

# 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**

JANUARY 12, 2021  
7:30 PM

## 1. CALL TO ORDER

## 2. ROLL CALL

## 3. APPROVAL OF THE MINUTES

a) December 8, 2020

## 4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	469 & 479 N OLD WOODWARD	DORAID MARKUS	21-01	DIMENSIONAL

## 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 ayudan a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

# 469/479 S OLD WOODWARD MAP



**Birmingham Board Of Zoning Appeals Proceedings  
Tuesday, December 8, 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, December 8, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**2. Rollcall**

**Present:** Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Erin Rodenhouse (all regular members were located in Birmingham, MI; Alternate Board Member Rodenhouse's location was not ascertained since she was not voting in the evening's petitions.)

**Absent:** Alternate Board Member Ron Reddy

**Administration:**

Bruce Johnson, Building Official  
Mike Morad, Asst. Building Official  
Jeff Zielke, Asst. Building Official  
Laura Eichenhorn, City Transcriptionist  
Eric Brunk, IT Manager

Chairman Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures to be followed for the virtual meeting. He then assigned duties for running the evening's meeting to Vice-Chairman Morganroth.

Vice-Chairman Morganroth described 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.

Vice-Chairman Morganroth took rollcall of the petitioners. All petitioners were present.

**T# 12-61-20**

**3. Approval Of The Minutes Of The BZA Meeting Of November 10, 2020**

Mr. Miller said that in the fourth line of the paragraph beginning "Mr. Miller said" on page four, 'could' should be changed to 'should'.

**Motion by Mr. Canvasser**

**Seconded by Mr. Lillie to accept the Minutes of the BZA meeting of November 10, 2020 as amended.**

**Motion carried, 5-0.**

**ROLL CALL VOTE**

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

Nays: None

**T# 12-62-20**

**4. Appeals**

**1) 1880 Kenwood Court  
Appeal 20-46**

Assistant Building Officials Morad and Zielke presented the item, explaining that the owner of the property known as 1880 Kenwood was requesting the following variances to construct a new home with an attached garage:

**A. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 28.66 feet. The proposed is 25.00 feet. Therefore a 3.66 foot variance is being requested.

**B. Chapter 126, Article 4, Section 4.75(A)1** of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 11.24 feet in front of the furthest façade. Therefore a variance of 16.24 feet is being requested.

ABO Zielke said the lot is rectangular in shape on a cul-de-sac. This property is zoned R1 – Single Family Residential.

In reply to Mr. Lillie, ABO Zielke confirmed that if the garage were set back five feet from the the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line then neither of the variances would be necessary. He confirmed that the applicant could move the garage far enough back to comply with the ordinance.

In reply to Vice-Chairman Morganroth, ABO Zielke confirmed the distance between the front porch and the recess on the other side of the dining room would be about two feet.

Vice-Chairman Morganroth noted that if the recess were pulled forward then the furthest point back would be the porch, which would affect where the garage could be built.

ABO Zielke confirmed for Mr. Miller that there was sufficient space in the rear of the home to move the house back while remaining in the building envelope.

Thomas Affeldt, architect, reviewed the letter to the BZA describing why these two variances were being sought. The letter was included in the evening's agenda packet.

It was noted by the Board that 1886 Kenwood is non-compliant with current ordinance.

In reply to questions from the Board, Mr. Affeldt stated:

- Setting the house and garage at 1880 Kenwood further back than proposed could give the feeling for the neighbors at 1886 Kenwood that 1880 Kenwood's garage is practically in 1886 Kenwood's back yard. That was part of the applicant's reasoning for wanting to keep the garage and home more forward on the property.
- There was also a desire to minimize the dimensional discrepancy between 1886 Kenwood's garage, which has a 25-foot setback, and the as-designed setback for 1880 Kenwood which would be 30-feet.
- If the home and garage are pushed back the 3.66 feet necessary to comply with the ordinance, the north end of the garage would be very close to being in the rear setback. Doing so would also increase the impervious area on the site since the driveway would have to continue further than originally planned, and the move could block the neighbors' view.
- While it might be possible to build a house on this lot that would not require variances, any such configuration on the lot could result in a negative outcome for the neighbors.
- The wall in front of the recess next to the dining room would not be the appropriate place to measure the furthest setback from the front property line, since that wall does not face the street. Of the walls that do face the street, the dining room would be the closest to the front property line.
- If he was recalling correctly, the garage would be set back five feet from the dining room wall.
- He felt that averaging the setbacks of the neighboring homes to the east and west of 1880 Kenwood would not be appropriate in this case since to the east there was no appropriate neighbor to include in the average and the orientation of the home to the west is very different from 1880 Kenwood's planned orientation. Consequently, he used the 25 foot setback provided by the ordinance for when there are no appropriate neighboring setbacks to average from.

Mr. Hart said that if the house and garage were moved 3.66 feet to the north that there would be no need for variance A. He noted the distance from the west edge of the garage to the neighboring property would be over 51 feet, which would still be far enough to not make it feel

like 1880 Kenwood's garage was in 1886 Kenwood's backyard. He also stated that moving 1880 Kenwood in such a way would actually better preserve the neighbor's views when looking to the east.

Public Comment

Danielle and Jeff Kalt, 1886 Kenwood, said it would be better for them if 1880 Kenwood's buildings were not moved further back on the lot. The Kalts' pathway and patio face northeast, and if 1880 Kenwood's buildings are moved further back on the lot the primary view from the Kalts' patio would be 1886 Kenwood's garage. If the home and garage at 1880 Kenwood were built according to the current plans, those buildings would still not be as close to the street as the Kalts' garage. They said moving 1880 Kenwood's garage back would be profoundly intrusive.

**Motion by Mr. Canvasser**

**Seconded by Mr. Miller with regard to Appeal 20-46, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 28.66 feet. The proposed is 25.00 feet. Therefore a 3.66 foot variance is being requested, and B. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 11.24 feet in front of the furthest façade. Therefore a variance of 16.24 feet is being requested.**

Mr. Canvasser moved to deny both variances. He said the issue was self-created and that there was no hardship demonstrated. He noted that Mr. Affeldt stated an ordinance-compliant house could be built on the lot. He also noted that the petition rests much of its argument on what it interprets as the 'intent' of the ordinance, and said that as a quasi-judicial Board it would not be appropriate for the BZA to base its decisions based on conjectured intent. He said the BZA is required to look at the plain language of the ordinance to guide its decisions. Mr. Canvasser also stated he was skeptical of the claim that every lot on a cul-de-sac is inherently irregular and deserving of extra flexibility vis-a-vis the ordinance as a result. He said cul-de-sacs are common enough, even if there are not an overwhelming number in Birmingham, that it would not be appropriate to categorize them as an unusual condition.

Mr. Miller said there is nothing that requires 1880 Kenwood to build a three-car garage facing 1886 Kenwood's patio and home. He noted 1880 Kenwood's garage could be in its backyard, facing the street, or on the south side of the site. That means a variance request to accommodate the proposed garage placement for 1880 Kenwood is a self-created matter, and not one of inherent hardship. Birmingham ordinance also goes to great lengths to keep garages behind the front façades of homes. Not only do these plans aim to have the garage further towards the front of the home than allowed by ordinance, but they even propose to have the garage encroaching into the front yard setback. Mr. Miller said only in very rare situations would the BZA ever consider granting such a request. He noted the building envelope

on this lot is large enough to accommodate most of the applicants' desires for the house. Commending Mr. Affeldt on his creativity and skill in the design, Mr. Miller expressed confidence that Mr. Affeldt would be able to design a home that generally satisfies the owners' wants and the requirements of the building ordinance.

Mr. Lillie said expecting 1880 Kenwood to comply with the ordinance would not be unduly burdensome. The garage could be moved back to comply with the ordinance and there are other ways of meeting the ordinance requirements as well. Since it is new construction, the issue is self-created.

Both Mr. Canvasser and Mr. Lillie reminded those present that variances are not granted or denied based on neighbor support or opposition, and that only a finding of practical difficulty allows the BZA to grant a dimensional variance.

Mr. Hart agreed with previous comments that since this is new construction there is sufficient opportunity to build a home that complies with the ordinance. He also agreed that no hardship had been demonstrated.

Vice-Chairman Morganroth said that while the plan was beautiful and appropriate for the neighborhood, a practical difficulty had not been established and so the requested variances could not be granted.

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**2) 815 Purdy  
Appeal 20-47**

ABO Zielke presented the item, explaining that the owner of the property known as 815 Purdy was requesting the following variances to construct a second floor addition with modification to the existing floor of an existing non-conforming home:

**A. Chapter 126, Article 4, Section 4.75(A)1** of the Zoning Ordinance requires that a private, attached, single-family residential garages shall not occupy more than 50% of a linear building width of a principal residential building that faces a street. The existing/proposed is the garage is 69.50%. Therefore a variance of 19.50% is being requested.

**B. Chapter 126, Article 4, Section 4.75(A)1** of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing/proposed is the garage is 9.40 feet in front of the furthest façade. Therefore a variance of 14.40 feet is being requested.

**C. Chapter 126, Article 4, Section 4.75(A)2** of the Zoning Ordinance requires that garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width; where there are multiple doors, they must be separated by a solid wall or jamb not less than 8.00 inches wide. The proposed is 18.00 feet. Therefore a variance of 9.00 feet is being requested.

ABO Zielke noted the property is zoned R3 – Single Family Residential. He confirmed both variances A and B relate to existing non-conformities with the home, and that neither of those variances would be expanding those non-conformities. Variance C would be expanding an existing non-conformity.

Mark Rauh of Timberland Homes reviewed the letter to the BZA describing why these variances were being sought. The letter was included in the evening's agenda packet.

There were no questions from the public.

**Motion by Mr. Lillie**

**Seconded by Mr. Rodriguez with regard to Appeal 20-47, A. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages shall not occupy more that 50% of a linear building width of a principal residential building that faces a street. The existing/proposed is the garage is 69.50%. Therefore a variance of 19.50% is being requested and B. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing/proposed is the garage is 9.40 feet in front of the furthest façade. Therefore a variance of 14.40 feet is being requested.**

**Mr. Lillie moved to grant variances A and B only and to tie them to the plans as submitted. He said it would be unduly burdensome to make the petitioner comply with the ordinance in these two instances since the house is already non-comforming. He noted that the need for these two variances was not self-created.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**Motion by Mr. Lillie**

**Seconded by Mr. Hart with regard to Appeal 20-47, C. Chapter 126, Article 4, Section 4.75(A)2 of the Zoning Ordinance requires that garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width; where there are multiple**

doors, they must be separated by a solid wall or jamb not less than 8.00 inches wide. The proposed is 18.00 feet. Therefore a variance of 9.00 feet is being requested.

Mr. Lillie moved to deny variance C because he said compliance with the ordinance in this case would not be unduly burdensome and granting the variance would increase the non-conformity.

Mr. Miller said he would support the motion because the outside dimension of the garage is 21.4 feet, which with two nine foot doors would still leave room for the required 8 inch separation in the middle with plenty of room on either side of the doors.

Vice-Chairman Morganroth said he would also support the motion because the ordinance can be met in this case.

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 12-63-20**

## **5. Correspondence**

Included in the agenda packet.

**T# 12-64-20**

## **6. General Business**

None.

**T# 12-65-20**

## **7. Open To The Public For Matters Not On The Agenda**

None.

**T# 12-66-20**

## **8. Adjournment**

**Motion by Mr. Lillie**

**Seconded by Mr. Lilley to adjourn the December 8, 2020 BZA meeting at 8:53 p.m.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

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Bruce R. Johnson, Building Official

# **CASE DESCRIPTION**

**469 & 479 S. Old Woodward  
(21-01)**

**Hearing date: January 12, 2021**

**Appeal No. 21-01:** The owner of the property known as 469 & 479 S. Old Woodward Avenue requests the following dimensional variances to construct a 5-story mixed-use building.

- A. Chapter 126, Article 3, Section 3.04(D)(5)** of the Zoning Ordinance requires that off-street parking contained in the first story shall not be permitted within 20.00 feet of any building façade on a frontage line or between the façade and the frontage line. The owner has proposed 7 parking spaces within 20.00 feet of the building frontage facing Hazel Street, therefore, a dimensional variance of 20.00 feet is being requested.
- B. Chapter 126, Article 4, Section 4.25(LD)(02)(1)** of the Zoning Ordinance requires that each building used for mixed commercial and residential use shall supply, on the site of the building, a minimum of 2 off-street loading zones and 2 refuse storage areas. Loading Spaces are required to be 40 feet long, 12 feet wide and 14 feet high in dimension. The owner has proposed one loading space on-site, therefore, a dimensional variance of one loading space is being requested.

## **Staff Notes:**

The subject property is Zoned B3 and D4 in the Downtown Overlay. On September 23<sup>rd</sup>, 2020, the subject property appeared before the Planning Board for Final Site Plan Approval for a 5-story mixed-use building. The Planning Board approved the proposed site plan with conditions including that the applicant receive a variance for providing 2 loading spaces 40 feet long, 12 feet wide and 14 feet high in dimension, and a variance for the 7 parking spaces within 20 feet of the frontage along Hazel.

In regards to variance A, Section 3.04(D)(5) of the Zoning Ordinance prohibits first floor on-site parking to be within 20 feet of the frontage line. The applicant is proposing 7 parking spaces within 20 feet of the building's frontage along Hazel Street in order to provide parking spaces to service the first floor commercial spaces. The subject property is not within the Parking Assessment District, therefore the subject site is required to provide all parking for commercial and residential use on site.

469-479 S. Old Woodward has proposed 5,201 square feet of commercial space on the first floor. The subject site is along the retail frontage line on S. Old Woodward and is required to provide retail within the first 20 feet of the building facing S. Old Woodward. The 3,968 square feet of first floor retail requires 13 parking spaces, while the 1,233 square foot entrance lobby requires an additional 2 parking spaces, totaling a requirement of 15 parking spaces for the commercial space on the first floor. The current site plan indicates 14 parking spaces on the first floor which are accessible by car from Hazel Street only. The 7 first floor parking spaces along Hazel Street are not in conformity with Section 3.04(D)(5) of the Zoning Ordinance because they are within 20 feet of the building frontage.

469-479 S. Old Woodward has 2 levels of underground parking, level P2 having 37 parking spaces and level P1 having 33 parking spaces. When including the proposed 14 parking spaces on the first floor, the building has a total of 84 parking spaces for the entire building. Given the proposed commercial space and number of residential units, the building is required to provide a total of 75 spaces, and has an excess of 9 parking spaces.

In regards to Variance B, Section 4.25(LD)(02)(1) of the Zoning Ordinance requires mixed-use buildings in the B3 Zone to provide 2 loading spaces on site that are 40 feet long, 12 feet wide and 14 feet high in dimension. The applicant has proposed a loading/receiving area on the east side of the first floor facing Woodward Avenue that is 1,030 square feet in area. The size of the receiving room allows one loading space that is 40 feet long, 12 feet wide and 14 feet high in dimension, however the room is not long enough to accommodate a second loading space, therefore a dimensional variance of 1 loading space is required.

Relevant Planning Board minutes for the Community Impact Study and Preliminary Site Plan Approval on June 24<sup>th</sup>, 2020, as well as Final Site Plan approval on September 23<sup>rd</sup>, 2020 are included in the packet.

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Brooks Cowan  
City Planner

# 469/479 S OLD WOODWARD MAP



**CITY OF BIRMINGHAM**  
**Community Development - Building Department**  
 151 Martin Street, Birmingham, MI 48009  
 Community Development: 248-530-1850  
 Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)

**APPLICATION FOR THE BOARD OF ZONING APPEALS**

Application Date: \_\_\_\_\_

Hearing Date: 1-12-21

Received By: \_\_\_\_\_

Appeal #: 21-01

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

Address: 469 & 477 S. OLD WOODWARD Lot Number: \_\_\_\_\_ St. well Number: 19.20.206.11 & 19.26.206.12

**II. OWNER INFORMATION:**

Name: BIRMINGHAM TOWERS PARTNERS, LLC  
 Address: 251 EAST MERRILL, SUITE 205 City: BIRMINGHAM State: MI Zip code: 48009  
 Email: \* D.MATTUS @ MATTUSLLC.COM Phone: 248.892.2222

**III. PETITIONER INFORMATION:**

Name: DORAD MATTUS Firm/Company Name: MATTUS MANAGEMENT GROUP, LLC  
 Address: D.MATTUS @ MATTUSLLC.COM City: BIRMINGHAM State: MI Zip code: 48009  
 Email: 251 EAST MERRILL, SUITE 205 Phone: 248.892.2222

**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 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: [Signature] Date: \_\_\_\_\_  
 Signature of Petitioner: [Signature] Date: \_\_\_\_\_

124 Peabody

Birmingham

Michigan

48009

CHRISTOPHER J LONGE AIA  
ARCHITECTURE

City of Birmingham  
Board of Zoning Appeals  
151 Martin Street  
Birmingham, Michigan 48009

December 9, 2020

Re: 469/479 South Old Woodward  
Birmingham, Michigan. 48009

Dear Members of the BZA;

Please accept the following as a hardship letter on behalf of the petitioner in support of its request for dimensional variances from the following Ordinance sections of the Birmingham Zoning Ordinance;

**Variance A:** Article 3.04 (D)(5)

*"Off-street parking contained in the first story shall not be permitted within 20' of any building façade on a frontage line or between the building façade and the frontage line."*

**Variance B:** Article 4.25 (LD)(02)(1)

*"Each building used for mixed commercial and residential use shall supply, on the site of the building, a minimum of 2 off-street loading zones..."*

**General Description:**

**The Property**

The is bordered by and has frontage on; South Old Woodward to the west (80'), Woodward Avenue to the east (85') and Hazel Street to the south (211'). The property shares a common border (no frontage) with Birmingham Place (10 story mixed-use) to the north (234').

**The Zoning**

The property/project has received Final Site Plan Approval.

The property is zoned **B-3** and is in the **D-4** Overlay Zoning District and is the only property in the Overlay District that IS NOT in the Parking Assessment District.

The South Old Woodward Frontage is the only required Retail Frontage (Redline Retail).

**The Project**

The project is a 5-story 50-unit apartment building with underground parking as required for residents. The main level consists of the residential/retail lobby, pedestrian egress, retail suites (@ west & east corners) to activate the corners of the building, vehicular entrance for the underground ramp as well as surface parking for the retail use, loading, refuse and transformer pad. The remaining floors (2 thru 5) are dedicated to apartment use.

**Variations Required**

**Variance A** - Surface parking for the retail use and guests is proposed within in the building on the Hazel frontage (not required retail/redline frontage) and conflicts with the Ordinance (20' required).

*We are therefore requesting a dimensional variance of 20' to allow 7 parking spaces within 20' of the building façade.*

**Variance B** - Loading for the building (Woodward Avenue side) is to be provided in the amount of 1- 19'x30' loading space whereas 2 - 12'x40'x14' loading spaces are required by ordinance. The oversized loading space that is provided can easily accommodate multiple vehicles appropriate to the building use or 1 very generous loading space (19'x 30'). Additional space is available for loading as the drawings indicate.

*We are therefore requesting a dimensional variance of 1 loading space.*

T 248 258 6940

cjlonge@cjlongeai.com

## Discussion

### **Variance A**

As mentioned above the project has received FSP approval based on achieving the variances outlined above and on the accompanying drawings illustrating the building plan.

1. It is not in the Parking Assessment District and therefore needs to park all uses on site.
2. The sites geometry is unusually long and narrow (80' x 211' +) with 3 frontages (one being a State Highway).
3. The longest frontage is on Hazel Street (211') which faces directly south and IS NOT required Retail Frontage (Redline Retail).
4. Across Hazel Street is the 555 (6-story office component) building that is setback from Hazel Street approximately 30'. There is no retail or accessible frontage at all on this facade.
5. The area between the road/sidewalk and the 555 building is a bed of rocks.
6. The building facade is comprised of a windowless wall of concrete.
7. Hazel is not a retail street.
8. There is metered parking on the south side of Hazel Street only.
9. The transcribed Planning Board meeting (9.23.20) comments reflect the comments above and with unanimous Final Site Plan Approval (see Planning Board Meeting of 9.23.2020, time-52:51 thru 1:30) endorsing parking to be allowed within 20' of the Hazel Street frontage.

### **Variance B**

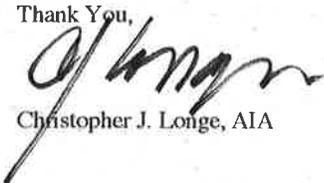
1. The loading area is proposed to be located on the west side façade of the building directly accessed from the Woodward Avenue right-of-way (public).
2. The loading area is proposed to be indoor (therefore screened) and is approximately 19' wide x 30' long x 18' high and designed into the buildings Architecture. While not meeting the strict application of the zoning ordinance, the loading area provided is reasonable for the use and size of the building.
3. The type of loading for this building (apartments) is typically facilitated by much smaller trucks than suggested by ordinance. The odd occurrence (if ever) of a tractor trailer needed to service the building could be accommodated both on Hazel Street and Woodward Avenue.
4. The drawings illustrate that several size vehicles (trucks) specific to the use (moving) can be accommodated *at the same time* within the designated building loading space.
5. The building has 3 frontages with no real 'back of house' (alley) for services (loading). While the South Old Woodard and Hazel Street frontages are the more important facades – the Woodward Avenue facade has received no less attention to its design.
6. There is additional opportunity for loading within the building @ the garage entrance.
7. There is additional opportunity for loading in the Woodward Avenue right-of-way which allows for parallel vehicle parking to the south and on many adjacent properties to the north (angled parking on east side of Woodward Avenue as well). This area is also available for loading well in excess of the required size.
8. The Hazel Street right-of-way is also available for loading well in excess of the required size.

## Conclusion

This property is unique and burdened in several ways. It is a corner property with 3 frontages on 3 public streets. Even with the difficult existing site geometry and fact that the property is not in the Parking Assessment District - all Ordinance requirements have been met with the exception of the requested variances - the Planning Board unanimously approved the Final Site Plan.

We respectfully request the Board of Zoning Appeals grant the requested dimensional variances as submitted. Please contact me with any questions or requests for additional information.

Thank You,



Christopher J. Longe, AIA



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

380 North Old Woodward Avenue  
Suite 300  
Birmingham, Michigan 48009

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

[www.wwrplaw.com](http://www.wwrplaw.com)

January 8, 2021

City of Birmingham  
Board of Zoning Appeals  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward, Birmingham (“Property”)

Dear Members of the Board of Zoning Appeals:

Please accept this letter as a supplement to the letter submitted on December 9, 2020 by architect Christopher J. Longe and attachments on behalf of the Petitioner regarding the proposed mixed-use development of the Property at 469-479 S. Old Woodward. The Property sits within the boundaries of the D4 Downtown Overlay District. The underlying zoning district is B3.

The Petitioner site plan was granted final approval by the Planning Board on September 23, 2020. Planning Board minutes for 9/23/20 are enclosed (“Minutes”).

#### **Dimensional Variance from Hazel Street Setback**

The Planning Department opined the Property is subject to a 20-foot setback requirement at the Hazel Street frontage set forth in the parking standards of the Zoning Ordinance (“Ordinance”). See Zoning Ordinance, Art. 3, section 3.04(D)(4). The Petitioner’s proposed building design is for a mixed-use building with a building façade on the frontage line on all three street-facing sides of the building. The Planning Department stated the 20-foot setback is required because the building includes indoor ground level parking on the Hazel Street side. It is notable that Hazel Street is not designated as a retail street. Further, directly across the street to the south is the north facing concrete wall of the 555 building’s parking garage.

#### **Dimensional Variance from Loading Space Requirements**

Additionally, the Planning Department opined the Property, which is a mixed-use retail and condominium development, is subject to two off-street loading spaces measuring 40 feet long, 12 feet wide and 14 feet high to comply with Ordinance section 4.25. The Petitioner’s proposed building design includes an indoor loading area on the Woodward side that is 30 feet long, 19 feet wide and 18 feet high. The proposed building will have first floor retail on S. Old

Woodward and Hazel Street. The lobby for the residential condominiums will be on S. Old Woodward, with indoor parking at the southeast corner of the building. The only possible location of a screened loading space is at the garage entrance off Woodward Avenue. Since the proposed use is principally residential, there will not be a demand for frequent large truck deliveries and such deliveries (such as moving trucks) can be scheduled to occur early or late in the day.

The Petitioner requests the Board of Zoning Appeals approve the two described dimensional variances allowing: (1) the building façade on Hazel Street to be at the frontage line; and (2) one loading space with the dimensions of 30 feet long, 19 feet wide and 18 feet high.

Side Setback Requirement of Ordinance	Requested Variance (as measured from lot line)
Minimum setback of 20' from frontage on Hazel due to on-site parking	Variance of 20' for zero side setback
Two screened loading spaces with the dimensions of 40'L x 12'W x 14'H.	One indoor loading space with the dimensions of 30'L x 19'W x 18'H

The dimensional variances are requested because of the unique size, shape, physical characteristics and location of this Property as it relates to other neighboring and nearby properties, and its three facades on S. Old Woodward, Hazel Street and Woodward Avenue.

**ARTICLE 8.03(F)(3)(a)(i) - BECAUSE OF SPECIAL CONDITIONS APPLICABLE TO THE PROPERTY IN QUESTION THE PROVISIONS OF THE ZONING ORDINANCE, IF STRICTLY APPLIED, UNREASONABLY PREVENT THE PROPERTY OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE.**

There are exceptional and extraordinary circumstances and conditions applicable to the subject Property because of the placement of the Property, the narrow shape and size of the Property, and the location of the Property with frontages on three streets, S. Old Woodward, Hazel Street and Woodward Avenue.

*It is also very important that this is the only D4 property not part of the Parking Assessment District in this part of the City.* These unusual circumstances cause a practical difficulty and unnecessary hardship for the property owner and prevent the property owner from using the Property in the same manner as other property owners within the same zoning district, i.e., the D4 Zone. Other owners in the D4 Zone may freely build a new building and all elements of the building, including setbacks, height, use, and all other requirements pursuant to the regulations set forth in the Downtown Overlay District because they are in the Parking Assessment District.

The on-site parking requirement on this narrow site (80' on S. Old Woodward and 85' on Woodward Avenue) makes a 20' setback on Hazel Street and the two 40' loading spaces near impossibilities, as they would reduce the ground floor to all parking and loading, leaving little

space, if any, for any other uses. Petitioner is requesting the variances to preserve the first-floor retail use and to park retail customers. The unusual and unique application of one of these elements of the D4 zoning district to this Property has a damaging effect on the use of the Property for permitted purposes. The City's application of the Zoning Ordinance to this Property completely negates the spirit, intent, goals and objectives of the Downtown Overlay to provide activated streetscapes with engaging first floor retail.

**ARTICLE 8.01(F)(3)(A)(ii) - LITERAL ENFORCEMENT OF THE CHAPTER WILL RESULT IN UNNECESSARY HARDSHIP.**

The literal enforcement of the 20' setback requirement and two 40' long screened loading spaces of the Ordinance, as they apply to an 80' wide lot fronted by roads on three sides results in an unnecessary hardship. Although the building is designed to be built in all respects as intended by the Zoning Ordinance, that is, with the standards of the D4 Zone, it is clear that the application of the "parking setback" found in Ordinance section 3.04(D)(4), if applied to this particular property in this unique situation, will cause the Petitioner a practical difficulty and an unnecessary hardship.

First, unlike other D4 properties in the City, the Property fronts on S. Old Woodward, Hazel Street and a state highway – Woodward Avenue. The 20' onsite parking setback is intended to provide a buffer from the sidewalk and the parking and to naturally screen the parking with landscaping. The spirit and intent of the Downtown Overlay is to create mixed-use buildings with an activated urban streetscape by allowing construction to the lot lines and by providing off-street parking in garages through the Parking Assessment District. The Petitioner's parking setback and loading space variances are within the spirit of the Ordinance requirements because the parking and loading will be inside of the building, covered seamlessly within the building's architecture.

The hardship caused is that the zoning standard does not satisfactorily accommodate either the location of the Property, the size, and dimensions of the Property, nor the design goals of an inviting, walkable streetscape. The result of application of the setback and loading space requirements to this Property are the unintended results of limiting street activation by requiring the building to be pushed off the sidewalk (like the 555 parking garage across the street) in addition to further limiting the amount of building area that can possibly be dedicated to retail frontage. This literal enforcement of the parking set back and loading space requirements have no purpose in this unique circumstance. The hardship is caused because of the unique siting of this Property and the requirements of the Zoning Ordinance that the building be built under the D4 regulations as discussed here.

**ARTICLE 8.01(F)(3)(a)(iii) – THE GRANTING OF THE VARIANCE WILL NOT BE CONTRARY TO THE SPIRIT AND PURPOSE OF THE ZONING ORDINANCE NOR CONTRARY TO PUBLIC HEALTH, SAFETY AND WELFARE.**

The granting of the variances requested by Petitioner will not be contrary to the spirit and

purpose of the Zoning Ordinance nor will it be detrimental to the public health, safety and welfare. In fact, Petitioner maintains that the construction of the proposed building in its entirety is in accordance with the spirit of the D4 Downtown Overlay requirements and the intent of the Zoning Ordinance. All other elements of this building are designed to be built in accordance with the Overlay District.

The Downtown Overlay requires buildings to be placed on the frontage line, the height is pursuant to the Downtown Overlay District Ordinance, the placement of other elements of the building are in accordance with the D4. The 20-foot parking setback of the Ordinance does not reasonably apply to this narrow Property that is outside of the Parking Assessment District boundaries, nor does dedicating a significant portion of the ground floor to two 40' off-street loading spaces. The off-street loading spaces requirement does not coordinate with either the unusual location of the Property nor the D4 building requirements as applied to the Property's unique dimensions. The result is that the application of the loading space requirement limits the use of the building by reducing the street-level space available for pedestrian accessibility and retail activity. The hardship is caused because of the unique siting and location of this Property, the Property's narrow shape, and the requirements of the Zoning Ordinance that the building be built under the D4 zoning regulations.

**ARTICLE 8.01(F)(3)(a)(iv) – THE GRANTING OF THE VARIANCE WILL RESULT IN SUBSTANTIAL JUSTICE TO THE PROPERTY OWNERS, THE OWNERS OF THE PROPERTY IN THE AREA AND THE GENERAL PUBLIC.**

The granting of the variance will result in substantial justice to the owner of the Property and the neighboring owners of the Property and the general public. The purposes of the Downtown Overlay District are to direct development to the Downtown District, encourage a form of development that enhances the economic vitality of Downtown, ensures new buildings are compatible with the desired characteristics of Downtown, and that uses relate to the pedestrian and promote retail activity (Ordinance section 3.01). The fulfillment of these requirements and the purposes of the Downtown Overlay have been determined by the Planning Commission and the City Commission as being a benefit to the health, safety and welfare of the community. The purposes and planning goals encourage new, compact development with a traditional urban form, to create a Downtown area of Birmingham that is as vibrant. It would be inconsistent with the purposes and goals of the Downtown Overlay if this Property is subject to the 20' parking setback. Similarly, as this Property is not within the boundaries of the Parking Assessment District, to require two off-street loading spaces on such a narrow site to accommodate principally a residential use with some first-floor retail significantly reduces the amount of area that can be dedicated to that same pedestrian-friendly retail uses.

The neighboring properties to the north are mixed-use retail and residential within the D5. To the south is the 555 Building and its parking garage also zoned D5. Other buildings in the Downtown Overlay have been permitted variances for loading spaces due to lot constraints. The Petitioner's proposed building with variances, therefore, will allow this Downtown block to be completed, it will activate the corner of S. Old Woodward and Hazel, and further the purposes of

the Downtown Overlay District. The granting of the variances will be of a benefit to the public and will result in substantial justice to all the citizens of the City of Birmingham.

**THE PRACTICAL DIFFICULTY AND HARDSHIP ARE NOT SELF-CREATED.**

The practical difficulty and hardship experienced by this Petitioner are not self-created but exist because of the size, shape, location and natural features of the Property. This Property is an irregular rectangular shape situated on two streets and a public highway. The Property is and has been for an extended period of time vacant. It was used for a restaurant and bank. The proposed building is designed as a mixed-use commercial and residential structure under the D4 and is made possible because of the requirements the Downtown Overlay District. The reasons for these variances and the current development plan is to benefit the City of Birmingham with a building and development that is complimentary to, and consistent with the surrounding properties and the Downtown Overlay, as well as the ordinances of the City of Birmingham. The variances requested are necessary and fair to treat this uniquely-shaped Property that has no benefit of the Parking Assessment District in the same manner as all other D4 properties.

The application of the parking setback and loading space requirements of the Ordinance to this Property is inconsistent with the accepted planning and zoning goals of the City, as they restrict the urban use of the Property, requiring a 20' buffer from the sidewalk and further contradicting compact urban design. The important goal of pedestrian activation also is not possible as a result of the imposition of loading spaces and parking at ground-floor level. This eliminates space an area that can be dedicated to inviting retail use in preference to off-street loading dock spaces. The location of this Property is not the same as others in the D4 zoning district in the City. It is outside the boundaries of the Parking Assessment District, it fronts on three streets, and it sits between two D5-zoned buildings without the advantages of those afforded to the owners in the D5 zone. Petitioner respectfully requests that the Board of Zoning Appeals grants a variance from the application of the Ordinance's parking setback and off-street screened loading for this Property.

The granting of this dimensional variances in this circumstance given the unique location and special circumstances of this Property is a result of the unique physical characteristics of the Property which create a practical difficulty and hardship that prevent the Petitioner from the use of the Property in the same manner as enjoyed by other property owners in the area not situated on such a narrow lot fronting three roads. These unique characteristics were not created by the Petitioner but are a result of physical characteristics of an unusually located property and the unusual location of the Property (bordered by three public streets and Woodward Avenue).

**Conclusion**

The variances requested are necessary to preserve the enjoyment and substantial property rights possessed by other property owners in the same Downtown Overlay District. Further, with the granting of these variances provides the following relief: (i) the Property owner will not be unreasonably prevented from the use of the Property for a permitted purpose by a literal

interpretation of the Zoning Ordinance that serves no purposes in this circumstance; (ii) the literal enforcement of the Zoning Ordinance will result in unfair and unnecessary hardship to the Petitioner; (iii) the granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health safety and welfare; and (iv) the granting of the variance will result in substantial justice to the Property owner, the owners of property and the general public. Finally, the practical difficulty and unnecessary hardships experienced by the Petitioner are not caused by the Petitioner. The granting of this variance will produce a situation where the development of this Property and building in the Downtown Overlay District, in all ways, comply with the purposes and objectives of the Overlay District.

Accordingly, Petitioner requests that the Board of Zoning Appeals favorably consider Petitioner's Application to grant the dimensional variances as submitted herein and the letter of Christopher J. Longe dated December 9, 2020.

Please contact the undersigned with any questions or requests for additional information.

Sincerely,

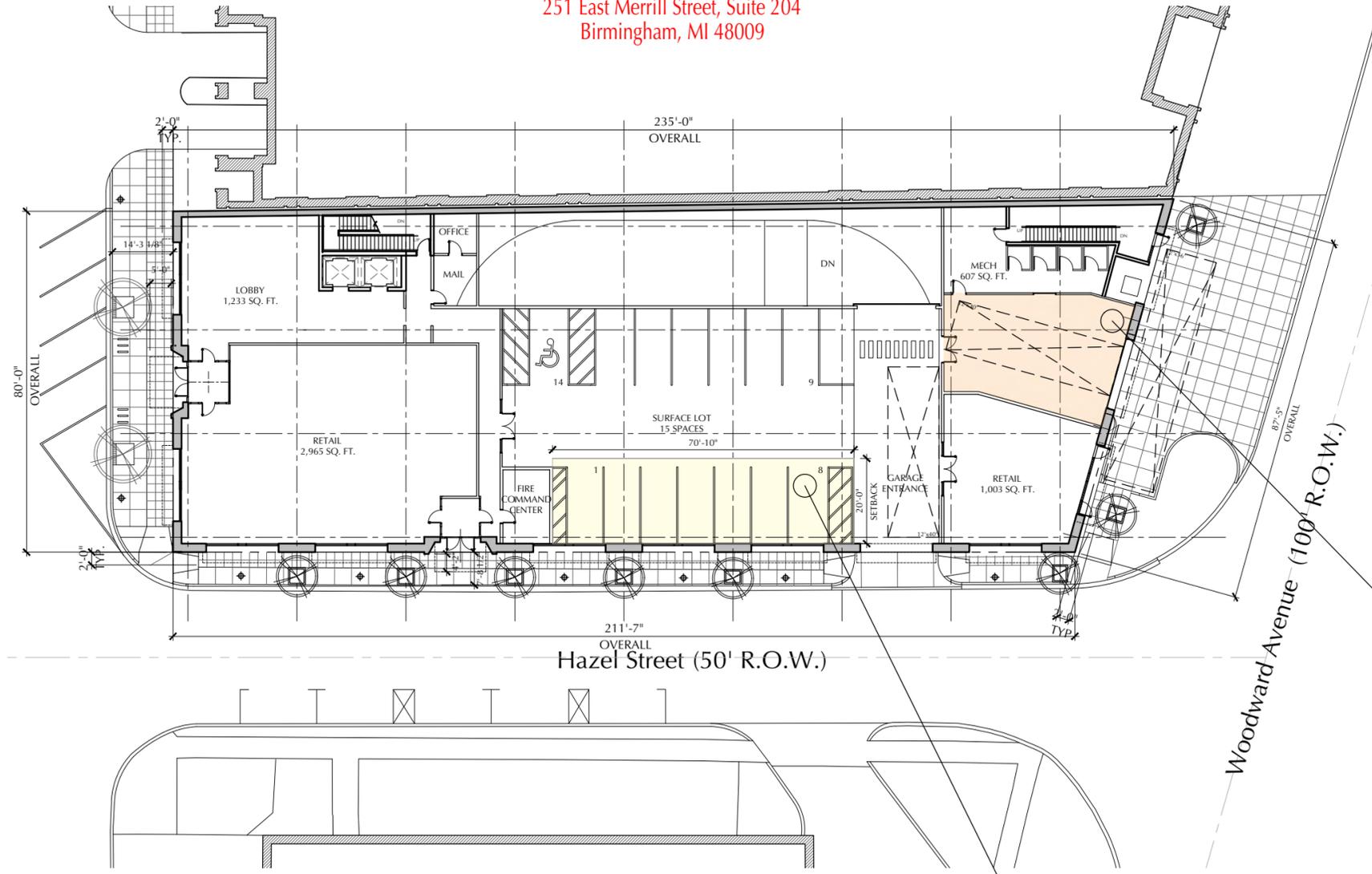
WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

*Richard D. Rattner*

Richard D. Rattner

CC: Christopher J. Longe

**Project M1**  
**Birmingham Tower Partners, LLC**  
 251 East Merrill Street, Suite 204  
 Birmingham, MI 48009



VARIANCE A: FRONT SETBACK (HAZEL STREET)

VARIANCE B: OFF-STREET LOADING SPACES

**OCCUPANCY AREAS**

OCCUPANCY	LOCATION IN BUILDING	NET USABLE AREA
RETAIL + LOBBY	FLOOR 1	5,542 SF
RESIDENTIAL UNITS + STORAGE	FLOOR 2	16,355 SF
RESIDENTIAL UNITS	FLOORS 3-5	38,158 SF

**PARKING TABULATION**

RESIDENTIAL	REQUIRE	PROVIDED
APARTMENTS	50.0 SPACES	84.0 SPACES
RETAIL		
RETAIL + LOBBY	17.30 SPACES	
COMMERCIAL	1.87 SPACES	
TOTAL	69.17 SPACES	84.0 SPACES

**LOADING**

B3 USE	2	1*

\*PROVIDES SPACE FOR SEVERAL LOADING VEHICLES APPROPRIATE TO BUILDING USE.



Site location:  
 B3/D4  
 469 and 479 South Old Woodward

**PROPOSED VARIANCE**

REQUESTED VARIANCES	REQUIRED	EXISTING	PROPOSED	VARIANCE AMOUNT
VARIANCE A: FRONT SETBACK	20.00 FEET	N/A	00.00 FEET	20 FEET
VARIANCE B: OFF-STREET LOADING SPACE	(2) OFF-STREET LOADING SPACES (40Lx12Wx14H)	N/A	1 LOADING SPACE	1 LOADING SPACE

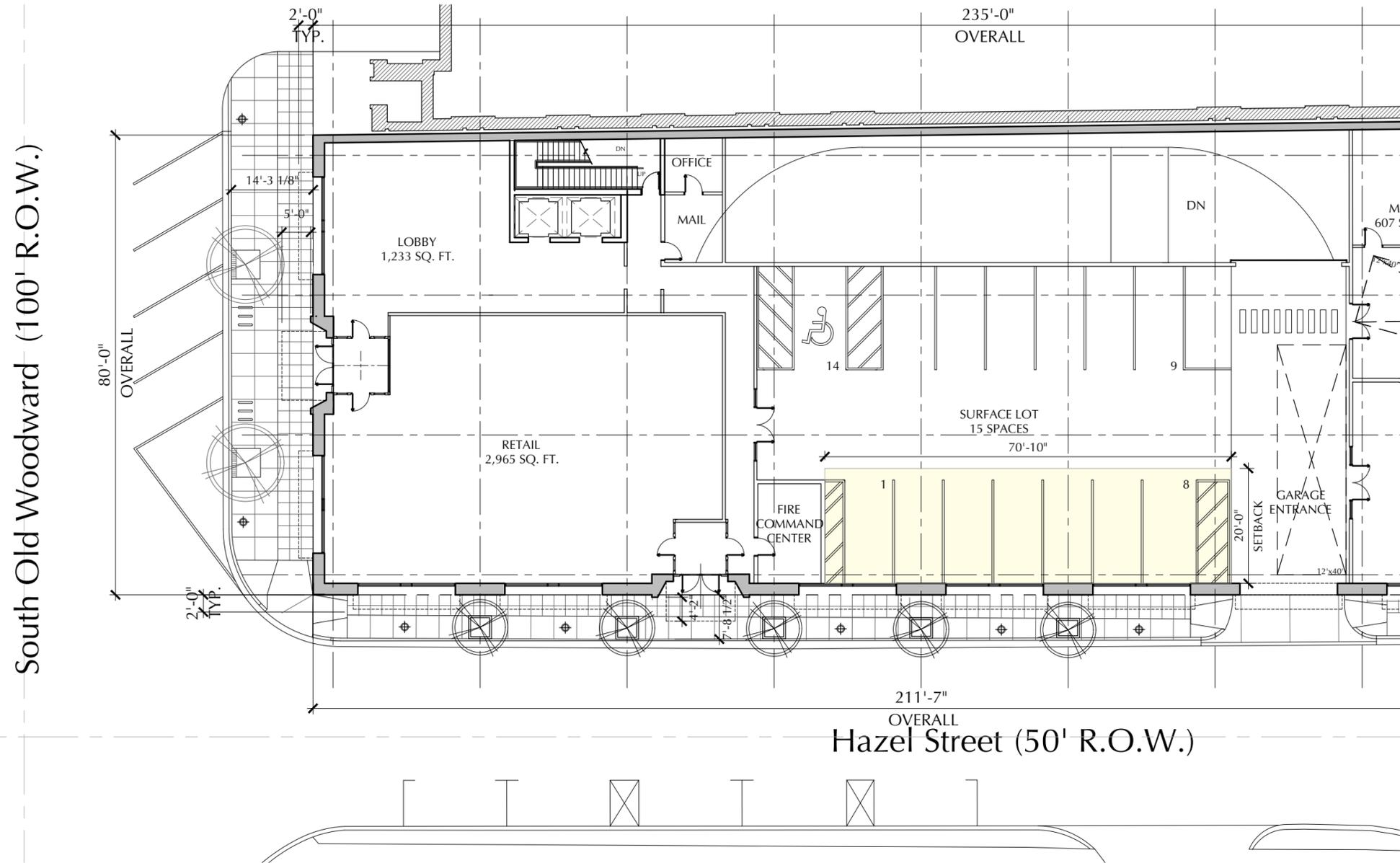
**VARIANCE PROPOSAL**

**CHRISTOPHER J LONGE AIA**  
**ARCHITECTURE**  
**INTERIORS**  
 124 Peabody, Birmingham, Michigan 48009 248.258.6940

SCALE: 1" = 20'-0"

SD.1

**Project M1**  
**Birmingham Tower Partners, LLC**  
 251 East Merrill Street, Suite 204  
 Birmingham, MI 48009



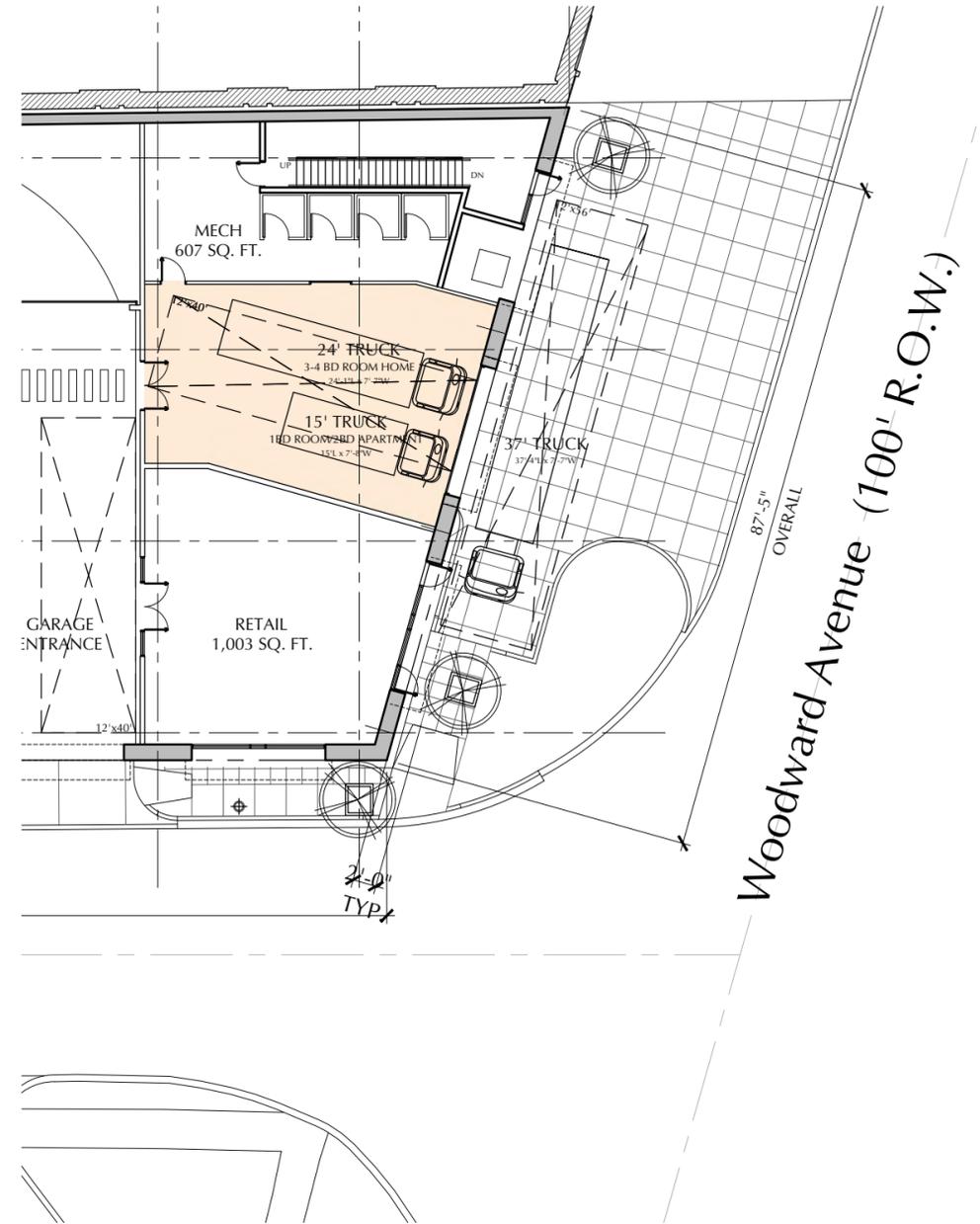
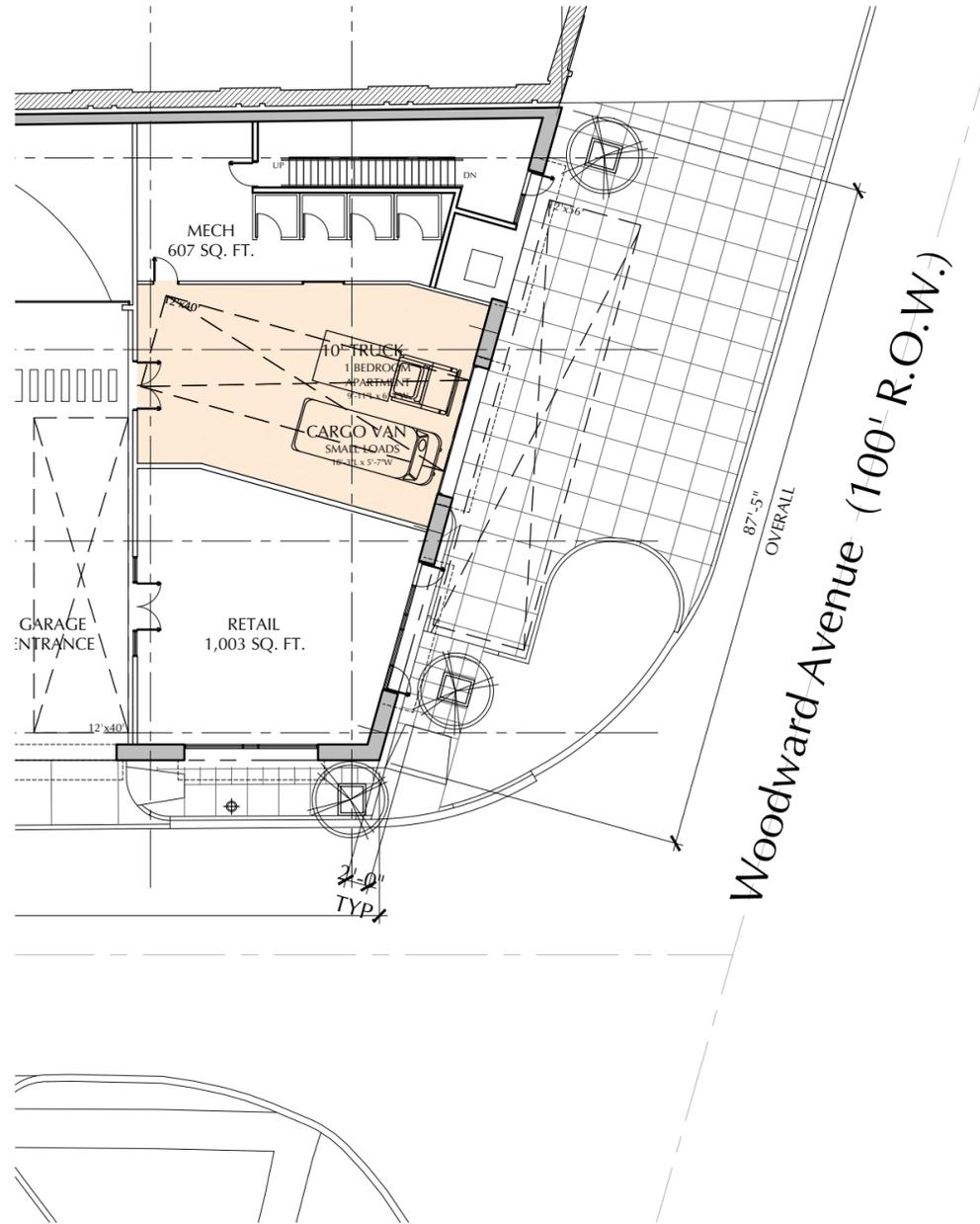
**VARIANCE A:**  
**20' STOREFRONT SETBACK**

SCALE: 1" = 20'-0"

**CHRISTOPHER J LONGE AIA**  
**ARCHITECTURE**  
**INTERIORS**  
 124 Peabody, Birmingham, Michigan 48009 248.258.6940

SD.2

**Project M1**  
 Birmingham Tower Partners, LLC  
 251 East Merrill Street, Suite 204  
 Birmingham, MI 48009



**VARIANCE B:  
 OFF-STREET LOADING**

SCALE: 1" = 20'-0"

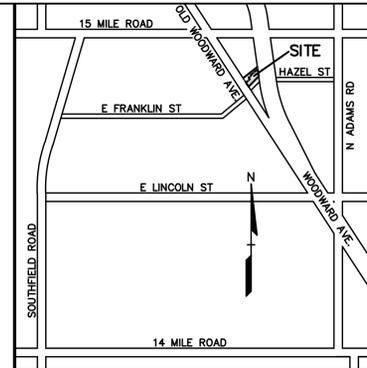
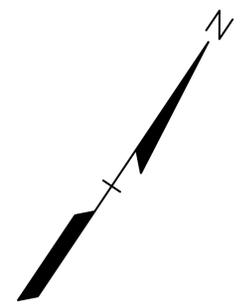
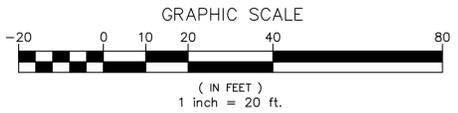
**CHRISTOPHER J LONGE AIA**  
 ARCHITECTURE  
 INTERIORS  
 124 Peabody, Birmingham, Michigan 48009 248.258.6940

**BENCHMARKS:**  
(GPS DERIVED - NAVD88)

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

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

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



NO.	DATE	BY	CHKD	REV	DESCRIPTION
1					PRELIMINARY
2					REVISED

**CAUTION!!**  
THE LOCATIONS AND ELEVATIONS OF EXISTING  
UNDERGROUND UTILITIES AS SHOWN ON THIS  
DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS  
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COMPLETENESS OR ACCURACY THEREOF. THE  
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FOR DETERMINING THE EXACT UTILITIES, DEPTHS AND  
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CONSTRUCTION CONTRACTOR AGREES THAT IN  
ACCORDANCE WITH GENERAL A ACCEPTED  
CONSTRUCTION PRACTICES, CONSTRUCTION  
CONTRACTOR SHALL BE REQUIRED TO ASSUME SOLE  
AND COMPLETE RESPONSIBILITY FOR JOB SITE  
CONDITIONS DURING THE COURSE OF CONSTRUCTION  
OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS  
AND PROPERTY THAT THE REQUIREMENT SHALL BE  
MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED  
TO NORMAL WORKING HOURS AND CONSTRUCTION  
CONTRACTOR FURTHER AGREES TO DEFEND,  
INDEMNIFY AND HOLD DESIGN PROFESSIONAL  
HARMLESS FROM ANY AND ALL LIABILITY, REAL OR  
ALLEGED, IN CONNECTION WITH THE PERFORMANCE  
OF WORK ON THE PROJECT EXCEPT LIABILITY  
ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN  
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f: 248.689.1044  
www.peainc.com

**MARKUS ASSOCIATES, LLC**  
BIRMINGHAM, MI 48009

**TOPOGRAPHIC & ALTA/NSPS LAND  
TITLE SURVEY-HAZEL ST./WOODWARD**  
PART OF THE NE 1/4 OF SECTION 36, T. 02N., R. 10E.,  
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN

DES. DN. D.L.C/D.S.D. SUR. RS. P.M. J.P.B.

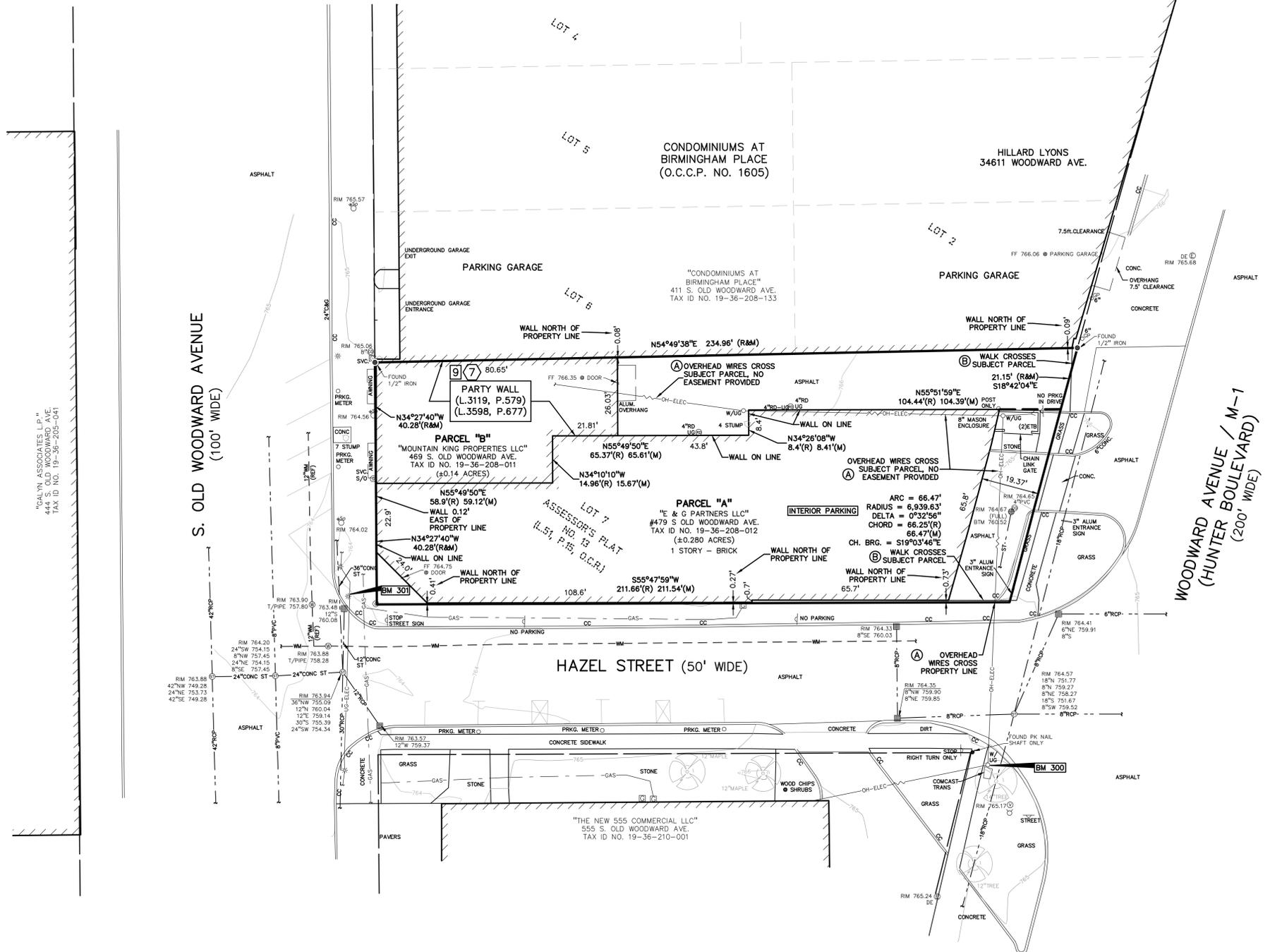
S:\PROJECTS\2017\2017-093 HAZEL STREET & WOODWARD AVE - P17519197-DEPT\170301\PLAN\70301A.dwg

ORIGINAL ISSUE DATE:  
APRIL 15, 2017

PEA JOB NO. 2017-093

SCALE: 1" = 20'

DRAWING NUMBER:  
**1 OF 2**



- LEGEND**
- IRON FOUND
  - ⊗ IRON SET
  - ⊕ NAIL FOUND
  - ⊖ NAIL & CAP SET
  - ⊙ BRASS PILEO SET
  - ⊗ MONUMENT FOUND
  - ⊕ MONUMENT SET
  - ⊙ SEC. CORNER FOUND
  - ⊖ RECORDED
  - ⊕ MEASURED
  - ⊖ CALCULATED
- EXISTING**
- OH-ELEC—W—O— ELEC. PHONE OR CABLE TV O.H. LINE, POLE & GUY WIRE
  - UG-CATV— UG-CATV
  - UG-PHONE— TELEPHONE U.G. CABLE, PEDESTAL & MANHOLE
  - UG-ELEC—ELEC. U.G. CABLE, MANHOLE, METER & HANDHOLE
  - GAS— GAS MAIN, VALVE & GAS LINE MARKER
  - WATER— WATERMAIN, HYD. GATE VALVE, TAPPING SLEEVE & VALVE
  - SANITARY— SANITARY SEWER, CLEANOUT & MANHOLE
  - STORM— STORM SEWER, CLEANOUT & MANHOLE
  - S&M— SQUARED SEWER & MANHOLE
  - S&M— SQUARE, ROUND & RESERVE CATCH BASIN, YARD DRAIN
  - P.I.— POST INDICATOR VALVE
  - W.V.— WATER VALVE BOX/HYDRANT VALVE BOX, SERVICE SHUTOFF
  - M.T.— MALIBOX, TRANSFORMER, IRRIGATION CONTROL VALVE
  - UNID.— UNIDENTIFIED STRUCTURE
  - S.E.— SPOT ELEVATION
  - C.L.— CONTOUR LINE
  - F.— FENCE
  - G.R.— GUARD RAIL
  - S.L.— STREET LIGHT
  - S.— SIGN
  - CONC.— CONCRETE
  - ASPH.— ASPHALT
  - GRAVEL— GRAVEL SHOULDER
- OTHER**
- ASSESSOR'S PLAT NO. 13, L.S.I., P.15, O.C.R.
  - EXHIBIT B - CONDOMINIUMS AT BIRMINGHAM PLACE, O.C.C.P. NO. 1605

SEE SHEET 2 OF 2 FOR  
SCHEDULE B EXCEPTIONS,  
LEGAL DESCRIPTIONS AND  
SURVEYOR'S NOTES

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JUNE 24, 2020**

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 24, 2020. Chairman Scott Clein convened the meeting at 7:31 p.m.

**A. Roll Call**

**Present:** Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative Rachel Hester (joined at 7:37 p.m.)

**Absent:** Board Member Robin Boyle; Student Representative June Lee

**Administration:** Jana Ecker, Planning Director  
Eric Brunk, IT Manager  
Nicholas Dupuis, City Planner  
Laura Eichenhorn, Transcriptionist

**Master Planning Team:** Robert Gibbs, Gibbs Planning Group  
Matt Lambert, DPZ

**06-72-20**

**B. Community Impact Study**

1. **469 – 479 S. Old Woodward (Former Mountain King & Talmer Bank)**  
– Request for Community Impact Study acceptance for a new 5 story mixed use building (Postponed from May 27, 2020).

City Planner Dupuis reviewed the item.

Chris Longe, architect, Steve Russo, traffic engineer, and Joel Rinkel, geotech consultant were present on behalf of the application.

Mr. Russo explained:

- The gate access for the garage would be internal to the building, located near the ramp that descends towards the subterranean levels. That would provide three stacking spaces for vehicles before they spill out onto Hazel. He said the card reader for the gate access takes about ten seconds to register and move a vehicle through the gate, and the applicant expects about 50 inbound vehicles every hour. Since that is less than one vehicle a minute, with three stacking spaces there should be no issue with vehicles queuing out onto Hazel.
- If the parking garage access is left where it was proposed in the plans, it would result in that access being blocked by eastbound traffic on Hazel for a total of only two

minutes every hour. The average queue for the stop sign at Woodward and Hazel is one vehicle, with a 95th percentile queue of two vehicles.

- Since Hazel is not a through street at Woodward and vehicles can only enter Woodward from Hazel via southbound right turn, vehicles making that turn would rarely be travelling in excess of 15 m.p.h. Therefore, vehicles would be travelling slow enough at that intersection that sight distance should not be an issue with the proposed garage access location.
- The applicant will work with MDOT to get any necessary permits for construction that occurs in the MDOT right-of-way.
- He would to work with the City's traffic consultant to allay any further concerns there may be from the location of the parking garage access.

Mr. Rinkel stated that about 18,000 cubic yards of soil would be removed from the excavation on the site, which is equivalent to about 25,000 cubic truck yards of material.

**Motion by Mr. Williams**

**Seconded by Mr. Jeffares to accept the Community Impact Study as provided by the applicant for the proposed development at 469-479 S. Old Woodward – Project M1 – with the following Conditions:**

- 1. The applicant must submit in writing the volume of excavated soils to be removed from the site;**
- 2. The applicant must provide details on any proposed stormwater retention methods proposed on site;**
- 3. The applicant must provide all details on proposed public safety measures to the Fire and Police Departments for review, including the fire suppression system plans, fire command center plans, and details on the proposed security system;**
- 4. The applicant must either provide the stormwater retention methods to be used onsite or must update the CIS to indicate that the applicant will not provide stormwater management devices; and,**
- 5. The applicant must provide the information requested by the City's traffic consultant.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**06-73-20**

**C. Preliminary Site Plan Review**

**1. 469 – 479 S. Old Woodward (Former Mountain King & Talmer Bank)  
– Request for Preliminary Site Plan Review for a new 5 story mixed  
use building (Postponed from May 27, 2020).**

City Planner Dupuis reviewed the item. He said:

- An eleventh condition should be added to the recommended motion which would allow for the proposed projections into the right-of-way.
- If the building has a 20 foot setback, and the first floor use is changed to retail, then the applicant would have to provide approximately three to four parking spaces for the retail. The 111 parking spaces already included on-site would either come close to covering, or would cover, those extra three to four spaces for retail.
- The ordinance only specifies the number of parking spaces required for retail uses of various sizes. It does not specify where those retail parking spaces must be located.
- The size of the vestibule on the roof would have to be limited to the size of the elevator for queuing and egress.

Mr. Longe, architect, spoke on behalf of the application. He explained:

- He would be vehemently opposed to putting the building's ramp off of Woodward. He stated that the garages to the north of this property have their access off big Woodward, which he finds offensive. He said it is preferable for the garage entrance to be accessible off Hazel which is closer to the front door of the building and therefore more conventional.
- Pushing the ramp further to the west would complicate the traffic pattern into the ramp.
- The right-of-way space between the building and Woodward provides ample space for loading and unloading. Other buildings along Woodward use the space between the buildings and Woodward in the same way. In addition, there is a receiving area designated in the plans that would be used for loading and unloading.
- Other projects he has worked on have received variances for the 12 by 40 foot loading area requirement since it is generally smaller mail and package delivery trucks, and not larger industrial trucks, that will be delivering to the building.
- The wall system and the glazing would be used to mitigate the ambient noise coming from the exterior of the building into the interior.
- While the the residential parking arrangements are still under consideration, the applicant is preliminarily thinking that specific spaces will be assigned to the residents. There would also be a keyfob system in place.
- The applicant proposes to put eight parking spaces along Hazel rather than a retail store because Hazel is a low-traffic street and the applicant suspects the space would be too small for retail to thrive. It seemed that it would be more responsible to provide parking on Hazel for the other retail uses in the building located off of both big Woodward and Old Woodward. The applicant would be able to convert the space to

retail if necessary.

Mr. Emerine said he thought it would make much more sense to have the eight spaces of retail parking on Hazel than it would to try to fit retail into that space. He also said that he concurred with Mr. Longe that the garage access should be located exactly where it was put in the plans. He said that coming in off Woodward would be an odd experience for people arriving to the building, and that if the garage entrance were to be moved the ramp might not function as it needs to. He said that he would like the applicant team to work with the City's traffic consultant to make sure her concerns are answered, but said he thinks the design for the garage access is appropriate as-is.

Planning Director Ecker stated that while she has seen the parking assessment district (P.A.D.) extended to additional buildings, she has not seen it extended to buildings that are not directly adjacent to another included building. She also stated that the 20 foot setback issue and the vestibule size issue would both be BZA considerations and not Planning Board ones.

Mr. Williams noted that this is the only D4 parcel in the City that is not in the P.A.D.

City Planner Dupuis requested commentary from the Board regarding the aforementioned issues that might be considered by the BZA.

Mr. Jeffares said that the vestibule as designed in the plans would be much safer, in the case of something like inclement weather, than a vestibule that is only equal to the size of the elevator shaft.

Mr. Koseck agreed with Mr. Jeffares. He continued by saying he was supportive of the eight parking spaces along Hazel. He noted that the floorplan works well to activate the corners and that the parking on Hazel would support the other retail in the building. He said there was a case to be made that there is a practical difficulty with the three-sided building, and that the blank wall across the street from the proposed parking would also not be conducive to retail. He said he also agreed with Mr. Longe's explanation for why the spaces would be located along Hazel.

Mr. Share said he concurred with Mr. Koseck's comments regarding why parking along Hazel would be appropriate for this project. He added that a 20 feet of retail in that area would not make a significant difference towards activating the street.

Ms. Whipple-Boyce and Mr. Williams said they concurred with previous Board members' comments regarding the vestibule and the proposed parking on Hazel.

Mr. Williams said he would urge the members of the BZA to rule favorably for both variance requests.

Chairman Clein said he was supportive of the proposed parking on Hazel. He said that as far as the vestibule, he saw no difficulty necessitating it be larger than the ordinance allows. He stated that he would much rather the Board rework the ordinance if there is a problem with it rather than disregard the ordinance's requirements due to subjective preference.

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**Motion by ~~Mr. Williams~~ Ms. Whipple-Boyce**

**Seconded by Mr. Koseck to approve to APPROVE the Preliminary Site Plan for 469-479 S. Old Woodward – Project M1 – with the following conditions:**

- 1. The applicant must submit revised plans showing the amount of bedrooms in each unit to ensure that the minimum area required per unit is met, or obtain a variance from the Board of Zoning Appeals;**
- 2. The applicant must submit a revised rooftop plan that shows no habitable space at Final Site Plan review, or obtain a variance from the Board of Zoning Appeals;**
- 3. The applicant must submit details on all proposed RTUs and details on the proposed screen wall material to ensure the RTUs are fully screened from public view at Final Site Plan review;**
- 4. The applicant must provide 2 street trees on the Woodward frontage, obtain a waiver from the Staff Arborist, or obtain a variance from the Board of Zoning Appeals;**
- 5. The applicant must (1) provide site plans showing the number of rooms for each residential unit to clarify the parking requirements for such, and (2) provide a minimum 20 ft. setback for the parking facility located on the first floor along the Hazel frontage or obtain a variance from the Board of Zoning Appeals;**
- 6. The applicant must submit revised plans showing 2 off-street loading spaces measuring 40 feet long, 12 feet wide and 14 feet high and in compliance with Section 4.25 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals;**
- 7. The applicant must submit details on the types and placement of all proposed light fixtures, as well as a photometric plan showing illumination levels at all property lines at Final Site Plan;**
- 8. The applicant must submit material specifications, samples, and glazing calculations for the proposed building at Final Site Plan review;**
- 9. The applicant must submit an existing conditions plan;**
- 10. The applicant must comply with the requests of all City Departments;**
- 11. The Planning Board approves the two-foot balcony projections into the right-of-way above eight feet.**

Jim Arpin, member of the public, said that he would urge the Board to not accept plans that require ten or more conditions for the motion. He said it would be a more efficient use of the Board's time and City staff's time. Mr. Arpin also expressed concern regarding the safety, power and fire issues that could occur with the installation of subterranean lifts, and concern with how these plans will meet the ingress and egress requirements of the parking ordinances.

Mr. Arpin thanked the Board for their work reviewing City projects, and said he made his comments with the goal of making the process smoother for the Board's benefit in the future.

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**CITY OF BIRMINGHAM**  
**REGULAR MEETING OF THE PLANNING BOARD**  
**WEDNESDAY, SEPTEMBER 23, 2020**  
Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 23, 2020. Chairman Scott Clein convened the meeting at 7:32 p.m.

**A. Roll Call**

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

**Absent:** Board Member Janelle Whipple-Boyce; Student Representatives Rachel Hester, June Lee

**Administration:** Jana Ecker, Planning Director  
Jamil Alawadi, IT Staff  
Nicholas Dupuis, City Planner  
Laura Eichenhorn, Transcriptionist

**09-120-20**

**F. Final Site Plan & Design Review**

**1. 469 – 479 S. Old Woodward, Project M1 (Former Mountain King and Talmer Bank) – Request for Final Site Plan & Design Review for new five story mixed use building.**

Mr. Share was able to rejoin the meeting at the beginning of this item.

City Planner Dupuis presented the item.

Since there was a possibility the owner would pursue a variance from the Board of Zoning Appeals (BZA) for a reduced setback along Hazel, Mr. Williams said it would be important for the BZA to understand that 469-479 S. Old Woodward is the only parcel in the City zoned D4 and not included in the Parking Assessment District (PAD). He said this fact represents a hardship for the applicant.

Mr. Emerine noted that the building also has three frontages, which also represents a hardship.

Mr. Williams agreed with Mr. Emerine.

Mr. Jeffares said he agreed with Mr. Williams and Mr. Emerine as well. He added that if one stood on the property of 469-479 S. Old Woodward and looked across Hazel, all one would see is a concrete and stone wall. Positing that the Hazel frontage was unlikely to attract a retailer because of the view, Mr. Jeffares recommended that the BZA consider this an additional reason for granting a variance for a lesser setback along Hazel.

Duraid Markus, owner, Chris Longe, architect for the project, and Rick Rattner, attorney for the project, were present.

Mr. Longe said the project team was considering putting in storage on the second floor with residential units along the perimeter, a community room, and a workout center. He said this would be the best use of space since the north side of the building faces a wall.

A number of members of the Board stated they were not comfortable with an either/or approval for residential or commercial use on the second floor.

Mr. Markus stated the final site plan and design review should then proceed using the residential schematic for the second floor.

In reply to Mr. Markus, Chairman Clein confirmed that the project could change its second floor use from residential to office through an administrative approval in the future if need be. Chairman Clein explained that would be permissible since both uses are allowed in the D4 zone. He said that, if the use were to change, only ~~attendant~~ changes to the exterior or issues with ordinance compliance would require further Board review.

Mr. Longe said the loading area on the Woodward side of the building has a bay that is 18 feet wide and 40 feet deep. He said the area should be more than sufficient for the anticipated loading needs of the residences in the building. Mr. Longe acknowledged that the project would need a variance from the BZA for the loading area.

In reply to Chairman Clein, Mr. Longe agreed with Mr. Jeffares' assessment that the Hazel side of the building would be a poor location for retail frontage. The concrete wall across Hazel prevents the street from being activated, and Mr. Longe opined that no amount on retail within their building along Hazel would change that. He noted that since the building is not part of the PAD all parking must be provided for on-site. If they were required to add more retail, they would be required to provide even more parking which would be difficult for the project. Mr. Longe emphasized that the project team wants to provide parking that is easily accessible for the retail customers. He confirmed that the project would be able to screen the parking along Hazel if the City requires it.

In response to a Board inquiry about the canopies, Mr. Longe confirmed that the proposed canopies meet the ordinance. He stated the specifications for the canopies were provided to City Planner Dupuis the day prior to the present meeting.

Mr. Longe told Mr. Koseck that the project team did intend to pursue admittance to the PAD.

In reply to Mr. Williams, Mr. Longe stated the transformer would be screened with metal coated to match the color of the building. He said the project team was also amenable to providing the required benches and trash receptacles.

Mr. Boyle recommended that the developer consider moving the residents' gym from the second floor to the ground floor on Hazel. Since the underground deck has parking in excess of its

residential requirements, the parking on Hazel could potentially be removed for a more activating ground-floor use. He ventured that most customers looking to visit the building's retail would park on-street and that the extra spaces below ground could be counted towards the retail parking requirements. He concluded that if the project team pursued his recommended configuration then they would also be able to avoid seeking a variance for Hazel.

Mr. Markus said Mr. Boyle made an interesting point, and said it was one his team had considered. The drawback to Mr. Boyle's proposal was that enacting it would put retail patrons in the otherwise residential underground parking deck, which the developers wanted to avoid to maintain the residents' feeling of security.

Mr. Boyle said that while he understood Mr. Markus' concern, most people visiting retailers in Birmingham endeavor to park on the street even if accessible underground parking is available. Because of this, Mr. Boyle explained that the excess parking spaces underground could count towards the retail requirements even though retail customers would rarely use those spaces. He said he just wanted the developers to have more flexibility.

Mr. Markus stated the underground deck was ten cars overparked, and that if the Hazel Street parking was eliminated then the project would be four cars under-parked. He also said that the Hazel Street parking would be a draw to any retailer looking to occupy the other available retail space.

Mr. Boyle said he would not continue pressing his point, and that he just wanted to raise the possibility with the project team.

The Board concurred that they were comfortable with the proposed plans for the Hazel side and agreed that there would be no adverse land planning effects if the BZA were to grant a variance for a reduced setback on Hazel.

Mr. Share said it was important to note that the Board was comfortable with the proposed Hazel variance due to the unique location of the project and the unusual three sides with surrounding facilities.

Since the applicant submitted the requirements for conditions one, four and six of the motion to the Planning Department subsequent to the motion's writing, and since City Planner Dupuis had the opportunity to review those submissions, the Board agreed those items could be approved administratively instead of requiring Board review and approval at a later date.

**Motion by Mr. Williams**

**Seconded by Mr. Boyle to approve the Final Site Plan and Design Review for 469-479 S. Old Woodward – Project M1 – subject to the following conditions:**

- 1. The applicant's revised and submitted plans clarifying the projection of all terraces and the dimensions of the sidewalk to ensure the canopies meet the projection standards and shall be approved administratively by the Planning Division;**
- 2. The applicant must provide a 20 ft. minimum setback for the parking facility located on the first floor along the Hazel frontage, or obtain a variance**

**from the Board of Zoning Appeals;**

**3. The applicant must submit revised plans showing 2 off-street loading spaces measuring 40 feet long, 12 feet wide and 14 feet high and in compliance with Section 4.25 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals;**

**4. The applicant's submitted specifications on the types and placement of all proposed light fixtures shall be approved administratively by the Planning Division;**

**5. The applicant must submit revised elevations and glazing calculations that show 70% glazing on each first floor facade, a maximum of 35% glazing on the upper floors, as well as material specifications for all new glass, or obtain a variance from the Board of Zoning Appeals;**

**6. The applicant's Existing Conditions Plan and material specifications shall be approved administratively by the Planning Division;**

**7. That the second floor use be designated as residential, per the submitted plans, with the appropriate parking requirements; and,**

**8. The applicant must comply with the requests of all City departments.**

Mr. Koseck expressed appreciation for the project and said it aligned well with the goals of the 2016 Plan. He said it would be an asset to its location. Mentioning the variance issues, Mr. Koseck said he hoped the BZA would recognize the unique circumstances associated with the project. He also said that if the project gains admittance to the PAD then the currently proposed first-floor parking could be changed into either more retail or more street-activating common spaces for the residents as per Mr. Boyle's prior suggestion. Mr. Koseck stated that everyone involved in bringing the project to fruition should be very proud, and said he looked forward to seeing the project built.

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Williams, Clein, Jeffares, Emerine, Boyle, Koseck, Share

Nays: None

Chairman Clein thanked Mr. Markus, Mr. Longe, Mr. Rattner and the project team for all their work on the project. He thanked the residents of the neighboring buildings for their long-term efforts towards ensuring that this project would be one that would benefit the community.

Mr. Markus told Mr. Boyle he was considering Mr. Boyle's recommendation. He said that if he could maintain his required number of parking spaces he would be interested in replacing some of the spots on Hazel with a more street-activating use.

The project team thanked the Board and signed off.