

# BIRMINGHAM BOARD OF ZONING APPEALS AGENDA

**UPDATED: VIRTUAL MEETING DUE TO COVID-19 PANDEMIC**

**Go To: <https://zoom.us/j/96343198370>**

**Or Dial: 877 853 5247 US Toll-Free**

**Meeting Code: 963 4319 8370**

SEPTEMBER 8, 2020

7:30 PM

## 1. CALL TO ORDER

## 2. ROLL CALL

## 3. APPROVAL OF THE MINUTES

a) August 11, 2020

## 4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	1120 E. LINCOLN	WERNER	20-38	INTERPRETATION

## 5. CORRESPONDENCE

## 6. GENERAL BUSINESS

## 7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

## 8. ADJOURNMENT

### Title VI

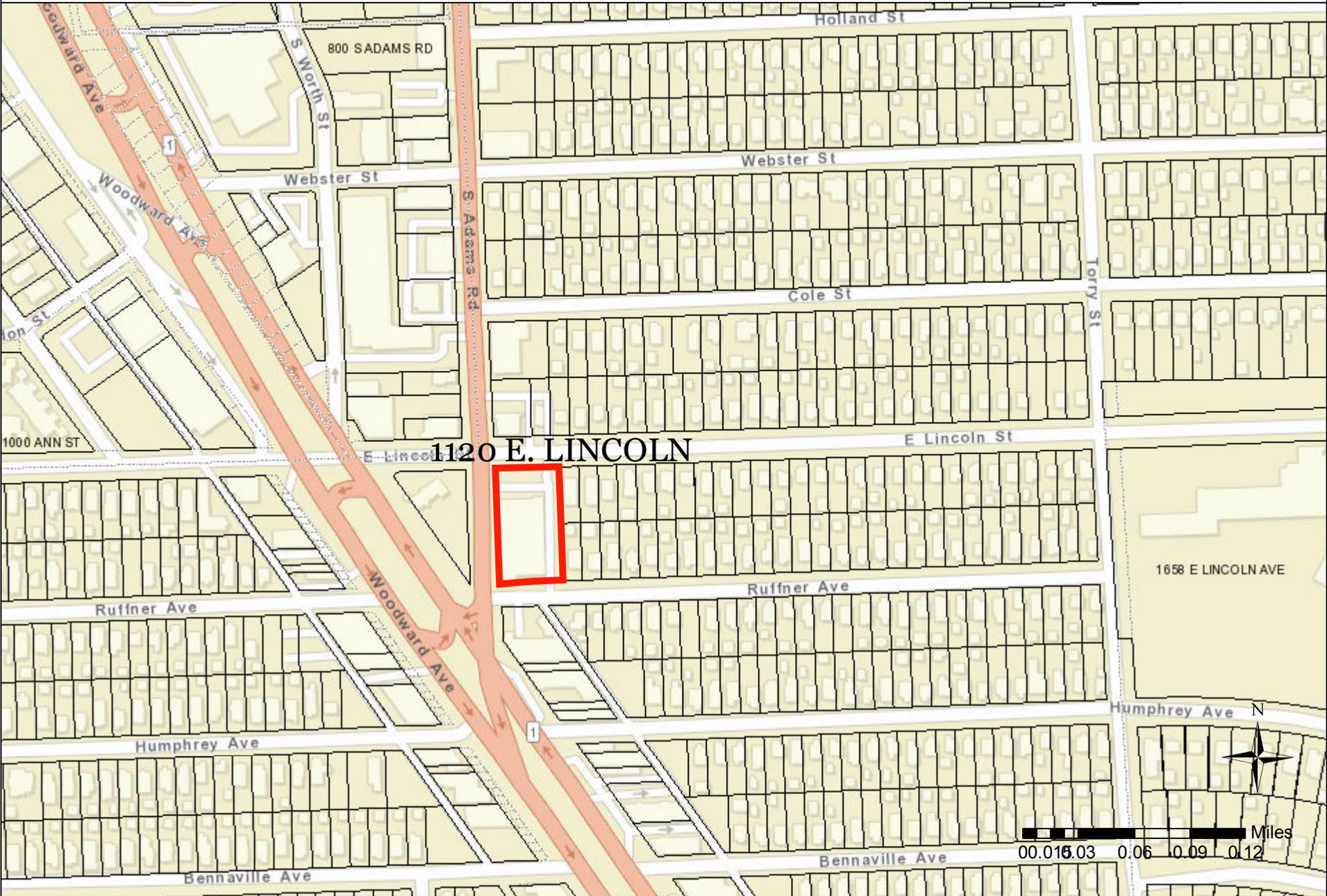
Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

*Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).*

The public entrance during non-business hours is through the police department at the Pierce Street entrance only. Individuals requiring assistance entering the building should request aid via the intercom system at the parking lot entrance gate on Henrietta Street.

La entrada pública durante horas no hábiles es a través del Departamento de policía en la entrada de la calle Pierce solamente. Las personas que requieren asistencia entrando al edificio debe solicitar ayuda a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

SEPTEMBER BZA MAP



**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS**  
**TUESDAY, AUGUST 11, 2020**  
**Held Remotely Via Zoom and Telephone Access**

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**1. CALL TO ORDER**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals (“BZA”) held on Tuesday, August 11, 2020. Vice-Chairman Canvasser convened the meeting at 7:35 p.m.

**2. ROLL CALL**

**Present:** Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart (was disconnected at 8:52 p.m.), Richard Lilley, John Miller, Erik Morganroth; Alternate Board Member Ron Reddy

**Absent:** Board Member Francis Rodriguez; Alternate Board Member Jerry Attia

**Administration:**

Bruce Johnson, Building Official  
Laura Eichenhorn, Transcriptionist  
Mike Morad, Asst. Building Official  
Jeff Zielke, Asst. Building Official

Chairman Lillie explained BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals are appointed by the City Commission and are volunteers who serve staggered three-year terms. They are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

Chairman Lillie took rollcall of the petitioners. All petitioners were present. Chairman Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures that would be followed for the virtual meeting.

**T# 08-43-20**

**3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF JULY 14, 2020**

Mr. Lilley noted that on the top of page five, Ms. Meads' name should be written as 'Glenda Meads' and not 'Glenda Means'.

Chairman Lillie opined that on page ten, sixth paragraph down, 'the petition' should be changed to 'the petitioner'. On page 11, second paragraph, first line he noted that 'he Commission' should be changed to 'the Commission'.

**Motion by Mr. Lilley**

**Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of July 14, 2020 as amended.**

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Lilley, Canvasser, Morganroth, Lillie, Miller, Hart, Reddy

Nays: None

**T# 08-44-20**

**4. APPEALS**

**1) 1535 Maryland  
Appeal 20-35**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1535 Maryland, was requesting the following variance to construct a detached garage:

**A. Chapter 126, Article 4, Section 4.03(B)** of the Zoning Ordinance requires that an accessory building shall not be permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks. The minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 18.25 feet. The proposed total is 12.00 feet. Therefore, a variance of 6.25 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting a variance to construct a detached garage to replace the existing one. This property is zoned R2 – Single Family Residential.

Thomas Friesen, owner, reviewed the letter to the BZA describing why he and his wife were seeking this variance. The letter was included in the evening's agenda packet.

In reply to Mr. Morganroth, Building Official Johnson confirmed that the Friesens were approved for a demolition permit by the City. Building Official Johnson said it was only concurrent with the demolition that the Building Department noticed the issue between the proposed garage and the existing house to the south.

A member of the public, residing at 31360 Pierce, said he was in favor of the Board granting the variance request since the setback issue was not discovered until the demolition was completed.

**Motion by Mr. Morganroth**

**Seconded by Mr. Canvasser with regard to Appeal 20-35, A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that an accessory building shall not be permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks. The minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 18.25 feet. The proposed total is 12.00 feet. Therefore, a variance of 6.25 feet is being requested.**

**Mr. Morganroth moved to approve the variance and tied it to the plans as submitted. Had the demolition not occurred, Mr. Morganroth stated he would have found a request to expand the garage reasonable because the wall was an existing non-conformity. He noted that the proposed garage would not be expanding a non-conformity. Mr. Morganroth said that the right to full use of the property includes the right to have a garage. The issue was not self-created since the Friesens followed all proper City procedures for acquiring their permit and the setback issue was only noticed by the Building Department after the demolition. Mr. Morganroth also cited Mr. Friesen's statement that he would have just remodeled the garage had he known there was a setback issue.**

**Mr. Miller concurred with Mr. Morganroth's assessment. He added that the variance would do substantial justice to both the property owner and the owners of the adjacent properties.**

**Chairman Lillie said he would also support the motion. He said the circumstances were unique in that the utility easement takes up part of the rear yard and that the two adjoining properties were not the same width.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

**Yeas: Morganroth, Canvasser, Lilley, Lillie, Miller, Hart, Reddy**

**Nays: None**

**2) 220 Northlawn  
Appeal 20-36**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 220 Northlawn, was requesting the following variances to construct an addition to an existing nonconforming home:

**A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum rear yard setback to be 30.00 feet. The proposed is 16.19 feet. Therefore a variance of 13.81 feet is being requested.**

**B. Chapter 126, Article 2, Section 2.08.2** of the Zoning Ordinance requires that the minimum combined front and rear setback is to be 55.00 feet. The proposed is 45.74 feet. Therefore a variance of 9.26 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting variances to construct an addition to the existing non-conforming home. This property is zoned R2 – Single Family Residential.

Thomas Farida, owner, reviewed his letter to the BZA describing why he was seeking these variances. The letter was included in the evening's agenda packet.

Mr. Morganroth noted that the two non-conforming walls of the home would not be altered proposed plans. He observed that the applicant would require permission to do any work on his home because of the two non-conforming walls, even when the non-conforming walls remain unchanged.

Mr. Farida confirmed that to be the case.

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth with regard to Appeal 20-36, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum rear yard setback to be 30.00 feet. The proposed is 16.19 feet. Therefore a variance of 13.81 feet is being requested, and B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is to be 55.00 feet. The proposed is 45.74 feet. Therefore a variance of 9.26 feet is being requested.**

**Mr. Miller moved to approve the appeal and tied it to the plans as submitted. He stated that the variances were only required because of the home's existing non-conformity, and that the non-conformity would not be increased by the granting of the variances. He said he found the request to be very reasonable, saying that the changes would be nearly impossible to notice from either the front or the rear of the home.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

Yeas: Miller, Morganroth, Lilley, Canvasser, Hart, Lillie, Reddy

Nays: None

**3) 515 Westwood  
Appeal 20-37**

Chairman Lillie asked the Board whether this appeal was sufficiently different from the appeal heard regarding this property in June 2020.

**Motion by Mr. Canvasser**

**Seconded by Mr. Miller to proceed with the review of Appeal 20-37 during the present meeting.**

**Mr. Canvasser noted that the June 2020 appeal for this property had two requested variances. He noted that this appeal only had one requested variance. He said the deletion of one of the variance requests was sufficient enough to comprise a material difference between the June 2020 appeal and the current one.**

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Canvasser, Miller, Lilley, Morganroth, Lillie, Hart, Reddy

Nays: None

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 515 Westwood was requesting the following variance to construct an addition the existing nonconforming home:

**A. Chapter 126, Article 4, Section 4.61(A)(1)** of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required side yard setback is 22.56 feet. The proposed is 16.38 feet, therefore a variance is 6.18 feet.

Assistant Building Official Zielke noted the applicant was requesting a variance to construct an addition to the existing home. Variances were granted for additions in 2014 and 2005. The addition in 2005 was not constructed. The applicant was in front of the BZA in June 2020 and received a denial at that time. The proposed variance was revised. This property is zoned R1 – Single Family Residential.

Ron Stern, of Bob Stern Builders, spoke on behalf of property owners Michael and Heather Dresden. Mr. Stern reviewed his letter to the BZA describing why the owners were seeking this variance. The letter was included in the evening's agenda packet.

Zachary Dauch, neighbor at 533 Westwood, said he and his wife were in favor of the proposed changes to 515 Westwood. They said the changes were a natural fit to the neighborhood and would cause no difficulties to them as the neighbors.

**Motion by Mr. Miller**

**Seconded by Mr. Lilley with regard to Appeal 20-37, A. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required side yard setback is 22.56 feet. The proposed is 16.38 feet, therefore a variance is 6.18 feet.**

**Mr. Miller moved to approve Appeal 20-37 and tied it to the plans as submitted. He said his concern when this property first came before the Board in June 2020 was that the proposed expansion would go into both the front and rear yards. He said he did not believe that proposal to be appropriate. Mr. Miller said that the present proposal, in contrast, would increase 515 Westwood's conformity with the majority of the rest of the neighborhood. He said granting the variance would do substantial justice not only to this lot but to the rest of the neighborhood.**

**Mr. Canvasser said he concurred with the motion. He added that the lot is somewhat irregular, which makes adherence to the ordinance even more difficult for the property owners.**

**Mr. Reddy said that the unique circumstances of the lot across the street from 515 Westwood show that the matter is not self-created. He agreed that the appeal should be granted.**

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Miller, Lilley, Canvasser, Morganroth, Lillie, Hart, Reddy

Nays: None

**T# 08-45-20**

## **5. CORRESPONDENCE**

Chairman Lillie stated that the Board received a letter dated August 5, 2020 from a Mr. Fisher residing on Hillside who said that neither he nor his neighbors were able to virtually raise their hands at the July 2020 BZA meeting.

Chairman Lillie said he was unsure why Mr. Fisher would not have been able to comment since other members of the public were able to comment during the same meeting. He also advised Mr. Fisher that the Board had been in receipt of his letter stating his objection to the proposed plans for 1165 Hillside.

Mr. Fisher stated that he and his neighbor both tried to access the July 2020 meeting via a number of different methods. He stated that he was in favor of the home being built and wanted improvement in the neighborhood. Mr. Fisher said he thought the variance for the front yard setback could have and should have been further mitigated so as not to disrupt the alignment of the fronts of the homes on the street.

Chairman Lillie said he thought the Board's discussion during the July 2020 meeting of the proposed variance for 1165 Hillside took Mr. Fisher's concerns into consideration. He explained that since the matter had been decided by the Board the only further recourse available to Mr. Fisher would be to take the matter to court, should he want to do that.

Mr. Fisher said he would not be interested in pursuing it in court, and said his main concern at this point was the fact that neither he nor his neighbor could comment on the appeal during the July 2020 meeting.

Chairman Lillie thanked Mr. Fisher for bringing it to the Board's attention, and said it is important to the Board to make sure that the technology they are using is functioning properly.

Mr. Morganroth said he wondered if all attendees understood there is a difference between physically raising one's hand and electronically raising one's hand through the Zoom platform.

Chairman Lillie said there could be a misunderstanding regarding the 'raise hand' function, but also noted that he gives instructions at the beginning of each meeting on how to electronically raise one's hand within Zoom.

**T# 08-46-20**

**6. GENERAL BUSINESS**

**T# 08-47-20**

**7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

**T# 08-48-20**

**8. ADJOURNMENT**

**Motion by Mr. Lilley**

**Seconded by Mr. Morganroth to adjourn the August 11, 2020 BZA meeting at 8:55 p.m.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Morganroth, Canvasser, Lilley, Miller, Lillie, Reddy

Nays: None

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Bruce R. Johnson, Building Official

# **CASE DESCRIPTION**

**1120 E. Lincoln (20-38)**

**Hearing date: September 8, 2020**

**Appeal No. 20-36:** The owner of a business applying to occupy a tenant space located at 1120 E. Lincoln Avenue requests an administrative appeal of the proposed use for the property.

A. **Chapter 126, Article 08, section 8.01 (F)1(a)** of the Zoning Ordinance authorizes the Board of Zoning appeals to hear and decide appeals from and review any determination made by an administrative official charged with the enforcement of the Zoning Ordinance. The Community Development Department has determined that the proposed use of alcoholic beverage sales for off-premise consumption does not meet the requirements of permitted uses as outlined in the Zoning Ordinance. Therefore, the applicant is requesting a reversal of that decision.

**Staff Notes:** The applicant has applied to operate a store which specializes in selling cheese, charcuterie and chocolate. This is classified as a specialty foods store which is a permitted use within the O-2 (Office/Commercial) Zone. The applicant has also requested to sell wine within their store for off-premise consumption. Alcoholic beverage sales for off-premise consumption is a specified use category within the Zoning Ordinance, but is not specifically listed as a commercial permitted use, an accessory permitted use or a use requiring a Special Land Use Permit within the O-2 (Office/Commercial) Zone. **Chapter 126, Article 1, Section 1.13** of the Zoning Ordinance states that *“any land use not specifically listed as a permitted use in Article 2 in the columns labeled ‘Permitted Uses’ or ‘Other Use Regulations’ is considered Non-Permitted.”* Therefore, because alcoholic beverage sales for off-premise consumption is not specifically listed in the Article 2 use categories for the O-2 (Office/Commercial) Zone, the Community Development Department has determined that the sale of wine for off premise consumption at a specialty food store is not permitted within the O-2 (Office/Commercial) Zone.

The Community Development Department has also determined that the sale of wine at a specialty food store does not meet the accessory permitted use category of *“commercial or office uses which are customarily incidental to the*

*permitted principal uses of the same lot*” of Section 2.23(C)(1)(h) of the Zoning Ordinance. As previously mentioned, alcoholic beverage sales for off-premise consumption is a specified use category in the Zoning Ordinance, but it is not specifically listed within the use categories of Article 2 for the O-2 (Office/Commercial) Zone. Meanwhile, the Zoning Ordinance does permit alcoholic beverage sales for off-premise consumption as an accessory permitted use in zones B2, B2-B, B2-C, B4 and MX. The Zoning Ordinance also permits alcoholic beverage sales for off-premise consumption as a use requiring a Special Land Use Permit in zones B1, MU-3, MU-5, and MU-7. Therefore, the Community Development Department has determined that alcoholic beverage sales for off-premise consumption may occur at a specialty foods store, but only in a zone that specifically permits alcoholic beverages for off-premise consumption as an accessory use or a use requiring a Special Land Use Permit.

The applicant has requested an appeal of the interpretation of the Zoning Ordinance by the Community Development Department that wine sales are not permitted as a commercial use customarily incidental to the permitted principal use in the O-2 (Office/Commercial) Zone. The justification for the applicant’s appeal is based upon Section 2.23(C)(1)(h) *Accessory Permitted Uses* of the Zoning Ordinance which lists “*commercial or office uses which are customarily incidental to the permitted principal uses of the same lot.*” The applicant believes that the sale of wine is customarily incidental to the permitted principal use of their specialty foods store selling cheese, charcuterie and chocolate. According to the applicant, the sale of wine is a small portion of the overall sales volume for their specialty food store, and is not the primary source of income. The applicant has also stated that it is a common occurrence for specialty food stores to sell wine to go with the assortment of foods for sale. The applicant claims that wine sales are a commercial use incidental to the permitted principal use of selling cheese, charcuterie and chocolate, and therefore should be permitted under the provisions of Article 2, Section 2.23(C)(1)(h).

# 1120 E LINCOLN MAP



Original

CITY OF BIRMINGHAM  
Community Development - Building Department  
151 Martin Street, Birmingham, MI 48009  
Community Development: 248-530-1850  
Fax: 248-530-1290 /

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 8/12/2020

Hearing Date: 9/8/2020

Received By: mm

Appeal #: 20-38

Type of Variance:	<input checked="" type="checkbox"/> Interpretation	<input type="checkbox"/> Dimensional	<input checked="" type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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**I. PROPERTY INFORMATION:**

Address: 1120 E Lincoln      Lot Number: T2N, R11E, SEC 31      Sidwell Number: 08-20-31-301-001  
 Sublots 317, 318, 319 Also on Plat

**II. OWNER INFORMATION:**

Name: Lincoln Adams LLC.

Address: 700 N. Old Woodward Ave Ste 300      City: Birmingham      State: MI      Zip code: 48009

Email: \* kdenhe@visioninvpartners.com      Phone:

**III. PETITIONER INFORMATION:**

Name: William Werner      Firm/Company Name: Monson's Provisions

Address: 620 W. Conbourne St.      City: Ferndale      State: MI      Zip code: 48220.

Email: WBWERNER61@gmail.com      Phone: 248-842-2739.

**IV. GENERAL INFORMATION:**

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

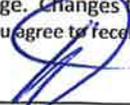
Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

- V. REQUIRED INFORMATION CHECKLIST:**
- One original and nine copies of the signed application
  - One original and nine copies of the signed letter of practical difficulty and/or hardship
  - One original and nine copies of the certified survey
  - 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
  - If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

**VI. APPLICANT SIGNATURE**

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

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

Signature of Owner:       Date: 8-12-2020

Signature of Petitioner:       Date: 7-25-2020



CITY OF BIRMINGHAM  
 Date 08/13/2020  
 Ref 00171672  
 Receipt 540275  
 Amount \$560.00

**William Werner**

**Mongers' Provisions**

620 West Cambourne Street  
Ferndale, MI 48220  
(248) 842-2739  
wbwerner61@gmail.com

11th August 2019

**Board of Zoning Appeals**

**Community Development - Building Department**

City of Birmingham  
151 Martin Street  
Birmingham, MI 48009

**Subject: Appeal for Interpretation of O2 Zoning Ordinance Related to Proposed Lease for Mongers' Provisions at 1120 E Lincoln Avenue, Birmingham, MI**

To Whom it May Concern,

I am writing regarding an appeal for an interpretation of the Zoning Ordinance, specifically related to the O2 Zoning uses and its enforcement pertaining to the sale of alcohol for off premise consumption. I am one of the owners of Mongers' Provisions, a specialty food store and cheese shop, located in Detroit and with a satellite location in Ferndale. We are attempting to lease the former Bagel Factory space located at 1120 E Lincoln Avenue and wish to be able to sell wine at this location as an incidental accessory use to our primary use as a specialty food store. In discussing these intentions with City Planning, City officials contend that this use is not allowed. **We believe that the ordinance is being interpreted and enforced in an arbitrary and capricious manner for the following reasons:**

1. **Birmingham Wine has been open since 2014 in an O2 Zoning District. Their initial applications for planning and building were approved despite the fact that their primary use is a wine shop. This use is not permitted under O2 zoning. In 2019 they relocated from 588 N Old Woodward (O2) to 798 N Old Woodward (O2) and were again granted approval to operate in this district.**
2. **The O2 zoning expressly permits use as a Specialty Food Store defined as**
  - a. *"9.02 Definitions - Specialty Food Store: A store selling foods and beverages that exemplify quality, innovation and style in their category. Their specialty nature derives from some or all of the following characteristics: their originality, authenticity, ethnic or cultural origin, specific processing, ingredients, limited supply, distinctive use, extraordinary packaging or specific channel of distribution or sale."*
3. If part of the intent of the ordinance was truly to exclude sales of wine and beer, the definition of a specialty food store should explicitly prohibit it or the word beverages should have been omitted. The word beverages here is open to interpretation, especially considering that most specialty food stores across the country sell wine.

4. The zoning ordinance goes on to say under 2.23 O2 Section C. 1 that accessory permitted uses include "commercial or office uses which are customarily incidental to the permitted principal uses of the same lot."
  - a. *"Other Use Regulations - Accessory Permitted Uses*
    - a...g.
    - h. *commercial or office uses which are customarily incidental to the permitted principal uses of the same lot"*
5. The **sale of wine at a cheese shop or specialty food store is a customarily incidental use.** In surveying 83 similar stores in Michigan and 18 other states, over 93% of them (78 of 83) sell wine. In almost all cases, this sale of wine is an incidental accessory to their principal use and not a primary source of revenue. To illustrate this, in the last two years our sales of alcohol for off premise consumption constitute 8% of our gross revenue.
6. We have repeatedly requested the basis for City's opinion that the off premise sale of wine by us:
  - a. Does not constitute a customarily incidental use which would allow such sale under the "Other Use Regulations" of the ordinance
  - b. Is not permitted as an accessory use even though the ordinance is written in a manner indicating that "other" subordinate uses are permitted so long as they are not a primary use
7. The city has refused to provide justification for their interpretation of the ordinance as requested above other than referring to Article 1, Section 1.13 of the Zoning Ordinance, which states that "Any land use not specifically listed as a permitted use in Article 2 in the columns labeled "Permitted Uses" or "Other Use Regulations" is considered Non-Permitted". **Which ignores the fact that the Other Use Regulations in O2 allows for other incidental uses as an accessory to primary.**
8. Our incidental sales of wine at this location would cause no nuisance, or other negative impacts to the surrounding neighborhood, the facade of the building, or the general cohesiveness of the area.
9. The inclusion of Specialty Food Stores as an expressly permitted use in this district is by nature arbitrary and capricious, if in its application, it excludes 95% of such businesses from operating as they customarily do. If this provision were solely included to permit a single specific business to operate in this zoning district, it further demonstrates the arbitrary, capricious and selective nature of its application and interpretation.
10. The City has repeatedly failed to subject Birmingham Wine (a business in similar standing, but that under all interpretations of the ordinance is not permitted to operate in O2) to the same standards and interpretations we are being held to. In light of this fact and the facts above, we firmly reject the interpretation provided to us by the City, on the grounds that it is arbitrary and capricious. We have a solid basis in the language of the

ordinance to allow our operations as desired and a business in similar standing is having its operations facilitated by the City's own approval process despite it being totally out of compliance with the ordinance.

Now, I am not suggesting that Birmingham Wine should be shut down because of these facts. We have no ill will towards that business or its ownership. I am merely requesting that the ordinance be interpreted, applied and enforced fairly. If the ordinance includes an expressly permitted use, the interpretation of accessory uses should be done in the context of customary operations for uses that are expressly permitted.

In our Detroit location, our business is viewed by surrounding residents as an asset to the community, one that enriches the mixture of the neighborhood. We have numerous existing customers in the City of Birmingham and are confident that the citizens of Birmingham would welcome our inclusion in this part of the city. Furthermore in our Detroit store, we are bound by terms of our lease to not dedicate more than 20% of our sales floor to wine or to have more than 20% of our revenue derived from the sale of alcohol. We have had no issues maintaining these terms in our two years of operation there. Our logo itself says what our primary focus is: Cheese, Charcuterie and Chocolate. It makes no mention of wine. We would be happy to accept a restriction that prevented us from having external signage indicating wine was sold at this proposed location as a condition of approval because these sales are incidental.

We fully understand that the spirit of the zoning ordinance is to protect the citizens from nuisance, maintain an aesthetically and economically cohesive community and provide an appropriate mixture of business and residential interests. Our operations fall fully within this spirit and the minimal sales of wine we would generate will create no impacts to the parking, noise, or generate other nuisances in the surrounding area. Nor would it alter our facade in a manner that would create a visual impact.

Regarding this type of interpretation establishing a precedent that the city does not wish to create, we do not believe that this is a concern for the following reasons. First, tying the sale of alcohol to an accessory use in O2 still prevents the establishment of stores operating primarily as a wine shop, party store or liquor store. Businesses that derive a majority or a non-incidental portion of their revenue from sales of alcohol would still be prohibited. Second, since the primary permitted uses are clearly established, the likelihood that numerous Specialty Food Stores that meet the definition provided in the ordinance (like we do) will suddenly crop up is extremely low.

Thank you for your time in this matter. I have attached an appendix documenting the list of other cheese shops and specialty food stores. *Z*

Sincerely,

William Werner

Co-Owner

Mongers' Provisions

*William Werner* 8-12-20

Appendix: A Survey Of Cheese Shops and Specialty Food Stores With and Without Wine

The following is a summary of other specialty food stores and cheese shops around the country that sell wine.

In the last two years, our **sales of wine and beer account for approximately 8% of our gross revenue**. This is an incidental use to our primary use as a specialty food store, albeit an important one that our growing customer base has come to expect. Yet another indication that these activities are "customarily incidental" is that by nature, most specialty food stores in Michigan and the country also sell wine. In addition, the Specialty Food Store definition includes the word beverages but does not delineate between alcoholic or non-alcoholic beverages.

To illustrate this point, I have compiled a survey of cheese shops and other specialty markets from around the state and the country that do or do not sell wine. In almost all cases, these shops derive the majority of their revenue from retail cheese and other specialty items other than wine. In adding shops to the list, I *specifically excluded any stores that had "wine" in their name so as to only represent stores that are not wine shops in their principal use*. This list includes some of the most premier wine shops in the country and includes stores from 18 states (This summary does not include stores in New York because state law only allows liquor stores to sell wine but they are allowed to sell beer. Every cheese shop I have been into in New York sells beer, so if I were to include the 10 + stores of this type in New York City alone, the percentage of cheese shops or specialty food stores that sell alcohol in one form or another would be over 97%).

<i>Store Type</i>	<i>Sells Wine</i>	<i>No Wine</i>
Cheese Shop	52	5
Specialty Market	26	0
<b>Grand Total</b>	<b>78</b>	<b>5</b>
	<b>% w/ wine</b>	<b>94%</b>

Business	Store Type	City	State	Wine	No Wine	Notes
Cheese Lady	Cheese Shop	Farmington	MI	1		
Aperitivo	Cheese Shop	Grand Rapids	MI	1		
Cheese Lady	Cheese Shop	Kalamazoo	MI	1		
Cheese Lady	Cheese Shop	Grand Rapids	MI	1		
Cheese Lady	Cheese Shop	Traverse City	MI	1		
Cheese Lady	Cheese Shop	Muskegon	MI	1		
Frankenmuth Cheese Haus	Cheese Shop	Frankenmuth	MI	1		
Village Cheese Shanty	Cheese Shop	Leland	MI	1		
Pinconning Cheese Store	Cheese Shop	Pinconning	MI	1		
Cheese House	Cheese Shop	Pinconning	MI	1		
Wilson's Cheese Shop	Cheese Shop	Pinconning	MI	1		
The Cheese shop of Saline	Cheese Shop	Saline	MI	1		
Culture Beer and Cheese	Cheese Shop	Brighton	MI	1		
Rockford Cheese Shop	Cheese Shop	Rockford	MI	1		
Devries & Co	Cheese Shop	Detroit	MI		1	
Zingermans	Cheese Shop	Ann Arbor	MI	1		
Zingermans Creamery	Cheese Shop	Ann Arbor	MI	1		
Cheese Lady Rochester	Cheese Shop	Rochester	MI		1	Shares retail space with a wine shop
Petoskey Cheese	Cheese Shop	Petoskey	MI		1	

Produce Station	Specialty Market	Ann Arbor	MI	1		
Argus Farm Stop	Specialty Market	Ann Arbor	MI	1		
Boulevard Market	Specialty Market	Tecumseh	MI	1		
Fortinos	Specialty Market	Grand Haven	MI	1		
Art of The Table	Specialty Market	Grand Rapids	MI	1		
Peters Gourmet Market	Specialty Market	Grandville	MI	1		
Port City Organics	Specialty Market	Manistee	MI	1		
Folgarellis	Specialty Market	Traverse City	MI	1		
Symons General Store	Specialty Market	Petoskey	MI	1		
Black Radish Creamery	Cheese Shop	Columbus	OH	1		
Cheese shop of Des Moines	Cheese Shop	Des Moines	IA	1		
The butcher and Grocer	Specialty Market	Columbus	OH	1		
The Hills Market	Specialty Market	Columbus	OH	1		
The Cheese House	Cheese Shop	Columbus	OH		1	
Rodgers Park Provisions	Specialty Market	Chicago	IL	1		
Olivia's Market	Specialty Market	Chicago	IL	1		
Green Grocer	Specialty Market	Chicago	IL	1		
Publican Quality Meats	Specialty Market	Chicago	IL	1		
Provisions Uptown	Specialty Market	Chicago	IL	1		
Fromagination	Cheese Shop	Madison	WI	1		

Wisconsin Cheese Mart	Cheese Shop	Madison	WI	1		
Carr Valley Cheese	Cheese Shop	Madison	WI	1		
Mousehouse Cheesehaus	Cheese Shop	Windsor	WI	1		
Homestead Cheese	Cheese Shop	Sun Prairie	WI		1	
Ehlenbach's Cheese Chalet	Cheese Shop	Deforest	WI	1		
Edelweiss Cheese Shop	Cheese Shop	New Glarus	WI	1		
Cheesers	Cheese Shop	Stoughton	WI	1		
Cardullo's Gourmet Shoppe	Specialty Market	Cambridge	MA	1		
Curds & Co	Cheese Shop	Brookline	MA	1		
Formaggio Kitchen	Cheese Shop	Cambridge	MA	1		
Wasik's Cheese Shop	Cheese Shop	Wellesley	MA	1		
The Cheese Shop of Salem	Cheese Shop	Salem	MA	1		
Cheese Plus	Cheese Shop	San Francisco	CA	1		
Bi Rite Market	Specialty Market	San Francisco	CA	1		
24th Street Cheese	Cheese Shop	San Francisco	CA	1		
La Fromagerie	Cheese Shop	San Francisco	CA	1		
Say Cheese	Cheese Shop	San Francisco	CA	1		
Mission Cheese	Cheese Shop	San Francisco	CA	1		
Cheese Boutique	Cheese Shop	San Francisco	CA	1		
Driver's Market	Specialty Market	Sausalito	CA	1		

Canyon Market	Specialty Market	San Francisco	CA	1		
Antonelli's	Cheese Shop	Austin	TX	1		
Houston Dairymaids	Cheese Shop	Houston	TX	1		
Gourmage	Cheese Shop	New Braunfels	TX	1		
Scardello	Cheese Shop	Dallas	TX	1		
The Cheese Shop of Portland	Cheese Shop	Portland	ME	1		
Dibruno Brothers	Specialty Market	Philadelphia	PA	1		
Cheese Bar	Cheese Shop	Portland	OR	1		
Rubiner's Cheesemongers	Cheese Shop	Great Barrington	MA	1		
Bleu Fox Cheese Shop	Cheese Shop	Chattanooga	TN	1		
St James Cheese Co	Cheese Shop	New Orleans	LA	1		
Goat Sheep Cow	Cheese Shop	Charleston	SC	1		
South Slope Cheese Shop	Cheese Shop	Asheville	NC	1		
Southern Whey	Cheese Shop	Southern Pines	NC	1		
Truckle Cheesmongers	Cheese Shop	Richmond	VA	1		
The Cheese Shop	Cheese Shop	Williamsburg	VA	1		
Market Hall	Specialty Market	Oakland	CA	1		
Buttercraft	Specialty Market	Portland	OR	1		
Spanish Table	Specialty Market	Berkeley	CA	1		
Paris Madrid Grocery	Specialty Market	Seattle	WA	1		

Caputos Market & Deli	Specialty Market	Salt Lake City	UT	1		
Cured	Cheese Shop	Boulder	CO	1		
Cheese Importers	Cheese Shop	Longmont	CO	1		
Curds Gourmet Cheese Shop and Deli	Cheese Shop	Littleton	CO	1		

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September 3, 2020

**Board of Zoning Appeals**  
**Community Development - Building Department**

City of Birmingham  
151 Martin Street  
Birmingham, MI 48009

**Subject: Addendum to Appeal for Interpretation of O2 Zoning Ordinance Related to Proposed Lease for Mongers' Provisions at 1120 E Lincoln Avenue, Birmingham, MI**

This is an addendum to our appeal letter to the Birmingham Board of Zoning Appeals Dated 11th August 2020 regarding our Proposed Lease at 1120 E Lincoln Ave.

We expand on the main points in that letter here with additional explanation and specific citations of Case Law in the State of Michigan related to zoning issues which are applicable here.

**Accessory Use Under Plain and Ordinary Language**

Courts have consistently held that municipalities should give effect to the plain and ordinary language in the interpretation of zoning ordinances. This means that words should be interpreted as they are written with commonly understood definitions used.

"Terms used in an ordinance must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions. See *Halloran v Bhan*, [470 Mich 572, 578](#); [683 NW2d 129](#) (2004)." *Epicurean Devs., LLC v. Summit Twp.*, No. 329060, at \*5 (Mich. Ct. App. Feb. 28, 2017)

In the case of this ordinance, the plain and ordinary language pertinent to our situation are the following terms:

1. **"Other"**

The ordinance under O2 allows other uses customarily incidental to the primary use on the same lot. It does not make a distinction or provide exceptions to the term other in any meaningful way. While it would seem that defining the word "other" should not be necessary, we do so because the City appears to be acting arbitrarily when applying this part of the ordinance.

- a. "Other Use Regulations - Accessory Permitted Uses"

- i. “h. commercial or office uses which are customarily incidental to the permitted principal uses of the same lot”
  - b. Other is defined as <https://www.dictionary.com/browse/other>
    - i. additional or further:
    - ii. different or distinct from the one or ones already mentioned or implied
2. **Accessory Use and “Customarily Incidental”**  
*“Use, Accessory: A subordinate use that is customarily incidental to the principal use on the same lot. In case a question arises as to the degree of being incidental or length of custom, the Board of Zoning Appeals shall rule. Accessory uses taking place on not more than 2 occasions per calendar year for not more than 48 hours on each occasion are not subject to the regulations of the Zoning Ordinance.” (Bham Zoning Ordinance Definitions)*

Since accessory is defined above in the ordinance, that definition hinges on the words “customarily incidental”. To define this term, we turn to court cases dealing with issues of what constitutes a “customarily incidental” land use in zoning. Notably, we cite *Ida Twp. v. Se. Mich. Motorsports, LLC*, No. 303595, at \*7-8 (Mich. Ct. App. Oct. 3, 2013) which involves a case where the Court considered the issue of what constitutes “customarily incidental” use.

“Instead, an accessory use will be found in cases where “the use in question enhance[s] the principal use of the property.” *Id.* at 813. Furthermore, an “incidental use” “depends upon” and “furthers” the principal use of the property. *Id.* It is “something . . . appertaining or subordinate to, or accompanying something else of greater or principal importance. . . .” *Twp of Groveland v Jennings*, 106 Mich App 504, 512; 308 NW2d 259 (1981) (quotations omitted). At all times, an accessory use must remain “something less” than the principal use of the property, which “must be and must continue to be dominant to an accessory use.” *Id.* at 513 (quotations omitted).

Combining these definitions into a workable whole indicates that, in order to qualify as an accessory use that is customarily incidental to a primary use under the ordinance, defendants' riding of motocross vehicles on tracks constructed for that purpose must be subordinate to the primary use, it must be dependent on or pertain to the primary use, and it must enhance or further the primary use of the property.”

*Ida Twp. v. Se. Mich. Motorsports, LLC, No. 303595, at \*7-8 (Mich. Ct. App. Oct. 3, 2013)*

We have a proven primary use, a “Specialty Food Store,” that is expressly permitted in the Ordinance. **Our sales of wine are incidental to this primary use, and as cited in *Ida*, these sales enhance and further this principal use while remaining wholly subordinate to it.** We have provided evidence of this fact in terms of these sales as a percentage of our revenue and evidence that these activities are customarily associated with similar businesses operating as specialty food stores.

The City has made no assertions or statements of material fact to the contrary. Nor have they developed or cited standards for determining what constitutes a customarily incidental use other than delegating this determination to the BZA in the event of a dispute. There do not appear to be any standards for the BZA to apply here and, in their absence, the legal precedent of plain and

ordinary language should stand. **Under the plain and ordinary language of the ordinance, and the Opinions of the Courts cited above, our sales of wine constitute a customarily incidental use.**

3. **“Beverages”**

The ordinance definition of specialty food store includes the word beverages. While courts uphold Cities’ right to allow or prohibit specific uses, they have also held that this process should be done in the context of the law as it is written. Again, we refer to *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004) and *Epicurean Devs., LLC v. Summit Twp.*, No. 329060, at \*5 (Mich. Ct. App. Feb. 28, 2017) regarding consulting a dictionary to define words in an ordinance.

Beverages is defined as “any potable liquid, especially one other than water, as tea, coffee, beer, or milk” <https://www.dictionary.com/browse/beverage> or by Merriam Webster as a “drinkable liquid”. Wine is clearly such a substance in plain and ordinary language. Had the intent of the City been to exclude alcoholic beverages, it would have been easy to adjust the language accordingly. It does not appear that this intent was present. In fact, in *Sinelli v Birmingham Zoning*, a case revolving around disputed interpretation of the zoning ordinance in relation to parking, the City argued successfully that the language in the ordinance should not be read to be more restrictive than actually written in plain construction.

In this case, the City had leased a section of public property to Bottle Basket, a restaurant for off street parking. Plaintiff believed that property zoned public property could only be used for off street parking if said parking was associated with a public purpose, i.e a school, park or other public facility. The City disagreed, citing its own zoning ordinance:

“Section 5.15 of the Birmingham zoning ordinance provides permitted uses of property zoned “public property”:

Permitted	Principal	Uses
1. Buildings housing governmental functions of the City, County or State.		
2. Schools, municipal buildings, libraries, fire stations, police stations, department of public works buildings and storage yards, wells, cemeteries, <b>off-street parking facilities</b> , water towers, auditoriums and essential services.		
3. Parks, playground, playfield, stadiums, flood plains, lakes and rivers.		
4. Any use of a building or land similar in character to those specified above.		
5. <b>Public swimming pool.</b>		[Emphasis added.]

Plaintiffs argue that parking is permitted in a public property zone only if it is connected to one of what they term the public purposes listed in paragraph 2 of § 5.15, and thus the word "public" should be read into the phrase "off-street parking facilities" as it appears in § 5.15. Defendants, on the other hand, argue that § 5.15's language is plain and unambiguous, permitting such property to be used for off-street parking of automobiles, and should not be read as limiting such use to persons having as their destination some public facility or public purpose.”...

“Paragraph five of § 5.15 lists a "public swimming pool" as a permitted use of public property. Had Birmingham intended to limit the use of public property for off-street parking facilities to those associated with public facilities, such as police stations, it could have similarly inserted the word public preceding the phrase off-street parking facilities.

Plaintiffs argue that just because Bottle Basket will be open to the public does not give the restaurant or the parking

the public character which the zoning ordinance contemplates for property zoned public property, citing *People ex rel Detroit H R Co v Salem Twp*, 20 Mich. 452 (1870). That argument presupposes, however, that the word public is to be read into the phrase off-street parking facilities, contrary to our holding.” *Sinelli v. Birmingham Zoning*, 160 Mich. App. 649, 653-54 (Mich. Ct. App. 1987)

The Court concurred here with the City. They held that had the intent been to restrict the use of off street parking to only serve public facilities, the City could have done so in the ordinance just as they made a distinction between public and private swimming pools.

This same argument applies in terms of the restriction of beverages to only those non alcoholic, or in the case of the above “Other Permitted Uses” to allow other incidental uses with the exception of alcoholic beverages. Nothing in the ordinary language of the ordinance supports the conclusion that the intent of the O2 zoning was to prohibit the incidental sale of beverages. It is clear that the O2 section of the ordinance is not written to permit liquor stores or party stores who derive a principal portion of their revenue from the sales of alcohol for off premise consumption. However, the argument that incidental accessory use for such a purpose does not apply here, or that the word beverages somehow excludes alcohol, is not based in fact, or on the plain and ordinary language used in the ordinance. **The City cannot arbitrarily decide to sometimes adhere to the ordinance as written, as they did in Sinelli, and at other times infer unwritten prohibitions or restrictions.**

**To illustrate this point, we highlight several examples where the ordinance is not being applied evenly with respect to primary and accessory use.**

- a. **Bakery** - Bakery is a permitted primary use in the O2 zoning district. No definition of bakery is provided. A deli is not a permitted use in the O2 zoning district. Cafe and Coffee shop is not a permitted use. Great Harvest bread sells sandwiches, coffee, an assortment of home goods and more. They operate not just as a bakery but as a cafe and deli.
- b. **Salon** - Again, a permitted use under O2, but not defined in the ordinance. Salons are generally accepted as “an establishment in which hairdressing, makeup, and similar cosmetic treatments are carried out professionally”. Most salons also sell at retail, hair care products and other accessories. Since the O2 district permitted uses does not specify general retail and the definition for “Boutique” does not include hair care products, retail of such items would be non-conforming by omission.

**Clearly these uses are accessory permitted uses in the plain and ordinary interpretation of other permitted uses.** Yet if the standard being applied to us, that any uses, accessory or otherwise must be explicitly defined, all of these other activities would be non-conforming. In fact, **such interpretation would wholly defeat the accessory use definition altogether, making it essentially meaningless.** This would be inconsistent with how the Courts have repeatedly treated cases dealing with accessory use.

## **Standards For Approval and Denial**

Furthermore, as part of a showing that administrative action is taken in an arbitrary or capricious manner, Courts have held that approval or denial of a planned use or development should be subject to clear and defined standards. In *Osius vs St. Clair Shores* 344 Mich. 693 (Mich. 1956), the Supreme Court of Michigan wrote:

"The ordinance presented is fatally defective. The zoning board of appeals is simply given authority to permit, and obviously to refuse to permit, the erection of gasoline stations after public hearings. But what standards prescribe the grant or rejection of the permission? We find none. The ordinance is silent as to size, capacity, traffic control, number of curb cuts, location, or any other of the myriad considerations applicable to such business. In this situation the words of the supreme court of Pennsylvania on a similar question are peculiarly appropriate:

"Where a zoning ordinance permits officials to grant or refuse permits without the guidance of any standard, but according to their own ideas, it does not afford equal protection. It does not attempt to treat all persons or property alike as required by the zoning act. While the exercise of discretion and judgment is to a certain extent necessary for the proper administration of zoning ordinances, this is so only where some standard or basis is fixed by which such discretion and judgment may be exercised by the board. Where a zoning ordinance is vague and indefinite, it cannot be sustained as valid under the authorizing act." *Taylor v. Moore*, 303 Pa. 469, 479 ( 154 A 799).

Without definite standards an ordinance becomes an open door to favoritism and discrimination, a ready tool for the suppression of competition through the granting of authority to one and the withholding from another. Such charges, in fact, were made in the case before us, another service station having been permitted on a nearby property. We need not pass upon them. The ordinance, as the trial court found, is unconstitutional and void, in the particular provisions with respect to which complaint is made, since it fixes no standard for the grant (or refusal) of the certificate prayed. A zoning ordinance cannot permit administrative officers or boards to pick and choose the recipients of their favors. Under the view we have taken it is unnecessary to pass upon other questions presented." *Osius v. St. Clair Shores*, 344 Mich. 693, 700-01 (Mich. 1956)

In including customarily incidental accessory uses in the zoning ordinance the City must apply them fairly and evenly. As mentioned above regarding accessory uses by bakeries, salons etc, and the operation in general of Birmingham Wine, the ordinance is not being interpreted or enforced in a consistent manner. Nor is plain and ordinary language the guiding principle in its interpretation. Sometimes unlisted uses are permitted and other times they are not.

Furthermore, in delegating authority to the BZA to determine what constitutes a customarily incidental use *without providing any standards for such determinations*, the ordinance falls into exactly the situation that the Court rejected in *Osius*. If bakeries and salons can have accessory uses that are not explicitly stated in the ordinance but a specialty food store cannot, accessory uses are clearly being applied in a selective manner without consistent standards. If the ordinance set standards as to the percentage of revenue, frequency of occurrence, or other means of determining customarily incidental use, such as a requirement to provide evidence a proposed use is not incidental, this would be avoided. It has not however done so and as such, the plain and ordinary meaning of these terms should be taken at face value.

### **Intent of the Ordinance**

We have reviewed numerous minutes of the Planning Board and BZA hearings. None of them indicate that the intent of the O2 district is to specifically prohibit the sale of alcohol, accessory or otherwise. From this review, we do understand that the primary intent of this district is to create a buffer zone between

heavy commercial use and residential properties. Our accessory sales of wine are not contrary to this intent. Furthermore, in terms of impact to residential properties, traffic and noise, these incidental sales do not differ from the previously established uses conducted on the same premises for years.

The inclusion of off-premise sales of wine as a permitted use in other districts while omitting such language in the language of O2 is not sufficient evidence of such intent. Other districts established in the ordinance expressly permit retail, delis and cafes/coffee shops yet they are not included as permitted uses in O2. Notwithstanding, the City allows salons to retail hair care products and bakeries to sell sandwiches and coffee. The omission of these uses whether primary or accessory does not demonstrate an intent to prohibit them. The City could not possibly list all potential accessory uses which is precisely why the ordinance allows for other accessory uses. Additionally, if the City wishes to cite the land use matrix provided in Appendix A of the zoning ordinance as proof of intent, we refer to section 1.06 of the ordinance:

**“1.06 Interpretation**

Text Supersedes Graphics: If there are found to be differences between the meaning or implication of any drawing, table, or figure, the text of this Zoning Ordinance shall apply.”

The text does not support any such intent. Nor does the body of evidence provided in minutes of the Planning Board in contemplating appropriate uses in O2 and, especially not in the context of incidental accessory use. Absence of evidence of intent to prohibit the accessory sale of alcohol, reliance on plain and ordinary language is the appropriate means to interpret the ordinance.

**Arbitrary and Capricious**

For the reasons above, and those stated in our initial letter, we believe that the ordinance is being applied and interpreted arbitrarily and capriciously. In previous requests for interpretation held before the BZA, the Board has indicated that an appeal for interpretation should demonstrate that the City official has acted in an arbitrary or capricious decision, or based their decision on an erroneous finding of a material fact or an erroneous interpretation of the zoning ordinance (BZA Appeals Proceedings, Tuesday November 2019 and others).

We stand that this is the case here. We do believe that the decision provided to us by City officials in our correspondence was arbitrary and capricious, ignored material fact presented by us, presented no evidence to the contrary, and failed to interpret the ordinance using the plain and ordinary language provided by the ordinance. Additionally, this conclusion is supported by the past actions and inactions of the City to enforce the ordinance as written in the same manner they are applying it to us for the following reasons:

1. Above all, the City has allowed Birmingham wine to operate in nonconformance since December 13, 2013. Each day is a separate violation of the ordinance. Were the applicable fines imposed, Birmingham Wine would be subject to \$71,000 in fines since moving in 2019 and \$393,000 in fines at the previous location. Cumulatively, the penalty for such non-conformance would be over \$464,000. The City has not enforced these penalties. Whether by error, negligence or, intentional favoritism, the approval of this business twice weakens the argument that the City interprets and

applies the standards of the O2 ordinance evenly. This demonstrates arbitrary and capricious application of the ordinance.

2. The City has demonstrated a track record of selectively interpreting the ordinance, sometimes under strict construction of language and at other times, under inferred prohibitions or permissions. It cannot exist both ways. Either all undefined or unexpressed permitted uses are prohibited, or accessory uses can be allowed providing they meet the plain and ordinary definition of customarily incidental activities. Though the City can establish rules and limitations on land use, it cannot cherry pick when to allow or deny "other" accessory uses based on unwritten rules or procedures. This demonstrates arbitrary and capricious interpretation and application of the ordinance.
3. When provided with material facts regarding the degree to which our sales of wine are incidental and customarily associated with our primary business, a specialty food store, the City twice refused to respond to these facts directly, or with clear standards or evidence to indicate that our assertions were contrary to the ordinance. When asked to clarify these standards or provide such evidence, the City has refused to respond. Asking for factual justification for administrative denial is not an unreasonable request, yet the City neglected to do so three times in our correspondence. This demonstrates that differences of opinion are not based in material fact but rather on an arbitrary interpretation of the ordinance. If the City had such standards or justifications to support their conclusion that our sales of wine are non-incidental and non-customary, they could have easily cited them. They did not cite any such justifications or standards. This is evidence that such standards do not exist and that the City is acting arbitrarily and capriciously.
4. The City did not demonstrate or assert that our incidental sale of wine would cause nuisance or otherwise compromise the spirit or intent of the O2 zoning district. Based on reasonable assumptions and our track record of selling incidental amounts of wine in our Detroit location, there is no basis in fact to make such an assertion. The amount of traffic our store would generate, vehicular or otherwise, would not differ substantially whether or not we sell wine. The same goes for noise or any other potential nuisance for that matter. We operate within normal retail hours, are not open past 7-8 pm (occasionally we stay open until 9 pm during the weeks preceding Christmas), nor are we open early. Our current hours of operation in Detroit are 12pm to 6 pm and prior to covid, we were generally open from 10 am to 7 pm. We have a demonstrated track record of providing upscale sales of specialty food with and without sales of wine. Our presence in a location creates no nuisance greater than any other specialty food store whether or not we sell incidental amounts of wine. We have attested to this and have 22 letters of support from residents or business owners from the City of Birmingham in support of our operation at this site with the sale of wine permitted. The City has not provided evidence or any references to the contrary in denying our desire to sell wine at this location.

The spirit of a zoning ordinance is incredibly important and we recognize that. We also firmly believe that allowing wine sales as an accessory use to the expressly permitted use of a specialty food store does nothing to violate this spirit. That the City has not provided evidence that such activities would create a nuisance or even inferred that they might, demonstrates an arbitrary and capricious interpretation of the ordinance.

5. All of the above refer to arbitrary and capricious interpretation of the ordinance by administrative action. That said, we feel that the wording of the permitted uses in O2 of the ordinance are arbitrary and capricious themselves. For example, we do not feel that Birmingham Wine, essentially operating as a wine “boutique” (boutique being a permitted use under O2) should be denied operation in this district because their impact is much like that of a specialty food store or any of the other of the permitted uses in the district. They are not a party store or mass appeal liquor store.

At the same time, the permission of a tobacconist in this district raises the question of how these permitted uses were established in the first place. Why is a tobacconist a better, more harmonious or less impactful business than a boutique wine shop? The City has in fact contemplated the removal of tobacconist from the permitted uses while allowing a party store at the address in question when it was considering redesignation of the O1/O2 districts to N1/N2/N3 (Regular Meeting of Planning Board, May 10, 2017).

The fact that they have contemplated this very question here is an indication of an awareness that the zoning for O2 as written, is inconsistent and not necessarily in the spirit of the current master plan. The list of permitted uses seems to be more a list of businesses already in operation in the zoning district than an expression of a desire for a long term plan or vision of the district. For example, “Hair Replacement Establishment”, is a permitted use under O2. In what circumstances did the drafters of this ordinance decide that a “Hair Replacement Establishment” was part of their long-term vision for the community other than allowing an existing such business to continue a prior use? We find it dubious at best that a planning board specifically envisioned such a business as being critical to its long term goals. The list goes on of such permitted uses, leather and luggage goods shop, photography studio, specialty home furnishing shop, interior design shop, semi-private swimming pool, tobacconist etc. There does not seem to be a clear connection between the impacts and uses of these businesses and their specific inclusion in the ordinance. Why prohibit an independent card shop or stationary store (not expressly stated and therefore prohibited) while permitting a flower/gift shop? And in this case, would the City bend the definition of flower/gift shop to permit such a business? And why specify a leather and luggage goods shop if a boutique is already a permitted use? A tailor is allowed and not defined, does that mean that a seamstress is prohibited? Planning Board Member Williams expressed these very concerns in a 2009 study session on the O2 permitted uses.

“Mr. Williams said it looks to him as though a lot of the language for O-1 and O-2 was drafted in response to what was in place when the Zoning Ordinance became effective. The ordinance took a pre-existing condition and made it conforming. This is different than what was done in the Triangle District where the drafters planned for what they wanted rather than grandfathering in existing uses.”

The alternating specificity and vagueness in the uses and definitions included in the O2 section of the ordinance do not indicate a clear plan and desired impact level for the community, so much as an attempt to grandfather some existing businesses while excluding others in a truly arbitrary manner. This is tantamount to spot zoning, an action publicly disavowed by the City numerous times in planning meetings and BZA hearings and, *by nature*, arbitrary and capricious.

## Equal Protection

The Courts have held that the standard for proving a violation of equal protection is high when it comes to cases of zoning, yet we feel that the facts in this case support such a standard. The primary standard here is that a similarly situated party is being held to a different standard for a similar use. Birmingham Wine is such a situation. They are, by admission of the City, a nonconforming use under the O2 zoning ordinance. They operate a non-conforming business in the same zoning district we seek to operate one that under plain and ordinary interpretation of the language in the ordinance would be in conformance. That they do so, is by direct refusal of the City to enforce the zoning ordinance as written. The City cited administrative error as the cause for this permission yet we find this unconvincing. Had the error only occurred in 2013 when the initial license was granted, this argument would hold more water. Yet the same error as mentioned previously, happened again in 2019 when the business relocated within the same zoning district.

Many cases brought before the Courts by plaintiffs make dubious claims as to what constitutes a similarly situated party. Yet in this case, the facts are simple. Both Birmingham Wine and Mongers' Provisions are independent retail businesses. Both businesses sell wine. In the case of Birmingham Wine, these sales are their primary use. In our case, wine sales are an incidental accessory. In *Township of Blackman v. Koller*, 357 Mich. 186 (Mich. 1959) and *M.G.L. S., Inc., v. Bldg. Inspector*, 326 Mich. 410 (Mich. 1949), the Michigan Supreme Court ruled that a city could not selectively enforce a zoning ordinance against, or deny plan approval for one party while allowing materially similar non-conforming use by another. Not only is this discrimination being facilitated by the City in respect to our proposed activities at 1120 E. Lincoln, but it is facilitated by the City while the other party is in non-conformance and we wish to operate *within the uses permitted by plain and ordinary interpretation of the ordinance*. In light of this, the actions of the City here are not only arbitrary and capricious because they permit a non-conforming use while denying a similar, though less intensive, one that conforms, but are in violation of the equal protection clause.

For all of the foregoing reasons, we urge the BZA to reconsider its interpretation and enforcement of the applicable Zoning Ordinances to permit our business to sell wine for off-premises consumption as allowed by the plain language of the applicable Ordinance (and when enforced in a principled manner).

Thank you in advance for your time and consideration.

Respectfully,

William Werner

Co-Owner

Mongers Provisions





Jeff Zielke <jzielke@bhamgov.org>

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## To Whom It May Concern

1 message

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**MATTHEW SALTER** <mgsalter@me.com>

Wed, Sep 2, 2020 at 2:23 PM

To: jzielke@bhamgov.org

Mr Zielke, I have been a patron of Monger's Provision since they opened. I am repeatedly impressed by their thorough knowledge of their products and outstanding customer service, which has been consistent throughout their company's growth.

While I am elated to hear that they will be opening an additional location in Birmingham, I am frustrated to hear that there is, what appears to be, an arbitrary restriction on their ability to offer their customers the small wine selection that they have traditionally sold to customers at other locations. As any former patron of theirs would know, the wine offered at Monger's is intended as convenient compliment to one's primary shopping focus there -the specialty food products. The owners clearly don't ascribe to offer a comprehensive range of wines which might compete with stores explicitly opened for this purpose.

Based on what I've read, it appears that the ordinance prohibiting wine sales in that zone have been inconsistently applied. It was ignored, in favor one business on multiple occasions, but unreasonably enforced as it relates to Mongers Provision's proposal, where it has previously served as an incidental, yet complimentary, source of revenue for them.

Monger's Provisions has the potential to further enhance commerce for the city of Birmingham and bring a sophisticated product -which is already coveted downtown- to a new community. The city of Birmingham should fairly apply the historic ordinances to them and permit them to operate their successful business just as they have done in Ferndale and Detroit.

Please don't hesitate to contact me with any questions or concerns.

Dr Matthew Salter  
734-730-5704  
Mgsalter@mac.com

Sent from my iPhone

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## Mongers Provisions

1 message

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**Bela Kogler** <Bela.Kogler@armstrong-white.com>  
To: "jzielke@bhamgov.org" <jzielke@bhamgov.org>  
Cc: William Werner <will@mongersprovisions.com>

Wed, Sep 2, 2020 at 1:33 PM

To the zoning board,

My name is Bela Kogler, I'm the Director of Business Development for Armstrong White a design studio servicing advertising agencies, marketing firms and corporations. We are repeat customers of Mongers Provisions utilizing their products for creative review presentations and showcasing our resources. Wine is an entirely secondary element of their offerings. They sell specialty cheeses and single source chocolates as well as exceptional charcuterie. A customer would visit the shop to primarily purchase these things. A bottle of wine would be the afterthought of one's purchases and would compliment those purchases. We view Mongers Provisions as a specialty food shop and they would make an excellent addition to Birmingham's retail food offerings.

As for Birmingham's often provincial and petty outlook on alcohol sales, the genie is out of the bottle! It is inconsistent and silly to reject Mongers Provisions because of their limited wine sales when other nearby wine shops have made the zoning cut; error or not. Alcohol is available for purchase many places within a mile of their prospective location at 1120 E. Lincoln.

There is no common sense reason to reject Mongers Provisions because of their limited wine sales. Birmingham needs to revise this zoning regulation for consistency and common sense.

Thank You

Bela Kogler

Béla Kogler

Director Business Development

248.229.1696

2125 East Lincoln

Birmingham, MI 48009

[Bela@armstrong-white.com](mailto:Bela@armstrong-white.com)

[www.armstrong-white.com](http://www.armstrong-white.com)





Jeff Zielke <jzielke@bhamgov.org>

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## Mongers' Provisions in Birmingham!

1 message

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Susan Randall <susan.m.randall@sbcglobal.net>

Tue, Sep 1, 2020 at 10:20 PM

To: "jzielke@bhamgov.org" <jzielke@bhamgov.org>

Cc: Zach Berg <zach@mongersprovisions.com>, "will@mongersprovisions.com" <will@mongersprovisions.com>

Board of Zoning Appeals,

We are so excited to hear that Mongers' Provisions is planning to open a shop at [1120 E. Lincoln Ave.](#) in Birmingham!

We have been Birmingham residents for 26 years and strive to support local specialty food stores in and around Detroit, especially those with high quality products and service such as Mongers' Provision. We have sought out Mongers' offerings since their initial opening in Ferndale. We now frequent the Detroit location and find it very convenient to pick up a variety of groceries and an occasional bottle of wine when shopping for their premium cheese and chocolate, the latter being the focus of our visits. The owners are hard working, conscientious, energetic and productive young people who love to serve their customers and contribute to the community. They have built a trustworthy and professional reputation in their current shops.

We strongly support Mongers' Provisions' appeal to allow incidental sales of wine per the zoning ordinance. Mongers' will offer a unique experience to the City of Birmingham.

Thank you for your consideration,

Thomas & Susan Randall  
[1220 Saxon Drive](#)  
Birmingham, MI 48009



Jeff Zielke <jzielke@bhamgov.org>

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## Zoning and Mongers' Provisions

1 message

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**Alecia Mathog Rice** <aleciasmiles@yahoo.com>

Tue, Sep 1, 2020 at 7:27 PM

To: jzielke@bhamgov.org

Dear Board of Zoning Appeals,

I am writing in support of Mongers' Provisions proposed location at 1120 E Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operations with incidental sales of wine. They operate as a specialty food store and cheese shop. Their sales of wine are incidental and are customarily associated with these types of businesses. While selling wine is not the primary objective, it does provide added value to customers incidental to other purchases.

I feel that preventing them from operating is unfair, especially considering how many local businesses sell wine as their primary use, many within a couple hundred yards of the proposed location.

Mongers' offers a product assortment and level of service not found at other business in Birmingham. As a resident since 2015 and frequent shopper since 1976, I really appreciate and value establishments such as Mongers' and I welcome their inclusion in our community.

Sincerely,  
Alecia Rice  
1062 S. Glenhurst Dr  
Birmingham, MI 48009  
(248) 910 0019



Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Mongers' Provisions - Proposed Location at 1120 E. Lincoln Avenue**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 1:30 PM

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

From: **Christopher Hatto** <christopher\_hatto@yahoo.com>  
Date: Tue, Sep 1, 2020, 10:05 AM  
Subject: Mongers' Provisions - Proposed Location at 1120 E. Lincoln Avenue  
To: jzielke@bhamgov.org <jzielke@bhamgov.org>

Board of Zoning Appeals  
City of Birmingham  
151 Martin Street,  
P.O. Box 3001 Birmingham,  
Michigan 48012

To Whom it May Concern,

I am writing in support of Mongers' Provisions proposed location at 1120 E. Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operation with incidental sales of wine.

They operate as a Specialty Food Store and Cheese Shop. Their sales of wine are incidental to this and customarily associated with these types of businesses. While wine is not the primary motivation for going, it does provide added value to customers incidental to other purchases. I have purchased products at their Detroit location many times in the past year and have only purchased wine once. Confirming that it is incidental to my primary reason for shopping at their store, to purchase high quality cheese and charcuterie which is not available at other stores in the Detroit area.

I feel that preventing them from operating in such a manner in the City of Birmingham would be unfair especially considering how many local businesses sell wine as their primary use, many within a couple hundred yards of the proposed location.

Mongers offers a product assortment and level of service not found at other businesses in the City of Birmingham. As a resident of the City, I would welcome their inclusion in our community!

Thank you for your consideration,

Carie and Christopher Hatto  
347 Westchester Way  
Birmingham, MI 48009



Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Mongers' Provisions**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 10:58 AM

2

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

From: **Alicia Chandler** <[aliciablumenfeldchandler@gmail.com](mailto:aliciablumenfeldchandler@gmail.com)>

Date: Tue, Sep 1, 2020, 10:25 AM

Subject: Mongers' Provisions

To: <[jzielke@bhamgov.org](mailto:jzielke@bhamgov.org)>

Board of Zoning Appeals  
City of Birmingham  
151 Martin Street,  
P.O. Box 3001 Birmingham,  
Michigan 48012

To Whom it May Concern,

My name is Alicia Chandler and I have lived at [955 Shirley](#) in Birmingham for the past ten years. I am writing in support of Mongers' Provisions proposed location at 1120 E. Lincoln Avenue. I am currently a customer of Mongers' Provisions. This is exactly the type of business that we want here in Birmingham. They are a small, locally-owned store providing specialty goods. I believe the residents of Birmingham would appreciate the store and the high-end goods they provide.

I am aware that Mongers' Provisions sells wine in addition to their food and cheeses, but I have always viewed this as a small part of their operations. The cheese and meats are great and it is nice to be able to buy a bottle to go along with a purchase, but by no means is that the focal point. It is just an added benefit to the customer.

In this time when empty storefronts are becoming a sad reality, I think our city needs to encourage small, locally-owned businesses to set up shop here in Birmingham. Mongers' is just the kind of business we need here and I think that the zoning board should make any approvals needed to allow this to happen.

Thank you for your service to our community,

Alicia Chandler  
[955 Shirley Road](#)  
[Birmingham, MI](#)  
[48009](#)



Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Mongers Provisions Board of Zoning Appeals Hearing for 1120 E Lincoln**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 11:42 AM

More.

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

From: **Drew Rosenberg** <androsenb@gmail.com>

Date: Tue, Sep 1, 2020, 11:27 AM

Subject: Mongers Provisions Board of Zoning Appeals Hearing for 1120 E Lincoln

To: &lt;jzielke@bhamgov.org&gt;, &lt;bjohnson@bhamgov.org&gt;

To: Bruce Johnson, Jeff Zielke

Board of Zoning Appeals  
City of Birmingham  
151 Martin Street,  
P.O. Box 3001 Birmingham,  
Michigan 48012

To Whom it May Concern,

I am writing in support of Mongers' Provisions proposed location at 1120 E. Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operation with incidental sales of wine.

Primos Pizza sells beer and wine **407 feet** from 1120 E. Lincoln Avenue.

Papa Joes sells beer and wine 0.2 miles from 1120 E. Lincoln Avenue.

ML Liquors, a full on liquor store, operates 0.3 miles from 1120 E. Lincoln Avenue.

My wife and I grew up in Birmingham. We left the community for our education. As we started to think about raising a family we were beyond excited to move back to Poppleton Park last year.

I am now afraid that we are making a mistake by moving back to a community that enforces such arbitrary standards.

Mr. Werner and Berg are upstanding citizens with an amazing business that engages the community. My wife and I have been consistent customers of theirs for years. There are other places where you can buy specialty cheeses and chocolates (and wines within 0.3 miles of the proposed location.) There are NOT other local businesses that engage with customers in the same manner as the mongers provisions team. They have created a business that focuses on education, community and taste. The first few times we visited Mongers we were in the shop for about 45 minutes. Neither Mr. Werner or Berg would let us leave before having us try over half of the cheese and chocolates in the shop. They made sure we knew every detail about everything we tasted. They have encouraged me to broaden my culinary horizon, to learn more about ingredients I use. They linked me to new books about cheese and chocolate. They have been a resource for culinary adventures for us on vacation. Their business inherently encourages family/community engagement of which we could all use more.

Moreover, they want to open a small business in Birmingham despite the COVID-19 outbreak. Shouldn't we encouraging small business development over closure?

I am not claiming to be familiar with the zoning laws and ordinances in our community. However failing to allow this business to operate based on a small percentage of wine sales at this specific location seems more related to bureaucracy than logic.

Thank you for your time and consideration,

Andrew Rosenberg, M.D.  
175 Wimbleton  
Birmingham, MI



Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Mongers Provisions**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 10:59 AM

Last one for now

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

From: **Sarah Winsky** <sarahwinsky@gmail.com>  
Date: Tue, Sep 1, 2020, 10:03 AM  
Subject: Mongers Provisions  
To: <jzielke@bhamgov.org>

To:

Board of Zoning Appeals  
City of Birmingham  
151 Martin Street,  
P.O. Box 3001 Birmingham,  
Michigan 48012

To Whom it May Concern,

As a 12 year Birmingham resident, I am writing in support of Mongers' Provisions proposed location at 1120 E. Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operation with incidental sales of wine.

They operate as a Specialty Food Store and Cheese Shop. Their sales of wine are incidental to this and customarily associated with these types of businesses. While wine is not the primary motivation for going, it does provide added value to customers incidental to other purchases.

I feel that preventing them from operating in such a manner in the City of Birmingham would be unfair especially considering how many local businesses sell wine as their primary use, many within a couple hundred yards of the proposed location.

Mongers offers a product assortment and level of service not found at other businesses in the City of Birmingham. As a resident of the City, I would welcome their inclusion in our community!

Thank you for your consideration,

Sarah Elizabeth Gourwitz  
1825 Southfield Rd.  
Birmingham, MI  
48009



Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Board of Zoning Appeals - Mongers' Provision**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 10:58 AM

1 of 4 more

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

From: **Katelyn Glime** <katelyn.glime@gmail.com>

Date: Tue, Sep 1, 2020, 10:34 AM

Subject: Board of Zoning Appeals - Mongers' Provision

To: &lt;jzielke@bhamgov.org&gt;

Cc: &lt;will@mongersprovisions.com&gt;, Zach Berg &lt;zach@mongersprovisions.com&gt;, Drew Rosenberg &lt;androsenb@gmail.com&gt;

To: Jeff Zielke  
Board of Zoning Appeals  
City of Birmingham  
151 Martin Street,  
P.O. Box 3001 Birmingham,  
Michigan 48012

To Whom it May Concern,

I am writing in support of Mongers' Provisions proposed location at 1120 E. Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operation with incidental sales of wine.

They operate as a Specialty Food Store and Cheese Shop. Their sales of wine are incidental to this and customarily associated with these types of businesses. While wine is not the primary motivation for going, it does provide added value to customers incidental to other purchases.

I feel that preventing them from operating in such a manner in the City of Birmingham would be unfair especially considering how many local businesses sell wine as their primary use, many within a couple hundred yards of the proposed location.

My husband and I both grew up in Birmingham, and last summer bought our first home here to start our family. We've been visiting Mongers' originally at their shared Ferndale location, then Detroit location, then back to Ferndale again! We would love to be able to walk or ride our bikes to their new Birmingham location to pick up goodies for ourselves or when we entertain at home as a one stop shop. The first time we went in, we spent an hour learning about the cheeses and sampling everything! It was such an amazing experience, and everyone they hire is outstanding. I truly think Birmingham will be missing out without this.

Thank you for your consideration,

Katie Glime  
175 Wimpleton, Birmingham MI 48009



Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Monger Provisions**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 7:46 AM

Here's another

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

From: **Fuse 45** <fusefortyfive@gmail.com>  
Date: Tue, Sep 1, 2020, 7:43 AM  
Subject: Monger Provisions  
To: <jzielke@bhamgov.org>  
Cc: Friedman, Jeffrey (J.) <JFRIEDM9@ford.com>

Dear Jeff Zielke,

We are residents of Birmingham (6 years at 990 Bird Ave). We write in support of Mongers Provisions and of their incidental sales of wine being a permitted use under the ordinance, and in any case a use that Birmingham should permit and encourage.

We have been customers of Mongers Provision for some time in Ferndale and Detroit. Mongers main focus is on cheese and chocolate. They also sell cured meats and other specialty food items. These exhibit originality, authenticity, uniqueness, including unique cultural origins and limited supply. They also sell wine, which is clearly incidental to the main operation. We have occasionally bought wine there, but we go mainly for the specialty foods.

The incidental nature of Mongers' wine sales is evident from the layout of the store. The wine is not displayed as the main attraction — that is plainly the cheese and cured meat counters. Wine takes up a small part of the available shelf space — most of that is devoted to chocolate.

We happen to like specialty food stores, so we frequent them when we travel. Across Michigan and across the country, specialty food stores commonly sell wine, even though they are not wine stores. These sales are a common incident to specialty food sales.

And we all know that wine sales, including incidental modest wine sales, can provide the critical margin that enables a specialty food retailer to stay in business.

Mongers would be a valuable addition to Birmingham's retail scene. They have excellent products that are not available elsewhere, provide good service, are friendly and a generally a terrific place to shop. The City of Birmingham should not quibble about incidental wine sales, which are not prohibited by the ordinance and fit the definition of incidental to the permitted use of a specialty food store.

In sum, we strongly support Mongers appeal. Thank you for taking the time to consider our views.

Very truly yours,

Sam &amp; Jeff Friedman

**Samantha Friedman**  
Co-Founder | Instructor  
fuse45.com | 917-678-1964





Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Mongers Provisions**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 5:12 AM

Good morning Brigette. Can you add this one to the letters. See you Wednesday

----- Forwarded message -----  
From: **Dale Kohler** <dwk025@gmail.com>  
Date: Mon, Aug 31, 2020, 10:29 PM  
Subject: Mongers Provisions  
To: <jzielke@bhamgov.org>

Dear Mr. Zielke:

I am writing to you on behalf of a group of responsible, young businessmen who are looking to expand their business' reach into our Birmingham community. I am speaking specifically about Mongers Provisions. I have shopped at Mongers Provisions for the past two years for specialty items in the cheese, chocolates and cured meats, respectively. These guys provide a great selection of products in these categories that is hard to match, let alone, beat! Their small business and specialty approach is just the kind of business I want to see woven into the fabric of our Birmingham "village like" environment. I, and many of my neighbors, want small, local businesses attracted to our "village", support these businesses and have them thrive.

And yes, a time or two I purchased some nice wine from this business to complement my cheese selections These guys do a great job and have really focused on their food items more so then wine portion of their business. I really believe the wine segment of their business is of an incidental nature, more of a service offering.

When I do a major wine purchase of any type, my business is directed to establishments like Birmingham Wine, Kakos, Meijers, Whole Foods and even Costco.

Please give this business the due consideration all small businesses deserve so they can expand and grow within our community. Without the ability to sell wine, albeit a small amount, their business would suffer and perhaps even have to look at other locations outside of our community. This would truly be a loss to our community.

Sincerely,

Dale Kohler



Jeff Zielke <jzielke@bhamgov.org>

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## Fwd: zoning approval

1 message

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**Marcia Nodel** <mnode1717@gmail.com>  
To: jzielke@bhamgov.org

Mon, Aug 31, 2020 at 12:59 PM

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

From: **Marcia Nodel** <mnode1717@gmail.com>  
Date: Mon, Aug 31, 2020 at 12:56 PM  
Subject: Fwd: zoning approval  
To: <will@mongersprovisions.com>

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

From: **Marcia Nodel** <mnode1717@gmail.com>  
Date: Mon, Aug 31, 2020 at 12:52 PM  
Subject: zoning approval  
To: <bjohnson@bhamgov.org>

Bruce Johnson

I am writing in support of Monger's Provisions. As a resident of Birmingham, I would welcome their type of business which I feel is lacking here. And I think they are justified in questioning the zoning law that seems to be working against them.

As a woman owned small business ( food supply), I agree with their mission and strongly disagree with the zoning law that they are being held to. Wine would be a small, complementary part of their business plan.

Marcia Nodel

Marcia's Pickled Munchies



Jeff Zielke <jzielke@bhamgov.org>

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## Mongers Provisions Board of Zoning Appeals Hearing for 1120 E Lincoln

1 message

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**Darren Ghiso** <darren.ghiso@gmail.com>  
To: bjohnson@bhamgov.org, jzielke@bhamgov.org

Mon, Aug 31, 2020 at 10:11 AM

Hi Bruce and Jeff,

My wife and I wanted to voice our support for the addition of Mongers Provisions to the Birmingham speciality food scene. We have been customers of their Ferndale location for many years and their expertise in chocolate, cheese and wine has kept us coming back. I also had an opportunity to attend a virtual wine and cheese tasting (over Zoom) when Mongers was selected by Microsoft as a partner. While cheese tastings on their own are enjoyable, I have no doubt you would agree that the pairing of wine with cheese makes for a proper culinary experience. I hope you consider approving Mongers Provisions for wine sales.

Thank you,

Darren and Nadine Ghiso  
1266 Henrietta St.



Jeff Zielke <jzielke@bhamgov.org>

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## Mongers Provisions Board of Zoning Appeals Hearing for 1120 E Lincoln

1 message

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Karen Braun <kgbraun@gmail.com>  
To: jzielke@bhamgov.org

Sat, Aug 29, 2020 at 11:03 AM

Mr. Zielke,

I have been a resident of Birmingham for almost 4 years now. I am a Detroit native, and have lived along or near the Woodward corridor for 65 years. I chose to build my retirement home in Birmingham because of the diversity of shops, restaurants and retail. I wanted to live in an area that was walkable and vibrant, a place that offered me the speciality goods and services that often only small retail establishments can provide. I also wanted to be in a location that encouraged me to support small, local businesses by making them available and accessible.

While there are many great examples of these types of establishments in the downtown Birmingham area, none seem to have quite the same unique offerings that Mongers Provisions does. I have been a customer of theirs from the outset, and know that the speciality items in the store are unlike anywhere else in the area. The quality of everything, all the unusual and delicious kinds of cheeses, cured meats and chocolates, along with the knowledge of the proprietors and staff - that is what keeps me coming back. That they sell wine has no bearing on my patronage.

Walking into the store tells you what that focus is. There are a plethora of places to purchase your wine from in this immediate area, from Kakos and Birmingham Wine to Whole Foods and Papa Joes. Mongers Provisions wine selection is extremely limited and not visibly marketed in the store. It is literally the visual definition of incidental. Is it a nice addition, of course! Is it the reason people, like myself, shop there? Absolutely not.

That wine sales are only an incidental percentage of their overall sales is not surprising. However, as a retired small business owner I would venture to say that even this incidental percentage can make a big difference when business is slow, or depressed. It helps with the rent, and the payroll. It can make the difference between success and failure.

Mongers Provisions is locally owned and operated, it's good for our community, for our city and for our state. It's what "we" say we want. Young people doing - taking responsibility for themselves, being productive, contributing. The City of Birmingham should welcome them with open arms, invite them to join in continuing to make our community better. They should not attempt to hobble them with a selective, and erroneous, definition of incidental wine sales nor should they deny their license based upon an arbitrary application of zoning and ordinance.

I strongly support Mongers Provisions appeal, and am hoping you will as well.

Sincerely,

Karen Braun  
1171 Arden Lane



Jeff Zielke <jzielke@bhamgov.org>

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**FW: MONGERS PROVISIONS BOARD OF ZONING APPEALS HEARING FOR 1120 E. LINCOLN**

1 message

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**linda@skinnytees.com** <linda@skinnytees.com>  
To: jzielke@bhamgov.org

Fri, Aug 28, 2020 at 9:54 AM



Linda Schlesinger-Wagner

Founder/CEO

669 S Eton St

Birmingham, MI 48009

Work 248.752.3090

Cell 248.760.2472

Fax 248.792.9078

**From:** linda@skinnytees.com <linda@skinnytees.com>

**Sent:** Friday, August 28, 2020 9:50 AM

**To:** bjohnson@bhamgov.org

**Cc:** jzielke@bhamgov.org

**Subject:** MONGERS PROVISIONS BOARD OF ZONING APPEALS HEARING FOR 1120 E. LINCOLN

City of Birmingham,

I have been a tenant for over ten years and would welcome Mongers. They run a high end classy establishment which would drive

more business to all of us. I know both partners extremely well and went thru the Goldman Sachs 10,000 Small Business program

with Will.

They are people that never stop giving back to the community and bring goodness to the neighborhood. I am extremely proud of

what they have created in the cheese world and I personally think wine compliments what they do but it is very small portion

of what they sale. Doing these times we must all please all our customers to survive in this business climate.

Linda Schlesinger-Wagner

Bates Street Society 2021 Pillar of Business and Philanthropy – Community House Foundation Birmingham honoree 2021



Linda Schlesinger-Wagner

Founder/CEO

669 S Eton St

Birmingham, MI 48009

Work 248.752.3090

Cell 248.760.2472

Fax 248.792.9078



Jeff Zielke <jzielke@bhamgov.org>

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## Mongers Provisions board of zoning appeals hearing for 1120 E. Lincoln

1 message

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**Rochelle Forester** <rochelleforester@mac.com>

Fri, Aug 28, 2020 at 12:56 PM

To: jzielke@bhamgov.org, bjohnson@bhamgov.org

Cc: will@mongersprovisions.com, zach@mongersprovisions.com

To the zoning board,

We live at 991 Lakepark Drive. We are repeat customers of Mongers Provisions. Wine is an entirely secondary element of their offerings. They sell specialty cheeses and single source chocolates as well as exceptional charcuterie. A customer would visit the shop to primarily purchase these things. A bottle of wine would be the afterthought of one's purchases and would compliment those purchases. We view Mongers Provisions as a specialty food shop and they would make an excellent addition to Birmingham's retail food offerings.

As for Birmingham's often provincial and petty outlook on alcohol sales, the genie is out of the bottle! It is inconsistent and silly to reject Mongers Provisions because of their limited wine sales when other nearby wine shops have made the zoning cut; error or not. Alcohol is available for purchase many places within a mile of their prospective location at 1120 E. Lincoln.

There is no common sense reason to reject Mongers Provisions because of their limited wine sales. Birmingham needs to revise this zoning regulation for consistency and common sense.

Thank You- Rochelle and Randy Forester

Sent from my iPad



Jeff Zielke <jzielke@bhamgov.org>

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## Mongers Provisions Board of Zoning Appeals Hearing for 1120 E Lincoln

1 message

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Erica Peresman <ericadavid@mac.com>

Fri, Aug 28, 2020 at 12:02 PM

To: bjohnson@bhamgov.org, jzielke@bhamgov.org

Gentlemen:

We are long time residents of Birmingham (15 years at 1240 Dorchester and before that on Suffield). We write in support of Mongers Provisions and of their incidental sales of wine being a permitted use under the ordinance, and in any case a use that Birmingham should permit and encourage.

We have been customers of Mongers Provision for some time in Ferndale and Detroit. Mongers main focus is on cheese and chocolate. They also sell cured meats and other specialty food items. These exhibit originality, authenticity, uniqueness, including unique cultural origins and limited supply. They also sell wine, which is clearly incidental to the main operation. We have occasionally bought wine there, but we go mainly for the specialty foods.

The incidental nature of Mongers' wine sales is evident from the layout of the store. The wine is not displayed as the main attraction — that is plainly the cheese and cured meat counters. Wine takes up a small part of the available shelf space — most of that is devoted to chocolate.

We happen to like specialty food stores, so we frequent them when we travel. Across Michigan and across the country, specialty food stores commonly sell wine, even though they are not wine stores. These sales are a common incident to specialty food sales.

And we all know that wine sales, including incidental modest wine sales, can provide the critical margin that enables a specialty food retailer to stay in business.

Mongers would be a valuable addition to Birmingham's retail scene. They have excellent products that are not available elsewhere, provide good service, are friendly and a generally a terrific place to shop. The City of Birmingham should not quibble about incidental wine sales, which are not prohibited by the ordinance and fit the definition of incidental to the permitted use of a specialty food store.

In sum, we strongly support Mongers appeal. Thank you for taking the time to consider our views.

Very truly yours,

David Jaffe and Erica Peresman  
1240 Dorchester  
(David's work address: 255 E. Brown, St., Suite 120)



Jeff Zielke <jzielke@bhamgov.org>

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## MONGERS PROVISIONS BOARD OF ZONING APPEALS HEARING FOR 1120 E LINCOLN

1 message

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**jane e Smitt** <janeesmitt@gmail.com>  
To: bjohnson@bhamgov.org, jzielke@bhamgov.org

Fri, Aug 28, 2020 at 10:21 AM

Jane E. Smitt  
2051 Villa Rd Apt 203  
Birmingham, Mich 48009

City of Birmingham,

I have been a Birmingham resident for over 25 years and the proximity and professionalism of a quality, well run establishment is very important to me. I would welcome a store that sells top notch products in the neighborhood..

I have visited their location in Midtown and I was very [impressed](#) by the selection offered. It would only add to the ease of shopping to have a speciality store that offers top notch cheeses and the wine and chocolate that compliment each other.

I am confident many people I know would love to see Mongers in Birmingham. During these times, it is very important to support small businesses. They have my vote!

Sincerely,  
Jane E Smitt



Jeff Zielke <jzielke@bhamgov.org>

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## Mongers Provisions BZA Hearing for 1120 E. Lincoln

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Paul Dorset <paul.dorset@gmail.com>  
To: bjohnson@bhamgov.org, jzielke@bhamgov.org

Thu, Aug 27, 2020 at 9:25 AM

Dear Mr. Johnson and Mr. Zielke,

I am writing to say how thrilled I am at the news of Mongers Provisions potentially coming to our city. Taking over the old Bagel Factory storefront will be a welcome addition to the community.

I have known one of the co-owners, Zach Berg, for nearly 20 years. I can say this without reproach that he is one of the kindest, most approachable persons I have ever met. He would be a welcomed presence to the Birmingham business community at large, without a doubt.

I'm also writing to say I fully support their ability to sell wine at this location.

While wine is important to their business it is not the foundation of what they do. First and foremost, they are a specialty cheese and chocolate store--not a liquor store.

Having regularly attended their Detroit location I can attest that this isn't a party atmosphere at this shop. They do not attract a transient crowd solely there to buy cheap wine. Customers arrive to buy high-end cheese and chocolate, who then also compete the holy epicurean trinity by adding wine. The ability to sell wine further elevates their profile as a specialty food store that is also befitting to the image of our city.

I fully support their arrival in Birmingham, and also urge you to strongly consider granting a variance to their planned location allowing them to sell wine.

Respectfully,

Paul Dorset  
1483 Henrietta St.  
Birmingham, MI 48009



Brigette Moran &lt;bmoran@bhamgov.org&gt;

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**Fwd: Zoning Appeal - 1120 E. Lincoln Ave.**

1 message

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**Jeff Zielke** <jzielke@bhamgov.org>  
To: Brigette Moran <bmoran@bhamgov.org>

Tue, Sep 1, 2020 at 9:53 AM

Again.

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

From: **Suhael Momin** <suhael.momin@gmail.com>  
Date: Tue, Sep 1, 2020, 7:54 AM  
Subject: Zoning Appeal - 1120 E. Lincoln Ave.  
To: <jzielke@bhamgov.org>  
Cc: <will@mongersprovisions.com>

Hello,

I'm a Birmingham resident who lives on Emmons Ave, within walking distance of the proposed Mongers' shop on E. Lincoln. I was extremely excited to find out Mongers' owners were considering a lease on the property next to Great Harvest.

Mongers is a specialty cheese / chocolate / charcuterie shop, not a wine store. They do sell wine, but these sales are incidental to their main purpose: connecting Detroiters to amazing food products from around the world.

I know the zoning board initially rejected Mongers' business plan due to zoning restrictions, but I urge you to reconsider. There are no other small shops in Birmingham that offer what Mongers does. I strongly believe they will add to the diversity of small shops that make this community so desirable.

Thank you,  
Suhael Momin  
[850 Emmons Ave, Birmingham, MI 48009](#)

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## Zoning and Mongers' Provisions

1 message

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**Alecia Mathog Rice** <aleciasmiles@yahoo.com>  
To: jzielke@bhamgov.org

Tue, Sep 1, 2020 at 7:27 PM

Dear Board of Zoning Appeals,

I am writing in support of Mongers' Provisions proposed location at 1120 E Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operations with incidental sales of wine. They operate as a specialty food store and cheese shop. Their sales of wine are incidental and are customarily associated with these types of businesses. While selling wine is not the primary objective, it does provide added value to customers incidental to other purchases.

I feel that preventing them from operating is unfair, especially considering how many local businesses sell wine as their primary use, many within a couple hundred yards of the proposed location.

Mongers' offers a product assortment and level of service not found at other business in Birmingham. As a resident since 2015 and frequent shopper since 1976, I really appreciate and value establishments such as Mongers' and I welcome their inclusion in our community.

Sincerely,  
Alecia Rice  
1062 S. Glenhurst Dr  
Birmingham, MI 48009  
(248) 910 0019



Jeff Zielke <jzielke@bhamgov.org>

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## Mongers & Zoning

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**Lisa Mayer** <lisajacobsmayer@gmail.com>  
To: jzielke@bhamgov.org

Wed, Sep 2, 2020 at 6:23 PM

To:

Board of Zoning Appeals  
City of Birmingham  
151 Martin Street,  
P.O. Box 3001 Birmingham,  
Michigan 48012

To Whom it May Concern,

I am writing in support of Mongers' Provisions proposed location at 1120 E. Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operation with incidental sales of wine.

They operate as a Specialty Food Store and Cheese Shop. Their sales of wine are incidental to this and customarily associated with these types of businesses. While wine is not the primary motivation for going, it does provide added value to customers incidental to other purchases.

I feel that preventing them from operating in such a manner in the City of Birmingham would be unfair especially considering how many local businesses sell wine as their primary use, many within a couple hundred yards of the proposed location.

Mongers offers a product assortment and level of service not found at other businesses in the City of Birmingham. As a resident of the City, I would welcome their inclusion in our community!

Thank you for your consideration,

Lisa Marie Mayer  
1166 Westboro  
Birmingham MI 48009

Bruce Johnson and Jeff Zielke,

I was so excited this morning to see an email from Mongers Provisions with the subject line coming to Birmingham. I was still waking up and so hadn't realized the full subject line and as I read the email my hopes sank. They are stating they need special approval from the city to allow them to sell alcohol at their business. I'm writing this email to you in favor of granting them approval. We have been shopping at their Detroit location for two years now. The cheeses they offer are simply wonderful and the staff are most helpful with their recommendations. It would be fantastic to be able to visit this store more locally and would make a great addition to our town. In all our visits to the shop, we have never purchased alcohol. That being said, I can see how the option to purchase is a good fit with their business. They state the wine sales are a small portion of their revenue, there is no reason to think this would change in Birmingham. Mongers Provisions carries a much smaller selection of alcohol than neighboring businesses that cater specifically to alcohol sales. Residents have their preferred places for purchasing alcohol, and I don't see this shifting.

Let Mongers Provisions open in Birmingham, don't let a chance for a good business opening in our town slip away. Let them sell alcohol, allow for people to grab a bottle if they need to, similar to how Primo's operates. It is not going to hurt the current businesses selling wine and beer in our area. We are loyal to Kakos and I don't see that changing, just because the cheese shop we will frequent is also selling wine.

Thank you for your consideration,

Amy Murray



William Werner &lt;will@mongersprovisions.com&gt;

**Mongers Provisions Board of Zoning Appeals Hearing for 1120 E Lincoln**

1 message

**Julie Sloan** <julie@shoployal.com>

Sun, Aug 30, 2020 at 10:48 PM

To: "will@mongersprovisions.com" &lt;will@mongersprovisions.com&gt;

Dear Will and Zach,

I am writing to voice my support for your proposed new location of Monger's Provisions in Birmingham at 1120 E Lincoln Ave. I was thrilled to hear you are considering coming to town but disappointed to learn of the ordinance challenges you are faced with at this space.

As a citizen of the community I am hoping you will pass on my enthusiasm for your business to come to town. As one of your many loyal patrons, I am very familiar and fond of your unique offerings. Your cheese and charcuteries are of the finest selection I have experienced and your expertise and personal approach to your customers make you a standout in the retail world. Your presence in Birmingham would surely bring traffic from near and far to our town and would be nothing but an asset to our community of shoppers who seek the finest in both product and customer service.

Despite shopping with you on so many occasions, I must admit I didn't realize that you sold wine, and so I remain hopeful that the fact that this category represents such a small percentage of your product offering won't deter you from pursuing and obtaining your new location.

Please feel free to forward this letter of support if it would help in your efforts to secure your new location and best of luck to you.

Best,

Julie Sloan

[julie@shoployal.com](mailto:julie@shoployal.com)

847-612-1554

[Shoployal.com](http://Shoployal.com)



637 S. ETON ST. BIRMINGHAM, MI 48009 248-723-9100 THEROBOTGARAGE.COM

August 29, 2020,

To Whom It May Concern:

I recently learned about Mongers Provisions trying to lease the space at 1120 East Lincoln Avenue, but running into a problem because as a specialty food store, they also sell wine as a small part of their business (8% of revenue I believe).

I do not know the owners personally but as a fellow Goldman Sachs 10KSB alum, I did want to write a letter of support for Mongers. Our family owns The Robot Garage which is located on Eton Street and as a local business-owner, we would so appreciate a small gourmet market like Mongers in the neighborhood. Their website is beautiful and they seem truly committed to high-quality specialty foods. Anyone who took the time to go through the Goldman program is really committed to both their business and the community. It's a significant time commitment and they only accept well-established businesses and the vetting process has become a seal of approval because of it.

We would love to be able to stop at Mongers on the way home, have food brought in for meetings, or refer it to parents waiting for children in classes who are looking for healthy, after-school snacks. We've introduced so many clients to Cannelle Patisserie, Griffin Claw, Skinny Tees, and to other gems in our neighborhood and Mongers seems like it would be such a natural fit to this very special community....something else to brag about to visitors. The Covid pandemic has been especially difficult for small businesses, with projections of up to 40% closing permanently because of it. Add to that the fact that historically, small businesses account for more than 60% of new jobs. Everything communities are doing to support small businesses will pay off so much as we recover. Given how much has changed in our world, I would encourage the City to take a second look at this application.

I want to say, I completely share and appreciate the City's caution with regards to alcohol sales. I just don't foresee any problems with a shop like this becoming a destination for people looking for trouble. This is such a tough time for everyone and we are hearing the same thing from thousands of families at The Robot Garage...They are desperate for anything "nice", "lovely", "warm and welcoming" to add to the world for their children right now. All those things are SO Birmingham and I do think one of the Silver Linings of Covid is that it has forced us to re-evaluate just about everything from our family life to education to shopping to general business policies and local policies. With so many big companies like Sur La Table declaring bankruptcy, there is a growing appreciation for small unique businesses like Mongers again. It's one more reason to go to Birmingham vs a mall.

Best Regards, and thank you for your consideration and time,

Sarah Jacobs



William Werner &lt;will@mongersprovisions.com&gt;

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**Mongers' Provisions**

1 message

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**Ilana Liss** <ilanaliss@gmail.com>  
To: jzielke@bhamgov.org  
Cc: will@mongersprovisions.com

Thu, Sep 3, 2020 at 1:37 PM

To Whom it May Concern,

I am writing in support of Mongers' Provisions proposed location at 1120 E. Lincoln Avenue. I am familiar with Mongers' Provisions and believe that the zoning ordinance permits their operation with incidental sales of wine.

They operate as a Specialty Food Store and Cheese Shop. Their sales of wine are incidental to this and customarily associated with these types of businesses. While wine is not the primary motivation for going, it does provide added value to customers incidental to other purchases.

I feel that preventing them from operating in such a manner in the City of Birmingham would be unfair especially considering how many local businesses sell wine as their primary use, many within a couple hundred yards of the proposed location.

Mongers offers a product assortment and level of service not found at other businesses in the City of Birmingham. As a resident of the City, I would welcome their inclusion in our community!

Thank you for your consideration,

Ilana Liss  
2300 Avon Lane