I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE
   Pierre Boutros, Mayor

II. ROLL CALL
    Alexandria Bingham, City Clerk Designee

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

- The Parkinson’s Walk Special Event Application has been withdrawn due to the executive orders in place that limit outside gatherings to a maximum of 100 people.
- Mayoral Proclamation on Social Injustice.
- All city offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- The Baldwin Public Library will begin accepting materials returns on June 8. Starting, June 15, the Library will be offering Curbside Pickup service to patrons on Mondays through Thursdays from 11:00 a.m. to 7:00 p.m. and on Fridays and Saturdays from 9:30 a.m. to 5:30 p.m. Find more details about Curbside Pickup and the Library’s reopening plan at www.baldwinlib.org/reopening.
- The City will maintain the hotline to provide residents with information about City and County COVID-19 resources through the end of the month. Elderly, quarantined and immunocompromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m.
- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- The Clerk’s Office reminds all voters that applications for Absent Voter ballots for the August 4, 2020 Primary election will be mailed to you in the next few weeks if you are on the Permanent Absent Voter list, and we thank all voters who took the opportunity to be added to the Absent Voter list recently. Finally, if you are interested in working as an Election Inspector in Birmingham in the upcoming elections, please contact our office at elections@bhamgov.org or 248-530-1880.
- Please welcome Abrial Hauff to the City of Birmingham as she has committed to serving our community as the Deputy City Clerk. Miss Hauff has accumulated 4 years of municipal experience as the Deputy Clerk in Columbus Township and comes with excellent recommendations from her previous co-workers.
APPOINTMENTS:
A. Housing Board of Appeals
   1. Robert Ziegelman
   2. Luke Joseph
   3. Chris McLogan

B. To appoint ___________ to the Housing Board of Appeals as a regular member to serve a three-year term to expire 5/4/2023.

C. To appoint ___________ to the Housing Board of Appeals as a regular member to serve a three-year term to expire 5/4/2023.

D. To appoint ___________ to the Housing Board of Appeals as a regular member to serve a three-year term to expire 5/4/2023.

E. Brownfield Redevelopment Authority
   1. Beth Gotthelf
   2. Rob Runco

F. To concur with the Mayor’s appointment of __________, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2023.

G. To concur with the Mayor’s appointment of __________, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2023.

IV. CONSENT AGENDA
   All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

   A. Resolution approving the City Commission revised regular meeting minutes of May 11, 2020.

   B. Resolution approving the City Commission regular meeting minutes of May 18, 2020.

   C. Resolution approving the warrant list, including Automated Clearing House payments, dated May 20, 2020 in the amount of $1,051,925.64.

   D. Resolution approving the warrant list, including Automated Clearing House payments, dated May 27, 2020 in the amount of $406,105.45.

   E. Resolution approving the warrant list, including Automated Clearing House payments, dated June 3, 2020 in the amount of $385,449.52.

   F. Resolution setting Monday, July 13th, 2020 at 7:30 PM for a public hearing to consider approval of a Special Land Use Permit Amendment and Final Site Plan and Design Review for Lutheran Church of the Redeemer at 1800 W. Maple Road.

   G. Resolution setting Monday, July 13th, 2020 at 7:30 PM for a public hearing to consider the proposed rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.
H. Resolution approving the attached resolution requesting reimbursement for the maximum allotment of $2,648.39 for eligible mosquito control activity under the Oakland County’s West Nile Virus Fund Program.

I. Resolution approving the purchase of two (2) Toro Workman HDX from Spartan Distributors, through State of Michigan extendable purchasing contract #071B0200329 for a total expenditure of $47,074.82. Funds for this purchase are available in the Auto Equipment Fund account # 641-441.006-971.0100.

J. Resolution approving the crack repair and painting project at Pembroke and Poppleton to Goddard Coatings Company for a total project cost not to exceed $27,755.00. Funds are available from 2020-2021 budget Parks Capital Projects Fund account #401-751.001-981.0100 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

K. Resolution approving the Intergovernmental Contract with the Charter Township of Bloomfield for Animal Control, Housing and Services. Further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.

L. Resolution confirming the City Manager’s authorization for the emergency expenditure regarding the implementation, integration and purchase of BS&A’s PZE review process feature and Bluebeam in an amount not to exceed $16,415 to be paid from the Building Department account number 101-371.000-811.0000, pursuant to Section 2-286 of the City Code.

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

A. Resolution approving the proposed lot combination of 211 Frank Street, Parcel # 19-36-184-020 and 227 W. Frank Street, Parcel # 19-36-184-019.

B. Resolution updating the Temporary COVID-19 Outdoor Dining Standards taking effect immediately and rescinding resolution #05-073-20A, as previously adopted by the City Commission on May 11, 2020.

C. Resolution approving the budget appropriations resolution adopting the City of Birmingham’s budget and establishing the total number of mills for ad valorem property taxes to be levied for the fiscal year commencing July 1, 2020 and ending June 30, 2021. (complete resolution in agenda packet)

D. Resolution amending the Schedule of Fees, Charges, Bonds and Insurance, Water and Sewer Service Sections, for changes in sewer, storm water, industrial surcharge, and industrial waste control charge rates effective for bills with read dates on or after July 1, 2020 as recommended in this report.

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
X. REPORTS

A. Commissioner Reports

B. Commissioner Comments

C. Advisory Boards, Committees, Commissions’ Reports and Agendas

D. Legislation

E. City Staff

INFORMATION ONLY

XI. ADJOURN

PLEASE NOTE: Due to building security, public entrance during non-business hours is through the Police Department – Pierce St. entrance only.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk’s Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).
Good Morning Cheryl,

I appreciate your email and apologies. We are extremely disappointed to learn that our Parkinson Walk will not be allowed at this time due to the restrictions in place for the COVID-19 pandemic. I know that Michigan Parkinson Foundation is not alone in having events canceled, and I know this is a difficult message for you to have to deliver.

At this time, we request that you withdraw our event application so our Parkinson Walk is not discussed at the June 8th meeting before the City Commission. We do request that in the event restrictions are lifted and we are allowed to have a gathering of more than 100, we be allowed to resubmit the event application for review at future meetings. The Metro Detroit Parkinson Walk is our critical fundraising event for the year at which the monies raised allow us to continue the valuable programs and services for those living with Parkinson's disease, including a 300% increase in requests for Respite Care just since the start of this pandemic.

Thank you again, Cheryl, for your assistance in this very unusual set of circumstances. I sincerely hope that life returns to more normal times, and we hear from you regarding resubmitting our event application.

Be safe, stay well and God Bless.

Diane Kraft
Program Manager

30400 Telegraph Rd., Suite 150
Bingham Farms, MI 48025
248-433-1160
programs@parkinsonsMI.org
www.parkinsonsMI.org
Diane and Mary Sue,
Unfortunately, due to the current conditions and safety restrictions in place for the COVID-19 pandemic, and along with recent Executive Order 2020-110 limiting gatherings to no more than 100, the City is not able to recommend City Commission approval of your event on September 12, 2020. The City regrets the unfortunate situation all applicants are in this year, but with the current restrictions on outdoor gatherings in place and safety being a top priority, it is most likely that the Commission would not approve your event.

Since the event is scheduled to be discussed at the upcoming June 8th Commission meeting, I wonder if you would prefer to email me a request to withdraw the event application, rather than having the event discussed during the public meeting and ultimately denied by the Commission. If so, please email me as soon as possible, since we are in the process of assembling the agenda for the meeting now.

Again, my apologies for this unfortunate turn of events.

Cheryl Arft
Acting City Clerk
City of Birmingham
151 Martin Street
Birmingham, MI  48009

248-530-1880
248-530-1080 (fax)

carft@bhamgov.org
ON SOCIAL INJUSTICE

WHEREAS, the death of George Floyd, an African American man, by the hands of police officers of the Minneapolis Police Department while in custody, leaves all persons shocked, appalled and infuriated by police misconduct, and

WHEREAS, the actions and in-actions of those officers were a disgrace to the law enforcement community, and were so egregious that the people of the United States of America have taken to protests and demonstrations throughout the nation to confront the issues of racial discrimination inequality and misconduct by police, and

WHEREAS, it is incumbent upon every person in this country to take a stand against racism, discrimination, misconduct, and violence, and send a clear message that those behaviors have no place in a civilized society; and

WHEREAS, our thoughts and prayers are with all those affected, especially the families and friends; by the social injustices that have occurred, and

WHEREAS, all people must condemn and refuse to tolerate racism, injustice and violence of any kinds toward any person and that all people must work together to build a future that ensures fairness, respect, dignity, security, and justice for all, now

THEREFORE BE IT RESOLVED that I, Pierre Boutros, Mayor for the City of Birmingham, proclaim the condemnation of the killing of George Floyd, and further condemn all forms of misconduct, racism, and discrimination, and we set forth our commitment to work for a more just society that provides safety, opportunity, and equality under the law for all those in America, irrespective of race, religion, ethnic origin, or sexual orientation.

On behalf of the City of Birmingham this 5th day of June, 2020.

Pierre Boutros, Mayor

3 PROCLAMATION
NOTICE OF INTENTION TO APPOINT TO THE HOUSING BOARD OF APPEALS

At the meeting of Monday, April 6, 2020, the Birmingham City Commission intends to appoint three regular members to the Housing Board of Appeals to serve three-year terms to expire May 4, 2023. Members shall be educated or experienced in building, construction administration, social services, real estate or other responsible positions.

The Housing Board of Appeals was established in order to provide an appeal process from regulation derived from the housing and maintenance requirements found in Chapter 22 of the city code. The purpose of the housing and maintenance regulations is to protect, preserve and promote the physical and social well being of the people, to regulate privately and publicly owned dwellings for the purpose of maintaining adequate sanitation and public health.

Interested citizens may submit an application available at the City Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, April 1, 2020. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Applicant(s) Presented for City Commission Consideration:

<table>
<thead>
<tr>
<th>Applicant Name</th>
<th>Criteria/ Qualifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Ziegelman</td>
<td>Architect</td>
</tr>
<tr>
<td>Luke Joseph</td>
<td>Real Estate</td>
</tr>
<tr>
<td>Chris McLogan</td>
<td>Real Estate</td>
</tr>
</tbody>
</table>

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

Attendance records are not included. The last official meeting for the HBA was April 3, 2007. The State of Michigan Construction Code Act requires the City to have an appeals board in place to hear appeals of decisions pertaining to the building and property maintenance codes. The HBA is in place to hear appeals from the property maintenance codes. The City has not had an appeal of one of its decisions since 2007.

SUGGESTED ACTION:

To appoint _______________________ as a regular member to the Housing Board of Appeals to serve a three-year term to expire May 4, 2023.

To appoint _______________________ as a regular member to the Housing Board of Appeals to serve a three-year term to expire May 4, 2023.
To appoint _______________________ as a regular member to the Housing Board of Appeals to serve a three-year term to expire May 4, 2023.
HOUSING BOARD OF APPEALS

Chapter 22 - Sections 22-312 – 22-314
Seven Members
Requirements: Qualified by education or experience in building, construction administration, social services, real estate, or other responsible positions.
Terms: Three year - expire the first Monday in May
Meetings held as needed.
Appointed by the City Commission

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Home Address</th>
<th>Home Business</th>
<th>E-Mail</th>
<th>Appointed</th>
<th>Term Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frink</td>
<td>David</td>
<td>5277 Coulter Lake Trail, Clarkston 48348</td>
<td>(248) 766-2069, <a href="mailto:davidlfrink@aol.com">davidlfrink@aol.com</a></td>
<td>9/10/2001, home builder</td>
<td>5/4/2020</td>
<td></td>
</tr>
<tr>
<td>McLogan</td>
<td>Chris</td>
<td>612 N. Glenhurst Dr, Birmingham 48009</td>
<td>(248) 321-5883, <a href="mailto:chrismclogan@gmail.com">chrismclogan@gmail.com</a></td>
<td>11/23/2015, real estate</td>
<td>5/4/2020</td>
<td></td>
</tr>
<tr>
<td>Peterson</td>
<td>Kenneth</td>
<td>34 Adelaide, Detroit 48201</td>
<td>(586) 615-0452, <a href="mailto:kenpeterson123@gmail.com">kenpeterson123@gmail.com</a></td>
<td>4/16/2007, home builder</td>
<td>5/4/2021</td>
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<tr>
<td>VACANT</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>5/4/2020</td>
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Wednesday, June 3, 2020
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</tr>
</thead>
<tbody>
<tr>
<td>Vincenti</td>
<td>Philip</td>
<td>938 Lakeside</td>
<td>(248) 722-4747</td>
<td><a href="mailto:pvincenti@tcwall.com">pvincenti@tcwall.com</a></td>
<td>4/9/2018</td>
<td>5/4/2021</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Birmingham 48009</td>
<td>building/contractor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wadette</td>
<td>Bradford</td>
<td>2586 Dorchester Rd.</td>
<td>(256) 509-7193</td>
<td><a href="mailto:wadettebradford@yahoo.com">wadettebradford@yahoo.com</a></td>
<td>6/3/2019</td>
<td>5/4/2022</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Birmingham 48009</td>
<td>investments</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest: Housing Board of Appeals

Specific Category/Vacancy on Board: Architect, CONSTRUCTION, REAL ESTATE, DESIGN

Name: Robert L. Ziegelman FAIA

Residential Address: 968 Stratford Ln.

Residential City, Zip: Bloomfield Hills, 48304

Business Address: 555 S. Old Woodward

Business City, Zip: 48009

Phone: 248-644-0600

Email: rziegelman@lzarch.com

Length of Residence: 60 years

Occupation: Architect

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied

Long experience on the Board when it was working regularly. Complete knowledge of Birmingham's codes and ordinances (or know where to find them)


List your related community activities:

- CIVIC DESIGN COMMITTEE. 1986 PLAN, 2016 PLAN, ROTARY 18-80
- HOUSING BOARD OF APPEALS(1990-2018)
- PARKING TRIANGLE DISTRICT 2010-18, COMMUNITY HOUSE ADVISORY COMMITTEE 1994-2010

List your related educational experience: M.I.T. Master of Architecture,; U of Michigan, B. of Architecture,; California....

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: Designing the Baldwin Public Library Addition

Do you currently have a relative serving on the board/committee to which you have applied? Yes

Are you an elector (registered voter) in the City of Birmingham? No

Signature of Applicant: ____________________________

January 28, 2020

Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carft@bhamgov.org or by fax to 248.530.1080.

Updated 12/02/19
APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest: Housing Board of Appeals

Specific Category/Vacancy on Board: Real estate

(see back of this form for information)

Name: Luke Joseph

Residential Address: 1478 Webster St

Residential City, Zip: Birmingham 48009

Business Address: 41001 Grand River Ave

Business City, Zip: Novi, 48375

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied. Would like to be involved in the community and to help the City to improve.

List your related employment experience: Accountant for 25 years, Licensed Real Estate Agent

List your related community activities: Volunteer in Church, serve in soup kitchens, Autism, Special Olympics

List your related educational experience: Accountant for 25 years, Licensed Real Estate Agent

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Signature of Applicant:

Date: 1/30/20

Return the completed and signed application form to: City of Birmingham, City Clerk’s Office, 151 Martin, Birmingham, MI 48009 or by email to clerk@bhamgov.org or by fax to 248.530.1080.
APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest: **HOUSING BOARD OF APPEALS**

Specific Category/Vacancy on Board: Real estate (see back of this form for information)

Name: **Chris McLogan**

Residential Address: **320 HAMILTON RD.**

Residential City, Zip: **BLOOMFIELD MI 48301**

Business Address: **275 S. OLD WOODWARD AVE.**

Business City, Zip: **BIRMINGHAM MI 48009**

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied

CURRENT MEMBER OF HOUSING BOARD OF APPEALS

List your related employment experience: **ASSOCIATE BROKER - MAX BROCK REALTORS**

List your related community activities: **EXECUTIVE COMMITTEE & BOARD OF DIRECTORS**

Bham / BLMI CHAMBER OF COMM. IMM. PAST PRESIDENT OF
BHAM ROTARY CLUB; BOARD TRUSTEE - BLMI VILLAGE HOA

List your related educational experience: **BA-MSU**

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: **NO**

Do you currently have a relative serving on the board/committee to which you have applied? **NO**

Are you an elector (registered voter) in the City of Birmingham? **NO**

Signature of Applicant: **[Signature]**

Date: **6-3-2020**

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carf@bhamgov.org or by fax to 248.530.1080.

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*
NOTICE OF INTENTION TO APPOINT TO THE
CITY OF BIRMINGHAM
BROWNFIELD REDEVELOPMENT AUTHORITY

At the regular meeting of Monday, April 6, 2020 the Birmingham City Commission intends to appoint two regular members to the City of Birmingham Brownfield Redevelopment Authority to serve three-year terms to expire May 23, 2023.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

Members shall be appointed by the Mayor, subject to approval by the City Commission.

Interested citizens may submit an application available at the city clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, April 1, 2020. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

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<tbody>
<tr>
<td>Beth Gotthelf</td>
<td>Resident – 363 Catalpa</td>
</tr>
<tr>
<td>Robert Runco</td>
<td>Resident – 1556 Lakeside</td>
</tr>
</tbody>
</table>

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:
To concur with the Mayor's appointment of ________, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2023.
To concur with the Mayor's appointment of ________, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2023.
BROWNFIELD REDEVELOPMENT AUTHORITY

Resolution # 04-123-05
5 members, three-year terms, appointed by the mayor subject to approval of the commission.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

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<th>Home Address</th>
<th>Business Phone</th>
<th>E-Mail</th>
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<th>Term Expires</th>
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<tbody>
<tr>
<td>Awdey</td>
<td>Harry</td>
<td>1633 Graefield</td>
<td>(586) 453-4677</td>
<td><a href="mailto:hawdey@gmail.com">hawdey@gmail.com</a></td>
<td>9/25/2017</td>
<td>5/23/2022</td>
</tr>
<tr>
<td>Gotthelf</td>
<td>Beth</td>
<td>363 Catalpa</td>
<td>(248) 227.6920</td>
<td><a href="mailto:gotthelf@butzel.com">gotthelf@butzel.com</a></td>
<td>5/9/2005</td>
<td>5/23/2020</td>
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<tr>
<td>Runco</td>
<td>Robert</td>
<td>1556 Lakeside</td>
<td>(248) 388-8100</td>
<td><a href="mailto:rrunco@runcowaste.com">rrunco@runcowaste.com</a></td>
<td>5/9/2005</td>
<td>5/23/2020</td>
</tr>
<tr>
<td>Torcolacci</td>
<td>Daniella</td>
<td>2047 Windemere</td>
<td>(248) 217-4805</td>
<td><a href="mailto:dtorcolacci@gmail.com">dtorcolacci@gmail.com</a></td>
<td>10/27/2014</td>
<td>5/23/2022</td>
</tr>
<tr>
<td>Zabriskie</td>
<td>Wendy</td>
<td>587 Watkins</td>
<td>(248) 646-7543</td>
<td><a href="mailto:jwzab@comcast.net">jwzab@comcast.net</a></td>
<td>5/9/2005</td>
<td>5/23/2021</td>
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# CITY BOARD/ COMMITTEE ATTENDANCE RECORD

## Name of Board: Brownfield Redevelopment Authority

## Year: 2019

## Members Required for Quorum:

<table>
<thead>
<tr>
<th>MEMBER NAME</th>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUNE</th>
<th>JULY</th>
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<th>SEPT</th>
<th>OCT</th>
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<th>SPEC MTG</th>
<th>Total Mtgs.</th>
<th>Total Absent</th>
<th>Percent Attended Available</th>
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</table>

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Department Head Signature
## CITY BOARD/ COMMITTEE ATTENDANCE RECORD

**Name of Board:** Brownfield Redevelopment Authority  
**Year:** 2018

**Members Required for Quorum:**

<table>
<thead>
<tr>
<th>MEMBER NAME</th>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUNE</th>
<th>JULY</th>
<th>AUG</th>
<th>SEPT</th>
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<th>NOV</th>
<th>DEC</th>
<th>SPEC MTG</th>
<th>SPEC MTG</th>
<th>Total Mtgs. Att.</th>
<th>Total Absent</th>
<th>Percent Attended Available</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REGULAR MEMBERS</strong></td>
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| Present or Available | 0   | 0   | 0   | 0   | 0   | 4   | 0   | 0   | 4   | 0   | 0   | 0   | 0       | 0       | 0                        | 0           |                           |

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**Department Head Signature**
# CITY BOARD/COMMITTEE ATTENDANCE RECORD

**Name of Board:** Brownfield Development Authority  
**Members Required for Quorum:**  
**Year:** 2017

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<tr>
<th>MEMBER NAME</th>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
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<th>JUNE</th>
<th>JULY</th>
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<th>Total Mtgs. Att.</th>
<th>Total Absent</th>
<th>Percent Attended Available</th>
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[Signature]

Department Head Signature
APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest  
Brownfield Redevelopment Authority

Specific Category/Vacancy on Board  
Current term expires 5/23/20  
(see back of this form for information)

Name  
Beth Gotthelf

Residential Address  
363 Catalpa

Residential City, Zip  
Birmingham, MI 48009

Business Address  
41000 Woodward Ave Stoneridge West

Business City, Zip  
Bloomfield Hills, MI 48034

Phone  
248.227.6920

Email  
gotthelf@butzel.com

Length of Residence  
since 1988

Occupation  
Attorney

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied ________

Desires to serve community. Uniquely qualified for this Board.

List your related employment experience  
2002-present: Co-Chair of the Energy & Sustainability practice at Butzel Long.  

List your related community activities  
Former General Counsel to Wayne County Brownfield Authority; Current Chair, Birmingham Brownfield Redevelopment Authority (see attached biographical sketch).

List your related educational experience  
University of Detroit School of Law (J.D.); Oakland University (B.S. Public Administration and Public Policy); Wylie E. Groves High School

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: ____________________________

No

Do you currently have a relative serving on the board/committee to which you have applied?  No

Are you an elector (registered voter) in the City of Birmingham?  Yes

Signature of Applicant  
Beth Gotthelf

Date  
March 27, 2020

Return the completed and signed application form to: City of Birmingham, City Clerk’s Office, 151 Martin, Birmingham, MI 48009 or by email to carft@bhamgov.org or by fax to 248.530.1080.

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.
Beth S. Gotthelf is a Shareholder based in Butzel Long’s Bloomfield Hills office. She is the firm’s Director of Innovation and External Relations, Co-Chair of the Energy & Sustainability practice, and the Chair of the Aerospace & Defense industry team. Ms. Gotthelf brings a pragmatic and holistic approach to clients’ issues, assisting them in reaching their business goals, often matchmaking clients’ needs and acting as an outside general counsel. Her assistance in diversifying automotive suppliers into the aerospace & defense arena during the economic downturn is just one example of her holistic approach. Ms. Gotthelf now counsels clients in governmental contracting, ITAR, EAR, and Foreign Military Sales. Another example is her work with start-up companies at the Macomb-Oakland University INCubator. Ms. Gotthelf is also a leader in environmental law, bringing creative solutions to remediation, redevelopment, tax incentives, and waste management.

Ms. Gotthelf represents and counsels a diverse mix of clients in numerous matters throughout the country. These matters include compliance and permitting; alternative energy issues; responding to an emergency; siting new facilities; civil and criminal enforcement; compliance audits; brownfields; tax incentives; remediation of contaminated sites; insurance claims; administrative procedures; solid and hazardous waste; landfills; composting; and occupational safety and health.

Ms. Gotthelf credits her successful counseling on using her business experience, legal training, and active participation in professional groups and non-profits that gives her much experience to draw upon.

Ms. Gotthelf has served as general counsel to the Michigan Chapter of the National Association of Surface Finishers since 1990 and Vice President since 2019; Macomb-Oakland University INCubator Executive in Residence and Advisory Board member (2013-present); Better Business Bureau Board member (2012-present); Michigan Israel Business Accelerator Board member (2007-present); former general counsel to
the Wayne County Brownfield Authority. She has represented the Wayne County Department of Environment on a broad variety of issues, including the Detroit bankruptcy as it related to the Detroit Water & Sewerage Department; wastewater treatment plant expansion, upgrade and compliance; wet weather; landfills; remediation; and ordinance amendments. She has also represented Oakland County on matters concerning stormwater and wastewater.

Ms. Gotthelf has been very active in the Bar, including past service as: Vice Chair of the American Bar Association ("ABA") Section of Natural Resources, Energy and Environmental Law, Water Quality and Wetlands; former Vice Chair of the Section's Keystone Committee; Chair of the State Bar of Michigan Environmental Law Section; and Chair of the Environmental Law Committee of the Oakland County Bar Association. Ms Gotthelf is a past member of the State Bar Representative Assembly on behalf of Oakland County.

Ms. Gotthelf serves on the Detroit Regional Chamber of Commerce Leadership Committee for Transportation, and is past Chair of the Chamber's Task Force on Water and Sewer Issues. She is a Fellow of the Michigan State Bar Foundation and a past Fellow of the Litigation Counsel of America. Ms. Gotthelf is Chair of the City of Birmingham (Michigan) Brownfield Authority (2005-present). On behalf of industry, Ms. Gotthelf served on the Federal Advisory Committee charged with recommending stormwater rules. She served as an arbitrator for the National Arbitration Forum.

Ms. Gotthelf's charitable activities include serving as Co-Chair of the Gleaners Food Bank Women's Power Breakfast fundraiser (2015); Board member and eventually President of the Board of Trustees for the National Multiple Sclerosis Society, Michigan Chapter (1996-2008); Board member and eventually Chair of the Board of Trustees of Oakland Plus Foundation (2005-11); Trustee of the Jewish Vocational Services (2000-15); member of the Jewish Federation of Metropolitan Detroit, State Government Relations Oversight Committee (2004-present); member of the Board of Directors for the University and Cancer Foundation(2000-07), to name a few.

Ms. Gotthelf was selected as one of 30 attorneys named "Leaders in Law" (2019) by Michigan Lawyer's Weekly and one of 20 influential leaders by Michigan Lawyers Weekly - Women in Law (2010). She was listed as one of the "Top 50 Female Michigan Super Lawyers" (2006-2009, 2014-2018). She has received a number of awards and special recognitions, including as an emerging leader by the Detroit Regional Chamber (2003); the National Association of Surface Finishers (2002);
Corp! Magazine as one of “Michigan's 95 Most Powerful Women” (2002); Corp! Magazine’s “Top 10 Business Attorneys for Southeast Michigan” (1999); and Crain's Detroit Business' 40 emerging leaders under age 40 (“40 Under 40”) (1994).


Education

- Oakland University 1980, B.S. Public Administration and Public Policy
- University of Detroit Mercy School of Law 1985, J.D.

Recognitions

Honorary Doctorate of Humanities, Oakland University, 2019

Michigan Lawyers Weekly - "Leader in the Law", 2019

Michigan Lawyers Weekly - recognized as one of 20 Women in Law, 2010

The Best Lawyers in America, Environmental Law, 2013-2020, Litigation--Environmental, 2020

DBusiness Top Lawyers in Metro Detroit, Environmental Law, 2011-2019

Michigan Super Lawyers, Environmental, 2006-2018
2009 Oakland University Distinguished Alumni Achievement Award

Litigation Counsel of America - former Fellow
Michigan State Bar Foundation - Fellow

Oakland County Bar Foundation - Fellow
Top 100 Michigan Super Lawyers (2006-2009)
Detroit Regional Chamber - recognition as an emerging leader (2003)

National Association of Metal Finishers (2002) - special recognition

Corp! Magazine - one of "Michigan's 95 Most Powerful Women" (2002)


Crain's Detroit Business' 40 emerging leaders under age 40 ("40 Under 40") (1994)

**Memberships**

Macomb-Oakland University INCubator Advisory Council

American Bar Association (ABA) - Vice Chair, Section of Environment, Energy, and Resources Water Quality and Wetlands Committee

Delta Theta Phi Law Fraternity, International Honorary Society

Former Vice-Chair, ABA Section Teleconference Seminars

Former Vice-Chair, 2010 Eastern Water Resources Conference

Former Vice-Chair, Annual Keystone Environmental Conference

State Bar of Michigan - past Chair, Environmental Law Section past Section Council-person and Chair of Program Committee Superfund, Solid and Hazardous Waste and Insurance

State Bar of Michigan - past member Representative Assembly on behalf of Oakland County

Oakland County Bar Association

Jewish Vocational Services - Board of Trustees

Detroit Regional Chamber of Commerce - Translink Advisory Committee past Chair, Task Force on Water and Sewer Issues

Great Lakes Guardians - former Chair, Board of Trustees

Michigan Israel Business Accelerator - Board of Directors, past President

Diplomat Helping Hands Foundation - Director

Federal Advisory Committee Member - rulemaking Phase 2 stormwater rules
Experience

- Successfully represented industry group in negotiations to amend an ordinance regulating industrial discharges into one of the largest wastewater treatment plants in the country.
- Representation of companies undergoing a multimedia environmental investigation by local, state and federal authorities, with criminal undertones.
- Prosecuted several cost recovery actions on behalf of clients seeking to recoup remediation costs against responsible parties.
- Assisted Developer in obtaining a unique 2007 Wetland Permit that allowed the construction of a wetland shelf for sediments and dredging.
- Assisted in addressing regional transportation issues for client’s possible move to downtown Detroit.
- Represented owner of land next to landfill due to methane gas migrating onsite.
- Convinced MDEQ to reverse its policy not to process permit applications for wastewater discharges from treatment plants until proper zoning is in place.
- Created Brownfield Authority for large metropolitan county and local municipalities.
- Environmental representation for a metal finishing company in connection with a release of hazardous chemicals that caused the evacuation of over 3,000 people and a flood of class action lawsuits.
- Defended against suit filed by MDEQ for alleged contamination of soils and groundwater.
- Reached a settlement for a nuisance value for MDEQ claims against client.
- Represented credit union in sale of contaminated property and cost recovery against Texaco.
- Represent Client in lawsuit against travel agent for refund of the cost of trip.
- Conducted environmental due diligence and organized a transfer of environmental permits for the purchase of a portable energy production facility.
- Creation of a 13-community management authority for a regional wastewater plant.
- Represented numerous clients in obtaining, modifying and or transferring air permits.
- Represent client after it was "raided" by US EPA
- Represented major manufacturer in negotiating complex remedial action plan.
- Represented manufacturing company with respect to multimedia inspection by state and US EPA
- Create the first wetland bank in Michigan.
- Numerous remediation projects of abandoned dumps.
- Successfully represented client in dispute with DEQ over wetland delineation for 50 acre development.
- Represented a private equity investor in the lengthy and complicated effort to purchase all of Ford Motor Company's glass manufacturing operations in North America
- Represent company in the sale of highly contaminated gas station, conversion to drugstore while remediating contamination.
- Ongoing representation for numerous casino clients in a variety of OSHA issues
- Reviewed various environmental due diligence and terms in sales agreements on behalf of bank and its borrowers.
- Represented manufacturing company in class action suit for damages as a result of evacuation
- Settled a suit against a manufacturer and designer of the pumps at the Wyandotte wastewater treatment plant, resulting in a program to repair the mammoth pumps and monetary damage.
- Defended against several claims of injury related to alleged mold exposure.
- Represent developer in the obtaining of a wastewater discharge permit from a manufactured home park, including fighting the State's decision not to issue a permit through a contested case proceeding
- Defend various companies against alleged wastewater discharge violations
- Represented energy company in development, land purchase, equipment purchase and tax incentives for wood pellet manufacturing
- Working with a developer to obtain DEQ permit to fill wetlands and negotiating an agreement with a nearby conservancy
• Worked with client to obtain $1 million Single Business Tax Credit.
• Review and analyze environmental due diligence reports, and purchase agreements on behalf of buyers, sellers, and lenders, and advise as to potential environmental liability and available protections.
• Supervised environmental due diligence and remedial activities related to major multi-parcel development in major metropolitan downtown area.
• Represented manufacturing company in lawsuit against insurance company for coverage after environmental emergency
• Represent manufacturer in stock purchase of contaminated property
• Negotiated an administrative order for a landfill client with the DNRE resulting from alleged violations of the laws and regulations regarding the operation and maintenance of solid waste landfills
• Defend client in CERCLA cost recovery claim.
• Obtained a judgment of approximately $24 million for DWSD and its rate payers
• Various enforcement actions against industrial wastewater dischargers
• Represent solar and windmill energy company for tax incentives, pilot projects and sale for residential use
• Assist with the purchasing, contracting, bonding, construction and permitting of two ethanol plants
• Defended several class action law suits against waste treatment & disposal clients alleging harm due to odors and other impact from respected facilities.
• Worked with client to obtain $1 million Single Business Tax Credit, approval of brownfield plan and negotiation of brownfield agreement with city
• Advised client concerning purchase, tax incentives and the remediation of a contaminated site to redevelop into residential units
• Assist in purchasing hundreds of thousands of dollars of tax credits in numerous transactions
• Ongoing representation of numerous solid waste and recycling companies on a variety of landfill compliance & permitting issues.
• Advised bond insurer for Michigan higher education facilities authority on various aspects of bond and environmental issues
• Financial lending for development of Bloomfield Park
• Assisted clients in obtaining permits and defending action in alleged disturbance of an endangered species (eagles).
• Assisting with the construction, financing & permitting of ethanol plants in two locations in a northern area of Michigan
• Representation of solid waste and recycling company included a variety of landfill compliance and contamination issues of multiple landfills and transfer stations
• Investigation of remedial contamination and negotiation of non-liability status with state
• Representing companies in alleged criminal environmental conduct
• Assisted manufacturing company in reopening after major fire
• Representation of a county in a variety of issues from construction of a $300 million upgrade and expansion of its wastewater treatment plant to compliance of its wastewater discharge limits
• Represented the County in the transfer of sewer capacity to the communities of Novi, Northville & Plymouth
• Various enforcement actions pursuant to Wayne County's air regulations against companies such as local steel and automotive corporations
• Representation of manufacturer in remediation using soil miting
• Represented several manufacturing home park clients in obtaining ground water discharge permits.
• Successfully prosecuted several contested case proceedings related to wetland permit denials.
• Assisted client in purchasing, tax incentives and permits of alternative fuel, R&D facility
• Obtained court order to allow access for remediation.
• Assisting with PUD approval, condo documents, along with wetland, shoreland and sewer water permits for a 450-acre lakefront residential development
• Chaired Brownfield Authority for large suburban community
• Represented a healthcare client with the environmental aspects of the sale of the company
• Defend Client in multiple class action and multi-party lawsuits that were filed in reaction to hydrochloric acid release at Client's property; pursue insurance coverage related to same.
• Assisted numerous clients with international transactions involving environmental due diligence and permitting throughout South America, Asia and Europe.
• Construction of a combined sewer overflow basin at a former dump site.
• Represented a County against the City of Detroit and Detroit Water and Sewerage Dept. to terminate special powers the Court gave to the Mayor of Detroit

News
• Automotive Industry Outlook and Workforce Issues as Coronavirus Impact Escalates is the focus of a free webinar on March 26 hosted by Butzel Long
  March 24, 2020
• Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in metro Detroit 2020
  November 19, 2019
• Butzel Long attorneys named to 2019 Super Lawyers list
  September 3, 2019
• Butzel Long attorneys featured during MINASF Midwest Seminar
  September 12-14, 2019
• Butzel Long attorneys named to The Best Lawyers in America® 2020
  August 15, 2019
• Butzel Long attorney Beth S. Gotthelf recently served as a panelist at the Michigan Space Forum in Traverse City
  June 11, 2019
• Butzel Long attorney Beth S. Gotthelf to receive Honorary Doctorate from Oakland University on April 25
  April 18, 2019
• Butzel Long attorney Beth S. Gotthelf named to Michigan Lawyers Weekly’s ‘Leaders in the Law’
  February 20, 2019
• Butzel Long attorney Beth Gotthelf’s passion for Defense Industry trade missions with Israel a win-win for Michigan and Israel businesses
  December 11, 2018
Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in Metro Detroit 2019
DBusiness Magazine, November 26, 2018

Butzel Long attorneys named to The Best Lawyers in America® 2019
August 15, 2018

Butzel Long attorney Beth Gotthelf quoted in U.S. News & World Report on Pursuing an Environmental Law Career
January 9, 2018

Butzel Long attorney Beth Gotthelf featured during Michigan Association of Environmental Professionals program on November 9
November 9, 2017

Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in metro Detroit 2018
November 1, 2017

Butzel Long attorney Beth S. Gotthelf featured during November 13 symposium focused on HUD’s Past, Present and Future
October 23, 2017

Butzel Long attorneys named to 2017 Super Lawyers list
September 5, 2017

Butzel Long attorneys named to The Best Lawyers in America® 2018
August 15, 2017

Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in metro Detroit 2017
November 15, 2016

Butzel Long co-hosts Michigan Defense Industry AUSA reception in Washington, D.C.
September 27, 2016

Butzel Long attorneys named to 2016 Super Lawyers list
September 1, 2016

Butzel Long attorneys named to The Best Lawyers in America 2017
August 15, 2016

Butzel Long and the Macomb-Oakland University INCubator "Adopt-A-Biz” program profiled in the Detroit Legal News
July 11, 2016

Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in metro Detroit 2016
November 24, 2015
• Butzel Long attorney to lead panel during FABTECH 2015 on November 11 in Chicago
  October 5, 2015
• Butzel Long attorney elected President of the Michigan Israel Business Bridge
  September 22, 2015
• Fifty-seven Butzel Long Attorneys Named to the 2015 Michigan Super Lawyers List
  September 9, 2015
• Butzel Long attorneys named to The Best Lawyers in America® 2016
  August 17, 2015
• Fifty-Five Butzel Long Attorneys Named to the 2014 Michigan Super Lawyers List
  September 11, 2014
• Butzel Long Attorneys Named to The Best Lawyers in America 2015
  August 18, 2014
• Butzel Long attorneys appointed to the Macomb-Oakland University INCubator Advisory Council
  March 18, 2014
• Butzel Long attorneys named to DBusiness magazine's Top Lawyers in Metro Detroit 2014
  November 4, 2013
• Program to teach the essentials on joint ventures and teaming agreements
  Butzel Long attorneys featured during October 10 seminar at Macomb-OU INCubator in Sterling Heights
  September 19, 2013
• Butzel Long attorneys named to The Best Lawyers in America® 2014
  August 15, 2013
• Butzel Long attorney Beth S. Gotthelf quoted in Michigan Lawyers Weekly article titled “In search of the new GM, and a way to stay relevant even if you are old”
  July 15, 2013
• Butzel Long opens office in Macomb-OU INCubator in Sterling Heights to meet record growth of industry startups and emerging businesses. Firm offers advisory and consulting services to early stage businesses in defense, homeland security, advanced manufacturing and technology sectors. June 26, 2013

• Butzel Long appoints Director of Innovation and External Relations. Attorney/Shareholder Beth S. Gotthelf assumes additional role. May 21, 2013

• Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in Metro Detroit 2013. November 5, 2012

• Butzel Long attorneys Beth S. Gotthelf and Joseph E. Richotte will be featured speakers during the NASF’s 3rd Annual Mid Winter Surface Finishing Conference & Exposition January 23, 2013 in Orlando. October 24, 2012

• Butzel Long attorneys named to Super Lawyers 2012. September 26, 2012

• Butzel Long attorneys named to The Best Lawyers in America® 2013. September 10, 2012

• Butzel Long attorney Beth S. Gotthelf co-chairs Jewish Vocational Services’ Trade Secrets fundraising event. March 8, 2012

• 68 Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in Metro Detroit 2012. November 28, 2011


• Butzel Long attorney co-chairs JVS annual fundraiser. February 8, 2011

• Sixty-four Butzel Long attorneys named to DBusiness magazine’s Top Lawyers in Metro Detroit 2011. December 2, 2010
• Forty-two Butzel Long attorneys named to the 2010 Michigan Super Lawyers list
  October 25, 2010
• Butzel Long attorney Beth S. Gotthelf is one of 20 attorneys to be honored by Michigan Lawyers Weekly during the 2010 Michigan Women in the Law luncheon on September 16
  August 26, 2010
• Butzel Long attorney Beth S. Gotthelf to appear on Bloomfield Community Television’s Practical Law show
  June 25, 2010
• Butzel Long attorney Beth S. Gotthelf co-chairs Jewish Vocational Services’ Strictly Business event on June 15, 2010
  May 20, 2010
• Butzel Long attorney Beth S. Gotthelf featured during NASF 2010 Washington Forum
  April 13, 2010
• Butzel Long Israel Practice Continues Expansion
  February 9, 2010
• Butzel Long attorney Beth S. Gotthelf elected to Board of Trustees for Jewish Vocational Services
  November 19, 2009
• Forty-Nine Butzel Long attorneys named to Super Lawyers 2009 listing
  November 9, 2009
• Butzel Long attorney Beth S. Gotthelf to receive Oakland University Distinguished Alumni Achievement Award on
  November 7, 2009
  October 8, 2009
• Butzel Long attorney Beth S. Gotthelf featured at May 20 Institute of Continuing Legal Education seminar on environmental issues
  May 7, 2009
• Butzel Long attorney Beth S. Gotthelf featured at National Association for Surface Finishing Washington Forum on April 28
  April 20, 2009
• Butzel Long attorney Beth S. Gotthelf inducted into the Litigation Counsel of America
  June 9, 2008
• Beth S. Gotthelf featured ABA Environmental Law Workshop
  March 7, 2007
Beth Gotthelf named Vice Chair of ABA Water Quality & Wetlands Committee
January 29, 2007

Client Alerts

- EPA Issues Enforcement Discretion Policy During COVID-19 Crisis
  March 27, 2020
- What You Need To Do if You are in the Aerospace and/or Defense Industries and Your Business is Exempt from the “Stay Home” Order, And What You Need To Do Even if it is Not
  March 24, 2020
- Environmental Compliance During COVID-19 Shelter-In-Place Restrictions
  March 24, 2020
- MSHHSD Issues PFAS Public Health Drinking Water Screening Levels for PFAS
  April 12, 2019
- Michigan Department of Environmental Quality Requires POTW’s to Reduce and Eliminate PFOA/PFOS Through Industrial Pretreatment Programs
  March 22, 2018
- EPA Issues Proposed Hazardous Pharmaceutical Waste Management Rule
  September 8, 2015
- Developers Beware! Northern Long-Eared Bat Listed as Threatened Species
  April 7, 2015
- Snyder Issues Energy Agenda For Michigan
  March 16, 2015
- TSCA Reform Legislation Introduced
  March 13, 2015
- Energy & Sustainability Alert
  July 7, 2014
- Environmental - More Environmental Cases are Going Criminal: How to Protect and Prepare - The Value of Audits and Compliance Programs
  May 14, 2012
- Client Alert - Environmental - EPA Announces Changes to Boiler and Incinerator Air Pollution Standards
  December 8, 2011
• Client Alert - Environmental - Michigan Property Assessed Clean Energy Act
  February 2, 2011
• Client Alert: Environmental - Self-Implementing Cleanups and "No Further Action" Letters
  January 19, 2011
• Client Alert: Environmental - Green Chemistry Eligible to Receive Tax Credits
  January 18, 2011
• E-news: Environmental
  November 23, 2010
• E-news: Environmental
  March 22, 2010
• E-news: Environmental
  March 9, 2010
• E-news: Environmental
  February 16, 2010
• E-news: Environmental - 07/29/09
  July 29, 2009
• E-news: Environmental
  May 19, 2009
• Automation Alley Newsletter - May 2009
  May 1, 2009
• E-news: Environmental
  April 24, 2009
• E-news: Environmental
  February 24, 2009
• E-news: Environmental
  February 2, 2009
• Automation Alley Newsletter - February 2009
  February 1, 2009

Seminars & Speaking Engagements
• Automotive Industry Outlook and Workforce Issues as the Coronavirus Impact Escalates Webinar
  March 26, 2020
• Cyber Compliance in A&D Breakfast Roundtable
  Butzel Long Bloomfield Hills Office, February 7, 2020
• Butzel Long / MEDC Lunch and Learn
  Detroit, MI, October 4, 2017
• Michigan Association of Metal Finishers (MAMF) Luncheon
  Detroit, MI, January 11, 2017
• GDI Contractors Luncheon
  Sterling Heights, MI, May 15, 2015
• International Traffic in Arms Regulations (ITAR) Primer Updates
  Sterling Heights, MI, April 23, 2015
• Coffee and Contracting: Protect Yourself and Still Win Business
  Sterling Heights, MI, March 24, 2015
APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest: Brownfield Redevelopment Authority Board
Specific Category/Vacancy on Board: 
Term Exp-Renew Term: (see back of this form for information)

Name: Robert Runco
Phone: 248-388-8100
Residential Address: 1556 Lakeside Drive
Email: *rrunco@runcowaste.com
Residential City, Zip: Birmingham, Mi. 48009
Length of Residence: 30 years
Business Address: PO Box 37379
Occupation: Owner
Business City, Zip: Oak Park, Mi. 48237

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied

Currently on board as VP since inception and work in this field

List your related employment experience: Waste removal, landfill management, environmental operations

List your related community activities: Bham Hockey Assoc President

List your related educational experience: 30 plus years in the business

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain:

NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? YES

Signature of Applicant: 
Date: April 1, 2020

Return the completed and signed application form to: City of Birmingham, City Clerk’s Office, 151 Martin, Birmingham, MI 48009 or by email to carrie@bhamgov.org or by fax to 248.530.1080.

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.
I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pierre Boutros called the meeting to order at 7:30 P.M. with everyone reciting the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk Designee, called the roll.

PRESENT:

Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

ABSENT: None

Administration: City Manager Valentine, Assistant City Manager Gunter, Finance Director Gerber, City Attorney Currier, Attorney Kucharek, Planning Director Ecker, DPS Director Wood, BSD Executive Director Tighe, City Engineer Johnson, Police Chief Clemence, Officer Grewe, IT Manager Brunk, Acting City Clerk Arft, City Clerk Designee Bingham.

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

ANNOUNCEMENTS:

• All city offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.

• The City has created a hotline to provide residents with information about City and County COVID19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential
functions, and obtaining necessary supplies by calling (248) 530-1805, Monday through Friday from 8 a.m. – 5 p.m.

- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.

- **Update on Noise Nuisance on Woodward Avenue by Police Chief Clemence:**
  - Woodward Avenue is a public road open 24 hours per day to anyone who wants to travel on it.
  - The Michigan Department of Transportation has jurisdiction over the avenue.
  - Birmingham has adopted the Michigan Motor Vehicle code as an enforcement mechanism for vehicles traveling on Woodward.
  - There is a system that measures noise, but it does not take into account ambient noise, which makes it nearly impossible to enforce.
  - City ordinances should not be used in lieu of the Motor Vehicle Code; it would be viewed by the courts as circumventing existing laws.
  - The Michigan Motor Vehicle code has a section that addresses aftermarket exhaust systems and the City is looking for an opinion, on the State level, on whether this could be a way for law enforcement officers to address noise violations.
  - He suggested lobbying the legislature to look at the current Michigan Vehicle Code Noise Violation section and amend to allow law enforcement to have a mechanism to enforce noise ordinances.
  - Birmingham Police Department has adjusted routine patrol start schedules to insure that patrols are out during peak travel times.
  - There are additional officers out on the weekend to address the negative behavior that goes on.
  - Contacted law enforcement partners such as Oakland County Sheriff and Michigan State Police to join the City of Birmingham in patrolling Woodward Avenue.
  - He also contacted neighboring agencies to address the residents’ concerns and take a team approach to mitigate the problem.
  - He further wanted to assure everyone that the department is doing everything in their power to address the situation and resolve the problems within the statues of the law.

Mayor Boutros thanked the Chief and his team on all that they do to keep the residents of Birmingham safe.

Commissioner Host asked the Chief if the City’s noise ordinance is one that could be used on Maple Road, Adams, or is it just for residential streets.

Chief Clemence clarified that if the violation involves a motor vehicle and a public road, the Motor Vehicle Code takes precedence.

Commissioner Host also asked for data to support that increased patrol has paid off in the number of ticketed violations.
Chief Clemence said that just on Woodward, the police department wrote sixty-six (66) violations over the weekend. The department is aware of the City and residents’ concerns. The Chief has deferred to the officers’ professionalism, discretion, and the use of the law to write appropriate violations when necessary.

Commissioner Host continued by asking how to mitigate cars loitering along the road in Dream Cruise fashion, and individuals socializing in violation of social distancing rules.

Chief Clemence advised that by bringing in additional staff the behavior is observed and voluntary compliance asked to keep the residents of Birmingham safe. He found that people, for the most part, have been cooperative.

Mayor Boutros encouraged anyone with additional questions to contact the City Manager via email or phone.

Public Comment

Mr. Brady Blaine, Redding Road, commented that he was blindsided by what happens on Woodward Ave. between February and November. The noise from amplified exhaust systems is overwhelming and wanted to know how long the residents have to tolerate this issue. He cited the Motor Vehicle Code and a former report from the Chief that says officers may write violations for noise nuisances. He closed by pleading for a permanent solution to this problem.

Chief Clemence expressed that he is committed to doing everything by the letter of the law, and doing the right thing in the interpretation of the law. Therefore, he wants to be sure that the Attorney General be in agreement with that interpretation.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

05-068-20 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

Commissioner Hoff: Item A, Meeting Minutes of the regular meeting of the City Commission on April 20, 2020.

Item J, Resolution approving a request from the Birmingham Bloomfield Art Center to hold Art Birmingham on S. Old Woodward Avenue between Bowers Street and Landon Street on August 22-23, 2020.

The following recusals from the vote were requested:

Mayor Boutros: Item I, Resolution setting Monday, June 8, 2020 at 7:30 PM for a public hearing to consider the proposed lot combination of 211 and 227 W. Frank Street, due to a personal interest in the property.
MOTION: Motion by Mayor Pro-Tem Longe, seconded by Commissioner Hoff:
To approve the Consent Agenda with the exception of Items A and J, and noting the recusal for Item I.

ROLL CALL VOTE: Ayes, Mayor Pro Tem Longe
Commissioner Hoff
Commissioner Baller
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Boutros

Nays, None

B. Resolution approving the warrant list, including Automated Clearing House payments, dated April 22, 2020 in the amount of $714,607.65.

C. Resolution approving the warrant list, including Automated Clearing House payments, dated April 29, 2020 in the amount of $231,390.32.

D. Resolution approving the warrant list, including Automated Clearing House payments, dated May 6, 2020 in the amount of $197,952.80.

E. Resolution delegating the Birmingham City Clerk and her authorized assistants, those being the members of her staff, the following duties of the election commission for the August 4, 2020 and November 3, 2020 elections:
   • Preparing meeting materials for the election commission, including ballot proofs for approval and a listing of election inspectors for appointment;
   • Contracting for the preparation, printing and delivery of ballots;
   • Providing candidates and the Secretary of State with proof copies of ballots;
   • Providing election supplies and ballot containers; and
   • Preliminary logic and accuracy testing.

F. Resolution designating Finance Director Mark Gerber, Assistant Finance Director Kim Wickenheiser, DPS Director Lauren Wood, Building Official Bruce Johnson, Assistant Building Official Mike Morad, Birmingham Museum Director Leslie Pielack, and Police Commander Scott Grewe as representatives for Election Commission members Mayor Pierre Boutros, Mayor Pro Tem Therese Longe, and Commissioners Clinton Baller, Rackeline Hoff, Brad Host, Mark Nickita and Stuart Sherman for the purpose of conducting the Public Accuracy Tests of the electronic tabulating equipment which will be used to count votes cast at the August 4, 2020 and November 3, 2020 elections.

G. Resolution opting into Oakland County’s Urban County Community Development Block Grant (CDBG) programs for the years 2021, 2022 and 2023. Furthermore, resolving to remain in Oakland County’s Urban County Community Development programs, which shall be automatically renewed in successive three-year qualification periods of time, or until such time that it is in the best interest of the City to terminate the Cooperative Agreement.
H. Resolution approving the purchase of a new 2020 Ford Transit Connect Cargo Van through Gorno Ford through the MiDEAL Contract #071B7700181 extendable purchasing pricing for a total expenditure of $25,339.00. Funds for this purchase are available in the Auto Equipment Fund, account #641.441.006-971.0100.7410.

I. Resolution setting Monday, June 8, 2020 at 7:30 PM for a public hearing to consider the proposed lot combination of 211 and 227 W. Frank Street.

05-069-20 CITY COMMISSION REGULAR MEETING MINUTES OF APRIL 20, 2020.

Commissioner Hoff pointed out the following concerns:

- Page 5, 2 references to Market Restaurant, the name Market should be capitalized.
- Page 6, Birmingham Racquet Club discussion should include their request for an extension to improve the racquet courts; the city manager said it would come back as a separate item. Will there be an amendment to their agreement to include the resurfacing of the courts.
- City Manager Valentine affirmed that it would. He went on to say that there are several other properties that the City leases and will bring them all back at the same time as the agreements are worked out.
- Commissioner Hoff asked should there be a reference in the minutes to that issue. City Manager Valentine agreed that the clerk could amend the minutes to reflect the issue.
- Page 7, there was a conflict in the discussion on DRV contractors repairing the edge slab on the NOW deck: Clarify if the contractors are performing a structural assessment or not.
- Page 4, Lot combination on Bates, the commissioners agreed that an ordinance revision to the lot combination ordinance is needed so consistent standards are in place moving forward. Was it decided to revise or was the Planning Board asked to review. City Manager Valentine recalled that it would be brought back at the Joint Workshop with the Planning Board in June as a topic of discussion. Commissioner Hoff agreed that it should not be in the minutes. City Manager Valentine confirmed that it is the action going forward based on the discussion that there would not be subsequent conversation on the topic.
- Page 8, Open to the Public for matters not on the Agenda – Maple Road should be capitalized.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita
To approve the City Commission regular meeting minutes of April 20, 2020 as corrected.

Commissioner Baller pointed out that the reference to the Beverly Hills Racquet Club is the Birmingham Racquet Club. He wants the record to reflect Birmingham Racquet Club.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Nickita
Commissioner Baller
Commissioner Host  
Commissioner Sherman  
Mayor Pro-Tem Longe  
Mayor Boutros  
Nays, None

05-070-20     ART BIRMINGHAM ON S. OLD WOODWARD AVENUE ON AUGUST 22-23, 2020

Commissioner Hoff pulled this item to discuss the rescheduling of this event. She noted that in the past when rescheduling was suggested due to the conflict with retailers during Mother’s Day weekend, the request was denied based on not being able to reschedule artists. She further asked if the artist had been contacted to confirm their interest in participating in view of the new date and the safety measures that would be implemented.

Annie VanGelderan, President and CEO of the Birmingham Bloomfield Art Center, responded that there are usually 150 artists participating. Some have dropped out and it will be a much smaller art fair planned.

Commissioner Hoff further asked if she shared with the artist the safety measures required by the City of Birmingham, and have they agreed to comply (i.e. credit card purchases only).

Ms. VanGelderan affirmed that she discussed current safety measures contingent on the State and Federal guidelines surrounding COVID in August.

Lastly, Commissioner Hoff asked about the fall art fair in September and concern surrounding the two events being held so close together.

Ms. VanGelderan did express concern, but felt that people would enjoy attending events that the City of Birmingham would offer.

Commissioner Baller pointed out that one of the reasons that this event location was moved was the conflict presented by the Maple Road reconstruction. He further asked would the construction be complete by late August, if so, should it be held in the usual and preferred location Shain Park.

City Manager Valentine expressed that construction projects are too unpredictable to plan an event of this nature so close to the projected end date.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host: To approve a request from the Birmingham Bloomfield Art Center to hold Art Birmingham on S. Old Woodward Avenue between Bowers Street and Landon Street on August 22-23, 2020 contingent upon compliance with all permit and insurance requirements, as well as payment of all fees and, further pursuant to any minor modifications or event cancellation
that may be deemed necessary by administrative staff leading up to or at the time of the event due to public health and safety measures.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Baller
Mayor Boutros
Nays, None

V. UNFINISHED BUSINESS
None

VI. NEW BUSINESS

05-071-20 OBSTRUCTION PERMIT AGREEMENT FOR RIGHT-OF-WAY OCCUPANCY
City Attorney Currier presented this item.
- City Attorney Currier and City Engineer Johnson have been in discussions with the owner of the former Varsity Shop in review of plans for development.
- The building has to be demolished and a new foundation built with an earth retention system.
- The owner has agreed to provide landscaping and improvements to the area South of Merrill.

Commissioner Hoff asked which side of the building would the H Piles be placed, and how would it effect street traffic.

City Engineer Johnson responded that the H Piles would be installed on the East, South, and West elevation. He went on to say that due to the H Pile system, excavation would not reach into the street. Access to the alley and roads would be maintained.

Commissioner Baller inquired about the public benefit offered with this project and how did it come about.

City Attorney Currier pointed out the location of the offering in the contract and went on to defer to City Manager Valentine who was actually involved in the discussion. City Manager Valentine explained that whenever City property is being utilized, consideration is requested from the developer.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the Obstruction Permit Agreement for Right-of-Way Occupancy by Temporary H Piles and authorizing the Mayor and Clerk to sign on behalf of the City.
ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Pro-Tem Longe
Mayor Boutros
Nays, None

05-072-20 AMENDED CONTRACT AGREEMENT WITH CREATIVE COLLABORATIONS, LLC

Assistant City Manager Gunter presented this item.

- Six months ago, an agreement was approved to provide cemetery services at the Historic Greenwood Cemetery services by Cheri Arcome dba Creative Collaborations, LLC.
- Staff was directed to work with the Greenwood Cemetery Advisory Board to review the following:
  - Alternatives to the current contract.
  - Key Performance Indicators
  - Cost Implications to perform services in-house
  - Opportunities to collaborate with neighboring cemeteries.
- Staff review found that it was cost prohibitive to bring the services in-house.
- The Greenwood Cemetery Advisory Board, based on staff review, recommended continuing for a year with Creative Collaborations, LLC with renewals reviewed on an annual basis.

Commissioner Baller asked if the vote was unanimous from the GCAB to move forward with this contract.

Assistant City Manager Gunter expressed that one member dissented.

Commissioner Sherman asked for clarification in comparing the cost of providing all the services in-house as opposed to contracting out sexton services and equipment rental, and billing the families directly, as it is currently being done. He further asked if Creative Collaborations, LLC has any competitors in the area.

Assistant City Manager Gunter explained that when evaluated to provide the services in-house, staff found that it is a volume business, meaning sextons prioritize work based on the client that brings in volume burials. She went on to say that Ms. Arcome has been able to engage sextons with a high volume of burials, and receives priority when she calls on their services. If the City were to try this directly, there will be no priority based on the low number of burials performed at the Greenwood Cemetery. Field research revealed Mr. Bancroft at Franklin Cemetery was unable to accommodate Greenwood and recommended Ms. Arcome. Staff was unsuccessful in finding anyone to provide the level of services that the City of Birmingham has come to appreciate.
Commissioner Hoff suggested that the only way to make a fair performance assessment of Ms. Arcome’s performance is to know the number of burials and plots sold over the last six months.

Cheri Arcome, Creative Collaborations, LLC, reported to date, five full burials, two cremains burials, and four plots were sold to four separate individuals.

Commissioner Hoff continued to express her concern that the Clerk’s office is doing all of the record keeping; and the City is collecting revenue and paying vendors including a landscaping company at $16,500 annually. She further expressed that the cost is not in line with the services that are being provided. She went on to say that she is not questioning the level of service provided by Ms. Arcome, but questions if the number of burials and sales are enough to support the cost of the contract.

Ms. Arcome responded that Greenwood is seasonal in terms of sales. People do not typically seek advance planning in the winter months. Sales appointments were scheduled for spring; which have been rescheduled due to the current COVID environment. She also expressed that cremations are now 70% of the business nationwide and those burials have been delayed until spring. Therefore, she anticipates more sales and burials in the upcoming months.

Commission Hoff suggested that the geo mapping planned for the cemetery would be very helpful in determining what is available at Greenwood. In response to the increase in cremations, she asked would the same equipment be used in the burial of cremains. She also expressed her belief that the City is in the same position as last November, with no options, in terms of continuing services at Greenwood Cemetery. Based on the scenario she is in support of continuing with Creative Collaborations, LLC. However, she suggested the contract extend for only six months to allow more options to be explored; and further suggested that the name of the company, contractually, include cemetery services contractor so that it does not sound like an advertising agency.

Assistant City Manager Gunter, in terms of Commissioner Hoff’s comments, wanted to give the GCAB credit for deliberating this issue intensely before putting forth the suggested resolution to this commission. She further expressed that it was done over three meetings, not rushed, and staff did the due diligence required to meet the GCAB’s scrutiny relative to economic analysis.

Commissioner Sherman agreed with Commissioner Hoff based on Ms. Arcome’s comments regarding burial activity picking up in fair weather. He went on to say he would like to see an analysis of the same period in subsequent years and felt that a six-month extension of the contract would allow for such analysis. He also felt that the comparison of the cost for the City to bring these services fully in-house vs. performing the service contractually through Creative Collaborations, LLC is not valid. Finally, he would like to know that the fee makes sense based on the number of burials and sale of plots.
Commissioner Host expressed gratitude for the work done by Assistant City Manager Gunter and Ms. Arcome in continuing services at the Historical Greenwood Cemetery.

Mayor Boutros expressed that he would like to see an analysis comparing apples to apples. He further asked Ms. Arcome, in light of the unprecedented times, how this effects the cemetery business.

Ms. Arcome responded that this is a very difficult time, especially for families, and the sales numbers will be down for advance planning. In the COVID environment, families are not allowed to have the funerals and visitations that they want, families are not allowed at Greenwood until all of the contractors have left the site. She went on to say families are waiting to have the celebrations of life, and numbers are going to be skewed in trying to compare same periods in different years.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To authorize the amended contract agreement with Creative Collaborations, LLC to act, on behalf of the City, as the service provider to the Historic Greenwood Cemetery for a term of one year with annual renewals until either party exercises the termination provisions as stated in the contract. The annual contract is set for an amount not to exceed $45,600, which will be paid from account #101-215.000-811.0000.

City Manager Valentine proposed, as an alternative, to approve the suggested resolution and simply re-evaluate the situation in six months.

Commissioner Hoff agreed that this is not a good comparison period, however, Ms. Arcome has worked for the City for seven years and there should be enough data from the last seven years on the number of burials and plots sold. She expressed that she would be willing to support a six-month extension, but not more.

Commissioner Baller asked if after six months would the contract be renewed for a year or six months, and would Ms. Arcome be agreeable to the terms.

Ms. Arcome suggested renewal of the contract for twelve months, in six months analyze the data, and provide a solution in May of 2021. She does not recommend turning over a cemetery to a new contractor during winter months.

Mayor Boutros asked if there were any restrictions to the proposed recommendation. City Attorney Currier affirmed that there are no restrictions if both parties to the contract agree.

Commissioner Baller expressed that based on the current information, he would not support the motion; but would support the suggested resolution.
Mayor Pro-Tem Longe agreed with Commissioner Sherman that this is not an apple to apples comparison. She went on to say that Ms. Arcome has a very specialized skill set, a business that she knows well, and is suited to work with families who are in grief, and her services are not overly expensive. Therefore, she supports the stability of a one-year contract.

Commissioner Host prefers a 12-month contractual agreement.

Commissioner Nickita reminded everyone that this is not an unusual situation where the commission extended a contract for a number of reasons. The general thinking is to be able to re-analyze this rapidly changing situation in the COVID environment in six months. This body would have the opportunity to alter or vary the contract later.

Commissioner Sherman pointed out that the contract before the commission is for six months, with a twelve-month renewal; without the proposed extension, the contract is in force for a year. He further said that his motion conforms to the contract in the packet and pointed out that the termination clause is not in the contract.

Assistant City Manager Gunter asked for support from City Attorney Currier in response to Commissioner Sherman concerns.

Commissioner Sherman suggested that the contract go to the City Attorney for review and brought back for approval.

Mayor Boutros suggested that staff bring back a fully amended agreement including the termination clause.

City Manager Valentine agreed to clarify the contract language and bring back to the meeting scheduled for May 18, 2020.

Public Comment:
David Bloom suggested waiting for more than a week and began reading an unauthorized analysis of the situation that contradicts the research and analysis presented by staff from an unidentified source.

City Attorney Currier expressed that he would be interested in who made the analysis so that it could be passed on to staff.

Mr. Bloom was not at liberty to share his source without permission from his source. He went on to admit that George Stern, a member of the Greenwood Cemetery Advisory Board, gave him the report to present to the City Commission.

Mayor Boutros asked if Mr. Stern was in attendance and Mr. Stern affirmed.

1 As amended May 18, 2020
Mr. Stern commented that he has 35 years in the cemetery business and the report that he
gave to Mr. Bloom was a report presented to the GCAB, suggesting that an independent
auditor look at the staff analysis for reasonableness and the City Commission should have a
neutral party look at the report presented by the City administration. He went on to say
that, this is a typical “make or buy” decision.

Commissioner Hoff requested that since the contract would be reviewed for completeness,
that the contractor identify as a cemetery services contractor in the agreement.

Commissioner Sherman withdrew the motion contingent on the second being withdrawn.
Commissioner Nickita withdrew the second.

No action was taken on the suggested resolution and staff was directed to complete the
contract language to move forward at a subsequent meeting.

05-073-20 COVID-19 ECONOMIC AND OPERATIONAL ASSISTANCE
INITIATIVES
City Manager Valentine presented recommendations developed by the administration and
staff to assist the residential and business community through the COVID-19 crisis.

1. Delaying invoicing and collection of special payments until January 2021
2. Waiving penalties on delinquent water and sewer bills, special assessment, and
   invoices rolled to taxes.
3. Waiving penalties on delinquent water and sewer bills through the end of the
   year.
4. Waiving fees for outdoor dining platforms.
5. Waiving fees for outdoor dining meter fees during the 2020 outdoor dining
   season.
6. Waiving annual fees for valet licenses.
7. Waiving liquor license renewal fees.
8. Waiving fees for temporary signage or eliminating temporary signage permits
   through the end of summer.
9. Waive e-check fees for online payments to encourage utilization as opposed to
   in-person visits.
10. Waive the field, park, and shelter rental fees for the current year to incentivize
    congregating with consideration to social distancing, if permitted.
11. Waive access fees to BS&A records to increase efficiencies and minimize physical
    contact at the Treasurer’s office.
12. Keep on-street parking fees during the day, and eliminate on-street parking fees
    after 5P.M.
13. Waive parking structure fees for public use through September.
14. Waive parking structure permit fees through September.
15. Waive initial merchant license fee for the remainder of 2020.
16. Waive temporary structure permit fees to encourage businesses to accommodate
    social distancing.
17. Waiving pet license fees through the end of 2020.
Commissioner Baller asked City Manager Valentine to clarify the economic impact of each recommendation in terms of whether or not the funds would be recoverable over time to the City for each recommendation.

Commissioner Sherman expressed concern about the habitual abuse of rolling delinquent bills onto the tax roll and waiving penalties in those situations.

Commissioner Baller asked if Commissioner Sherman would be amenable to a reduction as opposed to a waiver.

Commissioner Sherman would be amenable to delaying tax roll transfers or roll delinquencies that occurred prior to the date of the Governors Executive Order and hold the rest until next year.

Commissioner Host asked for the percentage of residential delinquencies compared to commercial delinquencies. Finance Director Gerber did not have that information available.

Commissioner Nickita expressed that if the intent is to address the need of people affected by the current environment, then it would make sense for the City Commission to look at the timing recommended and put dates on the water and tax initiatives, thus eliminating previous offenders.

Mayor Boutros suggested limiting the water and tax recommendations to residents.

Commissioner Host agreed with Mayor Boutros.

Finance Director Gerber expressed that the ordinance did not differentiate between residential and commercial. The Commission would have to make the determination. He further offered that under ordinance, water and sewer bills must be delinquent six months prior to transferring to the tax roll. Therefore, the delinquencies in question did not occur after the emergency was declared.

Commissioner Sherman reminded everyone that the residential and business community are combined in this circumstance. He went on to say the initiatives before the City Commission is to help the people that were harmed by the COVID-19, and not reward the habitual abusers.

City Manager Valentine expressed that based on the abovementioned comments; the administration could come back with recommendations including effective dates that are more in line with the impact if that is the pleasure of the commission.

Commissioner Hoff agreed with City Manager Valentine.
Commissioner Baller affirmed that the community should be assisted, but the focus should be on those that are actually distressed by the situation.

Public Comment:
David Bloom suggested, because bistros are required to have outdoor dining, making it optional for bistros to install platforms for the 2020 dining season.

Mayor Boutros advised Mr. Bloom that the City Commission have flexibility in dealing with each situation. He went on to advise that bistros are charged extra for the space that is used outside to expand capacity.

Commissioner Baller asked if signage standards would be relaxed. He also asked if anything displayed to date appeared to be egregious.

Planning Director Ecker explained that what is proposed would change the regulations according to the draft resolution included in the agenda packet. In response to the egregiousness of current displays, there are some signs that are larger and have been displayed longer than currently allowed. She assured everyone that permits would be required, to make sure social distancing is considered, but the fees would be waived.

Commissioner Sherman commented that he appreciates the gesture put forth for the park fee waiver; and expressed that he is not sure whom this would benefit.

Mayor Boutros expressed that if it does not hurt anyone; why not put forth the gesture.

Mayor Pro-Tem Longe felt it would benefit the individuals whom rent the Springdale shelter for gatherings.

Commissioner Hoff asked what the acronym BS&A represent. Finance Director Gerber explained that it is not an acronym but the name of the software used by the City for all financial transactions.

Commissioner Host applauded the efforts of the administration and staff to increase customer satisfaction.

In reference to the parking initiatives, Commissioner Hoff asked if mechanisms are in place to determine what effect this would have based on the potential for evening workers to use the metered parking.

Assistant City Manager Gunter expressed that on-street parking used by employees has not been a factor after 5 P.M.

Commissioner Nickita expressed the same concern, but would like to stay focused on the reason that short term metered parking is in place. He suggested that because on-street parking would be free, long-term users would park in short term spaces and could negatively
affect the existing parking concerns. He further stated that with parking along Maple St. eliminated, there are unforeseen consequences in terms of the short-term user.

City Manager Valentine expressed that designated spots are proposed for pick-ups and drop-off outside of retailers to accommodate the short-term visitor and would be discussed later in the presentation.

Mayor Pro-Tem Longe pointed out that item #12 is a two-part proposal.

Commissioner Baller suggested contacting Park Mobile for their input on this initiative. He went on to suggest signage in the parking structures to encourage social distancing.

Mayor Pro-Tem Longe suggested that signage related to social distancing would be appropriately posted on the elevators, which is the risk environment.

Commissioner Hoff suggested monitoring #14 to see how many people would be returning to work and how that would affect occupancy.

Commissioner Host reminded everyone that the current initiatives are mainly to assist the downtown businesses, and approximately 85% of the general fund is from residents; therefore, the next round of initiatives should mainly support residents.

Commissioner Sherman asked if there was information available on cities that use installment plans for property taxes.

City Manager Valentine did not have anything available, but assured the City Commission that it is under review.

Public Comment:
Andrew Haig, resident, expressed that the measures brought by the staff for relief was very impressive; he thanked everyone who worked on the initiatives.

David Bloom, resident, requested to speak about the Hunter House. He was asked to wait until public comment on matters not on the agenda.

City Manager Valentine presented initiatives to resume City operations:
1. Install hand sanitizer stations around the business district.
2. Install hand sanitizer stations in City parks.
3. Cleaning regimen of playground equipment, park furnishings, and bus shelters.
4. Allow curbside pickup in the business district.
5. Allow business to use City parks for classes to support social distancing.
6. Install Plexiglas partitions in municipal building and other City facilities to minimize public contact at counters.
7. Expand on-line service offerings.
8. Modifying outdoor dining area regulations to allow for social distancing.
9. Closing designated streets in the evening to accommodate expanded on-street dining.²
10. Provide additional seating along the streets for restaurants to allow patrons to wait outside for carryout.
11. Increasing communications and promoting information about voting in upcoming elections to encourage absent voting for safety and convenience.

Commissioner Hoff asked, in reference to the revised temporary use regulations due to COVID-19, how would it work on Maple Street and allow for social distancing.

Planning Director Ecker expressed that Maple Street along the construction zone was not included in the plan, because there was not a path for it to work.

Commissioner Baller asked for an explanation for providing picnic tables to businesses. He went on to say that, he would prefer to purchase more of the furnishings that are in Shain Park, which are durable, attractive, and could be stored and used forever.

City Manager Valentine offered that in anticipation of a mid-May reopening, the surplus of picnic tables could be used until businesses redesigned their outdoor dining, again, to accommodate social distancing. However, now that there is more time until reopening, he agreed with Commissioner Baller that his solution is appropriate.

Commissioner Nickita added that the comments by City Manager Valentine are very important in considering the ramifications of the action; and while he supports assisting the businesses in reopening in the current environment, he advised the commissioners to proceed carefully.

Public Comment:
Mr. Henke expressed that he has been working with the business district and staff and would appreciate the City Commission giving direction to staff immediately so that everyone can begin mobilizing.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the COVID-19 Economic Assistance Initiatives numbers 1, 4, 5, 6, 7, 8, 9, 10, 11, 12A, 13, 14, 15, 16, and 17.

And
COVID-19 Operational Initiatives number 1-8, 10, and 11 and adopt the resolutions for Temporary Outdoor Dining Standards, Temporary Signage Regulations, and Temporary Use Regulations.

Commissioner Nickita asked for clarification of the motion. City Manager Valentine clarified the motion and the suggested resolution.

² City Manager Valentine pulled this initiative until more clarity could be attained from the State Liquor Commission and the Michigan Municipal League.
Commissioner Baller asked how flexibility in the parking permit scenario outlined in number 14 of the Economic Assistance Initiatives played out in the resolution. He went further to ask if the City Commission was approving the resolution in concept and allowing the administration to apply flexibility as needed.

City Manager Valentine affirmed and added that if any significant changes arose, it would be brought back to the City Commission. He also anticipates these discussions to be ongoing as we move forward in the current environment.

Public Comment:
David Bloom, resident, commented on behalf of Paul Reagan that he is supportive of helping residents and business owners impacted by COVID-19, as well as the parking initiatives. He expressed that he is not supportive of spending to benefit wealthier, larger property owners, and developers.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Host
Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Nickita
Mayor Boutros

Nays, None

BSD COVID-19 BUSINESS RELIEF INITIATIVES
Ingrid Tighe, BSD Executive Director presented this item.
• BSD has been acting as a conduit for information on Federal and State programs designed to help small businesses, such as the Paycheck Protection program.
• Helped facilitate focus groups with Congresswoman and State Representative.
• Active in working with Oakland County for grants and other relief available on a County level.
• Merchant meetings to provide construction updates and expectations for the next 30, 60, and 90 days.
• Identified essential services that the Birmingham Shopping District must continue in the next year.
• Developed relief initiatives for downtown businesses that were not identified as essential.
• BSD committees collaborated to insure relief efforts were successful.
• Identified over $100,000 in budget to reallocate to COVID-19 relief efforts.
• Identified $75,000 in budget to put aside for contingencies.
• Identified another $225,000 that was set aside for construction assistance to help downtown businesses.
• Four committees using a 30, 90, and 180 day plan for business development and retention.
• Gift certificate programs “quarantine cash” to incentivize shopping.
• Providing small business kits to Birmingham businesses that includes masks, gloves, etc.
• Pro bono speakers to identify pressure points that businesses are experiencing
• Small business relief fund based on donations that may be earmarked for Birmingham businesses sponsored by Oakland County.
• Working on attracting new business through enhanced social media and marketing.
• Continue to maintain maintenance projects in Downtown Birmingham.
• Anticipating a soft opening of businesses at the end of the month, a “Back to Birmingham” promotion is in progress.

In closing, BSD Director Tighe, expressed that the unseen benefit has been that all of the cities in the State have been working together in seeking solutions to revive the economy in Michigan and she appreciates the many contributions.

05-074-20 RESOLUTION TO MEET IN CLOSED SESSION

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To approve the resolution to meet in closed session to:
1. Review pending litigation in the matter of Coulston v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261—15.275, 3
AND
2. Discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings Act.

ROLL CALL VOTE: Ayes, Commissioner Nickita
Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Mayor Boutros

Nays, None

VII. REMOVED FROM CONSENT AGENDA

None

VIII. COMMUNICATIONS

None

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

David Bloom commented on the Hunter House and asked that the City not build or approve more commercial/residential buildings in the City without discussions about parking. He

3 City Manager Valentine pulled this item from consideration; insufficient information.
added, if builders want to invest in Birmingham because it is desirable, they should design buildings that respect the character and quality of Birmingham. He does not want the character of buildings to leave the City of Birmingham.  

Jeff Jacob, 1253 Cole Street, expressed that the real estate and home construction businesses opened up last week. Families are stuck at home and homeschooling their children under the obstruction of construction noise. He would like the City to disallow home construction during the period of the stay at home order.

### X. REPORTS

A. Commissioner Reports
   1. Notice of intention to appoint to the Historic District Study Committee and Board of Ethics

B. Commissioner Comments
   1. Commissioner Host commented on the 2040 plan and hopes that it communicates what the residents want. He also is concerned about the boards/committees that are not meeting on Zoom.
   2. Commissioner Baller agreed with Commission Host in terms of getting the other boards and committees on Zoom to get back on track. He felt it was unfair to keep Mr. Jacob waiting until 11:30 p.m. for public comment. He reiterated that there was no discussion about moving public comment back to the end of the agenda after the trial period. He requested a report from staff on how it was working.
   3. Mayor Pro-Tem Longe expressed that she expected after the trial period an evaluation would have been considered, and action taken on how to proceed moving forward.
   4. There was a general agreement to bring discussions on where public comment would be placed on the agenda to a future meeting.
   5. Commissioner Sherman expressed that the conversation should be on how to move the meetings along, maybe by restricting Commissioner’s comments so that public comment could be reached in a timely manner. He further expressed that the meeting had gone far beyond a reasonable time due to incessant comments. He added that he supports public comment, wants to finish the business on the table before entertaining public comment, and focus on staying on task. He continued with reiterating that the comment section of the agenda should not lead to a discussion.
   6. Mayor Boutros referred to Commissioner Baller asking for direction or a collective effort from the City Commission to bring the public comment issue back to discussion.
   7. Commissioner Sherman called a point of order on how the meeting is being run. He advised the Mayor that his commentary is not required after each comment.
   8. Mayor Boutros accepted the criticism and expressed that he would try to do his best in the future.

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4 As amended May 18, 2020.
9. Commissioner Nickita asked to move on to closed session. Mayor Boutros agreed to move on after he completed the current session.

C. Advisory Boards, Committees, Commissions’ Reports and Agendas
D. Legislation
E. City Staff
   1. 3rd quarter Budget Report, submitted by Finance Director Gerber
   2. 3rd quarter Investment Report, submitted by Finance Director Gerber
   3. Woodward Avenue report, submitted by Police Chief Clemence

INFORMATION ONLY

Mayor Boutros recessed for closed session at 11:46 P.M.
Mayor Boutros reconvened at 11:58 P.M.

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:59 P.M.
I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance at 7:35 p.m.

II. ROLL CALL

Alexandria Bingham, City Clerk Designee, called the roll:

PRESENT: Mayor Boutros  
Mayor Pro-Tem Longe  
Commissioner Baller  
Commissioner Hoff  
Commissioner Host (occasionally absent due to technical difficulties)  
Commissioner Nickita  
Commissioner Sherman

ABSENT: None

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Attorney Carmago, DPS Director Wood, BSD Executive Director Tighe, Planning Director Ecker, Planning Assistant Dupuis, Liaison to the Public Arts Board Cowan, Police Chief Clemence, Commander Grewe, IT Manager Brunk, City Clerk Designee Bingham, and Acting City Clerk Arft.

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

ANNOUNCEMENTS:

• All City offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.

• The City has created a hotline to provide residents with information about City and County COVID19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. - 5 p.m.

• We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
• On June 5th we would like to recognize Gun Violence Awareness Day. On this day we encourage everyone to wear orange to honor those that were victims of gun violence in our country. Visit our social media platforms for further information.

• This year residents can watch an online Memorial Day Ceremony on our Facebook page as there will be no public event in the park. The online ceremony will begin at 10am on Monday, May 25th and can be accessed at www.facebook.com/BhamGov

• All registered Birmingham voters as of Tuesday, April 28, 2020 who were not on our absentee voter mailing list will be receiving a post card soon, complete and return this postcard to be placed on our absentee voter mailing list.

• The Birmingham Farmers Market will take place every Sunday, 9am-12pm, in public parking lot #6. Visit www.allinbirmingham.com for more information.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

05-075-20 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

Commissioners Baller and Sherman: Item F, Birmingham Bloomfield Chamber of Commerce Village Fair.


MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:

To approve the consent agenda excluding Items A and F.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Hoff
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Host
Commissioner Nickita
Mayor Boutros

Nays, None

B. Resolution approving the warrant list, including Automated Clearing House payments, dated May 13, 2020 in the amount of $988,127.99.

C. Resolution directing the Treasurer to transfer the unpaid and delinquent special assessments and invoices as of May 20, 2020 as presented, including interest and penalty, and reassess to the 2020 City tax roll with an additional 15% penalty, and further authorizing the Treasurer to remove from the list any bills paid after Commission approval (complete resolution in agenda packet).

D. Resolution directing the Treasurer to transfer and reassess to the 2020 City tax roll the properties with unpaid and delinquent water/sewage accounts listed in the Delinquent Water/Sewer Tax Roll dated April 16, 2020, including interest and penalty, and authorizing
the Treasurer to remove from the list any bills paid or a payment plan agreement signed after Commission approval. (complete resolution in agenda packet)

E. Resolution authorizing the IT department to purchase the Cortex XDR antivirus endpoint clients from AmeriNet. The purchase price not to exceed $7415.20. Funds are available in the IT Software Fund Account: 636-228.000-742.0000.

05-076-20 APPROVAL OF MAY 11, 2020 REGULAR CITY COMMISSION MEETING MINUTES (ITEM A)

Commissioner Nickita noted that at the very end of the meeting, just prior to adjournment, the minutes reflected that there was a consensus among four Commissioners to bring the subject of public comment to a future meeting. He suggested that it be struck from the minutes because there was no discussion or dialogue between the seven Commissioners present, therefore it was not a consensus; and the statement is inaccurate.

Commissioner Baller disagreed with Commissioner Nickita. He went on to say that, it was an accurate reflection of what occurred; he, Mayor Pro-Tem Longe, Commissioner Host, and Mayor Boutros were in favor of bringing the subject back to the Commission for discussion.

Commissioner Nickita asked to be accurate in the minutes that the minutes be held with no action until staff can review the video for clarification and confirm that there was no consensus.

City Clerk Designee Bingham affirmed that staff would review the video, make the appropriate adjustments, and bring the minutes back for approval at a future meeting.

Commissioner Host noted on page 11, second to last paragraph under Public Comment, that he would like the word “unauthorized” stricken from the record.

There was no action taken.

Public Comment

David Bloom, resident, would like the minutes to reflect the comment he made at the very end of the meeting during public comment about Hunter House; where he suggested that the City should not build or approve more offices in Birmingham without discussions regarding parking. He further clarified his comment to include if someone wants to build and invest in Birmingham because it is desirable, they should design buildings that respect the character and quality of Birmingham.

05-077-20 APPROVAL FOR THE BIRMINGHAM BLOOMFIELD CHAMBER OF COMMERCE TO HOLD THE VILLAGE FAIR ON JULY 7-12, 2020 (ITEM F)

Commissioner Baller pulled this item for consideration of the options. He suggested that Joe Bauman, President of the Birmingham Bloomfield Chamber of Commerce (BBCC), address the Commission.

City Manager Valentine expressed that Commissioner Baller pulled the item for discussion and it would be appropriate for Mr. Bauman to address concerns by Commissioner Baller at this time.

Commissioner Sherman pointed out that Commissioner Baller may have an economic relationship with the Chamber of Commerce and may need to recuse himself due to conflict in interest.

Commissioner Baller agreed and recused himself from the discussion.

Mr. Bauman addressed the Commission and availed himself for questions.
City Manager Valentine expressed concerns that are relative to issues surrounding the status of the pandemic and planning a public event in early July. He asked Mr. Bauman to speak to what precautions the BBCC planned to allow the event to occur.

Mr. Bauman explained that the event is traditionally held the week following Memorial Day and they knew early that it would not be possible for 2020 due to the Governor’s order and the health concerns surrounding public gatherings. The BBCC reached out to the fair operator and July 9-12 was the latest possible reschedule date available. He also stated that the BBCC and the fair operators are committed to following whatever recommendations and mandates from local, county, and State government to whether or not this fair takes place.

Commissioner Hoff expressed that she knows this is the BBCC’s major fundraiser and in her opinion, if the fair were held in July, attendance would be low. She asked would it be worth the effort knowing that attendance would not be the same as previous fairs.

Mr. Bauman agreed that the fair is the Chamber’s largest revenue producer. He went on to say that the Chamber’s concern is less about the loss of revenue and more about the safety of the guests and residents of Birmingham, and continuing the 65-year tradition if it can be done safely.

Mayor Pro-Tem Longe asked if the revenue generated from sponsorships and ticket sales do not cover the fixed cost associated with this type of event; would you be risking losing money rather than benefiting the Chamber?

Mr. Bauman explained that in the contractual agreement with the fair operator, there is a guaranteed minimum payment to the Chamber. He further said that the Chamber as well as other chambers throughout Oakland County and the State of Michigan is in a crisis; and the real risk is the Chamber’s goals to support local businesses to insure that they are successful. Finally, he expressed that this event would at least provide some revenue to assist local businesses.

Mayor Pro-Tem Longe asked how complying with social distancing and proper sanitation of equipment would be achieved in the tight space that is traditionally used for this fair.

Mr. Bauman expressed that the fair operator, North America Midway, puts those processes in place; and would work with City Staff to insure compliance. He went on to say he does not seek approval tonight to have the Village Fair or not, it is a step in allowing the BBCC to continue to explore whether it makes sense to move forward with the event in 2020.

Commissioner Hoff asked if the Commission were to approve the resolution tonight and decide on July 1, 2020 to cancel, are there any repercussions for you with the fair operator.

Mr. Bauman thanked Commissioner Hoff and expressed that he does not know yet; however, he is planning to have that discussion with the fair operator at their scheduled call to discuss this meeting.

Commissioner Sherman noted that the fair operator has a canned COVID remediation plan and it is not specific in terms of recommendations. He further asked what additional actions have the CCBB planned to assist in the protection of the community’s health.

Mr. Bauman agreed that it is not specific and one of the reasons is that the situation has a lot of moving parts and is changing rapidly. He went on to say they are unable to have a final plan in place until they understand what regulation and restrictions will be in place at that time of the event. Finally, Mr. Bauman said He and the BBCC envision many volunteers serving in guest relations identifying the locations of hand washing/sanitizing stations and answering guest questions. These guest service volunteers would monitor social distancing regulations that will be marked along lines for rides and vendors.
Commissioner Sherman suggested using the chamber’s resources to provide sanitizer, mask, etc. to protect the public.

Mr. Bauman noted that North American, the fair operator, is providing hand washing and hand sanitation stations. If Commissioner Sherman is referring to handing out kits, he mentioned that there is a cost effect in doing so. While the BBCC will comply with all requirements, if it becomes too onerous that there will be no benefit then that would be a consideration as to whether to move forward.

Commissioner Hoff commented that she understands that this is an important Chamber event. She went on to say that a drop-dead date for a decision is important.

Mr. Bauman felt that the resolution in front of the Commission is contingent upon certain requirements being satisfied. Therefore, he saw it as a conditional approval with an actual decision being made in the future, as more information is available in terms of what types of businesses and activities would be okay by June 15, 2020, for example.

Commissioner Host asked for a drop-dead date for the Commission to make a decision.

City Manager Valentine expressed that the resolution is set up to authorize staff to make that decision at the appropriate time based on the status of the City relative to COVID19. He agreed that there is a big question as to where the State will be in July.

Mayor Boutros commented that his concern is the safety of the public.

Commissioner Nickita commented that a number of things could happen between now and then. He would prefer to let the situation play out until clarity is established. He went on to say that if the Chamber would like to continue exploring the possibilities, he would like to give them the opportunity.

Mayor Boutros felt that the resolution would satisfy Commissioner Nickita concerns.

Commissioner Hoff expressed that the main factor would be the drop-dead date between the Chamber and the fair operator.

Commissioner Sherman asked when the St. Mary’s fair would be held.

Mr. Bauman clarified that St. Mary cancelled the fair due to the size of the event and the number of volunteers required was too much in this environment. He went on to say that his only concern with cancelling at this point is having a fair that everyone is comfortable with holding, and attendees feel safe.

Public Comment:

David Bloom, resident, commented that the Dream Cruise is on the agenda for cancellation; therefore, he asked the Commission to be fair, reasonable, and consistent in the decision. He went on to say that Michigan has the highest death rate from COVID19 and the statistics should be considered in the Commissioners’ decision.

Commissioner Hoff suggested that no action be taken until more information is available.

Mr. Bauman agreed to coming back with a date certain. He went on to say that his concern lays with the question of the fair operator needing an answer prior to the Commission next meeting.

City Manager Valentine clarified that approval of the first resolution would address all of the concerns expressed. He went on to say that if this event were to proceed, there are many details
to work out and further recommendations would come back to the Commission in terms of a viable operational plan.

Commissioner Sherman noted that all events have been cancelled through the summer in Birmingham and he cannot imagine a plan that would make this event safer for the public. He went on to say that, he is not in support of moving forward with this event.

Mayor Pro-Tem Longe agreed with Commissioner Sherman and expressed that the most robust plan would not provide enough certainty to guarantee a good outcome.

Commissioner Hoff agreed and said that the Commission must take a leadership role and as much as she wants to support the Chamber, she feels this is just not the right time for this type of event.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro-Tem Longe:

To deny the request from the Birmingham Bloomfield Chamber of Commerce to hold the Village Fair on July 7 - 12, 2020 due to concerns with the COVID-19 pandemic.

Commissioner Nickita agrees that more information would be desirable; he believes that as time goes on municipalities will be able to hold more events without regard to safety. He noted that if the event went on, it would be the only event held in Birmingham this summer; and he wants to be fair and consistent. He reluctantly agrees with the motion.

Public Comment:

Andrew Haig, resident, agreed with Commissioner Sherman in the sense that there is one possible upside outcome and many downsides to having this event. All events should be treated equally for public safety.

ROLL CALL VOTE:

Ayes, Commissioner Hoff
Mayor Pro-Tem Longe
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Boutros

Nays, None

Recused, Commissioner Baller

UNFINISHED BUSINESS

V. 05-078-20 CREATIVE COLLABORATIONS, LLC, A CEMETERY SERVICE PROVIDER AGREEMENT TO ACT ON BEHALF OF THE CITY IN PROVIDING SERVICES AT HISTORIC GREENWOOD CEMETERY.

Assistant City Manager Gunter addressed the Commission and presented this item.

Commissioner Hoff received calls from many members of the GCAB regarding the mention of automatic renewals; and thanked Assistant City Manager Gunter for addressing that language in the agreement. She went on to say that in the memorandum sent with the Agenda, automatic renewal was mentioned twice. She asked if including the language “upon annual review” was possible. Commissioner Hoff went on to address the termination provisions and asked if the language would be included in the agreement.
Assistant City Manager Gunter clarified that the termination provisions are included in the documents presented. She further deferred to City Attorney Currier to add the language “upon annual review” to the agreement.

Commissioner Sherman noted that the agreement addresses the issues that were presented at the last meeting. He went on to say that, the task for the Commission is whether to approve the contract and give staff direction for reviewing and reporting appropriately so that the Commission is able to make an intelligent decision when the contract comes back for review.

**MOTION:** Motion by Commissioner Sherman, seconded by Mayor Pro-Tem Longe:
To authorize the agreement with Creative Collaborations, LLC, a Cemetery Service Provider firm to act, on behalf of the City, as the service provider to the Historic Greenwood Cemetery for a term of one year with annual renewals until either party exercises the termination provisions as stated in the contract. The annual contract is set for an amount not to exceed $45,600.00, which will be paid from account #101-215.000-811.0000.

**Public Comment:**
David Bloom, resident, clarified his comments from the last meeting regarding his contact with George Stern. He stated that he initiated the contact.

**ROLL CALL VOTE:**

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| Nays  | None |

**VI. NEW BUSINESS**

05-079-20 APPROVAL FOR THE INSTALLATION OF A STOP SIGN ON BENNAVILLE AT GRANT AND ON BENNAVILLE AT EDEWOOD.

Commander Grewe presented this item.

**MOTION:** Motion by Commissioner Baller, seconded by Commissioner Sherman:
Approving the installation of a stop sign on Bennaville at Grant and on Bennaville at Edgewood. Further, directing the Chief of Police and the City Clerk to sign the traffic control orders on behalf of the City establishing the installation of a “Stop” sign on Bennaville at Grant and on Bennaville at Edgewood.

Commissioner Hoff asked if there was any public input.

Commander Grewe replied that a resident called DPS and DPS forwarded the information to Commander Grewe. In researching he found that there was a sign at the location of Bennaville and Grant before construction on Grant street and was not replaced.

Commissioner Nickita asked if both intersections had stop signs in the past. He further asked how the most recent stop sign on Northlawn and Pleasant is different from the signs in this proposal.

Commander Grewe affirmed that there was one at Grant and not Edgewood. He explained that the stop sign on Northlawn, a thru street, did not decrease speeds. Bennaville is not a through street, and traffic studies show that the signs are warranted.
05-080-20 APPROVAL TO AMMEND THE SIGN ORDINANCE. CHAPTER 86 OF THE CITY CODE

Planning Assistant Nick Dupris presented this item; Director Ecker was also available for questions. Commissioner Hoff asked what differentiates an awning from a canopy. Planning Assistant Dupris defined an awning as slanted and a canopy as straight.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
Approving the following amendments to the Sign Ordinance, Chapter 86 of the City Code:

1. Article 1, section 1.05, Permanent Business Signs and Broadcast Media Device Standards, to amend canopy signs and add awning signs;
2. Article 1, Table B, Business Sign Standards, to amend the sign types and subsequent standards for canopy signs, and to add awning signs; and
3. Article 9, Section 9.02, Definitions, to add definitions for awning, awning sign, awning valence, awning shed and canopy, and to amend the Permanent Business Sign Standards and Table B.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Nickita
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Mayor Boutros

Nays, None

05-081-20 RECOMMENDATION TO PAINT THE ELECTRICAL BOX ON N. OLD WOODWARD AND HAMILTON ROW.

Brooks Cowan, Staff Liason for the Public Arts Board presented this item.

Commissioner Nickita commented that these type of projects are important to urban design, and asked about the study of terminated vistas and the status of the report.

Staff Liason Cowan explained the report is near completion and there are six recommendations. In light of COVID19, the board felt that this project would be something fun to do this summer.

Commissioner Nickita expressed that according to the 2016 Plan, the urban designs are permanent installations and long-term solutions. He went on to say that short-term solutions like what is
presented now, should not become long-term solutions. He wants to see solutions that are more appropriate for permanency.

Commissioner Baller commented that he appreciates art and the work of the Public Arts Board. He went on to say that, in this case he does not support the plan for this particular vista. It is a historic district and the Historic District Commission and the Design Review Board should review the plan. Commissioner Baller suggested that everything done to the streetscape should enhance it. He also mentioned that he has not had enough time to review the proposal.

Mayor Pro-Tem Longe commended the Public Arts Board on the popcorn box at the movie theater. She is concerned that the crayon box does not represent the area. She went on to say that, the charging stations should be identified with appropriate signage.

Commissioner Hoff recalled that there was to be a theme throughout Birmingham or at least a discussion of a theme, more specific than pop art.

City Manager Valentine clarified that it was intended to be a comprehensive plan for discussion. Commissioner Sherman suggested that the Public Arts Board bring back a comprehensive plan.

Commissioner Hoff suggested that the theme could be pop art, but she would like to see a comprehensive plan for discussion by the Commission.

Mayor Boutros recommended taking no action until a comprehensive plan is presented for discussion.

Commissioner Nickita emphasized a long-term plan for terminated vistas including a time line for completion.

Anne Richie, Public Arts Board, commented that the response from residents was favorable toward the other installations. She went on to comment on the USB ports/charging stations are identified by the City of Birmingham logo.

Barbera Heller, Public Arts Board, affirmed that there is a comprehensive plan of recommendations and priorities, but they wanted to get one installation done this summer.

Public Comment:
David Bloom, resident, suggested that the City move forward with the $800.00 expenditure and volunteered to pay for this project.

No action was taken.

05-082-20 AMENDMENT TO THE EXISTING AGREEMENT WITH DRV CONTRACTORS

Assistant City Manager Gunter presented this item.

Commissioner Baller expressed appreciation for all of the work that has been done. He asked about the $150,000 used for lighting and recommended that the lighting portion of the project be put on hold until professional lighting designers are engaged for appropriate lighting.

Commissioner Hoff asked if the cost are doable based on the current balance in the enterprise fund. She further asked about the status of the structure assessment that is being done.

Assistant City Manager Gunter explained that last year a study began on the five parking decks for structural integrity; the study is near completion. In June, it will be presented to the Advisory Parking Committee for review. to the Commission.
Commissioner Hoff asked if that report would be helpful in this discussion for maintenance and rehabilitation projects.

Assistant City Manager Gunter expressed that WJE is working with DRV to complete the structural assessment for Commission review. She affirmed that the projects are not in conflict. Assistant City Manager Gunter reiterated that staff is trying to take advantage of the current low occupancy in the garages and move forward with as many components as possible.

Commissioner Nickita asked for clarity on the scope of work. The N. Old Woodward deck is closing in on $900,000 for improvements and there are still issues that are not included in this package, specifically the column capitals.

Assistant City Manager Gunter deferred to WJE and DRV to address the columns.

Matt Lewis, WJE, found that the garages are in good shape for the most part. He went on to say that the column capitals are loose concrete and would be addressed in the full package.

Commissioner Nickita clarified the area that he is seeing would be cleaned up in this package, but additional repairs are still to come.

Derick Vetor, DRV, affirmed that the precast would be repaired and are addressed in this proposal.

Mayor Boutros clarified that Commissioner Nickita’s concern is addressed in the proposal.

Mayor Pro-Tem Longe is delighted to see that the work is in progress. She supports Commissioner Baller’s position on lighting and recommends that the Architectural Review Board be involved in the lighting discussion.

Public Comment:
Michael Poris, resident, commented that he appreciates the work being done to repair the garages and expressed concern about lighting and feels that this is an opportunity to improve lighting both esthetically and functionality. He further asked who approves the contractors design.

City Manager Valentine explained that time is of the essence due to light utilization of the parking structures. Specifications were included in the proposal for lighting and if time allows for review by the Architectural Review Committee, he would be happy to do that.

Commissioner Sherman suggested moving the resolution forward without the lighting component.

Commissioner Baller suggested instructing the staff to hire a lighting designer.

Mayor Boutros reiterated that this is the perfect time to move fast on this project due to light utilization.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To amend the existing agreement with DRV Contractors to allow them to complete repair and rehabilitation projects in the five City parking decks as detailed in the May 2020 cost proposal for an amount not to exceed $506,980.

-AND-
To amend the existing agreement with WJE Engineers and Architects, P.C. to provide project oversight for the projects outlined in the DRV proposal dated May 2020 for an amount not to exceed $56,600.

-AND-

To direct staff to include the Architectural Review Committee and obtain consult from a lighting designer before proceeding with decisions about the lighting.

Commissioner Sherman suggested directing the staff to review the specified lighting and make a recommendation to the Commission at the next meeting.

Commissioner Baller acknowledged that there is no Architectural Review Committee, except for one person and expressed that he does not trust the process.

Commissioner Hoff asked why lighting was not proposed for Park Street and Pierce Street structures.

Derick Vector affirmed that the lighting in those parking decks were replaced with LED lighting a number of years ago.

Commissioner Hoff asked if the same lighting would be used in the remaining three parking structures.

Mr. Vector affirmed that the lighting would be similar.

Michael Poris, Resident, commented that it is worth taking a little time to review lighting suggestions. He went on to suggest tabling the lighting proponent in order to insure quality and a more cost efficient option is considered based on the advances in lighting.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Nickita
Mayor Pro-Tem Longe
Commissioner Hoff
Mayor Boutros

Nays, Commissioner Baller

Absent, Commissioner Host, due to technical difficulty

05-083-20 CANCELLATION OF THE ANNUAL WOODWARD DREAM CRUISE FOR 2020

City Manager Valentine presented this item.

Commissioner Nickita asked if other communities along Woodward, with the exception of Huntington Woods and Berkeley, have pulled out of this event.

Mayor Boutros affirmed that the other communities have pulled out; Huntington Woods and Berkeley are expected to do the same.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Sherman: To approve a resolution requesting the cancelation of the annual Woodward Dream Cruise event for 2020 due to public health and safety concerns attributed to the COVID-19 pandemic and encouraging the promotion of the cancelation of the event by WDC, Inc. to the public.
Commissioner Hoff commented that the City should support this resolution, but does not think this will stop the Cruise. She asked how the City would enforce social distancing.

City Manager Valentine agreed and expressed if the promotion of the event is discouraged, participation would be minimized.

Commissioner Hoff asked would additional officers be on hand to enforce social distancing.

Chief Clemence affirmed that there will be additional officers and all of the Chiefs are in support of cancelling. However, the police departments are going to function as if the event is going on.

Commissioner Sherman asked if MDOT would be available to enforce social gatherings.

Chief Clemence expressed that he could look into that option but that support has not happened in the past.

Mayor Pro-Tem Longe asked if local stores could sell merchandise outside.

City Manager Valentine expressed that it would be against local ordinances to do so.

ROLL CALL VOTE: Ayes, Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Mayor Pro-Tem Longe
Mayor Boutros

Nays, None

05-084-20 APPROVAL TO MEET IN CLOSED SESSION TO REVIEW PENDING LITIGATION

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To meet in Closed Session to review pending litigation in the matter of Coulston v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Mayor Pro-Tem Longe
Mayor Boutros

Nays, None

VII. REMOVED FROM CONSENT

VIII. COMMUNICATIONS
IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

David Bloom, Resident, commented on the noise complaints coming from Woodward Avenue. He went to Woodward and noticed that the noise was coming from rapid acceleration of vehicles. He reminded everyone that the City has a car culture, and taking a ride in the car is probably the only activity available to everyone at this time and suggested residents be tolerant of the noise.

X. REPORTS

A. Commissioner Reports
B. Commissioner Comments
   1. Commissioner Host emphasized that there is little that the Commission and City can do about giving relief for rentals. It is the decision of the property owner. He felt that the relief that could be given to residents is to waive the 2% fee required for road improvements. It is an equitable way to help. He further asked if impounding cars would be helpful in controlling the noise on Woodward.
      a. Chief Clemence reminded him that his team would need probable cause to impound a vehicle.
   2. Commissioner Baller asked if the other Commissioners support the public comment issue.
      a. Mayor Boutros supports further discussion on the topic.
      b. City Manager Valentine suggested a clear discussion with all of the Commissioners before declaring a consensus.
      c. Commissioner Hoff expressed that no one disagreed with discussing the topic it just was not on the agenda. She went on to say that, the Commissioners should evaluate it in live session.
      d. Commissioner Nickita agreed that no one disagreed but held that the minutes were incorrect. He requested that the Commissioners follow the appropriate process in bringing topics to the Commission for discussion.
   3. Commissioner Baller expressed his desire to set the record straight about an article published by the Downtown regarding lot combinations. He iterated that the story was false and members of the community should know that this is not how the Commission works. He commented that over 90,000 people have been lost in COVID19; 12 of the people were Birmingham residents. He shared an opinion editorial from the Washington Post dated May 18, 2020 by Micki McElya a history professor at the University of Connecticut on how Americans deal with national loses. He expressed to the families who have lost loved ones that he grieves and mourns with them. He also requested a moment of silence in memory of those who lost their lives in the fight against COVID19.

C. Advisory Boards, Committees, Commissions’ Reports and Agendas
D. Legislation
E. City Staff

INFORMATION ONLY

Mayor Boutros adjourned to Closed Session at 10:43 p.m.

Mayor Boutros reconvened the meeting at 10:56 p.m.
05-085-20  RESOLUTION TO EXECUTE CONSENT DECREE

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro-Tem Longe:
For approval to execute the consent decree in the matter of Coulston v. the City of Birmingham.

ROLL CALL VOTE: Ayes Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Nickita
Commissioner Baller
Commissioner Hoff
Mayor Boutros

Nays, None
Absent, Commissioner Host, due to technical difficulty

Mayor Boutros adjourned the meeting at 11:00 p.m.
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**SUBTOTAL PAPER CHECK** $916,128.27

## ACH TRANSACTION

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**SUBTOTAL ACH TRANSACTION** $135,797.37

**GRAND TOTAL** $1,051,925.64

All bills, invoices and other evidences of claim have been audited and approved for payment.

Mark Gerber  
Finance Director/ Treasurer

*Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.*
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Meeting of 06/08/2020
### City of Birmingham
#### Warrant List Dated 05/27/2020

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**SUBTOTAL ACH TRANSACTION** $284,302.99

**GRAND TOTAL** $406,105.45

All bills, invoices and other evidences of claim have been audited and approved for payment.

Mark Gerber  
Finance Director/ Treasurer

*Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.
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**SUBTOTAL PAPER CHECK** $215,403.26

**ACH TRANSACTION**

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### City of Birmingham

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**SUBTOTAL ACH TRANSACTION** $170,046.26

**GRAND TOTAL** $385,449.52

All bills, invoices and other evidences of claim have been audited and approved for payment.

Mark Gerber  
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.
INTRODUCTION:
The applicant, Lutheran Church of the Redeemer, is seeking a Special Land Use Permit (SLUP) Amendment & Final Site Plan and Design Review.

BACKGROUND:
On April 22nd, 2020, the applicant appeared before the Planning Board for SLUP & Final Site Plan and Design Review. The applicant discussed the proposed changes to the church which include expanding the sanctuary to provide more room for seating, increasing the size of the narthex at the entry, and moving the columbarium to accommodate for this expansion. It was also indicated that the steeple and spire would be replaced with a new one. The expansion of the sanctuary will match the existing materials on the building. Pedestrian access from the right-of-way was discussed and the Planning Board requested that a pedestrian walkway be added to the plans to connect the entrance to the sidewalk. The Planning Board moved to recommend approval of the SLUP Amendment & Final Site Plan & Design Review.

LEGAL REVIEW:
The City Attorney has reviewed the documentation and has no concerns.

FISCAL IMPACT:
There are no fiscal impacts based on the approval of the SLUP Amendment and Final Site Plan and Design Review for Lutheran Church of the Redeemer.

PUBLIC COMMUNICATIONS:
As required for combined SLUP and Final Site Plan and Design applications, a legal ad was placed in a newspaper of local circulation to advertise the SLUP request at 1800 W. Maple in advance of the April 22nd, 2020 Planning Board meeting. In addition, postcard notices were mailed to all property owners and occupants within 300 feet of the subject property, in advance of the April 22nd, 2020 Planning Board meeting. The applicant also placed a notification sign on the property which is visible from the sidewalk and street as required.

SUMMARY:
The applicant is seeking approval for a Special Land Use Permit (SLUP) Amendment and Final Site Plan & Design Review to expand the sanctuary of the church.
ATTACHMENTS:
- SLUP Resolution
- Planning Board minutes
- Updated (latest revised) Plans for City Commission
- Special Land Use Permit Application
- Planning Board Staff Report
- Planning Board Site Plans (old plans submitted to Planning Board) & Material Specification Sheets

SUGGESTED RESOLUTION:
To set a public hearing date for July 13th, 2020 to consider approval of a Special Land Use Permit Amendment and Final Site Plan and Design Review for Lutheran Church of the Redeemer at 1800 W. Maple Road.
WHEREAS, Lutheran Church of the Redeemer originally applied for and received on May 13, 1991 a Special Land Use Permit for site improvements at 1800 W. Maple, such application having been filed pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit Amendment is sought is located on the north side of W. Maple, between Chesterfield and N. Glenhurst.

WHEREAS, The land is zoned R-1, Single Family Residential, which permits a Church and a school with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, of the City Code requires a Special Land Use Permit to be reviewed by the Birmingham City Commission at such time that any change takes place in the building, or the use of the property is altered;

WHEREAS, The Planning Board reviewed a proposed Special Land Use Permit Amendment on April 22nd, 2020 to expand the sanctuary. The Planning Board recommended that the Special Land Use Permit Amendment be approved.

WHEREAS, The Birmingham City Commission has reviewed the Lutheran Church of the Redeemer Special Land Use Permit Amendment application as well as the standards for such review, as set forth in Article 7, section 7.34, Chapter 126, Zoning, of the City Code; and

NOW, THEREFORE, BE IT RESOLVED, That the Birmingham City Commission finds the standards set forth in the City Code have been met and the Lutheran Church of the Redeemer application for a Special Land Use Permit Amendment authorizing the proposed changed to expand the sanctuary space; and

BE IT FURTHER RESOLVED, that all conditions of the previously approved Special Land Use Permit and subsequent amendments shall be continued as part of this Special Land Use Permit Amendment and are incorporated as herein by reference; and

BE IT FURTHER RESOLVED, that the Lutheran Church of the Redeemer and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may subsequently be amended. Failure of the Lutheran Church of the Redeemer to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

I, Alex Bingham, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution by the Birmingham City Commission at its regular meeting held on October July 13th, 2020.

____________________________
Alex Bingham, City Clerk
Minutes of the virtual regular meeting of the City of Birmingham Planning Board held on April 22, 2020. Chairman Scott Clein convened the meeting at 7:41 p.m.

A. Roll Call

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams (joined at 7:59 p.m.); Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Student Representatives Rachel Hester, June Lee

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

04-41-20

G. Special Land Use Permit Review and Final Site Plan & Design Review

1. 1800 W. Maple (Lutheran Church of the Redeemer) - Special Land Use Permit Amendment to allow renovation and expansion of the Church.

City Planner Cowan presented the item.

Mr. Boyle said that he had never struggled with a site plan as much as he had with the one for this proposal. He asked whether the proposed changes would result in a building that is dimensionally different from the present building, and if so where those changes would occur.

City Planner Cowan stated that the applicant would better be able to explain what parts of the building would remain or change, but that the horizontal dashed lines on the plan were meant to indicate the proposed changes.

In reply to Mr. Boyle, City Planner Cowan said the height would be remaining at 27 feet as measured to the middle of the pediment.

In reply to Mr. Williams, City Planner Cowan stated the plans would add an additional 8.3% in square footage to the building.

Steve Schneeman, architect, provided further information about the project. He explained the goal of the rebuild is to make a more modern interior space for the congregation while preserving the style of the church facade. He said the sanctuary and practice space would be expanded, the
office space on the east side of the building would be relocated to another area in the building, and that the steeple would be replaced with a brand new steeple.

In reply to Mr. Koseck, Mr. Schneeman confirmed that the owner of the building would be amenable to linking the property’s pedestrian system to the City’s that runs along the north side of Maple. He said that would likely be located on the east side of the entry and onto Maple. He said adding a sidewalk to the west of the entry had not yet been discussed.

Steve Scheidt, representative for the owner, said public access off the south sidewalk would make a lot of sense. He said he was interested in increasing pedestrian connectivity on the east side of the entry while noting that there are large evergreen trees to the west side of the entry. He said the congregation would hope to retain the evergreen trees, but that ultimately they would do whatever the Planning Board recommends.

In reply to Chairman Clein, Mr. Koseck confirmed he would be comfortable with allowing administrative approval for the plans for further pedestrian access.

Mr. Williams noted the applicant agreed to a sidewalk on the east side of the entry.

Mr. Koseck agreed with Mr. Williams, but said the Planning Board should allow for administrative approval of the design since the Board can neither design the sidewalk nor approve the plans presently.

Seeing no further Board discussion, Chairman Clein invited public comment.

Jon Bobrowski explained that he is Bloomfield Township resident who lives directly to the west of the church. He expressed concern that construction might commence while the state lockdown is in order, which would mean that he may be sheltering at home during the day while construction occurs. He said the noise from the construction could be very taxing on the neighbors of the church. Mr. Bobrowski said that during past church construction projects construction vehicles would idle in the church parking lot before the ordinance permitted construction start time. Mr. Bobrowski also asked where the vehicles and construction materials would be stored.

Chairman Clein asked Mr. Schneeman to comment on how the quality-of-life issues potentially raised by the construction would be mitigated for neighbors of the church.

Mr. Schneeman said the original plan was to begin the construction in the late fall of 2020. He said that if there are still construction prohibitions present in the late fall that the project would not commence then. Mr. Schneeman continued that the construction manager would be required to adhere to all the noise ordinances and other regulations within Birmingham. In addition, if there are more specific concerns not covered directly by ordinance the church would take those into consideration since the congregation is very keen on maintaining good relationships with the neighbors. Staging could be planned in a way that the impact on the neighbors would be minimized.

Chairman Clein recommended that the applicant make a concerted effort while going through the construction startup to meet with the neighbors and build consensus on any issues that could arise to avoid having to get the City involved.
Mr. Schneeman confirmed that the applicant would do so.

Mr. Scheidt said it was firmly the congregation’s intention to build relationships with the neighbors, and told the Board that the church had a meeting scheduled to meet with the neighbors on March 12, 2020 which had to be cancelled due to escalating Covid-19 concerns at the time. He explained that a person from the congregation has been appointed to facilitate conversations with the neighbors and that there is an online group through which the congregants can discuss ways of further mitigating the impact on the surrounding area.

Seeing no further questions for the applicant, Chairman Clein returned the conversation to the Board.

Mr. Boyle stated that it was only in questioning that he was able to determine that the plan is to demolish and rebuild the church. He said this process raised issues for him regarding how the City handles the demolition of a very prominent building. Mr. Boyle said he wanted it on the record that in some ways the Board was misled in terms of what was presented to the Board.

**Motion by Ms. Whipple-Boyce**  
Seconded by Mr. Jeffares to recommend approval to the City Commission for the Final Site Plan for 1800 W. Maple and to recommend approval to the City Commission for the Special Land Use Permit Amendment for 1800 W. Maple.

Mr. Koseck asked if the City had the required information for this to be a final site plan approval. He said he agreed with Mr. Boyle’s statement to an extent. He said this is a very pretty building and asked how that aesthetic appeal would be carried forward and maintained.

Chairman Clein cautioned the Board that the comments should be related to the motion, and that further discussion regarding the item should pause until the motion has undergone a vote.

Mr. Williams said he agreed with Mr. Boyle and Mr. Koseck, saying that final site plan approval seemed inappropriate since the applicant had not provided all the information the Board usually requires for a final site plan approval.

Ms. Whipple-Boyce said she believed that the write-up of the item stated that the construction would be using matching materials, and also noted that a materials list was provided as well. She said the Board could seek confirmation as to whether the materials would indeed be matching.

Planning Director Ecker confirmed Ms. Whipple-Boyce’s recollection that the construction materials would be matching.

Chairman Clein invited public comment on the motion.

Mr. Bobrowski said he doubted that it was clear to any of the neighbors before this evening that the plan was to substantially demolish and rebuild the church. He said his concerns remained the same as his earlier comments.

In reply to a query by Chairman Clein, City Planner Cowan stated that the existing building to remain would be about 37,000 square feet, new construction would be about 11,000 square feet, and the demolition would be about 8,000 square feet.
Motion carried, 6-1.

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

Chairman Clein thanked both Mr. Schneeman and Mr. Scheidt for their attendance and enjoined them again to work with the neighbors to achieve a pleasant and conflict-free project.
SITE PLAN APPROVAL PACKAGE

LUTHERAN CHURCH OF THE REDEEMER

1800 W. MAPLE ROAD
BIRMINGHAM, MICHIGAN

PROJECT NO. 15165
1. APPROVED TREE PROTECTION SHALL BE ERECTED PRIOR TO THE START OF CONSTRUCTION ACTIVITIES, AND SHALL REMAIN IN PLACE UNTIL CONSTRUCTION IS COMPLETE.

2. ALL UNDERSTORY VEGETATION WITHIN THE LIMITS OF PROTECTIVE FENCING SHALL BE PRESERVED.

3. NO PERSON MAY CONDUCT ANY ACTIVITY WITHIN THE DRIP LINE OF ANY TREE DESIGNATED TO REMAIN, INCLUDING BUT NOT LIMITED TO, PLACING SOLVENTS, BUILDING MATERIALS, CONSTRUCTION EQUIPMENT, OR SOIL DEPOSITS WITHIN THE DRIP LINE.

4. WHERE GROUPINGS OF TREES ARE TO REMAIN, TREE FENCING SHALL BE PLACED AT THE LIMITS OF GRADING LINE.

5. DURING CONSTRUCTION, NO PERSON SHALL ATTACH ANY DEVICE OR WIRE TO ANY TREE, SCHEDULED TO REMAIN.

6. ALL UTILITY SERVICE REQUESTS MUST INCLUDE NOTIFICATION TO THE INSTALLER THAT PROTECTED TREES MUST BE AVOIDED. ALL TRENCHING SHALL OCCUR OUTSIDE OF THE PROTECTIVE FENCING.

7. SWALES SHALL BE ROUTED TO AVOID THE AREA WITHIN THE DRIP LINES OF PROTECTED TREES.

8. TREES LOCATED ON ADJACENT PROPERTIES THAT MAY BE AFFECTED BY CONSTRUCTION ACTIVITIES MUST BE PROTECTED.

9. ROOT ZONES OF PROTECTED TREES SHOULD BE SURROUNDED WITH RIGIDLY STAKED FENCING.

10. THE PARKING OF IDLE AND RUNNING EQUIPMENT SHALL BE PROHIBITED UNDER THE DRIP LINE OF PROTECTED TREES.

11. THE STRIPPING OF TOPSOIL FROM AROUND PROTECTED TREES SHALL BE PROHIBITED.

12. ALL TREES TO BE REMOVED SHALL BE CUT AWAY FROM TREES TO REMAIN.

13. THE GRUBBING OF UNDERSTORY VEGETATION WITHIN CONSTRUCTION AREAS SHOULD BE CLEARED BY CUTTING VEGETATION AT THE GROUND WITH A CHAIN SAW OR MINIMALLY WITH A HYDRO-AXE.

14. THE CONTRACTOR IS RESPONSIBLE FOR THE REPLACEMENT PER ORDINANCE GUIDELINES, FOR THE DAMAGE OR REMOVAL OF ANY TREE DESIGNATED TO REMAIN.

15. TREES TO BE REMOVED SHALL BE FIELD VERIFIED, EVALUATED AND FLAGGED FOR REMOVAL, BY THE LANDSCAPE ARCHITECT OR FORESTER, ONLY AS DIRECTED BY THE OWNER OR OWNERS REPRESENTATIVE.
GROUND-MOUNTED A/C CONDENSERS

BUILDING ILLUMINATION AT ENTRANCES

DECORATIVE SITE LIGHTING

Notes:
Refer to sheet A-101a for description of existing site lighting fixtures to remain.
Refer to architectural sheet for locations and additional descriptions of site lighting fixtures.
**XT™ 30 IR**

When it comes to weathering the elements, XT 30 IR offers a level of impact resistance that leads the strip shingle class that provides a level of protection that's far from every day. This easy-to-install shingle is built on an extra-strength fiberglass base, and coated with high-grade mineral granules embedded in protective, water-resistant asphalt.

- Durable, beautifully color-blended line of shingles.
- Manufactured with self-sealing adhesive strips.

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Due to variation in computer monitors and printers, the color samples seen on your computer screen may not exactly match the corresponding color. To verify actual product color, ask to see the actual product, available through a CertainTeed contractor or distributor.

PRODUCT OVERVIEW
- Impact Resistant Shingles Brochure - West
- Roofing Products Guide - Southeast/South Atlantic/Mid-Atlantic
- Roofing Products Guide - Denver/Salt Lake
- Roofing Products Guide - South Central
  (More Info)

TECHNICAL SPECS
- Data Sheet - XT30 IR
- 3-Part Spec - XT30 IR
- SDS - Asphalt Shingle - AR
- Miami-Dade NOA - XT30 IR
  (More Info)

INSTALLATION
- XT30IR Installation Instructions
  (More Info)

WARRANTY
- Asphalt Shingle Limited Warranty
- SureStart Warranty Brochure
  (More Info)

Sweets ProductTAG

TECHNICAL INFORMATION
- Impact resistant: UL 2218 Class 4 rating
- Fiberglass-based construction
- UL Class A fire resistance
- UL certified to meet ASTM D3462
- Conforms to CSA standard A123.5
- Miami-Dade Product Control Acceptance: Please see the Notice of Acceptance (NOA) to determine approved products by manufacturing location.
Color at Your Fingertips-48 Most Popular Colors

Before Making A Final Color Selection

Please note that the on-screen colors may not precisely match actual colors due to variance in monitor calibrations. It is the intent and purpose of this web-based color chart to provide a basic representation of Dryvit Systems finish colors and is offered as a sales aid only to select a range of colors for final selection. This web-based color chart shall not be used for final color selection as color differences may occur from one computer to another. Actual color selection should be made from 8” x 10” samples of each finish type, texture and color to be used on the project. Samples shall

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Accept All Cookies
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"Original" Aggregate Textured 100% Acrylic-Based Dirt Pickup Resistance Finishes

Quarzputz®, Sandblast®, Freestyle®, Sandpebble®, and Sandpebble® Fine finishes are premixed 100% acrylic-based coatings which are offered in standard colors as

Links
- Color Chart CAYF - 48 Most Popular Colors
- Color Chart CAYF - 288 Standard Colors
- Data Sheet
- NTX Data Sheet
- Safety Data Sheet - DPR Finishes
- Finishes/Coatings Warranty
- Interior Specifications - DS174 PDF
- Interior Specifications - DS174 DOC
- Textures Up Close

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Hartmann-Sanders™ Architectural Wood Columns are based upon the timeless orders of Classical Architecture. From the design of the capital to the proportions and shape of the column shaft, we follow the standards of classic column design. With over 100 years of experience manufacturing columns, Hartmann-Sanders™ offers the largest selection of authentic Architectural Wood Columns in the industry. We recommend solid stave or finger-joint western red cedar or clear all heart redwood for exterior applications. It is naturally weather resistant and immune to decay and infestation. Pine or polar may be used for interior columns that are to be painted. We also offer a large selection of stain-grade columns. Oak, cherry, maple, mahogany and poplar are the most common species used for stain-grade, however other wood species are available upon request. An interior asphaltum coating is applied on all columns to be used for exterior use. Columns that are to be painted are primed with three coats of an oil-based primer after they are turned. Each coat of primer is hand sanded to give an excellent surface for your final topcoats.

Columns may serve as a structural member or as a decorative accent. Columns which are to be installed around a structural support for decorative purposes will be manufactured in halves and provided with a spline joint for aligning the halves. For load bearing capacities, please contact our Architectural Specialists.

A large selection of capitals and base/plinths are available and manufactured of a high-density polyurethane, fiberglass or wood. Numerous styles of Decorative Capitals are also available to complement any design.
**Stave Construction:**
Our Wood Column shafts are formed of nominal 4” wide staves. The thickness of the stave depends on the height and diameter of the column shaft. Each stave is connected to the next with our patented Koll’s Lock-Joint, and is tapered to achieve uniform thickness throughout the shaft length. Tongue and Groove stave construction is also available and carries the same warranty as the Koll’s Lock-Joint. The staves are glued with the highest Type 1 water-resistant glue, interlocked, and kept under pressure for a minimum of eighteen hours.

**Stave Thickness:**
Our experience in the construction of columns has indicated that the thickness of the stock used is important and must provide enough material for proper architectural detail and strength. The nominal thickness of stock used is shown below in the table.

---

**Stave Thickness**

<table>
<thead>
<tr>
<th>Column Size</th>
<th>Plain Stave Thickness</th>
<th>Fluted Stave Thickness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 10” and 10’ tall</td>
<td>1½”</td>
<td>6” to 10”</td>
</tr>
<tr>
<td>11” to 20”</td>
<td>2”</td>
<td>11” to 18”</td>
</tr>
<tr>
<td>21” to 26”</td>
<td>3”</td>
<td>19” to 24”</td>
</tr>
<tr>
<td>27” and up</td>
<td>4”</td>
<td>25” and up</td>
</tr>
</tbody>
</table>

---

**Plan Types for Split Architectural Wood Columns**

A B C D E F G H K O

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Column shafts may be plain or fluted, with the flutes being either Doric or Ionic design. The following illustrations show each design.

---

Stave Construction: The Wood Column shafts are formed of nominal 4” wide staves. The thickness of the stave depends on the height and diameter of the column shaft. Each stave is connected to the next with our patented Koll’s Lock-Joint, and is tapered to achieve uniform thickness throughout the shaft length. Tongue and Groove stave construction is also available and carries the same warranty as the Koll’s Lock-Joint. The staves are glued with the highest Type 1 water-resistant glue, interlocked, and kept under pressure for a minimum of eighteen hours.

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<table>
<thead>
<tr>
<th>Roman Doric Cap &amp; Base/Plinth</th>
<th>Column Design #210 plain; #215 fluted</th>
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<tbody>
<tr>
<td><strong>Column Size</strong></td>
<td><strong>Bottom Shaft Diameter</strong></td>
</tr>
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<table>
<thead>
<tr>
<th>Tuscan Cap &amp; Base Plinth</th>
<th>Column Design #200 plain; #205 fluted</th>
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<tbody>
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<td><strong>Column Size</strong></td>
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</table>
Stationary/Picture

Head Jamb and Sill

Jambs
PELLA®
ProLine 450 Series

WOOD WINDOWS AND PATIO DOORS
AT A COMPETITIVE PRICE
Beauty of wood.

EnduraGuard® wood protection offers advanced protection against the effects of moisture, decay, stains from mold and mildew — as well as termite damage. This proven immersion-treatment method will help ensure that Pella® wood windows and patio doors look and perform beautifully for years.

EnduraGuard® wood protection

Our most popular features start here.
Choose from Pella’s most requested styles, and add character to your home with the right sizes, colors and grille patterns.

Factory-prefinished pine interiors. Pella wood products can arrive factory-prefinished in your choice of eight beautiful stain colors, as well as primed, or with White, Bright White or Linen White paint. You get a professional, high-quality finish — eliminating drips, runs and harmful odors.

* For testing purposes, the seal between the bottom rail and the glass was compromised in both casement units tested.
HARDWARE FINISHES
Choose from today’s most popular decorative finishes to coordinate with other finishes in your home.

PREFINISHED PINE INTERIORS
The interiors of all Pella® Pine windows and patio doors can arrive prefinished in your choice of eight stain colors to complement your home. Three prefinished paint colors or primed, ready-to-paint interiors are also available.

HARDWARE STYLES
Find beauty and function in Pella’s innovative, easy-to-operate hardware styles.

ALUMINUM-CLAD EXTERIORS
Beautifully durable, Pella’s low-maintenance EnduraClad® exterior finish resists fading and helps protect your windows and patio doors for years.
GRILLE PATTERNS

A variety of grille patterns for the traditional look of divided light. Custom patterns are also available.

- 9-Lite Prairie
- Traditional
- Top Row
- Cross
- Custom (equally divided)

GRILLES

Choose the look of true divided light, or add grilles-between-the-glass that make cleaning the glass easier.

- 7/8" Simulated-Divided-Light with Spacer
- 7/8" Simulated-Divided-Light Without Spacer
- 2", 1-1/4" and 3/4" Roomside Removable
- 3/4" Aluminum Grilles-Between-the-Glass

Aluminum grilles-between-the-glass feature the option of the interior grille colors shown above. The exterior will match the EnduraClad® color you choose.*

GRILLE PATTERNS

A variety of grille patterns for the traditional look of divided light. Custom patterns are also available.

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SELECT YOUR DESIGN OPTIONS:

1. GLASS

(a) LOW-E GLASS COLLECTION

- Advanced Low-E insulating glass with argon
- AdvancedComfort Low-E insulating double-pane glass with argon
- NaturalSun Low-E insulating glass with argon
- SunDefense™ Low-E insulating glass with argon

(b) ADDITIONAL GLASS OPTIONS

- Tempered glass
- Laminated (non-impact-resistant), tinted and obscure glass available on select products

See glass information on pages 8 - 9 for details.

2. INTERIORS

(a) WOOD TYPES

- Pine

(b) WOOD FINISHES

- Unfinished
- Primed, ready to finish
- Prefinished stain or paint

(c) INTERIOR TRIM

- Primed, ready to finish
- Prefinished stain or paint

* See page 10 for finishes.

3. EXTERIORS

(a) EXTERIOR FINISHES

- Aluminum-clad with EnduraClad® protective finish

(b) EXTERIOR TRIM

- EnduraClad factory-applied trim

* See page 10 for finishes.

4. HARDWARE

(a) FINISHES

- Champagne, White, Brown, Bright Brass, Satin Nickel, Oil-Rubbed Bronze®
- Antique Brass® and Chrome®

1 See hardware finish colors and styles on page 10.
2 Oil-Rubbed Bronze is a living finish that will develop its own unique patina with use.
3 Available on hinged patio doors only.

5. GRILLES

(a) PERMANENT GRILLES

- Simulated-Divided-Light grilles with or without spacer
- Aluminum grilles-between-the-glass

(b) REMOVABLE GRILLES

- Roomside interior wood grilles

* See left for grille finish colors and styles.

6. SCREENS

(a) SCREENS

- InView® screen
- Vivid View® high-transparency screen

* WARNING: Screen will not stop child or pet from falling out of window or door. Keep child or pet away from open window or door.

See written warranty for complete details at pella.com/warranty.

7. WARRANTY

- Pella 20/10 Limited Warranty

* See warranty information for complete details. See written warranty for complete details at pella.com/warranty.

8. ADDITIONAL OPTIONS

- See a Pella professional for specific details and additional options available.
- Some features are part of our standard offering; not all options are available on all product styles.

* On hinged patio doors, Endura Hardware Collection offers a 10-year warranty. See written warranty for complete details at pella.com/warranty.
2 Oil-Rubbed Bronze is a living finish that will develop its own unique patina with use.
3 Hinged patio doors only.
4 Grille patterns offered may vary per product. See specific product information for availability.
5 Only available with matching interior and exterior colors.
6 Appearance of exterior grille color may vary depending on the Low-E insulating glass selection.
TS6080

Series:

Application:

Construction:

Thickness:

Available Fire-Rating:

Fire-rated doors may require modified construction depending on rating. Contact TruStile or your TruStile Representative for details.
Preliminary Site Plan Review Application
Planning Division

Form will not be processed until it is completely filled out.

1. Applicant
   Name: MERRITT CIESLAK DESIGN
   Address: 33610 GRAND RIVER
             FARMINGTON, MI 48335
   Phone Number: 248-374-0001
   Fax Number: 248-374-0001
   Email address: ss@medarchitects.com

2. Property Owner
   Name: LUTHERAN CHURCH OF THE REDEEMER
   Address: 1800 W. MAPLE
             BIRMINGHAM, MI
   Phone Number: 248-644-4010
   Fax Number: 248-644-1471
   Email address: sc@lutheranchurch.com

3. Applicant's Attorney/Contact Person
   Name: MERRITT CIESLAK DESIGN
   Address: 33610 GRAND RIVER
             FARMINGTON, MI 48335
   Phone Number: 248-374-0001
   Fax Number: 248-374-0001
   Email address: st@medarchitects.com

4. Project Designer/Developer
   Name: MERRITT CIESLAK DESIGN
   Address: 33610 GRAND RIVER
             FARMINGTON, MI 48335
   Phone Number: 248-374-0001
   Fax Number: 248-374-0001
   Email address: rc@lutheranchurch.com

5. Required Attachments
   I. Two (2) paper copies and one (1) digital copy of all project plans including:
      i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
      ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
      iii. A certified Land Survey;
      iv. Interior floor plans;
      v. A Landscape Plan;
      vi. A Photometric Plan;
      vii. Colored elevation drawings for each building elevation;
   II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
   III. Samples of all proposed materials;
   IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
   V. Current aerial photographs of the site and surrounding properties;
   VI. Warranty Deed, or Consent of Property Owner if applicant is not the owner;
   VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information
   Address/Location of the property: 1800 W. MAPLE
   BIRMINGHAM, MI
   Name of development: LUTHERAN CHURCH OF THE REDEEMER
   Sidewalk #: 19-224-378-072
   Current Use: CHURCH
   Proposed Use: CHURCH
   Area of Site in Acres: 0.053
   Current zoning: R-1
   Is the property located in the floodplain? NO

Name of Historic District site is located in: N/A
Date of Historic District Commission Approval: N/A
Date of Design Review Board Approval: N/A
Will proposed project require the division of platted lots? NO
Will proposed project require the combination of platted lots? NO
7. Details of the Proposed Development (attach separate sheet if necessary)

REPLACEMENT OF THE EXISTING CHURCH SANCTUARY (TWO LEVELS)
RENOVATION OF EXISTING SPACES ADJACENT TO THE NEW SANCTUARY IN
THE EAST AND WEST BUILDING WINGS, RELOCATION OF THE EXISTING
COLUMBARIUM TO THE EAST SIDE OF THE NEW SANCTUARY,
RECONFIGURATION OF THE ACCESS DRIVE AND WALKWAYS ON THE SITE
TO ACCOMMODATE THE NEW CONSTRUCTION.

8. Buildings and Structures

Number of Buildings on Site: 1
Height of Buildings & # of Stories: 27'-0" + 1 STORY + BALCONY

Use of Buildings: CHURCH
Height of Rooftop Mechanical Equipment: 22'-0" TO TOP OF HIGHEST (SCREENED)

9. Floor Use and Area (in Square Feet)

Proposed Commercial Structures:
Total basement floor area:
Number of square feet per upper floor: 11,243 s.f. (NEW)
Total floor area: 49,140 s.f. (NEW + EXISTING)
Floor area ratio (total floor area + total land area): 18%
Open space: 105,480 s.f.
Percent of open space: 40%

Proposed Residential Structures:
Total number of units: n/a
Number of one bedroom units:
Number of two bedroom units:
Number of three bedroom units:
Open space:
Percent of open space:

Proposed Additions:
Total basement floor area, if any, of addition:
Number of floors to be added:
Square footage added per floor: 11,243 s.f.
Total building floor area (including addition): 49,140 s.f.
Floor area ratio (total floor area + total land area): 18%
Open Space: 105,480 s.f.
Percent of open space: 40%

10. Required and Proposed Setbacks

Required front setback: 25'-0"
Required rear setback: 30'-0"
Required total side setback: 119'-6"
Side setback: 47'-9"

11. Required and Proposed Parking

Required number of parking spaces: 260
Typical angle of parking spaces: 90°
Typical width of maneuvering lanes: 22'-0"
Location of parking on site: FRONT SIDE & REAR YARDS
Location of parking off site: none
Number of light standards in parking area: 23
Screenwall material: wood

Proposed number of parking spaces: 218 (unchanged)
Typical size of parking spaces: 9'-0" x 20'-0"
Number of spaces <180 sq. ft: none
Number of handicap spaces: 1
Shared parking agreement: no
Height of light standards in parking area: 13'-9"
Height of screenwall: 6'-0" unknown.
12. Landscaping
Location of landscape areas: **SEE INCLUDED SHEET L2**

Proposed landscape material: **SEE INCLUDED SHEET L2**

13. Streetscape
Sidewalk width: **N/A**
Number of benches: **N/A**
Number of planters: **N/A**
Number of existing street trees: **N/A**
Number of proposed street trees: **N/A**
Streetscape plan submitted: **N/A**

Description of benches or planters: **N/A**
Species of existing trees: **N/A**
Species of proposed trees: **N/A**

14. Loading
Required number of loading spaces: **N/A**
Typical angle of loading spaces:
Screenwall material:
Location of loading spaces on site:

Proposed number of loading spaces:
Typical size of loading spaces:
Height of screenwall:
Typical time loading spaces are used:

15. Exterior Waste Receptacles
Required number of waste receptacles: **1 (EXISTING)**
Location of waste receptacles: **NORTH PARKING LOT**
Screenwall material: **BRICK**

Proposed number of waste receptacles: **NO NEW**
Size of waste receptacles: **N/A**
Height of screenwall: **6'-4"**

16. Mechanical Equipment

Utilities and Transformers:
Number of ground mounted transformers: **1 (EXISTING)**
Size of transformers (L-W-H): **48"L x 56"W x 60"H**
Number of utility easements: **N/A**
Screenwall material: **EXISTING LANDSCAPING**

Ground Mounted Mechanical Equipment:
Number of ground mounted units: **5 (NEW)**
Size of ground mounted units (L-W-H): **35" x 35" x 46"H**
Screenwall material: **LANDSCAPING - SEE SHEET L2**

Rooftop Mechanical Equipment:
Number of rooftop units: **7 EXISTING, 12 NEW**
Type of rooftop units: **SEE SHEET A-BOI FOR NEW ROOF TOP UNITS**
Screenwall material: **SHINGLED ROOF SCREEN (NEW)**
Location of screenwall: **SOUTH FACE OF WEST WING ADDITION**

Location of all utilities & easements: **SEE SHEET C-1**
Existing transformer at east side of existing building
Height of screenwall: **6'-0"**

Location of all ground mounted units: **SOUTH SIDE OF WEST WING ADDITION**
Height of screenwall: **6'-0" LANDSCAPING**

Location of all rooftop units: **ROOF OF WEST WING ADDITION**
Size of rooftop units (L-W-H): **10'-0"L x 7'-0"W x 5'-4"H**
Percentage of rooftop covered by mechanical units: **< 3%**
Height of screenwall: **15'-9" A.F.F.**
Distance from rooftop units to all screenwalls: **5'-0"**

17. Accessory Buildings
Number of accessory buildings: **NONE**
Location of accessory buildings: **N/A**

Size of accessory buildings: **N/A**
Height of accessory buildings: **N/A**
18. Building Lighting
Number of light standards on building: 2
Size of light fixtures (L·W·H): 20"×20"×20"
Maximum wattage per fixture: SEE INCLUDED
Light level at each property line: 11 (EXIST. IN PARKING LOT)

Type of light fixtures: DECORATIVE - SEE SHEET AS-102
Height from grade: 9’-0"
Proposed wattage per fixture: 

19. Site Lighting
Number of light fixtures: 20 (EXIST. AT DRIVES)
Size of light fixtures (L·W·H): 20’×20’×20”
Maximum wattage per fixture: SEE INCLUDED
Light level at each property line: 11 (EXIST. AT PARKING LOT)

Type of light fixtures: EXISTING DECORATIVE
Height from grade: 13’-9"
Proposed wattage per fixture: EXISTING
Holiday tree lighting receptacles: 

20. Adjacent Properties
Number of properties within 200 ft.: 52 (ALL R-1 OR R-2)

<table>
<thead>
<tr>
<th>Property #1</th>
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<tbody>
<tr>
<td>Number of buildings on site:</td>
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<td>Zoning district:</td>
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<tr>
<td>Use type:</td>
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<td>Square footage of principal building:</td>
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<td>Square footage of accessory buildings:</td>
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<td>Number of parking spaces:</td>
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<td>North, south, east or west of property?</td>
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<tr>
<td>Square footage of accessory buildings:</td>
<td></td>
</tr>
<tr>
<td>Number of parking spaces:</td>
<td></td>
</tr>
<tr>
<td>North, south, east or west of property?</td>
<td></td>
</tr>
</tbody>
</table>
Property #6
Number of buildings on site: ____________________________ Property Description: ____________________________
Zoning district: ______________________________________
Use type: __________________________________________
Square footage of principal building: ____________________
Square footage of accessory buildings: ____________________
Number of parking spaces: ____________________________ North, south, east or west of property? ________________

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and/or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: ____________________________ Date: __________
Print Name: ____________________________

Signature of Applicant: ____________________________ Date: __________
Print Name: ____________________________

Signature of Architect: ____________________________ Date: __________
Print Name: ____________________________

Office Use Only
Application #: PSLU90 -001 Date Received: __________ Fee: $ 0.00 __________
Date of Approval: __________ Date of Denial: __________ Accepted by: __________
PRELIMINARY SIT PLAN REVIEW APPLICATION CHECKLIST - PLANNING DIVISION

Applicant: LUTHERAN CHURCH OF THE REDEEMER

Address: 1800 W. MAPLE RD.

Date: 2/10/20

Project: SANCTUARY REPLACEMENT

BIRMINGHAM, MI

All site plans and elevation drawings prepared for approval shall be prepared in accordance with the following specifications and other applicable requirements of the City of Birmingham. If more than one page is used, each page shall be numbered sequentially. All plans must be legible and of sufficient quality to provide for quality reproduction or recording. Plans must be no larger than 24” x 36”, and must be folded and stapled together. The address of the site must be clearly noted on all plans and supporting documentation.

Preliminary Site Plan

A full Site Plan detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1” = 100’ (unless the drawing will not fit on one 24” X 36” sheet) and shall include:

1. Name and address of applicant and proof of ownership;
2. Name of Development (if applicable);
3. Address of site and legal description of the real estate;
4. Name and address of the land surveyor;
5. Legend and notes, including a graphic scale, north point, and date;
6. A separate location map;
7. A map showing the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;
8. Aerial photographs of the subject site and surrounding properties;
9. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
10. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject site’s property lines;
11. Interior floor plans;
12. A chart indicating the dates of any previous approvals by the Planning Board, Board of Zoning Appeals, Design Review Board, or the Historic District Commission (“HDC”);
13. Existing and proposed layout of streets, open space and other basic elements of the plan;
14. Existing and proposed utilities and easements and their purpose;
15. Location of natural streams, regulated drains, 100-year flood plains, floodway, water courses, marshes, wooded areas, isolated preserve-able trees, wetlands, historic features, existing structures, dry wells, utility lines, fire hydrants and any other significant feature(s) that may influence the design of the development;
16. General description, location, and types of structures on site;
17. Location of sidewalks, curb cuts, and parking lots on subject site and all sites within 200 ft. of the property line;
18. Details of existing or proposed lighting, signage and other pertinent development features;
19. Elevation drawings showing proposed design;
20. Screening to be utilized in concealing any exposed mechanical or electrical equipment and all trash receptacle areas;
21. Location of all exterior lighting fixtures;
22. A Photometric Plan depicting proposed illuminance levels at all property lines;
23. A Landscape Plan showing all existing and proposed planting and screening materials, including the number, size, and type of plantings proposed and the method of irrigation; and
24. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

Elevation Drawings

Complete elevation drawings detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1” = 100’ (unless the drawing will not fit on one 24” X 36” sheet) and shall include:

25. Color elevation drawings showing the proposed design for each façade of the building;
26. List of all materials to be used for the building, marked on the elevation drawings;
27. Elevation drawings of all screenwalls to be utilized in concealing any exposed mechanical or electrical equipment, trash receptacle areas and parking areas;
28. Details of existing or proposed lighting, signage and other pertinent development features;
29. A list of any requested design changes;
30. Itemized list and specification sheets of all materials, light fixtures and mechanical equipment to be used, including exact size specifications, color, style, and the name of the manufacturer;
31. Location of all exterior lighting fixtures, exact size specifications, color, style and the name of the manufacturer of all fixtures, and a photometric analysis of all exterior lighting fixtures showing light levels to all property lines; and
32. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.
This Indenture: 1725

This Indenture, made this 25th day of July, in the 35th year of Our Lord one thousand seven hundred and forty one

Between: LILLIAN A. SCHULZ

The first part

and

HERBERT R. SCHULZ, LUCY SCHULZ, Raymond SCHULZ, Corporation of Birmingham, Michigan,

The second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of

Dollars, the receipt whereof is hereby acknowledged, have sold, released, conveyed, and assigned and conveyed unto the said parties of the second part, the tract of land more in detail as hereinafter described, and unto their heirs and assigns forever.

The above described tract of land being the following part of the South West Quarter of Section 26, Township 4 South, Range 4 West, 230 acres, more or less, lying in the Village of Birmingham, Oakland County, Michigan, and containing approximately 6.2 acres more or less, specifically described as follows:

The West Half of the South West Quarter of Section 26, thence running North 52 degrees 24 minutes West, 230.26 feet to a point; thence North 84 degrees 56 minutes East, 195.57 feet to a point of beginning; thence North 52 degrees 24 minutes West, 230.26 feet to the point of commencement of the aforesaid tract of land, containing 620 acres more or less

And

Moreover, for the aforesaid consideration of $6,200.00, to the said parties of the second part, for and in consideration of the sum of

Dollars, the receipt whereof is hereby acknowledged, have sold, released, conveyed, and assigned and conveyed unto the said parties of the second part, the property and premises more in detail as hereinafter described, and unto their heirs and assigns forever.

The property and premises more in detail described as follows:

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Together with all and every the aforesaid and appurtenances thereunto belonging, and to the said parties of the second part, for and in consideration of the sum of $6,200.00, to the said parties of the second part, for and in consideration of the sum of

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In witness whereof the said party, s of the first part, buy, have unto act, day, hand, and


State of Michigan,
County of Oakland

On this 19 __ day of May
in the year one thousand nine hundred and ___ before me,
a Notary Public in and for said county, personally appeared LILLIAN A. SCHMIDT


My commission expires AUGUST 28, 1948
Notary Public
Michigan

__________________________
DAVID C. KUDI
DATE: April 22, 2020

TO: Planning Board Members

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 1800 W. Maple Final Site Plan and Design Review and SLUP Amendment

The subject property is located on the north side of W. Maple Road between N. Glenhurst and Chesterfield Avenue. The applicant is proposing an addition to the church to accommodate a larger sanctuary space. Religious Institutions such as Lutheran Church of the Redeemer may operate in an R-1 Zone with a Special Land Use Permit, which the applicant received in 1991.

The applicant is renovating 11,243 square feet of the church while creating an additional 3,791 square feet of usable space which is an 8.3% increase, therefore does not need a CIS. The changes and additions are for expanding the sanctuary space including the narthex, nave, ambulatory room, chance and the balcony. The renovations also expand office capacity and an additional waiting room.

Exterior changes include an enhanced front gable and pediment along with sidewalk improvements, barrier free ramps, landscaping and the relocation of a columbarium. At this time, the applicant is seeking the Planning Board’s recommendation for approval of the Final Site Plan and a Special Land Use Permit Amendment to the City Commission.

1.0 Land Use and Zoning

1.1 Existing Land Use - The site is zoned R-1, Single Family Residential. The current occupant is a religious institution operating with a SLUP.

1.2 Existing Zoning - Currently zoned R-1, Single Family Residential, the existing use is a permitted use with a Special Land Use Permit.

1.3 2016 Regulating Plan - The subject site is not located within the Downtown Birmingham Overlay District.

1.4 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site, including the proposed 2016 Regulating Plan zones.
### 2.0 Setback and Height Requirements

The proposed project appears to meet all of the bulk, area, height and placement requirements. The church steeple and spire is grandfathered in for the height limits. Please see attached zoning summary sheet for further details.

### 3.0 Screening and Landscaping

3.1 **Dumpster Screening** – No changes proposed. The dumpster is currently enclosed with a 6’ masonry screen wall to match the existing church, and a 6’ high pressure treated wooden gate.

3.2 **Parking Facility Screening** – Article 05, Section 4.54 (B)(7) of the Zoning Ordinance require all parking facilities that immediately adjoin the rear or side lot line of property zoned to a residential classification be screened with a 6’ high masonry wall. Currently, the majority of the parking area is screened along the north, east and west property lines with 6’ wooden privacy fencing and various types of vegetation.

On May 14th, 1991, a variance was granted from the Board of Zoning Appeals to permit a 6 foot wooden fence to be used as parking lot screening along the west, north and east property lines. On April 12, 2005, The Board of Zoning Appeals granted a variance to eliminate screening requirements on the first 240 feet of the west property line and to use existing vegetative screening in lieu of a fence. Minutes from both BZA meetings are provided below.

In accordance with section 4.54 (D)(3) of the Zoning Ordinance, screening is not required along the east property line where the proposed parking facility abuts the parking area for the commercial strip plaza next door to the subject site.

Section 4.54 (C)(3)(a) of the Zoning Ordinance requires that the front or side of any parking facility that abuts a street be screened with a 32” high masonry wall placed along the front setback line. Article 04, Section 4.54(D)(1) of the Zoning Ordinance further states that when screening is placed along a front setback line, the resulting
front yard shall be void of all parking and storage and must be landscaped. The applicant appeared before the Board of Zoning Appeals on April 12, 2005 at which time they received variances for the 32” masonry screen walls along the front setback line to screen the parking areas in front of the church and to allow the front 2 parking spaces (4 total) on either side of the curved driveway to extend into the 25’ front yard.

3.3 Mechanical Screening – Five ground mounted condensers are proposed on the west side of the building facing Maple Road. The mechanical units 36” x 36” and are screened by Emerald Green Arborvitae 5 feet in height. There are two rooftop mechanical units on the western side of the new renovation. The mechanical units are obscured by the slope of the roof.

3.4 Landscaping - The applicant is proposing to remove 14 trees to accommodate for the expansion of the building. New additions will be surrounded by a landscaping bed with 78 Winter Gem Boxwoods, 54 Green Mound Alpine Currants and 21 Emerald Arbor Vitae. The front entrance and side courtyard will also have enhanced landscaping with 15 Karl Foester Reed Grass perennials, 12 Risky Business Hostas and 23 Creeping Lilyturf plants.

11 new trees will be planted on the eastern side of the building. 5 Skyline Honey Locusts will be planted along the eastern parking lot entrance, while 3 Eastern Hemlocks, 2 Pink Flair Flowering Cherry trees and 1 Marilee Crabapple tree will be planted along the eastern side of the church.

Although the subject property is zoned R-1 and is not subject to parking lot landscaping requirements, that applicant currently has 7,026 square feet of landscaping in their 80,465 square foot parking lot which is an 8.7% coverage rate.

4.0 Parking, Loading, Access, and Circulation

4.1 Parking – Article 04, Section 4.46 of the Zoning Ordinance requires one (1) space for every six fixed seats in a church. The church has 514 fixed seats, therefore 86 parking spaces are required on site. No changes to the parking lot are proposed. The applicant has 218 spaces on site, 11 of which are barrier free. All of the proposed parking spaces meet the 180 square feet size requirement.

Article 04, section 4.53(C)(3) of the Zoning Ordinance states that when screening is required along a front setback line, screenwall shall be placed along the setback line. The applicant appeared before the Board of Zoning Appeals on April 12, 2005 at which time they received variances for the 32” masonry screen walls along the front setback line to screen the parking areas in front of the church and to allow the front 2 parking spaces on either side of the curved driveway to extend into the 25’ front yard.

4.2 Loading – No changes
4.3 **Access & Circulation** – The front entrance circle drive is being narrowed to a 20 foot width to accommodate the new walkway along the expanded front entrance. A new walkway surrounding the front and side of the building is proposed to connect to ADA accessible ramps on the east and west side of the nave and chance.

The property has four curb cuts, two of which provide access to the rear parking lot, the other two providing ingress and egress to the front circle drive. **It is of note that the proposed walkway improvements connect to the front circle drive as well as the side and rear parking lots, but there is no walkway connecting to the entrance at the public sidewalk.**

5.0 **Lighting**

The applicant is proposing 10 new lights to be installed along the new walkway and columbarium. Six of the lights are proposed to be 150 watt 8-sided lanterns with textured panels and cadalabra vertical base-down lamps made by Antique Street Lamps. Four new Gotham 6-inch specular lights are also proposed; two above the front entrance and two above the side entrance on the west.

As this property is zoned R-1, the Lighting Standards of Section 4.21 of the Zoning Ordinance are not applicable, although the Planning Board may wish to require conditions for SLUP approval. The applicant has provided a photometric plan and lighting specs for their expansive property and parking lot.

The foot-candle ratio is 12.3:1 for circulation areas which satisfies the Zoning Ordinance’s requirement of 20:1 or less. The existing light poles are all below 13’ and are full cutoff luminaires, therefore satisfying the ordinance requirements.

6.0 **Departmental Reports**

6.1 **Engineering Division** – Engineering Department has no comments at this time.

6.2 **Department of Public Services** – No concerns were reported at this time.

6.3 **Fire Department** - No concerns were reported at this time.

6.4 **Police Department** - Comments to be provided by April 22nd, 2020.

6.5 **Building Department** – No concerns were reported at this time.

7.0 **Design Review**

The proposed sanctuary space is meant to be more accommodating for larger events. The expanded narthex provides more gathering space before and after services while the expansion of the east and west ambulatory and balcony provides greater seating capacity.
The new exterior will mainly be composed of “Berwick” modular brick from Belden Brick Co to match the existing brick. The expanded entrance will have four columns made of western red cedar wood that will be painted white. These columns are attached to a white pediment on a gabled roof. The plans indicate sand pebble - fine finish EIFS material on the front of the pediment as well as the east and west exteriors of the expanded Narthex. The sand pebble fine finish EIFS is meant to match the material above the town hall entrance on the west side of the building. The front façade is proposed to have spandrel glass with aluminum-clad wood, stone sills and soldier course headers. The sanctuary is complimented by a 50 foot steeple and spire that is grandfathered in for the height limits. The east and west sides of the sanctuary will have monument windows surrounded by stone detail and soldier course brick. Two windows are proposed to be removed and infilled with brick to accommodate the relocation of offices to the area connecting the sanctuary to the chapel. The roof edges will have a decorative white synthetic trim. A new rehearsal room will be constructed on the west side of the building that is complemented by two columns and an entryway to the side of the parking lot.

The columbarium will be moved from the west side of the chapel to the east side. The project architect has indicated the Church is contracting with a cemetery operator to assist with the relocation of the remains. The columbarium remains will be accompanied by various planters and benches. The entryways for the sanctuary, chapel, columbarium, and rehearsal room will be enhanced by a new walkway surrounded by new landscaping and additional antique lamps.

8.0 Approval Criteria for Final Site Plan

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

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

(2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.

(3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.

(4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.

(5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.

(6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.
9.0 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed for the site described in the application of amendment.

The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

10.0 Recommendation

Based upon review of the Final Site Plan submitted, the Planning Division recommends that the Planning Board recommend approval to the City Commission for the Final Site Plan and Special Land Use Permit Amendment for 1800 W. Maple.

10.0 Sample Motion Language

Motion to recommend approval to the City Commission for the Final Site Plan for 1800 W. Maple.

AND

Motion to recommend approval to the City Commission for the Special Land Use Permit Amendment.

OR

Motion to recommend denial to the City Commission for the Special Land Use Permit Amendment and the Final Site Plan for 1800 W. Maple.

OR

Motion to postpone action on the requested Special Land Use Permit Amendment and the Final Site Plan for 1800 W. Maple, pending receipt of the following:

1) __________________________________________________________

2) __________________________________________________________

3) __________________________________________________________.
Zoning: R-1, Single Family Residential

Adjacent Zoning:

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<th>South</th>
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<th>West</th>
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<td>R-1 Single Family Residential</td>
<td>B-1, Neighborhood Business</td>
<td>R-1 Single Family Residential</td>
<td></td>
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Land Area: 263,686 square feet or 6.053 acres

Minimum Lot Area: 9,000 square feet

Front Setback: 25 feet

proposed: 122.67 feet

Side Setback: 45 feet minimum per side, 112 feet total

proposed: 79.63 feet on the west side; 137.65 on the east side, 217.3 feet total

Rear Setback: 30 feet

proposed: 124.3 feet

Lot Coverage: 30% or 79,105 square feet

proposed: 19% or 49,140 square feet

Minimum Open Space: 40% or 105,474 square feet

proposed: 40% or 105,480 square feet
Max. Height: permitted: 30 feet to the midpoint, 2 stories  
existing: 27 feet to the midpoint,  
(Steeple and Spire are grandfathered in)

Loading: required: N/A  
proposed: N/A

The applicant received a variance for the loading space requirement from the Board of Zoning Appeals on April 12, 2005.

Parking: required: 1 space / 6 fixed seats = 86 (514 fixed seats)  
proposed: 218, including 11 barrier free spaces

The applicant received a variance from the Board of Zoning Appeals to allow 4 parking spaces within the 25 foot front setback on April 12, 2005.

Parking Lot Screening: required: 6 feet high masonry screen wall around all parking facilities that adjoin the side or rear lot line of residential areas. 32” high masonry screen wall around all parking facilities that abut a street.  
proposed: 6 foot wood fence and vegetation

A variance was granted from the Board of Zoning Appeals on May 14, 1991 to permit the wood fence to be used as parking lot screening along the west, north and east property line. An additional variance was received from the BZA on April 12, 2005 to allow the western property line to be screened with vegetation, and to omit screening requirements along the front setback on W Maple.

Landscaping: required: N/A  
Proposed: 8.7% parking lot landscaping coverage

Dumpster Screening: required: 6-foot high masonry screen wall with wooden doors  
proposed: Existing
Mr. Gibbs stated he is going to abstain because he arrived in the middle of the presentation.

Yea: Messrs. Cotton, Hughes, Conlin and Williams

Nay: Mr. Lillie

Abstain: Mr. Gibbs

Motion passes to deny the variance.

Appeal 91-14

The Lutheran Church of the Redeemer, 1800 W. Maple, is requesting a variance to install a wooden stockade fence in lieu of a masonry fence.

Section 5.215, Chapter 39, Birmingham City Code, requires screening fences to be made of masonry and therefore requires a variance.

Mr. Gibbs excused himself from participating in this appeal because he is a member of this church.

Mr. Murphy explained that churches located in residentially-zoned property are required to obtain a Special Land Use Permit. This was granted by the City Commission with the exception of the masonry fence issue because this needed a variance from this Board.

The petitioner is requesting, with the neighborhood's consent, to install a fence to be made of stockade wood material, similar to the type of material already installed in back of the property.

Mr. Tom Boyce, Chairman of the Board of Trustees for the church, explained exactly where the proposed fence would be located. The stockade fence would begin at the first jog on the west side of the property and continue around to the east and back up to Mills Pharmacy. The chain-link fence would be removed and replaced with the stockade fence. There are some neighbors along the north property line who want to keep the chain-link fence in place so the church will continue the existing stockade fence on the north side. The church will maintain the responsibility for cleaning the debris between the two fences.

Mr. Boyce explained the stockade fence is considered more aesthetically pleasing to both the neighbors and the congregation. The wooden stockade fence will not have any kind of detrimental impact on the trees and shrubbery along the property line. There are 26 trees along the property line. A masonry fence would interfere with the root structure of these trees. The issue of snow packing up against the wooden fence and deteriorating it would not be an issue because there is a curb that runs inside the fence by approximately 6' around the whole property.
Mr. Boyce explained whole purpose of putting up the fence to begin with was to address a lot of the neighbors' concerns regarding privacy. Mr. Boyce stated this situation is similar to Holy Name's which was before the Board previously.

Mr. Conlin referred to the names on the petition and asked how many of these people are affected immediately by the fence. Mr. Boyce stated there are 17 names out of 21. The other 3 neighbors were unable to be reached.

A landscape architect had stated that the existence of the trees may be undermined by a masonry wall.

Mr. Boyce stated the fence will be of very high quality cedar. The wooden posts are guaranteed to last 30-40 years.

Mr. Bruce Pence of 210 N. Glenhurst stated he has been a neighbor on the north side of the church's property for 30 years and strongly recommends positive consideration to the petitioner's request.

Ms. Rebecca Morrell who lives on Fairview behind the church on the north end stated she is in favor of the stockade fence in lieu of a masonry fence because she doesn't want any vegetation destroyed. She would like the church to plant some trees to replace some that were originally destroyed.

Mr. Mike Doonan who lives at 166 N. Glenhurst stated he endorses the proposal. The church has done yeoman's work all the way around in pleasing everybody.

Motion by Mr. Conlin

Seconded by Mr. Lillie in reference to Appeal 91-14 to grant a variance under Section 5.215, Chapter 39, Birmingham City Code, to allow the Lutheran Church of the Redeemer to install a cedar stockade fence of the quality represented in the hearing tonight. The petitioner has demonstrated more than adequately two major points, one of which the purpose of the Ordinance is to screen neighboring uses, those being different uses. The neighbors have stood up unanimously and supported the stockade in lieu of the masonry and that shows the spirit of the Ordinance is kept intact. Secondly, the petitioner has gone on record to state that the existing vegetation would be damaged or would have to be substantially removed which would incur damage or inconvenience or ecological problems with the neighbors and that in and of itself is a practical difficulty. Consequently, I would move that the variance be granted per the proposal as outlined tonight by the Board and linked to the plans submitted.
Yeas: Messrs. Williams, Cotton, Hughes, Conlin and Mr. Lillie

Nays: None
Motion passes to grant the variance.

Appeal 91-15

Ms. Susan Pohl, representing the property owner of 1872 Derby, Birmingham, Michigan is requesting a variance in order to permit a family day-care home closer than 750 feet from another family day-care home.

Section 5.22(f), Chapter 39, Birmingham City Code, states that no family day-care homes shall be located closer than seven hundred fifty (750) feet from another family day-care home or foster-care facility except as permitted below:

The Board of Zoning Appeals may approve the location of a family day-care home within seven hundred fifty (750) feet of another existing home or foster-care facility upon proof and specific findings by the Board that the resulting concentration of uses will not adversely affect the peace and tranquility or the residential character of the surrounding area.

Mr. Murphy explained the Board has received this evening some correspondence from some of the neighbors and from the petitioner. The application that was sent to the Board does not have the signature of the owner, however Mr. Murphy explained he did have it in his file.

Mr. Murphy stated that if the Board grants this approval, it will run with the land; it would be a permanent variance for this address.

Mr. Lillie asked how many houses there are between the two day-care facilities; Mr. Murphy believes there are two.

Ms. Pohl stated she would like to be granted the variance and didn't see how it would cause any problems with the neighbors. She explained that most of the traffic from the other day-care facility, on the corner of Derby and Graefield, is located on Graefield. The traffic from her proposed facility would be located on Derby. Her driveway can accommodate three cars. Ms. Pohl stated she is caring for three children at the present time and the maximum the City allows is six children.

Ms. Pohl stated she can rent the house with the option to buy.
1800 WEST MAPLE
Lutheran Church of the Redeemer
(Appeal 05-23)

The owners of the property known as 1800 W. Maple request the following variances or reviews:

A. A dimensional variance of 240.5 ft. to eliminate the requirement for a 6 ft. high masonry wall along the unscreened portion of the parking area along the west property line and to use existing vegetative screening in lieu of the 6 ft. high masonry wall required by Section 126-572 (7) of the Zoning Ordinance;

B. A dimensional variance of 137 ft. to eliminate the requirement for a 32 in. high masonry screenwall at the front setback line along W. Maple in lieu of the 32 in. high masonry screenwall required by Section 126-572 (d) (3) (a)

C. A dimensional variance to allow the existing four parking spaces to remain in the required front setback along W. Maple in lieu of eliminating the existing four parking spaces as required by Section 126-572 (e) (1) of the Zoning Ordinance.

D. A dimensional variance of one loading space in lieu of the one loading space required by Section 126-569 of the Zoning Ordinance.

This property is zoned R-1 Single-Family Residential.

One letter of approval has been received from an adjacent residential neighbor.

Mr. Sabo advised that the Lutheran Church of the Redeemer has received final site plan and design review approval from the Planning Board along with the Planning Board’s recommendation to the City Commission for approval of a Special Land Use Permit (“SLUP”) Amendment with conditions attached.

The applicant is proposing to make numerous minor site plan changes, including reconfiguration of the parking area, curb and gutter improvements, sidewalk improvements, installation of numerous barrier-free ramps, landscape changes, construction of a dumpster enclosure, and addition of cenotaphs. As a result of adding landscaping and handicap compliant parking spaces to the parking lot, they will go from 231 spaces existing to 224 spaces proposed.
Mr. Jeffrey Huhta, P.E. from Nowak & Fraus, Consulting Engineers, was present along with Mr. Curtis Burstein from the Church’s building committee. Mr. Huhta explained that basically, the existing parking area is in disrepair. The church would like to pull their existing parking away from the mature pine trees on the east side of the property and create landscape islands throughout the lot. Mr. Huhta went on to address the four variances.

A. With respect to eliminating the requirement for a 6 ft. high masonry wall on the unscreened portion of the parking area along the west property line, the church has responded to the concerns of the individual property owners along the row who preferred vegetation behind their property, rather than a wall. Now that the vegetation is matured and established, any disturbance to this area would be a detriment to the neighborhood.

B. As far as the 32 in. masonry screenwalls along the front setback line, Mr. Huhta felt that placing screenwalls in that area really doesn’t make a whole lot of sense. The two 20 ft. long screenwalls that would be required on either end of the parking horseshoe will not provide any significant benefit as they will do nothing to screen the other parking spaces that are permissible by the Ordinance. It would be much better to enhance that area with some landscaping.

C. The existing four parking spaces in the required 25 ft. front setback are visible to the general public and serve an important function for the Church operations. In addition, the Church needs to retain as many on-site parking spaces as possible to serve its congregation.

D. The Church has no need for a loading space as there are no functions within the Church that require such a space. The Church does not receive any deliveries from trucks; all deliveries are from passenger vehicles. Of greater importance as previously stated is to provide for as many regular parking spaces as possible.

No one from the audience wished to participate in the discussion at 11:10 p.m.

Motion by Mr. Judd
Seconded by Mr. Conlin with respect to Appeal 05-23, 1800 W. Maple, the petitioner seeks four variances to the Zoning Ordinance. (A) is a variance to Section 126-572 (7) to eliminate the requirement for a 6 ft. high masonry wall along the unscreened portion of the parking area; (B) is a variance to Section 126-572 (d) (3) (a) to eliminate the requirement of a 32 in. high masonry screenwall at the front setback along W. Maple; (C) is a variance to Section 126-572 (e) (1) to allow the existing four parking spaces to remain in the required front setback; and (D) is a variance to Section 126-569 to eliminate the requirement of one loading space. There are four standards that a petitioner must meet to successfully argue practical difficulty: The first is whether strict compliance with the restrictions governing the area setbacks, frontage, height, etc. would unreasonably prevent the petitioner from using the property and to require the petitioner to conform
would be unnecessarily burdensome. The petitioner has shown that the four parking spaces in the required 25 ft. front setback serve an important function for the Church operations and the Church needs to retain as many on-site parking spaces as possible.

The second standard is whether to grant the variance would do substantial justice to the applicant or surrounding property owners. Under these circumstances it would. The Church has made an extremely good faith effort to meet the requirements of abutting property owners by planting vegetation on the unscreened portion of the parking area rather than erecting a 6 ft. high screenwall. Vegetation and landscaping are also being added to the rest of the property in order to make it aesthetically more pleasing.

The third standard is whether the plight of the petitioner is due to unique circumstances of the property. This property is certainly unique, in that it is a church that needs as much parking as possible in order to serve its congregation.

Last is whether the problem is self-created. The problem has been self-created in an effort to improve the Church property from the perspective of its members as well as the neighbors.

For those reasons, the motion is to grant the variances and tie the motion to the plans as presented.

Motion carried, 7-0.

ROLL CALL VOTE
Yeas:  Judd, Conlin, Hughes, Koseck, Lillie, Lyon, Stamps
Nays:  None
Absent:  None
OLD PLANS REVIEWED BY THE PLANNING BOARD

SITE PLAN APPROVAL PACKAGE

LUTHERAN CHURCH OF THE REDEEMER

1800 W. MAPLE ROAD
BIRMINGHAM, MICHIGAN

PROJECT NO. 15165
**GENERAL TREE PROTECTION NOTES**

1. APPROVED TREE PROTECTION SHALL BE ERECTED PRIOR TO THE START OF CONSTRUCTION ACTIVITIES, AND SHALL REMAIN IN PLACE UNTIL CONSTRUCTION IS COMPLETE.

2. ALL UNDERSTORY VEGETATION WITHIN THE LIMITS OF PROTECTIVE FENCING SHALL BE PRESERVED.

3. NO PERSON MAY CONDUCT ANY ACTIVITY WITHIN THE DRIP LINE OF ANY TREE DESIGNATED TO REMAIN, INCLUDING BUT NOT LIMITED TO, PLACING SOLVENTS, BUILDING MATERIALS, CONSTRUCTION EQUIPMENT, OR SOIL DEPOSITS WITHIN THE DRIP LINE.

4. WHERE GROUPINGS OF TREES ARE TO REMAIN, TREE FENCING SHALL BE PLACED AT THE LIMITS OF GRADING LINE.

5. DURING CONSTRUCTION, NO PERSON SHALL ATTACH ANY DEVICE OR WIRE TO ANY TREE, SCHEDULED TO REMAIN.

6. ALL UTILITY SERVICE REQUESTS MUST INCLUDE NOTIFICATION TO THE INSTALLER THAT PROTECTED TREES MUST BE AVOIDED. ALL TRENCHING SHALL OCCUR OUTSIDE OF THE PROTECTIVE FENCING.

7. SWALES SHALL BE ROUTED TO AVOID THE AREA WITHIN THE DRIP LINES OF PROTECTED TREES.

8. TREES LOCATED ON ADJACENT PROPERTIES THAT MAY BE AFFECTED BY CONSTRUCTION ACTIVITIES MUST BE PROTECTED.

9. ROOT ZONES OF PROTECTED TREES SHOULD BE SURROUNDED WITH RIGIDLY STAKED FENCING.

10. THE PARKING OF IDLE AND RUNNING EQUIPMENT SHALL BE PROHIBITED UNDER THE DRIP LINE OF PROTECTED TREES.

11. THE STRIPPING OF TOPSOIL FROM AROUND PROTECTED TREES SHALL BE PROHIBITED.

12. ALL TREES TO BE REMOVED SHALL BE CUT AWAY FROM TREES TO REMAIN.

13. THE GRUBBING OF UNDERSTORY VEGETATION WITHIN CONSTRUCTION AREAS SHOULD BE CLEARED BY CUTTING VEGETATION AT THE GROUND WITH A CHAIN SAW OR MINIMALLY WITH A HYDRO-AXE.

14. THE CONTRACTOR IS RESPONSIBLE FOR THE REPLACEMENT PER ORDINANCE GUIDELINES, FOR THE DAMAGE OR REMOVAL OF ANY TREE DESIGNATED TO REMAIN.

15. TREES TO BE REMOVED SHALL BE FIELD VERIFIED, EVALUATED AND FLAGGED FOR REMOVAL, BY THE LANDSCAPE ARCHITECT OR FORESTER, ONLY AS DIRECTED BY THE OWNER OR OWNERS REPRESENTATIVE.

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**TREE PROTECTION DETAIL-PLAN**

**TREE PROTECTION DETAIL-SECTION**

**LEGEND:**

- TREES TO BE REMOVED
- TREES TO REMAIN
- TREE PROTECTION FENCING

**Note:** TREE PROTECTION FENCING TO BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.
GROUND-MOUNTED A/C CONDENSERS

BUILDING ILLUMINATION AT ENTRANCES

DECORATIVE SITE LIGHTING

LUTHERAN CHURCH OF THE REDEEMER
MAYO ROAD
BIRMINGHAM, MICHIGAN

NEW SITE COMPONENTS
DATE: June 1, 2020
TO: Joseph A. Valentine, City Manager
FROM: Jana L. Ecker, Planning Director
SUBJECT: Request to set a public hearing to consider the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5

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

BACKGROUND:
On May 27, 2020, the Planning Board conducted a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward, currently the site of the former Mountain King restaurant and Talmer Bank. After much discussion, the Planning Board voted 4 – 3 in favor of recommending approval of the proposed rezoning to the City Commission and adopted the findings of fact contained in the staff report dated April 17, 2020.

LEGAL REVIEW:
No legal review is required.

FISCAL IMPACT:
There is no fiscal impact for this agenda item.

SUMMARY:
The Planning Division requests that the City Commission set a public hearing date for July 13, 2020 to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward.

ATTACHMENTS:
Please find attached the following documents for your review:

- Staff reports prepared for the Planning Board
- Rezoning application and supporting documents submitted by applicant
- Letters from the City Attorney
- All relevant City Commission and Planning Board meeting minutes
- All letters and petitions received for and against the proposed rezoning

SUGGESTED RESOLUTION:
To set a public hearing date for July 13, 2020 to consider the proposed rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.
DATE: April 17, 2020

TO: Planning Board

FROM: Jana Ecker, Planning Director

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

The applicant for 469-479 S. Old Woodward (Parcel Numbers 19362 08011 and 1936208012 respectively) requested that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The maximum height allowed in the D-4 zoning district is 4-5 stories. In the D-5 zoning district, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 zone.

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

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

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

On October 10, 2018, the Planning Board continued discussion and deliberations on the question of whether a rehearing should be held based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.
On both November 14, 2018 and again on December 12, 2018, the applicant requested postponement of the rehearing to allow additional time for the developer and property owner to meet with the adjacent property owners. Thus, the matter was ultimately postponed until the January 23, 2019 meeting of the Planning Board.

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

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

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

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

Petition for Amendment to the Zoning Ordinance:

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

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

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

On September 11, 2019, the Planning Board reviewed the study prepared by DPZ CoDesign with respect to the area in Downtown Birmingham bounded by Haynes, Brown, Old Woodward and Woodward Avenue and the findings as to which properties
should be considered for rezoning to D5 given their proximity to properties with existing buildings over 5 stories in height. The Board requested additional massing illustrations. The Planning Board also discussed proposed ordinance language to clarify the meaning of the terms “immediately adjacent” and “abutting”. The Planning Board concluded that further study was needed on a clear definition of abutting, and stated that draft ordinance language should also address how streets and alleys would affect the definition of abutting.

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

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

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

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

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

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

**Abutting**: Sharing a boundary or property line.

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

At this time the applicant has requested that the rezoning request for 469 – 479 S. Old Woodward be brought back to the Planning Board for review and consideration given that no action was taken by the City Commission on March 11, 2019, and given that the
D5 ordinance language had been clarified and approved by the City Commission on January 13, 2020.

History of Property

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

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

Requirements for Rezoning

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

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

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

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

2. An explanation of why the existing zoning classification is no longer appropriate
**Applicant response:**

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

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

**Applicant response:**

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

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

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

Information required on plot plans shall be as follows:

1. Applicant’s name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner’s parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

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

Article 7 section 7.02 of the Zoning Ordinance further states:

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

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
- The objectives of the City’s then current master plan and the City’s 2016 plan.
- Existing uses of property within the general area of the property in question.
- Zoning classification of property within the general area of the property in question.
- The suitability of the property in question to the uses permitted under the existing zoning classification.
- The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

**Planning Division Analysis & Findings**

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

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

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
- The objectives of the City’s then current master plan and the City’s 2016 Plan.
- Existing uses of property within the general area of the property in question.
- Zoning classification of property within the general area of the property in question.
- The suitability of the property in question to the uses permitted under the existing zoning classification.
- The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.
Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.0(B)(5) of the Zoning Ordinance as noted below.

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Existing Land Use</th>
<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
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<tbody>
<tr>
<td>Existing Zoning</td>
<td>B-3, Office Residential</td>
<td>B-3, Office Residential</td>
<td>B-2, General Business</td>
<td>B-2B, General Business</td>
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<tr>
<td>Overlay Zoning</td>
<td>D-5</td>
<td>D-5</td>
<td>MU-5</td>
<td>D-2</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.

2. Department of Public Services – The Department of Public Services has no concerns at this time.

3. Fire Department – The Fire Department has no concerns with the rezoning at this time.

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

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

**Suggested Action:**

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

**OR**

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

1. 
2. 
3. 

**OR**

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

1. 
2. 
3. 
02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

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

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

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

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

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

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

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

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

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

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

Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.
Mayor Nickita closed the Public Hearing at 10:40 PM.

**MOTION: Motion by DeWeese, seconded by Boutros:**

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

AND

To approve the rezoning of the following properties:

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

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

**VOTE: Yeas, 7**

Nays, 0

Absent, None
REZONING APPLICATION

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

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

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

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

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

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

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.
Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

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

- **Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii)** requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.

- **Sec. 7.02 (B) (2) (b) (i)** - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.

- **Sec. 7.02 (B) (2) (b) (ii)** - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.

- **Sec. 7.02 (B) (2) (b) (iii)** - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S. Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

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

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

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

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.

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

- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?

- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

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

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

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

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

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

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

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

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

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

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

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.
Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

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

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

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

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

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

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

Mr. Boyle made the following points:
- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.
Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

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

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

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

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

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

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

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

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

**Motion failed, 2-5.**

**ROLLCALL VOTE**
Yeas: Boyle, Jeffares
Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce
Absent: Share, Williams

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

Motion carried, 5-2.

ROLLCALL VOTE
Yeas:  Whipple-Boyce, Koseck, Clein, Emerine, Ramin
Nays:  Jeffares, Whipple-Boyce
Absent:  Share, Williams
REZONING APPLICATION

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

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

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

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

Motion by Mr. Williams  
Seconded by Mr. Koseck to include the following correspondence into the official record:  
- Letter dated September 11, 2018 from Susan K. Friedlaender, Attorney with  
  Friedlaender, Nykanen, Rogowski, PLC;  
- Letter dated September 10, 2018 from B. Geiger, Unit 623, 411 S. Old Woodward  
  Ave;  
- Letter dated September 11, 2018 from Timothy J. Currier, Beier Howlett, City  
  Attorney, dealing with the process of rezoning application before the Planning  
  Board.

Motion carried, 7-0.

VOICE VOTE  
Yeas: Williams, Koseck, Boyle, Clein, Emerine, Jeffares, Whipple-Boyce  
Nays: None  
Absent: Share

Mr. Williams pointed out the Planning Board has opinions of opposing counsel dealing with the issue  
as to whether the D-5 Ordinance can in fact apply to the two properties in question (former Mountain  
King and Talmer Bank sites). That is a legal question for the City Attorney to decide.
The second issue is whether the two parcels are or are not in the Parking Assessment District. It is important to know from the City’s standpoint why this property is or is not in the Parking Assessment District based on the records of the City at the time the Parking Assessment District was created. Further, if they are in the Parking Assessment District, then the analogies to the other five-story buildings in the City in Downtown which are in the Parking Assessment District and don't have to provide on-site parking is relevant. If they are not in the Parking Assessment District and the applicant is required to provide on-site parking, then that is a different conclusion. He wants the opinion of the City Attorney before proceeding because if the conclusion is that the properties are not eligible for D-5 zoning then having a hearing is a waste of time.

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

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

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

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

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

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

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

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

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

**Motion by Mr. Williams**
**Seconded by Ms. Whipple-Boyce to postpone consideration of the public hearing which was scheduled for tonight to October 10, 2018 with the condition that the Board receive**
the legal opinion of counsel to the City of Birmingham submitted to the Planning Board in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

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

**Motion carried, 7-0.**

**VOICE VOTE**
- Yeas: Williams, Whipple-Boyce, Boyle, Clein, Emerine, Jeffares, Koseck
- Nays: None
- Absent: Share
REZONING APPLICATION

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

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

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

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

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

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

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

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

- There was a mistake in the CIS that was included in the packet that indicated this property is in the PAD. This property is not.
- The ordinance states pursuant to 7.02 (B) (5) (a-e) that the Planning Board should make findings of fact. There was no presentation of a finding of fact as it was presented to the City Commission.
• The D-5 Zone was enacted and at that time, three buildings were rezoned to D5, but the ordinance itself is clear and unambiguous. It provides language that indicates there are going to be different buildings put into the D-5 Zone.

• The fact that the property sits outside of the PAD should be looked at because of the potential five or six types of structures that could be built under the D-4 Ordinance. That is what is new to their rezoning argument. If a mixed-use building is constructed in D-4, it must have 288 parking spaces on-site. That requires their building to be accompanied by nine underground parking levels. That is a major change in the way the Planning Board might look at this for rezoning.

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

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

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

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

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

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

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

The ordinance does not say that the Planning Board has the authority to rehear an application that it has denied when the City Commission has not heard it and denied it. It says the same application shall not be brought back within the same year unless there has been substantial change in conditions which the applicant can present to the Planning Board upon reapplication. That is not what happened here.
Ms. Friedlander stated that the City Commission speaks through its resolutions. The Commission's resolution says to cancel the public hearing to consider approval of the rezoning of 469-479 S. Old Woodward Ave. from B-3/D-4 to B-3/D-5 and refer the matter back to the Planning Board. It does not say to refer the matter back to the Planning for a rehearing and reconsideration of this rezoning request.

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

**Motion by Mr. Boyle**

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

**Motion carried, 7-0.**

**VOICE VOTE**

Yees: Boyle, Share, Clein, Jeffares, Koseck, Whipple-Boyce, Williams
Nays: None
Absent: Ramin

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

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

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

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

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

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

Mr. Williams said his understanding is that the Board didn't go beyond the three properties which were non-conforming because no other properties were before them. It is clear to him that the written record of the CIS was incorrect. The record should be clear that the property is not within the PAD. Also, he doesn't think the Planning Board complied with the ordinance in its
findings. He added that it would be inappropriate to go forward with a rehearing tonight because there is a counsel of record who can't be present who said he represents a certain party that is not here. Everybody should be given an opportunity to be heard.

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

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

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

**Motion failed, 3-4.**

ROLLCALL VOTE  
Yeas: Share, Koseck, Clein  
Nays: Boyle, Jeffares, Whipple-Boyce, Williams  
Absent: Ramin

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

Motion carried, 4-3.

ROLLCALL VOTE  
Yeas: Jeffares, Whipple-Boyce, Boyle, Williams  
Nays: Koseck, Share, Clein  
Absent: Ramin

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

**Motion by Mr. Williams**  
_Seceded by Mr. Boyle that the re-hearing that has been approved by the Planning Board be held on Wednesday, November 14, 2018._

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

**Motion carried, 7-0.**

VOICE VOTE  
Yeas: Williams, Boyle, Clein, Jeffares, Koseck, Share, Whipple-Boyce  
Nays: None  
Absent: Ramin
E. REZONING REQUEST

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

Motion by Mr. Williams
Seconded by Ms. Whipple-Boyce that the rehearing of the rezoning request for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) be postponed to the regular Planning Board meeting of January 23, 2019.

Motion carried, 7-0.

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

VOICE VOTE
Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Koseck, Share
Nays: None
Absent: None

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

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

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

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

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

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

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

- The 469–479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.
- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors’ preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.
Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

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

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

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

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

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

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

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

- The applicant’s assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight’s presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.
- According to Planning Director Ecker’s report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).
Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.

A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City’s 2016 and Master Plans.

The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City’s Plans.

The discussion of changing this site’s zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

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

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

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

- Regarding 7.02(B)(2)(b)(i), the applicant is required to show, and the Board is required to present findings of facts, as to why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described ‘necessary’ as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged
this to be an understandable preference on the part of the applicant, he asserted that it would not be a 'necessary' change. Additionally, the applicant’s contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and ‘necessary’ zoning change.

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

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

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

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

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

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

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

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

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.
Ms. Friedlander told the Board that all the letter’s points had been covered in the evening’s discussion.

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

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

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

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

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

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

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board’s interpretation. He clarified that the Board’s directive was to
determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City’s Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member’s replies.

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

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

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

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

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

Motion carried, 4-3.

ROLL CALL VOTE
Yeas: Whipple-Boyce, Emerine, Jeffares, Williams
Nays: Clein, Koseck, Share
Absent: Ramin

Chairperson Clein explained that this is a recommendation to the City Commission. He explained the Commission will then take this recommendation and all attendant information, hold another public hearing of the applicant’s request and the community’s perspective, and make their determination. Chairperson Clein thanked the audience for voicing their opinions during the discussion.
NEW BUSINESS
PUBLIC HEARING TO CONSIDER THE REZONING OF 469 – 479 S. OLD WOODWARD FROM B3/D4 TO B3/D5
Mayor Bordman suggested the Commission consider including this property in the Parking Assessment District (PAD) before considering whether to rezone the property, since they are separate considerations.

Commissioner DeWeese supported Mayor Bordman’s suggestion.

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

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

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

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

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

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

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

Commissioner Nickita said this will end up before the APC, so it would be most efficient to move the PAD question for their study now.
Commissioner Sherman opined that this discussion was inappropriate in both timing and procedure. He said that not only does this conversation have nothing to do with the current rezoning request, but the onus for requesting a property’s inclusion in the PAD is on the property owner, not the City.

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

Mayor Bordman noted for the record that the City received a confirmed petition from the property’s neighbors. As a result, according to state statute, the motion to re-zone would have to pass with a ¾ vote, meaning six out of the seven Commissioners approving.

Mayor Bordman then gave a review of public hearing procedure and opened the public hearing at 7:59 p.m.
Planning Director Ecker presented the proposed rezoning. 

Clarifications/Comments

Commissioner Nickita stated Birmingham Place, in terms of space which can be occupied, is 98’ 2” tall. The mechanicals bring the height of the building up to 114’ 4”.

Planning Director Ecker explained:

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

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

- The Planning Board considered the matter of the D5 zoning designation very carefully, as the video excerpt demonstrated. He reviewed the Board’s process for creating the D5 designation, adding that new construction was anticipated as a result of the D5 zoning classification.
- This is clearly not an instance of spot-zoning, since spot-zoning entails changing one building to be zoned differently from the surrounding properties, allowing permitted uses that are inconsistent with the area, and is an unreasonable classification. None of those conditions are
present in the subject rezoning request. The proposed rezoning would make this building the same as the surrounding properties, have similar use to the surrounding buildings, and would be a reasonable classification change.

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

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

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

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

Mayor Bordman invited members of the public to speak.

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

Mayor Bordman thanked Mr. Rattner for his comments.

Susan Friedlaender, attorney at Friedlaender Nykanen & Rogowski, said the excerpt Mr. Rattner presented from the July 8, 2015 PB meeting was irrelevant because the minutes from a PB
meeting in January 2016 reflect the PB was unable to reach consensus about D5 zoning. At that time the PB decided to address the non-conforming aspects of the 555 Building and not the whole surrounding area. Ms. Friedlaender continued:

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

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

- The effect of the proposed rezoning on the south-facing condominiums is already apparent, as one was taken off the market with no offers and two have been on the market for over 120 days, when in the last four years condominiums in Birmingham Place were on the market for less than 35 day.
- Sales of condominiums in other parts of the building have not fared better.
- A sixteen-year office tenant of Birmingham Place informed Ms. Prentice he would not be renewing his lease because he did not want his view to be obstructed by a hotel.

- Continued slow residential sales and rentals will decrease the taxable value of Birmingham Place and decrease tax revenue received by the City. The current taxable value of Birmingham Place is estimated at $36 million which generates an estimated $1.6 million in yearly property taxes to the City.
- Birmingham Place has 146 residential units.

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

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

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

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

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

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

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

- Mr. Rattner argued that rezoning should be considered based on whether it is necessary in order to bestow the rights and usage common to an adjacent property to the property in question, which is not what the City ordinance says. The question the ordinance actually addresses is whether the current zoning allows for the enjoyment of property ownership.

Mickey Schwartz of Birmingham Place said the City’s previous plans intentionally limited building height, and this matter should be considered as part of the current Master Planning process. He noted that a number of other buildings in the area have conformed to their D4 zoning and it has not been a problem for them.
Richard Huddleston, vice-president of Valstone Asset Management and office tenant at 260 E. Brown, explained that from November 2010 - December 2017 Valstone owned the commercial space at Birmingham Place. He continued:

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

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

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

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

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

Alice Lezotte, a Birmingham Place resident, said that Birmingham Place is a vertical neighborhood and entreated the Commissioners to consider it as such, keeping in mind what they would want for their horizontal neighborhoods. She explained this discussion is a matter of quality of life, air, space, noise, and safety for the residents of Birmingham Place.
Fred Lavery, owner of the Audi Dealership on Woodward in Birmingham, said that as a business owner who has been party to SLUPs with the City he believes Mr. Markus is correct in saying that the City gains control by rezoning the parcel to D5 because of the SLUP requirement. The Triangle District, which is designed with consideration of New Urbanism, requires building heights from five to nine stories, meaning the precedent for taller buildings has already been set in Birmingham.

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

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

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

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

Commissioner DeWeese said he did not understand the D5 zoning designation to be applicable to any buildings beyond the specific non-conforming buildings for which the designation was designed. He said he was not convinced the zoning needed to be changed for enjoyment of use, and that the 555 Building seems to be made up of two buildings, the shorter of which would be more appropriate to determine the height to which the proposed building at 469 - 479 S. Old Woodward could go. While he said he would consider other points, at this time Commissioner DeWeese indicated he would not be voting to approve the rezoning.

Commissioner Sherman said the question of what buildings and areas would be appropriately included in the D5 zoning area, with specific attention from Haines to Brown, should be sent back
to the PB with a request for a definitive answer. No action should be taken on the motion because it is too related to the potential development in this case.

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

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

Commissioner Nickita said:

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

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

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

- He does not see a significant difference between the first criterion requiring rezoning for the necessity and preservation of enjoyment and rights and the second criterion requiring rezoning if the zoning classification is no longer appropriate. That said, the applicant made a
compelling case that parking is unfeasible with this parcel zoned to D4, which satisfies both criteria.

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

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

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

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

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

**VOTE:**

- **Yeas,** 3
- **Nays,** 4 (Boutros, Harris, Nickita, Sherman)

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

MOTION DIED FOR LACK OF A SECOND

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

MOTION DIED FOR LACK OF SECOND

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

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

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

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

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

Mayor Bordman invited public comment on the motion.

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

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

Mr. Bloom said he would like to know the impact on the City if the parcel is built up as a hotel, office building, mixed use space, or any other type of development. He would want the PB to
report on each building-type’s likely impact on parking, public safety, density, and overall quality of life for Birmingham residents.

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

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

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

**VOTE:** Yeas, 2 (Nickita, Sherman)

Nays, 5

**MOTION FAILED**

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

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

Mayor Bordman recessed the meeting for three minutes. The meeting resumed at 10:48 p.m.
DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

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

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

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

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.
On September 12, 2018, the Planning Board considered the applicant’s request for a rehearing based on new information. After much discussion, the Planning Board voted to postpone consideration of the public hearing until October 10, 2018, pending receipt of a legal opinion of counsel in writing as to whether the proposed properties are eligible to be rezoned to the D5 category.

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

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

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

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

LEGAL REVIEW:
No legal review is required.

FISCAL IMPACT:
There is no fiscal impact for this agenda item.

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

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

ATTACHMENTS:
Please find attached the following documents for your review:

- Rezoning application and supporting documents submitted by applicant
- Letter from the City Attorney dated September 11, 2018 and October 1, 2018
- Staff reports prepared for the Planning Board
- All relevant City Commission and Planning Board meeting minutes
- All letters and petitions received for and against the proposed rezoning
SUGGESTED RESOLUTION:
To APPROVE the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5;

OR

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

OR

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

AND / OR

To direct the Advisory Parking Committee to review the properties at 469 – 479 S. Old Woodward for inclusion into the Parking Assessment District, and to provide a recommendation to the City Commission.
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

   Change premises described as:

   479 South Old Woodward Avenue

   No. Street

   Tax ID #: 19-36-208-012; see documents for more information

   Legal Description__________________________________________

   from its present zoning classification of __________ to __________.

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

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

2. Change premises described as:

   _____________________________

   No. Street:

   _____________________________

   Legal Description__________________________________________

   from its present zoning classification of __________ to __________.

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

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

Signature of Applicant: 

Print Name: Christopher J. Lange

Name of Owner: Birmingham Tower Partners, LLC

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

Birmingham, Michigan 48009
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

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

Date Received: __________________________  Received By: __________________________

Resolution No. __________________________ Approved/Denied __________________________

Application Fee: $1,500.00  Receipt Number __________________________

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

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

1. Preliminary discussion with the Community Development Director or City Planner.

2. Formal application to City Commission with the following information:
   a) Change requested
   b) Signature and name of persons requesting change
   c) Reasons for requested change

3. City Commission will refer request to the Planning Board for recommendation and final report.

4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.

5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.

6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
   a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
   b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

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

7. The City Commission will then take action on the application upon review of the Planning Board’s recommendation and approved minutes of the Public Hearing.

8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

   Change premises described as:

   469 South Old Woodward Avenue
   No.                      Street
   Tax ID #: 19-36-208-011; see documents for more information
   Legal Description
   ___________________________ from its present zoning classification of B3/D4 to B3/D5.

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

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

2. Change premises described as:

   ___________________________ from its present zoning classification of ___________________________ to ___________________________.

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

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

Signature of Applicant: ___________________________
Print Name: Christopher J. Longe
Name of Owner: Birmingham Tower Parters, LLC
Address and Telephone Number: 251 East Merrill Street, Suite 205
Birmingham, Michigan 48009
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

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

Date Received: ____________________  Received By: ____________________

Resolution No. ____________________  Approved/Denied ____________________

Application Fee: $1,500.00  Receipt Number ____________________

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.
May 17, 2018

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

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

Dear Members of the Planning Board and City Commission:

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

Executive Summary

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

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

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

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

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

The Birmingham of 2016

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

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to “…guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan (“Birmingham Plan”), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.
Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

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

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

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

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

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

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

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

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

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

**Conclusion**

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

Very truly yours,

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

Richard D. Rattner

RDR/emc
City of Birmingham  
City Commission  
151 Martin St.  
Birmingham, MI  48009

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

Dear Members of the Planning Board and City Commission:

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

Executive Summary

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

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

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

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

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

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan (“2016 Plan”) and amended the Zoning Ordinance to include the Downtown Birmingham Overly District. The Subject Property is located in the D-4 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to “...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan (“Birmingham Plan”), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.
Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

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

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

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

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

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

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

The existing D-4 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the
existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.

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

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

Conclusion

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

Very truly yours,

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

[Signature]

Richard D. Rattner

RDR/cmc
CERTIFICATE OF SURVEY

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

This is to certify that the map or plan and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for Title Survey (ST-3) and the survey was completed on March 3, 2017.

David Cole, PLS No. 55191
Agent for PEA, Inc.
CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL BE REQUIRED TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.

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

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**PRELIMINARY UTILITY PLAN**

**SCALE: 1" = 20'**

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<th>(4) Refill Factor</th>
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**PEA, Inc.**

**MARCH 6, 2017**

**NOT  FOR  CONSTRUCTION**

**C-6.0**
August 13, 2018

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

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

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

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

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

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.
The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District’s plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City’s modern plan to create a sustainable, vibrant downtown.

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

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

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

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

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

**Zoning Analysis – Revisited**

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

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

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

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

  The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2108 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a “D-4 building would not work” at the site (Mr. Koseck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemned by the application of the ordinance. It is unfair to hold the applicant to a
standard that requires proof that the property cannot be used as zoned rather than the “appropriateness” of current zoning. When properly analyzed in the context of the Master Plan, which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to share the same zoning classification as its immediate neighbors. As will be demonstrated in the next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3 zoning requirements.

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

**469 S. Old Woodward**

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

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

**479 S. Old Woodward**

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

Given lot 479’s configuration, the only onsite parking that would be practically feasible is approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite parking spaces would limit the building footprint to not more than from 1,950 square feet to
approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

**Combined Lots**

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

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

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

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham
Place. They argued that the new Zone did not apply to any other properties. This assertion ignores the very careful hard work of the City Commission, the Planning Board, and the Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to its plain language.

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

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

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

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

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations that the D-5 is closed to other buildings led the Board to bypass the Applicant’s D-5 site plan design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham Place and the impact of such on the Birmingham Place residents. However, it is clear that when these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually the owner of the subject Property would apply to be rezoned for the reasons stated in this letter. The idea that an ordinance is created for only a few buildings, when the ordinance itself states otherwise, is unsupportable and unreasonable. Rezoning the subject Property to a D-5 Zone will be putting this parcel on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be
developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (Exhibit B). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

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

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

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

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

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

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

The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not “shown a D-4 building could not work.”
In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

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

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

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

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

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

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

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

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B)(5)(a-e). No contrary findings of fact were made by the Planning Board.

- The Property is the only D-4 property in the City not in the Parking Assessment District. The report in the Planning Department’s packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.

- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.

- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

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

RDR/gsm
Project M1 - The Hazelton
Birmingham Tower Partners, LLC
577 South Old Woodward
Birmingham, Michigan 48029

BIRMINGHAM PLACE HEIGHT COMPARISON DIAGRAM
CHRISTOPHER J. LONGE AIA
ARCHITECTURE INTERIORS
10 Pedestry, Birmingham, Michigan 48019 • 248.588.8360

MECHANICAL ROOFLINE
80' D-4 ZONING ROOFLINE
70' D-4 ZONING ROOFLINE

MECHANICAL ROOFLINE
80' D-4 ZONING ROOFLINE
70' D-4 ZONING ROOFLINE

D-4 ZONING BUILDING OUTLINE
R4 ZONING BUILDING OUTLINE
60' D-4 ZONING BUILDING OUTLINE
50' D-4 ZONING BUILDING OUTLINE
40' D-4 ZONING BUILDING OUTLINE
30' D-4 ZONING BUILDING OUTLINE
20' D-4 ZONING BUILDING OUTLINE
10' D-4 ZONING BUILDING OUTLINE
0' D-4 ZONING BUILDING OUTLINE
# CITY OF BIRMINGHAM
# PLANNING BOARD ACTION ITEMS
# OF WEDNESDAY, JUNE 27, 2018

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REVISED FINAL SITE PLAN AND DESIGN REVIEW | 2 |
| 1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant | 2 |
| Motion by Ms. Whipple-Boyce  
Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4. | 2 |
| Motion carried, 7-0. | 2 |
| 2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot | 3 |
| Motion by Mr. Jeffares  
Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:  
1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;  
2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;  
3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;  
4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.  
5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.  
6. Applicant comply with the requests of all City Departments. | 5 |
| Motion carried, 7-0. | 5 |
| **REZONING APPLICATION** | 5 |
| 1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building | 5 |
Birmingham Planning Board Proceedings
June 27, 2018

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| Motion by Mr. Boyle  
Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.  
Motion failed, 2-5.  
Motion by Ms. Whipple-Boyce  
Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.  
Motion carried, 5-2. | 5 |
| PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")  
1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building  
Motion by Mr. Boyle  
Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.  
Motion carried, 7-0. | 11 |
| | 12 |
Minutes of the regular meeting of the City of Birmingham Planning Board held on June 27, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

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

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

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

06-108-18

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

Mr. Jeffares made a correction:
Page 8 - Fourth paragraph from the bottom insert after "of," "office use for business to business."

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

Motion carried, 7-0.

VOICE VOTE
Yeas: Koseck, Boyle, Clein, Jeffares, Ramin, Whipple-Boyce
Nays: None
Abstain: Emerine
Absent: Share, Williams

06-109-18

CHAIRPERSON’S COMMENTS (none)
06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

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

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

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

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

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

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

Motion carried, 7-0.

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

VOICE VOTE
Yeas: Whipple-Boyece, Koseck, Boyle, Clein. Emerine, Jeffares, Ramin
Nays: None
Absent: Share, Williams

06-112-18

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

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

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

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

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

**Design Review**

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

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

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

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

Mr. Boyle noticed that the plans do not show a safe pedestrian zone through the parking lot. Further, Mr. Boyle noted on the west facade of the building there are grey awnings with small windows underneath; but no windows on the large section that is adjacent to the patio.
Mr. Koseck pointed out that the plans show the driveway bisects the sidewalk. Mr. Baka replied that the Engineering Dept. has stated that the sidewalk must maintain its current configuration by placing it through the driveway approach.

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

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

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

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

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

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

**Motion by Mr. Jeffares**

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

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

At 8:05 p.m. there were no comments on the motion from members of the audience.
Motion carried, 7-0.

VOICE VOTE
Yeas: Jeffares, Koseck, Boyle, Emerine, Klein, Ramin, Whipple-Boyce
Nays: None
Absent: Share, Williams

REZONING APPLICATION

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

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

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

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

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

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.
Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

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

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

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

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

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:
- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.
If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?

There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

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

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

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

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

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

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

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

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.
Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Motion by Mr. Boyle**

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

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

**Motion failed, 2-5.**

ROLLCALL VOTE
Yeas: Boyle, Jeffares
Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce
Absent: Share, Williams

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

**Motion carried, 5-2.**

ROLLCALL VOTE
Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin
Nays: Jeffares, Whipple-Boyce
Absent: Share, Williams

**06-114-18**

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

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

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

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

**Motion carried, 7-0.**

VOICE VOTE
Yeas: Boyle, Whipple-Boyce, Clein, Emerine, Jeffares, Koseck, Ramin
Nays: None
Absent: Share, Williams

**06-115-18**

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)
b. **Administrative Approval Requests**

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

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

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

d. **Other Business**

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

**06-116-18**

**PLANNING DIVISION ACTION ITEMS**

Staff report on previous requests (none)

Additional items from tonight’s meeting (none)

**06-117-18**

**ADJOURNMENT**

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

Jana L. Ecker
Planning Director
1. Cannot redevelop either site with the same use or building size and provide adequate parking.

2. Cannot redevelop either site with a single-story building (required to meet the ‘Downtown Birmingham Overlay Ordinance’).

3. Combined sites have 3 separate frontages that are required to meet the ‘Downtown Birmingham Overlay Ordinance’.
1. Provides 1,400 square feet of 2 story mixed-use building with surface parking.

2. Leaves 5,750 sf of undeveloped property.
Comments
1. Provides 2 story frontage (retail) on South Old Woodward
2. Provides 1 story office partially on Hazel
3. Surface parking occupies all of Woodward Avenue and most of Hazel
Comments

1. Provides 2 story/single-use (retail) on south Old Woodward

2. Provides 2 story/single-use (retail) partially on Hazel

3. Surface parking occupies most of Woodward Avenue
Comments

1. Provides 2 story/mixed-use (retail/office) on South Old Woodward

2. Surface parking on both Hazel and Woodward Avenue (2 curb cuts)
1. Provides 3 story building/mixed-use building on all 3 frontages

2. Provides a ‘ramp over ramp’ hybrid internal parking w/2 curb cuts

3. Provides 8 residences
Comments
1. Provides 5 story building/mixed-use building on all 3 frontages
2. Provides internal parking ramp on 1st, 2nd and 3rd floors
3. Provides parking on entire 4th floor
4. Provides a 20' liner on 1st, 2nd and 3rd floors
5. Provides 5 residential units on 5th floor
REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT’S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant’s application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant’s request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department’s analysis and findings under the City Ordinance regarding the applicant’s request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant’s proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City’s master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant’s proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant’s property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

Submitted by Applicant on 1-18-19
September 11, 2018

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Rezoning Application Before the Planning Board

Dear Ms. Ecker:

This letter is in response to your request to clarify the procedure by which applications for rezoning and determinations of rezoning are made. The Zoning Ordinance states in Section 7.02 B.2. Application for Rezoning, as follows:

"2. Application for Rezoning.

1. Persons Entitled to Seek Rezoning. Only a person who has a fee interest in a piece of property, or a contractual interest which may become a fee interest in a piece of property, may seek an amendment in the zoning classification of that property under this section.

2. Application for Rezoning.
   a. An application for an amendment to change the zoning classification of a particular property must be filed with the Building Official on such forms and accompanied by such fees as may be specified by the City Commission. The application and any supporting documentation shall be forwarded by the City Building Department to the Planning Board for study and recommendation.
   b. Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:
      i. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.
      ii. An explanation of why the existing zoning classification is no longer appropriate.
      iii. An explanation of why the proposed rezoning will not be detrimental to surrounding properties.
   c. Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. The plot plan shall be drawn to a scale of not less than one inch equals 50 feet for a property of less than 3 acres and one inch equals 100
feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:
i. Applicant’s name, address and telephone number.
ii. Scale, north point, and dates of submission and revisions.
iii. Zoning classification of petitioner’s parcel and all abutting parcels.
iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
v. Existing use of the property.
vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
viii. All existing easements.
ix. Location of existing sanitary systems and/or septic systems.
x. Location and size of existing water mains, well sites and building service.
xii. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable.”

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

“5. Findings of Fact and Recommendation of the Planning Board. The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
a. The objectives of the City’s then current master plan and the City’s 2016 Plan.
b. Existing uses of property within in the general area of the property in question.
c. Zoning classification of property within the general area of property in question.
d. The suitability of the property in question to the uses permitted under the existing zoning classification.
e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.

Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

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

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc
October 1, 2018

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

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

Dear Members of the Board:

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

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

Very truly yours,

BEIER HOWLETT, P.C.

TJC/jc

Timothy J. Currier
October 1, 2018

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

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

Dear Members of the Board:

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

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

ANSWER: YES.

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

Very truly yours,

BEIER HOWLETT, P.C.

TJC/je

Timothy J. Currier
DATE: January 17, 2019
TO: Planning Board
FROM: Jana L. Ecker, Planning Director
SUBJECT: Rehearing of Rezoning Request for 469 – 479 S. Old Woodward
(New information in Blue Type)

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

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

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

Please find attached the applicant’s letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request.
On September 12, 2018, the applicant appeared before the Planning Board and outlined the substantial change in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

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

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

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

At the Planning Board meeting on November 14, 2018, the applicant requested postponement of the rehearing to December 12, 2018.

At the Planning Board meeting on December 12, 2018, the applicant requested further postponement of the rehearing to January 27, 2019 to allow additional time to meet with the neighbors and attempt to reach an agreement on the proposed development.

The only new document that is being provided at this time is a memo from the applicant dated January 18, 2019 summarizing previous documents submitted and discussed at Planning Board meetings. This document is attached immediately following this memo and minutes.
Over the past several months, the applicant has submitted written documentation and evidence in support of applicant’s application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant’s request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department’s analysis and findings under the City Ordinance regarding the applicant’s request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant’s proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City’s master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant’s proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant’s property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.
The applicant for 469-479 S. Old Woodward (Parcel Numbers 1936208011 and 1936208012 respectively) requested that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed use building in between the Birmingham Place and the 555 building. The maximum height allowed in the D-4 zoning district is 4-5 stories. In the D-5 zoning district, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 zone.

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

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

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

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

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

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

Requirements for Rezoning

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

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

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

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

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

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

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

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

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

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

Information required on plot plans shall be as follows:

1. Applicant’s name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner’s parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

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

Article 7 section 7.02 of the Zoning Ordinance further states:

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

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
   a. The objectives of the City’s then current master plan and the City’s 2016 plan.
   b. Existing uses of property within in the general area of the property in question.
   c. Zoning classification of property within the general area of the property in question.
   d. The suitability of the property in question to the uses permitted under the existing zoning classification.
   e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

**Planning Division Analysis & Findings**

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

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

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
   a. The objectives of the City’s then current master plan and the City’s 2016 Plan.
   b. Existing uses of property within the general area of the property in question.
   c. Zoning classification of property within the general area of the property in question.
   d. The suitability of the property in question to the uses permitted under the existing zoning classification.
   e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.0(B)(5) of the Zoning Ordinance as noted below.
A. The objectives of the City’s then current master plan and the City’s 2016 Plan

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

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

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

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

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

<table>
<thead>
<tr>
<th>Existing Land Use</th>
<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Retail/Commercial/Residential</td>
<td>Retail/Commercial/Residential</td>
<td>Retail/Commercial/Parking</td>
<td>Commercial/Parking</td>
</tr>
<tr>
<td>Existing Zoning</td>
<td>B-3, Office Residential</td>
<td>B-3, Office Residential</td>
<td>B-2, General Business</td>
<td>B-2B, General Business</td>
</tr>
<tr>
<td>Overlay Zoning</td>
<td>D-5</td>
<td>D-5</td>
<td>MU-5</td>
<td>D-2</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

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

**Departmental Reports**

1. **Engineering Division** – The Engineering Department has no concerns with the rezoning application at this time.

2. **Department of Public Services** – The Department of Public Services has no concerns at this time.

3. **Fire Department** – The Fire Department has no concerns with the rezoning at this time.

4. **Police Department** – The Police Department has no concerns with the rezoning application.

5. **Building Department** – No comments were provided from the Building Department on the rezoning application.
Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission. Should additional information be presented at the public hearing not contained within this staff report, the Planning Board should add any findings related to such information to the motion language provided below.

**Suggested Action:**

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

**OR**

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

1. ____________________________________________________________
2. ____________________________________________________________
3. ____________________________________________________________

**OR**

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

1. ____________________________________________________________
2. ____________________________________________________________
3. ____________________________________________________________
DATE: October 5, 2018
TO: Planning Board
FROM: Jana L. Ecker, Planning Director
SUBJECT: Request for Rehearing of Rezoning Request for 469 – 479 S. Old Woodward

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

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

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

Please find attached the applicant’s letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request.
On September 12, 2018, the applicant appeared before the Planning Board and outlined the substantial change in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

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

Should the Planning Board accept that the applicant has proven a substantial change in the evidence and a rehearing should occur, all of the previous application documents, plans and reports are also provided for your review and consideration.

**Suggested Action:**

1. **Sample Motion Language on Request for Rehearing:**

   The Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

   OR

   The Planning Board finds that there have not been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus denies a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

2. **Sample Motion Language on Rezoning Request if Rehearing is Granted:**

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

   OR

   Motion to recommend **DENIAL** to the City Commission of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:
Motion to recommend **POSTPONEMENT** of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending review and approval of the following:

1. 
2. 
3. 

OR
DATE: September 7, 2018
TO: Planning Board
FROM: Jana L. Ecker, Planning Director
SUBJECT: Request for Rehearing of Rezoning Request for 469 – 479 S. Old Woodward

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

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

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

Section 7.02(6) of the Zoning Ordinance states:

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

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

Please find attached the applicant’s letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request. Should the Planning Board accept that the applicant has proven a
substantial change in the evidence and a rehearing should occur, all of the previous application documents, plans and reports are also provided for your review and consideration.

**Suggested Action:**

1. **Sample Motion Language on Request for Rehearing:**

   The Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

   OR

   The Planning Board finds that there have not been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus denies a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

2. **Sample Motion Language on Rezoning Request if Rehearing is Granted:**

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

   OR

   Motion to recommend **DENIAL** to the City Commission of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

   1. __________________________________________________________
   2. __________________________________________________________
   3. __________________________________________________________

   OR

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

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

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

**History of Property**

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

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

**Requirements for Rezoning**

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:
Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

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

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

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

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

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

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

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

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

Information required on plot plans shall be as follows:

1. Applicant’s name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner’s parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

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

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.
The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
   a. The objectives of the City’s then current master plan and the City’s 2016 plan.
   b. Existing uses of property within in the general area of the property in question.
   c. Zoning classification of property within the general area of the property in question.
   d. The suitability of the property in question to the uses permitted under the existing zoning classification.
   e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

**Planning Division Analysis**

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

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street. The proposed building allows for mixed uses and a scale that will seamlessly match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line.

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

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

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. The property is located on Woodward Avenue, which has a 200’ wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the West is the long commercial building with a CVS and other businesses.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.
C. Zoning classification of property within the general area of the property in question.

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

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

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, under the current zoning of D4, the building would be capped at a height of 5 stories and thus be dwarfed by the adjacent Birmingham Place and 555 Buildings.

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

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

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning application at this time.

2. Department of Public Services – The Department of Public Services has no concerns at this time.

3. Fire Department – The Fire Department has no concerns with the rezoning at this time.

4. Police Department – The Police Department has no concerns with the rezoning application.
5. **Building Department** – No comments were provided from the Building Department on the rezoning application.

**Planning Department Findings**

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the downtown overlay district for the purpose of building as high, but no higher than, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone for the purpose of building to nine stories is appropriate and compatible in the area. The following sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

**Sample Motion Language**

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

**OR**

Motion to recommend **DENIAL** to the City Commission of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _______________________________________________________________________
2. _______________________________________________________________________
3. _______________________________________________________________________

**OR**

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

1. _______________________________________________________________________
2. _______________________________________________________________________
3. _______________________________________________________________________
02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

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

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

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

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

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

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

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

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

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

City Planner Ecker said the enlargements or extensions are an absolute right if the regular overlay standards are met. If it is an addition or new construction which would exceed the D4 requirements, it can be done with a Special Land Use Permit.
Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.

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

**MOTION: Motion by DeWeese, seconded by Boutros:**

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

AND

To approve the rezoning of the following properties:

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

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

**VOTE:** Yeas, 7

Nays, 0

Absent, None
AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

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

Article 03 shall be amended as follows:

Section 3.04 Specific Standards

A. Building Height: Overlay: The various elements of building height shall be determined as follows for the various zones designated on the Regulating Plan:

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

2. D3 Zone (three or four stories):
   a. Eave line for sloped roofs shall be no more than 46 feet.
   b. Peak or ridge of any sloped roof shall be no more than 58 feet as measured to the average grade.
   c. Maximum overall height including the mechanical and other equipment shall be no more than 68 feet.
   d. A fourth story is permitted if it is used only for residential.
   e. All buildings in D3 Zone containing a fourth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
f. The fourth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
g. All buildings constructed in a D3 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.

3. D4 Zone (four or five stories):
   a. Eave line shall be no more than 58 feet.
   b. Peak or ridge of any sloped roof shall be no more than 70 feet as measured to the average grade.
   c. Maximum overall height including mechanical and other equipment shall be no more than 80 feet.
   d. The fifth story is permitted if it is used only for residential.
   e. All buildings containing a fifth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
   f. The fifth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
   g. All buildings constructed in the D4 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.

4. D5 Zone (over 5 stories)
   a. All existing buildings located in the D5 Zone on November 1, 2016 are deemed legal, conforming buildings with regards to setbacks, number of stories and height.
   b. All existing buildings located in this zone district on November 1, 2016 may be extended or enlarged only if the property owner elects to develop the extended or enlarged portion of the building under the provisions of the Downtown Overlay and the extension or enlargement meets all of the requirements of the Downtown Birmingham Overlay District and the D4 Zone.
   c. New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D-5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building in the D-5 to which they are immediately adjacent or abutting if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit.

4.5 C and P Zones: Downtown Birmingham Overlay District building height shall comply with the underlying height restrictions listed in each two-page layout in Article 2 of the Zoning Ordinance, but may be negotiated by the Planning Board.

5.6. Stories at sidewalk level shall be a minimum of 10 feet in height from finished floor to finished ceiling. The Planning Board may reduce this standard for renovations to existing buildings that do not meet this standard.
6.7. A transition line shall be provided between the first and second stories. The transition shall be detailed to facilitate an awning.

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

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

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

______________________________________________
Mark Nickita, Mayor

______________________________________________
Cheryl Arft, City Clerk
June 22, 2018

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

Dear Jana:

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

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

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

Sincerely,

John M. Connaughton, Fire Chief
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City Planner Ecker explained for Commissioner Boutros that the 555 site has room where a new building could be constructed.

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

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

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

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

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

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

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Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.
Mayor Nickita closed the Public Hearing at 10:40 PM.

MOTION: Motion by DeWeese, seconded by Boutros:

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

AND

To approve the rezoning of the following properties:

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(b) 411 S. Old Woodward (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
(c) 225 E. Merrill (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.

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

VOTE: Yeas, 7
Nays, 0
Absent, None
REZONING APPLICATION

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

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

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

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

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

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

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

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

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

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

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

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:
- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.
- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.
Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:
- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Motion by Mr. Boyle**

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

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

**Motion failed, 2-5.**

**ROLLCALL VOTE**

Yeas: Boyle, Jeffares

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

Absent: Share, Williams
Motion by Ms. Whipple-Boyce
Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE
Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin
Nays: Jeffares, Whipple-Boyce
Absent: Share, Williams
8-221-18  CANCEL PUBLIC HEARING – 469–479 S. OLD WOODWARD – REZONING
City Manager Valentine reported the applicant wishes to go back to Planning Board.

MOTION:  Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To cancel the public hearing to consider approval of the rezoning of 469–479 S. Old Woodward from B3/D4 to B3/D5 and to refer the matter back to the Planning Board.

VOTE:  
Yeas, 7
Nays, 0
Absent, 0

The Commission decided to further discuss during Commissioner Comments:
● How much information needs to be provided to the Commission upon the cancellation of a public hearing; and,
● How to supply Commissioners with previously submitted background information for agenda items.
REZONING APPLICATION

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

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

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

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

Motion by Mr. Williams
Seconded by Mr. Koseck to include the following correspondence into the official record:
- Letter dated September 11, 2018 from Susan K. Friedlaender, Attorney with Friedlaender, Nykanen, Rogowski, PLC;
- Letter dated September 10, 2018 from B. Geiger, Unit 623, 411 S. Old Woodward Ave;
- Letter dated September 11, 2018 from Timothy J. Currier, Beier Howlett, City Attorney, dealing with the process of rezoning application before the Planning Board.

Motion carried, 7-0.

VOICE VOTE
Yeas: Williams, Koseck, Boyle, Clein, Emerine, Jeffares, Whipple-Boyce
Nays: None
Absent: Share

Mr. Williams pointed out the Planning Board has opinions of opposing counsel dealing with the issue as to whether the D-5 Ordinance can in fact apply to the two properties in question (former Mountain King and Talmer Bank sites). That is a legal question for the City Attorney to decide.
The second issue is whether the two parcels are or are not in the Parking Assessment District. It is important to know from the City’s standpoint why this property is or is not in the Parking Assessment District based on the records of the City at the time the Parking Assessment District was created. Further, if they are in the Parking Assessment District, then the analogies to the other five-story buildings in the City in Downtown which are in the Parking Assessment District and don’t have to provide on-site parking is relevant. If they are not in the Parking Assessment District and the applicant is required to provide on-site parking, then that is a different conclusion. He wants the opinion of the City Attorney before proceeding because if the conclusion is that the properties are not eligible for D-5 zoning then having a hearing is a waste of time.

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

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

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

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

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

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

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

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

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

**Motion by Mr. Williams**
**Seconded by Ms. Whipple-Boyce to postpone consideration of the public hearing which was scheduled for tonight to October 10, 2018 with the condition that the Board receive**
the legal opinion of counsel to the City of Birmingham submitted to the Planning Board in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

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

Motion carried, 7-0.

VOICE VOTE
Yeas: Williams, Whipple-Boyce, Boyle, Clein, Emerine, Jeffares, Koseck
Nays: None
Absent: Share
REZONING APPLICATION

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

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

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

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

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

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

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

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

- There was a mistake in the CIS that was included in the packet that indicated this property is in the PAD. This property is not.
- The ordinance states pursuant to 7.02 (B) (5) (a-e) that the Planning Board should make findings of fact. There was no presentation of a finding of fact as it was presented to the City Commission.
The D-5 Zone was enacted and at that time, three buildings were rezoned to D5, but the ordinance itself is clear and unambiguous. It provides language that indicates there are going to be different buildings put into the D-5 Zone.

The fact that the property sits outside of the PAD should be looked at because of the potential five or six types of structures that could be built under the D-4 Ordinance. That is what is new to their rezoning argument. If a mixed-use building is constructed in D-4, it must have 288 parking spaces on-site. That requires their building to be accompanied by nine underground parking levels. That is a major change in the way the Planning Board might look at this for rezoning.

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

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

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

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

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

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

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

The ordinance does not say that the Planning Board has the authority to rehear an application that it has denied when the City Commission has not heard it and denied it. It says the same application shall not be brought back within the same year unless there has been substantial change in conditions which the applicant can present to the Planning Board upon reapplication. That is not what happened here.
Ms. Friedlander stated that the City Commission speaks through its resolutions. The Commission’s resolution says to cancel the public hearing to consider approval of the rezoning of 469-479 S. Old Woodward Ave. from B-3/D-4 to B-3/D-5 and refer the matter back to the Planning Board. It doesn't say to refer the matter back to the Planning for a rehearing and reconsideration of this rezoning request.

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

**Motion by Mr. Boyle**

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

Motion carried, 7-0.

**VOICE VOTE**

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

Nays: None

Absent: Ramin

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

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

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

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

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

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

Mr. Williams said his understanding is that the Board didn't go beyond the three properties which were non-conforming because no other properties were before them. It is clear to him that the written record of the CIS was incorrect. The record should be clear that the property is not within the PAD. Also, he doesn't think the Planning Board complied with the ordinance in its
findings. He added that it would be inappropriate to go forward with a rehearing tonight because there is a counsel of record who can't be present who said he represents a certain party that is not here. Everybody should be given an opportunity to be heard.

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

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

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

**Motion failed, 3-4.**

**ROLLCALL VOTE**  
Yeas: Share, Koseck, Clein  
Nays: Boyle, Jeffares, Whipple-Boyce, Williams  
Absent: Ramin

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

**Motion carried, 4-3.**

**ROLLCALL VOTE**  
Yeas: Jeffares, Whipple-Boyce, Boyle, Williams  
Nays: Koseck, Share, Clein  
Absent: Ramin

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

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

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

**Motion carried, 7-0.**

**VOICE VOTE**  
Yeas: Williams, Boyle, Clein, Jeffares, Koseck, Share, Whipple-Boyce  
Nays: None  
Absent: Ramin
E. **REZONING APPLICATION**

1. **469-479 S. Old Woodward Ave.** (former Mountain King and Talmer Bank)

   Rehearing of application to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building (postponed from October 10, 2018)

Mr. Rick Rattner, 380 N. Old Woodward Ave., said that after many hours of work they thought it might be helpful if they were given a chance to talk to the Birmingham Place neighbors and see if they could come to some conclusion about how they might accommodate each other. Therefore, they ask that the application be postponed to a date certain.

Mr. Clein announced that communication between parties is always something this board has strived for. Therefore, he would be willing to wait in order to allow that to happen.

Mr. Share assured that the Planning Board would not simply rubber stamp the agreement that was made, should they make one.

Mr. Koseck added that through communication there is always a better result, better planning, and happier people. So he was in favor of the request.

At 7:35 p.m. the Chairman asked for public discussion.

Ms. Susan Friedlander, who represents Birmingham Place Residential Condominium Assoc., said this is the first they are hearing about the postponement request. Her clients are upset about it because this is their fifth time in front of the Planning Board. It has gotten really expensive for them as well as time consuming. Further, they lose people every time their hearing is put off. Therefore, they want to just go ahead this evening. Additionally, she questioned why they were not notified of the postponement before tonight’s meeting.

Mr. Jason Able spoke on behalf of the Condominiums of Birmingham Place Master Assoc. He echoed Ms. Friedlander’s words. Every time this appeal is postponed less people show up.

Mr. Larry Rockind, resident of Birmingham Place, said at a minimum the applicant should be required to give some indication of what they have in mind. Also they should talk about paying the costs that the residents have incurred as a result of the delays.

Mr. Mickey Schwartz, resident of Birmingham Place, noted that in other developments like the Frank St. project the developer met with the neighborhood before submitting anything to the Planning Dept., which is the appropriate way of doing something. This has been going along for a long time and he doesn't see any grounds for further postponement. So, he asked the Board not to extend the hearing. If the hearing is extended he asked that it be for a period of six months in order to accommodate the residents who will be away for the winter.

Mr. Duraid Markus, one of the principals of the ownership of the two buildings, said he understands the concerns. He asked for a chance to show the residents of Birmingham Place
what the development would look like at five and nine stories and what he can or cannot accommodate them with. He wants to do a lot to appease their fears. It came to this late juncture because they finally finalized the plans.

Discussion clarified that tonight the Board is dealing with massing and the intensity of use.

Ms. Whipple-Boyce asked Mr. Markus if anything he is planning to discuss with the residents of Birmingham Place has to do with him not rezoning the property. Mr. Markus responded that if he can show the residents a rezoning plan that they are happy with maybe there will be less opposition.

Mr. Share explained that the Board is well aware of the intensity of the feelings of the residents of Birmingham Place. Their letters are all part of the record. Therefore, no matter how many if fewer people show up for the hearing it won't influence the Board's decision.

Mr. Koseck hoped this would be a win-win and the residents would see something positive in what is being proposed by the applicant.

Mr. Jeffares said the Board has seen where something received complete opposition and they worked on it and came up with a great outcome. That is what he would like to strive for and have everybody be happy. Maybe it will work or not work, but why not give it a shot.

Mr. Emerine thought it is important that people get together and discuss this. He was in favor of postponement. Mr. Boyle said he is of the same mind. From his experience on this Board, the more conversation there is outside of this room, the better understanding there is between parties. Chairman Clein was in general agreement with those feelings.

Mr. Markus indicated that December 12th would be fine to come back.

**Motion by Mr. Boyle**

Seconded by Mr. Koseck that in light of the statements from the applicant that we postpone this rezoning application for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) to the Planning Board meeting scheduled for December 12, 2018.

There were two further comments from the public on the motion at 7:58 p.m.

Mr. Mickey Schwartz, resident of Birmingham Place, said tonight's hearing is about rezoning. It seemed to him they have digressed into talking about the specifics of the project that have nothing to do with rezoning. He heard Ms. Whipple-Boyce ask Mr. Markus whether or not he would request a rezoning change. However, he didn't hear him answer her question, and gave a non-responsive answer. If this is really about the rezoning then maybe they should talk about that tonight. They can always talk about the specifics of the project if the Board agrees to the rezoning request.

Ms. Tony Schwartz, resident of Birmingham Place, said this is a rezoning and why discuss a project that may not even happen if it is not approved. It is hard for her to believe that when the developer originally bought the property he did not have the intention of building to ten stories.
Motion carried, 7-0.

VOICE VOTE
Yeas: Boyle, Koseck, Clein, Jeffares, Emerine, Share, Whipple-Boyce
Nays: None
Absent: Williams
Planning Board Minutes
December 12, 2018

E. REZONING REQUEST

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

Motion by Mr. Williams
Seconded by Ms. Whipple-Boyce that the rehearing of the rezoning request for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) be postponed to the regular Planning Board meeting of January 23, 2019.

Motion carried, 7-0.

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

VOICE VOTE
Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Koseck, Share
Nays: None
Absent: None

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

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

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

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

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

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

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

- The 469-479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.
- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors’ preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.
Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

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

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

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

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

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

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

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

- The applicant’s assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight’s presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.
- According to Planning Director Ecker’s report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).
- Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.

- A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City’s 2016 and Master Plans.

- The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City’s Plans.

- The discussion of changing this site’s zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

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

- Two other sites in Birmingham are building five story hotels, demonstrating that parking a five story hotel within the City is not excessively burdensome.

- In addition to the potential parking agreement with the 555 building, other options are available to the applicant for parking a five story hotel on this site.

- The applicant’s statements this evening demonstrated that this rezoning request is based on the applicant’s preference for a certain type of hotel, not the inability to build a hotel on the site more generally.

- The zoning uses for both D-4 and D-5 are the same, so Mr. Rattner’s assertion that a change in zoning is necessary to allow the applicant to enjoy the same uses as the adjacent buildings is fallacious. The only difference between the zoning types is the building height.

- A five story hotel on the site would be taller than the 555 building and would adequately fill in the visual gap in the streetscape.

- It is clear that this rezoning request is about economics and not about land use, which is an insufficient reason to rezone a property.

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

- Regarding 7.02(B)(2)(b)(i), the applicant is required to show, and the Board is required to present findings of facts, as to why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described ‘necessary’ as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged
this to be an understandable preference on the part of the applicant, he asserted that it would not be a ‘necessary’ change. Additionally, the applicant’s contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and ‘necessary’ zoning change.

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

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

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

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

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

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

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

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

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.
Ms. Friedlander told the Board that all the letter’s points had been covered in the evening’s discussion.

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

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

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

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

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

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

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board’s interpretation. He clarified that the Board’s directive was to
determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City’s Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member’s replies.

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

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

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

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

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

Motion carried, 4-3.

ROLL CALL VOTE
Yeas: Whipple-Boyce, Emerine, Jeffares, Williams
Nays: Clein, Koseck, Share
Absent: Ramin

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

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

VIA HAND DELIVERY

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

Re: 4694 79 S. Old Woodward Avenue (the “Proposed Development”) Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long on Behalf of Birmingham Tower Partners, LLC (the “Applicant”) Hearing Scheduled for Wednesday, May 23, 2018 (the “Hearing”)

Dear Ms. Ecker:

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

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

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

Yours very truly,

Michael Schwartz, MD

xc: Applicant (via email to dmarkus@yahoo.com)
Planning Board Members (via separate emails)
Eric and Janis Sterling  
411 S. Old Woodward Avenue, Unit 615  
Birmingham, MI 48009  

June 7, 2018

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

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

Ladies and Gentlemen:

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

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

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

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

In addition, we have serious safety and other concerns, including:
1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

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

Yours very truly,

Eric Sterling

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

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

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Yours very truly,

[Signature]

Nikole Fine
Unit #521
June 8, 2018

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

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

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[Signature]

Stuart Glasier
June 8, 2018

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

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Yours very truly,

Gary Asbeir
803 Randy
June 8, 2018

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

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

Ladies and Gentlemen:

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

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

Yours very truly,

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

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

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the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Edwin B. Shaw
Felicia P. Shaw
Fwd: 469-479 S. Old Woodward Ave. (the "Proposed Project") Objection

1 message

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

Wed, Jun 13, 2018 at 9:52 PM

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

Sent from my iPad

Begin forwarded message:

From: Alice Lezotte <zareyskid@gmail.com>
Date: June 10, 2018 at 12:47:33 PM EDT
Subject: 469-479 S. Old Woodward Ave. (the "Proposed Project") Objection

411 S. Old Woodward. #511
Birmingham, MI. 48000
June 8, 2018

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

The Birmingham city code has many statements to keep in mind when considering a new city project (I paraphrase):
1. Regulation and control of a project should promote the public health, safety, and general welfare of the city
2. Provide orderly growth and HARMONIOUS development
3. Secure adequate traffic circulation and "lessen" congestion on our streets
4. Ensure adequate provisions for water drainage, sanitary sewer facilities, and other health requirements
5. Achieve the maximum utility and "livability" of a project
6. Natural features must be preserved and changes should "add" to the attractiveness and "value" of the neighborhood
7. Any Proposed project should take into consideration as to the impact on adequate supply of light and air to adjacent properties and the capacity of essential public facilities, such as police and fire protection, drainage structures, municipal water, sanitary sewers, and refuse disposal

Wise decisions have been made in the past (e.g., Forefront, Bristol, etc.) in accordance with the city's 2016 Master Plan and our Building Codes.
It is my hope similar consideration will prevail and this proposal will be denied.
Maple Road and Woodward on the south east corner would be an ideal location for this proposed project.
We want to keep our "Walkable" community as safe and pleasant as possible.

Best regards,
Alice Lezotte
Fwd: Proposal for a 9 story building on S. Old Woodward, Birmingham
1 message

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

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


From: Julie Wolfe

411 S. Old Woodward #1021
Birmingham, MI 48009

6/10/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009
Re: 469-479 S. Old Woodward Avenue (the “Proposed Project ”)

Ladies and Gentlemen:

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

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

Thank you.

Julie Wolfe
June 14, 2018

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

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

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

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

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

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

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

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

Yours very truly,

Catherine Brozek
June 15, 2018

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

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Carol Kozlow

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

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Yours very truly,

[Signature]

Lans P. Rockink
Birmingham Place
Unit 317
June 15, 2018

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

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

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[Signature]

Erin Mellett
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June 15, 2018

Birmingham City Commission
Birmingham Planning Board
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Birmingham, MI 48009

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Yours very truly,

Vandad Raofi

and

Negar Farhi
June 15, 2018

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

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Yours very truly,

Valerie Soley
411 S. Old Woodward Ave
Unit 508
Birmingham MI
48009
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

June 15, 2018  

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

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Yours very truly,

[Signature]

411 S. Old Woodward

B’ham 48009
June 15, 2018

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

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

Ladies and Gentlemen:

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

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[Signature]

Unit 606
411 S. Old Woodward Ave
Birmingham, MI 48009
411 S. Old Woodward, Suite 902  
Birmingham, MI 48009

June 15, 2018

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

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Rose Boyll

Ralph Boyll

Rose Boyll

06/08/18
June 15, 2018

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

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Yours very truly,

[Signature]

Victoria Shounyea

Unit # 514
June 15, 2018

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

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[Signature]

411 S. Old Woodward Ave
Unit 508
Birmingham, Michigan
June 15, 2018

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

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Alice LaPote #571
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Ted Elsholz
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Rose M. Boyd

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411 S. Old Woodward, Suite #901
Birmingham, MI 48009

June 15, 2018

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

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2. I also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

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

Yours very truly,

[Signature]

Helen O. Kane
Owner
June 15, 2018

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

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

Ladies and Gentlemen:

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

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

Yours very truly,

[Signature]

DAVID SALIBA
Unit 529
411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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

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

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Yours very truly,

Roanne M. Saliba
Birmingham Place, Unit #529
Birmingham, MI 48009

June 16, 2018

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

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

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[Signature]

[Signature]
Birmingham City Commission  
*Note to Reader:* This document text contains personal details such as a residential address, which may not be appropriate for sharing. Please ensure any personal information is handled with care.

151 Martin Street  
Birmingham, MI 48009  
June 16, 2018

Birmingham, MI 48009

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

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

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Yours very truly,

Debra J. Elsholz
Birmingham, MI 48009

June 16, 2018

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

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

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Yours very truly,

[Signature]

460 Park
June 18, 2018

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

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

Ladies and Gentlemen:

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

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

Yours very truly,

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

Dear City Commission and Planning Board Members,

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

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

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

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

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

Sincerely,

John Kello
June 19, 2018

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

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

Ladies and Gentlemen:

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Yours very truly,

Dana Bassipour
June 19, 2018

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

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

Ladies and Gentlemen:

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

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Yours very truly,

Michael Hanna
June 19, 2018

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

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

Ladies and Gentlemen:

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

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[Signature]

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

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

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[Signature]  
LISA A. MARTIN
June 19, 2018

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

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

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2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

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

Yours very truly,

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

Re: Proposed Project at 469-479 S. Old Woodward Avenue
Dear City Commission and Planning Board Members,

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

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

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

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

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

Sincerely,

Kevin Keibou
152 N Old Woodward
Birmingham MI 48009
June 20, 2018

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

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

Dear City Commission and Planning Board Members,

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

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

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

Sincerely,

[Signature]
David Hesano  
First Vice President  
David.hesano@cbre.com
June 20, 2018

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

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

Dear City Commission and Planning Board Members,

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

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

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

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

Sincerely,

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

Nine9.com
June 20, 2018
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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

Dear City Commission and Planning Board Members,

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

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

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

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

Sincerely,

Gregg Speaks
Managing Director
CIBC Bank USA
34901 Woodward Avenue, Suite 200
Birmingham, MI 48009
June 20, 2018

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

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

Dear City Commission and Planning Board Members,

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

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

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

Sincerely,

Nason Kassab
35270 Woodward Ave
Birmingham, MI 48009
June 20, 2018

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

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

Dear City Commission and Planning Board Members,

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

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

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
10. This project would continue to make the City of Birmingham the premier city to live and shop.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

[Signature]

Kevin Denha
40700 Woodward Ave Suite 125
Bloomfield Hills, MI. 48304
June 20, 2018

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

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

Dear City Commission and Planning Board Members,

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

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

Sincerely,

ISHBIA & GAGLIERD, P.C.

Jeffrey A. Ishbia
June 20, 2018

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

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

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

Sincerely,

Brian Najar
Najar Companies
600 N. Old Companies, Ste 100
Birmingham, MI 48009
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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

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

Sincerely,

Joseph Jonna, Jonna Luxury Homes
June 20, 2018

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

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

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

Sincerely,

Scott S. Yaldo, Esq.
June 20, 2018

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

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

Dear City Commission and Planning Board Members,

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

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

Sincerely,

Joseph P. Vicari
7096 E. 14 Mile Rd.
Warren, MI 48092
David Breedlove  
85 Tradd Street  
Charleston, SC. 29401  

June 20, 2018  

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

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

Ladies and Gentlemen:  

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

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

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

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.  

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to
maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner’s minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,

David Breedlove
June 20, 2018

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

RE: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

Gus J. Abro, Esq.

GA/gja
June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members:

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

The Elia Group, LLC

Zaid D. Elia, President
June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

Jonna Construction is a builder and investor in Downtown Birmingham.

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable ‘gap’ between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

[Signature]

Frank G. Jonna
6200 2nd Ave., Suite D-102
Detroit, MI 48202
June 21, 2018

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Very truly yours,

RANDAL TOMA & ASSOCIATES, P.C.

Randal S. Toma
Attorney at Law
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Jacques Van Staden - Founder & CEO
176 S. Old Woodward Ave
Birmingham, MI 48009
Jana Ecker <jecker@bhamgov.org>

Rezoning issue
1 message

Clinton Baller <cmballer@avidpays.com>
To: Jana Ecker <Jecker@bhamgov.org>

Fri, Jun 22, 2018 at 10:17 AM

Jana,

Could you please let the Planning Board know my thoughts on the rezoning request for the former Franklin/First Place/Talmer bank building and Chinese restaurant on Woodward/Old Woodward?

I don't know why that property was not included in the D5 rezoning that occurred several months ago, but it should have been. Birmingham Place is nine stories, and the 555 building is 15. I can't imagine that the city would not allow something of similar height and mass to occupy the space between these two projects.

Beyond that, I think the city ought to insist on a project that brings some vitality to Old Woodward and the side street (Hazel), which are now dead zones. Either that, or just vacate Hazel insist on a use that is advantageous to the city.

My two cents, which are worth at least a nickel, I think.

Cheers!

Clint
June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009
411 S. Old Woodward, Suite 631
Birmingham, MI 48009

June 26, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxon, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Dennis W. Liu
June 27, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin St
Birmingham, MI 48009

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham's lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,

Peter R. Sobelton
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project ”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
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4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

[Signature]
June 27, 2018

**VIA HAND DELIVERY**

John M. Connaughton, Fire Chief  
572 South Adams  
Birmingham, MI 48009

Re: Proposal to Rezone 469-479 S. Old Woodward Avenue

Dear Chief Connaughton:

I am writing, individually and as an officer and director of the Birmingham Place Residential Condominium Association, in response to your letter of June 22 Jana Ecker. A number of residents here discussed this matter with Joel Campbell and wish we had been sent a copy of the letter, but at least we got it as part of the agenda for tomorrow night’s Planning Board hearing.

In any event, we have some serious concerns with this situation in general and with your letter in particular, which include:

1. The proposed new building is **not** planned to be built “very close to the South Side of Birmingham Place” but rather is proposed to literally abut the southerly walls of Birmingham Place. This may not have a direct bearing on fire issues, but it does raise other issues and should, in any event, be stated accurately.

2. We understand that the fire equipment currently has some, albeit limited, access to Birmingham Place from Hazel Street. Your letter correctly states that you “...would not deploy our aerial truck for operations on the South Side of the building,” but it fails to note that the proposed building, which would be 22 feet taller than Birmingham Place, completely eliminates whatever access is currently available from Hazel Street.

3. Your letter also states “...we do have access from both the East and West sides of the building.” If the proposed building is built, a review of the drawings makes it clear that there would, in fact, be no fire equipment access whatsoever to most, if not all, of the residential and office units on the southerly part of Birmingham Place from the east side and only limited access to these units from the west side.
4. Current access from the west side also includes an alley running from Woodward Avenue to the rear of 469 S. Old Woodward. While this alley might well not accommodate larger fire trucks, it certainly provides some access to some equipment, which would be completely cut off by the proposed building.

5. We agree completely with the balance of the second paragraph regarding fighting “high rise” fires from within the building and also detailing the helpful fire fighting fixtures and equipment in Birmingham Place. Nevertheless, the simple fact remains that fire protection for Birmingham Place (and more importantly, the people who live and work here) will be less than it was if the proposed building is built as planned.

Our bottom line, so to speak, is that fire protection to at least the southerly portion of Birmingham Place would be reduced if the proposed building were allowed, and we have to ask you, as Fire Chief, how much increased risk for the sake of new development that hopes to maximize and increase the currently allowable building size is acceptable. The increased risk can easily be avoided by the City denying the rezoning request and maintaining the status quo. The value of adding several stories to a building pales in comparison to any increased risk to the health, safety and welfare of the Birmingham Place residents and occupants as well as the firefighters tasked with protecting the residents and occupants.

We request that you very seriously reconsider your position on this matter and advise both the Planning Board and the City Commission of the same, preferably before the meeting tonight but in any event at your first opportunity. Thank you for your time and attention. Best regards.

Yours very truly,

Michael D. Umphrey

xc: All Birmingham Planning Board Members (via hand delivery)
All Birmingham City Commissioners (via hand delivery)
September 11, 2018

City of Birmingham
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward
in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the Planning Board and Ms. Ecker:

We are writing this letter on behalf of the Birmingham Place Residential Condominium Association. The Association opposes the rehearing and rezoning of the Applicant’s property to the D5 overlay zone for many reasons as detailed in this letter. The dispositive reason to again deny recommendation of the rezoning is because the D5 ordinance was never intended to be applied in the manner requested.

Introduction

It is first baffling to the Association that the Applicant was able to obtain a rehearing of this Board’s decision at the June 27, 2018 public hearing to deny the Applicant’s request for a tabling of its the rezoning request. The Applicant apparently was able to defy this Board’s denial of the tabling request and come back again with the exact same rezoning request. The Applicant’s latest submission not only fails to demonstrate any substantial change in facts, evidence or conditions but is also fails to show that the Planning Board made any mistake, failed to consider any relevant facts or was misled by alleged mischaracterizations regarding the clear, history, intent and purpose of the D5 Ordinance. A close examination of the Applicant’s rehearing request reveals inconsistencies, fallacies, erroneous assumptions, unsupported assertions, and mischaracterizations of the record and history of the D5 ordinance. The intention of this letter is to provide that closer examination which should leave no doubt that the Planning Board should not change its original vote to deny a positive rezoning recommendation.

There Has Been No Mischaracterization of the Intent of the D5 Ordinance and its Inapplicability to the Applicant’s Property.

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place or any Planning Board member has mischaracterized the purpose of the D5 ordinance enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final product was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. The following is a summary of the history of the D5 ordinance. However, attached as Exhibit A, is a detailed timeline with references to the relevant public records which supports the statements made in this summary.
The 555 Building proposed the first draft of the D5 ordinance as the means to renovate and expand its existing non-conforming buildings and develop a new building on the southern portion of its site. The owners could not make those changes under the City's then existing ordinances that governed the renovation and expansion of nonconforming property. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. Moreover, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was (1) to find a way to make those taller buildings legally conforming structures and (2) draft language that would allow the reasonable renovation and expansion of other commercial nonconforming buildings throughout the City. The City Commission did not direct the Planning Board to draft a new overlay ordinance that allowed any building under 5 stories to obtain greater height because located adjacent to a building that was over 5 stories. The Applicant's representations to the contrary are simply opportunistic.

The above conclusion is amply supported by a memorandum from Planning Director Jana Ecker to the Planning Board dated September 22, 2015 (sic) that was included in the City Commission's February 13, 2017 packet. The City Commission voted to approve the D5 ordinance at that February meeting. (Memorandum attached as Exhibit B)

Ecker discusses in the memorandum that the Planning Board faced a dilemma regarding how to deal with the 555 Building. While the Planning Board recognized the importance of the 555 Building, it was hesitant to create "a new classification around a specific building." (Ecker Memorandum, p. 1) The memorandum details the failed attempts to devise a way to not only address the 555 Building but also the future development of several other parcels, including parcels that did not share the height nonconformity. The Planning Board was unable to draft an ordinance regarding the future development of other parcels because "there were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached." (Ecker Memorandum, pp. 2-3) (Emphasis added) The Planning Board considered several options to allow changes to legal non-conforming commercial buildings. 2 The Planning Board considered drafting two new overlay ordinances, one of which could be applied even to conforming property on the west side of Woodward, which would allow building heights that matched the allowable height east of Woodward in the Triangle District. (Id. at p. 5) Ecker suggested amending the B-3 ordinance to allow the same development rights that existed when the 555 Building was constructed under that ordinance. Although no consensus could be reached regarding application of the ordinance to the future development of existing properties, there was consensus with the blessing of the City

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1 The contents of the memorandum suggest that the date contains a typographical error because the timeline discussed within the memo extends to setting the December 14, 2016 public hearing.

2 The Zoning Ordinance already contained a provision that allowed the limited expansion of nonconforming residential buildings. See Section 6.02
Commission that the improvement and expansion of legal nonconforming buildings should be studied. (Id. at p. 3) The decision was made therefore only to deal with the nonconformity issue in the new D5 overlay district.

Thus, although Planning Board members correctly remember discussing additional properties in the Southern Gateway during the D5 drafting process, those discussions did not bear fruit or any action because of a lack of consensus. It was not because the Mountain King owners were not before the Board. It was because the Planning Board could not reach a consensus other than allowing valuable buildings such as the 555 Building, Birmingham Place and Merrillwood the greater right to renovate or expand without the disability of being a non-conforming property because of height and setback.

The Applicant was not prejudiced by the Planning Department's Mistaken Statement in its Review of the Community Impact Statement and Preliminary Site Plan

The Applicant claims that this Board made its rezoning recommendation based upon the mistaken assumption that the Property is located within the Parking Assessment District (PAD) and that it allegedly was prejudiced by the asserted mistaken assumption.

First, it is true that the Planning Department's review of the Applicant's Community Impact Statement (CIS) and Preliminary Site Plan review erroneously stated that the Applicant's property was within the PAD. The Planning Department's mistake, however, did not prejudice the Planning Board’s review of the rezoning request for several reasons. First, the mistake regarding the PAD was in the Planning Department's CIS and Preliminary Site Plan review and the Planning Board did not consider the CIS or site plan at the rezoning hearing.

Second, the Planning Board did not prevent the Applicant from explaining how the parking requirements impacted its ability to develop the land under the D4 ordinance. The record shows that the Applicant discussed the fact that the property is not in the PAD. (Video of hearing at 2:07:56) In answer to the question why the property could not be developed under the D4 overlay ordinance, the Applicant claimed that it could not develop the Property under D4 because it was not in the PAD.

Owner: “But office building, to put a... I don’t have the parking for it. I'm not in the Parking Assessment District, so I'm limited by parking. I can’t put a restaurant there, because I... you know... I, I, don’t have the parking to park it. The only thing I can really put there at the end of the day is a hotel. I mean that’s the only thing that makes it work. And again, to make it work as a hotel, I need to fit everything into this package that the hotel wants.” (emphasis added)

Third, if the Applicant believed that not being part of the PAD was crucial to its rezoning request nothing prevented the Applicant from discussing that fact when initially addressing the standards for the rezoning. The fact that the Applicant made no mention of the PAD in its initial written rezoning request belies its post hoc argument that the issue was so crucial to its request.

Moreover, if parking is the issue as the Applicant now claims that it is, the remedy is not to develop a project that has even greater parking requirements than is required under the existing ordinance. The rezoning is not necessary to meet the parking requirements when the possibility of
variances for parking can resolve parking related problems.

Finally, the Applicant stated that it was its understanding that it is the only D4 site that is not in the PAD. That understanding appears to be wrong. If the GIS website is up to date, it appears that there are two other parcels that also are zoned D4 but shown as outside of the PAD. The parcels are 484 W. Maple and 460 W. Maple. (See Exhibit C, Map with Overlay District and PAD Map)

The Applicant Has not Demonstrated That the Applicable Parking Requirements Prevent Development Under the D4 Overlay Ordinance

The Applicant’s supplemental explanation under Section 7.02(B)(2)(b)(i) of “why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership” is that it cannot meet the parking requirements if developed under the D4 overlay ordinance. The Applicant asserts that it needs more vertical height for a mixed use project and to meet parking requirements. As discussed below, the Applicant has failed to support this claim. It is hard to determine whether the Applicant claims that the property cannot be used as it currently exists because of the inability to meet parking requirements or that it cannot be redeveloped physically for any purpose under the current zoning classification because of its configuration coupled with the D4/B-3 mixed use and parking requirements.

The Applicant makes the following assertions regarding parking requirements:

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District ... it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required) Letter, p. 2

***

The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. Letter, p.3

***

Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses. Letter, p.3

***

There are serious difficulties with building an underground
garage within the D-4 design parameters that is deeper than two levels. Consequently, any such garage is limited to approximately 60 parking spaces. Letter, p. 5

Based upon the first quote above, the Applicant appears to be stating that the property as it currently exists cannot support any or very limited off-street parking. Even if that is true, under Section 4.45 (G) 2 and 4 of the zoning ordinance, off-street parking can be provided within 100 feet of the site or via shared parking arrangements. The Applicant claimed in its CIS that it has an agreement with the 555 Building for the use of 45 parking spaces. The Applicant could also apply for parking variances. If the application of the parking provision of the zoning ordinance prevents the property from being used, the likelihood of necessary variances is extremely high.

The next four quotes appear to be referring to a redevelopment under the D4 overlay district requirements. The Applicant essentially makes the logically challenged argument that because it is outside of the PAD it needs to develop a project that requires even more parking to meet the off-street parking requirements. The Applicant’s proposed use shows a three level underground parking facility with 100 spaces and an agreement with the 555 Building for 45 more spaces. The Applicant does not explain the discrepancy between its proposed plan and its new claim that any underground garage is limited to approximately 60 parking spaces because of D4 design regulations. However, the same D4 design regulations that would apply to an underground garage in the D4 district also apply in the D5 district. The D5 zone does not provide any relief from the design issue. The Applicant, however, asserts that it could meet the parking requirements if it could construct a 9 story building but it cannot meet the parking requirements if it constructs a 5 story building. If the site can only accommodate 60 parking spaces rather than the 100 spaces that the Applicant originally represented, it defies explanation how a taller building is better able to meet even greater parking requirements. Moreover, if there is a design requirement which hampers providing more onsite parking, that is a variance and not a zoning issue.

The Applicant also does not explain whether it means that if restricted to five stories, it cannot develop its preferred 98 hotel units, 29 residential units and a first floor coffee shop/hotel lobby. The Applicant asserts that it is needs more height because it cannot possibly fit mixed uses and meet parking requirements on its site if limited to 5 stories. According to its proposed plan, however, it can fit approximately 21-26 hotel rooms per floor and 13 residential units per floor. It is unclear if the Applicant is now claiming that it can only build a two level underground parking garage rather than a three level underground garage. In either case, it does not affect the above ground height of the building. The Applicant likely could develop a 5 story mixed use building with for example 70 hotel units, 13 residential units and the same size lobby/coffee shop as proposed. A 5 story development with these specifications might require 73 parking spaces for the hotel, approximately 13-16 spaces for the residential uses (depending on the number of rooms) and 12 spaces for the lobby/coffee shop. Even if the Applicant could only fit 60 spaces onsite, it

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3 The Applicant appears to have made some mistakes in its parking analysis. For example the residential parking requirement under B-3 is 1 space for a 2 room dwelling and 1.25 spaces for a dwelling that has more than 3 rooms. The Applicant claimed that it needed 1.25 spaces for 26 apartments and 1.5 spaces for 3 apartments for a total of 37 spaces. The actual requirement is 29.75 spaces for 29 units.
could provide 105 spaces with the 555 Building parking agreement for 45 spaces.

The Applicant also has not explained whether it has explored the possibility of parking variances. A good argument exists that it should not have to provide any parking spaces for the lobby/coffee shop. The users of those retail spaces will likely be hotel guests or neighboring occupants who can easily walk to the coffee shop. The coffee shop likely will not be a destination spot for the motoring public. It is also likely that the hotel would not always be at full capacity which could provide a basis for obtaining additional parking variances. The City also is in the process of reviewing parking requirements for residential uses and possibility eliminating them for a site such as the Applicant’s property.

Therefore, the answer to not being in the PAD is not to create taller buildings with higher density that requires more parking. The more reasonable solution is developing at lower densities with lower parking requirements and applying for any needed variances.

The Planning Board Appropriately Decided to Table Consideration of the CIS and Preliminary Site Plan Review

The Applicant's second supplemental explanation under Sec. 7.02(B)(2)(b)(ii) of "why the existing zoning classification is no longer appropriate" essentially contains a confused diatribe regarding the Planning Board’s decision to table consideration of the CIS and preliminary site plan review until after the City Commission acted on the rezoning request. It also discusses the ability to develop and use the property under the existing classification, which was addressed above in this letter. The Applicant also claims under this section that the Board was misled to believe that the D5 overlay zone only applies to existing buildings taller than five stories. That issue has also been addressed earlier in this letter.

First, the Planning Board correctly voted not to review the CIS or proposed site plan until and unless the rezoning was granted. There is no legal or factual basis for the CIS and preliminary site plan review until the petitioner secures the rezoning necessary to develop the property as proposed. In fact, it is an elementary zoning and planning principle that neither a planning board or legislative body should ever consider a particularized site plan at the rezoning stage unless the rezoning is conditional or part of a planned unit development. The reason is that the municipality is supposed to be making the rezoning decision based upon whether the general zoning classification is appropriate for the property and not whether any specific proposed plan is appropriate for the property. Another reason is because once the land is rezoned, the land owner cannot be tied to any specific site plan. The owner is free to develop the land under any provision of the new zoning classification. It would have been an error if the Planning Board had recommended rezoning based upon the CIS or site plan or had been unduly influenced by the proposed use for the site in making a decision.

Second, the Applicant's assertion that the Michigan Zoning Enabling Act, MCL 125.3101, et seq ("MZEA") requires that rezoning decisions be made according to a site plan is inaccurate and nonsensical. The MZEA provides that a zoning ordinance must be "based on a plan designed to promote the public health, safety and general welfare..." (emphasis added) This means that the zoning ordinance itself and any amendments to it must be based - not on a site plan for the particular use of a single parcel of property - but upon a general land use plan, like the 2016 Birmingham Plan. The MZEA does not require site plans for rezoning property. It does require
site plans for the approval of special land uses and planned unit developments. A site plan ensures that property is developed consistent with ordinance requirements. The Planning Board did not prejudice the Applicant in any way by not reviewing a proposed site plan for a zoning that did not exist for the site. The rezoning of property is a legislative rather than administrative act and depends on the implementation and furtherance of general policies. It does not depend on a site plan for a single parcel of property.

The Applicant Failed to Support that the Rezoning Will Not Be Detrimental to Surrounding Properties

The Applicant’s supplemental explanation of why the proposed rezoning will not be detrimental to surrounding properties relies on its factually inaccurate statement that the City intended that the D5 overlay zone apply to the Applicant’s property and that the Birmingham Place owners will not be harmed by the rezoning.

First, as previously discussed, the history of the D5 zone indisputably supports that the clear intent of the D5 zone is only to apply to existing buildings taller than five stories. It should be noted here however that the Applicant’s Letter very misleadingly takes Ms. Ecker’s comment regarding new construction in the D5 zone completely out of context. All the participants in the D5 ordinance amendment process understood that the new construction provision was added for the benefit of the 555 Building. The language regarding new construction was not meant for property that had no existing height nonconformity that the D5 ordinance amendment was addressing.

Second, the Birmingham Place owners maintain their position that the proposed rezoning will be detrimental to the use and enjoyment of their property. A vast majority of the residential condominium owners, even those whose views will not be impacted, are opposed to the proposed development for many reasons that will be brought to the Board’s and Commission’s attention.

The Board Did Not Fail to Make Required Findings of Fact or Misapply the Rezoning Standards

The Applicant further claims that the Planning Board failed to make the required findings under Ordinance Section 7.02(B)(5). Its primary complaint is that the ordinance allegedly does not require the Planning Board to determine whether the property can be used as zoned. This is splitting hairs.

Section 7.02(B)(5) (d) of the zoning ordinance requires that the Planning Board make findings of fact regarding “[t]he suitability of the property in question to the uses permitted under the existing zoning classification.” Asking the Applicant why it cannot use the property as zoned is simply a way of determining whether the property is suitable for the uses permitted under the existing zoning ordinance.

Second, the Applicant claims that the Planning Board should have examined the appropriateness of the current zoning and not whether the Applicant could develop under this category. Again this is splitting hairs because it is the same question. The zoning may be inappropriate as applied to this site if the Applicant cannot develop or use its property under this classification. If the property can be used and the zoning classification still furthers master plan
goals and the public interest then it remains appropriate. The only difference between the D4 and D5 overlay zones is building height. The uses are the same. The Applicant’s only argument that conditions changed is the rezoning of Birmingham Place and the 555 Building. However that rezoning has not changed any existing land use patterns. The rezoning recognized existing land uses that had become nonconforming because of building height policies that changed after those taller buildings were constructed. Birmingham Place is as tall now as it was when it was rezoned to D5. The rezoning merely normalized the existing heights of the affected buildings.

A community generally should preserve its master plan and existing zoning unless the zoning classification no longer furthers the master plan goals or is no longer suitable for the site because of changed conditions and development patterns. The City certainly can adopt new master plan goals but should not make sweeping changes to the City’s land use plan through its zoning ordinances alone without first studying the issue of increasing building heights. The planning study is supposed to precede such zoning changes because the Zoning Enabling Act mandates that zoning be based on a plan. There has been no official study or public notice of any plan to allow more than 5 stories on the West side of Woodward. Moreover, the City weakens its master plan and its ability to defend it in court when it approves rezoning that is inconsistent with the plan. The proposed rezoning was not consistent with the 2016 Plan which reflects a policy decision to limit the height of buildings in the Downtown Overlay Zone to five stories. It is true that the City has since allowed taller buildings in the Triangle District but that new zoning was accomplished according to the Triangle District Plan. Therefore, when asked to depart from the 2016 Plan as it applies to the West side of Woodward, the City is well within its rights to require that the proponent demonstrate that the property cannot physically or viably be developed as zoned. To suggest otherwise ignores established zoning law and planning principles.

**CONCLUSION**

The Applicant has not provided any new information that should change the Planning Board’s original and correct recommendation to rezone the property to the D5 overlay classification. It is beyond dispute that the D5 ordinance was meant only to apply to existing buildings over 5 stories or existing sites that contained buildings over 5 stories. The Planning Board determined when it drafted the D5 ordinance that it would not address the future development of any other parcels in the Southern Gateway. It would be unfair and a failure of process for the Planning Board to ignore that history because the public will then have been misled by the process to enact the D5 ordinance. It is customary for the City to involve the public in any study to raise building heights as it did in the Triangle District.

Moreover, the Applicant made no effort to demonstrate that the D4 ordinance is unreasonable or unworkable as applied to its property. It has not made any credible case to support the rezoning request. At the June 27, 2018 hearing, the Applicant claimed that he could only make the site work with a hotel and in order to develop a hotel “I need to fit everything into this package that the hotel wants.” (emphasis added) This is the very reason why the City cannot rezone property based upon a proposed use. The issue is not what this particular hotel wants and the City cannot guarantee by rezoning the property that the hotel will even go through with the development. The issue is what does the existing zoning allow and can any of the allowable uses be reasonably developed consistent with the City’s land use polices as reflected in the 2016 Plan and its zoning ordinance.
The Planning Board, therefore, must recommend a denial of this opportunistic and improper rezoning request.

Very truly yours,

Susan K. Friedlaender

Susan K. Friedlaender
EXHIBIT A

TIMELINE AND SUPPORTING MATERIALS REGARDING THE EVOLUTION OF THE INTENT AND PURPOSE OF THE D5 OVERLAY ORDINANCE

INTRODUCTION

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place has mischaracterized the purpose of its enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final and enacted draft was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. In fact, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was to find a way to allow the renovation and expansion of legal nonconforming commercial buildings. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. This is why it would be completely improper to rezone the Applicant’s property to D5. The rezoning would pose a serious question regarding whether the Planning Board properly notified the public and City Commission regarding the intent and application of the D5 ordinance.

June 10, 2015 Planning Board Study Session

In the spring of 2015 the owners of the 555 Building submitted a request to amend the zoning ordinance and create a new D5 overlay district for buildings over five stories. The owners proposed the ordinance after the building department found “that any changes to the existing legal non-conforming building would increase the nonconformity, and thus be prohibited unless numerous variances were approved.” (2015-06-10 Minutes from Planning Board Study Session)

When first presented with several different drafts of the proposed D5 ordinance, the Planning Board discussed that the proposed amendment “should be viewed not only as to how it applies to 555 S. Old Woodward Ave., but possibly to other properties as well.” Id. The reason for this cautious approach was to counter any charges of spot zoning or undue favoritism. The dilemma that emerged, however, was the valid concern about applying the ordinance to other properties without further study: (Emphasis added)¹

Mr. Koseck noted there are all kinds of non-conforming buildings in the City and he doesn’t think the goal is that they should all go away and become conforming. That is why the Board of Zoning

¹ Please note that the reason for the inconsistency of referring to the “D-5” and “D5” overlay zone throughout this letter is because while the Zoning Ordinance uses the “D5” appellation, the minutes and other writers often use “D-5” designation. This writer chooses to use the official Zoning Ordinance version.
Appeals exists. He is in favor of improvements being made to the
building, but as the applicant makes enhancements he (page 7)
hopes they would go further to be more in compliance with D-4, D-
3, D-2, and D-1. It scares him to expand D-5 beyond the limits of
this property without further study.” Id.

Chairman Clein thought of this as an opportunity to take a look at
this building along with several parcels in the context of future
development. If Bruce Johnson, Building Official, and Tim Currier,
City Attorney, would come to a Planning Board meeting and are on
board, he would be in favor of providing some relief in a unique
situation; but he just doesn't want to do it capriciously. The
Ordinance standards were put in place for a reason and he would be
supportive of fitting them into the context of a building that
obviously is not going away, in order to help make it better.

Ms. Whipple-Boyce was also in support of helping to make this
Gateway building better looking. She thought also that it would be
helpful to have Messrs. Johnson and Currier come to a Planning
Board meeting. She could not imagine why the Planning Board
could not somehow help the applicant to get their building re-
skinned in some other way. Further, the ordinance proposal should
not include some of the things that the board does not want to have
in the City.

Ms. Lazar was in full support, as well, of trying to do something
with the building. However, she didn't see how this board could
whip up a new ordinance in a short period of time. It concerns her
that what might be applied to this building could become applicable
to some other sites which would not be appropriate. She would
rather try to help the applicant get to where they need to be with this
building” Id.

July 7, 2015 Planning Board Study Session

At the next study session, the Planning Board continued discussions regarding whether to
target a larger area between Hazel and Brown or limit the application of the new ordinance to the
555 Building.

Mr. Williams summed up the discussion by saying the board wants
to go the conforming route and use the SLUP process to do it. Maybe
the applicant won't get everything but they can probably get a
substantial achievement through the combination of the new MU
classification plus SLUP exceptions for what they get as of right and
what they get as a bonus. Ms. Ecker noted that is consistent with
what the City does in other districts and what has been approved by
the City Commission. This is a methodology that gives the Planning
Board flexibility. It was the consensus that staff should work on
crafting something to that effect, taking the 555 Bldg. separately so that it gets through the City Commission.

September 9, 2015 Study Session

At the next study session, Ms. Ecker summarized the process as follows:

The applicant is seeking to rezone the 555 S. Woodward Ave. properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-09 Minutes, p. 9)

The Planning Board continued to ponder the scope of the work and whether it should go beyond dealing only with the 555 Building. Mr. Williams suggested creating a D5 district for the 555 Building and a D-6 District for other locations which might be nine stories. Id. at p. 10.

The Planning Board failed to reach a consensus or agreement with Mr. Williams suggestion.

September 30, 2015 Planning Board Study Session

At the next study session, the purpose of the proposed ordinance was characterized as follows:

Ms. Ecker explained that in order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal then is to seek rezoning of the 555 S. Woodward Ave. property from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-30 Minutes, pp 10-11)

The Planning Board again discussed creating two new overlay zones to address not only the nonconformity issue but also to address other property in the Southern Gateway area. The Planning Board continued to debate the expanded approach and could not reach a consensus.

Ms. Whipple-Boyce said it is important to try to help the applicant have some sort of zoning classification so they can move on with their project. However, she also does not want to see 168 ft. up and down Woodward Ave. She is not sure that looking at the whole area is even appropriate. So maybe just work with this building and give them a zoning classification. Steer the applicant toward having their building conform with the sort of downtown standards that the board hopes to have; which for example, isn't the garden level. If they want to continue to have these when they come forward with a new plan that is when they can go to the BZA. (Emphasis Added)
Mr. Share was in favor of having the applicant first exhaust their remedies. If the BZA doesn't provide them with the relief they need and this board concludes that it is really critical, then maybe the board changes the ordinance, takes the heat for it, and tells everyone it is because they don't want the building to fall down.

Chairman Clein said he is not hearing any clear direction so the board needs to bring this back because it is a complicated issue. (Emphasis Added)

The Owner’s attorney assured the Planning Board that providing the 555 Building with relief would not be spot zoning.

January 17, 2016 Planning Board Study Session

At the opening of the study session, Ms. Ecker recounted the history of the ordinance amendment and rezoning request. She explained that the 555 Building not only wanted to renovate the existing building but the owners also wanted to add “an addition to the south of the existing residential tower for new retail space and residential units.” (Emphasis Added)

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2016-01-17 Minutes, pp 3-4)

Ms. Ecker also recounted that as of the last study session the Planning Board could not reach a consensus regarding whether to deal only with the 555 Building or look at properties along Woodward north to Brown Street:

There was no consensus on whether only the 555 S. Old Woodward Ave. property should be placed in a new overlay classification or whether this should extend north to Brown St. along Woodward Ave.

The minutes from the study session show that the Planning Board continued to debate whether to include properties other than the 555 Building in the proposed overlay district:

Mr. Share thought there are two separate questions. One relates to the 555 Building and whether or not it ought to be allowed to become conforming; separately, there is a question about general planning principles.
Mr. Boyle’s opinion was there are three issues: the building itself; the corridor; and thirdly how to move forward with the details on S. Old Woodward Ave.

Mr. Williams stated the board should focus on the 555 Building and come up with a practical solution. The problem is that the building isn’t right and it needs to be improved.

Ms. Whipple-Boyce said the question is whether a new zoning classification needs to be created, or can the applicant go through the variance process and achieve the same result.

Understandably, the owners of the 555 Building wanted to move forward with their request. The owners’ attorney reiterated that the Owner was requesting that “the Zoning Ordinance be amended to accommodate their building; and second that the zoning map include the petitioner’s property.” (Emphasis added) The attorney did not believe that accommodating the building would be spot zoning, meaning that the Planning Board did not have to concern itself with anything other than moving forward on an ordinance that would apply only to the 555 Building.

Additionally, he [Mr. Rattner, the attorney] emphasized this is certainly not spot zoning. The idea is to modify the ordinance to make a nonconforming building one that should obviously be conforming in order to allow the owner to make improvements. Mr. Rattner requested that the proposed ordinance be moved forward to a public hearing.

The Planning Board was persuaded and concluded that it needed to focus on the 555 Building and leave discussion of the corridor for another day.

Chairman Clein summarized that the board has come to the conclusion that it needs to focus on the 555 Building. The rest of the corridor is a different discussion. The board concluded that a subcommittee consisting of Ms. Ecker, Mr. Rattner, the City Attorney, and two board members could have a discussion on this in an open meeting forum. Mr. Share and Mr. Koseck volunteered to represent the Planning Board in the deliberations.

There was one public comment which shows that this member of the public understood that the Planning Board would not be making any new and sweeping changes but only be focusing on how to help the 555 Building.

Mr. Paul Reagan, 997 Purdy, said he is encouraged by the discussion. No one wants the building to deteriorate. He is glad that the Planning Board is not going beyond what was asked for, which is to restore the building. That is about how far it should go. Right now there is real competition for parking on S. Old Woodward Ave. Imagine what expanding the density of that building would do to the neighborhood. Lastly, he was shocked to
hear the petitioner had a hand in drafting ordinance language for rezoning. (Emphasis Added)

The Planning Board decided to establish a sub-committee to work on the new ordinance amendment. The sub-committee did not present its findings and proposals until September 2016. In the interim however the Planning Board obtained direction from the City Commission regarding dealing with the important issue of nonconforming commercial buildings.

**June 20, 2016 Joint Session with City Commission**

The Planning Board presented several land use items to the City Commission at the joint session with the understanding that if the City Commission wanted further discussion the matter would be submitted at a subsequent meeting for more formal direction to further study and address the issue. (See 2016-06-13 Memo from J.A. Valentine to City Commission.) Mr. Valentine also submitted a more detailed memo to the City Commission dated June 14, 2016 which in part described the issue of “Existing Commercial Non-Conforming Buildings” and asked the Commission whether the issue merited further discussion. (See June 14, 2016 Valentine Memo.)

The representation made to the City Commission was that the Planning Board wanted to address the 555 Building and other existing non-conforming buildings like Birmingham Place and Merrillwood. There was no representation that the Planning Board would address extending the proposed new overlay ordinance to buildings like the Applicant’s building that was not in danger of losing substantial value like the 555 Building if forced to redevelop only by losing substantial building height.

**July 25, 2016 City Commission Meeting**

Ms. Ecker attended the City Commission meeting to get the Commission’s formal direction on how the Planning Board should proceed on the planning issues raised at the joint meeting.

Ms. Ecker represented to the Commission that the Board was only looking for ways to deal with existing nonconforming commercial buildings and not to create a new ordinance that would allow existing sites without any height non-conformity to construct new buildings under the proposed zoning district. The ordinance was not intended to deal with new development that could conform to the existing zoning classification. Ms. Ecker stated:

if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty’s when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already nonconforming. (Minutes, p. 6)

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Mayor Pro Tem Nickita stated that this was an issue that the Commission wanted to address.

He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a nonconforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building. (Minutes, p. 6) (emphasis added)

The City Commission gave the following direction to the Planning Board:

MOTION: Motion by DeWeese, seconded by Bordman: To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures. (Id.)

The City Commission’s specific directive relative to any new zoning category was to allow for changes to non-conforming buildings and for their renovation and maintenance. It was not to create a new overlay district that allowed any property the option to build taller than 5 stories.

August 10, 2016 Planning Board Meeting

Ms. Ecker briefed the Planning Board on the City Commission’s directives regarding the planning issues addressed at the joint meeting. She reported that that the Commission directed the Planning Board as follows:

3) Existing Commercial Non-Conforming Buildings - to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering creating a new zoning category or categories to allow for changes to nonconforming buildings for maintenance and renovation consistent with those permitted for residential buildings and structures. (Minutes, p. 5)

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Ms. Ecker suggested creating a win-win situation by offering the ability to renovate or to add an addition, but the City would get something in return. Ms. Whipple-Boyce said it would be nice to have this in place ahead of time for buildings like 555 Woodward and Merrillwood. **Chairman Clein thought the board could consider new zoning categories if there are specific areas that need it; but they can also consider generic language changes. Look at the non-conforming buildings first.** (Id.) (Emphasis added)
September 14, 2016 Planning Board Meeting

At this meeting, the Planning Board resumed the discussion of non-conforming building regulation under the City Commission's parameters which did not include allowing sites with buildings under 5 stories the ability to go higher than 5 stories.

Ms. Ecker, along with the attorney for the 555 Building, suggested that instead of creating a new overlay district, the Planning Board could recommend amendments to the B-3 zoning ordinance that would render not only the 555 Building but also Birmingham Place as conforming buildings.

It was during the discussion to amend the B-3 ordinance that the only reference to Mountain King is recorded in any public document concerning the D5 zoning amendment:

Ms. Ecker stated that the 555 Building, Birmingham Place and Mountain King were the only properties in the City zoned B-3 in the underlying D-4 Zone. She suggested an option that would amend the regulations for height and setback similar to what they were when the buildings were approved. Mr. Williams wanted to limit the focus on just the 555 Woodward Bldg. as he thinks it needs to be approved. (Minutes, p. 5) (Emphasis added)

Ms. Ecker noted this option would allow the applicant to have a conforming status and apply for financing to do an expansion and improvement on the building. It would allow them to do an addition to the south and come to zero setback, and to go up to match the height of the building that is there. What it would not do is force them to address the issue of the garden level or the dead zone along Woodward Ave. However, it would permit them to address that. Id.

Ecker was mistaken regarding the number of parcels zoned B-3. The Power House Gym property is also zoned B-3. Regardless, it should be clear that the only reason Ecker mentioned Mountain King was to promote the idea that changing the B-3 zoning would alleviate any concern about spot zoning and at the same time would not open the door to many other parcels being able to take advantage of the amended ordinance. However, there was no support for the B-3 amendment option.

Mr. Koseck was in favor of allowing the building to continue to be updated but that doesn't mean it should be permitted to grow. Any add-on to the south would have to meet the current Ordinance."

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Discussion concerned whether B-3 zoning that allows Birmingham Place and Mountain King to reach 168 ft. in height would be a hard sell to the public. The conclusion was they could not sell it on more than one piece of property. Mr. Williams proposed they go back to a previous zoning for the 555 Building that existed 45 years ago. He didn't think it should include any other
property. Because of that they would not be making a special case for this building in the form of spot zoning. The legal argument is that it would be remedying a wrong. (2016-09-14 Minutes, p. 5)(Emphasis added) (Minutes, p. 5) (Emphasis added)

September 28, 2016 Planning Board Meeting

Ms. Ecker provided background information including that at the last study session the Planning Board “resumed their discussion regarding legal nonconforming buildings.” The result was that “after much consideration” the Board directed the Planning Staff to meet with the 555 Building applicant to draft proposed ordinance language that addressed “the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of three buildings downtown.” (2016-09-28 Minutes, p. 3)

It is clear that by this meeting the Planning Board was only discussing a draft of the D5 overlay ordinance that gave the 555 Building, Birmingham Place and Merrillwood conforming status and nothing more. According to the minutes, the approach, with which the 555 Building applicant agreed, “was first to create a D-5 Zone, and second to recommend rezoning of one or more properties into the new D-5 category. This would allow the board to have further discussion on whether they want it to be the 555 Building property, or include the Birmingham Place and the Merrillwood Building, which are also non-conforming with regard to height.” (Id. at p. 5.)

It is also very clear that the Planning Board intended that the D5 language regarding new development in the D5 zone was for the benefit of the 555 Building owners, who expressed throughout the process that they wanted the right to use their vacant property for a new building that could be built as tall as the 555 Building. The only issue was whether building higher than 5 stories would require a special land use permit.

Chairman Clein summarized that the language would make any property that is put into the D-5 Zone legal and conforming as to height and setback. It would allow expansions as part of building maintenance. Undeveloped portions of the property could be built upon so long as it meets the D-4 Overlay standards. The south side of the 555 Building still needs to be resolved.” (Id.)

Mr. Williams did not agree with limiting the south side to five stories. However, anything built above five stories would require a Special Land Use Permit ("SLUP"). Mr. Share was in favor of tying all of the expansions to a SLUP. Chairman Clein felt the D-4 controls are in place and any expansion must conform. Mr. Share thought the City should have some control over how changes get made. Mr. Koseck liked the SLUP because it allows the City to control the design to meet the spirit and intent of the D-4 Zone. Mr. Jeffares agreed. (Id.)

2 As stated, the Planning Board also amended Section 6.02 so that it applied to nonconforming commercial and residential buildings.
The 555 Building owner’s Attorney responded to the discussion as follows:

Mr. Richard Rattner, Attorney, represented the applicant. He said they are almost there with allowing the 555 Building to be conforming in all respects. Secondly, the proposed expansion language is fine. Third, they would like to see the height of a new building being constructed in the D-5 Zone be up to but not exceeding the height of the building immediately adjacent or abutting it. That means the south building cannot be any higher than the 555 Building. They would like to do that without a SLUP. (Id.) (Emphasis added)

October 28, 2016 Planning Commission Meeting

At this meeting, the Planning Board set a public hearing for making a recommendation on the amendment of the D5 ordinance and the proposed rezoning of the 555 Building to the new zoning overlay district category.

First, Ms. Ecker provided a recap which reiterated that the proposed D5 classification would accomplish two goals: (1) render 555 S. Old Woodward a legal conforming structure and (2) allow a new addition at the south end of the building that could be built as tall as the adjacent structure. (2016-10-26 Minutes, p. 4)

Ms. Ecker also suggested that the Board should recommend rezoning Birmingham Place and Merrillwood to the D5 classification because they were also nonconforming in building height. The consensus was to contact the owners before including them. There was no suggestion that they contact the owner of the Mountain King property or include that property in the rezoning because the Mountain King property did not contain an existing building over 5 stories.

The decision to include Merrillwood in the rezoning further establishes that the City did not intend the D5 Overlay ordinance as part of any general development incentive for the South Woodward Gateway as the Applicant has represented to the Board. Merrillwood is not located in the South Woodward Gateway. The Planning Board included Birmingham Place and Merrillwood because the only purpose of the D5 overlay district is to provide legal conforming status to existing buildings over 5 stories.

December 14, 2016 Planning Commission Meeting

At this meeting, the Planning Board held a public hearing on the proposed D5 amendment and the rezoning of the three nonconforming buildings. Ms. Ecker explained that the Planning Board set the public hearing “with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently non-conforming to be considered legal in regards to setbacks, number of stories, and height. The new
D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings.” (2016-12-14 Minutes, p. 3) (Emphasis added) 

It should be obvious that Ms. Ecker would have notified the public that the new D5 classification could be applied to any property in the City whether or not it was nonconforming in height if that was the intent of the new ordinance. The failure to notify the public of that intent is another reason why the Planning Board must again deny recommendation of the rezoning request. In fact, a resident, who was concerned about the impact on parking demand commented that he did not believe that residents really understood what was being considered. If what was being proposed was other than what has been represented as the goal of the amendment, there has been a serious breach of the public trust.

February 13, 2017 City Commission Public Hearing

At this meeting, the City Commission held a public hearing on the D5 ordinance amendment and rezoning. The planning department briefed the City Manager prior to the hearing.

In a Memorandum dated February 6, 2017 from Senior Planner Matthew Baka he reminded the City Manager that the Planning Board and City Commission discussed the issue of legal non-conforming commercial buildings at the June 2016 joint meeting.

The Memo further provides that the Planning Board held a public hearing to consider Zoning Ordinance amendments with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently nonconforming to be considered legal in regards to setbacks, number of stories, and height. The new D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings. (Memo, p. 1.) (emphasis added)

The Memo advised only that the goal of the zoning ordinance amendment was to render several buildings legally conforming structures. The Memo would have alerted the City Manager if the intention was to allow new construction on sites that did not already contain a building greater than 5 stories.

The minutes from the February 13, 2017 public hearing show that City Planner Ecker advised the Commission that with respect to the new D5 classification and rezoning of the three buildings:

[The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be

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3 As stated, the Planning Board also recommended amending Article 6, Nonconformances, Section 6.02 by removing the limitation that the extension or expansion of nonconforming property applied only to residential property.
extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay. (Minutes, p. 15)

First, Ms. Ecker unmistakably represented to the City Commission that the proposed D5 ordinance would apply to taller existing buildings, like the 555 Building, Birmingham Place and Merrillwood, and allow improvements and expansions of those buildings or sites.

Second, Ms. Ecker also led the Commissioners to believe that only the 555 Building would be eligible to build a new taller building in the D5 district because of the vacant land on its site. Ecker advised Commissioner Boutros that the language regarding new construction of a building as tall as an adjacent building was inserted because “the 555 site has room where a new building could be constructed.” (Id.)

Ecker also assured Commissioner Hoff as follows:

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said that they could not, because the properties next door would not have the D5 zoning classification.”

The clear inference is that neither Merrillwood or Birmingham Place could build new taller buildings by simply buying the next door parcels because those parcels would not have been eligible to be part of the D5 district. The 555 Building could construct a new building because its entire site would be zoned D5.

CONCLUSION

The history of the D5 overlay ordinance should clear up any misconception or unsupported assertions by the Applicant that Birmingham Place, its attorneys or any Planning Board member mischaracterized the intent and purpose of the D5 ordinance. The facts show that the only intent was to allow the renovation and expansion of existing buildings taller than 5 stories. It was also to allow the 555 Building the option to build on its vacant property that also was zoned D5. There was no intent that the City apply the ordinance to property like the Applicant’s property which can be redeveloped under the D4 ordinance and not lose any preexisting height. As a nonconforming building for reasons other than being taller than 5 stories, the Applicant can seek permission to renovate or expand its existing buildings under Article 6, Section 6.02.
DATE:         September 22, 2015
TO:           Planning Board Members
FROM:         Jana L. Ecker, Planning Director
SUBJECT:      Study Session on Legal Non-conforming Buildings

Last year, the owners of the 555 S. Old Woodward building applied to the Planning Board to amend the Zoning Ordinance to allow the renovation of the existing building, the addition of new residential units along S. Old Woodward, as well as an addition to the south of the existing residential tower for new retail space and residential units. The Building Official had previously ruled that some changes to the existing legal non-conforming building may be permitted. However, the scale and scope of the changes that the property owner sought to implement would exceed what would be permitted as maintenance and thus were not permitted in accordance with the legal non-conforming regulations contained in the Zoning Ordinance.

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward building requested a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal was then to seek rezoning of the 555 S. Old Woodward properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building at 555 S. Old Woodward as a legal, conforming building that could then be renovated and expanded in accordance with new D5 development standards.

On May 13, 2015, the Planning Board began discussing the applicant’s proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building. The Planning Board did, however, recognize the importance of the 555 S. Old Woodward building and the need to allow renovations and additions to improve its presence at the south end of Downtown Birmingham. Specific concerns raised regarding the existing 555 S. Old Woodward building were the unwelcome facades of the Woodward elevation, the split level concept on the S. Old Woodward elevation, and the exposed structured parking.

At subsequent Planning Board meetings on June 10th, 2015 and July 8th, 2015 the Planning Board further discussed the ways that the building could be modified and improved as a conforming structure and not through the use of variance requests. The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows
the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development. It was suggested that this could be accomplished through a combination of a new zoning district and a Special Land Use Permit (SLUP) or the addition of a D6 zone as well, to differentiate permitted height north of Bowers, and south of Bowers along Woodward. The board reviewed multiple examples of similar “gateway corridor” districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.

On September 9, 2016, the board reviewed a revised draft of the proposed D5 zone. Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District. Some board members felt that the allowable height in a new D5 or D6 zone should mirror the 9 stories permitted in the Triangle District on the east side of Woodward. Other board members felt that additions should be permitted to match the height of existing non-conforming buildings. The board was unable to reach consensus on how to proceed, and requested additional information and direction from the City Attorney on potential options to provide exemptions for non-conforming buildings. The City Attorney’s response letter dated September 29, 2016 is attached for your review.

On June 20, 2016 the issue of legal non-conforming commercial buildings was discussed at a joint meeting of the City Commission and Planning Board. The 555 S. Old Woodward building, the Merrillwood Building and Birmingham Place were referenced due to their non-conformity with regards to their height and bulk, and the desire to allow improvements or changes to these buildings. While no action was taken at the joint meeting, there was consensus that the issue of the improvement or expansion of legal non-conforming buildings should be studied.

On July 25, 2016, the City Commission again discussed the issue of legal, non-conforming commercial buildings and directed the Planning Board to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

On September 14, 2016, the Planning Board resumed their discussion regarding legal non-conforming buildings. Specifically, the Planning Board discussed the following options to allow changes to legal non-conforming buildings for maintenance, renovation and/or expansion:

1. **Allow Maintenance and Renovation Only of Existing Legal, Non-conforming Commercial Buildings**
Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity
A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
   1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
   2. The use shall not be reestablished after discontinuance for 6 months.
   3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

The amendment noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building so long as the addition meets the current zoning standards for the existing zone district. This amendment would allow both commercial and residential legal non-conforming buildings to be expanded using a consistent approach. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height only) to construct an addition. However, the addition could not be 10 stories in height to match the existing building, but could be built up to a maximum of 5 stories as currently allowed in the zone district.

2. Allow the Expansion of Existing Legal, Non-conforming Buildings To Match Existing Non-conforming Conditions

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity
A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
   1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
   2. The use shall not be reestablished after discontinuance for 6 months.
   3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself increase the degree of the dimensional nonconformance, nor violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).
Section 6.02 Continuance of Nonconformity

A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:

1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F). A legally nonconforming structure may expand its square footage provided that the expansion does not exceed the extent of the height and/or setback in nonconformance. All other development standards must be met in the expansion.

a. A vertical expansion of a nonconforming building or structure which is legally nonconforming as to one or more setback requirements is a permitted expansion of that nonconformity.

b. A horizontal expansion of a nonconforming building or structure which is legally nonconforming as to one or more height requirements is a permitted expansion of that nonconformity.

Both of the amendments noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building up to, but not exceeding, the existing non-conforming dimension. The first option listed above is more general in nature, and could include the expansion of any type of non-conformity (height, setbacks, FAR, density, lot coverage etc.). The second option listed above is limited to expanding only height and/or setback non-conformities. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height or setbacks) to construct an addition up to 10 stories in height to match the existing building height and setbacks.

3. Convert Existing Legal, Non-conforming Buildings to Conforming Using a Special Land Use Permit
Another option to consider may be to convert buildings or structures in Downtown Birmingham that are legal non-conforming with regards to height into conforming buildings through the use of a Special Land Use Permit. An amendment to Article 3, Overlay Districts, or to Article 6, Nonconformances, could be proposed as follows:

**Conversion of Non-conforming Status:** A building in the Downtown Birmingham Overlay District that is a legal non-conforming building or structure with regards to height may be deemed a conforming building or structure with regards to height if the property owner agrees to specific conditions to control the future extension, enlargement or renovation of the building or structure and said conditions are approved by the City Commission under the provisions of a Special Land Use Permit.

This approach would allow for the extension or enlargement of existing legal, non-conforming buildings downtown on a case by case basis as negotiated by the City Commission. The amendment noted above would provide flexibility for different site conditions and would provide control over the parameters of future expansion based on site and neighborhood context. As an example, a 10 story legal non-conforming building in a 5 story zone district could be deemed conforming if placed under the provisions of a SLUP that establish the specific conditions for maximum extension or enlargement of the building in the future.

4. **Re-establish the Zoning District(s) in effect when Building Permits were Issued for Buildings in Excess of 5 Stories (or amend the B3 Zoning District) to render existing buildings conforming**

Another option to consider may be to re-establish the former zoning classification(s) in place in the 1970’s when several buildings were legally constructed greater than 5 stories in height, and to rezone properties with non-conforming buildings with regards to height back to this classification. Thus, any extension or enlargement of an existing legal, non-conforming building so rezoned would be permitted as anticipated at the time of construction. As an example, a 10 story building constructed in 1975 under a classification that permitted 11 stories in height could be extended or enlarged up to 11 stories in height.

5. **Create a New Zoning District(s)**

Another option to consider is to create a new zoning classification(s) that would permit additional building height and rezoning certain properties to this classification, thus rendering legal non-conforming buildings or structures conforming buildings with regard to height. This approach has been discussed by the Planning Board over the past year, and amendments have been drafted to create two new classifications under the Downtown Overlay, D5 and D6, to attempt to address the non-conforming heights of several buildings downtown. The Planning Board has also discussed using this approach to address sites along the west side of Woodward to allow additional height even for existing conforming buildings along the corridor to match the height permitted on the east side of Woodward in the Triangle District. The latest version of
the draft previously discussed by the Planning Board is attached and highlighted to indicate areas noted for further discussion. As an example using this approach, an existing 10 story legal non-conforming building in a 5 story zone district could be rezoned to a new zoning classification to be created that would allow 10 story buildings as of right.

At the Planning Board meeting on September 14, 2016, board members agreed that the improvement and maintenance of existing legal, non-conforming commercial buildings should be permitted, and expansion of such buildings should also be permitted consistent with regulations for residential buildings. Board members also discussed at length the issue of several legal, non-conforming buildings in the Downtown Overlay District, and the desire to allow improvements to those buildings as well. After much discussion, the Planning Board directed Planning staff to meet with the applicant for the 555 Building to craft ordinance language that would make existing buildings downtown conforming with regards to both height and setbacks, and to allow future expansion that would comply with the standards of the D4 Overlay.

On September 28, 2016, the Planning Board discussed draft ordinance language that proposed to create a D5 zone district that would render existing buildings legal and conforming with regards to setback and height. Board members agreed that additions or renovations should be permitted to existing buildings. With regards to the construction of new buildings in the proposed D5 zone district, there was much discussion as to whether such buildings should meet the 5 story maximum height in the D4 zone district, or should be allowed to match the height of the existing adjacent buildings. The consensus of the board was to allow additional height for new buildings in the D5 to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP. At the end of the discussion, the applicant asked if the Planning Board could simply waive certain requirements in the D5 zone instead of requiring a SLUP. Staff agreed to discuss this with the City Attorney.

Since the September 28, 2016 Planning Board meeting, City staff has met with the applicant to refine the draft ordinance language. Accordingly, please find attached draft ordinance language for your review based on the Planning Board’s direction from the last meeting that addresses the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of buildings downtown.

The applicant has also provided another version of a draft ordinance for the Planning Board’s discussion as well based on their desire to construct a new building that exceeds the height of the existing 555 building, but maintains the same number of stories. The applicant’s revised draft is also attached for your review.

Finally, City staff has reviewed the applicant’s request as to whether the Planning Board can simply waive certain requirements in the D5 zone with both the City Manager and the City Attorney. Although it was unclear as to whether there was a legal question, the City Manager directed the City Attorney to respond. The City Attorney has advised that the question of whether the Planning Board can waive specific requirements is not a legal question, but rather a
policy question. Ultimately, the City Commission has the sole authorization to pass zoning legislation, with or without waivers, so long as they remain in compliance with the Michigan Zoning Enabling Act.

Should the Planning Board wish to recommend the attached ordinance amendments, the board may also wish to consider proposing a rezoning of the 555 Building, Birmingham Place and/or the Merrillwood Building to the proposed D5 Zone (over 5 stories).

**Suggested Action:**

To set a public hearing for December 14, 2016 to consider the following amendments to Chapter 126 Zoning:

(a) Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district;

(b) Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To set a public hearing for December 14, 2016 to consider the rezoning of the following properties:

(d) **555 S. Old Woodward** (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;

(e) **411 S. Old Woodward** (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and

(f) **225 E. Merrillwood** (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.
October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward, Birmingham, Michigan (the “Property”)

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the “Association”) to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is “back” on the Planning Board's agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client’s position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called “new” information or positions could possibly justify a change to the Planning Board’s previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled “new” information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also.
advising the Association of its legal rights and remedies along with the Residential Condominium Association’s counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: [Signature]
J. Patrick Lennon

cc: Ms. Michele Prentice
    Ms. Jana L. Ecker
    Ms. Susan K. Friedlander
    Mr. Richard D. Rattner
Submitted On Behalf of Birmingham Place on 01-23-18

REZONING REQUEST FOR 469-479 S. OLD WOODWARD

RESPONSE TO “SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT
AND THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT’S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant’s application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant’s request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department’s analysis and findings under the City Ordinance regarding the applicant’s request to rezone 469-479 S. Old Woodward:

• The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).

Reply: Agreed

• The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).

Reply: Agreed

• The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.

Reply: Agreed

• Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.

Reply: This is first of several completely subjective conclusions stated as fact but without any supporting facts or evidence. The actual fact is that the very nature of the lots’ size and configuration and the parking requirements make building a nine (9) story building virtually unworkable, especially as regards parking and traffic issues (see report by independent expert retained by the City with findings to the contrary of what the developer claims the Planning Board has made).

• Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.

Reply: See immediately above; rezoning would only exacerbate already serious problems.

• Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant’s proposal will add consistency to the streetscape in mass and architectural detail.
Reply: The clear facts are that only Birmingham Place and the 555 Building are zoned D-5, that the office portion of the 555 Building on Hazel Street is only five (5) to six (6) stories, and that all other nearby properties are one (1) or two (2) story buildings. It is apparent at a glance that the building the developer proposes would dwarf almost all nearby buildings, would create substantial inconsistency to the area in both mass and architectural detail, the latter, based on the developer’s filings with the City to date being a very substantial departure from all adjacent and nearby buildings, make the proposed building “stick out like a sore thumb” in an otherwise very attractive area.

- Section 7.02(B)(5)(a) -- The objectives of the City’s master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.

Reply: The actual fact is that, based on the developer’s drawings submitted to date, the proposed building would have a virtually blank wall facing Woodward Avenue, would crowd the already narrow Hazel Street area with hotel frontage and would be detriment to the Old Woodward frontage by adding inconsistent mass running all the way to the Hazel Street corner. The only “strong image of the City toward Woodward” would be the unwelcoming appearance of a modern day version of a medieval wall running from the north end of Birmingham Place all the way to the south end of the 555 Building.

- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant’s proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.

Reply: The factual portion of the above re mixed use buildings, etc. is accurate, but the statement that the proposed hotel somehow “aligns” with entirely different uses in all nearby buildings is obviously inaccurate at best.

- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.

Reply: Correct but irrelevant, especially in light of the subject property having been intentionally zoned D-4 and “both neighboring properties” having been zoned D-5 primarily, if not exclusively, to give them legal conforming status, which was never necessary or intended for the subject property.

- Section 7.02(B)(5)(d) – The applicant’s property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.

Reply: In actual fact, a five (5) story or lower building would be entirely consistent with every building in the area other than Birmingham Place and the 555 Building, neither of which dominate or are inconsistent with the one (1) story properties that have occupied the subject property for decades.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.

Reply: The alleged “domination” of Birmingham Place and the 555 Building is patently inaccurate, given the actual facts of the vast majority of development in the S. Old Woodward area. More importantly, the trend of development in Birmingham has complied with D-4 standards. A memo dated May 18, 2018 from the Planning Department to this Board (which may have been removed from this Board’s second packet and on which the Planning Department has supposedly completely reversed itself) reads in part:

"Developments trends in Birmingham's Downtown Overlay have seen many buildings built, or approved to be built, to D-4 Standards such as the Maple gateway buildings close by (Greenleaf Trust, Balmoral and the proposed Peabody Redevelopment), the Brookside development, and the proposed mixed use development replacing the Varsity Shop. There have been no buildings erected to D-5 Overlay Zoning standards in some time."

Further, there has been no change in the trend in development or in the character of this area since the 2016 Plan was adopted – taller buildings existed then, and yet the predominant character of the downtown area remains two- to four-story buildings. All other recent developments (e.g., the Daxton Hotel, Forefront, Bristol, Brookside, Peabody, Westbrown, the new proposed Maple House, even 750 Forest in the Triangle District, etc.) have complied with the Master Plan; so should this development.

- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

Reply: It is difficult to understand how the Planning Department could come to this conclusion, if it actually has, but even if it actually has, the conclusion is clearly contrary to the obvious facts and should be ignored by the Planning Board.
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

[Signature]

Jay Black
1276 Smith Ave.
Birmingham, MI 48009
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9-story building on this 0.41-acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

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Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

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[Signature]

955 Biltmore

[Date]
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Eunice Galperin

Eunice Galperin
ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Jackie Pippin
642 Oak Ave
Birmingham 48009
ADDRESS

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 460-170 S Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

P. Steven Warren
1896 Stanley Blvd
Birmingham, Mich 48009
ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Mark D. Rubinstein
268 Pilgrim
6/23/18

Arline K. Rubinstein
268 Pilgrim
6/23/18
May 6, 2019

Mr. Joseph A. Valentine, City Manager

City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI  48012-3001

Re:  Request to Amend the D5 Overlay Zoning Ordinance

Dear Mr. Valentine:

On March 11, 2019, a request was made to rezone 469-479 South Old Woodward from B3/D4 to B3/D5. The following are the excerpts from the Minutes of that meeting as to the City Commission’s discussion:

“**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To deny the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

City Attorney Currier said he would have to research whether the applicant could submit a new application before a year’s time elapses if the City makes changes to the D5 ordinance, because it might sufficiently constitute a material change in circumstance.

Mayor Bordman said she would be supporting the motion because she does not want the issue to go back to the PB.

**VOTE:**
Yeas,  3
Nays,  4 (Boutros, Harris, Nickita, Sherman)

**MOTION FAILED**

**MOTION:** Motion by Commissioner Harris
To approve the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

**MOTION DIED FOR LACK OF A SECOND**

**MOTION:** Motion by Mayor Pro Tem Boutros
To postpone the hearing to do a comprehensive study.

**MOTION DIED FOR LACK OF SECOND**
MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To postpone the public hearing to July 22, 2019 for the purpose of sending it back to the Planning Board with specific direction to look at the issues raised by Commissioner Nickita on the D-5 ordinance and to look at the properties between Haines and Brown, Old Woodward and Woodward for the appropriate zoning classification.

Planning Director Ecker said the ordinance language could possibly be reviewed and brought back by July 22, 2019. She was not sure if the PB would reach consensus in three months on the geographic area to which the D5 zoning should be applied, since they have already studied the issue and were not able to reach consensus.

Commissioner Hoff said she would be interested in knowing whether building heights should be to the eaves or the tallest structure on a building, and the specific meaning of the ‘adjacent’ and ‘abutting’ in the context of the ordinance.

Commissioner Sherman said he would be willing to change the date in the motion to allow an additional month of study.

Commissioner Nickita said it should not take four months to define the method of determining building height and the definitions of ‘adjacent’ and ‘abutting’. He said it would be better to keep the date in the motion and to extend it if necessary.

Mayor Bordman invited public comment on the motion.

Mr. Rattner stated the applicant had no objection to the motion.

Mr. Schwartz said that all the interested parties have weighed in on the issue, and the Commission is in effect postponing a civic duty.

Mr. Bloom said he would like to know the impact on the City if the parcel is built up as a hotel, office building, mixed use space, or any other type of development. He would want the PB to report on each building-type’s likely impact on parking, public safety, density, and overall quality of life for Birmingham residents.

Mr. Reagan said ‘adjacent’ and ‘abutting’ were terms already discussed at the beginning of the 2016 planning process. In addition, the expansion of the geographic area being studied concerned Mr. Reagan because, as he stated, the
neighborhood included within that area already deals with significant congestion, cut-through traffic, and parking issues. If these developments occur, there has to be sufficient parking accommodations. Mr. Reagan asserted parking shortages would stem the possible larger D5 developments the City is considering allowing.

Ms. Friedlander said choosing to raise the heights of buildings should be part of a community study process, and all the buildings around the Merrillwood building should be included in this motion and studied since Merrillwood is also zoned D5.

Mr. Abel said the Commission should make a decision this evening.

Commissioner Hoff said Commissioner Nickita’s concerns should be spelled out in the motion.

Mayor Bordman agreed with Mr. Abel and Commissioner Hoff. She asked if there was motion to amend in order to include Commissioner Nickita’s comments.

No motion to amend was offered.

VOTE: Yeas, 2 (Nickita, Sherman)
Nays, 5

MOTION FAILED

The Commission took no action. The property remains zoned D4.

Mayor Bordman recessed the meeting for three minutes. The meeting resumed at 10:48 p.m.”

The Birmingham Zoning Ordinance provides under Section 7.02B6:

“6. Underlying Action by the City Commission. Following receipt of the written report and recommendations from the Planning Board, the City Commission may grant or deny any application for the amendment for rezoning. If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.”
The question is, was the City Commission’s motions a denial of the application that prevent it from being reheard for at least one year. In this regard, I refer you to Robert’s Rules of Order:

“SECONDING A MOTION. After a motion has been made, another member who wishes it to be considered says, ‘I second the motion,’ or, ‘I second it,” or even, ‘Second!’—without obtaining the floor, and in small assemblies without rising. ** In large assemblies, and especially in those where nonmembers may be seated in the hall, the seconder should stand, and without waiting to be recognized should state his name (with other identification, if appropriate) and say, ‘Mr. President [or ‘Mr. Chairman’], I second the motion.’ In some organizations, especially labor unions, the word ‘support’ is used in place of ‘second.’

If no member seconds the motion, the chair must be sure that all have heard it before proceeding to other business. In such a case the chair normally asks, ‘Is there a second to the motion?’ In a large hall he may repeat the motion before doing so. Or, if a resolution was submitted in writing and read by the chair or the secretary rather than by the mover (as described on p. 33) the chair may say, ‘Miss A has moved the adoption of the resolution just read. Is there a second to the resolution?”; or, if the text of the resolution has been distributed to the members in advance and was moved without being read, the chair may say, for example, ‘Miss A has moved the adoption of the resolution relating to….., as printed. Is there a second to the resolution?’ If there still is no second, the chair says, ‘The motion [or ‘resolution’] is not a seconded”; or, ‘Since there is no second, the motion is not before this meeting.’ Then he immediately says, ‘The next item of business is …..’; or, if appropriate, ‘Is there any further business?’

A second merely implies that the seconder agrees that the motion should come before the meeting and not that he necessarily favors the motion. A member may second a motion (even if using the word ‘support’ as indicated above) because he would like to see the assembly go on record as rejecting the proposal, if he believes a vote on the motion would have such a result. A motion made by direction of a board or duly appointed committee of the assembly requires no second from the floor (provided the subordinate group is composed of more than one person), since the motion’s introduction has been directed by a majority vote within the board or committee and is therefore desired by at least two assembly members or elected or appointed persons to whose opinion the assembly is presumed to give weight regarding the board’s or committee’s concerns. (For rules governing the appointment of non-assembly members to committees, see pp. 174-75, 492-93,496.)”
Though the Minutes indicate that the motion to deny the rezoning failed, and the motion to approve the rezoning did not receive a second, the failure to have a second to the motion to approve only means that it was not before the meeting, and, therefore, it was not officially rejected. It is, therefore, our opinion that Section 702B6 is not applicable with respect to the request to amend the D5 Overlay Zoning Ordinance, and re-application can be made without waiting one year to do so.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:
The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

   Change premises described as:

   479 South Old Woodward Avenue
   No. Street
   Tax ID #: 19-36-208-012; see documents for more information
   Legal Description


   A sealed land survey showing location, size of lot and placement of building (if any) on
   the lot to scale must be attached.

   Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

   No. Street

   Legal Description

   classification of _________ to _________.

   A sealed land survey showing location, size of lot and placement of building (if any) on
   the lot to scale must be attached.

   Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: [Signature]
Print Name: Christopher J. Longe
Name of Owner: Birmingham Tower Parters, LLC
Address and Telephone Number: 251 East Merrill Street, Suite 205
Birmingham, Michigan 48009
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: ______________________  Received By: ______________________

Resolution No. ______________________  Approved/Denied ______________________

Application Fee: $1,500.00  Receipt Number ______________________

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.
ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.

2. Formal application to City Commission with the following information:
   a) Change requested
   b) Signature and name of persons requesting change
   c) Reasons for requested change

3. City Commission will refer request to the Planning Board for recommendation and final report.

4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.

5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.

6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
   a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
   b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

   For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.

7. The City Commission will then take action on the application upon review of the Planning Board’s recommendation and approved minutes of the Public Hearing.

8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:
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   No. ___________________________ Street ___________________________
   
   Tax ID #: 19-36-208-011; see documents for more information
   
   ___________________________ from its present zoning
   
   classification of **B3/D4** to **B3/D5**.
   
   A scaled land survey showing location, size of lot and placement of building (if any) on
   the lot to scale must be attached.

   Statements and reason for request or other data have a direct bearing on the request.

2. **Change premises described as:**

   ___________________________ No. ___________________________
   
   Street: ___________________________
   
   ___________________________ from its present zoning
   
   classification of ___________________________ to ___________________________.
   
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Signature of Applicant: ___________________________

Print Name: **Christopher J. Longe**

Name of Owner: **Birmingham Tower Parters, LLC**

Address and Telephone Number: **251 East Merrill Street, Suite 205**

Birmingham, Michigan 48009
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Birmingham, Michigan

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Resolution No. ___________________ Approved/Denied ___________________

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The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.
CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL 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 THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

MARKUS MANAGEMENT GROUP, LLC
251 EAST MERRILL STREET, SUITE #205
BIRMINGHAM, MICHIGAN, 48009

DESCRIPTION
DN. SUR. P.M.
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DATECHKNo. BY
MARCH 6, 2017

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CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL 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 THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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### Construction Contractor Agreement

Construction contractor agrees that in accordance with generally accepted construction practices, construction contractor will 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 this requirement shall be made to apply continuously and not be limited to normal working hours, and construction contractor further agrees to defend, indemnify and hold design professional harmless from any and all liability, real or alleged, in connection with the performance of work on this project excepting liability arising from the sole negligence of the design professional.

### Markup Management Group, LLC

251 East Merrill Street, Suite #205
Birmingham, Michigan, 48009

Description

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DATE CHK No. BY

MARCH 6, 2017

C-6.0

PRELIMINARY UTILITY PLAN

SCALE: 1" = 20'

PB PB DLC JPB

### Table

- **Affected Area**: 0.000
- **Area of Interspersed Surface**: 0.000
- **Percent Interspersed**: 0.000
- **Radius Factor**: 2.0
- **Imaginary Radius Factor**: 0.000
- **Maximum Permitted Radius Factor**: 2.0
- **Unrestricted Radius Area**: 0.000
- **Area of Interspersed Surface - Unrestricted Radius Area**: 0.000
- **Radius Factor - Unrestricted Radius Area**: 2.0
- **Maximum Permitted Radius and Unrestricted Radius Area**: 2.0
- **Required Depth per Foot**: 2.0
- **Required Depth per Foot Panel**: 2.0

### Approved by:

City Engineer

*Existing prior to re-development*
CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL 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 THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.

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C-8.1
NOTES AND DETAILS
SCALE: NONE
PB PB DLC JPB

MARCH 6, 2017
Caution!!

The locations and elevations of existing underground utilities as shown on this drawing are only approximate. No guarantee is either expressed or implied as to the completeness or accuracy thereof. The contractor shall be exclusively responsible for determining the exact utility locations and elevations prior to the start of construction.

South Old Woodward
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Markus Management Group, LLC
251 East Merrill Street, Suite #205
Birmingham, Michigan, 48009

Description
DN. SUR. P.M.
South Old Woodward

L-1.0 Scale: 1" = 20'

NOT FOR CONSTRUCTION
May 17, 2018

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI (“Subject Property”) in the D5 Downtown Birmingham Overlay District Zone (“Application”)

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner (“Property Owner”) of 469 and 479 S. Old Woodward (“Property”) as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-3 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a “missing tooth.”

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.
The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970’s after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street’s architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan (“2016 Plan”) and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the D-3 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to “…guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan (“Birmingham Plan”), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.
Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant’s enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-3 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the
existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

**Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties**

The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

**Conclusion**

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-3 to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]

Richard D. Rattner

RDR/emc
1. Cannot redevelop either site with the same use or building size and provide adequate parking.

2. Cannot redevelop either site with a single-story building (required to meet the ‘Downtown Birmingham Overlay Ordinance’).

3. Combined sites have 3 separate frontages that are required to meet the ‘Downtown Birmingham Overlay Ordinance’.
Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469
South Old Woodward
(Partial Frontage/Surface Parking)

Use and Parking Data

<table>
<thead>
<tr>
<th>Building Type</th>
<th>Required</th>
<th>Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Story</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retail (1st)</td>
<td>600 sf</td>
<td>600 sf</td>
</tr>
<tr>
<td>Office (2nd)</td>
<td>800 sf</td>
<td>800 sf</td>
</tr>
</tbody>
</table>

Total Required: 7,3 Spaces
Total Provided: 7 Spaces

Comments
1. Provides 1,400 square feet of 2 story mixed-use building with surface parking.
2. Leaves 5,750 sf of undeveloped property.
479 South Old Woodward

(2 Stories on Old Woodward/Hazel w/surface Parking)

Use and Parking Data

2 Story Building
- 800 sf x 2 = 1,600 sf
  Retail (1st & 2nd) / 300 = 5.3 Spaces
- 2,500 sf Office (1st) / 150 = 16.7 Spaces

Total Required: 22 Spaces
Total Provided: 22 Spaces

Comments

1. Provides 2 story frontage (retail) on South Old Woodward

2. Provides 1 story office partially on Hazel

3. Surface parking occupies all of Woodward Avenue and most of Hazel
Comments

1. Provides 2 story/single-use (retail) on south Old Woodward

2. Provides 2 story/single-use (retail) partially on Hazel

3. Surface parking occupies most of Woodward Avenue
Comments

1. Provides 2 story/mixed-use (retail/office) on South Old Woodward

2. Surface parking on both Hazel and Woodward Avenue (2 curb cuts)
1. Provides 3 story building/mixed-use building on all 3 frontages
2. Provides a ‘ramp over ramp’ hybrid internal parking w/2 curb cuts
3. Provides 8 residences
1. Provides 5 story building/mixed-use building on all 3 frontages.
2. Provides internal parking ramp on 1st, 2nd and 3rd floors.
3. Provides parking on entire 4th floor.
4. Provides a 20’ liner on 1st, 2nd and 3rd floors.
5. Provides 5 residential units on 5th floor.
October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members

City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Parking Assessment District—469-479 S. Old Woodward

Dear Members of the Board:

The Board has asked if we have any information as to why the above properties were not included in the Parking Assessment District when they were first created and any explanation as to the City’s reasoning at that time. We do not have any files or documents that can assist you in this regard.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

TJC/jc

Timothy J. Currier
October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

[Signature]

TJC/je
August 13, 2018

City of Birmingham
City Commission
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward, Birmingham, MI (“Subject Property”) in the D5 Downtown Birmingham Overlay District Zone (“Application”)

Dear Members of the City Commission, Planning Board and Ms. Ecker:

Please accept this letter from the property owner (“Property Owner”) of 469 and 479 S. Old Woodward (“Property”) as a Request for Re-Hearing of the Property Owner’s rezoning Application to rezone the Subject Property from the D-4 Overlay Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

The information set forth in this letter supplements the information set forth in the Application and the undersigned’s letter of May 17, 2018. Please recall that the subject Property is a former single-story restaurant building and drive-through bank that sits between two existing D-5 zoned buildings in the City. The Property is in the B-3 Office-Residential Zone and the D-4 Overlay Zone.

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.
The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District’s plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City’s modern plan to create a sustainable, vibrant downtown.

To mischaracterize this ordinance as a mere correction of nonconformity for three buildings is not only erroneous, but does disservice to the hard work done by the City Commission, Planning Board and Administration. Most importantly, such an analysis does not comply with the spirit, intent and vision exhibited in theory and practice in the Downtown Birmingham Overlay District. Said simply, such an interpretation ignores and discredits all of the good faith hard work that went into the creation of not only the Ordinance, but the master plan process for the future of our growing and vibrant downtown.

**The Property is not within the Parking Assessment District, Contrary to Information Presented in the Board’s Packet**

This Property is *not* within the parking assessment district. This is a serious flaw in any zoning analysis and must be corrected in order for the public record of the Board’s action and recommendation on the Application to properly reflect the realities of this matter. Correcting this fact leads to new information about the Property and the plan for development of the Property that is central to the question of rezoning pursuant to the Zoning Enabling Act. The Board has not had an opportunity to review this new information in the first instance. The new information significantly changes the analysis of rezoning under Article 7.02B2b and 7.02B5 of the Zoning Ordinance.

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District (Parking Assessment District Map is enclosed for your reference at Exhibit A), it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required).

The Planning Department’s Memorandum submitted to the Planning Board, dated May 18, 2018, regarding the Community Impact Statement of the Property’s redevelopment, erroneously provides, “The subject Property is in the Parking Assessment District.” And not only is the subject Property not in the Parking Assessment District, contrary to what was reported to the Planning Board, but we understand that this Property is the only D-4 zoned property in the
City not included in the Parking Assessment District.

Zoning Analysis – Revisited

Whether or not the Property is within the Parking Assessment District makes a significant difference in terms of the analysis under Sec. 7.02(B)(2)(b)(i-iii), Zoning Amendments. Section 7.02(B) requires the Applicant to provide certain explanations about the rezoning to be considered by the Planning Board and the City Commission. Please consider the following new information regarding the effects of the Parking Assessment District on this analysis, which was not reviewed by the Board.

- **Sec. 7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership**

The issue of location outside of the Parking Assessment District provides new information about the necessity of rezoning the Property to preserve the Applicant’s enjoyment of rights associated with ownership. Because of the size and narrow corner configuration of the Property, it will not support street-level retail, residential, and the required parking for those uses. The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. The 2016 Plan promotes mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses.

- **Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate**

The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2108 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a “D-4 building would not work” at the site (Mr. Koseck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemned by the application of the ordinance. It is unfair to hold the applicant to a
standard that requires proof that the property cannot be used as zoned rather than the “appropriateness” of current zoning. When properly analyzed in the context of the Master Plan, which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to share the same zoning classification as its immediate neighbors. As will be demonstrated in the next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3 zoning requirements.

The Property consists of two lots -- 469 and 479 -- which front Old Woodward and Woodward Avenue. The lots are in the “retail/red-line district” and under current zoning, each lot is severely restricted.

469 S. Old Woodward

The 469 lot width narrows as it extends east and has approximately 21 feet of Woodward Avenue frontage. The site has an existing 1 story, 2,900 square feet building, formerly used as a restaurant. Should this parcel be re-used, its only use (by necessity) would need to be a ‘nonconforming’ restaurant, since any change in use without a parking assessment district designation would require it to provide onsite parking for the new intended uses. However, since the restaurant has been closed for more than six months, it would not be eligible to continue as a nonconforming use!

Given the parcel’s narrow configuration, the only onsite parking that could be provided to satisfy the ordinance is two (2) spaces off of Woodward Avenue. Only two onsite parking spaces would limit the building footprint to approximately 300 to 600 square feet, depending on the permitted use. There is no practically feasible way to provide greater parking spaces.

479 S. Old Woodward

The 479 parcel has 211 feet of frontage on Hazel and approximately 40 feet of frontage on Old Woodward. This lot expands as it extends east to approximately 66 feet of Woodward Avenue frontage. The lot has an existing one-story, 11,826 square foot enclosure of which a small portion is a finished bank building. The balance is dedicated to a drive-thru lane for a drive-thru bank. Should this parcel be re-used, its only use (by necessity) must be a ‘nonconforming’ drive-thru bank since any change in use under the Ordinance would trigger onsite parking requirements for the new intended use. Also, drive-thru banks are specifically prohibited in the downtown Birmingham Overly District. See ordinance at Article 3(4)(C)(2)(b): “The following uses are prohibited...Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services.”

Given lot 479’s configuration, the only onsite parking that would be practically feasible is approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite parking spaces would limit the building footprint to not more than from 1,950 square feet to
approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

**Combined Lots**

Seemingly, the combination of the two parcels would create greater opportunity to develop a project conforming to the Master Plan and the 2016 Downtown Plan goals for the B3/D4 zoning. Unfortunately, the combined parcel cannot meet the Master Plan and 2016 Downtown Plan goals of mixed uses and first floor retail without both onsite parking and underground parking. The Ordinance mandates main level retail (20’ minimum in depth) on Old Woodward. Of course, onsite parking must be provided for any additional uses. This forces redevelopment toward uses with minimal parking requirements, such as hotels, which is what the Applicant proposes. As stated elsewhere in this letter, there are serious difficulties with building an underground garage within the D-4 design parameters that is deeper than two levels. Clearly, the current zoning unfairly forces the owner into an unreasonable position when considering the parcel’s potential use and its place in the Downtown Overly District. Consequently, any such garage is limited to approximately 60 parking spaces.

To discuss these difficulties in a vacuum is not the intention of the Zoning Enabling Act. The Act at MCL 125.3203 provides that zoning must be determined according to a plan. Here, the Applicant attempted to explain to the Board that the site plan is impacted by the fact that the Property is not within the Parking Assessment District. Unfortunately, the Board refused to consider any site plan and its conformance to the 2016 Plan, putting such review off until the Applicant obtained rezoning. This placed the Applicant in a double-bind. He could not demonstrate the inappropriateness of current zoning without an analysis of how the Parking Assessment District, or lack thereof, affects the site plan design. Had the Applicant been allowed to at least discuss a site plan design in relation to the rezoning analysis, he would have demonstrated that there is no feasible option to develop the Property within the current zoning classifications outside of the Parking Assessment District. This would have been a valuable discussion of new information that should have at least been heard by the Planning Board.

**Mischaracterization that the D-5 Ordinance was Passed Only to Make Three Properties Conforming**

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham
Place. They argued that the new Zone did not apply to any other properties. This assertion
ignores the very careful hard work of the City Commission, the Planning Board, and the
Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to
its plain language.

The history of the Planning Board’s consideration of the D-5 Zone was outlined in detail
by Ms. Ecker at the June 27th meeting. The Planning Board studied and considered the revisions
to the ordinance for the South Old Woodward area for two years prior to adopting the D-5 Zone.
In the Planning Department’s Memorandum to the Planning Board, dated September 22, 2016,
submitted to the Board for its September 28, 2016 study session, Ms. Ecker wrote: “The
consensus of the Board was to allow additional height for new buildings in the D-5 zone district
to match existing adjacent buildings, if the new building was constructed under the provisions of
a SLUP.”

During the June 27, 2018 hearing, Chairman Clein expressed (at time 2:10:25 of the
hearing video), that during consideration of the new D-5 Zone, the Board considered the entire
southern area of Downtown and positively did discuss the subject Property for potential property
rezoning. However, the Board did not include the Property initially because no applicant or
interested owner had come forward at that time. Mr. Jeffares also reiterated the same point (at
time 1:48:30 of the hearing video). Ms. Ecker clearly stated (at video time 2:09:00) that the new
D-5 Zone is a zoning classification that is not limited to the three non-conforming buildings
(555 Building, Merrill Wood and Birmingham Place).

Despite clear evidence to the contrary, the mischaracterizations assumed in this hearing
were espoused by Ms. Whipple-Boyce who indicated that she understood the D-5 Zone only
applied to the three properties, and was not available for the Applicant’s Property. These
misrepresentations had a direct bearing on consideration of the Applicant’s explanation of why
the rezoning will not be detrimental to surrounding properties.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be
Detrimental to the Surrounding Properties

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations
that the D-5 is closed to other buildings led the Board to bypass the Applicant’s D-5 site plan
design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham
Place and the impact of such on the Birmingham Place residents. However, it is clear that when
these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually
the owner of the subject Property would apply to be rezoned for the reasons stated in this letter.
The idea that an ordinance is created for only a few buildings, when the ordinance itself states
otherwise, is unsupported and unreasonable. Rezoning the subject Property to a D-5 Zone will
be putting this parcel on equal footing with the surrounding properties from a structural, use and
design perspective. The proposed rezoning will enhance the entire area by allowing it to be
developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (Exhibit B). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

The Board Failed to Make Required Findings of Fact under Ordinance Sec. 7.02(B)(5)

In making its decision on June 27th, the Board denied the Application based on Ordinance Sec. 7.02(B)(2)(b) and the required explanations imposed on the Applicant. As a result of its misunderstanding of the analysis required by the Zoning Amendments section of the Ordinance, the Board committed error in basing its decision on Sec. 7.02(B)(2)(b) rather than on the findings of fact required by Sec. 7.02(B)(5). Section 7.02(B)(5)(a-e) lists five findings the Board must make regarding the Application when making its recommendation to the City Commission. Without these findings by the Planning Board, the recommendation to the City Commission does not give the commission sufficient information to understand why this rezoning Application was denied.

- **Sec. 7.02(B)(5)(a)** - The objectives of the City’s then current master plan and the City’s 2016 Plan.

  The Board made no findings of fact with respect to the objectives of the City’s current master plan and the City’s 2016 Plan. A simple motion to deny a recommendation of rezoning was made “to recommend DENIAL to the City Commission of the applicant’s request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.” (See Exhibit C, June 27, 2018 meeting minutes, at p.10).

  The Applicant, however, in its May 17, 2018 letter to the Board, submitted significant information relating to the conformance of D-4 to D-5 rezoning of the Property with the goals of the 2016 Master Plan to promote mixed uses and consistency in architectural details and massing to neighboring structures.

- **Sec. 7.02(B)(5)(b)** - Existing uses of the property within the general area of the property in question.

  The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not “shown a D-4 building could not work.”
In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

- **Sec. 7.02(B)(5)(c) - Zoning classification of the property within the general area of the property in question.**

  The Board acknowledged that the entire southern area of Birmingham has been studied for change in zoning possibly to a gateway district due to the established heights of the iconic 555 Building and the Birmingham Place Building. The Board acknowledged the recent rezoning of the abutting and adjacent properties to the D-5 Zone and the current zoning classifications of nearby properties. The Board did not make any findings that addressed the fact that the subject Property is not only located in the area of the D-5 zone, but actually is situated between two D-5 zoned parcels. The adjacent and abutting properties are zoned D-5.

- **Sec. 7.02(B)(5)(d) - The suitability of the property in question to the uses permitted under the existing zoning classification.**

  The Board made no findings of fact regarding the suitability of the Property in question to the uses under the existing zoning classification. The Board’s discussion centered on the height of the proposed development under the D-5 versus the D-4. There was no finding or discussion of suitability to permitted uses. The Applicant directs the Board’s attention here because the Property sits outside of the Parking Assessment District. The Board failed to engage with this fact and its implications on the Applicant’s site plan, which has a significant negative impact on the Applicant’s ability to use the Property within the uses promoted by the 2016 Plan. Again, without a factual finding, the Board concluded that the Applicant had not proven that a D-4 building would not work at the Property (June 27, 2018 hearing video, Chairman Clein, starting at video time 2:10:25).

- **Sec. 7.02(B)(5)(e) - The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.**

  There was little discussion of the trend of development in the general area, other than the discussion of the historical development of the 555 Building and Birmingham Place prior to their down-zoning in later amendments to the Ordinance. Again, the Board acknowledged the recent changes in zoning to the 555 Building and Birmingham Place, as well as a mention of a zoning variance obtained for the development of the Pearl property. However, the Board did not make a finding of fact regarding the trend of development and its relationship to its decision to deny the Applicant’s request.
Conclusion

Applicant respectfully requests that this matter be referred back to the Planning Board to allow full consideration of the following:

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B)(5)(a-e). No contrary findings of fact were made by the Planning Board.

- The Property is the only D-4 property in the City not in the Parking Assessment District. The report in the Planning Department’s packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.

- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.

- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]
Richard D. Rattner

RDR/gsm
## CITY OF BIRMINGHAM
### PLANNING BOARD ACTION ITEMS
#### OF WEDNESDAY, JUNE 27, 2018

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**REVISED FINAL SITE PLAN AND DESIGN REVIEW** | 2 |
| 1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant | 2 |
| Motion by Ms. Whipple-Boyce  
Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4. | 2 |
| Motion carried, 7-0. | 2 |
| 2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot | 3 |
| Motion by Mr. Jeffares  
Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:  
1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;  
2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;  
3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;  
4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.  
5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.  
6. Applicant comply with the requests of all City Departments. | 5 |
| Motion carried, 7-0. | 5 |
| **REZONING APPLICATION** | 5 |
| 1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building | 5 |
**Birmingham Planning Board Proceedings**  
**June 27, 2018**

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| Motion by Mr. Boyle  
Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.  
Motion failed, 2-5.  

Motion by Ms. Whipple-Boyce  
Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant’s request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.  
Motion carried, 5-2.  

**PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")**  

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building  

   Motion by Mr. Boyle  
   Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.  

   Motion carried, 7-0.  

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2
Minutes of the regular meeting of the City of Birmingham Planning Board held on June 27, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Members Daniel Share, Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

06-108-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JUNE 13, 2018

Mr. Jeffares made a correction:
Page 8 - Fourth paragraph from the bottom insert after "of," "office use for business to business."

Motion by Mr. Koseck
Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of June 13, 2018.

Motion carried, 7-0.

VOICE VOTE
Yeas: Koseck, Boyle, Clein, Jeffares, Ramin, Whipple-Boyce
Nays: None
Abstain: Emerine
Absent: Share, Williams

06-109-18

CHAIRPERSON’S COMMENTS (none)
06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT
REVISED FINAL SITE PLAN AND DESIGN REVIEW

1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant

Mr. Baka recalled that this application has already been approved by the Planning Board and the applicant is coming back for one change. On May 14th, 2018, the applicant went before the City Commission and indicated that they were also proposing to move tables to clear a dance area when needed. The City Commission determined that a dancing area was not in the original scope or shown on the plans; therefore it must be re-reviewed by the Planning Board.

The applicant has submitted a SLUP Amendment application with associated site plans depicting the location and size of a dancing area proposed in their dining room. The dance floor measures 10 ft. by 38 ft. and is located in front of the raised booth seating area.

At 7:32 p.m., there were no comments from the audience on the proposal.

Motion by Ms. Whipple-Boyce
Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.

Motion carried, 7-0.

There were no comments from the public on the motion at 7:35 p.m.

VOICE VOTE
Yeas: Whipple-Boyce, Koseck, Boyle, Clein. Emerine, Jeffares, Ramin
Nays: None
Absent: Share, Williams

06-112-18

2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot

Mr. Baka advised the subject property, located in the Rail District, is a 0.77 acre site currently containing a single-story commercial building and a parking lot. The applicant is proposing to renovate the existing building to allow for three tenant spaces consisting of retail, fitness and potentially storage uses. The existing parking lot is proposed to be expanded, while the landscaping and streetscape will also be improved. The building is proposed to receive new
paint, awnings, lighting and architectural detail. Also, the applicant would like to screen the loading space with arborvitae.

The applicant engaged in a pre-application discussion with the Planning Board on May 23, 2018. At that time the applicant described the plan to beautify and fill the current building to bring the site back into function while the property owners work on a plan to redevelop the entire property in the future. Planning Board members asked the owners to provide active first-floor uses to activate the street, as well as add glazing and architectural details to break the monotony of the existing blank walls.

The submitted site plan shows a new electrical transformer adjacent to the dumpster enclosure at the southeast corner of the property that is screened with arborvitae. The applicant has noted that DTE has been contacted regarding the transformer location and that DTE approval will be acquired in regards to the location. The applicant must still submit a signed letter from DTE approving the location of all electrical transformers.

The applicant is proposing to expand and rework the existing parking lot to a 38 space lot containing both additional landscaping and two ADA parking spaces. The parking requirement for the three tenants is 12 spaces.

Design Review
The applicant is proposing new renovations that include new paint, awnings, lighting and architectural details including new windows and doors along the north and west elevations. Eight new door/window installations with dark bronze metal frames are proposed along the north and west elevations. Four open-ended canvas awnings are also proposed over the new window/door installations. The doors, windows and awnings help to break up the vast blank space that currently exists on the walls.

Article 4, section 4.90 of the Zoning Ordinance requires buildings in the MX Zoning District to provide a minimum of 70% glazing on any ground floor façade that faces a street or parking area.

Signage: The applicant has indicated that the northern portion of the wall on the west elevation will be a potential location for tenant signage. The applicant is also proposing to place their address sign on the parking lot screen wall in front of the building. The applicant must submit all signage details to the Planning Dept. for approval, including specifications on any wall signs, canopy signs or address signs. The applicant has now submitted material samples of each newly proposed material (including new glass, awning fabric, patio pavers) to complete the Design Review.

In response to Mr. Koseck, Ms. Ecker explained the City is in the process of figuring out the street lighting in the Rail District. DTE has installed three different types of lights with three different types of globes, along with different fixtures throughout the Rail District and none of them are correct since the first installation at Armstrong White on E. Lincoln. Basically the negotiations with DTE to correct the problem are down to cost right now.

Mr. Boyle noticed that the plans do not show a safe pedestrian zone through the parking lot. Further, Mr. Boyle noted on the west facade of the building there are gray awnings with small windows underneath; but no windows on the large section that is adjacent to the patio.
Mr. Koseck pointed out that the plans show the driveway bisects the sidewalk. Mr. Baka replied that the Engineering Dept. has stated that the sidewalk must maintain its current configuration by placing it through the driveway approach.

Mr. Baka agreed with Mr. Emerine that clarification is needed because the applicant is required to have six trees in the parking lot and ten are shown in the site plan.

Mr. Jason Krieger, Krieger Klatt Architects, was present with Mr. Tom Lasky and Mr. Andy Petcoff from the ownership, along with Mr. Brian Kowalski, the project architect. Mr. Krieger said the site plan is correct regarding the trees. The windows on the west elevation are up high because a fitness center is proposed and they tried to maintain as much wall space as possible for them. They are trying to add more fenestrations and glass. Windows have been added on the southwest corner of the building. On the north elevation the windows have been lowered down to the ground to create more of a storefront feel.

Their proposal is to basically clean up the building, paint it, improve it, and then occupy it. They will comply with City standards for lights, trash cans, and benches. With regard to the parking lot, they hope to keep as much as they can and add on to it in compliance with City engineering standards. Personally, he would rather see more screening closer to Cole St., behind the retaining wall, and not right at the loading area where it might get hit. Then, just leave the loading zone as a striped area. Mr. Koseck agreed, because typically there is no truck parked in the loading space. He suggested that Mr. Krieger could work with staff to shift the arborvitae to the north where it wouldn't be hit. Additionally, Mr. Koseck thought it would be nice to have some planter boxes in the patio area just to soften it. Mr. Krieger agreed that the patio should be broken up a little with some greenery.

Mr. Krieger explained that tenant to the north is a cabinet shop and the south tenant space is vacant.

Responding to Mr. Boyle, Mr. Krieger said did not see a problem with putting in a pedestrian safety path through the parking lot to the entrance of the center. However they might lose one parking space.

No one from the public cared to comment on the proposal at 8:01 p.m.

**Motion by Mr. Jeffares**

Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:

1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;
2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;
3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;
4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.
5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.
6. Applicant comply with the requests of all City Departments.

At 8:05 p.m. there were no comments on the motion from members of the audience.
Motion carried, 7-0.

VOICE VOTE
Yeas: Jeffares, Koseck, Boyle, Emerine, Klein, Ramin, Whipple-Boyce
Nays: None
Absent: Share, Williams

06-113-18

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Klein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.
Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- **Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii)** requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- **Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership.** Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- **Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate.** It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- **Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties.** The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the 5, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.
• If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
• There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:
• The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
• Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
• The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
• Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
• There is nothing under the D-4 Zoning classification that would prohibit the developer from developing a mixed-use development.
• The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.
Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Klein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support. It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work. He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:
• The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.

• He was positive about the potential impact on the City as a whole of rezoning this property.

• The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.

• There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.

• At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin’s point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn’t think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn’t think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

**Motion by Mr. Boyle**
Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board
recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

**Motion failed, 2-5.**

ROLLCALL VOTE
Yeas: Boyle, Jeffares
Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce
Absent: Share, Williams

**Motion by Ms. Whipple-Boyce**
Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

**Motion carried, 5-2.**

ROLLCALL VOTE
Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin
Nays: Jeffares, Whipple-Boyce
Absent: Share, Williams

**06-114-18**

**PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")**

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building

Motion by Mr. Boyle
Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.

There was no discussion from the public on the motion at 10:02 p.m.

**Motion carried, 7-0.**

VOICE VOTE
Yeas: Boyle, Whipple-Boyce, Clein, Emerine, Jeffares, Koseck, Ramin
Nays: None
Absent: Share, Williams

**06-115-18**

**MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

a. Communications (none)
b. **Administrative Approval Requests**

- 2211 Cole, Cole II - Approval for screening of two rooftop units.
- East of Woodward Ave. and north of Bennaville, parking lot - Renovate existing parking lot to increase number of parking spots, install new screen wall per code.
- Mr. Baka brought forward a request from a resident of Crosswinds to add to their outdoor deck motorized screening that rolls up and down. It is fastened to the building and would need a permit. The neighbor put one up too. Ms. Ecker said it is a design change from what was approved for the deck and there was not a Building Permit issued. Consensus was they should come to the Planning Board for approval and that Board members should visit the site.

c. **Draft Agenda for the next Regular Planning Board Meeting of July 11, 2018**

- Bistro Regulations;
- Ongoing discussion of first-floor retail;
- Discussion on parking.

d. **Other Business**

- Ms. Ecker noted the SLUP request for 191 N. Chester was approved at the City Commission to allow the office use in the old Church of Christ Scientist Bldg.
- The Hazel, Ravines, Downtown SLUP was also approved.
- Also, the Commission established the Master Plan Selection Committee.

**06-116-18**

**PLANNING DIVISION ACTION ITEMS**

Staff report on previous requests (none)

Additional items from tonight’s meeting (none)

**06-117-18**

**ADJOURNMENT**

No further business being evident, the Chairman adjourned the meeting at 10:10 p.m.

Jana L. Ecker  
Planning Director
REZONING REQUEST FOR 469-479 S. OLD WOODWARD
SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND
THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT’S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant’s application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant’s request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department’s analysis and findings under the City Ordinance regarding the applicant’s request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant’s proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant’s proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant’s property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.
Jana Ecker <jecker@bhamgov.org>  
RE: Scheduling of Hearing Before Planning Commission - 469 and 479 S Old Woodward (Collectively "Property")  
1 message

Richard Rattner <RDRattner@wwrplaw.com>  
To: Jana Ecker <Jecker@bhamgov.org>  

Jana:
Thanks for your response.
Rick

Richard D. Rattner  
380 North Old Woodward Avenue, Suite 300  
Birmingham, Michigan 48009  
Main: (248) 642-0333 • Fax (248) 642-0856  
rdr@wwrplaw.com

From: Jana Ecker <Jecker@bhamgov.org>  
Sent: Monday, January 27, 2020 4:17 PM  
To: Richard Rattner <RDRattner@WWRPLaw.com>  
Cc: Doraide Marcus (dmarkus@markusllc.com) <dmarkus@markusllc.com>; Christopher Longe (cjlonge@cjlongeaia.com) <cjlonge@cjlongeaia.com>  
Subject: Re: Scheduling of Hearing Before Planning Commission - 469 and 479 S Old Woodward (Collectively "Property")  

Good afternoon,

I received your email and I confirm that the rezoning request for 469 - 479 S. Old Woodward will be placed on the February 27, 2020 meeting of the Planning Board.

Jana

On Mon, Jan 27, 2020 at 3:07 PM Richard Rattner <RDRattner@wwrplaw.com> wrote:

Ms. Ecker:

Pursuant to our prior discussions, please accept this email as our client's request to be added to the Agenda of the Planning Board meeting, scheduled for February 27, 2020. The subject of the hearing is the continuation of the hearing on the application to include 469 and 479 S. Old Woodward, Birmingham, MI in the D-5 Downtown Birmingham Overlay
District Zone ("Application"). The Application and supporting information was filed with the Planning Department and, after a hearing at the Planning Board, the matter was heard by the City Commission on March 11, 2019. The City Commission took no action on the matter. Since the March 11, 2019 meeting, the Planning Board has reviewed certain issues to clarify the language of the D-5 Overlay Ordinance. Now that those discussions have been held, our client now request that the Application for rezoning now be added to the Agenda for the February 27, 2020, hearing at the Planning Board.

Please confirm that this matter has been added to the agenda.

Thank you for your attention to this matter.

Rick Rattner

Richard D. Rattner
380 North Old Woodward Avenue, Suite 300
Birmingham, Michigan 48009

Main: (248) 642-0333 • Fax (248) 642-0856

rdr@wwrplaw.com

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--
Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841
469/479 S. Old Woodward Avenue
Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020
D5 Is the Culmination of Exhaustive Study

✓ Contemplated for 2 years before enacted
✓ Many study sessions, discussions, and public meetings
✓ Advertised and noticed
✓ Considered many different options
✓ Multiple iterations of draft amendments
✓ Studied entire downtown area and study by planning
  ✓ Consultant targeting this specific area of downtown
Article 1, Section 1.04

D5 will "reinforce [an] identifiable district in the Downtown to provide a sense of place."

D5 will allow for a "diverse mix of uses, including [street-level] retail, commercial . . . and especially residential."

D5 will allow a building that is "compatible, in mass and scale, with its immediate surroundings."
Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

• The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan...”
D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

• D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04

• Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership Ord. Sec. 7.02(B)(2)(b)(i)

• Existing Zoning Not Appropriate Ord. Sec. 7.02(B)(2)(b)(ii)

• Rezoning is Not Detrimental to Surrounding Properties Sec. 7.02(B)(2)(b)(iii)

• D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE
SEC. 7.02(B)(5)(a)-(e)

✓ Sec. 7.02(B)(5)(a) – **conforms to the City’s Master Plan** and 2016 Plan

✓ Sec. 7.02(B)(5)(b) – The **proposed mixed uses of the subject property** (retail, residential, and hotel) are **consistent with existing uses in the neighborhood**.

✓ Sec. 7.02(B)(5)(c) – **Properties in the general area** (abutting and adjacent) are zoned D-5.

✓ Sec. 7.02(B)(5)(d) – **Property is not suitable** to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.

✓ Sec. 7.02(B)(5)(e) – **Trend of development in the area** favors D-5 zoning.
The City, after consideration, has already amended the new D5 proposed ordinance language
Thank You

Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020
CITY OF BIRMINGHAM
ORDINANCE NO.

THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 3, OVERLAY DISTRICTS, SECTION 3.04(A) TO AMEND THE BUILDING HEIGHT STANDARDS IN THE D5 ZONE OF THE DOWNTOWN BIRMINGHAM OVERLAY DISTRICT.

Article 3, section 3.04 (A) of the Zoning Ordinance:

New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building on a directly abutting D5 Zone property, to which they are immediately adjacent or abutting if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit. For the purposes of this section, private properties separated by public property (including public right-of-way and public vias), will not be deemed abutting.

ORDAINED this __________ publication day of________, 2020 to become effective 7 days after publication.

______________________________
Pierre Boutros, Mayor

______________________________
Cheryl Arft, Acting City Clerk
CITY OF BIRMINGHAM
ORDINANCE NO.

THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9, DEFINITIONS, SECTION 9.02 TO DEFINE THE TERM ABUTTING.

**Abutting:** Sharing a boundary or property line.

ORDAINED this ________ publication day of_______, 2020 to become effective 7 days after publication.

______________________________

Pierre Boutros, Mayor

______________________________

Cheryl Arft, Acting City Clerk
Purpose:

To conduct a focused study of the area in Downtown Birmingham bounded by Haynes, Brown, Old Woodward and Woodward Avenue and make recommendations as to which properties should be considered for rezoning to D5 given their proximity to properties with existing buildings over 5 stories in height, to properties that are currently zoned to allow greater than 5 stories of height or due to other identified factors.

The Planning Board would then review the recommendations and use them to assist in clarifying the terms “abutting” and “adjacent” with regards to the D5 zone.

Zoning Enabling Act Reference:

125.3201 Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201.

1. A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state’s citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

2. Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.

3. A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.

4. A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles.
Background:
The D5 zone is an overlay zone within the Downtown Birmingham Overlay District (DBOD), which is intended to implement the Downtown Birmingham 2016 Plan. Originally, the DBOD included 3 overlay zones: D2, D3, and D4, as well as Civic and Parking zones for parks and public parking. The D5 zone was established in order to make three otherwise legally non-conforming buildings legally conforming, two of which are within the study area. Prior to D5, the three non-conforming buildings fell within the D4 district, which restricts buildings to 5 stories if the upper floor is residential and 4 stories otherwise. The D5 district permits building height per the D4 requirements, except where a Special Land Use Permit (SLUP) allows heights over 5 stories. Above 5 stories there is no specified limit, outside of the subjective evaluation requirements of the SLUP process requiring recommendation of the Planning Board and approval of the City Commission.

The study area includes D5, D4, and D3 overlay zones, which are mapped over B-3, office-residential, and B-2, general business. D3 limits height to 4 stories where the upper floor is residential and 3 stories otherwise. The limits for D4 were previously stated. Properties mapped with D5 include two existing structures which exceeded 5 stories prior to the DBOD. The D3 and D4 district boundaries do not coincide with property lines at the northern end of the study area where one property is mapped with both D3 and D4. This is likely due to the location of Downtown Overlay zones recommended within the 2016 Plan which were drawn by hand prior to widespread adoption of GIS. Within the mid-block, there are two small properties mapped with D4, properties to the south and north of these being D5. See the map above and on the following page with D5 in dark gray, D4 in light blue, D3 in orange, and D2 in light green. The light gray parcels are public parking.
The current City Master Plan, from 1980, had recommended reducing the overall development capacity within Downtown from its 4 story limit at the time to 2 stories, due to parking limitations. The buildings which required the D5 zone had already been constructed, and some indicate that their presence at the time is in part what instigated the desire for a Master Plan update in 1980. The 555 Building is specifically discussed in the Master Plan as being out of character due to its bulk, not necessarily its height. The Master Plan also indicates that other high-rise buildings may be appropriate within the downtown to accentuate the skyline, provided careful regulation to ensure compatibility. At the time, most of Downtown was 2 stories or below, with a few taller buildings. The incompatibility between the higher buildings and 2 story downtown as a general practice is noted. Discussion of the Merrillwood Building, a 6 story building which steps back at the 3rd floor, states that its corner location is appropriate for taller buildings as a compliment to the otherwise low height of Downtown.

The Downtown Birmingham 2016 plan provided a recommended overlay district for Downtown and discussed heights such that the area generally retain a cap of five stories as most traditional American downtowns are between 2 and 4 stories. The Downtown Overlay District follows the height recommendations of the 2016 plan and zoning district boundary recommendations, shown below, with the exception of D5 which was added later. The boundary between D3 and D4 within the study area that does not coincide with property lines is a result of this map. Presumably, since D4 generally surrounds the area, the D3 portion is intended to preserve an existing historic building. Across Old Woodward, D3 and D2 districts are intended to provide a transition to the adjacent neighborhood.
Downtown Birmingham 2016

APPENDIX F - 2

BUILDING 1: REGULATING PLAN

REGULATING PLAN OF THE DOWNTOWN BIRMINGHAM OVERLAY ZONING DISTRICT

© 2019 DPZ CoDesign | D5 Study | 09/05/19
In addition to the core Downtown, the vision for the Triangle District, updated in 2007, is important contextually. Both the study area and the Triangle District frame the vision of Downtown Birmingham along big Woodward. The Triangle District Plan recommends that taller mixed-use buildings be located along Woodward, 7 to 9 stories, with medium height mixed-use buildings, 3 to 6 stories, within the District’s interior. In all cases, the maximum permitted height is unclear due to the use of height bonuses where each stated height district can be increased in height, such as 3 Story Mixed-Use qualifying for 5 story buildings. The allocation of height and the Triangle District Overlay focus heavily on transitions to adjacent neighborhoods, especially the single-family housing which remains within the District. The study area is generally adjacent to areas of 5 to 6 story mixed-use buildings, due to the adjacency of those properties to residences along Forest, Chestnut, and Hazel. As apparent at Maple and Woodward and at Haynes and south along Woodward, the 7 to 9 story district would be mapped along the entirety of Woodward if residences were further, transitioning upward from the 5 to 6 story district.

The Birmingham Plan for 2040, currently in progress, has proposed that Downtown Birmingham be considered to include 3 districts: Market North, Maple and Woodward, and Haynes Square. This proposal is aimed at bridging the Woodward divide and at improving the quality of retail and development along south Old Woodward. Presently, the experience of travel along Woodward is that one drives by Downtown Birmingham, rather than through Downtown Birmingham. The 2040 plan intends to change this perception to one of driving through the core of Downtown Birmingham. The study area occurs at a key seam between Haynes Square and Maple and Woodward, framing the northern end of Haynes Square. The concept for Haynes Square is to connect Old Woodward with big Woodward at a right-angle, accompanied by a public open space, the square. This alleviates the dangerous traffic condition at the current intersection of these roads, and provides a central public space to mark the entrance to greater Downtown Birmingham.
Building heights

A hierarchy of heights is recommended between Woodward Avenue and the adjacent single-family residential neighborhoods. Taller buildings at least seven stories are needed to properly define the scale of Woodward Avenue’s wide right-of-way and the taller buildings on the west side of the road. Building height should then step down to 4-5 stories in the interior of the Triangle District along the narrow streets. Buildings adjacent to single-family residential neighborhoods should be limited to three stories. Height bonuses of up to an additional two stories will be allowed for developments that offer certain public amenities. These could include making public parking available in private parking structures, providing public open spaces, improvements to the public streetscape or incorporating energy-efficient green building design into structures. Payments to an escrow account designated for off-site amenities should be accepted in lieu of providing them.

New construction should create architectural variety by stepping back upper floors and varying the massing of buildings. Taller buildings should also be setback from nearby residential neighborhoods.

In order for the Triangle District to efficiently redevelop, parking will need to be provided with multi-level parking structures. The largest public parking structure will be required in the vicinity of Worth Plaza and should be located between the plaza and Woodward to take advantage of the highest allowable heights and best access.

**HEIGHT PLAN**

- 2.5 Story Single-Family
- 3 Story Attached Single-Family
- 3 Story Mixed-Use
- 5 Story Mixed-Use
- 7 Story Mixed-Use

- Up to 2 bonus stories except where adjacent to single-family
- Up to 1 bonus story
- Up to 2 bonus stories

Bonus stories available as incentives when providing public amenities such as public parking, public open space, residential units, green building design. See ordinance for specific guidance.

**Height Plan**

Birmingham Triangle District
Discussion:

In order to evaluate the request, DPZ Partners Matthew Lambert and Marina Khoury discussed the conditions of the study area and surrounding Downtown Districts. Marina was consulted due to her extensive code experience and her lack of familiarity with the specifics of Birmingham, and objective party. Matthew provided familiarity with the conditions of the study area, the 2040 plan in progress, and the reason for this request.

Prior to being informed about further specifics, Marina was provided the information included in the Background section of this document, including the 3d models of the current conditions and present zoning allowances. Her initial take away was based upon 3 assertions:

1. Nothing in the present assignment of height through zoning justifies retaining a lower height for any properties within the study area.
2. Zones should generally be contiguous.
3. The design of buildings has a greater impact on compatibility than height.

Initial assertions from Marina reinforced the conclusions that Matthew had also arrived at. Further discussion ensued, addressing other issues of design compatibility and public benefit that are beyond the scope of the request, and addressed through the existing Special Land Use Permit (SLUP) process that is embedded in the D5 zone.
Overall, it is clear that the entire study area merits rezoning to D5. This triangle of land occupies a very special position in Downtown Birmingham where Woodward and Old Woodward separate from each other. Already, the study area has been developed at a scale above the majority of the downtown area. Were the Triangle District height map extended in concept across Woodward, the study area would be mapped with the 7 to 9 story district. The most significant position within the study area is the site of the 555 building, which merits the greatest height. The remainder of the study area provides background to that key site: a podium which is capped by place where the Woodwards meet.

Impact overall must also be addressed. The sites within the study area that are not currently D5 would only impact directly abutting (sharing a property line) properties, Birmingham Place, which is already a taller building within D5. Context is established by the nearby properties, which includes the 555 building even though it is in the study area, properties zoned between 6 and 9 stories in the Triangle District, and 4 to 5 story properties within the overall Downtown District. Old Woodward and Woodward are both very wide roads where taller buildings on one side of the road have a limited impact on those adjacent properties across the road. In fact, due to the size of both roads, they require taller buildings to create a street room, greater height along Woodward than Old Woodward, as is recognized by the Triangle District zoning. Brown is also a relatively wide road, a portion of which is occupied by a parking structure. Taller buildings along the south side of Brown may require one or more stepbacks, which is already provided for in D4 and further requirements possible through D5’s SLUP process. Hazel is the street where nearby properties are most impacted, however the only impacted property is the 555 building which is already tall and presents a mostly blank wall to the north.

One concern remains which is the preservation of the Ford-Peabody Mansion. This concern reflects the Downtown Overlay mapping of the 2016 Plan. While presently a listed historic resource, the Historic Preservation Ordinance provides little protection for the building overall. While the allocation of heights and zoning districts is not necessarily to be concerned with preservation in a downtown area, allocating significant additional height may induce development and loss of the historic asset. Yet the mansion could be relocated were the site to be redeveloped. This is a consideration left for the appointed boards and elected officials to address. Concerning the specifics of the request made, setting aside the question of historic significance, this site would also qualify for rezoning to D5.

Lastly, we want to reiterate an important point: the design of buildings is more impactful to compatibility than height. This sentiment was discussed at length in review of the study area, and also stated in the 1980 Master Plan which considered this same issue of the impact of height on the city. As also stated in the 1980 plan, the design of the 555 building was considered to be less compatible due to the long mass of the larger portion of the building. Should the study area be rezoned to D5 as recommended, it is incumbent upon the Planning Board and City Commission to ensure that the massing and design of any new building is compatible with the context.

Recommendation:
All properties within the study area should be eligible for rezoning to D5, with the potential exception of the Ford-Peabody Mansion for considerations related to preservation.
Massing Studies - Existing condition

# Height of buildings in stories
# Height of buildings in stories

- Building 1: 9 stories
- Building 2: 7 stories
- Building 3: 15 stories
- Building 4: 9 stories
- Building 5: 7 stories
- Building 6: 15 stories
D5 Study

Massing Studies - Development potential under current zoning

Downtown Overlay
max allowable heights:
- D2 3-story development - 56'
- D3 4-story development - 68'
- D4 5-story development - 80'

Triangle Overlay
max allowable heights:
- MU-3 MFR - 60'
- MU-5 attached SF - 82'
- MU-7 general business - 118'
D5 Study

Massing Studies - Development potential under current zoning

Downtown Overlay
max allowable heights:
- D2 3-story development - 56'
- D3 4-story development - 68'
- D4 5-story development - 80'

Triangle Overlay
max allowable heights:
- MU-3 MFR - 60'
- MU-5 attached SF - 82'
- MU-7 general business - 118'
411 S. Old Woodward Ave., Unit 1018  
Birmingham, MI 48009  
May 16, 2018

VIA HAND DELIVERY

Ms. Jana Ecker, Director  
City of Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Development”)  
Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long  
on Behalf of Birmingham Tower Partners, LLC (the “Applicant “)  
Hearing Scheduled for Wednesday, May 23, 2018 (the “Hearing”)

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons. First, I received notice of the Hearing by mail on May 8, 2018 and visited the City Planning Office on Friday, May 11, 2018 to review the application. As of that date, the Applicant had not filed the statements required under subsection 7.02 B.2.b of the Rezoning Amendments (i.e., explanations of why rezoning is necessary, of why the existing zoning classification is no longer appropriate, and of why the proposed rezoning will not be detrimental to the surrounding properties). I suggest that failure to timely file those explanations caused the notice of the Hearing not to meet the fifteen (15) day advance notification required under subsection 7.02 B.4.a.i of the Rezoning Amendments.

Second, as a Birmingham resident living adjacent to the Proposed Development, I would appreciate time to review the very extensive documents filed by the Applicant. I suggest that public input is critical on a project that seeks to permission to erect the first building greater than five (5) stories to be built in downtown Birmingham in decades, which could well set a precedent for continuing development of high rise structures in our beautiful community. Substantial additional time will be required for myself and the many other Birmingham residents who are affected by the Proposed Development to adequately review and to respond to these filings.

Please contact me at the above address, via email to mickeyswartz@gmail.com, or at telephone numbers (248) 229-9989 or (248) 593-3155 with any questions or further requirements and in any event with the new hearing date. Thank you for your time and attention.

Yours very truly,

Michael Schwartz, MD

Cc: Applicant (via email to dsmarkus@yahoo.com)  
Planning Board Members (via separate emails)
Eric and Janis Sterling
411 S. Old Woodward Avenue, Unit 615
Birmingham, MI 48009

June 7, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, we have serious safety and other concerns, including:
1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Eric Sterling

Janis Sterling
Sent from my iPad

Begin forwarded message:

From: Alice Lezotte <zareyskid@gmail.com>
Date: June 10, 2018 at 12:47:33 PM EDT
Subject: 469-479 S. Old Woodward Ave. (the "Proposed Project") Objection

411 S. Old Woodward. #511
Birmingham, MI. 48000
June 8, 2018
Mr. Jeffares, I am a city of Birmingham constituent. I would like to express my disapproval and opposition to the request for rezoning and to the Proposed Project itself.

The Birmingham city code has many statements to keep in mind when considering a new city project (I paraphrase):

1. Regulation and control of a project should promote the public health, safety, and general welfare of the city.
2. Provide orderly growth and HARMONIOUS development.
3. Secure adequate traffic circulation and "lessen" congestion on our streets.
4. Ensure adequate provisions for water drainage, sanitary sewer facilities, and other health requirements.
5. Achieve the maximum utility and "livability" of a project.
6. Natural features must be preserved and changes should "add" to the attractiveness and "value" of the neighborhood.
7. Any Proposed project should take into consideration as to the impact on adequate supply of light and air to adjacent properties and the capacity of essential public facilities, such as police and fire protection, drainage structures, municipal water, sanitary sewers, and refuse disposal.

Wise decisions have been made in the past (e.g., Forefront, Bristol, etc.) in accordance with the city's 2016 Master Plan and our Building Codes.
It is my hope similar consideration will prevail and this proposal will be denied.
Maple Road and Woodward on the south east corner would be an ideal location for this proposed project.
We want to keep our "Walkable" community as safe and pleasant as possible.

Best regards,
Alice Lezotte
Fwd: Proposal for a 9 story building on S. Old Woodward, Birmingham

1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

---------- Forwarded message ----------
From: Julie Wolfe <julie@moosejaw.com>
Date: Sun, Jun 10, 2018, 1:08 PM
Subject: Proposal for a 9 story building on S. Old Woodward, Birmingham
To: Julie Wolfe <julie@moosejaw.com>

From: Julie Wolfe

411 S. Old Woodward #1021

Birmingham, MI 48009

6/10/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009
Re: 469-479 S. Old Woodward Avenue (the “Proposed Project ”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. More construction to this area is very disturbing and frustrating. The city has been torn up enough.

Thank you.

Julie Wolfe
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, we have serious safety and other concerns, including:
1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Edwin B. Shaw

Felicia P. Shaw
June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members:

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable ‘gap’ between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

The Elia Group, LLC

Zaid D. Elia, President

124 S. Old Woodward • Suite A • Birmingham, MI 48009 • 248.645.7777 (Phone) • 248.645.7771 (Fax)
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Joseph P. Vicari
7096 E. 14 Mile Rd.
Warren, MI 48092
June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

Jonna Construction is a builder and investor in Downtown Birmingham.

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

[Signature]

Frank G. Jonna
6200 2nd Ave., Suite D-102
Detroit, MI 48202
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Scott S. Yaldo, Esq.
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete and old one-story buildings that sit between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
10. This project would continue to make the City of Birmingham the premier city to live and shop...
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Kevin Denha
40700 Woodward Ave Suite 125
Bloomfield Hills, MI. 48304
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

ISHBIA & GAGLEARD, P.C.

Jeffrey A. Ishbia
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Brian Najar
Najar Companies
600 N. Old Companies, Ste 100
Birmingham, MI 48009
6/20/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

[Signature]

Joseph Jonna, Jonna Luxury Homes
June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which is 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Very truly yours,

RANDAL TOMA & ASSOCIATES, P.C.

Randal S. Toma
Attorney at Law
Date 6/20/2018
Birmingham City Commission & Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue
Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable ‘gap’ between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
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5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

[Signature]

Kevin Kejou
152 N Old Woodward
Birmingham MI 48009
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

David Hesano
First Vice President
David.hesano@cbre.com
6/18/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

John Kello
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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Sincerely,

Anthony Toma
CEO & Founder
Nine9
2653 Industrial Row Dr.
Troy, MI 48084

Nine9.com
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S Old Woodward Avenue

Dear City Commission and Planning Board Members,

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Gregg Speaks
Managing Director
CIBC Bank USA
34901 Woodward Avenue, Suite 200
Birmingham, MI 48009
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Nason Kassab
35270 Woodward Ave
Birmingham, MI 48009
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

Re: Proposed Project at 469-479 S. Old Woodward Avenue  

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.  

Sincerely,  

Jacques Van Staden - Founder & CEO  
176 S. Old Woodward Ave  
Birmingham, MI 48009
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project referenced above. I am no longer a resident of Birmingham but maintain a condominium in Birmingham. Birmingham has been my home for most of my 70 years since my parents bought their first home on Villa in 1949. I remember visiting Pearls for a nice Chinese dinner. So, I know the area well. And while we moved from our home on Lincoln to warmer weather after retirement, Birmingham will always be home. I have watched how the character of the town has changed over the last 65 years. I was sad when the City allowed 555 to be built. I will always believe it was a mistake. We do not need another mistake.

I was encouraged when the City leaders realized they needed to protect the character and feel of the city. There was no place for skyscrapers in Birmingham. The city’s 2016 Master Plan recognized the need to control the height of new buildings in the city center. I think they have done an excellent job over the last twenty years.

I have watched in my new home, Charleston, as real estate investors have tried to come in and build one more hotel and destroy what makes Charleston attractive. It is an on-going battle. You are faced with the same economic pressures and arguments I hear in Charleston. It is just one more hotel. There are already buildings of similar height in town. The city needs more hotel rooms. It will generate more business in town. The arguments are always the same and unfortunately, so are the results. The town becomes more impersonal. Small businesses are replaced by those that cater to the transient visitors. Residents must go elsewhere to shop.

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to
maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner’s minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,

David Breedlove
June 20, 2018

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

**RE: Proposed Project at 469-479 S. Old Woodward Avenue**

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

Gas J. Abro, Esq.

GA/gja
June 22, 2018

Jana Ecker, Planning Director
City of Birmingham (MI)
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012-3001

Dear Jana:

I am following up on our communications in regards to residents at 411 S. Old Woodward known as Birmingham Place and their concerns with fire protection. The proposed project at 469-479 S. Old Woodward is potentially going to be a nine story building, built very close to the South side of Birmingham Place. Their concern is the fire department’s ability to fight a fire at Birmingham Place if the proposed project does not allow aerial operations on the South side of the building.

Though we would not deploy our aerial truck for operations on the South side of the building, we do have access from both the East and West sides of the building. Our aerial truck has an extended 100’ ladder which would reach approximately six to seven stories based on the distance the aerial is positioned, due to this most high rise fires are fought from the inside of a high rise building. The Birmingham Place has a fire pump to increase pressure to upper floors, fire suppression sprinklers that when activated would extinguish a fire or contain the spread of the fire, standpipes at each floor allowing firefighters to connect hose lines to fight a fire and a fire alarm which would alert residents of the building. The exterior of the building is of a material that is non-combustible and smoke alarms throughout the building. Our officers and firefighters are well trained to aggressively attack a fire in a high rise building. There should be no concerns that the proposed project would hinder fire operations in the Birmingham Place.

I hope this letter will help ease the concerns of our residents as the Planning Board and other stakeholders discuss the proposal and the future of the site. Please let me know if I can assist you in any other way.

Sincerely,

John M. Connaughton, Fire Chief
City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI (“Subject Property”) in the D5 Downtown Birmingham Overlay District Zone (“Application”)

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner (“Property Owner”) of 469 and 479 S. Old Woodward (“Property”) as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-4 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a “missing tooth.”

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.
The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970’s after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street’s architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan (“2016 Plan”) and amended the Zoning Ordinance to include the Downtown Birmingham Overly District. The Subject Property is located in the D-4 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to “...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan (“Birmingham Plan”), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.
Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission. Please consider the following comments with respect to these issues.

7.02(B)(2)(b)(i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership

Rezoning of the Subject Property is necessary to preserve the Applicant’s enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-4 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the
existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.

Sec. 7.02(B)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties

The proposed rezoning of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-4 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-4 to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]

Richard D. Rattner

RDR/cmc
June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Victoria Shouneya

Victoria Shouneya

Unit #54
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

June 15, 2018

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

Alex Shockey

#514
June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

[Signature]

Stuart Glasier
June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Alice Segatte #571
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

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Yours very truly,

Ted Elsholz
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

Nikole Fine

UNIT #521
ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

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Yours very truly,

[Signature]

Brandon Knight
Ladies and Gentlemen:

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[Signature]
ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,
June 15, 2018

411 S. Old Woodward, Suite
Birmingham, MI 48009

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

[Signature]

411 S. Old Woodward
B’ham 48009

10/18
June 15, 2018

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Birmingham, MI 48009

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[Signature]

Unit 606
411 S. Old Woodward Ave
Birmingham, MI 48009
June 15, 2018

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Ralph Boyll

Rose Boyll

06/08/18
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Eunice Galperin
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

June 15, 2018

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Vandad Raofi

and

Negar Farhi
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Birmingham, MI 48009

June 16, 2018

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Debra J. Elsholz

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June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
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[Signature]

Gary Aspeir
305 Randy
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

June 15, 2018  

Birmingham City Commission  
Birmingham Planning Board  
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1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Carol Kozlow

[Signature]
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Bev Ross
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Yours very truly,

[Signature]

[Name]

Birmingham Place
Unit 317
Birmingham, MI 48009

June 18, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

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Yours very truly,

Susan Borman
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project ”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,

Erin Mellett
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

[Signature]

Jay Beck
1376 Smith Ave.
Birmingham, MI 48009
June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

Dana Bassipour
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

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The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,
June 14, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Yours very truly,

Catherine Brozek
June 27, 2018

VIA HAND DELIVERY

John M. Connaughton, Fire Chief
572 South Adams
Birmingham, MI 48009

Re: Proposal to Rezone 469-479 S. Old Woodward Avenue

Dear Chief Connaughton:

I am writing, individually and as an officer and director of the Birmingham Place Residential Condominium Association, in response to your letter of June 22 Jana Ecker. A number of residents here discussed this matter with Joel Campbell and wish we had been sent a copy of the letter, but at least we got it as part of the agenda for tomorrow night’s Planning Board hearing.

In any event, we have some serious concerns with this situation in general and with your letter in particular, which include:

1. The proposed new building is not planned to be built “very close to the South Side of Birmingham Place” but rather is proposed to literally abut the southerly walls of Birmingham Place. This may not have a direct bearing on fire issues, but it does raise other issues and should, in any event, be stated accurately.

2. We understand that the fire equipment currently has some, albeit limited, access to Birmingham Place from Hazel Street. Your letter correctly states that you “... would not deploy our aerial truck for operations on the South Side of the building,” but it fails to note that the proposed building, which would be 22 feet taller than Birmingham Place, completely eliminates whatever access is currently available from Hazel Street.

3. Your letter also states “... we do have access from both the East and West sides of the building.” If the proposed building is built, a review of the drawings makes it clear that there would, in fact, be no fire equipment access whatsoever to most, if not all, of the residential and office units on the southerly part of Birmingham Place from the east side and only limited access to these units from the west side.
4. Current access from the west side also includes an alley running from Woodward Avenue to the rear of 469 S. Old Woodward. While this alley might well not accommodate larger fire trucks, it certainly provides some access to some equipment, which would be completely cut off by the proposed building.

5. We agree completely with the balance of the second paragraph regarding fighting “high rise” fires from within the building and also detailing the helpful fire fighting fixtures and equipment in Birmingham Place. Nevertheless, the simple fact remains that fire protection for Birmingham Place (and more importantly, the people who live and work here) will be less than it was if the proposed building is built as planned.

Our bottom line, so to speak, is that fire protection to at least the southerly portion of Birmingham Place would be reduced if the proposed building were allowed, and we have to ask you, as Fire Chief, how much increased risk for the sake of new development that hopes to maximize and increase the currently allowable building size is acceptable. The increased risk can easily be avoided by the City denying the rezoning request and maintaining the status quo. The value of adding several stories to a building pales in comparison to any increased risk to the health, safety and welfare of the Birmingham Place residents and occupants as well as the firefighters tasked with protecting the residents and occupants.

We request that you very seriously reconsider your position on this matter and advise both the Planning Board and the City Commission of the same, preferably before the meeting tonight but in any event at your first opportunity. Thank you for your time and attention. Best regards.

Yours very truly,

Michael D. Umphrey

xc: All Birmingham Planning Board Members (via hand delivery)
All Birmingham City Commissioners (via hand delivery)
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,

[Signature]

[Handwritten Name]

[Handwritten Number]
June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project ”)

Ladies and Gentlemen:

I am writing, as the owner of a residential condo unit in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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In addition, I have serious safety and other concerns, including:

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Yours very truly,

Michael Hanna
411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

Valerie Soley
411 S. Old Woodward Ave
Unit 508
Birmingham, MI 48009
June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

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Yours very truly,

Doris Hanna
June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

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1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Moëssa Hanna
ADDRESS:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

DATE:

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Mark D. Rubinstein
268 Pilgrim
6/23/18

Atene L. Rubinstein
268 Pilgrim
6/23/18
Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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[Signature]

[Address]
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

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Yours very truly,

[Signature]

411 S. Old Woodward Ave
Unit 508
Birmingham, Michigan
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

June 26, 2018

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9-story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Dennis W. Liu
ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Jackie Pierson
642 Oak Ave
Birmingham, MI 48009
ADDRESS

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 460-170 S Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival and success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which rezoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a three-story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small-town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

[Signature]

19-96 Stanley Blvd
Birmingham, Mich
48009
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

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Yours very truly,

LISA A. MARTIN
Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

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Yours very truly,

[Signature]

[Place]
June 27, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin St
Birmingham, MI 48009

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham's lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,

Peter R. Sobelton
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

Rose M. Boyle

[Signature]

Ralph S. Boyle
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Helen O. Kane
Owner
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deep felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

[Signature]

David Saliba
Unit 529
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Roanne M. Saliba
Birmingham Place, unit #529
Jana Ecker <jecker@bhamgov.org>

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**Rezoning issue**
1 message

**Clinton Baller** <cmballer@avidpays.com>  
To: Jana Ecker <jecker@bhamgov.org>  
Fri, Jun 22, 2018 at 10:17 AM

Jana,

Could you please let the Planning Board know my thoughts on the rezoning request for the former Franklin/First Place/Talmer bank building and Chinese restaurant on Woodward/Old Woodward?

I don’t know why that property was not included in the D5 rezoning that occurred several months ago, but it should have been. Birmingham Place is nine stories, and the 555 building is 15. I can’t imagine that the city would not allow something of similar height and mass to occupy the space between these two projects.

Beyond that, I think the city ought to insist on a project that brings some vitality to Old Woodward and the side street (Hazel), which are now dead zones. Either that, or just vacate Hazel insist on a use that is advantageous to the city.

My two cents, which are worth at least a nickel, I think.

Cheers!

Clint
September 11, 2018

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the Planning Board and Ms. Ecker:

We are writing this letter on behalf of the Birmingham Place Residential Condominium Association. The Association opposes the rehearing and rezoning of the Applicant’s property to the D5 overlay zone for many reasons as detailed in this letter. The dispositive reason to again deny recommendation of the rezoning is because the D5 ordinance was never intended to be applied in the manner requested.

Introduction

It is first baffling to the Association that the Applicant was able to obtain a rehearing of this Board’s decision at the June 27, 2018 public hearing to deny the Applicant’s request for a tabling of its the rezoning request. The Applicant apparently was able to defy this Board’s denial of the tabling request and come back again with the exact same rezoning request. The Applicant’s latest submission not only fails to demonstrate any substantial change in facts, evidence or conditions but is also fails to show that the Planning Board made any mistake, failed to consider any relevant facts or was misled by alleged mischaracterizations regarding the clear, history, intent and purpose of the D5 Ordinance. A close examination of the Applicant’s rehearing request reveals inconsistencies, fallacies, erroneous assumptions, unsupported assertions, and mischaracterizations of the record and history of the D5 ordinance. The intention of this letter is to provide that closer examination which should leave no doubt that the Planning Board should not change its original vote to deny a positive rezoning recommendation.

There Has Been No Mischaracterization of the Intent of the D5 Ordinance and its Inapplicability to the Applicant’s Property.

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place or any Planning Board member has mischaracterized the purpose of the D5 ordinance enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final product was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. The following is a summary of the history of the D5 ordinance. However, attached as Exhibit A, is a detailed timeline with references to the relevant public records which supports the statements made in this summary.
The 555 Building proposed the first draft of the D5 ordinance as the means to renovate and expand its existing non-conforming buildings and develop a new building on the southern portion of its site. The owners could not make those changes under the City's then existing ordinances that governed the renovation and expansion of nonconforming property. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. Moreover, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was (1) to find a way to make those taller buildings legally conforming structures and (2) draft language that would allow the reasonable renovation and expansion of other commercial nonconforming buildings throughout the City. The City Commission did not direct the Planning Board to draft a new overlay ordinance that allowed any building under 5 stories to obtain greater height because located adjacent to a building that was over 5 stories. The Applicant's representations to the contrary are simply opportunistic.

The above conclusion is amply supported by a memorandum from Planning Director Jana Ecker to the Planning Board dated September 22, 2015 (sic) that was included in the City Commission's February 13, 2017 packet. The City Commission voted to approve the D5 ordinance at that February meeting. (Memorandum attached as Exhibit B)

Ecker discusses in the memorandum that the Planning Board faced a dilemma regarding how to deal with the 555 Building. While the Planning Board recognized the importance of the 555 Building, it was hesitant to create “a new classification around a specific building.” (Ecker Memorandum, p. 1) The memorandum details the failed attempts to devise a way to not only address the 555 Building but also the future development of several other parcels, including parcels that did not share the height nonconformity. The Planning Board was unable to draft an ordinance regarding the future development of other parcels because “there were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.” (Ecker Memorandum, pp. 2-3) (Emphasis added) The Planning Board considered several options to allow changes to legal nonconforming commercial buildings. The Planning Board considered drafting two new overlay ordinances, one of which could be applied even to conforming property on the west side of Woodward, which would allow building heights that matched the allowable height east of Woodward in the Triangle District. (Id. at p. 5) Ecker suggested amending the B-3 ordinance to allow the same development rights that existed when the 555 Building was constructed under that ordinance. Although no consensus could be reached regarding application of the ordinance to the future development of existing properties, there was consensus with the blessing of the City

1 The contents of the memorandum suggest that the date contains a typographical error because the timeline discussed within the memo extends to setting the December 14, 2016 public hearing.

2 The Zoning Ordinance already contained a provision that allowed the limited expansion of nonconforming residential buildings. See Section 6.02
Commission that the improvement and expansion of legal nonconforming buildings should be studied. (Id. at p. 3) The decision was made therefore only to deal with the nonconformity issue in the new D5 overlay district.

Thus, although Planning Board members correctly remember discussing additional properties in the Southern Gateway during the D5 drafting process, those discussions did not bear fruit or any action because of a lack of consensus. It was not because the Mountain King owners were not before the Board. It was because the Planning Board could not reach a consensus other than allowing valuable buildings such as the 555 Building, Birmingham Place and Merrillwood the greater right to renovate or expand without the disability of being a non-conforming property because of height and setback.

**The Applicant was not prejudiced by the Planning Department's Mistaken Statement in its Review of the Community Impact Statement and Preliminary Site Plan**

The Applicant claims that this Board made its rezoning recommendation based upon the mistaken assumption that the Property is located within the Parking Assessment District (PAD) and that it allegedly was prejudiced by the asserted mistaken assumption.

First, it is true that the Planning Department's review of the Applicant's Community Impact Statement (CIS) and Preliminary Site Plan review erroneously stated that the Applicant's property was within the PAD. The Planning Department's mistake, however, did not prejudice the Planning Board's review of the rezoning request for several reasons. First, the mistake regarding the PAD was in the Planning Department's CIS and Preliminary Site Plan review and the Planning Board did not consider the CIS or site plan at the rezoning hearing.

Second, the Planning Board did not prevent the Applicant from explaining how the parking requirements impacted its ability to develop the land under the D4 ordinance. The record shows that the Applicant discussed the fact that the property is not in the PAD. (Video of hearing at 2:07:56) In answer to the question why the property could not be developed under the D4 overlay ordinance, the Applicant claimed that it could not develop the Property under D4 because it was not in the PAD.

Owner: “But office building, to put a... I don’t have the parking for it. I’m not in the Parking Assessment District, so I’m limited by parking. I can’t put a restaurant there, because I... you know... I, I, don’t have the parking to park it. The only thing I can really put there at the end of the day is a hotel. I mean that’s the only thing that makes it work. And again, to make it work as a hotel, I need to fit everything into this package that the hotel wants.” (emphasis added)

Third, if the Applicant believed that not being part of the PAD was crucial to its rezoning request nothing prevented the Applicant from discussing that fact when initially addressing the standards for the rezoning. The fact that the Applicant made no mention of the PAD in its initial written rezoning request belies its post hoc argument that the issue was so crucial to its request.

Moreover, if parking is the issue as the Applicant now claims that it is, the remedy is not to develop a project that has even greater parking requirements than is required under the existing ordinance. The rezoning is not necessary to meet the parking requirements when the possibility of
variances for parking can resolve parking related problems.

Finally, the Applicant stated that it was its understanding that it is the only D4 site that is not in the PAD. That understanding appears to be wrong. If the GIS website is up to date, it appears that there are two other parcels that also are zoned D4 but shown as outside of the PAD. The parcels are 484 W. Maple and 460 W. Maple. (See Exhibit C, Map with Overlay District and PAD Map)

**The Applicant Has not Demonstrated That the Applicable Parking Requirements Prevent Development Under the D4 Overlay Ordinance**

The Applicant’s supplemental explanation under Section 7.02(B)(2)(b)(i) of “why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership” is that it cannot meet the parking requirements if developed under the D4 overlay ordinance. The Applicant asserts that it needs more vertical height for a mixed use project and to meet parking requirements. As discussed below, the Applicant has failed to support this claim. It is hard to determine whether the Applicant claims that the property cannot be used as it currently exists because of the inability to meet parking requirements or that it cannot be redeveloped physically for any purpose under the current zoning classification because of its configuration coupled with the D4/B-3 mixed use and parking requirements.

The Applicant makes the following assertions regarding parking requirements:

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District ... it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4. 46 of the Zoning Ordinance (Off-Street Parking Spaces Required) Letter, p. 2

***

The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. Letter, p.3

***

Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses. Letter, p. 3

***

There are serious difficulties with building an underground
garage within the D-4 design parameters that is deeper than two
levels....Consequently, any such garage is limited to
approximately 60 parking spaces. Letter, p. 5

Based upon the first quote above, the Applicant appears to be stating that the property as it
currently exists cannot support any or very limited off-street parking. Even if that is true, under
Section 4.45 (G) 2 and 4 of the zoning ordinance, off-street parking can be provided within 100
feet of the site or via shared parking arrangements. The Applicant claimed in its CIS that it has an
agreement with the 555 Building for the use of 45 parking spaces. The Applicant could also apply
for parking variances. If the application of the parking provision of the zoning ordinance prevents
the property from being used, the likelihood of necessary variances is extremely high.

The next four quotes appear to be referring to a redevelopment under the D4 overlay district
requirements. The Applicant essentially makes the logically challenged argument that because it
is outside of the PAD it needs to develop a project that requires even more parking to meet the off
street parking requirements. The Applicant’s proposed use shows a three level underground
parking facility with 100 spaces and an agreement with the 555 Building for 45 more spaces. The
Applicant does not explain the discrepancy between its proposed plan and its new claim that any
underground garage is limited to approximately 60 parking spaces because of D4 design
regulations. However, the same D4 design regulations that would apply to an underground garage
in the D4 district also apply in the D5 district. The D5 zone does not provide any relief from the
design issue. The Applicant, however, asserts that it could meet the parking requirements if it could
construct a 9 story building but it cannot meet the parking requirements if it constructs a 5 story
building. If the site can only accommodate 60 parking spaces rather than the 100 spaces that the
Applicant originally represented, it defies explanation how a taller building is better able to meet
even greater parking requirements. Moreover, if there is a design requirement which hampers
providing more onsite parking, that is a variance and not a zoning issue.

The Applicant also does not explain whether it means that if restricted to five stories, it
cannot develop its preferred 98 hotel units, 29 residential units and a first floor coffee shop/hotel
lobby. The Applicant asserts that it needs more height because it cannot possibly fit mixed uses
and meet parking requirements on its site if limited to 5 stories. According to its proposed plan,
however, it can fit approximately 21-26 hotel rooms per floor and 13 residential units per floor. It
is unclear if the Applicant is now claiming that it can only build a two level underground parking
garage rather than a three level underground garage. In either case, it does not affect the above
ground height of the building. The Applicant likely could develop a 5 story mixed use building
with for example 70 hotel units, 13 residential units and the same size lobby/coffee shop as
proposed. A 5 story development with these specifications might require 73 parking spaces for
the hotel, approximately 13-16 spaces for the residential uses (depending on the number of rooms)
and 12 spaces for the lobby/coffee shop. Even if the Applicant could only fit 60 spaces onsite, it

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3 The Applicant appears to have made some mistakes in its parking analysis. For example
the residential parking requirement under B-3 is 1 space for a 2 room dwelling and 1.25 spaces for
a dwelling that has more than 3 rooms. The Applicant claimed that it needed 1.25 spaces for 26
apartments and 1.5 spaces for 3 apartments for a total of 37 spaces. The actual requirement is 29.75
spaces for 29 units.
could provide 105 spaces with the 555 Building parking agreement for 45 spaces.

The Applicant also has not explained whether it has explored the possibility of parking variances. A good argument exists that it should not have to provide any parking spaces for the lobby/coffee shop. The users of those retail spaces will likely be hotel guests or neighboring occupants who can easily walk to the coffee shop. The coffee shop likely will not be a destination spot for the motoring public. It is also likely that the hotel would not always be at full capacity which could provide a basis for obtaining additional parking variances. The City also is in the process of reviewing parking requirements for residential uses and possibility eliminating them for a site such as the Applicant's property.

Therefore, the answer to not being in the PAD is not to create taller buildings with higher density that requires more parking. The more reasonable solution is developing at lower densities with lower parking requirements and applying for any needed variances.

The Planning Board Appropriately Decided to Table Consideration of the CIS and Preliminary Site Plan Review

The Applicant's second supplemental explanation under Sec. 7. 02(B){2)(b)(ii) of “why the existing zoning classification is no longer appropriate” essentially contains a confused diatribe regarding the Planning Board’s decision to table consideration of the CIS and preliminary site plan review until after the City Commission acted on the rezoning request. It also discusses the ability to develop and use the property under the existing classification, which was addressed above in this letter. The Applicant also claims under this section that the Board was misled to believe that the D5 overlay zone only applies to existing buildings taller than five stories. That issue has also been addressed earlier in this letter.

First, the Planning Board correctly voted not to review the CIS or proposed site plan until and unless the rezoning was granted. There is no legal or factual basis for the CIS and preliminary site plan review until the petitioner secures the rezoning necessary to develop the property as proposed. In fact, it is an elementary zoning and planning principle that neither a planning board or legislative body should ever consider a particularized site plan at the rezoning stage unless the rezoning is conditional or part of a planned unit development. The reason is that the municipality is supposed to be making the rezoning decision based upon whether the general zoning classification is appropriate for the property and not whether any specific proposed plan is appropriate for the property. Another reason is because once the land is rezoned, the land owner cannot be tied to any specific site plan. The owner is free to develop the land under any provision of the new zoning classification. It would have been an error if the Planning Board had recommended rezoning based upon the CIS or site plan or had been unduly influenced by the proposed use for the site in making a decision.

Second, the Applicant’s assertion that the Michigan Zoning Enabling Act, MCL 125.3101, et seq ("MZEA") requires that rezoning decisions be made according to a site plan is inaccurate and nonsensical. The MZEA provides that a zoning ordinance must be “based on a plan designed to promote the public health, safety and general welfare…” (emphasis added) This means that the zoning ordinance itself and any amendments to it must be based - not on a site plan for the particular use of a single parcel of property - but upon a general land use plan, like the 2016 Birmingham Plan. The MZEA does not require site plans for rezoning property. It does require
site plans for the approval of special land uses and planned unit developments. A site plan ensures that property is developed consistent with ordinance requirements. The Planning Board did not prejudice the Applicant in any way by not reviewing a proposed site plan for a zoning that did not exist for the site. The rezoning of property is a legislative rather than administrative act and depends on the implementation and furtherance of general policies. It does not depend on a site plan for a single parcel of property.

**The Applicant Failed to Support that the Rezoning Will Not Be Detrimental to Surrounding Properties**

The Applicant’s supplemental explanation of why the proposed rezoning will not be detrimental to surrounding properties relies on its factually inaccurate statement that the City intended that the D5 overlay zone apply to the Applicant’s property and that the Birmingham Place owners will not be harmed by the rezoning.

First, as previously discussed, the history of the D5 zone indisputably supports that the clear intent of the D5 zone is only to apply to existing buildings taller than five stories. It should be noted here however that the Applicant’s Letter very misleadingly takes Ms. Ecker’s comment regarding new construction in the D5 zone completely out of context. All the participants in the D5 ordinance amendment process understood that the new construction provision was added for the benefit of the 555 Building. The language regarding new construction was not meant for property that had no existing height nonconformity that the D5 ordinance amendment was addressing.

Second, the Birmingham Place owners maintain their position that the proposed rezoning will be detrimental to the use and enjoyment of their property. A vast majority of the residential condominium owners, even those whose views will not be impacted, are opposed to the proposed development for many reasons that will be brought to the Board’s and Commission’s attention.

**The Board Did Not Fail to Make Required Findings of Fact or Misapply the Rezoning Standards**

The Applicant further claims that the Planning Board failed to make the required findings under Ordinance Section 7.02(B)(5). Its primary complaint is that the ordinance allegedly does not require the Planning Board to determine whether the property can be used as zoned. This is splitting hairs.

Section 7.02(B)(5) (d) of the zoning ordinance requires that the Planning Board make findings of fact regarding “[t]he suitability of the property in question to the uses permitted under the existing zoning classification.” Asking the Applicant why it cannot use the property as zoned is simply a way of determining whether the property is suitable for the uses permitted under the existing zoning ordinance.

Second, the Applicant claims that the Planning Board should have examined the appropriateness of the current zoning and not whether the Applicant could develop under this category. Again this is splitting hairs because it is the same question. The zoning may be inappropriate as applied to this site if the Applicant cannot develop or use its property under this classification. If the property can be used and the zoning classification still furthers master plan
goals and the public interest then it remains appropriate. The only difference between the D4 and D5 overlay zones is building height. The uses are the same. The Applicant’s only argument that conditions changed is the rezoning of Birmingham Place and the 555 Building. However that rezoning has not changed any existing land use patterns. The rezoning recognized existing land uses that had become nonconforming because of building height policies that changed after those taller buildings were constructed. Birmingham Place is as tall now as it was when it was rezoned to D5. The rezoning merely normalized the existing heights of the affected buildings.

A community generally should preserve its master plan and existing zoning unless the zoning classification no longer furthers the master plan goals or is no longer suitable for the site because of changed conditions and development patterns. The City certainly can adopt new master plan goals but should not make sweeping changes to the City’s land use plan through its zoning ordinances alone without first studying the issue of increasing building heights. The planning study is supposed to precede such zoning changes because the Zoning Enabling Act mandates that zoning be based on a plan. There has been no official study or public notice of any plan to allow more than 5 stories on the West side of Woodward. Moreover, the City weakens its master plan and its ability to defend it in court when it approves rezoning that is inconsistent with the plan. The proposed rezoning was not consistent with the 2016 Plan which reflects a policy decision to limit the height of buildings in the Downtown Overlay Zone to five stories. It is true that the City has since allowed taller buildings in the Triangle District but that new zoning was accomplished according to the Triangle District Plan. Therefore, when asked to depart from the 2016 Plan as it applies to the West side of Woodward, the City is well within its rights to require that the proponent demonstrate that the property cannot physically or viably be developed as zoned. To suggest otherwise ignores established zoning law and planning principles.

CONCLUSION

The Applicant has not provided any new information that should change the Planning Board’s original and correct recommendation to rezone the property to the D5 overlay classification. It is beyond dispute that the D5 ordinance was meant only to apply to existing buildings over 5 stories or existing sites that contained buildings over 5 stories. The Planning Board determined when it drafted the D5 ordinance that it would not address the future development of any other parcels in the Southern Gateway. It would be unfair and a failure of process for the Planning Board to ignore that history because the public will then have been misled by the process to enact the D5 ordinance. It is customary for the City to involve the public in any study to raise building heights as it did in the Triangle District.

Moreover, the Applicant made no effort to demonstrate that the D4 ordinance is unreasonable or unworkable as applied to its property. It has not made any credible case to support the rezoning request. At the June 27, 2018 hearing, the Applicant claimed that he could only make the site work with a hotel and in order to develop a hotel “I need to fit everything into this package that the hotel wants.” (emphasis added) This is the very reason why the City cannot rezone property based upon a proposed use. The issue is not what this particular hotel wants and the City cannot guarantee by rezoning the property that the hotel will even go through with the development. The issue is what does the existing zoning allow and can any of the allowable uses be reasonably developed consistent with the City’s land use polices as reflected in the 2016 Plan and its zoning ordinance.
The Planning Board, therefore, must recommend a denial of this opportunistic and improper rezoning request.

Very truly yours,

Susan K. Friedlaender

Susan K. Friedlaender
EXHIBIT A

TIMELINE AND SUPPORTING MATERIALS REGARDING THE EVOLUTION OF THE INTENT AND PURPOSE OF THE D5 OVERLAY ORDINANCE

INTRODUCTION

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place has mischaracterized the purpose of its enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final and enacted draft was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. In fact, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was to find a way to allow the renovation and expansion of legal nonconforming commercial buildings. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. This is why it would be completely improper to rezone the Applicant’s property to D5. The rezoning would pose a serious question regarding whether the Planning Board properly notified the public and City Commission regarding the intent and application of the D5 ordinance.

June 10, 2015 Planning Board Study Session

In the spring of 2015 the owners of the 555 Building submitted a request to amend the zoning ordinance and create a new D5 overlay district for buildings over five stories. The owners proposed the ordinance after the building department found “that any changes to the existing legal non-conforming building would increase the nonconformity, and thus be prohibited unless numerous variances were approved.” (2015-06-10 Minutes from Planning Board Study Session)

When first presented with several different drafts of the proposed D5 ordinance, the Planning Board discussed that the proposed amendment “should be viewed not only as to how it applies to 555 S. Old Woodward Ave., but possibly to other properties as well.”Id. The reason for this cautious approach was to counter any charges of spot zoning or undue favoritism. The dilemma that emerged, however, was the valid concern about applying the ordinance to other properties without further study: (Emphasis added)¹

Mr. Koseck noted there are all kinds of non-conforming buildings in the City and he doesn't think the goal is that they should all go away and become conforming. That is why the Board of Zoning

¹ Please note that the reason for the inconsistency of referring to the “D-5” and “D5” overlay zone throughout this letter is because while the Zoning Ordinance uses the “D5” appellation, the minutes and other writers often use “D-5” designation. This writer chooses to use the official Zoning Ordinance version.
Appeals exists. He is in favor of improvements being made to the building, but as the applicant makes enhancements he (page 7) hopes they would go further to be more in compliance with D-4, D-3, D-2, and D-1. It scares him to expand D-5 beyond the limits of this property without further study.” *Id.*

Chairman Clein thought of this as an opportunity to take a look at this building along with several parcels in the context of future development. If Bruce Johnson, Building Official, and Tim Currier, City Attorney, would come to a Planning Board meeting and are on board, he would be in favor of providing some relief in a unique situation; but he just doesn't want to do it capriciously. The Ordinance standards were put in place for a reason and he would be supportive of fitting them into the context of a building that obviously is not going away, in order to help make it better.

Ms. Whipple-Boyce was also in support of helping to make this Gateway building better looking. She thought also that it would be helpful to have Messrs. Johnson and Currier come to a Planning Board meeting. She could not imagine why the Planning Board could not somehow help the applicant to get their building re-skinned in some other way. Further, the ordinance proposal should not include some of the things that the board does not want to have in the City.

Ms. Lazar was in full support, as well, of trying to do something with the building. However, she didn’t see how this board could whip up a new ordinance in a short period of time. It concerns her that what might be applied to this building could become applicable to some other sites which would not be appropriate. She would rather try to help the applicant get to where they need to be with this building” *Id.*

**July 7, 2015 Planning Board Study Session**

At the next study session, the Planning Board continued discussions regarding whether to target a larger area between Hazel and Brown or limit the application of the new ordinance to the 555 Building.

Mr. Williams summed up the discussion by saying the board wants to go the conforming route and use the SLUP process to do it. Maybe the applicant won’t get everything but they can probably get a substantial achievement through the combination of the new MU classification plus SLUP exceptions for what they get as of right and what they get as a bonus. Ms. Ecker noted that is consistent with what the City does in other districts and what has been approved by the City Commission. This is a methodology that gives the Planning Board flexibility. It was the consensus that staff should work on
crafting something to that effect, taking the 555 Bldg. separately so that it gets through the City Commission.

**September 9, 2015 Study Session**

At the next study session, Ms. Ecker summarized the process as follows:

The applicant is seeking to rezone the 555 S. Woodward Ave. properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-09 Minutes, p. 9)

The Planning Board continued to ponder the scope of the work and whether it should go beyond dealing only with the 555 Building. Mr. Williams suggested creating a D5 district for the 555 Building and a D-6 District for other locations which might be nine stories. *Id.* at p. 10.

The Planning Board failed to reach a consensus or agreement with Mr. Williams suggestion.

**September 30, 2015 Planning Board Study Session**

At the next study session, the purpose of the proposed ordinance was characterized as follows:

Ms. Ecker explained that in order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal then is to seek rezoning of the 555 S. Woodward Ave. property from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-30 Minutes, pp 10-11)

The Planning Board again discussed creating two new overlay zones to address not only the nonconformity issue but also to address other property in the Southern Gateway area. The Planning Board continued to debate the expanded approach and could not reach a consensus.

Ms. Whipple-Boyce said it is important to try to help the applicant have some sort of zoning classification so they can move on with their project. However, she also does not want to see 168 ft. up and down Woodward Ave. *She is not sure that looking at the whole area is even appropriate. So maybe just work with this building and give them a zoning classification.* Steer the applicant toward having their building conform with the sort of downtown standards that the board hopes to have; which for example, isn't the garden level. If they want to continue to have these when they come forward with a new plan that is when they can go to the BZA. (Emphasis Added)
Mr. Share was in favor of having the applicant first exhaust their remedies. If the BZA doesn't provide them with the relief they need and this board concludes that it is really critical, then maybe the board changes the ordinance, takes the heat for it, and tells everyone it is because they don't want the building to fall down.

Chairman Clein said he is not hearing any clear direction so the board needs to bring this back because it is a complicated issue.

The Owner’s attorney assured the Planning Board that providing the 555 Building with relief would not be spot zoning.

January 17, 2016 Planning Board Study Session

At the opening of the study session, Ms. Ecker recounted the history of the ordinance amendment and rezoning request. She explained that the 555 Building not only wanted to renovate the existing building but the owners also wanted to add “an addition to the south of the existing residential tower for new retail space and residential units.”

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.”

Ms. Ecker also recounted that as of the last study session the Planning Board could not reach a consensus regarding whether to deal only with the 555 Building or look at properties along Woodward north to Brown Street:

There was no consensus on whether only the 555 S. Old Woodward Ave. property should be placed in a new overlay classification or whether this should extend north to Brown St. along Woodward Ave.

The minutes from the study session show that the Planning Board continued to debate whether to include properties other than the 555 Building in the proposed overlay district:

Mr. Share thought there are two separate questions. One relates to the 555 Building and whether or not it ought to be allowed to become conforming; separately, there is a question about general planning principles.
Mr. Boyle’s opinion was there are three issues: the building itself; the corridor; and thirdly how to move forward with the details on S. Old Woodward Ave.

Mr. Williams stated the board should focus on the 555 Building and come up with a practical solution. The problem is that the building isn’t right and it needs to be improved.

Ms. Whipple-Boyce said the question is whether a new zoning classification needs to be created, or can the applicant go through the variance process and achieve the same result.

Understandably, the owners of the 555 Building wanted to move forward with their request. The owners’ attorney reiterated that the Owner was requesting that “the Zoning Ordinance be amended to accommodate their building; and second that the zoning map include the petitioner’s property.” (Emphasis added) The attorney did not believe that accommodating the building would be spot zoning, meaning that the Planning Board did not have to concern itself with anything other than moving forward on an ordinance that would apply only to the 555 Building.

Additionally, he [Mr. Rattner, the attorney] emphasized this is certainly not spot zoning. The idea is to modify the ordinance to make a nonconforming building one that should obviously be conforming in order to allow the owner to make improvements. Mr. Rattner requested that the proposed ordinance be moved forward to a public hearing.

The Planning Board was persuaded and concluded that it needed to focus on the 555 Building and leave discussion of the corridor for another day.

Chairman Clein summarized that the board has come to the conclusion that it needs to focus on the 555 Building. The rest of the corridor is a different discussion. The board concluded that a sub-committee consisting of Ms. Ecker, Mr. Rattner, the City Attorney, and two board members could have a discussion on this in an open meeting forum. Mr. Share and Mr. Koseck volunteered to represent the Planning Board in the deliberations.

There was one public comment which shows that this member of the public understood that the Planning Board would not be making any new and sweeping changes but only be focusing on how to help the 555 Building.

Mr. Paul Reagan, 997 Purdy, said he is encouraged by the discussion. No one wants the building to deteriorate. He is glad that the Planning Board is not going beyond what was asked for, which is to restore the building. That is about how far it should go. Right now there is real competition for parking on S. Old Woodward Ave. Imagine what expanding the density of that building would do to the neighborhood. Lastly, he was shocked to
hear the petitioner had a hand in drafting ordinance language for rezoning. (Emphasis Added)

The Planning Board decided to establish a sub-committee to work on the new ordinance amendment. The sub-committee did not present its findings and proposals until September 2016. In the interim however the Planning Board obtained direction from the City Commission regarding dealing with the important issue of nonconforming commercial buildings.

June 20, 2016 Joint Session with City Commission

The Planning Board presented several land use items to the City Commission at the joint session with the understanding that if the City Commission wanted further discussion the matter would be submitted at a subsequent meeting for more formal direction to further study and address the issue. (See 2016-06-13 Memo from J.A. Valentine to City Commission.) Mr. Valentine also submitted a more detailed memo to the City Commission dated June 14, 2016 which in part described the issue of “Existing Commercial Non-Conforming Buildings” and asked the Commission whether the issue merited further discussion. (See June 14, 2016 Valentine Memo.)

The representation made to the City Commission was that the Planning Board wanted to address the 555 Building and other existing non-conforming buildings like Birmingham Place and Merrillwood. There was no representation that the Planning Board would address extending the proposed new overlay ordinance to buildings like the Applicant’s building that was not in danger of losing substantial value like the 555 Building if forced to redevelop only by losing substantial building height.

July 25, 2016 City Commission Meeting

Ms. Ecker attended the City Commission meeting to get the Commission’s formal direction on how the Planning Board should proceed on the planning issues raised at the joint meeting.

Ms. Ecker represented to the Commission that the Board was only looking for ways to deal with existing nonconforming commercial buildings and not to create a new ordinance that would allow existing sites without any height non-conformity to construct new buildings under the proposed zoning district. The ordinance was not intended to deal with new development that could conform to the existing zoning classification. Ms. Ecker stated:

if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty’s when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already nonconforming. (Minutes, p. 6)

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Mayor Pro Tem Nickita stated that this was an issue that the Commission wanted to address.

He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a nonconforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building. (Minutes, p. 6) (emphasis added)

The City Commission gave the following direction to the Planning Board:

MOTION: Motion by DeWeese, seconded by Bordman: To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures. (Id.)

The City Commission’s specific directive relative to any new zoning category was to allow for changes to non-conforming buildings and for their renovation and maintenance. It was not to create a new overlay district that allowed any property the option to build taller than 5 stories.

August 10, 2016 Planning Board Meeting

Ms. Ecker briefed the Planning Board on the City Commission’s directives regarding the planning issues addressed at the joint meeting. She reported that that the Commission directed the Planning Board as follows:

3) Existing Commercial Non-Conforming Buildings - to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering creating a new zoning category or categories to allow for changes to nonconforming buildings for maintenance and renovation consistent with those permitted for residential buildings and structures. (Minutes, p.5)

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Ms. Ecker suggested creating a win-win situation by offering the ability to renovate or to add an addition, but the City would get something in return. Ms. Whipple-Boyce said it would be nice to have this in place ahead of time for buildings like 555 Woodward and Merrillwood. Chairman Clein thought the board could consider new zoning categories if there are specific areas that need it; but they can also consider generic language changes. Look at the non-conforming buildings first. ( Id. ) (Emphasis added)
September 14, 2016 Planning Board Meeting

At this meeting, the Planning Board resumed the discussion of non-conforming building regulation under the City Commission’s parameters which did not include allowing sites with buildings under 5 stories the ability to go higher than 5 stories.

Ms. Ecker, along with the attorney for the 555 Building, suggested that instead of creating a new overlay district, the Planning Board could recommend amendments to the B-3 zoning ordinance that would render not only the 555 Building but also Birmingham Place as conforming buildings.

It was during the discussion to amend the B-3 ordinance that the only reference to Mountain King is recorded in any public document concerning the D5 zoning amendment:

Ms. Ecker stated that the 555 Building, Birmingham Place and Mountain King were the only properties in the City zoned B-3 in the underlying D-4 Zone. She suggested an option that would amend the regulations for height and setback similar to what they were when the buildings were approved. Mr. Williams wanted to limit the focus on just the 555 Woodward Bldg. as he thinks it needs to be approved. (Minutes, p. 5) (Emphasis added)

Ms. Ecker noted this option would allow the applicant to have a conforming status and apply for financing to do an expansion and improvement on the building. It would allow them to do an addition to the south and come to zero setback, and to go up to match the height of the building that is there. What it would not do is force them to address the issue of the garden level or the dead zone along Woodward Ave. However, it would permit them to address that. Id.

Ecker was mistaken regarding the number of parcels zoned B-3. The Power House Gym property is also zoned B-3. Regardless, it should be clear that the only reason Ecker mentioned Mountain King was to promote the idea that changing the B-3 zoning would alleviate any concern about spot zoning and at the same time would not open the door to many other parcels being able to take advantage of the amended ordinance. However, there was no support for the B-3 amendment option.

Mr. Koseck was in favor of allowing the building to continue to be updated but that doesn't mean it should be permitted to grow. Any add-on to the south would have to meet the current Ordinance.”

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Discussion concerned whether B-3 zoning that allows Birmingham Place and Mountain King to reach 168 ft. in height would be a hard sell to the public. The conclusion was they could not sell it on more than one piece of property. Mr. Williams proposed they go back to a previous zoning for the 555 Building that existed 45 years ago. He didn't think it should include any other
property. Because of that they would not be making a special case for this building in the form of spot zoning. The legal argument is that it would be remediying a wrong. (2016-09-14 Minutes, p. 5)(Emphasis added) (Minutes, p. 5)(Emphasis added)

September 28, 2016 Planning Board Meeting

Ms. Ecker provided background information including that at the last study session the Planning Board “resumed their discussion regarding legal nonconforming buildings.” The result was that “after much consideration” the Board directed the Planning Staff to meet with the 555 Building applicant to draft proposed ordinance language that addressed “the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of three buildings downtown.” (2016-09-28 Minutes, p. 3) ²

It is clear that by this meeting the Planning Board was only discussing a draft of the D5 overlay ordinance that gave the 555 Building, Birmingham Place and Merrillwood conforming status and nothing more. According to the minutes, the approach, with which the 555 Building applicant agreed, “was first to create a D-5 Zone, and second to recommend rezoning of one or more properties into the new D-5 category. This would allow the board to have further discussion on whether they want it to be the 555 Building property, or include the Birmingham Place and the Merrillwood Building, which are also non-conforming with regard to height.” (Id. at p. 5.)

It is also very clear that the Planning Board intended that the D5 language regarding new development in the D5 zone was for the benefit of the 555 Building owners, who expressed throughout the process that they wanted the right to use their vacant property for a new building that could be built as tall as the 555 Building. The only issue was whether building higher than 5 stories would require a special land use permit.

Chairman Clein summarized that the language would make any property that is put into the D-5 Zone legal and conforming as to height and setback. It would allow expansions as part of building maintenance. Undeveloped portions of the property could be built upon so long as it meets the D-4 Overlay standards. The south side of the 555 Building still needs to be resolved.” (Id.)

Mr. Williams did not agree with limiting the south side to five stories. However, anything built above five stories would require a Special Land Use Permit (“SLUP”). Mr. Share was in favor of tying all of the expansions to a SLUP. Chairman Clein felt the D-4 controls are in place and any expansion must conform. Mr. Share thought the City should have some control over how changes get made. Mr. Koseck liked the SLUP because it allows the City to control the design to meet the spirit and intent of the D-4 Zone. Mr. Jeffares agreed. (Id.)

² As stated, the Planning Board also amended Section 6.02 so that it applied to nonconforming commercial and residential buildings.
The 555 Building owner’s Attorney responded to the discussion as follows:

Mr. Richard Rattner, Attorney, represented the applicant. He said they are almost there with allowing the 555 Building to be conforming in all respects. Secondly, the proposed expansion language is fine. Third, they would like to see the height of a new building being constructed in the D-5 Zone be up to but not exceeding the height of the building immediately adjacent or abutting it. That means the south building cannot be any higher than the 555 Building. They would like to do that without a SLUP. (Id.) (Emphasis added)

**October 28, 2016 Planning Commission Meeting**

At this meeting, the Planning Board set a public hearing for making a recommendation on the amendment of the D5 ordinance and the proposed rezoning of the 555 Building to the new zoning overlay district category.

First, Ms. Ecker provided a recap which reiterated that the proposed D5 classification would accomplish two goals: (1) render 555 S. Old Woodward a legal conforming structure and (2) allow a new addition at the south end of the building that could be built as tall as the adjacent structure. (2016-10-26 Minutes, p. 4)

Ms. Ecker also suggested that the Board should recommend rezoning Birmingham Place and Merrillwood to the D5 classification because they were also nonconforming in building height. The consensus was to contact the owners before including them. There was no suggestion that they contact the owner of the Mountain King property or include that property in the rezoning because the Mountain King property did not contain an existing building over 5 stories.

The decision to include Merrillwood in the rezoning further establishes that the City did not intend the D5 Overlay ordinance as part of any general development incentive for the South Woodward Gateway as the Applicant has represented to the Board. Merrillwood is not located in the South Woodward Gateway. The Planning Board included Birmingham Place and Merrillwood because the only purpose of the D5 overlay district is to provide legal conforming status to existing buildings over 5 stories.

**December 14, 2016 Planning Commission Meeting**

At this meeting, the Planning Board held a public hearing on the proposed D5 amendment and the rezoning of the three nonconforming buildings. Ms. Ecker explained that the Planning Board set the public hearing “with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently non-conforming to be considered legal in regards to setbacks, number of stories, and height. The new
D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings.” (2016-12-14 Minutes, p. 3) (Emphasis added)

It should be obvious that Ms. Ecker would have notified the public that the new D5 classification could be applied to any property in the City whether or not it was nonconforming in height if that was the intent of the new ordinance. The failure to notify the public of that intent is another reason why the Planning Board must again deny recommendation of the rezoning request. In fact, a resident, who was concerned about the impact on parking demand commented that he did not believe that residents really understood what was being considered. If what was being proposed was other than what has been represented as the goal of the amendment, there has been a serious breach of the public trust.

February 13, 2017 City Commission Public Hearing

At this meeting, the City Commission held a public hearing on the D5 ordinance amendment and rezoning. The planning department briefed the City Manager prior to the hearing.

In a Memorandum dated February 6, 2017 from Senior Planner Matthew Baka he reminded the City Manager that the Planning Board and City Commission discussed the issue of legal nonconforming commercial buildings at the June 2016 joint meeting.

The Memo further provides that the Planning Board held a public hearing to consider Zoning Ordinance amendments with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently nonconforming to be considered legal in regards to setbacks, number of stories, and height. The new D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings. (Memo, p. 1.) (emphasis added)

The Memo advised only that the goal of the zoning ordinance amendment was to render several buildings legally conforming structures. The Memo would have alerted the City Manager if the intention was to allow new construction on sites that did not already contain a building greater than 5 stories.

The minutes from the February 13, 2017 public hearing show that City Planner Ecker advised the Commission that with respect to the new D5 classification and rezoning of the three buildings:

[The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be

3 As stated, the Planning Board also recommended amending Article 6, Nonconformances, Section 6.02 by removing the limitation that the extension or expansion of nonconforming property applied only to residential property.
extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay. (Minutes, p. 15)

First, Ms. Ecker unmistakably represented to the City Commission that the proposed D5 ordinance would apply to taller existing buildings, like the 555 Building, Birmingham Place and Merrillwood, and allow improvements and expansions of those buildings or sites.

Second, Ms. Ecker also led the Commissioners to believe that only the 555 Building would be eligible to build a new taller building in the D5 district because of the vacant land on its site. Ecker advised Commissioner Boutros that the language regarding new construction of a building as tall as an adjacent building was inserted because “the 555 site has room where a new building could be constructed.” (Id.)

Ecker also assured Commissioner Hoff as follows:

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said that they could not, because the properties next door would not have the D5 zoning classification.”

The clear inference is that neither Merrillwood or Birmingham Place could build new taller buildings by simply buying the next door parcels because those parcels would not have been eligible to be part of the D5 district. The 555 Building could construct a new building because its entire site would be zoned D5.

CONCLUSION

The history of the D5 overlay ordinance should clear up any misconception or unsupported assertions by the Applicant that Birmingham Place, its attorneys or any Planning Board member mischaracterized the intent and purpose of the D5 ordinance. The facts show that the only intent was to allow the renovation and expansion of existing buildings taller than 5 stories. It was also to allow the 555 Building the option to build on its vacant property that also was zoned D5. There was no intent that the City apply the ordinance to property like the Applicant’s property which can be redeveloped under the D4 ordinance and not lose any preexisting height. As a nonconforming building for reasons other than being taller than 5 stories, the Applicant can seek permission to renovate or expand its existing buildings under Article 6, Section 6.02.
DATE: September 22, 2015

TO: Planning Board Members

FROM: Jana L. Ecker, Planning Director

SUBJECT: Study Session on Legal Non-conforming Buildings

Last year, the owners of the 555 S. Old Woodward building applied to the Planning Board to amend the Zoning Ordinance to allow the renovation of the existing building, the addition of new residential units along S. Old Woodward, as well as an addition to the south of the existing residential tower for new retail space and residential units. The Building Official had previously ruled that some changes to the existing legal non-conforming building may be permitted. However, the scale and scope of the changes that the property owner sought to implement would exceed what would be permitted as maintenance and thus were not permitted in accordance with the legal non-conforming regulations contained in the Zoning Ordinance.

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward building requested a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal was then to seek rezoning of the 555 S. Old Woodward properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building at 555 S. Old Woodward as a legal, conforming building that could then be renovated and expanded in accordance with new D5 development standards.

On May 13, 2015, the Planning Board began discussing the applicant’s proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building. The Planning Board did, however, recognize the importance of the 555 S. Old Woodward building and the need to allow renovations and additions to improve its presence at the south end of Downtown Birmingham. Specific concerns raised regarding the existing 555 S. Old Woodward building were the unwelcome facades of the Woodward elevation, the split level concept on the S. Old Woodward elevation, and the exposed structured parking.

At subsequent Planning Board meetings on June 10th, 2015 and July 8th, 2015 the Planning Board further discussed the ways that the building could be modified and improved as a conforming structure and not through the use of variance requests. The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows
the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development. It was suggested that this could be accomplished through a combination of a new zoning district and a Special Land Use Permit (SLUP) or the addition of a D6 zone as well, to differentiate permitted height north of Bowers, and south of Bowers along Woodward. The board reviewed multiple examples of similar “gateway corridor” districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.

On September 9, 2016, the board reviewed a revised draft of the proposed D5 zone. Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District. Some board members felt that the allowable height in a new D5 or D6 zone should mirror the 9 stories permitted in the Triangle District on the east side of Woodward. Other board members felt that additions should be permitted to match the height of existing non-conforming buildings. The board was unable to reach consensus on how to proceed, and requested additional information and direction from the City Attorney on potential options to provide exemptions for non-conforming buildings. The City Attorney’s response letter dated September 29, 2016 is attached for your review.

On June 20, 2016 the issue of legal non-conforming commercial buildings was discussed at a joint meeting of the City Commission and Planning Board. The 555 S. Old Woodward building, the Merrillwood Building and Birmingham Place were referenced due to their non-conformity with regards to their height and bulk, and the desire to allow improvements or changes to these buildings. While no action was taken at the joint meeting, there was consensus that the issue of the improvement or expansion of legal non-conforming buildings should be studied.

On July 25, 2016, the City Commission again discussed the issue of legal, non-conforming commercial buildings and directed the Planning Board to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

On September 14, 2016, the Planning Board resumed their discussion regarding legal non-conforming buildings. Specifically, the Planning Board discussed the following options to allow changes to legal non-conforming buildings for maintenance, renovation and/or expansion:

1. **Allow Maintenance and Renovation Only of Existing Legal, Non-conforming Commercial Buildings**
Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity
A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

The amendment noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building so long as the addition meets the current zoning standards for the existing zone district. This amendment would allow both commercial and residential legal non-conforming buildings to be expanded using a consistent approach. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height only) to construct an addition. However, the addition could not be 10 stories in height to match the existing building, but could be built up to a maximum of 5 stories as currently allowed in the zone district.

2. Allow the Expansion of Existing Legal, Non-conforming Buildings To Match Existing Non-conforming Conditions

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity
A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:
1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself increase the degree of the dimensional nonconformance, nor violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).
Section 6.02 Continuance of Nonconformity

A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:

1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F). A legally nonconforming structure may expand its square footage provided that the expansion does not exceed the extent of the height and/or setback in nonconformance. All other development standards must be met in the expansion.

a. A vertical expansion of a nonconforming building or structure which is legally nonconforming as to one or more setback requirements is a permitted expansion of that nonconformity.

b. A horizontal expansion of a nonconforming building or structure which is legally nonconforming as to one or more height requirements is a permitted expansion of that nonconformity.

Both of the amendments noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building up to, but not exceeding, the existing non-conforming dimension. The first option listed above is more general in nature, and could include the expansion of any type of non-conformity (height, setbacks, FAR, density, lot coverage etc.). The second option listed above is limited to expanding only height and/or setback non-conformities. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height or setbacks) to construct an addition up to 10 stories in height to match the existing building height and setbacks.

3. Convert Existing Legal, Non-conforming Buildings to Conforming Using a Special Land Use Permit
Another option to consider may be to convert buildings or structures in Downtown Birmingham that are legal non-conforming with regards to height into conforming buildings through the use of a Special Land Use Permit. An amendment to Article 3, Overlay Districts, or to Article 6, Nonconformances, could be proposed as follows:

**Conversion of Non-conforming Status:** A building in the Downtown Birmingham Overlay District that is a legal non-conforming building or structure with regards to height may be deemed a conforming building or structure with regards to height if the property owner agrees to specific conditions to control the future extension, enlargement or renovation of the building or structure and said conditions are approved by the City Commission under the provisions of a Special Land Use Permit.

This approach would allow for the extension or enlargement of existing legal, non-conforming buildings downtown on a case by case basis as negotiated by the City Commission. The amendment noted above would provide flexibility for different site conditions and would provide control over the parameters of future expansion based on site and neighborhood context. As an example, a 10 story legal non-conforming building in a 5 story zone district could be deemed conforming if placed under the provisions of a SLUP that establish the specific conditions for maximum extension or enlargement of the building in the future.

4. **Re-establish the Zoning District(s) in effect when Building Permits were Issued for Buildings in Excess of 5 Stories (or amend the B3 Zoning District) to render existing buildings conforming**

Another option to consider may be to re-establish the former zoning classification(s) in place in the 1970’s when several buildings were legally constructed greater than 5 stories in height, and to rezone properties with non-conforming buildings with regards to height back to this classification. Thus, any extension or enlargement of an existing legal, non-conforming building so rezoned would be permitted as anticipated at the time of construction. As an example, a 10 story building constructed in 1975 under a classification that permitted 11 stories in height could be extended or enlarged up to 11 stories in height.

5. **Create a New Zoning District(s)**

Another option to consider is to create a new zoning classification(s) that would permit additional building height and rezoning certain properties to this classification, thus rendering legal non-conforming buildings or structures conforming buildings with regard to height. This approach has been discussed by the Planning Board over the past year, and amendments have been drafted to create two new classifications under the Downtown Overlay, D5 and D6, to attempt to address the non-conforming heights of several buildings downtown. The Planning Board has also discussed using this approach to address sites along the west side of Woodward to allow additional height even for existing conforming buildings along the corridor to match the height permitted on the east side of Woodward in the Triangle District. The latest version of
the draft previously discussed by the Planning Board is attached and highlighted to indicate areas noted for further discussion. As an example using this approach, an existing 10 story legal non-conforming building in a 5 story zone district could be rezoned to a new zoning classification to be created that would allow 10 story buildings as of right.

At the Planning Board meeting on September 14, 2016, board members agreed that the improvement and maintenance of existing legal, non-conforming commercial buildings should be permitted, and expansion of such buildings should also be permitted consistent with regulations for residential buildings. Board members also discussed at length the issue of several legal, non-conforming buildings in the Downtown Overlay District, and the desire to allow improvements to those buildings as well. After much discussion, the Planning Board directed Planning staff to meet with the applicant for the 555 Building to craft ordinance language that would make existing buildings downtown conforming with regards to both height and setbacks, and to allow future expansion that would comply with the standards of the D4 Overlay.

On September 28, 2016, the Planning Board discussed draft ordinance language that proposed to create a D5 zone district that would render existing buildings legal and conforming with regards to setback and height. Board members agreed that additions or renovations should be permitted to existing buildings. With regards to the construction of new buildings in the proposed D5 zone district, there was much discussion as to whether such buildings should meet the 5 story maximum height in the D4 zone district, or should be allowed to match the height of the existing adjacent buildings. The consensus of the board was to allow additional height for new buildings in the D5 to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP. At the end of the discussion, the applicant asked if the Planning Board could simply waive certain requirements in the D5 zone instead of requiring a SLUP. Staff agreed to discuss this with the City Attorney.

Since the September 28, 2016 Planning Board meeting, City staff has met with the applicant to refine the draft ordinance language. Accordingly, please find attached draft ordinance language for your review based on the Planning Board’s direction from the last meeting that addresses the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of buildings downtown.

The applicant has also provided another version of a draft ordinance for the Planning Board’s discussion as well based on their desire to construct a new building that exceeds the height of the existing 555 building, but maintains the same number of stories. The applicant’s revised draft is also attached for your review.

Finally, City staff has reviewed the applicant’s request as to whether the Planning Board can simply waive certain requirements in the D5 zone with both the City Manager and the City Attorney. Although it was unclear as to whether there was a legal question, the City Manager directed the City Attorney to respond. The City Attorney has advised that the question of whether the Planning Board can waive specific requirements is not a legal question, but rather a
policy question. Ultimately, the City Commission has the sole authorization to pass zoning legislation, with or without waivers, so long as they remain in compliance with the Michigan Zoning Enabling Act.

Should the Planning Board wish to recommend the attached ordinance amendments, the board may also wish to consider proposing a rezoning of the 555 Building, Birmingham Place and/or the Merrillwood Building to the proposed D5 Zone (over 5 stories).

**Suggested Action:**

To set a public hearing for December 14, 2016 to consider the following amendments to Chapter 126 Zoning:

(a) Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district;
(b) Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To set a public hearing for December 14, 2016 to consider the rezoning of the following properties:

(d) **555 S. Old Woodward** (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;
(e) **411 S. Old Woodward** (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
(f) **225 E. Merrilwood** (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.
September 11, 2018

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Rezoning Application Before the Planning Board

Dear Ms. Ecker:

This letter is in response to your request to clarify the procedure by which applications for rezoning and determinations of rezoning are made. The Zoning Ordinance states in Section 7.02 B.2. Application for Rezoning, as follows:

"2. Application for Rezoning.

1. Persons Entitled to Seek Rezoning. Only a person who has a fee interest in a piece of property, or a contractual interest which may become a fee interest in a piece of property, may seek an amendment in the zoning classification of that property under this section.

2. Application for Rezoning.

a. An application for an amendment to change the zoning classification of a particular property must be filed with the Building Official on such forms and accompanied by such fees as may be specified by the City Commission. The application and any supporting documentation shall be forwarded by the City Building Department to the Planning Board for study and recommendation.

b. Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

i. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.

ii. An explanation of why the existing zoning classification is no longer appropriate.

iii. An explanation of why the proposed rezoning will not be detrimental to surrounding properties.

c. Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. The plot plan shall be drawn to a scale of not less than one inch equals 50 feet for a property of less than 3 acres and one inch equals 100
feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:
i. Applicant’s name, address and telephone number.
ii. Scale, north point, and dates of submission and revisions.
iii. Zoning classification of petitioner’s parcel and all abutting parcels.
iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
v. Existing use of the property.
vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
viii. All existing easements.
ix. Location of existing sanitary systems and/or septic systems.
x. Location and size of existing water mains, well sites and building service.
xii. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable.”

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

“5. Findings of Fact and Recommendation of the Planning Board. The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
a. The objectives of the City’s then current master plan and the City’s 2016 Plan.
b. Existing uses of property within in the general area of the property in question.
c. Zoning classification of property within the general area of property in question.
d. The suitability of the property in question to the uses permitted under the existing zoning classification.
e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.

Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc
October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward,
Birmingham, Michigan (the “Property”)

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the “Association”) to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is “back” on the Planning Board’s agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client’s position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called “new” information or positions could possibly justify a change to the Planning Board’s previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled “new” information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also
advising the Association of its legal rights and remedies along with the Residential Condominium Association's counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: [Signature]

J. Patrick Lennon

cc:  Ms. Michele Prentice
     Ms. Jana L. Ecker
     Ms. Susan K. Friedlander
     Mr. Richard D. Rattner
3/2/2020

City Clerk
City of Birmingham
151 Martin
Birmingham, MI 48009

Dear City Clerk,

I am writing this letter to **strongly oppose** the rezoning request for **469-479 Old Woodward Avenue (former Mountain King and Talmer Bank)**.

A 9 story building would completely impede and block any view that I have from my condo unit. I paid a lot for my condo and have an amazing view of both old Woodward and Woodward. This 9 story building will not only impede on my view, but also devalue and depreciate my condo, which I paid handsomely for. I have no objection for a new building on the site as it would be a nice addition, however, 4 - 5 story building would be perfect, in my opinion. That said, I hope that this rezoning does **NOT** pass.

Best,

[Signature]

Gayle Goodman
VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Development”)
Request to Rezone from B3/D4 to B3/D5 Filed by William Rattner
Hearing Scheduled for Wednesday, February 27, 2020 (the “Hearing”)

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons as the legal requirements for a hearing have not been met.

First, the Developer has not met the legal requirement to request a hearing. As of last night (February 18, 2020), the Applicant had not posted the notice sign required under subsection 7.02 B.4.a.v of the Rezoning Amendments. As stated “A notice sign shall be posted in a conspicuous place on the subject property . . .” I would be glad to share with the planning board the photos of the property which demonstrated the lack of notice.

Second, the Planning Board errored in the required 15-day notice to adjacent property owners (7.02 B3aiii). Specifically, the postcard mailed regarding Notice of Public Hearing stated the hearing would occur on “Wednesday, February 27, 2020”. No such date exists. Either the meeting is on Wednesday February 26 or Thursday February 27. This confusion is unfair to concerned Birmingham citizens. Most importantly, accurate 15-day notification has not been mailed.

I request the Planning Board follow City Rules and Regulations and only hold a rezoning hearing when all regulations are met.

Please contact me via email to mickeyschwartz@gmail.com, or at (248) 229-9989 with any questions or further requirements and in any event with the new hearing date.

Thank you for your time and attention.

Yours very truly,

Michael Schwartz, MD
### Planning Board Members (via separate emails)

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Term Expires</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janelle Boyce</td>
<td>03/28/2020</td>
<td><a href="mailto:jwboyce@hotmail.com">jwboyce@hotmail.com</a></td>
</tr>
<tr>
<td>Robin Boyle</td>
<td>03/28/2022</td>
<td><a href="mailto:rboyle@wayne.edu">rboyle@wayne.edu</a></td>
</tr>
<tr>
<td>Scott Clein</td>
<td>03/28/2022</td>
<td><a href="mailto:s.clein@comcast.net">s.clein@comcast.net</a></td>
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<tr>
<td>Stuart Jeffares</td>
<td>03/28/2021</td>
<td><a href="mailto:stuartjeffares@gmail.com">stuartjeffares@gmail.com</a></td>
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<tr>
<td>Bert Koseck</td>
<td>03/28/2020</td>
<td><a href="mailto:bkosek@comcast.net">bkosek@comcast.net</a></td>
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<tr>
<td>Nasseem Ramin</td>
<td>11/02/2020</td>
<td><a href="mailto:nramin@dykema.com">nramin@dykema.com</a></td>
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<tr>
<td>Daniel Share</td>
<td>03/28/2021</td>
<td><a href="mailto:dshare@bsdd.com">dshare@bsdd.com</a></td>
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<tr>
<td>J. Bryan Williams</td>
<td>03/28/2021</td>
<td><a href="mailto:jwilliams@dickinsonwright.com">jwilliams@dickinsonwright.com</a></td>
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<tr>
<td>Jason Emerine</td>
<td>11/02/2020</td>
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<tr>
<td>Sofia Trimble</td>
<td>12/31/2019</td>
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<tr>
<td>John Utley</td>
<td>12/31/2019</td>
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</tbody>
</table>
Re: Confirmation of postponement

1 message

Jana Ecker <jecker@bhamgov.org>  Thu, Feb 20, 2020 at 9:07 AM
To: Mickey Schwartz <mickeyschwartz@gmail.com>, James J Arpin <jjarpin@gmail.com>

Good morning gentlemen,

As I indicated via email last evening, the rezoning hearing for 469 - 479 S. Old Woodward will not be heard at the Planning Board meeting on February 27, 2020. Please note that it will remain listed on the agenda, but there will be a note in bold type requesting postponement to March 25, 2020. We will send out new notices on the matter for that date.

The applicant was advised yesterday that they are required to place the required notice sign on the property at least 15 days prior to the hearing, and to ensure that it remains posted until after the hearing.

Thank you for bringing this matter to our attention.

Jana Ecker

On Wed, Feb 19, 2020 at 8:55 PM Mickey Schwartz <mickeyschwartz@gmail.com> wrote:

Jana,

Can you please confirm that the rezoning hearing scheduled for next week’s Planning Board meeting is postponed as per my concerns raised in my letter of 2/19/2020.

Thank you,

Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com

--
Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841
October 1, 2018

Ms. Jana L. Ecker and  
Planning Board Members  
City of Birmingham  
151 Martin Street, P.O. Box 3001  
Birmingham, MI  48012  

Re:  Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward  

Dear Members of the Board:  

The Board has requested a legal opinion in connection with the following question:  

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?  

ANSWER: YES.  

If you have any additional questions, please do not hesitate to contact me.  

Very truly yours,  

BEIER HOWLETT, P.C.  

Timothy J. Currier  

TJC/jc
October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI  48012

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ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier

TJC/jc
To Whom it May Concern:

I am the Co-owner of the building at 444-494 S Old Woodward. We have tenants that pay a premium in their rent because they have dedicated parking for their customers. We are concerned that the change in usage, as in more tenants, for 400 South Old Woodward and 469-479 South Old Woodward could force people to look for offsite parking. We have a problem with the 555 South Old Woodward and 411 South Old Woodward building customers parking in our lot when they are not patronizing our businesses. Every week we have people looking to rent parking spaces. We can not handle more people looking for places to park because the building wasn’t designed to accommodate it's tenants. Please consider the businesses that provide parking for their patrons when you contemplate usage changes to buildings on South Old Woodward.

Thank you,

Lynn Groth
Galyn Associates
Good afternoon Mr. Arpin,

I received your email and will include it in the Planning Board's agenda for April 22, 2020.

Please allow me to respond to several of the comments in your email. The Planning Board meeting of April 22, 2020 was posted in a newspaper of general circulation on Sunday, April 5, 2020. Please see attached notice that was sent to the Oakland Press. Postcards were also mailed to all owners and occupants within 300' of the property requesting the rezoning more than 15 days prior to the scheduled public hearing, also attached. These are the required notices that must be posted/distributed 15 days prior. Both were completed, and both contained the details required to participate in the virtual meeting using a computer, smartphone or regular telephone.

The Planning Board's page on the City's website to which you refer that was listed in the postcard notice was to obtain copies of previously approved minutes of the Planning Board. All previously approved minutes are posted there for past meetings as noted on the postcard. This page will also be updated with the full agenda and all accompanying reports etc. on the Friday before the meeting as usual (Friday, April 17, 2020).

In addition, please find attached an easy to follow instruction sheet that may assist you in participating in virtual meetings.

Have a great day, and stay healthy,
Jana
I am reaching out to both of you as representatives of Birmingham Place to make sure you know that the upcoming rezoning request will be considered at a virtual meeting on April 22, 2020. Hopefully you have received your notice postcards with the Zoom link for the meeting. If you do not have the equipment (computer or smartphone) or desire to join the meeting over the internet, there is also a phone in option that allows you to listen and participate in the meeting in real time.

If you need any further information, please let me know.

Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841

--
Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841

3 attachments
469 - 479 S. Old Ww Rezoning - Virtual Meeting -4-22-20.doc
47K
469 -479 S. Old Woodward - Rezoning - 4-22-20.doc
47K
Public Meetings on Zoom - Guide for Members of the Public.docx
381K
Fwd: Virtual Planning Board Meeting

1 message

Mickey Schwartz <mickeyschwartz@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

As per your email, please forward this to the Planning Board members.
I am disappointed and do not understand why I can not communicate directly.

---------- Forwarded message ----------
From: Mickey Schwartz <mickeyschwartz@gmail.com>
Date: Tue, Apr 14, 2020 at 2:45 PM
Subject: Virtual Planning Board Meeting
To: <pboutros@bhamgov.org>, <tlonge@bhamgov.org>, <cballer@bhamgov.org>, <rackyhoff@hotmail.com>, <bhost@bhamgov.org>, <mnickita@bhamgov.org>, <ssherman@bhamgov.org>

To: City Commissioners (and Planning Board Members):

The Birmingham Planning Board has scheduled a virtual meeting to address a non-essential, controversial rezoning issue that had been under consideration for years (469-479 Old Woodward Rezoning). In light of the current COVID-19 pandemic, this borders on the absurd. The notion that they MAY legally do this does not mean that it should be done. The new concept of virtual meetings for non-essential issues is fraught with problems in a democratic society particularly for citizens without technical skills.

I object to the meeting and formally request the Planning Board to defer this issue pending the resolution of the Michigan mandated shutdown.

We have no knowledge of the long-term effects of this horrible pandemic. Will we want more tall buildings and an increase in population density in downtown? What will happen to Birmingham retail as the society moves more to online shopping? We are in unprecedented times and uncharted territory. Why the urgency to consider changes now that the City may regret in the future?

Rather than business as usual, perhaps the Planning Board should be studying how the proposed Master Plan should be updated for a post COVID-19 environment.

Please postpone this rezoning issue.

(I tried to send this to the Planning Board members but their emails are not included in the City Web Page).

Mickey Schwartz, MD
411 South Old Woodward Ave. Unit 1018
Birmingham, MI 48009
248 229-9989
mickeyschwartz@gmail.com
Jana Ecker <jecker@bhamgov.org>

Re: Virtual Planning Board Meeting
1 message

Joe Valentine <jvalentine@bhamgov.org>
To: mickeyschwartz@gmail.com
Cc: Jana Ecker <Jecker@bhamgov.org>

Mr. Schwartz,

I am in receipt of your email to the City Commission and wanted to provide a reply given your concern for the application of 469-479 S.Old Woodward being considered by the Planning Board on April 22nd. Given the applicant had submitted their application for consideration and their request to move it forward, they maintain their right to petition their government and continue the scheduled public hearing. A postponement at this time could come at the request of the applicant or by motion of the Planning Board if determined necessary in further considering their application. However, the City Commission does not have the ability to postpone a scheduled public hearing before the Planning Board.

In regard to watching this meeting, it should be streamed from our website and also broadcast over the normal cable stations for viewing, just as prior meetings.

I hope you find this information helpful.

Best regards,
Joe Valentine

From: Mickey Schwartz <mickeyschwartz@gmail.com>
Date: April 14, 2020 at 2:45:41 PM EDT
To: pboutros@bhamgov.org, tlonge@bhamgov.org, cballer@bhamgov.org, Rackyhoff@hotmail.com, bhost@bhamgov.org, nnickita@bhamgov.org, ssherman@bhamgov.org
Subject: Virtual Planning Board Meeting

To: City Commissioners (and Planning Board Members):

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Please postpone this rezoning issue.

(I tried to send this to the Planning Board members but their emails are not included in the City Web Page).

Mickey Schwartz, MD
411 South Old Woodward Ave. Unit 1018
Birmingham, Mi 48009
248 229-9989
mickeyschwartz@gmail.com

--

Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
To get the latest information regarding the City of Birmingham, please sign up for our communication tools by clicking here [www.bit.ly/bhamnews](http://www.bit.ly/bhamnews).
April 15, 2020

VIA EMAIL ONLY

Birmingham Planning Board

c/o Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Re: Request to Adjourn Hearing on Request to Rezone 469-479 S. Old Woodward Ave. Until the Rescission or Expiration of (i) Michigan Stay at Home Executive Order No. 2020-42, and (ii) Michigan Executive Order 2020-15 Suspending Compliance with the Michigan Open Meetings Act

Dear Members of the Birmingham Planning Board,

On behalf of the Birmingham Place Residential Condominium Association and Birmingham Place Commercial Condominium Association, we respectfully request that the Planning Board adjourn the hearing on the rezoning of 469-479 S. Old Woodward Ave., until such time that the hearing can be held in person under the requirements of the Michigan Open Meetings Act. Holding this meeting “virtually” on April 22, 2020 is not only unfair and prejudicial to the condominium owners of Birmingham Place and various other stakeholders in the City of Birmingham, but is completely contrary to Governor Whitmer’s Executive Directive No. 2020-02. That Executive Directive, which supplements Governor Whitmer’s Executive Order 2020-15 that authorized virtual meetings which are not otherwise permissible under the Open Meetings Act, is in full force and effect, and states that:

All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.
Birmingham Planning Board
c/o Ms. Jana Ecker
Planning Director
City of Birmingham

April 15, 2020

If there ever was an agenda item that may be deferred to a later time under the circumstances we are currently facing, this is one of them. This rezoning application has been pending since June 2018. Now, while our community is under extreme uncertainty, stress, and anxiety, we have to revisit this difficult case, which could have many negative impacts on our community, and Birmingham Place residents and commercial occupants. If that were not enough, the Birmingham Place residents must find the means to participate virtually through an app or telephone. This is simply an unreasonable request, and does not allow residents to participate in a meaningful and productive way. Many of the residents of Birmingham Place are senior citizens, and either do not understand how to participate virtually, or are not comfortable participating in this manner. My clients have participated in all of the hearings related to this rezoning case to date, and based on that experience, the Planning Board should anticipate a packed and confusing virtual meeting room. Is this really the best way to handle a rezoning case of this magnitude?

Other than the applicant’s presumed desire to move this application forward, there is certainly no reason why the Planning Board must consider this rezoning application in a virtual format under these circumstances. While it is a nice accommodation that virtual meetings are authorized under Governor Whitmer’s Executive Order 2020-15 so essential business can be dealt with during this crisis, a postponement of a rezoning request that was initiated in 2018 is clearly required under the Governor’s Executive Directive 2020-02. We strongly urge the Planning Board to postpone this hearing to comply with the Governor’s orders. If this matter must be heard in a virtual format on April 22nd, we demand that the Planning Board place on the record why this rezoning application could not be deferred to a later date as required in the Governor’s Executive Directive 2020-02.

Thank you for your consideration of our request. We look forward to hearing from you prior to April 22nd.

Sincerely,

JPHOWE, PLLC

J. Patrick Howe

cc: Timothy J. Currier, City Attorney (via email)
Joseph A. Valentine, City Manager (via email)
Birmingham Place Residential Condominium Association
Birmingham Place Commercial Condominium Association
REQUEST TO ADJOURN VIRTUAL HEARING ON REZONING REQUEST FOR 469-479 S. OLD WOODWARD SCHEDULED FOR APRIL 22, 2020

I am the owner of a condominium at 411 South Old Woodward. I ask that you adjourn the above hearing for these reasons, more fully discussed below:

1. The Board is required by Executive Order 2020-1(1) to adjourn this hearing until a hearing can be held in person.
2. The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly for seniors, especially given the unusual importance of the issues and the unique complexity of the issues.
3. Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.
4. The virtual notice of the hearing is not timely and this requires adjournment of the hearing.

Executive Order 2020-02, Sect. 1, which remains in effect, provides (emphasis added):

All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.

In other words, this is in effect an order to bodies such as the Birmingham Planning Board to adjourn hearings until they can be held in person unless there is a compelling reason not to do so.

This is no doubt a recognition that virtual meetings are simply not as good as in person meetings for many reasons, including the ability of participants to actually participate fully. This is even more true for senior citizens, as discussed below.

The severe limitations of virtual meetings are described in this article:

When meeting face to face, people are freer with each other than they would be online. People are able to express themselves by using body language, gestures and words all of which work together to convey a message. Communication is better in face to face meetings because misunderstandings are less likely. [Ed. Note: All of this is especially critical for senior citizens, who may have more difficulty following the proceeding in the best of circumstances.]

When you go in for a physical meeting, it is the primary reason why you are at the particular place at any given time. You will be with others attending the meeting as well and none will tolerate the other wasting their time. Everyone will be disciplined and will not be easily distracted by things like phones and computers. The serious environment will emphasize the need to concentrate fully on the meeting and keep off any distractions...

However the chances of having a communication breakdown are increased in virtual meetings. Distractions by personal and work related issues are more likely to happen during virtual meetings than face to face ones.

As discussed below, this meeting requires a decision by the Board which will affect the daily lives, home values, and probably financial futures and retirement planning of many residents. It is just too important to limit public participation to a virtual meeting which has all the detriments described above.

There is no "practicable" reason why this hearing should not be adjourned. It has been pending for almost two years with no effort by the Developer to expedite the proceeding. There is no prejudice to anyone to an adjournment, but a tremendous benefit to many in an adjournment for an in person hearing. (It is worth noting that this proceeding has been delayed on more than one occasion by the Developer’s failure to comply with certain requirements or the Developer’s request.)
There are doubtless many matters before the Planning Board which may work well in a virtual meeting. This is not one of them. It is of unusual significance to an unusually large number of residents and is remarkably complex.

This application for rezoning involves rezoning a parcel abutting Birmingham Place’s residential condominiums to permit construction of a tall commercial building. As the Manager of Birmingham Place told this Board, the mere possibility of this rezoning has deflated the market value of a number of units and, if built out, would obstruct the views of a number of units. Furthermore, together with the hotel completing construction at Brown and Old South Woodward, vehicle and pedestrian traffic will soar. And this is just the beginning. This is a very big and unusual deal.

The Request for Rezoning was first heard by the Board on June 27, 2018. The issue went to the Council, which sent it back for rehearing by the Board. After a rehearing on December 12, 2018, the matter was heard by the City Council on February 11, 2019. The Council failed to pass motions to approve, deny, or adjourn. The Council President advised at the meeting the Council would need to consult with the City attorney as to further proceedings. In the meantime, an entirely different proceeding changed the wording of the zoning ordinance applicable to this parcel.

Even with the help of counsel, it is a difficult proceeding to understand. And currently we cannot even meet with counsel or among ourselves. The many prior meetings on this rezoning request have been very well attended by objectors, including residents of Birmingham Place which has its own counsel. We have prepared for these meetings with our own meetings, including meeting before and after the hearing. This has enabled us to coordinate our presentations to be effective and to save time. In addition, we have sometimes changed our presentation depending on what happens at the hearing itself, which is impossible at a virtual hearing. In addition, the hearings have often involved visual aids, which even on a zoom conference will be difficult to appreciate.

A virtual meeting is useless to people who are not very computer literate and especially hopeless for many seniors. I am 71. Trust me when I tell you me and my friends are overwhelmed by the pandemic. Just arranging for food, taking care of our medical appointments and medications, and worrying about and trying to stay in touch with our children and grandchildren is wearying in and of itself. Many of us are not comfortable with computers.

As a recent study explained:

The study also highlights the obstacles older adults experience such as a significant decrease in sensory keenness, particularly with vision and hearing, as well as a decrease in motor skills due to health problems, such as arthritis and tremors. “Often a large challenge for older adults when using the computer is navigating the mouse and keyboard, which is commonly due to a health problem like arthritis."

Many of us when we look at instructions for a Zoom meeting will give up before we even start. In addition, simply navigating and being heard at a large Zoom meeting (and I have been in those) is challenging for the best of us. Have a heart.

There is no prejudice to anyone by a postponement. The application for rezoning was filed on June 27, 2018 and was before the City Council on February 11, 2019. The Developer has made no effort to expedite its request. Even if the request were approved, no outside activities could proceed at this point anyway. The matter has already been pending for close to two years.

3) Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.

We don’t know what the future holds even in the short term, but one thing is for sure, life will not return to what we knew before the pandemic. As has been noted:

Yet cities since then have thrived and grown. They’re much cleaner and safer than they were a century ago. That’s because cities are by their nature adaptable organisms. More efficient than rural areas and more flexible than suburbs, they are constantly reinventing themselves — sometimes so quickly that it’s startling, sometimes so slowly that we don’t even notice.

The world after COVID-19 will be different — as it is after any disaster. And COVID-19 will accelerate changes that have been brewing in cities for a long time. The result will be a new kind of city, different than what we have seen before. A city that should be able to withstand shocks like COVID-19 in a sturdier fashion.

The Board needs to see what this new world might require before so dramatically changing our downtown as it has existed for years.

4) The virtual notice of the hearing is not timely and this requires adjournment of the hearing.

The well-known Open Meetings Act requires hearings like this one to be held in a public place with personal attendance. The only reason there is a “virtual” alternative is due to Executive Order 2020-15 which exempts compliance with the Act under detailed and specific requirements because of the pandemic. One of those requirements prescribes the necessary notice (Sect. 1(e)):

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body’s website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website’s homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

(i) An explanation of the reason why the public body is meeting electronically.
(ii) **Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.**

(iii) **Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.**

(iv) **Procedures by which persons with disabilities may participate in the meeting.**

As with any notice, this one is necessary to provide everyone with an adequate opportunity to prepare and attend. The more complex the meeting, the longer the notice period should be.

The detailed requirements in the Order are in obvious deference to the fact that virtual meetings are more difficult for the participants. This means the public should have the maximum time available for notice. But it did not.

Our ordinance requires 15 days' notice of a zoning request with notice personally sent to residents within 300 feet. But the Board's virtual notice was (a) not sent to persons within 300 feet, and (b) published on the website on April 14, only seven, not fifteen, days before the hearing.

For all the reasons discussed above, maximum notice is necessary to give the public even a chance to participate meaningfully in the hearing.

But aside from that, the notice is inadequate under the ordinance and requires adjournment of the hearing, which should be to a time when a hearing can be held in person,
Mr. Schwartz,

Thank you for your email. The public hearing was previously scheduled and noticed for this upcoming meeting by the board. As long as the applicant wishes to proceed, the public hearing would continue under the applicant's prior request. The Executive Directive you are referencing applies to State agencies and is not an Executive Order covering municipalities. There is no question these are challenging times, however, we are following the guidance from this State as well as our obligations as a municipality.

I hope this helps provide some clarity on this matter.

Regards,
Joe Valentine

On Wed, Apr 15, 2020 at 9:37 AM Mickey Schwartz <mickeyschwartz@gmail.com> wrote:
As a follow up to yesterdays, email:
Just to be clear, are you stating that the Planning Board (and any Birmingham City government Board (elected or appointed)) acts totally independent of the City Commissioners?

Do the City Commissioners not have the legislative ability to enforce Governor Whitmer’s Executive Directive No. 2020-02.

"All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time".

Why is this issue which has been under consideration for almost 2 years now so critical that it can not be postponed pending resumption on non-virtual meetings?

Mickey Schwartz, MD
248 229-9989
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To get the latest information regarding the City of Birmingham, please sign up for our communication tools by clicking here www.bit.ly/bhamnews.
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Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com
Regarding PB meeting to discuss rezoning request for downtown Birmingham:

Last night I attended a Birmingham Virtual Meeting. This NONCONTROVERSIAL virtual meeting was fraught with problems. The take home lesson is that VIRTUAL MEETINGS ARE PROBLEMATIC in a democracy and should be limited whenever possible. AS SUCH, I AGAIN ASK FOR POSTPONEMENT OF PLANNING BOARD MEETINGS THAT REQUIRE PUBLIC PARTICIPATION UNTIL THESE HORRIBLE BUT NECESSARY COVID PANDEMIC RESTRICTIONS ARE EASED.

The Birmingham Design Review Board (DRB) meeting was scheduled for 4/15/2020 at 7:15. Apparently, another meeting started first and the DRB was delayed for about an hour. I joined the meeting about 7:30 and had no concept of why the DRB meeting was not taking place. I could not ask for clarification. How is this fair to participants?

Nick Dupis handled the technical aspects of a virtual meeting as best as possible. Nonetheless, he could not overcome systematic limitations. The limitations on citizen’s ability to participate defeats the intent of the Open Meeting Act. Examples of problems include:

  Participants that could not be seen, could not be easily called on to speak. To overcome this, Nick appropriately unmuted all participants but unfortunately, chaos pursued. Consider how challenging it is to try to let people speak when they all speak at the same time. Remember the story of the tower of Babel. One participant, unknowingly had background noise and had to be muted.

  Nick suggested participants use a “raise hand” button on ZOOM to be recognized. This option is not available on all ZOOM devices and may require software updates on some computers. Citizen participation is limited. Telephone call-in citizens obviously cannot “raise hand”.

  One of the Board members had occasional random background noise in their house resulting in confusion to participants.

  At times voices of speakers were muffled or frozen (due to external Internet issues) and potential important communications between the Board and Public were lost.

The pending rezoning issue before the Planning Board involves 100’s (more realistically 1000’s) of pages of documents. In a virtual meeting, citizens cannot review documents and participate without 2 computers/tablets. It is near impossible on an iPhone. How is this appropriate?

Zoom meetings limit open dialogue between board members due to initial inexperience (first zoom meeting ever for PB) and outcomes are unknown without any previous experiences in this technology. Goes without saying that the same tech issues apply to the public.

FOR ALL THESE CONCERNS AND MANY MORE, PLEASE POSTPONE THE REZONING HEARING PENDING A FAIR PROCESS ON AN ISSUE THAT ALL AGREE IS CONTROVERSIAL.
469/479 S. Old Woodward Avenue

Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B

Birmingham Planning Board
April 22, 2020
D5 Is the Culmination of Exhaustive Study

- Contemplated for 2 years before enacted
- Many study sessions, discussions, and public meetings
- Advertised and noticed
- Considered many different options
- Multiple iterations of draft amendments
- Studied entire downtown area and study by planning
  - Consultant targeting this specific area of downtown
Article 1, Section 1.04

From 2016 Plan, Vision Statement

D5 will “reinforce [an] identifiable district in the Downtown to provide a sense of place.”

D5 will allow for a “diverse mix of uses, including [street-level] retail, commercial . . . and especially residential.”

D5 will allow a building that is “compatible, in mass and scale, with its immediate surroundings.”
Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

• The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan...”
D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

- **D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04**

- **Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership** Ord. Sec. 7.02(B)(2)(b)(i)

- **Existing Zoning Not Appropriate** Ord. Sec. 7.02(B)(2)(b)(ii)

- **Rezoning is Not Detrimental to Surrounding Properties** Sec. 7.02(B)(2)(b)(iii)

- **D-5 Satisfies Purpose of Zoning Ordinance** Sec. 1.04
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE
SEC. 7.02(B)(5)(a)-(e)

✓ Sec. 7.02(B)(5)(a) – conforms to the City’s Master Plan and 2016 Plan
✓ Sec. 7.02(B)(5)(b) – The proposed mixed uses of the subject property (retail, residential, and hotel) are consistent with existing uses in the neighborhood.
✓ Sec. 7.02(B)(5)(c) – Properties in the general area (abutting and adjacent) are zoned D-5.
✓ Sec. 7.02(B)(5)(d) – Property is not suitable to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.
✓ Sec. 7.02(B)(5)(e) – Trend of development in the area favors D-5 zoning.
• The City, after consideration, has already amended the new D5 proposed ordinance language
Thank You

Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020
April 15, 2020

Ms. Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI  48009

Re:  Mr. J. Patrick Howe’s Letter of April 15, 2020

Dear Ms. Ecker:

You forwarded the above referenced letter to this office for review, and in particular, to review the citations contained in the letter to the Governor’s Directives and Orders.

In this regard, Mr. Howe stated the following:

“Holding this meeting ‘virtually’ on April 22, 2020 is not only unfair and prejudicial to the condominium owners of Birmingham Place and various other stakeholders in the City of Birmingham, but is completely contrary to Governor Whitmer's Executive Directive No. 2020-02. That Executive Directive, which supplements Governor Whitmer’s Executive Order 2020-15 that authorized virtual meetings which are not otherwise permissible under the Open Meetings Act, is in full force and effect, and states that:

All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, considerer (sic) postponing public meetings and/or agenda items that may be deferred until a later time.’”

What is not apparent from Mr. Howe’s description, is there is a difference between Executive Directives and Executive Orders. Executive Directives, in this case, are sent only to State Department Directors and Autonomous Agency Heads. If you examine Executive Director 2020-02 which is attached hereto and incorporated by reference, you will see it is addressed as follows:

“Executive Directive 2020-02
Executive Directive
No. 2020-2

To:  State Department Directors and Autonomous Agency Heads
From:  Governor Gretchen Whitmer
Date:  March 13, 2020”
In addition, you will note that the operative section, which is also quoted by Mr. Howe, states in paragraph in 1, as follows:

“All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.” (Emphasis Added)

This Directive was not sent to cities, school districts or local government, but to State Department Directors and Agency Heads of the State. Therefore, it is not applicable in circumstances before the Planning Board.

Executive Order 2020-48, which rescinds 2020-15, was directed to local units of government, and all entities that are subject to the Open Meetings Act. On page 2 of the Governor’s Executive Order, she states as follows:

“To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Executive Order 2020-15 provided this limited and temporary relief from certain rules and procedures. This order clarifies and extends the duration of that relief, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-15 is rescinded.” (Emphasis Added)

You will note that this Order directs public bodies, and entities to continue to conduct public business. This document, which I have included for your review, does not direct that public bodies postpone business, but merely directs how remote meetings are to be conducted.
As you will note from a thorough review of Executive Order 2020-48, there is no requirement that business be postponed. It is merely a modification of the requirements of the Open Meetings Act as to how remote meetings are to be conducted. In so doing, the Governor did not order any changes to the authority of the Planning Board in conducting its meetings or in the manner in which it considers requests for adjournments or postponements. Such requests are certainly still within the discretion of the Planning Board as to whether they wish to grant a postponement or not. It is not dictated by the Governor’s Order 2020-48 and, as stated above, the Executive Directive 2020-02 is not applicable to cities and school districts.

We hope this is of assistance to you.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc
As governor, one of my most solemn obligations is to protect the health, safety, and welfare of Michigan residents, particularly in times of crisis. It is a core and critical duty of the executive branch to respond quickly and effectively to emergent threats to the public health, safety, and welfare of Michiganders, and to faithfully execute the laws of this state in a manner consistent with that priority.

With Executive Order 2020-4, I declared a statewide state of emergency due to the spread of the novel coronavirus (COVID-19). This is a new strain of coronavirus that had not been previously identified in humans, can easily spread from person to person, and can result in serious illness or death. To mitigate the spread of COVID-19 and to provide essential protections to vulnerable Michiganders and this state’s health care system and other critical infrastructure, it is crucial that all Michiganders take steps to limit in-person contact, particularly in the context of large groups.
One of the cornerstones of public engagement in governmental activities is the ability to participate in the meetings of public bodies. The Open Meetings Act ("OMA"), 1976 PA 267, as amended, MCL 15.261-.275, sets forth guideposts to ensure that the public has meaningful access to the meetings and decision-making processes of certain public bodies. The OMA requires that “[a]ll meetings of a public body shall be open to the public and shall be held in a place available to the general public,” and “[a]ll decisions of a public body” and “deliberations of a public body” must take place at a meeting open to the public. MCL 15.263(1)-(3). It further provides that “[a]ll persons shall be permitted to attend any meeting except as otherwise provided in this act” and “shall be permitted to address a meeting of a public body under rules established and recorded by the public body.” MCL 15.263(1), (5). Finally, the OMA provides that “[a] meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.” MCL 15.265(1).

The OMA promotes governmental accountability and fosters open and responsible governmental decision making. In conducting its business during this time of emergency, state government must ensure that it preserves these important governmental objectives without unduly compromising the public health, welfare, and safety of this state.

Acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.

2. All public bodies of departments and agencies of the State subject to the OMA that must continue to meet must do so by means sufficient to enable meaningful access and communication for all participants. Participation by remote access technology, including conference calling, real-time streaming, or other platforms is acceptable, and sufficient to form a quorum, so long as public access and participation is preserved.

3. Public notice of the time and date of each meeting of a public body of a department or agency of the State subject to the OMA must be given in the manner required by the OMA, which includes publication of the notice on the public body's internet website. The public notice must also be read into the record of the meeting. The public notice may also be given by posting the notice on the internet website of the public body. The public notice must be given at least 24 hours before the meeting, and may be given at a later time by posting the notice on the internet website of the public body. The public notice must also be read into the record of the meeting. The public notice may also be given by posting the notice on the internet website of the public body.
notice must include sufficient information such that the public's right to address a meeting of the public body is preserved.

This directive is effective immediately and will remain in effect until further notice.

Thank you for your cooperation in implementing this directive.
Recently Viewed

E.O. NO. 2020-11
EXECUTIVE ORDER No. 2020-11 (COVID-19)
Temporary prohibition on large assemblages and events, temporary school closures Rescission of Executive Order 2020-5

E.O. NO. 2020-12
EXECUTIVE ORDER No. 2020-12 (COVID-19)
Enhanced support for deliveries

E.O. NO. 2020-13
EXECUTIVE ORDER No. 2020-13 (COVID-19)
Temporary enhancements to operational capacity and efficiency of health care facilities

E.O. NO. 2020-14
EXECUTIVE ORDER No. 2020-14 (COVID-19)
Temporary extension of deadline to redeem property for nonpayment of delinquent property taxes

E.O. NO. 2020-15
EXECUTIVE ORDER No. 2020-15 (COVID-19)
Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards

E.O. NO. 2020-16
EXECUTIVE ORDER No. 2020-16 (COVID-19)
Expanding child care access during the COVID-19 emergency

E.O. NO. 2020-17
EXECUTIVE ORDER No. 2020-17 (COVID-19)
Temporary restrictions on non-essential medical and dental procedure

E.O. NO. 2020-18
EXECUTIVE ORDER No. 2020-18 (COVID-19)
Enhanced restrictions on price gouging Rescission of Executive Order 2020-8

E.O. NO. 2020-19
EXECUTIVE ORDER No. 2020-19 (COVID-19)
Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home

E.O. NO. 2020-20
EXECUTIVE ORDER No. 2020-20 (COVID-19)
Temporary restrictions on the use of places of public accommodation Rescission of Executive Order 2020-9

E.O. NO. 2020-21
EXECUTIVE ORDER No. 2020-21 (COVID-19)
Temporary requirement to suspend activities that are not necessary to sustain or protect life

E.O. NO. 2020-22

E.O. NO. 2020-23
EXECUTIVE ORDER No. 2020-23 (COVID-19)
Enhanced authorization of remote means for carrying out state administrative procedures

E.O. NO. 2020-24
EXECUTIVE ORDER No. 2020-24 (COVID-19)
Temporary expansions in unemployment eligibility and cost-sharing Rescission of Executive Order 2020-10

E.O. NO. 2020-25
EXECUTIVE ORDER No. 2020-25 (COVID-19)
Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies

E.O. NO. 2020-26
EXECUTIVE ORDER No. 2020-26 (COVID-19)
Extension of April 2020 Michigan income tax filing deadlines

E.O. NO. 2020-27
EXECUTIVE ORDER No. 2020-27 (COVID-19)
Conducting elections on May 5, 2020 using absent voter ballots

E.O. NO. 2020-29  EXECUTIVE ORDER No. 2020-29 (COVID-19) Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers

E.O. NO. 2020-30  EXECUTIVE ORDER No. 2020-30 (COVID-19) Temporary relief from certain restrictions and requirements governing the provision of medical services

E.O. NO. 2020-31  EXECUTIVE ORDER No. 2020-31 (COVID-19) Temporary relief from standard vapor pressure restrictions on gasoline sales

E.O. NO. 2020-32  EXECUTIVE ORDER No. 2020-32 (COVID-19) Temporary restrictions on non-essential veterinary services

E.O. NO. 2020-33  EXECUTIVE ORDER No. 2020-33 (COVID-19) Expanded emergency and disaster declaration

E.O. NO. 2020-34  EXECUTIVE ORDER No. 2020-34 (COVID-19) Temporary restrictions on veterinary services


E.O. NO. 2020-36  EXECUTIVE ORDER No. 2020-36 (COVID-19) Protecting workers who stay home, stay safe when they or their close contacts are sick

E.O. NO. 2020-37  EXECUTIVE ORDER No. 2020-37 (COVID-19) Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities

E.O. NO. 2020-38  EXECUTIVE ORDER No. 2020-38 (COVID-19) Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts

E.O. NO. 2020-39  EXECUTIVE ORDER No. 2020-39 (COVID-19) Temporary relief from certain restrictions and requirements governing the provision of emergency medical services

E.O. NO. 2020-40  EXECUTIVE ORDER No. 2020-40 (COVID-19) Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and persons


E.O. NO. 2020-42  EXECUTIVE ORDER No. 2020-42 (COVID-19) Temporary requirement to suspend activities that are not necessary to sustain or protect life - Rescission of Executive Order 2020-21
Executive Order 2020-15 (COVID-19)

EXECUTIVE ORDER

No. 2020-15

Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.
The Emergency Management Act vests the governor with broad powers and duties to “cope with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945, provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Effective immediately and continuing until April 15, 2020 at 11:59 pm, to the extent that the Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 to 15.272 ("OMA") requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA,
MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:

(a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.

(b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body also may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants.

(c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.

(d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:
(i) An explanation of the reason why the public body is meeting electronically.

(ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.

(iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.

(iv) Procedures by which persons with disabilities may participate in the meeting.

(f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.

(g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.

(h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.

(i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.

(j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to the general public through the public body's website homepage an agenda and other materials relating to the meeting.
(k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.

2. A public body holding a meeting electronically as provided under this order is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid “round-the-horn” decision-making in a manner not accessible to the public at an open meeting.

3. If a decision or other action of a public body is in compliance with the requirements of this order and the other requirements of the OMA, it is in compliance with the OMA.

4. Effective immediately and continuing until April 15, 2020 at 11:59 pm, if a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a, a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public’s ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, also is permitted.

5. Effective immediately and continuing until April 15, 2020 at 11:59 pm, strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily
suspended so as not to require school district boards to hold meetings at least once each month.

6. Nothing in this order permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.

7. As used in this order, the terms “decision,” “meeting,” and “public body” mean those terms as defined under section 2 of the OMA, MCL 15.262, except this order does not apply to state legislative bodies.

8. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.

9. This order supersedes sections 2 and 3 of Executive Directive 2020-2.

Given under my hand and the Great Seal of the State of Michigan.

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https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522173--,00.html 3/31/2020
REQUEST TO ADJOURN VIRTUAL HEARING ON REZONING REQUEST FOR 469-479 S. OLD WOODWARD SCHEDULED FOR APRIL 22, 2020

I am the owner of a condominium at 411 South Old Woodward. I ask that you adjourn the above hearing for these reasons, more fully discussed below:

1. The Board is required by Executive Order 2020-1(1) to adjourn this hearing until a hearing can be held in person.
2. The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly for seniors, especially given the unusual importance of the issues and the unique complexity of the issues.
3. Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.
4. The virtual notice of the hearing is not timely and this requires adjournment of the hearing.

Executive Order 2020-02, Sect. 1, which remains in effect, provides (emphasis added):
All public bodies of departments and agencies of the State, including but not limited to boards, commissions, committees, subcommittees, authorities, and councils, must, to the extent practicable, consider postponing public meetings and/or agenda items that may be deferred until a later time.

In other words, this is in effect an order to bodies such as the Birmingham Planning Board to adjourn hearings until they can be held in person unless there is a compelling reason not to do so.

This is no doubt a recognition that virtual meetings are simply not as good as in person meetings for many reasons, including the ability of participants to actually participate fully. This is even more true for senior citizens, as discussed below.

The severe limitations of virtual meetings are described in this article:
When meeting face to face, people are freer with each other than they would be online. People are able to express themselves by using body language, gestures and words all of which work together to convey a message. Communication is better in face to face meetings because misunderstandings are less likely.
Note: All of this is especially critical for senior citizens, who may have more difficulty following the proceeding in the best of circumstances.

When you go in for a physical meeting, it is the primary reason why you are at the particular place at any given time. You will be with others attending the meeting as well and none will tolerate the other wasting their time. Everyone will be disciplined and will not be easily distracted by things like phones and computers. The serious environment will emphasize the need to concentrate fully on the meeting and keep off any distractions. However the chances of having a communication breakdown are increased in virtual meetings. Distractions by personal and work related issues are more likely to happen during virtual meetings than face to face ones.

As discussed below, this meeting requires a decision by the Board which will affect the daily lives, home values, and probably financial futures and retirement planning of many residents. It is just too important to limit public participation to a virtual meeting which has all the detriments described above. There is no “practicable” reason why this hearing should not be adjourned. It has been pending for almost two years with no effort by the Developer to expedite the proceeding. There is no prejudice to anyone to an adjournment, but a tremendous benefit to many in an adjournment for an in person hearing. (It is worth noting that this proceeding has been delayed on more than one occasion by the Developer’s failure to comply with certain requirements or the Developer’s request.)

2. The format of a virtual hearing does not provide a fair and adequate forum for objectors to state their views, particularly seniors, especially given the unusual importance of the issues and the unique complexity of the issues.

There are doubtless many matters before the Planning Board which may work well in a virtual meeting. This is not one of them. It is of unusual significance to an unusually large number of residents and is remarkably complex.

This application for rezoning involves rezoning a parcel abutting Birmingham Place’s residential condominiums to permit construction of a tall commercial building. As the Manager of Birmingham Place told this Board, the mere possibility of this rezoning has deflated the market value of a number of units and, if built out, would obstruct the views of a number of units. Furthermore, together with the hotel completing construction at Brown and Old South Woodward, vehicle and pedestrian traffic will soar. And this is just the beginning. This is a very big and unusual deal.

The Request for Rezoning was first heard by the Board on June 27, 2018. The issue went to the Council, which sent it back for rehearing by the Board. After a rehearing on December 12, 2018, the matter was heard by the City Council on February 11, 2019. The Council failed to pass motions to approve, deny, or adjourn. The Council President advised at the meeting the Council would need to consult with the City attorney as to further proceedings. In the meantime, an entirely different proceeding changed the wording of the zoning ordinance applicable to this parcel.

Even with the help of counsel, it is a difficult proceeding to understand. And currently we cannot even meet with counsel or among ourselves. The many prior meetings on this rezoning request have been very well attended by objectors, including residents of Birmingham Place which has its own counsel. We have prepared for these meetings with our own meetings, including meeting before and after the hearing. This has enabled us to coordinate our presentations to be effective and to save time. In addition, we have sometimes changed our presentation depending on what happens at the hearing itself, which is impossible at a virtual hearing. In addition, the hearings have often involved visual aids, which even on a zoom conference will be difficult to appreciate.

A virtual meeting is useless to people who are not very computer literate and especially hopeless for many seniors. I am 71. Trust me when I tell you me and my friends are overwhelmed by the pandemic. Just arranging for food, taking care of our medical appointments and medications, and worrying about and trying to stay in touch with our children and grandchildren is wearying in and of itself. Many of us are not comfortable with computers.

As a recent study explained:

The study also highlights the obstacles older adults experience such as a significant decrease in sensory keenness, particularly with vision and hearing, as well as a decrease in motor skills due to health problems, such as arthritis and tremors. "Often a large challenge for older adults when using the computer is navigating the mouse and keyboard, which is commonly due to a health problem like arthritis."
Many of us when we look at instructions for a Zoom meeting will give up before we even start. In addition, simply navigating and being heard at a large Zoom meeting (and I have been in those) is challenging for the best of us. Have a heart.

There is no prejudice to anyone by a postponement. The application for rezoning was filed on June 27, 2018 and was before the City Council on February 11, 2019. The Developer has made no effort to expedite its request. Even if the request were approved, no outside activities could proceed at this point anyway. The matter has already been pending for close to two years.

3) Before taking the drastic action requested, the Board should wait until it has time to digest the effects of the pandemic on the needs of Birmingham.

We don't know what the future holds even in the short term, but one thing is for sure, life will not return to what we knew before the pandemic. As has been noted:

Yet cities since then have thrived and grown. They’re much cleaner and safer than they were a century ago. That’s because cities are by their nature adaptable organisms. More efficient than rural areas and more flexible than suburbs, they are constantly reinventing themselves — sometimes so quickly that it’s startling, sometimes so slowly that we don’t even notice.

The world after COVID-19 will be different — as it is after any disaster. And COVID-19 will accelerate changes that have been brewing in cities for a long time. The result will be a new kind of city, different than what we have seen before. A city that should be able to withstand shocks like COVID-19 in a sturdier fashion.

The Board needs to see what this new world might require before so dramatically changing our downtown as it has existed for years.

4) The virtual notice of the hearing is not timely and this requires adjournment of the hearing.

The well-known Open Meetings Act requires hearings like this one to be held in a public place with personal attendance. The only reason there is a “virtual” alternative is due to Executive Order 2020-15 which exempts compliance with the Act under detailed and specific requirements because of the pandemic. One of those requirements prescribes the necessary notice (Sect. 1(e)):

(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body’s website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website’s homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

(i) An explanation of the reason why the public body is meeting electronically.
(ii) Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both.
(iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
(iv) Procedures by which persons with disabilities may participate in the meeting.

As with any notice, this one is necessary to provide everyone with an adequate opportunity to prepare and attend. The more complex the meeting, the longer the notice period should be.

The detailed requirements in the Order are in obvious deference to the fact that virtual meetings are more difficult for the participants. This means the public should have the maximum time available for notice. But it did not.

Our ordinance requires 15 days’ notice of a zoning request with notice personally sent to residents within 300 feet. But the Board’s virtual notice was (a) not sent to persons within 300 feet, and (b) published on the website on April 14, only seven, not fifteen, days before the hearing.

For all the reasons discussed above, maximum notice is necessary to give the public even a chance to participate meaningfully in the hearing.
But aside from that, the notice is inadequate under the ordinance and requires adjournment of the hearing, which should be to a time when a hearing can be held in person,

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Jana L. Ecker

Planning Director
City of Birmingham
248-530-1841
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E.O. NO. 2020-35 (COVID-19) Expanded emergency and disaster declaration
E.O. NO. 2020-34 (COVID-19) Temporary restrictions on veterinary services; Recission of Executive Order 2020-32

E.O. NO. 2020-35 (COVID-19) Provision of K-12 education during the remainder of the 2019-2020 school year

E.O. NO. 2020-36 (COVID-19) Protecting workers who stay home, stay safe when they or their close contacts are sick

E.O. NO. 2020-37 (COVID-19) Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities

E.O. NO. 2020-38 Recission of Executive Order 2020-7

E.O. NO. 2020-39 (COVID-19) Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts

E.O. NO. 2020-40 (COVID-19) Temporary relief from certain restrictions and requirements governing the provision of emergency medical services

E.O. NO. 2020-41 (COVID-19) Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and persons

E.O. NO. 2020-42 (COVID-19) Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic

E.O. NO. 2020-43 (COVID-19) Temporary requirement to suspend activities that are not necessary to sustain or protect life - Recission of Executive Order 2020-21

E.O. NO. 2020-44 (COVID-19) Temporary restrictions on the use of places of public accommodation - Recission Executive Order 2020-20

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E.O. NO. 2020-48 (COVID 19) Mitigating the economic harms of the COVID-19 pandemic through the creation of a spirits buyback program for restaurants and bars throughout the state

E.O. NO. 2020-49 Temporary extension of validity of driver's licenses, state identification cards and registration

E.O. NO. 2020-50 (COVID-19) EXECUTIVE ORDER Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards

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EXECUTIVE ORDER

No. 2020-48

Temporary authorization of remote participation in public meetings
and hearings and temporary relief from monthly meeting
requirements for school boards

Rescission of Executive Order 2020-15

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness
or death. It is caused by a new strain of coronavirus not previously identified in humans
and easily spread from person to person. There is currently no approved vaccine or antiviral
treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the
first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued
Executive Order 2020-4. This order declared a state of emergency across the state of
Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency
Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency
Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the
hundreds, confirmed cases in the thousands, and deep disruption to this state’s economy,
homes, and educational, civic, social, and religious institutions. On April 1, 2020, in
response to the widespread and severe health, economic, and social harms posed by the
COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive
Order 2020-4 and declared both a state of emergency and a state of disaster across the
State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the

The Emergency Management Act vests the governor with broad powers and duties to
“cope[e] with dangers to this state or the people of this state presented by a disaster or
emergency,” which the governor may implement through “executive orders, proclamations,
and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the
Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of
emergency, “the governor may promulgate reasonable orders, rules, and regulations as he
or she considers necessary to protect life and property or to bring the emergency situation
within the affected area under control.” MCL 10.31(1).
To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings.

To that end, it is reasonable and necessary to temporarily suspend rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan. These public bodies and entities must continue to conduct public business during this emergency, including actions to respond to COVID-19, and the general public must be able to continue to participate in government decision-making without unduly compromising public health, safety, and welfare.

Executive Order 2020-15 provided this limited and temporary relief from certain rules and procedures. This order clarifies and extends the duration of that relief, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-15 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. To the extent that the Open Meetings Act ("OMA"), 1976 PA 267, as amended, MCL 15.261 to 15.272, requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA, MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:

   (a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.

   (b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body also may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants.

   (c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.

   (d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.
(e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

(i) An explanation of the reason why the public body is meeting electronically.

(ii) Detailed procedures by which the public may participate in the meeting remotely, including a telephone number, internet address, or both.

(iii) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.

(iv) Procedures by which persons with disabilities may participate in the meeting.

(f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.

(g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.

(h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.

(i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.

(j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to
the general public through the public body’s website homepage an agenda and other materials relating to the meeting.

(k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convene and held in compliance with the requirements of the OMA applicable to a closed session.

2. A public body holding a meeting electronically as provided under this order is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid “round-the-horn” decision-making in a manner not accessible to the public at an open meeting.

3. If a decision or other action of a public body is in compliance with the requirements of this order and the other requirements of the OMA, it is in compliance with the OMA.

4. If a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a, a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public's ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, also is permitted.

5. Strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily suspended so as not to require school district boards to hold meetings at least once each month.

6. Nothing in this order permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.

7. As used in this order, the terms “decision,” “meeting,” and “public body” mean those terms as defined under section 2 of the OMA, MCL 15.262, except this order does not apply to state legislative bodies.
8. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.

9. This order supersedes sections 2 and 3 of Executive Directive 2020-2.

10. This order is effective immediately and continues through May 12, 2020.

11. Executive Order 2020-15 is rescinded.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 14, 2020
Time: 8:17 pm

By the Governor:

GRETCHEN WHITMER
GOVERNOR

SECRETARY OF STATE
Thoughts regarding a successful ZOOM Planning Board Meeting

Mickey Schwartz <mickeyschwartz@gmail.com>  
To: Jana Ecker <jecker@bhamgov.org>  

Wed, May 13, 2020 at 9:45 AM

Jana,

In an effort to facilitate Mr. Clein's request for a successful BP Zoom meeting, please forward this to the Planning Board members and anyone in IT involved in the upcoming meetings:

TO: SCOTT CLEIN and all BIRMINGHAM PLANNING BOARD MEMBERS
FROM: DR. MICHAEL SCHWARTZ
RE: SUCCESSFUL ZOOM MEETINGS
MAY 13, 2020

MR. CLEIN:

I’m sure that all parties want resolution of the requested rezoning of 469-479 S Old Woodward. As such, I write to you (and the Planning Board) to offer my feedback and suggestions as a Birmingham citizen on Zoom PB Public Meetings. The following is based on several ZOOM meetings I attended.

I would encourage you to have an IT person handle the logistics of a ZOOM meeting so that you can manage your role as the Chair and not have to also be the IT director.

At the beginning, please have an IT person discuss how to use the “Raise Hand” option. Two meetings I attended mentioned it but did not address how to use it. This option is in different locations (some of which are difficult to find) depending on the device being used (e.g. computer, tablet, phone). At the last PB meeting, I received a call from a participant who could not find the “Raise Hand” option. The individual is a Vice President of a Fortune 500 firm with considerable technical knowledge. Nonetheless, she could not communicate with the PB limiting citizen participation.

The call-in number can be problematic. I attempted to call in to the last PB meeting and received a message “more than 50 participants” I was then placed on hold with a message that the meeting is being recorded and would be available. Again, citizen participation may be restricted.

Meeting needs to start on time. The last PB meeting started late and several individuals expressed concern that the meeting may not be occurring, again limiting participation. If it can not start on time, perhaps some type of ‘STANDBY MEETING STARTING SOON’ message could be used.

Please remind PB members that they are being viewed. Walking, eating etc. during a professional meeting can be very distracting.

I hope these suggestions are helpful and look forward to this new means of citizen participation.

Mickey Schwartz, MD
248 229-9989
mickeyschwartz@gmail.com
May 19, 2020

By Email

Planning Board
City of Birmingham
151 S. Martin Street
Birmingham, MI 48009
Attn: Jana Ecker

Re: Application to Rezone to D5 469/479 S. Old Woodward (“Application”)

Dear Members of the Planning Board:

This letter is submitted to you on behalf of our client (“Applicant”), the owner of the former Mountain King restaurant and drive-thru bank property at 469/479 S. Old Woodward (“Property”). Please accept the following as a brief summary outline of certain relevant facts concerning the history of the review and significant issues discussed and resolved regarding the appropriateness of the rezoning of the Property to a D5 zoning district.

Two Years Ago. The Property owner first submitted this Application to rezone the Property from D4 to D5 in May of 2018.

- Over the past two years, multiple hearings and study sessions have been held regarding the Application. The Planning Board has heard comments at the hearings, or received written communications, from those citizens that were either in favor of, or those that objected (“Objectors”) to, this Application.

- Over this period of two years, the Applicant has consistently demonstrated that this Application complies with all Ordinances of the City regarding the appropriateness of rezoning the Property to D5, including but not limited to, as set forth in Article 1, Sections 1.04 and 1.12(A), and Article 7, Sections 7.02(B)(2)(b)(i-iii) and 7.02(B)(5)(a)-(e) of the Birmingham Zoning Ordinances. Further, this conclusion has been recognized by the reports provided by the Planning Department.
• One objection to the rezoning claimed that the Property should not be eligible for rezoning to D5 because the D5 was intended to apply to 3 non-conforming properties only. Another objection was that any further rezoning to D5 should be part of a Master Plan for this area.
  
  o The Planning Board responded to the first objection by seeking and receiving an opinion from the City Attorney that responded to the question: “Is the owner of the property located at 460/470 Old South Woodward, legally permitted to apply for rezoning to the newly created D5 zoned district in the Downtown Overlay District”. In a letter dated October 1, 2018, the City Attorney responded: “yes”.

• As to the second objection, after a detailed discussion during its January 23, 2019 public hearing on the Application, the Planning Board confirmed that the D5 was intended as a zoning district in the same manner as other zoning districts set forth in the Ordinance and that the D5 is not limited to 3 nonconforming properties. Accordingly, on January 23, 2019, the Planning Board recommended to the City Commission that the Property be rezoned to the D5 zoning district.

• The City Commission took no action on March 11, 2019, but rather, during the discussion at the Commission level, there were comments made regarding a review of certain details of the Ordinance at the Planning Board and the possibility of clarifying three parts of the proposed Ordinance, to wit: (1) the maximum building height; (2) the definition of “immediately adjacent or abutting”; and (3) the properties within the City to which the D5 district should apply.

• On July 10, 2019, the Planning Board addressed these three issues in a study session. The result was as follows:
  
  o The Board believed that the zoning ordinance adequately defined building height and no further definition was required to address maximum building height in the D5;

  o The Planning Board proposed that the D5 Ordinance should be amended to clarify the definition of “immediately adjacent and abutting,” to remove reference to “adjacent” and to add a definition of “abutting,”; and
With regard to the properties within the City to which the D5 district should apply, the Planning Board asked the City to engage its professional planning consultant, DPZ Co-Design (“DPZ”), to make a study of this area of the downtown (called the “Study Area” in their report) to determine where D5 is appropriate and to study if it was within good planning practices for the Planning Board to entertain further applications for additional buildings to be placed into the D5 district.

- On September 11, 2019 the Planning Board reviewed the DPZ report. That report confirmed that D5 was indeed an appropriate zone for this Property and that it is good planning practice to allow additional buildings into the D5 district. DPZ’s conclusion was that “…All properties within the study area should be eligible for rezoning to D5, with the potential exception of the Ford-Peabody Mansion for considerations related to preservation.”

- On November 13, 2019 the Planning Board took the extra step of reviewing additional massing studies provided DPZ.

- On December 11, 2019 the Planning Board recommended to the City Commission approval of the text amendment to the ordinance.

- On January 13, 2020 the City Commission approved the text amendment to the Ordinance as recommended by the Planning Board.

In conclusion, this Application has received a detailed and exhaustive study over its two-year pendency. It has been thoroughly studied by the Planning Board, the City’s Planning Department, the City Commission, and DPZ, and an independent outside expert planning consultant that has been a part of Birmingham’s Master Plan preparation for many years. Every report, planning study, legal opinion and planning consultant’s conclusion has indicated that D5 rezoning is appropriate for the Property. In fact, a denial of this rezoning Application clearly ignores the obvious fact that the Application offers a real benefit to the City. It complies with the concepts provided in the Master Plan as well as the latest plan provided by DPZ that focuses on this Property and the “Study Area” as described in that study. A D5 zone for this Property not only satisfies every requirement of the Birmingham Zoning Ordinances, and the spirit and intent of those ordinances, but will be a benefit to the entire community.
Applicant respectfully requests that the Planning Board recommend that the City Commission grant approval of the Application.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

Richard D. Rattner

cc:  Mr. Joseph Valentine  
     Mr. Timothy Currier, Esq.  
     Mr. Doraid Markus  
     Mr. Christopher Longe
469/479 S. Old Woodward Avenue

Former Mountain King Restaurant/Drive Thru Bank

Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B

Birmingham Planning Board
April 22, 2020
D5 Is the Culmination of Exhaustive Study

- Contemplated for 2 years before enacted
- Many study sessions, discussions, and public meetings
- Advertised and noticed
- Considered many different options
- Multiple iterations of draft amendments
- Studied entire downtown area and study by planning consultant targeting this specific area of downtown
Article 1, Section 1.04

From 2016 Plan, Vision Statement

D5 will “reinforce [an] identifiable district in the Downtown to provide a sense of place.”

D5 will allow for a “diverse mix of uses, including [street-level] retail, commercial . . . and especially residential.”

D5 will allow a building that is “compatible, in mass and scale, with its immediate surroundings.”
Establishment of Overlay Districts in 2016 Plan Ord. Art I,1.12,A

• The overlay districts ...have been established to add additional and unique development standards which will better help the City of Birmingham accomplish the goals of the Downtown Birmingham 2016 Plan...”
D-5 Zoning Satisfies the Required Basic Provisions of Sec. 1.04 and Ord. Sec. 7.02(B)(2)(b)(i-iii)

- D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04
- Rezoning Preserves Enjoyment of Rights and Usage Associated with Ownership Ord. Sec. 7.02(B)(2)(b)(i)
- Existing Zoning Not Appropriate Ord. Sec. 7.02(B)(2)(b)(ii)
- Rezoning is Not Detrimental to Surrounding Properties Sec. 7.02(B)(2)(b)(iii)
- D-5 Satisfies Purpose of Zoning Ordinance Sec. 1.04
APPLICANT HAS DEMONSTRATED 5 FINDINGS OF ORDINANCE SEC. 7.02(B)(5)(a)-(e)

✓ Sec. 7.02(B)(5)(a) – conforms to the City’s Master Plan and 2016 Plan
✓ Sec. 7.02(B)(5)(b) – The proposed mixed uses of the subject property (retail, residential, and hotel) are consistent with existing uses in the neighborhood.
✓ Sec. 7.02(B)(5)(c) – Properties in the general area (abutting and adjacent) are zoned D-5.
✓ Sec. 7.02(B)(5)(d) – Property is not suitable to the uses permitted under existing zoning due to constraints of the property and the relationship to neighboring property.
✓ Sec. 7.02(B)(5)(e) – Trend of development in the area favors D-5 zoning.
City Action

• The City, after consideration, has already amended the new D5 proposed ordinance language.
Thank You

Rezone to D5
Pursuant to Zoning Ordinance Sec. 7.02B
Birmingham Planning Board
April 22, 2020
469 - 479 S Old Woodward Zoning Application
1 message

Prentice, Michele <Michele.Prentice@colliers.com> Tue, May 19, 2020 at 1:36 PM
To: Jana Ecker <Jecker@bhamgov.org>, "abingham@bhamgov.org" <abingham@bhamgov.org>, "s.clein@comcast.net" <s.clein@comcast.net>

Per the request made by Scott Clein at the April 22, 2020 Planning Board meeting, please find attached are pre-meeting written comments and the consensus of 70 Birmingham Residents for the Planning Board and City Commission members review prior to the May 27, 2020 Planning Board meeting. Please add this submittal as part of the official record for the D5 rezoning application and acknowledge its receipt. Thank you.

Michele Prentice
Senior Property Manager | Detroit
Dir +1 248 642 9000 | Fax +1 248 236 1490
401 S. Old Woodward, Birmingham MI 48009
michele.prentice@colliers.com

www.colliers.com

CCF_000252.pdf
4038K
May 12, 2020

RE: 469 – 479 South Old Woodward Rezone Application from D4 to D5

To: City of Birmingham, MI Planning Board & City Commission:

At the April 22, 2020 Planning Board meeting, Chairman Scott Clein requested that any interested parties that have comments or objections to the application to rezone 469-479 S. Old Woodward Ave. from D4 to D5 (the “D5 Rezoning Application”), submit written material prior to the May 27, 2020 Planning Board meeting wherein the D5 Rezoning Application will be considered. The residents and commercial tenants of the Condominiums of Birmingham Place object to the D5 Rezoning Application, and for the reasons outlined herein, respectfully request that: (i) the Planning Board recommend to the City Commission that the D5 Rezoning Application be denied, and (ii) the City Commission deny the D5 Rezoning Application.

It is our desire to assist the Planning Board and City Commission in their efforts to manage a productive Zoom Planning Board meeting on May 27, 2020, and any future virtual meetings held by the City Commission. Therefore, we are substituting our pre-meeting written comments below with signatures of individuals that agree with these points and would have been speaking at the Planning Board meeting if it were held in person. We respectfully request that: (i) the Planning Board members review our opposition points prior to the Zoom meeting, (ii) Chairman Clein acknowledge this submittal from the residents and commercial tenants of the Condominiums of Birmingham Place at the Zoom meeting, and (iii) this submittal be made part of the official record for the D5 Rezoning Application.

Resident & Commercial Tenants of
Condominiums of Birmingham Place
Opposition Points to 467-479 S. Old Woodward
D4 to D5 Rezoning Request

1. **REZONING THE SUBJECT PROPERTY IS NOT NECESSARY.** The applicant has not demonstrated why it cannot develop the subject property under the current D4 zoning, nor has it demonstrated why rezoning the subject property to D5 is necessary. This is a required element for the City to approve a rezoning under the City Zoning Ordinance, which the applicant has simply not demonstrated.

2. **D4 ZONING FOR THE SUBJECT PROPERTY IS, AND CONTINUES TO BE APPROPRIATE:** The applicant has not demonstrated that the current D4 zoning is no longer appropriate, which is required under the City Zoning Ordinance to rezone a
property. Mixed uses are permitted under D4 and D5 zoning. The only difference between D4 and D5 zoning is building height. Why is D4 building height no longer appropriate, after it has been applied to many buildings over many years (eg. Daxton Hotel, Greenleaf Trust, Balmoral, Brookside Residences, Varsity Shop redevelopment, Peabody redevelopment)? Why should the subject property be treated differently now? It shouldn’t!

3. **THE DEVELOPMENT TRENDS IN THE CITY IS CLEARLY 5 STORY BUILDINGS:** The development trend in the City is 5 stories or less, not above 5 stories. To make the argument that this portion of the City has experienced a development trend above 5 stories ignores that fact that the zoning ordinance that allowed Birmingham Place and the 555 Building to be developed over 5 stories was rejected years ago, and the City has intentionally permitted and encouraged the development of 5 story buildings since then. To say that there is a “development trend” above 5 stories in the City of Birmingham is misleading and disingenuous.

4. **JUST BECAUSE THE LANGUAGE OF THE D5 ORDINANCE WAS RECENTLY UPDATED BY THE CITY, DOES NOT MEAN THAT IT SHOULD BE APPLIED TO THE SUBJECT PROPERTY:** The question before the Planning Board is whether the D5 zoning designation is appropriate for the subject property under the requirements of Section 7.02 of the City Zoning Ordinance. The fact that the subject property is adjacent to two formerly legal non-conforming buildings, does not mean that it should be developed to the same standards as those buildings. The D5 Ordinance was clearly created to address the non-conforming status of three existing buildings, and to address expansions or modifications to those three buildings...not to encourage new development above 5 stories on other properties that were not zoned D5 when the D5 ordinance was created.

5. **PROPOSED REZONING IS INCONSISTENT WITH THE INTENT OF THE D5 ORDINANCE:** The intent of the D5 Ordinance was to address the legal non-conforming status of three existing buildings, not to encourage new development above 5 stories on properties not zoned D5. The record is clear on this fact. Had the residents and commercial tenants of the Condominiums of Birmingham Place known that the subject property could be developed above 5 stories, many of them may have decided to pass on the purchase or lease, or assign a different purchase or rental value to certain condominium units.

6. **D4 ZONING ALLOWS FOR A DEVELOPMENT THAT IS CONSISTENT WITH THE MASTER PLAN AND 2016 PLAN:** The development of a mixed use building is permitted under both D4 and D5 zoning, and a 5 story building a consistent with the goals of the City Master Plan and the 2016 Plan. Neither of these Plans call for the City to raise building heights in downtown Birmingham above 5 stories.
7. **DEVELOPMENT OVER 5 STORIES WAS REJECTED MANY YEARS AGO:** Rezoning the subject property to D5 is essentially allowing the owner to develop the property at a height that the City of Birmingham rejected many years ago, and has consistently prohibited. The residents and commercial tenants of the Condominiums of Birmingham Place had no reason to believe that the City would “turn back the clock” on them and allow a development over 5 stories on the subject property to proceed.

8. **PARKING AND CONGESTION WILL GO FROM BAD TO WORSE:** The subject property is not within the Parking Assessment District, and must provide its own on-site parking or shared parking within 100 ft. of the subject property. Given this constraint, why would the City allow this property to be developed in a way that requires far more parking than it would under the existing D4 zoning? This is not logical, and will exacerbate the parking problems in Birmingham.

9. **DEVELOPING THE SUBJECT PROPERTY ABOVE 5 STORIES WILL BE DETRIMENTAL TO SURROUNDING RESIDENTS:** Rezoning the subject property to D5 would be detrimental to the residents and commercial tenants of the Condominiums of Birmingham Place, which has been described in the many letters filed with the City and placed on the record at previous hearings on this rezoning request.

10. **D4 ZONING ALLOWS THE SUBJECT PROPERTY TO BE BUILT TALLER THAN THE ADJACENT SOUTHERN BUILDING:** The existing D4 zoning of the subject property would allow it to be built higher than the northern edge of the 555 Office Building. A 5 story building would make for a more harmonious transition from Birmingham Place to the 555 Building, as opposed to abutting a 9-story building that would tower over the northern edge of the 555 Building.

11. **A 9 STORY BUILDING ON THE SUBJECT PROPERTY WOULD DWARF MOST OF ITS NEIGHBORING BUILDINGS:** The proposed 9 story development of the subject property would dwarf almost all surrounding buildings except for the three (3) buildings that were constructed under a zoning ordinance that was rejected by the City many years ago. If the proposed development was compared to the vast majority of buildings in this neighborhood, one could only conclude that a 5-story development is more harmonious with the neighborhood than a 9-story development.

12. **A 9 STORY BUILDING WOULD NOT CREATE A STRONG IMAGE:** The proposed 9 story building on the subject property would not improve the frontages of S. old Woodward, Hazel and Woodward. The proposed elevation drawings show a crowding of a narrow right of way on Hazel and S. Old Woodward, and a blank wall facing Woodward. This is not the type of welcoming strong image envisioned in the City Zoning Ordinance and Master Plan.
13. **THE CITY SHOULD WAIT FOR THE BIRMINGHAM 2040 PLAN TO BE ADOPTED, AND LOOK TO THAT FOR GUIDANCE.** The City is well aware that we are in the midst of updating the City Master Plan, which will guide the development of the City for the next 20 years. Before taking drastic action to increase building heights above 5 stories in downtown Birmingham, we should wait for the updated City Master Plan to guide us and follow that. To do otherwise would undermine the thousands of hours that various City stakeholders have been put into updating the City Master Plan.

14. **THE APPLICANT HAS AN ECONOMIC PROBLEM NOT A ZONING PROBLEM:** The City should not rezone a property to meet a developer’s economic requirements, unit counts, or hotel brand mandates. The applicant has admitted on the record at previous hearings that the economics and unit count are driving this rezoning request. The City should stick to the City Zoning Ordinance that has been in place for many years. Economics, financial return, and adding hotel room or residential unit count has no place in a rezoning decision. The wellbeing of the community and the existing residents should outweigh an applicant’s own financial interests.

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</table>
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14. **THE APPLICANT HAS AN ECONOMIC PROBLEM NOT A ZONING PROBLEM:** The City should not rezone a property to meet a developer’s economic requirements, unit counts, or hotel brand mandates. The applicant has admitted on the record at previous hearings that the economics and unit count are driving this rezoning request. The City should stick to the City Zoning Ordinance that has been in place for many years. Economics, financial return, and adding hotel room or residential unit count has no place in a rezoning decision. The wellbeing of the community and the existing residents should outweigh an applicant’s own financial interests.

<table>
<thead>
<tr>
<th>Owner's Name</th>
<th>Unit #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jin Kim</td>
<td>1024</td>
</tr>
<tr>
<td>Alec Shonk</td>
<td>514</td>
</tr>
<tr>
<td>Karen &amp; David Dunnell</td>
<td>1008</td>
</tr>
<tr>
<td>Alexander &amp; Claudia Pflau</td>
<td>611</td>
</tr>
<tr>
<td>Bradley Steele</td>
<td>704</td>
</tr>
<tr>
<td>Mark Banks</td>
<td>410</td>
</tr>
<tr>
<td>Rosemary Sanafa</td>
<td>825</td>
</tr>
<tr>
<td>Andy Raffin</td>
<td>410</td>
</tr>
</tbody>
</table>
old Woodward, Hazel and Woodward. The proposed elevation drawings show a
crowding of a narrow right of way on Hazel and S. Old Woodward, and a blank wall
facing Woodward. This is not the type of welcoming strong image envisioned in the City
Zoning Ordinance and Master Plan.

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ADOPTED, AND LOOK TO THAT FOR GUIDANCE.** The City is well aware that
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residents should outweigh an applicant’s own financial interests.

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**Peter Chang**
Owner’s Name

**#111**
Unit #

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**Cal St**
Owner’s Name

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Owner’s Name

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Owner’s Name

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Owner’s Name

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Owner’s Name

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Owner’s Name

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Owner’s Name

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Owner’s Name

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Owner’s Name

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May 19, 2020

VIA EMAIL ONLY

Birmingham Planning Board
c/o Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Re: Birmingham Place Residential Condominium Association & Birmingham Place Commercial Condominium Association Objection to Application to Rezone 469-479 S. Old Woodward Ave. from D4 to D5 Zoning Designation

Dear Members of the Birmingham Planning Board,

This firm represents the Birmingham Place Residential Condominium Association and Birmingham Place Commercial Condominium Association, the members of which are the residents and commercial tenants of Birmingham Place located at 401-411 S. Old Woodward Ave. The record in the Application to Rezone 469-479 S. Old Woodward Ave. from D4 to D5 (the “D5 Rezoning Application”), contains numerous objections previously filed by my clients, and individual residents and commercial tenants of Birmingham Place. The purpose of this letter is to supplement all prior objections, and to summarize why the D5 Rezoning Application must be denied under the City’s Zoning Ordinance.

You will likely hear from the applicant for the D5 Rezoning Application (the “Applicant”), that this request is the culmination of years of exhaustive study in this area of downtown Birmingham regarding the appropriateness of rezoning the subject parcel to a mixed-use building that exceeds 5 stories. This self-serving statement is just wrong and misleading. The truth is, the D5 zoning designation was created to address the non-conforming status of three existing buildings, and to address expansions or modifications to those three buildings on their parcels….not to encourage new development on a property that was not zoned D5 when the D5 zoning designation was created. The fact that the Planning Board and City Commission recently reviewed the simple language of the D5 zoning designation to clarify various ambiguities, is irrelevant to the appropriateness of
rezoning the subject property from D4 to D5, and should have no bearing on the Planning Board’s recommendation to the City Commission, or the City Commission’s decision. The fact is, the original short and simple D5 zoning designation language needed a second look, as it was never intended to do anything more than correct the legal non-conforming status of three buildings. Setting aside the fact that the Applicant is attempting to utilize a zoning designation that was created to address three legal non-conforming buildings to obtain City approval for a new 9-story building, the question before that Planning Board is whether the D5 zoning designation is appropriate for the subject property under the requirements set forth in Section 7.02 of the City Zoning Ordinance. For the reasons set forth herein, along with numerous other reasons previously placed into the record, one must conclude that the Applicant has not met the burden required under the City’s Zoning Ordinance to justify rezoning the subject property from D4 to D5.

All rezoning applications in the City are governed by the City Zoning Ordinance. The purpose of the Zoning Ordinance is to “guide the growth and development of the City in accordance with the goals, objectives, and strategies stated within the Birmingham Master Plan and Downtown Birmingham 2016 Plan” (see Section 1.04 of the City Zoning Ordinance). With respect to the D5 Rezoning Application, the question becomes: does rezoning the subject property from D4 to D5 further the goals, objectives, and strategies stated within the City Master Plan and Birmingham 2016 Plan? The answer is NO. The Applicant would enjoy the ability to utilize the subject property for the exact same mixture of uses under the D4 zoning classification and the D5 zoning classification. Then why does the Applicant need to rezone the subject property one might ask? Building height - that is the only distinction between the D4 and D5 zoning classification. The Applicant has summarily stated that allowing the subject property to be developed higher than the 5 stories “conforms to the City’s Master Plan and Birmingham 2016 Plan.” No, it does not actually. The Applicant has not provided, and the undersigned cannot find, one single section in either the City Master Plan or the Birmingham 2016 Plan, which calls for, or even impliedly encourages, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height. For this reason, the D5 Rezoning Application does not further the goals, objectives, and strategies stated within the City Master Plan and Birmingham 2016 Plan, and must be denied.

In addition to proving that a proposed rezoning furthers the spirit of the City Zoning Ordinance, under Section 7.02(B)(2)(b) of the City Zoning Ordinance, an applicant for a rezoning must explain:

i. why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership;

ii. why the existing zoning classification is no longer appropriate; and

iii. why the proposed rezoning will not be detrimental to surrounding properties.
The Applicant’s position as outlined in the D5 Rezoning Application, and our client’s position with respect to each of these factors, is as follows:

i. why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership;

**Applicant’s Response:** Rezoning of the subject property is necessary to preserve the Applicant’s enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed use building. Furthermore, the D-5 Ordinance, at Section 3.04-4-b, anticipates that the subject property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

**Our Response:** The Applicant’s response is confusing and misleading, and does not demonstrate how the Applicant is unable to use the property if it is not rezoned to D5. That is because the Applicant certainly can use and enjoy the subject property under the D4 zoning designation. The fact is that the mixed uses permitted under D4 are the same mixed uses permitted under D5. Somehow, we are supposed to believe that if we raise the building height to 9 stories as opposed to 5 stories, the Applicant’s usage rights will somehow change? That does make any sense, and for this reason the Applicant has not demonstrated that rezoning the subject property to D5 is necessary for the preservation and enjoyment of the Applicant’s rights of usage commonly associated with property ownership.

ii. why the existing zoning classification is no longer appropriate;

**Applicant’s Response:** The existing D-4 zoning classification is no longer appropriate for the subject property. The subject property is surrounded by the Birmingham Place, a 10-story building on the north side and the 555 Buildings, a 15-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner
consistent with the existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the subject property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

**Our Response:** Again, the Applicant’s response is misleading. D4 and D5 zoning designations allow for the same mixture of uses, so there is no way the Applicant can argue that the uses allowed under D4 are no longer appropriate. With respect to the 5-story height restriction in the D4 zoning designation, it is impossible to find that such a restriction is no longer appropriate. If you look at all of the major developments in Birmingham over the past 10 years, the 5-story restriction has been applied to all of them (eg. Greenleaf Trust, Balmoral, Brookside Residences, Daxton Hotel, Varsity Shop redevelopment, Peabody redevelopment). Furthermore, the Applicant has not provided, and the undersigned cannot find, one single section in either the City Master Plan or the Birmingham 2016 Plan which calls for, or even impliedly encourages, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height.

The Applicant states that a 9-story building on the subject property would fill a gap between the 10 story Birmingham Place building to the north, and the 15-story 555 building to the south. This is just not accurate. Yes, the 10 story Birmingham Place building directly abuts the subject property to the north, but to the immediate south across Hazel is the 7 story 555 Office Building, which contains ground story retail, 3 stories of office, and 3 stories of parking. 4 floors of usable office space to the immediate south is a far cry from the 15-story tower as described by the Applicant. The 15 story 555 Residential Building is further to the south across Bowers St., hundreds of feet away from the subject property. Under current height regulations, a 5-story building built on the subject property could actually exceed the height of the 555 Office Building to the south. The Planning Board has no obligation to rezone the subject property to D5 as it did for Birmingham Place and the 555 Building. The D5 zoning designation was specifically created for those two (2) buildings (along with the Merrillwood Building), to simply remedy their legal non-conforming status, and to address expansions or modifications to those three buildings on their parcels. A 5-story mixed use building would also create a more unified block and would enhance the gateway area to downtown Birmingham – we don’t need a 9-story building to accomplish this goal. Accordingly, 5 stories has been, and continues to be, appropriate.
iii. why the proposed rezoning will not be detrimental to surrounding properties.

**Applicant’s Response:** The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-4 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

**Our Response:** Neither the residents of Birmingham Place nor any other stakeholders in the City of Birmingham ever anticipated that the subject property would be rezoned for a development above 5 stories. The fact is (and the February 13, 2017 City Commission meeting transcript substantiates), that the D5 zoning designation was approved by the City Commission for the sole purpose of addressing the legal non-conforming status of 3 buildings constructed under 1960’s / 1970’s zoning regulations that were rejected by the City many years ago, and to address expansions or modifications to those three buildings on their parcels. To state that this D5 Rezoning Application was anticipated by the City is self-serving and wrong. Allowing a 9-story building over a 5 story building will be detrimental to surrounding properties for many reasons already placed into the record, including:

- Increased congestion
- Parking deficiency
- Traffic congestion along southbound Woodward Ave., Hazel St., and N. Old Woodward
- Increased noise
- Unexpected diminution in surrounding property values and rental values that were not be anticipated by nearby owners and tenants due to the fact that the City Zoning Ordinance, City Master Plan and the Birmingham 2016 Plan do not call for, or even impliedly encourage, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height.
• Blocked sun and view by neighbors to the north and south of the subject parcel

For the reasons outlined above, we submit that rezoning the subject property is not necessary for the Applicant to enjoy its property rights, D4 has been and remains the appropriate zoning designation for the subject property, and allowing the subject property to be developed above 5 stories would be to the extreme detriment of surrounding property owners, who never had reason to believe that the City would allow the subject property to be developed above 5 stories.

Based on the evidence presented in connection with a rezoning application, the Planning Board must make findings of fact under Section 7.02(B)(5) of the City Zoning Ordinance. Based on the record and the foregoing analysis, we submit that the Planning Board should find as follows:

a. Does the Rezoning Application meet the objectives of the City’s then current master plan and the City’s 2016 Plan?

Finding: No, insofar as the D5 zoning designation was created to correct the legal non-conforming status of three buildings, and there is not one section of the City Master Plan or Birmingham 2016 Plan that calls for, or even impliedly encourages, the development of mixed-use buildings in downtown Birmingham that exceed 5 stories in height.

b. Is the proposed rezoning compatible with the existing uses of property within in the general area of the property in question.

Finding: The D4 and D5 zoning classifications allow for the same mixed uses. Accordingly, this finding is not applicable to the D5 Rezoning Application.

c. How does the proposed rezoning compare to the zoning classification of property within the general area of the property in question?

Finding: A 9-story building on the subject property would dwarf almost all surrounding buildings except for the three buildings that were constructed under a 1960’s / 1970’s zoning ordinance that was rejected by the City many years ago. If the proposed 9 story building was compared to the vast majority of both older and recently constructed buildings in downtown Birmingham, one could only conclude that a 5-story building under the D4 zoning designation is more harmonious in downtown Birmingham than a 9-story building.
d. Is the subject property suitable for the existing zoning classification?

**Finding:** The D4 and D5 zoning classifications allow for the same mixed uses. Accordingly, there is no reason why a 5-story mixed use building under the existing D4 zoning classification is not suitable for the subject property, but a 9-story mixed use building under the D5 zoning classification is suitable. It appears that the Applicant just wants to rezone the subject property so it can increase the number of residential or hotel units in the building. This factor has no place in a rezoning decision.

e. What is the trend of development in the general area of the subject property in question, and have any changes taken place in this zoning classification?

**Finding:** The development trend in the City is 5 stories or less, not above 5 stories. The 1960’s / 1970’s zoning ordinance that allowed Birmingham Place and the 555 Building to be developed over 5 stories was rejected by the City years ago, and the City has intentionally permitted and encouraged the development of 5 story buildings since then.

In summary, it is our position that: (i) the D5 zoning designation was created to address the non-conforming status of three existing buildings, and to address expansions or modifications to those three buildings on their parcels, (ii) the D5 Rezoning Application does not further the spirit or intent of the City Zoning Ordinance, City Master Plan, or Birmingham 2016 Plan, (iii) rezoning the subject property to D5 is not required to preserve the Applicant’s property rights, (iv) the existing D4 zoning classification remains appropriate and suitable for the subject property, (v) constructing a 9 story building as opposed to a 5 story building would be detrimental to surrounding properties owners in a manner that they had no reason to anticipate, (vi) the development trend in downtown Birmingham is 5 stories not 9, and (vii) nothing has changed in downtown Birmingham that justifies creating a new trend for new buildings to be constructed over 5 stories.

For these reasons, we respectfully submit that the Planning Board is bound under the City Zoning Ordinance to recommend that the City Commission deny the D5 Rezoning Application, and the City Commission is required to deny it.
Thank you for your consideration of our objections.

Very truly yours,

JPHOWE, PLLC

cc:   Timothy J. Currier, City Attorney (via email)
      Joseph A. Valentine, City Manager (via email)
      Birmingham Place Residential Condominium Association
      Birmingham Place Commercial Condominium Association
Re: Comment for May 27, 2020 Meeting on Rezoning 469-479 S. Old Woodward to D5

Birmingham should not be giving developers zoning changes worth millions of dollars without getting any community benefits in return. The owner of this property knew it was zoned D4 when he bought it. The owner knew the economics involved in developing a property zoned D4 and paid a price associated with the D4 zoning.

Now the owner comes in front of this Planning Board, hat in hand, asking for a rezoning change worth millions of dollars but offering nothing in return.

- The City has a goal of adding affordable housing into the downtown area. Why is the owner not offering that say 50% of the residential units will be affordable based in Birmingham’s median income of $114,537?

- The owner is offering to build three underground parking decks – will this be enough capacity for the building? Will it add capacity to the already strained parking system? If the new parking adds to the system, another community benefit.

- Will the ground floor retail be locally owned businesses? Another community benefit.

Birmingham has some of the most desirable development property in the State and this parcel is prime real estate. Our City should insist on clearly defined community benefits from this developer before even considering the D5 rezoning approval.

Brad Coulter
498 Wimbleton
Birmingham, MI
DATE: May 26, 2020
TO: Joseph A. Valentine, City Manager
FROM: Lauren A. Wood, Director of Public Services
SUBJECT: Oakland County West Nile Expense Reimbursement Request

INTRODUCTION:
Upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners continues to establish a West Nile Virus Fund Program to assist cities, villages and townships (CVT) in addressing mosquito control activities.

Oakland County’s West Nile Virus Fund Program authorizes Oakland County CVT to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larviciding or focused adult mosquito insecticide spraying in designated community green areas.

The 2020 West Nile Virus (WNV) Prevention Reimbursement amount designated for the City of Birmingham is $2,648.39. Birmingham must apply for reimbursement and our project must meet the eligibility requirements as determined by the Oakland County Health Division. This is the sixteenth year for this reimbursement program.

BACKGROUND:
We have been treating the catch basins, approximately 2300, beginning in 2003. The City of Birmingham incurs expenses in connection with mosquito control activities. We currently purchase the mosquito control material from Clarke Mosquito Control. We have been pleased with the treatment plan of the citywide catch basins and continue to stay current on best practices for mosquito control. Community education has also been an integral part of this program each year. Reimbursement from Oakland County for the program this year is $2,648.39, which has been the same amount the past four years.

LEGAL REVIEW:
There has been no legal review in the past for this annual Oakland County West Nile Reimbursement Program.
FISCAL IMPACT:
The reimbursement amount of $2,648.39 will offset the expenditure made for the material purchase from the Sewer Fund-Operating Supplies Account #590-536.002-729.0000.

PUBLIC COMMUNICATIONS:
This does not apply in this case. Information on West Nile is available on the City website www.bhamgov.org.

SUMMARY:
We spend approximately $10,000 in Larvicide material to administer our mosquito control program each season. The program includes treating the local catch basins throughout the community, once during the season. This activity is eligible for reimbursement under Oakland County’s West Nile Virus Fund Program.

ATTACHMENTS:
Include the Resolution requesting reimbursement for the maximum allotment of $2,648.39 for eligible mosquito control activity under the Oakland County’s West Nile Virus Fund Program.

SUGGESTED RESOLUTION:
To approve the attached resolution requesting reimbursement for the maximum allotment of $2,648.39 for eligible mosquito control activity under the Oakland County’s West Nile Virus Fund Program.
WHEREAS, upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners has established a West Nile Virus Fund Program to assist Oakland County cities, villages and townships in addressing mosquito control activities; and

WHEREAS, Oakland County’s West Nile Virus Fund Program authorizes Oakland County cities, villages and townships to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larviciding or focused adult mosquito insecticide spraying in designated community green areas; and

WHEREAS, the City of Birmingham, Oakland County, Michigan has incurred expenses in connection with mosquito control activities believed to be eligible for reimbursement under Oakland County’s West Nile Virus Fund Program.

NOW THEREFORE BE IT RESOLVED that the Birmingham City Commission authorizes and directs its Director of Public Services, as agent for the City of Birmingham, in the manner and to the extent provided under Oakland County Board of Commissioners, to request reimbursement of eligible mosquito control activity under Oakland County’s West Nile Virus Fund Program.

DATED
SIGNED
CERTIFIED
INTRODUCTION:
The Department of Public Services is requesting the Purchase of two (2) Toro Workman HDX heavy-duty utility vehicles to replace two (2) Toro Workman HDX at Lincoln Hills and Springdale golf courses. These two (2) new vehicles will replace the two (2) vehicles #175 and #210 purchased in 2003 and 2005; respectively that have surpassed their useful life of 10-12 years.

BACKGROUND:
These vehicles are used for heavy-duty operation including hauling large heavy loads of soil, debris and for towing heavy loads of sand used for topdressing greens. They are also used as daily vehicles for transporting employees. They are essential for the day-to-day operations of both golf courses. They will be purchased for $23,537.41 each, from Spartan Distributors, for a total of $47,074.82.

The Department of Public Services is requesting the Purchase of two (2) Toro Workman HDX heavy-duty utility vehicles to replace two (2) Toro Workman HDX at Lincoln Hills golf course and Springdale golf course. The existing vehicles will be auctioned on Michigan Intergovernmental Trade Network (MITN) for a total of ten days to sell each one with a minimum bid of $5,000 each. In the event that the minimum purchase price is not met, Spartan Distributors will offer $5,000 each on trade, subtracted from the final invoice.

We have reviewed the condition of the existing vehicles and determined they need to be replaced due to the age of the vehicle, the rising costs that come with repairing older vehicles, and the diminished condition of the vehicles. We have observed a significant loss of power with the vehicles, resulting in them not being able to perform the tasks we need them to perform.

LEGAL REVIEW:
This item does not require legal review.

FISCAL IMPACT:
The State of Michigan extended purchasing contract #071B0200329 is available for the two (2) Toro Workman HDX. Spartan Distributors is the exclusive dealer for this contract. Funds for this purchase are available in the Auto Equipment Fund account #641-441.006-971.0100 in the amount of $50,000 and included in the 2019-2020 budget. The existing machines will be sold through the MITN auction site or traded in to Spartan Distributors at $5,000 each, whichever is greater. The cost for each vehicle is $23,537.41, for a total of $47,074.82.
PUBLIC COMMUNICATIONS:
This does not apply for this purchase.

SUMMARY
Due to the age and condition, the Department of Public Services recommends the purchase of two (2) Toro Workman HDX heavy-duty utility vehicles to replace two (2) Toro Workman HDX at Lincoln Hills golf course and Springdale golf course. The total cost for this purchase is $47,074.82.

ATTACHMENTS:
There are no attachments included with this report.

SUGGESTED RESOLUTION:
To approve the purchase of two (2) Toro Workman HDX from Spartan Distributors, through State of Michigan extendable purchasing contract #071B0200329 for a total expenditure of $47,074.82. Funds for this purchase are available in the Auto Equipment Fund account # 641-441.006-971.0100.
DATE: May 27, 2020
TO: Joseph A. Valentine, City Manager
FROM: Lauren A. Wood, Director of Public Services
SUBJECT: Crack Repair & Painting of Pembroke & Poppleton Tennis Courts

INTRODUCTION:
Pembroke and Poppleton Park Tennis Courts are in need of various repairs to ensure their longevity and continued safe play. The foremost consideration of this project is addressing the cracks throughout the courts.

The Rite-Way Crack Repair System has been found to be the City’s preference for crack repair. The manufacturer touts this repair system as being world renown, and they have references and testimonials from very satisfied customers to back them up. RiteWay offers guaranteed tennis court repair for tennis courts, and comes with a 2-year Manufacturer’s Warranty.

The RiteWay Crack Repair System is a long-term repair system that uses an exclusive technology to water-proof existing cracks with an overlay system. This exclusive technology allows the existing cracks on the tennis court to move without breaking the membrane of the system. When installed by a Certified RiteWay Contractor, the RiteWay Crack Repair System creates an invisible repair which is not affected by weather or temperature. Other crack repair systems may keep cracks from coming back, but customers complain about "Dead Spots", "Hollow Sounds" and "Bubbling". The RiteWay Crack Repair System not only keeps cracks from coming back, it is 100% playable - which means NO Dead Spots, NO Bubbling, and NO Hollow-Sounding Areas.

Performing crack repair with the RiteWay method costs 50-70% less than reconstruction of tennis courts, and is currently the preferred method of maintaining the City’s tennis courts. This crack repair system adds another 5-10 years to the playable life of the tennis courts.
BACKGROUND:
This purchase includes repairs and new acrylic surface at Pembroke and Poppleton Tennis Courts. The request for proposals was entered into the Michigan Inter-Governmental Trade Network (MITN) purchasing system. Sealed bids were opened on May 14, 2020 for the cost to repair cracks at Pembroke and Poppleton Tennis Courts and apply a new acrylic surface at both locations as well. The new acrylic surface or “paint” will consist of blue courts on green matching our recently painted courts throughout the City. Pembroke tennis courts were reconstructed in 2008. Poppleton tennis courts had crack repairs performed in 2010.

One (1) bidder responded to the request for proposals. The result of the sealed bids follows in the table below.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Base Bid</th>
<th>Complete Bid?</th>
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<tbody>
<tr>
<td>Goddard Coatings Company</td>
<td>$27,755.00</td>
<td>Yes</td>
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LEGAL REVIEW:
The City Attorney has completed a review of this contract agreement and approved with signature.

FISCAL IMPACT:
This project is included in the 2020-2021 fiscal year budget. Funds will be available from the Parks Capital Projects Fund account #401-751.001-981.0100. In the spring of 2019, the crack repair and painting of St. James and Quarton tennis court project cost $28,475.00.

PUBLIC COMMUNICATIONS:
The Department of Public Services plans to notify via signage on-site of the upcoming project in addition to signage for the duration of the project. We will send a postcard to the Homeowner’s Association President.

SUMMARY:
The Department of Public Services recommends awarding the crack repair and painting of Pembroke and Poppleton tennis courts to Goddard Coatings, as they are the only responsible and responsive bidder for this project. The price is competitive with our project cost from last year. Last year, for the St. James and Quarton tennis court project, there were two bidders, including Goddard Coatings, the second low bidder. The total project cost for the 2019 project was $28,475.00. This type of work is specialized, and additionally Riteway requires a certified installer as part of their warranty, therefore this limits the pool of qualified vendors.

Goddard Coatings Company is a certified installer of the RiteWay crack repair system and has extensive references. Additionally, the City of Birmingham has hired Goddard Coatings to perform projects in the past and has been completely satisfied with their workmanship and responsiveness.

The Parks and Recreation Board at their meeting of June 2, 2020 recommended this project proceed for approval to the City Commission.
ATTACHMENTS:
- Agreement (Attachment A)
- Bidders Agreement (Attachment B)
- Cost Proposal (Attachment C)
- Site Visit (Attachment D)
- Iran Sanctions Act Vendor Certification Form (Attachment E)
- Completion Date (Attachment F)
- Goddard Coatings-Certified Installer of RiteWay.

SUGGESTED RESOLUTION:
To approve the crack repair and painting project at Pembroke and Poppleton to Goddard Coatings Company for a total project cost not to exceed $27,755.00. Funds are available from 2020-2021 budget Parks Capital Projects Fund account #401-751.001-981.0100 for these services. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
ATTACHMENT A - AGREEMENT
Crack Repair and Painting Pembroke & Poppleton Tennis Courts

This AGREEMENT, made this ________day of __________, 2020, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and __Goddard Coatings Company__, having its principal office at 490 S. Opdyke Rd, Pontiac, MI 48341 (hereinafter called "Contractor"), provides as follows:

WHEREAS, the City of Birmingham, through its Public Services Department, is desirous of having work completed to apply crack repair system and new acrylic surfacing including markings to existing (4) tennis courts at 2 locations- Pembroke Park and Poppleton Park.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to perform crack repair and new acrylic surfacing including markings to existing tennis courts at locations listed above, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform tree supply and planting.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform crack repair and new acrylic surfacing including markings and the Contractor's cost proposal dated __May 13____, 2020 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed ____$27,755.00__, as set forth in the Contractor's __May 13__, 2020 cost proposal.

3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor’s role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers’ compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.
10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. **Workers' Compensation Insurance:**

   **For Non-Sole Proprietorships:** Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

   **For Sole Proprietorships:** Contractor shall complete and furnish to the City prior to the commencement of work under this Agreement a signed and notarized Sole Proprietor Form, for sole proprietors with no employees or with employees, as the case may be.

B. **Commercial General Liability Insurance:** Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. **Motor Vehicle Liability:** Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. **Additional Insureds:** Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds: The City of Birmingham, including all elected and
appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

E. Professional Liability: Professional liability insurance with limits of not less than $1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.

F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than $1,000,000, per occurrence preferred, but claims made accepted.

G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than $3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage.

H. Cancellation Notice: Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
5) If so requested, Certified Copies of all policies mentioned above will be furnished.

J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of
Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

   City of Birmingham  
   Attn: Carrie Laird  
   851 S. Eton St.  
   Birmingham, MI 48009  
   claird@bhamgov.org  
   248-530-1714

   CONTRACTOR:

   Goddard Coatings Company
   490 S. Opdyke Rd
   Pontiac, MI 48341
   248-393-6320

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration
Association with one arbitrator being used, or three arbitrators in the event any party’s claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.
IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:

[Signature]

CONTRACTOR

By: [Signature]

Its: [Signature]

CITY OF BIRMINGHAM

By: ____________________________
   Pierre Boutros
   Its: Mayor

By: ____________________________
   Cheryl Arft
   Its: Acting City Clerk

Approved:

Lauren Wood, Director of Public Services
(Approved as to substance)

Mark Gerber, Director of Finance
(Approved as to financial obligation)

Timothy J. Corrier, City Attorney
(Approved as to form)

Joseph A. Valentine, City Manager
(Approved as to substance)
# Certificate of Liability Insurance

**Issuer**: Hanover Insurance Company

**Policy Number**: Cert ID 9896

## Coverages

**Type of Insurance**

<table>
<thead>
<tr>
<th>Class</th>
<th>Name</th>
<th>Class Limit Applies</th>
<th>Lines</th>
<th>Policy Number</th>
<th>Policy Eff/Exp</th>
<th>Limits</th>
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</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td>Commercial General Liability</td>
<td></td>
<td></td>
<td>ZIB 8966995-35</td>
<td>12/31/2018/12/31/2019</td>
<td>EACH OCCURRENCE $1,000,000</td>
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<tr>
<td></td>
<td></td>
<td>CLAIMS-MADE</td>
<td>OCC, JR</td>
<td></td>
<td></td>
<td>DAMAGE TO RENTED PREMISES (Ex. buildings) $100,000</td>
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<td>MED EXP (Any one person) $10,000</td>
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<td>PERSONAL &amp; ADV INJURY $1,000,000</td>
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<td>GENERAL AGGREGATE $2,000,000</td>
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<td>PRODUCTS - COM/BOP AGG $2,000,000</td>
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<td>OTHERS:</td>
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<td></td>
<td>COMBINED SINGLE LIMIT (Per accident) $1,000,000</td>
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<td>BODILY INJURY (Per Person) $50,000</td>
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<td>PROPERTY DAMAGE (Per Accident) $250,000</td>
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<tr>
<td><strong>B</strong></td>
<td>Umbrella Liability</td>
<td></td>
<td></td>
<td>U78 8987003-38</td>
<td>12/31/2018/12/31/2019</td>
<td>EACH OCCURRENCE $2,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OCCUR</td>
<td>CLAIMS-MADE</td>
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<td></td>
<td>AGGREGATE $2,000,000</td>
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<td></td>
<td>Prod-Completed Ops $2,000,000</td>
</tr>
</tbody>
</table>

## Description of Operations/Locations/Vehicles

ACORD 101, Additional Remarks Schedule, may be attached if more space is required.

Additional Insureds As Their Interest May Appear: The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. Coverage is primary and contributory to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

## Certificate Holder

**City of Birmingham**

151 Martin St

Birmingham MI

**Cancellation**

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Authorised Representative

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ATTACHMENT B - BIDDER’S AGREEMENT
Crack Repair and Painting Pembroke & Poppleton Tennis Courts

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Jake Vaughn 5/13/2020
PREPARED BY DATE
(Print Name)
President

TITLE

AUTHORIZED SIGNATURE jake@goddardcoatings.com

E-MAIL ADDRESS

Goddard Coatings Company
COMPANY

490 S Opdyke Rd, Pontiac, MI 48341 248.393.6320
ADDRESS PHONE

N/A

NAME OF PARENT COMPANY PHONE

ADDRESS
**ATTACHMENT C - COST PROPOSAL**

Crack Repair and Painting Pembroke & Poppleton Tennis Courts

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

<table>
<thead>
<tr>
<th>COST PROPOSAL</th>
<th>Pembroke Tennis Courts</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RiteWay Crack Repair</strong></td>
<td><strong>BID AMOUNT</strong></td>
<td>$11,120.00</td>
</tr>
<tr>
<td>Acrylic Coating &amp; Marking Product: Laykold ColorCoat</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Lawn Restoration</strong></td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td><strong>250 Linear Feet of crack repair more than 1/8&quot;</strong></td>
<td>$4,315.00</td>
<td></td>
</tr>
<tr>
<td>Other Miscellaneous (Attach Detailed Description)</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$15,435.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

|  | Poppleton Tennis Courts |  |
| **RiteWay Crack Repair** | **BID AMOUNT** | $11,120.00 |  
| Acrylic Coating & Marking Product: Laykold ColorCoat | |  
| **Lawn Restoration** | $0 |  
| **70 Linear Feet of crack repair more than 1/8"** | $1,200.00 |  
| Other Miscellaneous (Attach Detailed Description) | $0 |  
| **TOTAL** | **$12,320.00** |  

**GRAND TOTAL** | **$27,755.00**

Firm Name: Goddard Coatings Company

Authorized signature: [Signature]

Date: 5/13/2020
ATTACHMENT D – SITE VISIT
Crack Repair and Painting Pembroke & Poppleton Tennis Courts

In order to the bid to be considered valid, a site visit to Pembroke and Poppleton Tennis Courts must be completed by the contractor.

SITE VISIT

X Our company visited the job sites

☐ Our company did not visit the job sites

Reason: ____________________________________________________________
___________________________________________________________________
___________________________________________________________________
___________________________________________________________________

Length of Crack Repair (in feet) needed:

Pembroke Tennis Courts ~ 250 ft

Poppleton Tennis Courts ~ 70 ft
APPENDIX E - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM

Crack Repair and Painting Pembroke & Poppleton Tennis Courts

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

<table>
<thead>
<tr>
<th>Jake Vaughn</th>
<th>5/13/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREPARED BY</td>
<td></td>
</tr>
<tr>
<td>(Print Name)</td>
<td>DATE</td>
</tr>
<tr>
<td>President</td>
<td></td>
</tr>
<tr>
<td>TITe</td>
<td>DATE</td>
</tr>
<tr>
<td>AUTHORIZED SIGNATURE</td>
<td>E-MAIL ADDRESS</td>
</tr>
<tr>
<td>Goddard Coatings Company</td>
<td></td>
</tr>
<tr>
<td>COMPANY</td>
<td></td>
</tr>
<tr>
<td>490 S Opdyke Rd, Pontiac, MI 48341</td>
<td>248.393.6320</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>PHONE</td>
</tr>
<tr>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>NAME OF PARENT COMPANY</td>
<td>PHONE</td>
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<tr>
<td>ADDRESS</td>
<td></td>
</tr>
<tr>
<td>38-1462603</td>
<td>TAXPAYER I.D.#</td>
</tr>
</tbody>
</table>
ATTACHMENT F – COMPLETION DATE
Crack Repair and Painting Pembroke & Poppleton Tennis Courts

COMPLETION DATE: September 30, 2020
A work schedule shall be provided to the Designated City Representative. The work schedule shall be approved by the Designated City Representative prior to the start of the work. His decision as to acceptability shall be deemed in the City of Birmingham’s best interest. The City of Birmingham is the only party to this contract that may authorize amendment of this schedule. The contractor is required to start the project within 10 working days after notified to start work.

It is mandatory that the entire project is completed on or before September 30, 2020.

( X ) Our company can meet the completion date.

(  ) Our company cannot meet the completion date but offers:

The reason our company cannot complete the work as required is as follows:


Company Name: Goddard Coatings Company
DATE: May 15, 2020

TO: Joseph A. Valentine, City Manager

APPROVED BY: Mark H. Clemence, Police Chief

FROM: Scott Grewe, Operations Commander

SUBJECT: Animal Control Housing and Services

INTRODUCTION:
The Birmingham Police Department and the Bloomfield Township Police Department have partnered to prepare an agreement to consolidate Animal Control resources. This proposed agreement would provide the City with 24/7 access to an animal shelter for the housing of stray and vicious animals. This will include the care of animals, a process for returning pets to their owners and an adoption process in the event no owner is located or when an animal has been surrendered by its owners.

BACKGROUND:
For several years, the Police Department has worked with Gasows Veterinary Clinic for the housing of stray animals. However, Gasows would not quarantine vicious animals and as a result, the City had a contract with Oakland County Animal Control for quarantining these vicious animals, which is required by state law, after a bite occurs.

Ownership at Gasows Veterinary Clinic has changed. New owners have contacted the Police Department and advised they no longer would be accepting stray animals from the City. Also, our contract with Oakland County Animal Control has recently expired.

This proposed agreement with Bloomfield Township will give our officers access to their animal control facility at any time, as well as residents attempting to regain possession of their pets.

LEGAL REVIEW:
This intergovernmental agreement has been reviewed and approved by attorneys for both the City and Bloomfield Township.

FISCAL IMPACT:
Beginning July 1, 2020 the City would pay Bloomfield Township $14,400.00 annually, which will be paid in two payments, July 1st and January 1st. The contract also states the fee to be paid to Bloomfield Township shall be limited to a 5% annual increase.

SUMMARY:
The City’s previous location for housing stray animals is under new ownership and no longer wishes to act as a shelter facility for the Police Department’s animal control needs. Also, a
contract with Oakland County Animal Control, that was in place due to restricted use at Gasows, has recently expired.

This proposed intergovernmental contract will provide the Police Department with access to an animal shelter to effectively handle stray and vicious animals in accordance with state laws. This new agreement will provide the needed facilities to effectively handle all animal related incidents without the need for multiple agreements.

ATTACHMENTS:

1. Intergovernmental Contract for Animal Control Housing and Services between the City of Birmingham and the Charter Township of Bloomfield.

SUGGESTED RESOLUTION:
To approve the Intergovernmental Contract with the Charter Township of Bloomfield for Animal Control, Housing and Services. Further, to direct the Mayor and City Clerk to sign the agreement on behalf of the City.
INTERGOVERNMENTAL CONTRACT

FOR ANIMAL CONTROL HOUSING AND SERVICES

BETWEEN

THE CITY OF BIRMINGHAM AND THE CHARTER TOWNSHIP OF BLOOMFIELD

THIS AGREEMENT, made and entered into this ___ day of __________, 2020, by and between the CITY OF BIRMINGHAM, a Michigan Municipal Corporation, located at 151 Martin Street, Birmingham, Michigan, hereinafter referred to as the CITY, and the CHARTER TOWNSHIP OF BLOOMFIELD, located at 4200 Telegraph Road, Bloomfield Hills, Michigan, 48302 hereinafter referred to as the TOWNSHIP.

WITNESSETH:

The Intergovernmental Contract Act, MCLA 123.1 et seq., provides that a municipal corporation shall have power to join with any other municipal corporation, by contract, or otherwise as may be permitted by law, for the operation or performance, jointly, or by any 1 or more on behalf of all, of any service which each would have the power to provide; and,

WHEREAS, the CITY would like to utilize the Bloomfield Township Animal Welfare Center for the lodging and care of all stray, surrendered and held animals; and,

WHEREAS, the TOWNSHIP is willing to provide the CITY the use of the TOWNSHIP'S Animal Welfare Center for the considerations hereinafter expressed; and,

WHEREAS, the TOWNSHIP will provide its Animal Welfare Center for the purpose of lodging and caring for stray, surrendered animals and animals held for ten (10) days, as required by law when an animal is being held after biting another animal or human from the CITY; and,

WHEREAS, the TOWNSHIP will employ qualified and trained animal welfare employees, either full-time or part-time, to allow it to perform the animal welfare center services for and on behalf of the CITY with the understanding that it is the intent of this Agreement that services are to be provided Monday thru Friday during normal business hours to be specifically determined by the Township, with provisions for after hour access to the Animal Welfare Center; and,

WHEREAS, the Township shall comply with the animal regulation laws of the State of Michigan, those being P.A. 339,1919 as amended; and,

WHEREAS, the TOWNSHIP will provide proper food, water, shelter and humane care for all stray, surrendered, and held animals impounded by the CITY, and such animals that are brought to the TOWNSHIP'S Animal Welfare Center by residents of the CITY until they are placed or otherwise humanely disposed of in accordance with respective state laws, CITY ordinances and/or court orders; and,

WHEREAS, the TOWNSHIP shall make every effort to notify owners of identifiable impounded animals, by telephone or mail consistent with the TOWNSHIP'S procedures; and,
WHEREAS, upon completion of the required holding period, impounded animals from the CITY become the property of the TOWNSHIP and may be disposed of according to law, and consistent with TOWNSHIP policies; and,

WHEREAS, the TOWNSHIP shall provide for the transfer of injured animals from the CITY to veterinary care when appropriate for care that is routine or customary in nature, or immediate disposal of injured animals when determined to be necessary by officers and/or animal welfare employees; and,

WHEREAS, if an injured animal from the CITY is transferred for veterinary service and at that time it is determined that the injured animal requires care over and above what is deemed to be customary, the TOWNSHIP must seek permission from an on-duty CITY police command officer for financial authorization prior to treatment; and,

WHEREAS, the TOWNSHIP will provide the CITY with a policy for the drop off of stray animals at the Animal Welfare Center by CITY police officers during hours when Animal Welfare Center employees are not on duty; and,

WHEREAS, the TOWNSHIP will provide the CITY with a system to ensure that impounded animals released to CITY residents by TOWNSHIP Animal Welfare Center employees have appropriate paperwork from the CITY verifying appropriate vaccinations required by law, and valid CITY licenses required by CITY ordinance prior to release from impoundment or within a reasonable period of time thereafter; and,

WHEREAS, the TOWNSHIP will collect a fee of $35 per day for every impounded animal at the Animal Welfare Center. The TOWNSHIP will collect its fee prior to the release of any impounded animal; and,

WHEREAS, the CITY is responsible for the issuance of all violation tickets related to stray animals and for the completion of documentation of proper licensing and vaccination records prior to any release of impounded animals; and,

WHEREAS, the TOWNSHIP shall provide the CITY with a policy allowing for the disposal of all dead animals picked up in the CITY by police officers and CITY Department of Public Services employees into a designated disposal receptacle maintained by the TOWNSHIP at a designated TOWNSHIP facility on a 24/7 basis.

NOW, THEREFORE, for and in consideration of the mutual undertakings of the parties hereto, all as herein set forth, it is agreed by and between the parties as follows:

1. The CITY agrees to pay the TOWNSHIP an annual fee of Fourteen Thousand Four Hundred and 00/100 Dollars ($14,400.00) for a twelve (12) month period commencing July 1, 2020. This annual fee will be paid in two (2) installments each year. Fifty percent (50%) of the annual fee will be paid on or before July 1 ("Adjustment Date") and the other fifty percent (50%) will be paid on or before January 1 of the next year. The annual fee to be paid by the CITY to the TOWNSHIP shall not increase by more than five percent (5%) each year.

2. This Agreement may be terminated by either party, at any time, or for any reason, upon written notice of the intent to terminate three (3) months prior to the termination date.
3. The TOWNSHIP shall provide the CITY with the lodging and care of all stray, surrendered animals and held animals at the TOWNSHIP’S Animal Welfare Center staffed by qualified and trained animal welfare employees as outlined in this Agreement.

4. This Agreement shall be governed by, performed, interpreted and enforced in accordance with the laws of the State of Michigan. The CITY agrees to use the TOWNSHIP’S animal Welfare Center employees as provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

5. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

6. Except as otherwise provided herein; to the fullest extent permitted by law, each party shall be responsible for the acts and/or omissions of its own employees, officers and/or agents, the costs associated with those acts and/or omissions, and for their own defense of those acts/omissions.

7. The CITY and TOWNSHIP will add each other as an additional party insured on their liability insurance.

8. Each party agrees that it shall be responsible for any and all claims, costs, actions, causes of action, losses or expenses — including attorney fees, resulting from or caused by its acts or omissions, and the acts or omissions of its employees pursuant to this Agreement. Neither party shall construe the other party as an employee.

9. This Agreement and its incorporated Exhibit “A” constitute the entire Agreement for the lodging of stray and surrendered animals at the Charter Township of Bloomfield’s Animal Welfare Center between the TOWNSHIP and CITY.

10. The TOWNSHIP and CITY have a long shared history of cooperation and each party pledges its best efforts to provide the same or better level of service.

11. If any breach is caused by either TOWNSHIP or CITY, written notice shall be given by the party believing a breach has occurred by regular mail and representatives of the TOWNSHIP and CITY Police Departments will meet within seven (7) days of receipt of notice to attempt to cure the alleged breach in question.

12. Commencing on July 1, 2020 through June 30, 2021, consistent with the billing of the Agreement, the TOWNSHIP shall provide to the CITY, in a format to be agreed upon by the TOWNSHIP and the CITY, a report as to the number of stray, held or surrendered animals from the CITY processed and lodged by the TOWNSHIP Animal Welfare Center and provide said report on an annual basis beginning July 1, 2021.
13. This Agreement may be modified only by the written agreement of both the TOWNSHIP and the CITY.

14. The TOWNSHIP and CITY have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The person signing this Agreement on behalf of each party have legal authority to sign this Agreement and bind the parties to the terms and conditions contained herein.

15. Notices shall be given to:

   a. City of Birmingham Police Department
      151 Martin Street
      P.O. Box 3001
      Birmingham, MI 48012-3001
      Attention: Mark H. Clemence, Chief of Police

      With copies to:

      Timothy J. Currier, City Attorney
      Beier Howlett, P.C.
      3001 W. Big Beaver Rd., Ste. #200
      Troy, MI 48084

   b. Charter Township of Bloomfield
      4200 Telegraph Road
      Bloomfield Hills, MI 48302
      Attention: Leo Savoie, Township Supervisor
      Phillip Langmeyer, Chief of Police

      With copies to:

      Derek Beckerleg, Township Attorney
      Secrest Wardle
      2600 Troy Center Drive
      Troy, MI 48084

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESS:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

CITY OF BIRMINGHAM

By:____________________________

Its:___________________________

CHARTER TOWNSHIP OF BLOOMFIELD

By:____________________________

Its:___________________________
Approval (ENTER TOWNSHIP CODE)
EXHIBIT “A”
SCOPE OF SERVICES

The Charter Township of Bloomfield shall provide:

A. Stray, surrendered and held animal lodging at the TOWNSHIP’S Animal Welfare Center on a twenty-four (24) hours, seven (7) days per week basis to the CITY.

B. The TOWNSHIP agrees to serve as the CITY’S primary lodging facility for stray, surrendered and held animals for the CITY consistent with all state and local laws.

C. The TOWNSHIP will provide twenty-four (24) hours, seven (7) days per week basis for stray, surrendered and held animals for the CITY including, but not limited to the following:

1. Provide proper food, water, shelter and humane care for all stray, surrendered and held animals impounded by the CITY and such animals that are brought to the TOWNSHIP’S Animal Welfare Center by residents of the CITY until they are placed or otherwise humanely disposed of in accordance with respective state laws, CITY ordinances and/or court orders.

2. Employ qualified and trained animal welfare employees, either full-time or part-time, to allow it to perform the animal welfare center services for and on behalf of the CITY with the understanding that it is the intent of this Agreement that services are to be provided Monday thru Friday during normal business hours to be specifically determined by the Township, with provisions for after hour access to the Animal Welfare Center.

3. Provide for the transfer of injured animals to veterinary care when appropriate for care that is routine or customary in nature, or immediate disposal of injured animals when determined to be necessary by officers and/or animal welfare employees.

4. Seek permission from an on-duty CITY police command officer for financial authorization prior to treatment of an injured stray, surrendered or held animal whose care goes above and beyond the customary services covered by the TOWNSHIP.
5. Provide for the CITY with a policy for the drop off of stray, surrendered or held animals at the Animal Welfare Center by CITY police officers during hours when Animal Welfare Center employees are not on duty.

6. Provide the CITY with a policy allowing for the disposal of all dead animals picked up in the CITY by police officers and CITY Department of Public Services employees into a designated disposal receptacle maintained by the TOWNSHIP at a designated TOWNSHIP facility on a 24/7 basis.

7. The CITY will collect on behalf of the Township a fee of $35 per day for every impounded lodged animal at the Animal Welfare Center, being held on behalf of a citizen. The CITY will give to the TOWNSHIP these fees as part of all necessary paperwork to be completed prior to the release of any impounded. The fees will belong to the TOWNSHIP.

D. The Township agrees to provide an appropriate animal welfare center and provide training necessary for all animal welfare center employees to comply with and/or obtain any necessary certifications required by applicable law.
INTRODUCTION:

Adherence to the restrictions and Executive Orders resulting from the COVID-19 pandemic have caused City Hall to close to the public, thus making it difficult to process Community Development plan reviews and permit applications. Consequentially, we have begun utilizing a drop box located in the Police Department lobby in addition to our current practice of processing permit applications received in the mail. However, it has become increasingly more apparent that transitioning as many of our processes as possible to an online format would be the best and safest way to serve the public.

Our current software provider, BS&A, can provide us with additional features on our current program to allow for online permit acceptance. We have already implemented and streamlined online inspection scheduling and we are scheduled to go live with online permit application acceptance on June 15, 2020. The next step for fully integrating our plan review processes to an online format will be achieved by adding the BS&A Planning, Zoning and Engineering (PZE) program along with Bluebeam software to facilitate electronic plan review.

The PZE extension and Bluebeam software were not previously budgeted, however BS&A has the resources to help us add these necessary features due to the urgency of our current situation.

BACKGROUND:

The process for the employment of online application submittals and PZE review processes began earlier this year. The first phase of the actual implementation will include the acceptance of online applications and payments for simple permits that do not require plans or other construction documents to be submitted for review. These permits are to include trades permits such as plumbing, HVAC, and electrical. Once we are confident that inclusion of online permit acceptance is successful, we will proceed with adding the Planning, Zoning and Engineering (PZE) application. The PZE review processes will require Bluebeam software to facilitate plan review for the design professionals as well as the Building, Engineering and Planning Departments. Due to its complexity, the initial timeline for execution was two years, which would closely align with other similar communities. However, in response to COVID-19 it has become evident that we need to expedite the conversion of our processes to an online format.
LEGAL REVIEW:

A legal review for these expenditures is not necessary.

FISCAL IMPACT:

The costs for the addition of PZE is $5,500.00. Incorporating Bluebeam into PZE will be $6,500.00 and purchasing Bluebeam software and licenses is $4,415.00. The total expense is $16,415.

PUBLIC COMMUNICATIONS:

Not required. However, permit applicants will be notified upon the execution of any new process steps or procedures.

SUMMARY:

The COVID-19 pandemic has made the permit application and plan review processes within Community Development difficult and potentially unsafe for staff and the public and, therefore, the department is proposing that we fully integrate our permit and plan review processes to online on an accelerated timeline. The implementation of the PZE review application, supplemented with Bluebeam, will accomplish this goal.

ATTACHMENTS:

- PZE Implementation and Training Proposal
- BS&A Integration with Bluebeam Proposal
- Bluebeam Purchase Proposals

SUGGESTED RESOLUTION:

To confirm the City Manager’s authorization for the emergency expenditure regarding the implementation, integration and purchase of BS&A’s PZE review process feature and Bluebeam in an amount not to exceed $16,415 to be paid from the Building Department account number 101-371.000-811.0000, pursuant to Section 2-286 of the City Code.
Proposal to...
City of Birmingham, Oakland County MI
April 28, 2020
Project Contact: Lori Merians
Account Executive: Dan J. Burns, CPA

PZE Implementation and Training

Building Department .NET
Remote Training for 10 people
Five days at $1,100/day

Remote Setup
Two days @ $1,100/day

$5,500

$2,200

Total $7,700

Signature constitutes an order for products and services as quoted.

Signature __________________________ Date 4-29-20

Please complete the following for our records:

Project Contact Name: Bruce Johnson Title: Building Official
Phone/Fax: 248-530-1842 Email: bjohnson@bcog.org
Mailing Address: 151 Martin St
City, State, Zip: Birmingham MI, 48009

BS&A SOFTWARE
14965 Abbey Lane, Bath, MI 48808
(855) 272-7638 | (517) 641-8960 FAX
inquiry@bsasoftware.com

Prices good for a period of 90 days from date on proposal
Proposal to...
City of Birmingham, Oakland County MI
April 28, 2020
Project Contact: Lori Merians
Account Executive: Dan J. Burns, CPA

Remote Integration

BS&A Integration with Bluebeam for Plan Review
- Bluebeam REVU and Studio Prime must be purchased separately
- BS&A recommends the use of Bluebeam Studio Prime, for the best integration
- Bluebeam must be installed prior to integration with BS&A Software
- BS&A does not perform training on the use of Bluebeam. Bluebeam training must be completed prior to integration with BS&A
- Cost includes up to five (5) days of remote training on use of the integration with Bluebeam

Signature constitutes an order for products and services as quoted.

[Signature]

Date 4-29-20

Please complete the following for our records:

Project Contact Name Bruce Johnson
Title Building Official
Phone/Fax 248-530-1842
Email bjohnson@bhamgov.org
Mailing Address 151 Martin St
City, State, Zip Birmingham MI 48009
City of Birmingham

Eric Brunk
M
United States
Phone: (248) 530-1885
Fax: 
Email: ebrunk@bhamgov.org

Inside Account Executive

Christopher Owens
290 Davidson Ave
Somerset, NJ 08873
Phone: 732-868-8849
Fax: 732-
Email: christopher_owens@shi.com

All Prices are in US Dollar (USD)

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<tr>
<th>Product</th>
<th>Qty</th>
<th>Your Price</th>
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<tr>
<td><strong>Total</strong></td>
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Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Thank you for choosing SHI International Corp! The pricing offered on this quote proposal is valid through the expiration date listed above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order. For any additional information including Hardware, Software and Services Contracts, please contact an SHI Inside Sales Representative at (888) 744-4084.

SHI International Corp. is 100% Minority Owned, Woman Owned Business.
TAX ID# 22-3009648; DUNS# 61-1429481; CCR# 61-243957G; CAGE 1HTF0

The Products offered under this proposal are resold in accordance with the SHI Online Customer Resale Terms and Conditions, unless a separate resale agreement exists between SHI and the Customer.
**Quotation**

**MasterGraphics.aec, LLC**  
303 W. 45th Ave  
Denver, CO 80216  
Phone: (888) 451-9980

Bruce Johnson  
bjohnson@bhamgov.org

**Ship To**  
The City of Birmingham  
151 Martin Street  
Birmingham, MI 48012  
USA

**Bill To**  
The City of Birmingham  
PO Box 3001  
Birmingham, MI 40809  
USA

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<tr>
<td>Bluebeam New Studio Prime Level</td>
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Sub Total $2,223.00  
Tax $0.00  
Shipping $0.00  
Total $2,223.00

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**Terms & Conditions**

1. Prices are valid until the listed expiration date  
2. Promotional prices are based on customer’s eligibility with current software  
3. All items proposed are FOB origin and freight is prepaid and added to the invoice unless included in quoted prices.  
4. New subscriptions are eligible for a refund up to 20 days from the purchase date  
5. Product availability is subject to change without notice and quote shall be adjusted as applicable  
6. This quote and the details provided within are confidential and for the customer’s use only  
7. Applicable sales tax will be applied on the invoice provided by MG accounting department  
8. All prices reflect 3% cash, check or e-check discount  
9. Standard payment is net 20 days from date of Invoice. Other terms must be approved in writing prior to accepting your purchase order  
10. A late fee of 1.5% per month will be added to your balance beginning after due date. In the event that MG needs to engage outside service agencies or attorneys to collect any outstanding debt, you will be responsible to pay any extra fees incurred to collect the debt above and beyond the original amount of the debt.  
11. Client agrees to full Terms and Conditions at [www.mg-aec.com/terms-and-conditions](https://www.mg-aec.com/terms-and-conditions)
<table>
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<tr>
<th>Meeting Date, Time, Location:</th>
<th>Monday, June 8, 2020 7:30 PM Municipal Building, 151 Martin Birmingham, MI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of Request:</td>
<td>211 W. Frank Street &amp; 227 W. Frank Street</td>
</tr>
<tr>
<td>Nature of Hearing:</td>
<td>To consider the proposed lot combination of Lot Combination of 211 W Frank Street, Parcel # 19-36-184-020 T2N, R10E, SEC 36 ASSESSOR'S REPLAT OF PART OF TORREY'S, HOOD'S &amp; SMITH ADDS LOT 80 and 227 W Frank Street, Parcel # 19-36-184-019 - T2N, R10E, SEC 36 ASSESSOR'S REPLAT OF PART OF TORREY'S, HOOD'S &amp; SMITH ADDS LOT 56</td>
</tr>
<tr>
<td>City Staff Contact:</td>
<td>Jana Ecker 248.530.1841 <a href="mailto:jecker@bhamgov.org">jecker@bhamgov.org</a></td>
</tr>
<tr>
<td>Notice Requirements:</td>
<td>Mailed to all property owners within 300 feet of subject address.</td>
</tr>
<tr>
<td>Approved minutes may be reviewed at:</td>
<td>City Clerk's Office</td>
</tr>
</tbody>
</table>

Persons wishing to express their views may do so in person at the hearing or in writing addressed to City Clerk, City of Birmingham, 151 Martin, Birmingham, MI 48009.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice) or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Please note City Commission meetings will be conducted virtually (online and/or by phone) until further notice due to health concerns surrounding Coronavirus/COVID-19 under the Governor of Michigan’s Executive Order. Visit [www.bhamgov.org/participate](http://www.bhamgov.org/participate) to learn how to participate in virtual meetings.
DATE:       June 8, 2020
TO:         Joseph A. Valentine, City Manager
FROM:       Brooks Cowan, City Planner
APPROVED:   Jana Ecker, Planning Director

INTRODUCTION:
The owner of 211 and 227 W. Frank Street submitted an application on March 4, 2020 seeking approval for a lot combination of two parcels into one. This matter has been in process since that time due to delays in plan revision as a result of business shutdowns due to the COVID-19 pandemic.

BACKGROUND:
The subject properties are located on the northeast corner of W. Frank Street and Henrietta Street. 211 W. Frank is currently occupied with a home while 227 W. Frank is a vacant lot. The owner of both properties has applied to combine the two lots into one in order to demolish the existing home at 211 W. Frank and construct a new home facing W. Frank.

The Combination of Land Parcels Ordinance (Chapter 102, Section 102-83) requires that the following standards be met for approval of a lot combination.

(1) **The Combination will result in lots or parcels of land consistent with the character of the area where the property is located, Chapter 126 of this Code for the zone district in which the property is located, and all applicable master land use plans.**

The subject property is zoned R3, Single Family Residential. In regards to lot size, the minimum lot area per unit in the R3 Zone is 4,500 SF. The applicant has proposed a lot combination that would total 10,118 SF of lot area which conforms to the Zoning Ordinance standards for minimum lot area. The maximum lot coverage for the R3 Zone is 30%, which is 3,036 SF for the combination of the two proposed lots. The applicant is proposing a maximum building footprint of 3,035 SF which conforms to the Zoning Ordinance standards for lot coverage.

In regards to setbacks, a 24.35 foot front setback on W. Frank is required and 24.35 feet is proposed. The applicant is required to maintain a total side yard setback of 30.7 feet. A 25.7 foot setback is required on the east side and 25.7 feet is proposed. 5 feet is required on the west side and 5 feet is proposed. A 30 foot rear setback is required and 30 feet is proposed. Therefore all setback requirements of the Zoning Ordinance are met with the proposed building...
With regards to the character of the area, the 1980 Master Plan recommends the area as a single family residential zone. The applicant proposes to maintain a single-family residential use consistent with the single family uses on adjacent lots surrounding the property.

(2) All residential lots formed as a result of a combination shall be a maximum width of no more than twice the average lot width of all lots in the same zone district within 300 feet on the same street.

The average lot width of all lots in the same zone district within 300 feet on the same street is 62.5 feet, making the maximum lot width 125 feet. The applicant is proposing a lot width of 80 feet. Accordingly, the proposal meets this requirement.

(3) All residential lots formed as a result of a combination shall be a maximum area of no more than twice the average lot area of all lots in the same zone district within 300 feet on the same street.

The average lot area of all lots in the same zone district within 300 feet on the same street is 8,259 square feet, making the maximum lot area 16,518 square feet. The applicant is proposing a combined lot area of 10,118 square feet. Accordingly, the proposal meets this requirement.

(4) The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.

There is a wide range of lot shapes in this neighborhood. The lot sizes within 500 feet range from approximately 4,500 SF to 17,500 SF. The rhythm and pattern of W. Frank Street in the applicant’s area also has more variability due to four homes facing W. Frank Street while eight homes within 300 feet of the subject property have their sides abutting the street. The applicant's proposed lot size of 10,118 square feet is 22.5% more than the average lot size of 8,259 square feet within 300 feet, but is well under the maximum size permitted (2x the average) of 16,518 square feet. There are a number of lots much larger than the proposed lot combination within 500 feet, and the proposed building envelope will fit in with the existing rhythm and pattern of the neighborhood. Based on the attached survey, the proposed lot combination and building envelope appear to meet this requirement.

(5) Any due or unpaid taxes or special assessments upon the property have been paid in full.

There are no outstanding taxes due on this property. The proposal meets this requirement.

(6) The combination will not adversely affect the interest of the public or the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:

a.) The location of proposed buildings or structures, the location and nature of vehicular
ingress or egress so that the use or appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.

Based on the attached survey the proposed lot combination and building envelope appear to meet this requirement.

b.) The effect of the proposed combination upon any floodplain areas, wetlands and other natural features and the ability of the applicant to develop a buildable site on the resulting parcel without unreasonable disturbances of such natural features.

The property is not located in a floodplain or wetlands, nor adjacent to a floodplain or wetlands.

c.) The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.

The proposed lot combination does not appear to impact the supply of light and air to adjacent properties or the ability of the City to provide essential services.

LEGAL REVIEW:
The City Attorney has reviewed the application and has no concerns.

FISCAL IMPACT:
Not applicable.

PUBLIC COMMUNICATIONS:
Prior to the application being considered by the City Commission, the City Clerk will send out notices to all property owners and occupants within 300’ of both 211 and 227 W. Frank Street seeking public comment on the proposal as required by law.

SUMMARY:
The Planning Division recommends that the City Commission approve the application for the lot combination of 211 and 227 W. Frank Street

ATTACHMENTS:
- Application for lot combination
- Letter to the City
- Proof of ownership
- Registered Land Surveys
- Letter from Resident

SUGGESTED ACTION:
To approve the proposed lot combination of 211 Frank Street, Parcel # 19-36-184-020 and 227 W. Frank Street, Parcel # 19-36-184-019.
1. **Applicant**
   
   Name: Pierre Boutros on Behalf of Frank Street Associates, LLC  
   Address: 1945 Heide St  
   Troy, MI 48084  
   Phone Number: 248-361-6868  
   Fax Number:  
   Email address: pboutros@onecareitc.com

2. **Property Owner**
   
   Name: Frank Street Associates, LLC  
   Address: 1945 Heide St  
   Troy, MI 48084  
   Phone Number: 248-361-6868  
   Fax Number:  
   Email address: pboutros@onecareitc.com

3. **Applicant’s Attorney/Contact Person**
   
   Name: Same As Above  
   Address:  
   Phone Number:  
   Fax Number:  
   Email address:  

4. **Project Designer/Developer**

   Name: J & A Civil Engineering, LLC  
   Address: 18832 Rosewood Dr.,  
   Macomb Township, MI 48042  
   Phone Number: 586-764-2441  
   Fax Number:  
   Email address: fhanna1994@gmail.com

5. **Project Information**

   Address/Location of Property: 211 and 227 West Frank St  
   Sidwell #:  
   Parcel #: 08-19-38-184-020 08-19-38-184-019  
   Current Zoning: R 1

6. **Required Attachments**

   I. Two (2) copies of a registered land survey showing:  
      i. All existing and proposed platted lot lines;  
      ii. Legal descriptions of proposed lots;  
      iii. Locations of existing/surrounding structures for at least 500 ft. in all directions;  
      iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked;

   II. One (1) digital copy of plans;  
   III. Proof of ownership;  
   IV. Written statement of reasons for request;  
   V. A letter of authority or power of attorney in the event the application is made by a person other than the property owner;  
   VI. Sketches of proposed development (optional);  
   VII. Other data having a direct bearing on the request.  
   VIII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

7. **Details of the Proposed Development (attach separate sheet if necessary)**

   ____________________________________________
   ____________________________________________
   ____________________________________________
   ____________________________________________
(I), (We), the undersigned, do hereby request to combine lots of record in the City of Birmingham, Oakland County, Michigan. (I), (We), do hereby swear that all of the statements, signatures, and descriptions appearing on and with this request are in all respects true and accurate to the best of (my), (our), knowledge.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Property Owner: ________________________ Date: 3/4/20

Print Name: Frank Street Associates, LLC

Signature of Applicant: ________________________ Date: 3/4/20

Print Name: Pierre Boutros

Office Use Only

Application #: ________________________ Date Received: ________________________ Fee: ________________________

Date of Approval: ________________________ Date of Denial: ________________________ Reviewed By: ________________________
1. Applicant
   Name: Frank Street Associates, LLC
   Address: 1945 Heidt St
   Troy, MI 48084
   Phone Number: 
   Fax Number: 
   Email address: 

2. Property Owner
   Name: Frank Street Associates, LLC
   Address: 1945 Heidt St
   Troy, MI 48084
   Phone Number: 
   Fax Number: 
   Email address: 

3. Project Information
   Address/Location of Property: 211 W. Frank St., 237 W. Frank St.
   Name of Development: 
   Area in Acres: 
   Name of Historic District, if any: 
   Current Use: 
   Current Zoning: 

4. Date of Board/Commission Review
   City Commission: 
   Planning Board: 
   Historic District Commission: 
   Design Review Board: 
   Board of Zoning Appeals: 
   Board of Building Trades Appeals: 
   Housing Board of Appeals: 
   Other: 

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: 
Date: 

Office Use Only

Application#: 
Date Received: 
Fee: 
Date of Approval: 
Date of Denial: 
Reviewed By: 
March 4, 2020

City of Birmingham
151 Main Street
PO Box 3001
Birmingham, MI 48012

RE: 227 & 211 Frank Street proposed Lot combination application

To Whom It May Concern:

Please accept the application, supplements and the requested surveys for the proposed Lot combination. I am requesting this combination since our current house on Hawthorne in the City no longer meets our needs. My current house has limitations as to bedrooms and bathrooms which makes privacy among the kids very difficult.

These two lots are 40 feet in width each making them two of the smallest lots in the immediate area. The combination of the two lots will provide for a width of 80 feet which still falls below a number of similar sized lots in the area. These combined lots will allow for a new house that will improve the neighborhood since the existing house has long passed its useful life. Please note that the final footprint of the proposed house will be smaller than the footprint reflected on the attached survey because of the 30% lot coverage requirement.

I am hopeful that the City finds this request reasonable and acceptable. We do not anticipate requesting any building variance at this time for the construction of the home on the combined Lots. Keeping this in mind, we will request that architect design a home that conforms to the standard set-back requirements of the combined property. Our new home will be a major upgrade to this very visible corner of the city and my family as I look forward to living there for many years to come.

I thank you for your consideration.

Pierre Boutros
OPERATING AGREEMENT
OF
FRANK STREET ASSOCIATES, LLC
a single-member Michigan limited liability company

This Operating Agreement ("Agreement") is entered into as of July 5, 2018, by FRANK STREET ASSOCIATES, LLC, a Michigan limited liability company ("Company") and PIERRE BOUTROS, the sole member of the Company ("Member").

ARTICLE I
ORGANIZATION

1.1 Formation. Pursuant to the Michigan Limited Liability Company Act of 1993, Michigan Public Act 23, as amended from time to time ("Act"), the Member has formed the Michigan limited liability company by the filing of its Articles of Organization with the Michigan Department of Licensing and Regulatory Affairs ("Articles") on July 5, 2018.

1.2 Name. The name of the Company is FRANK STREET ASSOCIATES, LLC. The Company may also conduct its business under one or more assumed names.

1.3 Principal Office. The principal office of the Company shall be located in such place as the Member may determine from time to time.

1.4 Registered Office and Resident Agent. The location of the registered office and the name of the resident agent of the Company in the State of Michigan shall be as stated in the Articles, and as determined from time to time by the Member. The Registered Office and/or Resident Agent may be changed from time to time, in accordance with the Act. If the Resident Agent resigns, the Company shall promptly appoint a successor.

1.5 Purpose of Company. The purpose of the Company is to engage in those activities and transactions as determined by the Member that may be permitted by the Act.

1.6 Duration. The Company's duration shall be perpetual, subject to earlier dissolution in accordance with either the other provisions of this Agreement, the Articles or the Act.

1.7 Intention for Company. The Member has formed the Company as a limited liability company under and pursuant to the Act. The Member specifically intends and agrees that the Company is not to be treated as a partnership (including a limited partnership) or any other venture, but a limited liability company under and pursuant to the Act.

ARTICLE II
BOOKS, RECORDS, AND ACCOUNTING

2.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act. The Company's books and
records shall be kept at the Company's Registered Office. The Member and its representatives shall have the right to inspect the Company's books and records at any time upon reasonable notice.

2.2 Fiscal Year. The Company's fiscal year shall be the calendar year.

ARTICLE III
MANAGEMENT

3.1 Management of Business. The business and affairs of the Company shall be managed by a manager (the "Manager"). The initial Manager of the Company shall be Hany Boutros. Except as otherwise required by nonwaivable provisions of the Act, the Manager shall have the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including, without limitation, the power to enter into any and all agreements and execute any and all contracts, documents and instruments; obtain insurance covering the business and affairs of the Company and its property and on the lives and well being of its Members; commence, prosecute, or defend any proceeding in the Company’s name; borrow money and issue evidence of indebtedness; sell, assign, pledge, encumber, or otherwise transfer the Company's assets and amend the Articles. The Manager may resign, and the Member may remove the Manager, at any time. Upon the resignation, removal, death, or incapacity of the Manager, the Member may appoint a successor Manager.

3.2 Standard of Care; Liability. The Manager shall discharge the Manager's duties on behalf of the Company in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner which the Manager reasonably believes to be in the best interests of the Company. The Manager shall not be liable for monetary damages to the Company for any breach of any such duties except for acting in violation of this Operating Agreement or the Act or a willful violation of the law.

3.3 Reimbursement. The Manager shall be entitled to reimbursement from the Company for all expenses of the Company reasonably incurred and paid for by the Manager on behalf of the Company.

ARTICLE IV
CONSENT AND AUTHORITY

4.1 Consent. Any action the Manager is required or permitted to take may be taken by consent or approval without any meeting or any other action.

4.2 Third-Party Reliance. Any person (including any financial institution) who may deal with the Company, Manager, or the Member on behalf of the Company, shall be entitled, without liability and without any further inquiry or investigation, to rely on the unilateral authority of the Manager to make any and all decisions and to take any and all actions with respect to the Company, and any decisions and actions of the Manager shall be binding on and enforceable against the Company.
ARTICLE V
MISCELLANEOUS PROVISIONS

5.1 Governing Law. This Operating Agreement is being executed and delivered in the State of Michigan and shall be governed by, construed and enforced in accordance with the laws of the State of Michigan.

5.2 Entire Agreement. This Operating Agreement constitutes the entire agreement between the parties and contains all of the agreements between said parties with respect to the subject matter hereof. This Operating Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

5.3 Amendment; Termination. This Operating Agreement may be amended or revoked at any time by a written agreement executed by the Member. No change or modification to this Operating Agreement shall be valid unless in writing and signed by the Member.

5.4 Signature Delivery. For purposes of this Operating Agreement, a facsimile signature, telecopier signature and/or electronic mail signature, shall be deemed the same as an original.

5.5 Counterparts. This Operating Agreement may be executed in counterpart, each of which shall be treated as an original and all of which, when taken together, shall constitute one and the same instrument.

The parties have signed this Agreement on the day and year written above.

"Company"

FRANK STREET ASSOCIATES, LLC,
a Michigan limited liability company

By: [Signature]

Its: Sole Member

"Manager"

[Signature]

Hany Boutros
WARRANTY DEED

The Grantor, The Phoebe A. Filletzzi Trust, by James H. Kemp, Jr., its Successor Trustee, whose address is 211 W. Frank St., Birmingham, MI 48009.

Conveys and warrants to, Frank Street Associates, LLC, whose address is 1945 Heidi St., Troy, MI 48084 the following described premises situated in the City of Birmingham, Oakland County and State of Michigan:

Lot 80, Assessor's Replat of part of Terry's Addition, Hood's Addition and Smith Addition, a replat of part of Lot 1 and Lots 20 to 28 including part of Lots 31, 32 and 33 of Lots 34 to 39 including all of Terry's Addition and Lots 7, 8 and 9 of Hood's Addition and part of Lot 25, Smith Addition, Village (Now City) of Birmingham, Oakland County, Michigan, recorded in Lib 41 of Plats, Page 36, Oakland County Records.

More commonly known as: 211 W. Frank St., Birmingham, MI 48009.

Tax Parcel No. 19-36-184-020.

For the full consideration of See Real Estate Transfer Valuation Affidavit Filed

Subject to building and use restrictions, easements, and zoning ordinances of record, if any.

Togethher with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto.

Dated this 25th day of July, 2018

Phoebe A. Filletzzi Trust

By James H. Kemp, Jr.

James H. Kemp, Jr.

Successor Trustee

State of Michigan

County of Oakland

On this 25th day of July, 2018, before me personally appeared The Phoebe A. Filletzzi Trust, by James H. Kemp, Jr., its Successor Trustee to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

JEFF MILLER

Notary Public

Notary Public

County, Michigan

Acting as:

My Commission Expires:

Drafted by:

James H. Kemp, Jr.

When recorded return to:

211 W. Frank St.

Frank Street Associates, LLC

Birmingham, MI 48009

1945 Heidi St.

Troy, MI 48084

OK-AB
WARRANTY DEED

HARY BRUISELD ["Grantee"], whose address is 1961 North St., Troy, Michigan 48084, hereby conveys and surrenders to FRANK STEBBINS ASSOCIATES, L.L.C, a Michigan limited liability company, whose address is 1961 North St., Troy, Michigan 48084 ["Grantor"], the real property located situated in the City of Birmingham, Oakland County, Michigan, described as follows:

Lot 57, A Vesta's Plat of Town of Terre Haute and Town Addition, as recorded in Liber 104, Page 161, Plat Book, Oakland County Records.

Conveyance is made to 227 T. Frank Stebbins.

Tax Parcel No.: 9-12-04-04-016

The consideration for this instrument is One Dollar ($1.00) and is subject to Michigan Tax pursuant to MCL 212.22 and MCL 332.11.

Filed the 1st day of December, 2021

Mary Boudreaux

SEAL OF MICHIGAN

COUNTY OF Oakland

The foregoing instrument was acknowledged before me this 26th day of December, 2021, by Mary Boudreaux, Acting Commissioner of Oakland County, Michigan.

DEPARTMENT OF REAL ESTATE TAX

Oscar E. Olim, Esq.
Seyburn, Wilcox, P.C.
3300 Lawrence Court, Suite 600
Plymouth, Michigan 48170

This instrument is recorded in the Office of the Register of Deeds for Oakland County, Michigan.

Eleventh Day of December, 2021
PROPERTY COMBINATION
PARENT PARCELS

FRANK STREET (50' WIDE)
S88°22'00"E

LOT 79
PARCEL: 19-36-184-019
227 W. FRANK ST.
VACANT

LOT 80
PARCEL: 19-36-184-020

EX. SHED
TO BE
DEMOLISHED

LOT 78
PARCEL: 19-36-184-021
EX. HOUSE
754 HENRIETTA ST.

S01°47'00"W 128.00'
HENRIETTA ST. (50' WIDE)

128.00'
40.00'

128.00'
38.10'

PARENT PARCELS:
Lot 79, Assessor's Replat of Part of Torrey's, Hood's and Smith Addition, as recorded in Liber 41, Page 36 of Plats, Oakland County Records, Michigan. Commonly known as 227 W. Frank Street, Birmingham, MI 48009.
Tax Parcel No. 19-36-184-019.

Lot 80, Assessor's Replat of Part of Torrey's, Hood's and Smith Addition, as recorded in Liber 41, Page 36 of Plats, Oakland County Records, Michigan. Commonly known as 211 W. Frank Street, Birmingham, MI 48009.
Tax Parcel No. 19-36-184-020.
PROPERTY COMBINATION
COMBINED PARCEL

FRANK STREET (50' WIDE)
S88°22'00"E 80.00'

LOT 56
PARCEL 19-36-184-001
EX. HOUSE
731 S. BATES

LOT 57
PARCEL 19-36-184-002
EX. HOUSE
731 S. BATES

LOT 80
48.93'
44.81'
128.00'
73.65'

LOT 79
30.00'
128.00'
73.65'

BUILDING ENVELOPE

LOT 78
PARCEL 19-36-184-021
EX. HOUSE
754 HENRIETTA ST.

S01°47'00"W 128.00'
HENRIETTA ST. (50' WIDE)

COMBINED PROPERTY:
Lot 79 & 80, Assessor's Replat of Part of Torrey's, Hood's and Smith Addition, as recorded in Liber 41, Page 36 of Plats, Oakland County Records, Michigan.

LEGEND
F.M. FOUND MONUMENT
S.I. SET IRON ROD

PROJECT: PROPERTY COMBINATION
LOCATION: 211 & 227 FRANK STREET, BIRMINGHAM
TITLE: PARCEL 19-36-184-019 & 19-36-184-020
CLIENT:

JOB #: 2-105 DRAWN BY: P.E.
SHEET: 2 OF 2 DATE: 3-9-2020

J&A CIVIL ENGINEERING, INC.
18832 ROSEWOOD DRIVE
MACOMB TOWNSHIP, MI 48042
PHONE (586) 786-2414
frianna1994@gmail.com

SCALE: 1"=120'

CHARLES DE WINTER
SURVEYOR
No. 25839
CERTIFIED LAND SURVEYOR
AVERAGE FRONT SETBACK OF HOUSES 20 FT IN EACH DIRECTION ON N. SIDE OF FRANK STREET

<table>
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<tr>
<th>NO.</th>
<th>ADDRESS</th>
<th>FRONT SETBACK (FT)</th>
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<tbody>
<tr>
<td>1</td>
<td>1 S. BATES</td>
<td>25.54</td>
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<tr>
<td>2</td>
<td>103 FRANK</td>
<td>24.31</td>
</tr>
<tr>
<td>3</td>
<td>105 W. FRANK</td>
<td>22.26</td>
</tr>
<tr>
<td>4</td>
<td>107 W. FRANK</td>
<td>22.35</td>
</tr>
<tr>
<td></td>
<td>AVERAGE</td>
<td>24.05</td>
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</table>

AVERAGE FRONT SETBACK OF HOUSES 20 FT IN EACH DIRECTION ON W. SIDE OF HENRIETTA STREET TO DETERMINE SIDE SETBACK ON HENRIETTA STREET

<table>
<thead>
<tr>
<th>NO.</th>
<th>ADDRESS</th>
<th>FRONT SETBACK (FT)</th>
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<tbody>
<tr>
<td>1</td>
<td>740 HENRIETTA</td>
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<td>2</td>
<td>742 HENRIETTA</td>
<td>22.11</td>
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<td>3</td>
<td>744 HENRIETTA</td>
<td>20.16</td>
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<tr>
<td>4</td>
<td>746 HENRIETTA</td>
<td>21.16</td>
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<tr>
<td>5</td>
<td>748 HENRIETTA</td>
<td>23.16</td>
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<td>6</td>
<td>750 HENRIETTA</td>
<td>24.16</td>
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<tr>
<td>7</td>
<td>752 HENRIETTA</td>
<td>25.16</td>
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<tr>
<td></td>
<td>AVERAGE</td>
<td>23.55</td>
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</tbody>
</table>

FOOTING R.A.
REQUIRED SETBACKS
FRONT AVE. OF EX. HOUSES FRONT SETBACKS WITHIN 20 FT
BEAR - 20.50
SHRUBS 0.6 FT. TOTAL - 5' 4"

M AXIMUM LOT COVERAGE:
200% OF 11,164 - 2,232.80 sq. ft.
30% OF 11,164 = 3,349.20 sq. ft.

PROPOSED LOT COVERAGE:
BEHIND ENVELOPE - 2,397.12 sq. ft.
7,564 - 5,954.87 = 3,552.00 sq. ft.
MAXIMUM PROPOSED HOUSE FOOTPRINT = 3,345.12 sq. ft.
PROPERTY DESCRIPTION:
Lot 75, Assessor’s Replat of Part of Torrey’s, Hoods and Smith Addition, as recorded in Liber 41, Page 36 of Plat, Oakland County Records, Michigan. Commonly known as 227 W. Frank Street, Birmingham, MI 48009.
Tax Parcel No. 19-36-184-019.
Lot 80, Assessor’s Replat of Part of Torrey’s, Hoods and Smith Addition, as recorded in Liber 41, Page 36 of Plat, Oakland County Records, Michigan. Commonly known as 211 W. Frank Street, Birmingham, MI 48009.
Tax Parcel No. 19-36-184-020.

PROPOSED COMBINED PROPERTY:
Lot 75 & 80, Assessor’s Replat of Part of Torrey’s, Hoods and Smith Addition, as recorded in Liber 41, Page 36 of Plat, Oakland County Records, Michigan.
To Whom It May Concern,

We fully support the combination of the Boutros's properties at the end lot of 211 and 227 W Frank. The combination of parcels would be better suited for one home rather than two homes and also coexist with the same (one home per corner) set up that is displayed directly across the street from these parcels. In conjunction with the combination of properties we feel it would continue the existing esthetic that is displayed on this block along with elevating the beauty and charm of the neighborhood. We support the Boutros family in the combination of parcels and welcome them to our neighborhood!

Thank you,

Prakash and Michelle Chinnaiyan
731 S. Bates Street
Birmingham

Prakash Chinnaiyan, MD
CNS Service Chief
Director of Tumor Metabolism
Professor of Radiation Oncology
Oakland University William Beaumont School of Medicine

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Nothing in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.
DATE: May 29, 2020

TO: Joseph A. Valentine, City Manager

FROM: Mark Gerber, Finance Director

SUBJECT: 2020-2021 Budget Appropriations Resolution

INTRODUCTION:
As required by state law and city charter, the City Commission must annually approve a budget for the following fiscal year and approve the property tax millage to be assessed on July 1st.

BACKGROUND:
The City held a public hearing on June 6, 2020, to review the 2020-2021 recommended budget and to receive comments and revisions from the City Commission and the general public. There were no public comments on the budget and the City Commission made no changes to the manager’s recommended budget or to the recommended property tax millage.

LEGAL REVIEW:
None needed.

FISCAL IMPACT:
As explained by the City Manager at the budget hearing, the effects of the COVID-19 pandemic, which have yet to be determined, were not included in the recommended budget. The City Manager will bring back at a future meeting, mostly likely after the audit, revisions to the budget once those effects can be quantified and when we have a better understanding of where the City stands financially at June 30, 2020.

SUMMARY:
It is recommended that the City Commission approve the budget appropriations resolution adopting the City of Birmingham’s budget and establishing the total number of mills for ad valorem property taxes to be levied for the fiscal year commencing July 1, 2020 and ending June 30, 2021.

ATTACHMENTS:
The budget appropriations resolution with the changes noted above is attached to this report.

SUGGESTED RESOLUTION:
To approve the budget appropriations resolution adopting the City of Birmingham’s budget and establishing the total number of mills for ad valorem property taxes to be levied for the fiscal year commencing July 1, 2020 and ending June 30, 2021.
## BUDGET APPROPRIATIONS RESOLUTION

WHEREAS, the City Manager has submitted the proposed 2020-2021 Budget, and:

WHEREAS, the City Commission has reviewed the 2020-2021 Budget, and;

WHEREAS, the City Commission has held a Public Hearing on the 2020-2021 Budget;

WHEREAS, Chapter VII, Section 14 of the Birmingham City Charter requires that the City Commission pass an annual appropriations resolution, and;

NOW THEREFORE, BE IT RESOLVED, that the City Commission does hereby adopt the following estimated revenues for the City of Birmingham for the fiscal year commencing July 1, 2020, and ending June 30, 2021:

### GENERAL FUND:
- Taxes $26,948,810
- Licenses & Permits $2,774,960
- Intergovernmental Revenue $2,165,630
- Charges for Services $3,322,020
- Fines & Forfeitures $1,799,110
- Interest & Rent $647,690
- Other Revenue $571,730
- Contributions from Other Funds $100,000

  **Total General Fund** $38,329,950

### GREENWOOD CEMETERY PERPETUAL CARE FUND:
- Charges for Services $60,000
- Interest $22,000

  **Total Greenwood Cemetery Perpetual Care Fund** $82,000

### MAJOR STREETS FUND:
- Intergovernmental Revenue $1,641,450
- Interest & Rent $43,500
- Contributions from Other Funds $2,000,000

  **Total Major Streets Fund** $3,684,950

### LOCAL STREETS FUND:
- Intergovernmental Revenue $670,450
- Interest & Rent $29,600
- Other Revenue $197,460
- Contributions from Other Funds $3,000,000

  **Total Local Streets Fund** $3,897,510
<table>
<thead>
<tr>
<th>Fund</th>
<th>Taxes</th>
<th>Intergovernmental</th>
<th>Charges for Services</th>
<th>Interest</th>
<th>Draw from Fund Balance</th>
<th>Total</th>
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<tbody>
<tr>
<td>SOLID WASTE DISPOSAL FUND:</td>
<td>$2,042,500</td>
<td>4,110</td>
<td>17,000</td>
<td>30,000</td>
<td>50,160</td>
<td>$2,143,770</td>
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<td>BROWNFIELD REDEVELOPMENT AUTHORITY FUND:</td>
<td>$287,300</td>
<td>2,000</td>
<td>20,000</td>
<td>30,000</td>
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<td>$309,300</td>
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<td>PRINCIPAL SHOPPING DISTRICT FUND:</td>
<td>$1,054,970</td>
<td>25,000</td>
<td>13,700</td>
<td>190,000</td>
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<td>$1,283,670</td>
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<td>COMMUNITY DEVELOPMENT BLOCK GRANT FUND:</td>
<td>$36,100</td>
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<td>$36,100</td>
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<td>TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY FUND:</td>
<td>$470</td>
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<td>LAW AND DRUG ENFORCEMENT FUND:</td>
<td>$25,000</td>
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<td>1,300</td>
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<td>$26,300</td>
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<td>BALDWIN LIBRARY FUND:</td>
<td>$3,541,640</td>
<td>1,050,320</td>
<td>62,800</td>
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<td>$4,706,760</td>
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DEBT SERVICE FUND:
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<td>Intergovernmental</td>
<td>3,300</td>
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<td>Interest</td>
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<tr>
<td><strong>Total Debt Service Fund</strong></td>
<td>$ 1,554,750</td>
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CAPITAL PROJECTS FUND:
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<tr>
<td>Contribution from Other Funds</td>
<td>$ 1,950,000</td>
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<td>Draw from Fund Balance</td>
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<td><strong>Total Capital Projects Fund</strong></td>
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SPRINGDALE GOLF COURSE:
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<tr>
<td>Interest &amp; Rent</td>
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<td>Other Revenue</td>
<td>200</td>
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<td>Draw from Net Position</td>
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<td><strong>Total Springdale Golf Course Fund</strong></td>
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AUTOMOBILE PARKING SYSTEM FUND:
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<td>Interest</td>
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<td>Draw from Net Position</td>
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<td><strong>Total Automobile Parking System Fund</strong></td>
<td>$ 8,366,650</td>
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SEWAGE DISPOSAL FUND:
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<td>Charges for Services</td>
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<td>Interest</td>
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<td>Draw from Net Position</td>
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<td><strong>Total Sewage Disposal Fund</strong></td>
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WATER-SUPPLY SYSTEM RECEIVING FUND:
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<tr>
<td>Draw from Net Position</td>
<td>667,930</td>
</tr>
<tr>
<td><strong>Total Water-Supply System Fund</strong></td>
<td>$ 7,038,930</td>
</tr>
</tbody>
</table>
LINCOLN HILLS GOLF COURSE:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charges for Services</td>
<td>$716,400</td>
</tr>
<tr>
<td>Interest</td>
<td>$62,500</td>
</tr>
<tr>
<td>Other Revenue</td>
<td>$300</td>
</tr>
<tr>
<td><strong>Total Lincoln Hills Golf Course Fund</strong></td>
<td>$779,200</td>
</tr>
</tbody>
</table>

COMPUTER EQUIPMENT FUND:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charges for Services</td>
<td>$683,160</td>
</tr>
<tr>
<td>Interest</td>
<td>$11,200</td>
</tr>
<tr>
<td>Other Revenue</td>
<td>$3,000</td>
</tr>
<tr>
<td>Draw from Net Position</td>
<td>$486,560</td>
</tr>
<tr>
<td><strong>Total Computer Equipment Fund</strong></td>
<td>$1,183,920</td>
</tr>
</tbody>
</table>

AND, BE IT FURTHER RESOLVED, that the City Commission does hereby adopt on a budgetary center basis the following expenditures for 2020-2021:

GENERAL FUND:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Government</td>
<td>$6,652,960</td>
</tr>
<tr>
<td>Public Safety</td>
<td>$14,761,920</td>
</tr>
<tr>
<td>Community Development</td>
<td>$3,104,050</td>
</tr>
<tr>
<td>Engineering &amp; Public Services</td>
<td>$5,345,180</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>$8,413,550</td>
</tr>
<tr>
<td>Contribution to Fund Balance</td>
<td>$52,290</td>
</tr>
<tr>
<td><strong>Total General Fund</strong></td>
<td>$38,329,950</td>
</tr>
</tbody>
</table>

GREENWOOD CEMETERY PERPETUAL CARE FUND:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditures</td>
<td>$20,000</td>
</tr>
<tr>
<td>Contribution to Fund Balance</td>
<td>$62,000</td>
</tr>
<tr>
<td><strong>Total Greenwood Cemetery Perpetual Care Fund</strong></td>
<td>$82,000</td>
</tr>
</tbody>
</table>

MAJOR STREETS FUND:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance of Streets and Bridges</td>
<td>$453,400</td>
</tr>
<tr>
<td>Street Cleaning</td>
<td>$219,590</td>
</tr>
<tr>
<td>Street Trees</td>
<td>$269,110</td>
</tr>
<tr>
<td>Traffic Controls &amp; Engineering</td>
<td>$273,310</td>
</tr>
<tr>
<td>Snow and Ice Removal</td>
<td>$288,510</td>
</tr>
<tr>
<td>Administrative</td>
<td>$20,900</td>
</tr>
<tr>
<td>Capital Outlay-Engineering and Construction of Roads and Bridges</td>
<td>$1,715,430</td>
</tr>
<tr>
<td>Contribution to Fund Balance</td>
<td>$444,700</td>
</tr>
<tr>
<td><strong>Total Major Streets Fund</strong></td>
<td>$3,684,950</td>
</tr>
</tbody>
</table>
LOCAL STREETS FUND:
- Maintenance of Streets and Bridges $704,200
- Street Cleaning $253,330
- Street Trees $551,990
- Traffic Controls & Engineering $65,300
- Snow and Ice Removal $176,530
- Administrative $29,490
- Capital Outlay-Engineering and Construction of Roads and Bridges $1,262,430
- Contribution to Fund Balance $854,240
Total Local Streets Fund $3,897,510

SOLID WASTE DISPOSAL FUND:
- Personnel Services $190,050
- Supplies $28,000
- Other Charges $1,925,720
Total Solid Waste Disposal Fund $2,143,770

BROWNFIELD REDEVELOPMENT AUTHORITY FUND:
- Expenditures $307,300
- Contribution to Fund Balance $2,000
Total Brownfield Redevelopment Authority Fund $309,300

PRINCIPAL SHOPPING DISTRICT FUND:
- Expenditures $1,255,950
- Contribution to Fund Balance $27,720
Total Principal Shopping District Fund $1,283,670

COMMUNITY DEVELOPMENT BLOCK GRANT FUND:
- $36,100

TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY FUND:
- Contribution to Fund Balance $470

LAW AND DRUG ENFORCEMENT FUND:
- Expenditures $2,840
- Contribution to Fund Balance $23,460
Total Law and Drug Enforcement Fund $26,300

BALDWIN LIBRARY FUND:
- Expenditures $4,025,350
- Contribution to Fund Balance $681,410
Total Baldwin Public Library $4,706,760
DEBT SERVICE FUND:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$1,549,250</td>
</tr>
<tr>
<td>Contribution to Fund Balance</td>
<td>$ 5,500</td>
</tr>
<tr>
<td><strong>Total Debt Service Fund</strong></td>
<td><strong>$1,554,750</strong></td>
</tr>
</tbody>
</table>

CAPITAL PROJECTS FUND:

| Amount | $2,745,000 |

SPRINGDALE GOLF COURSE:

| Amount | $592,430 |

AUTOMOBILE PARKING SYSTEM FUND:

| Amount | $8,366,650 |

SEWAGE DISPOSAL SYSTEM FUND:

| Amount | $11,579,370 |

WATER-SUPPLY SYSTEM RECEIVING FUND:

| Amount | $7,038,930 |

LINDON HILLS GOLF COURSE:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenses</td>
<td>$ 724,700</td>
</tr>
<tr>
<td>Contribution to Net Position</td>
<td>$ 54,500</td>
</tr>
<tr>
<td><strong>Total Lincoln Hills Golf Course</strong></td>
<td><strong>$ 779,200</strong></td>
</tr>
</tbody>
</table>

COMPUTER EQUIPMENT FUND:

| Amount | $1,183,920 |

BE IT FURTHER RESOLVED that the budget summary above be approved as the 2020-2021 City Budget and that this resolution shall be known as the City of Birmingham 2020-2021 General Appropriations Act.

BE IT FURTHER RESOLVED that the City Commission does hereby designate $2,047,500 to be raised by 0.7803 mills levied on the taxable valuation of all real and personal property subject to taxation in the City for the purpose of the collection and removal of garbage and trash of the City as authorized by MCL 123.261, et. seq.
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to make budgetary transfers within the budgetary centers established through the adoption of this budget, and that all transfers between budgetary centers may be made only by further action of the City Commission pursuant to the provisions of the Michigan Uniform Accounting and Budgeting Act.

BE IT FURTHER RESOLVED that the 2020-2021 budget shall be automatically amended on July 1, 2020, to re-appropriate encumbrances outstanding and reserved at June 30, 2020.

BE IT FINALLY RESOLVED that the City Treasurer be authorized to add to all taxes paid after August 31, 2020, three-fourths of one percent (3/4 of 1%) penalty each and every month, or fraction thereof, that remains unpaid. On all taxes paid after February 16, 2021, and through March 1, 2021, there shall be added a late penalty charge equal to three percent (3%) of such tax.
DATE: May 29, 2020

TO: Joseph A. Valentine, City Manager

FROM: Mark Gerber, Finance Director/Treasurer

SUBJECT: Water/Sewer Rate Changes for 2020-2021

INTRODUCTION:
Every year the City Commission sets water and sewer rates for the new fiscal year based on the approved Water and Sewage Disposal Fund budgets.

BACKGROUND:
On June 6, 2020, the City Commission held a public hearing on the recommended budget for fiscal year 2020-2021. During this hearing, the City Commission reviewed the Water and Sewer Fund budgets proposed for 2020-2021 along with recommended changes to the water and sewer rates.

LEGAL REVIEW:
No legal review necessary.

FISCAL IMPACT:
Water Rates
Water rates for 2020-2021 are recommended to increase $.08 from $4.87 to $4.95/1,000 gallons of water used, or 1.6%. The increase would raise the annual cost to the average homeowner using 90 units of water by $7.20.

Sewer Rates
Sewer rates are recommended to increase $.39 from $7.82 to $8.21/1,000 gallons of water used, or 5.0%. The increase would raise the annual cost to the average homeowner using 90 units of water by $35.10.

Storm Water Rates
Storm water rates are recommended to increase $18 from $201 to $219 per ESWU for Evergreen-Farmington Sewage Disposal District and $6 from $251 to $257 per ESWU for Southeast Oakland Sewage Disposal District.

Industrial Surcharge and Industrial Waste Control Charge (IWC)
The charges for Industrial Surcharge and Industrial Waste Control Charge are determined by Great Lakes Water Authority (GLWA). These charges are collected by the City and remitted to GLWA. The City does not keep any of the money it collects for these fees. The Industrial Waste Control Charge is scheduled to increase approximately 2.1%. Currently, there is one Birmingham customer charged an Industrial Surcharge.
The new rates will take affect for all billings where the read date is on or after July 1, 2020.

Below are the recommended fee changes:

**FEES, CHARGES, BONDS AND INSURANCE AMENDMENT**

**DEPARTMENT OF PUBLIC SERVICE**

<table>
<thead>
<tr>
<th>Section</th>
<th>Existing Fee</th>
<th>Proposed Fee</th>
<th>Change Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Water</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional charge for water used:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For each 1,000 gallons or part thereof</td>
<td>$4.87</td>
<td>$4.95</td>
<td>B</td>
</tr>
</tbody>
</table>

**FINANCE**

<table>
<thead>
<tr>
<th>Section</th>
<th>Existing Fee</th>
<th>Proposed Fee</th>
<th>Change Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sewer Service Rates (Chapter 114)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For each 1,000 gallons or part thereof</td>
<td>$7.82</td>
<td>$8.21</td>
<td>B</td>
</tr>
</tbody>
</table>

**Storm Water Utility Fee (Chapter 114)**

*Evergreen-Farmington Sewage Disposal District*

For each Equivalent Storm Water Unit (ESWU)

<table>
<thead>
<tr>
<th></th>
<th>Existing Fee</th>
<th>Proposed Fee</th>
<th>Change Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly Fee</td>
<td>$50.25</td>
<td>$54.75</td>
<td>B</td>
</tr>
<tr>
<td>Monthly Fee</td>
<td>$16.75</td>
<td>$18.25</td>
<td>B</td>
</tr>
</tbody>
</table>

*Southeast Oakland County Sewage Disposal District*

For each Equivalent Storm Water Unit (ESWU)

<table>
<thead>
<tr>
<th></th>
<th>Existing Fee</th>
<th>Proposed Fee</th>
<th>Change Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly Fee</td>
<td>$62.75</td>
<td>$64.25</td>
<td>B</td>
</tr>
<tr>
<td>Monthly Fee</td>
<td>$20.92</td>
<td>$21.42</td>
<td>B</td>
</tr>
</tbody>
</table>

**Industrial Surcharge (Chapter 114)**

An industrial surcharge shall be levied against industrial and commercial customers contributing sewage to the system with concentrations of pollutants exceeding the levels described as follows:

Amounts of Industrial Surcharge - Total Charge per pound of excess pollutants

<table>
<thead>
<tr>
<th></th>
<th>Existing Fee</th>
<th>Proposed Fee</th>
<th>Change Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biochemical oxygen demand (BOD), over 275 mg/l</td>
<td>$0.491</td>
<td>$0.502</td>
<td>C</td>
</tr>
<tr>
<td>Total suspended solids (TSS), over 350 mg/l</td>
<td>$0.499</td>
<td>$0.510</td>
<td>C</td>
</tr>
<tr>
<td>Phosphorus (P), over 12 mg/l</td>
<td>$7.354</td>
<td>$7.519</td>
<td>C</td>
</tr>
<tr>
<td>Fats, oils, grease (FOG) over 100 mg/l</td>
<td>$0.473</td>
<td>$0.484</td>
<td>C</td>
</tr>
</tbody>
</table>
**Industrial Waste Control IWC (Chapter 114)**

An industrial waste control charge shall be levied against all non-residential properties, in accordance with rates established by resolution.

Meter Size - Quarterly Charge

<table>
<thead>
<tr>
<th>Meter Size</th>
<th>Quarterly Charge (A)</th>
<th>Quarterly Charge (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/8&quot;</td>
<td>$ 10.14</td>
<td>$ 10.35</td>
</tr>
<tr>
<td>3/4&quot;</td>
<td>$ 15.21</td>
<td>$ 15.54</td>
</tr>
<tr>
<td>1&quot;</td>
<td>$ 25.35</td>
<td>$ 25.89</td>
</tr>
<tr>
<td>1 1/2&quot;</td>
<td>$ 55.77</td>
<td>$ 56.94</td>
</tr>
<tr>
<td>2&quot;</td>
<td>$ 81.12</td>
<td>$ 82.80</td>
</tr>
<tr>
<td>3&quot;</td>
<td>$ 147.03</td>
<td>$ 150.09</td>
</tr>
<tr>
<td>4&quot;</td>
<td>$ 202.80</td>
<td>$ 207.00</td>
</tr>
<tr>
<td>6&quot;</td>
<td>$ 304.20</td>
<td>$ 310.50</td>
</tr>
<tr>
<td>8&quot;</td>
<td>$ 507.00</td>
<td>$ 517.50</td>
</tr>
<tr>
<td>10&quot;</td>
<td>$ 709.80</td>
<td>$ 724.50</td>
</tr>
<tr>
<td>12&quot;</td>
<td>$ 811.20</td>
<td>$ 828.00</td>
</tr>
<tr>
<td>14&quot;</td>
<td>$1,014.00</td>
<td>$1,035.00</td>
</tr>
<tr>
<td>16&quot;</td>
<td>$1,216.80</td>
<td>$1,242.00</td>
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<tr>
<td>18&quot;</td>
<td>$1,419.60</td>
<td>$1,449.00</td>
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<tr>
<td>20&quot;</td>
<td>$1,622.40</td>
<td>$1,656.00</td>
</tr>
<tr>
<td>24&quot;</td>
<td>$1,825.20</td>
<td>$1,863.00</td>
</tr>
<tr>
<td>30&quot;</td>
<td>$2,028.00</td>
<td>$2,070.00</td>
</tr>
<tr>
<td>36&quot;</td>
<td>$2,230.80</td>
<td>$2,277.00</td>
</tr>
<tr>
<td>48&quot;</td>
<td>$2,433.60</td>
<td>$2,484.00</td>
</tr>
</tbody>
</table>

**CHANGE CODES**

A. Fee has remained the same for many years
B. Proposed fee covers current costs
C. Pass through costs that reflects actual cost of service
D. Fee consistent with neighboring communities
E. New fee
F. Increase to cover normal inflationary increase
G. No longer provide this service
H. Other – Explain

**SUMMARY:**

It is recommended that the City Commission amend the Schedule of Fees, Charges, Bonds and Insurance, Sewer Service Sections, for changes in sewer, storm water, industrial surcharge, and industrial waste control charge rates effective for bills with read dates on or after July 1, 2020 as recommended above.

**ATTACHMENTS:**

None.
SUGGESTED RESOLUTION:
To amend the Schedule of Fees, Charges, Bonds and Insurance, Water and Sewer Service Sections, for changes in sewer, storm water, industrial surcharge, and industrial waste control charge rates effective for bills with read dates on or after July 1, 2020 as recommended in this report.
DATE: June 4, 2020
TO: Joseph A. Valentine, City Manager
FROM: Jana Ecker, Planning Director
SUBJECT: Updated Temporary COVID-19 Outdoor Dining Standards

INTRODUCTION:
As restaurants prepare for reopening at 50% capacity next week, the City is considering providing options to assist restaurants in providing additional outdoor dining space to allow indoor seats lost to be provided outdoors through October 31, 2020.

BACKGROUND:
On May 11, 2020, the City Commission adopted several resolutions to provide temporary assistance to business owners navigating the COVID-19 Pandemic and social distancing guidelines. The City approved the waiver of many fees, made changes to existing policies to assist businesses during the pandemic, and adopted temporary resolutions to allow for expanded outdoor dining and temporary uses outdoors through September 8, 2020.

At this time, the Governor has issued an updated Executive Order that allows restaurants to reopen on June 8, 2020 at 50% capacity to alleviate health concerns by allowing for social distancing. In addition, the Michigan Liquor Licensing Commission (“MLCC”) has also approved a new limited term outdoor service area program for establishments serving alcoholic beverages through October 31, 2020. The 2020 Limited Permanent Outdoor Service Permission Application allows restaurants to provide or expand outdoor seating areas temporarily to accommodate social distancing guidelines and assist businesses through the pandemic.

Accordingly, please find attached a draft resolution entitled Updated Temporary COVID-19 Outdoor Dining Standards for your review. This resolution is intended to replace the Temporary COVID-19 Outdoor Dining Standards Resolution approved on May 11, 2020 to provide updated outdoor dining guidelines in response to the adoption of the Governor’s Executive Order 2020-99, and the MLCC’s 2020 Limited Permanent Outdoor Service Permission program.

LEGAL REVIEW:
The City Attorney has reviewed the attached resolution.

FISCAL IMPACT:
Not applicable.

PUBLIC COMMUNICATIONS:
City staff has met with restauranteurs to discuss their concerns during the COVID Pandemic.
The City also sent out a survey to garner input from restaurants as to their needs during re-opening. Ongoing communication has continued on a daily basis.

SUMMARY:
City staff recommends that the City Commission adopt the Updated Temporary COVID-19 Outdoor Dining Standards Resolution.

ATTACHMENTS:
- Draft Updated Temporary COVID-19 Outdoor Dining Standards Resolution
- Survey results – City Survey
- Survey of Hazel Ravine Downtown Customers – Owner’s Survey

SUGGESTED ACTION:
To adopt Resolution #______, entitled Updated Temporary COVID-19 Outdoor Dining Standards, to take effect immediately;

AND

To rescind Resolution #_____, entitled Temporary COVID-19 Outdoor Dining Standards, as previously adopted by the City Commission on May 11, 2020.
RESOLUTION #
UPDATED TEMPORARY COVID-19 OUTDOOR DINING STANDARDS

WHEREAS the novel coronavirus (COVID-19) is a respiratory disease that is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person;


WHEREAS the City of Birmingham has activated their Emergency Operation Center to respond to the COVID-19 pandemic;

WHEREAS the City of Birmingham is committed to encouraging economic activity and assisting local businesses impacted by the COVID-19 pandemic to ease back into operation while containing the spread of COVID-19;

WHEREAS it is the intent of the City of Birmingham to assist establishments permitted to open to the public to expand into outdoor space to allow for the provision of the number of seats previously approved for their operation while also accommodating social distancing guidelines currently in force within the State of Michigan;

NOW THEREFORE BE IT RESOLVED, all food and drink establishments in existence as of the date of this resolution will be permitted to operate outdoor dining areas in accordance with the following Temporary COVID-19 standards through October 31, 2020:

1. Establishments may add new outdoor dining areas or expand previously approved outdoor dining areas in order to add additional seating to compensate for lost interior seating as a result of COVID-19 related restrictions to accommodate social distancing and/or to allow for phased reopening;
2. The number of seats to be removed from the interior of the restaurant due to health guidelines is the maximum number that each establishment shall be permitted to add outdoors in the public right-of-way on the sidewalk, in the on-street parking zone, in a via and / or on private property;
3. Outdoor dining areas must commence adjacent to the establishment in accordance with Michigan Liquor Control Commission standards, and may extend out in front of neighboring establishments, or on abutting private property (with consent of the owner), as space permits;
4. Outdoor dining areas permitted temporarily under this resolution may include the use of tents or other coverings for the entire period that this resolution remains in effect, so long as no side enclosures of any kind are in use;

5. If a food and drink establishment is unable to provide or expand outdoor dining into the public right-of-way on the sidewalk, in the on-street parking zone, in a via or on private property and / or is unable to meet requirements (1) through (4) above in these locations, the City may permit other options for outdoor dining on a case by case basis if unique or mitigating circumstances exist.

6. All establishments seeking temporary changes in accordance with this resolution must submit an Administrative Approval application to the Planning Division, and include the following documents;

   i) A plan view of the proposed outdoor dining area showing all fixtures and furnishings with all distances clearly marked for pedestrian paths and between seating;

   ii) Proof of insurance to include coverage of the existing outdoor dining area and the area proposed for expansion; and

   iii) A temporary license agreement, if located on public property.

BE IT FURTHER RESOLVED, that all existing and expanded outdoor dining areas on both public and private property are required to alter the design and layout of tables, chairs, fixtures and enclosure systems to meet social distancing guidelines in effect and contain the spread of COVID19 as follows:

1. Reconfigure the layout of the entire outdoor dining area, to the maximum extent practical, to provide a minimum 6’ clear pedestrian walking path adjacent to the dining area;

2. Reconfigure tables and chairs to allow seating for patrons only in accordance with social distancing guidelines in effect;

3. Remove all previously approved chairs and other seating that does not meet social distancing guidelines;

4. Install temporary signage to encourage compliance with social distancing guidelines;

5. Provide a temporary hand sanitizing station adjacent to the outdoor dining area;

6. Provide a temporary service station outdoors that includes a trash receptacle and disinfecting wipes or other supplies for the cleaning of tables and chairs between patrons and of high touch points in the outdoor dining area.

BE IT FURTHER RESOLVED, that the City of Birmingham will waive all application fees, license and rental fees for the expanded portion of the outdoor dining area permitted by this resolution, including the use of both on street and off street right-of-ways and City owned property.

BE IT FURTHER RESOLVED, Except as herein specifically provided, all ordinances of the City of Birmingham in effect at the time of the issuance of this resolution, and as they may be subsequently amended, shall remain in force. Failure to comply
with all Federal and State laws and regulations and the ordinances of the City may result in enforcement action and/or termination of an existing Special Land Use Permit.

I, Alexandria Bingham, City Clerk Designee, of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on ____________, 2020.

________________________________________________________________________
Alexandria Bingham, City Clerk Designee
Q1 Please specify your role in a food or drink establishment:

Answered: 14  Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant owner/operator</td>
<td>100.00%  14</td>
</tr>
<tr>
<td>Attorney</td>
<td>0.00%     0</td>
</tr>
<tr>
<td>Manager</td>
<td>0.00%     0</td>
</tr>
<tr>
<td>Other</td>
<td>0.00%     0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>14</td>
</tr>
</tbody>
</table>
Q2 Please indicate the location of your restaurant within Birmingham:

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downtown</td>
<td>92.86%</td>
</tr>
<tr>
<td>Triangle District</td>
<td>0.00%</td>
</tr>
<tr>
<td>Rail District</td>
<td>7.14%</td>
</tr>
<tr>
<td>Other</td>
<td>0.00%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q3 What is the name of the establishment you represent?

Answered: 14    Skipped: 0

<table>
<thead>
<tr>
<th>#</th>
<th>RESPONSES</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tallulah Wine Bar &amp; Bistro</td>
<td>6/3/2020 12:04 AM</td>
</tr>
<tr>
<td>2</td>
<td>Adachi</td>
<td>6/2/2020 4:32 PM</td>
</tr>
<tr>
<td>3</td>
<td>Bella Piatti</td>
<td>6/1/2020 3:00 PM</td>
</tr>
<tr>
<td>4</td>
<td>Phoenicia</td>
<td>6/1/2020 1:52 PM</td>
</tr>
<tr>
<td>5</td>
<td>Streetside Seafood</td>
<td>5/31/2020 3:26 PM</td>
</tr>
<tr>
<td>6</td>
<td>Hunter House Hamburgers</td>
<td>5/30/2020 6:22 PM</td>
</tr>
<tr>
<td>7</td>
<td>GRIFFIN CLAW</td>
<td>5/29/2020 2:39 PM</td>
</tr>
<tr>
<td>8</td>
<td>Elie's Mediterranean grill/Bar</td>
<td>5/28/2020 7:04 PM</td>
</tr>
<tr>
<td>9</td>
<td>220</td>
<td>5/28/2020 4:33 PM</td>
</tr>
<tr>
<td>10</td>
<td>Social</td>
<td>5/28/2020 9:18 AM</td>
</tr>
<tr>
<td>11</td>
<td>Rugby Grille Restaurant</td>
<td>5/28/2020 8:35 AM</td>
</tr>
<tr>
<td>12</td>
<td>Townhouse</td>
<td>5/27/2020 5:39 PM</td>
</tr>
<tr>
<td>13</td>
<td>Pernoi</td>
<td>5/27/2020 5:28 PM</td>
</tr>
<tr>
<td>14</td>
<td>Brooklyn pizza</td>
<td>5/27/2020 5:11 PM</td>
</tr>
</tbody>
</table>
Q4 During the COVID-19 pandemic, has your establishment been offering food for carryout or delivery?

Answered: 14   Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>78.57%</td>
</tr>
<tr>
<td>No</td>
<td>21.43%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q5 Should food and drink establishments be authorized to resume in-person dining operations at a reduced capacity, do you intend to open during this period?

Answered: 14  Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>100.00%</td>
</tr>
<tr>
<td>No</td>
<td>0.00%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q6 If yes, what is the anticipated timeframe needed to reconfigure your interior operations to accommodate new guidelines and open for business:

Answered: 14  Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 1 week</td>
<td>71.43%</td>
</tr>
<tr>
<td>&lt; 2 weeks</td>
<td>21.43%</td>
</tr>
<tr>
<td>&lt; 3 weeks</td>
<td>7.14%</td>
</tr>
<tr>
<td>4 weeks +</td>
<td>0.00%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q7 Do you currently have a sufficient amount of the required cleaning products and personal protection equipment to operate if in person dining was authorized this week?

Answered: 14   Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>78.57%</td>
</tr>
<tr>
<td>No</td>
<td>21.43%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q8 Do you currently have sufficient staffing levels to operate if in person dining was authorized this week?

Answered: 13   Skipped: 1

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>61.54%</td>
</tr>
<tr>
<td>No</td>
<td>38.46%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q9 Are you currently considering options to add an outdoor host stand, waiting area or pick up zone to accommodate social distancing regulations and / or anticipated reduced indoor capacity?

Answered: 14    Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>100.00%</td>
</tr>
<tr>
<td>No</td>
<td>0.00%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q10 With the new ability to utilize additional public space adjacent your property, are you currently considering options to create or expand outdoor dining options to accommodate social distancing regulations and/or anticipated reduced indoor capacity?

Answered: 14  Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>100.00%</td>
</tr>
<tr>
<td>No</td>
<td>0.00%</td>
</tr>
</tbody>
</table>

TOTAL 14
Q11 If yes, how many NEW outdoor dining seats would you like to add to the area adjacent to your establishment:

Answered: 13   Skipped: 1

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;10</td>
<td>2</td>
</tr>
<tr>
<td>11 - 20</td>
<td>3</td>
</tr>
<tr>
<td>21 - 30</td>
<td>3</td>
</tr>
<tr>
<td>31 - 40</td>
<td>2</td>
</tr>
<tr>
<td>40 +</td>
<td>3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>13</td>
</tr>
</tbody>
</table>
Q12 If yes and you plan to expand outdoor operations and / or outdoor dining adjacent to your establishment, what is your anticipated budget, including furnishings, fixtures, barriers, coverings etc:

Answered: 14   Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $1000</td>
<td>14.29%</td>
</tr>
<tr>
<td>&lt; $2500</td>
<td>14.29%</td>
</tr>
<tr>
<td>&lt; $5000</td>
<td>14.29%</td>
</tr>
<tr>
<td>&lt; $10,000</td>
<td>21.43%</td>
</tr>
<tr>
<td>$10,000 +</td>
<td>21.43%</td>
</tr>
<tr>
<td>Unknown</td>
<td>14.29%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q13 If you plan to expand outdoor operations and / or outdoor dining adjacent to your establishment, what is the anticipated timeframe needed to purchase, construct and / or set up outdoor operations:

Answered: 14   Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 1 week</td>
<td>50.00%</td>
</tr>
<tr>
<td>&lt; 2 weeks</td>
<td>28.57%</td>
</tr>
<tr>
<td>&lt; 3 weeks</td>
<td>0.00%</td>
</tr>
<tr>
<td>4 weeks +</td>
<td>7.14%</td>
</tr>
<tr>
<td>Unknown</td>
<td>14.29%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q14 If the City were to create a “Social District” in a public park or other open space, would you be interested in participating by setting up a temporary booth / stand to sell food and / or beverages for the summer in such location?

Answered: 14  Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>57.14%</td>
</tr>
<tr>
<td>No</td>
<td>42.86%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Q15 If you answered yes, and you were able to set up a temporary booth / stand in a “Social District”, how much space would you need to accommodate food preparation and sales to the public:?

Answered: 9    Skipped: 5

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>10' by 10' space</td>
<td>22.22%</td>
</tr>
<tr>
<td>20' by 20' space</td>
<td>44.44%</td>
</tr>
<tr>
<td>10' by 30' space</td>
<td>11.11%</td>
</tr>
<tr>
<td>Other</td>
<td>22.22%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>9</td>
</tr>
</tbody>
</table>
Q16 If you answered yes to opening in a “Social District”, and you were to set up a temporary booth / stand in a “Social District”, would you plan to sell food with or without alcoholic beverages?

Answered: 8    Skipped: 6

**ANSWER CHOICES** | **RESPONSES**
---|---
Sell food and / or non-alcoholic beverages only | 12.50% 1
Sell food and alcoholic beverages | 87.50% 7
TOTAL | 8
Q17 Please rank each with 1 being your top choice and 5 being your least desired. If permitted, which of the following options would be your preferred option to adding outdoor operations and / or outdoor dining for your establishment:

Answered: 14  Skipped: 0

<table>
<thead>
<tr>
<th>Option</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>TOTAL</th>
<th>SCORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>On the sidewalk and / or bumpout adjoining your establishment</td>
<td>33.33%</td>
<td>8.33%</td>
<td>25.00%</td>
<td>25.00%</td>
<td>8.33%</td>
<td>12</td>
<td>3.33</td>
</tr>
<tr>
<td>In the on-street parking space(s) near your establishment</td>
<td>18.18%</td>
<td>36.36%</td>
<td>9.09%</td>
<td>27.27%</td>
<td>9.09%</td>
<td>11</td>
<td>3.27</td>
</tr>
<tr>
<td>In off-street parking space(s) adjacent to your establishment</td>
<td>27.27%</td>
<td>36.36%</td>
<td>9.09%</td>
<td>18.18%</td>
<td>9.09%</td>
<td>11</td>
<td>3.55</td>
</tr>
<tr>
<td>Into the street if temporarily closed to vehicular traffic for the summer</td>
<td>35.71%</td>
<td>14.29%</td>
<td>28.57%</td>
<td>14.29%</td>
<td>7.14%</td>
<td>14</td>
<td>3.57</td>
</tr>
<tr>
<td>In a “Social District” established for the summer</td>
<td>0.00%</td>
<td>14.29%</td>
<td>14.29%</td>
<td>7.14%</td>
<td>64.29%</td>
<td>14</td>
<td>1.79</td>
</tr>
</tbody>
</table>
Q18 If you have any comments or questions for the City to assist food and drink establishments during this difficult time, please feel free to share them here:

Answered: 7   Skipped: 7

<table>
<thead>
<tr>
<th>#</th>
<th>RESPONSES</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I would love the city assist with masks, gloves, hand sanitizers and etc.</td>
<td>6/3/2020 12:04 AM</td>
</tr>
<tr>
<td>2</td>
<td>The anticipated start of demo/construction of the Varsity Shop makes these questions very difficult to answer. We really need to see the conditions once they start. If Pierce is closed, shall I assume the southbound lane will be kept open for emergency vehicles?</td>
<td>5/31/2020 3:26 PM</td>
</tr>
<tr>
<td>3</td>
<td>If participating in the Social District, we would be interested in bringing our food truck, but not a stand or booth.</td>
<td>5/30/2020 6:22 PM</td>
</tr>
<tr>
<td>4</td>
<td>Thanks for working so hard to make this a workable Situation</td>
<td>5/28/2020 4:33 PM</td>
</tr>
<tr>
<td>5</td>
<td>Please approve Social's dining space on the sidewalk directly east of our space.</td>
<td>5/28/2020 9:18 AM</td>
</tr>
<tr>
<td>6</td>
<td>If the governor does not allow us to be at least 50% open, there is a question whether financially we will open or to continue on with only Togo orders.</td>
<td>5/28/2020 8:35 AM</td>
</tr>
<tr>
<td>7</td>
<td>Thank you for conducting this survey</td>
<td>5/27/2020 5:39 PM</td>
</tr>
</tbody>
</table>
Q1 Are you likely to go to a restaurant as soon the law allows?

Answered: 807  Skipped: 1

**Answer Choices**

<table>
<thead>
<tr>
<th>Answer Choices</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>I will not be going to a restaurant anytime soon.</td>
<td>18.34%</td>
</tr>
<tr>
<td>I will wait a few weeks before going out to a restaurant.</td>
<td>26.39%</td>
</tr>
<tr>
<td>I'm on the fence.</td>
<td>13.51%</td>
</tr>
<tr>
<td>I will be cautious about where I go, but I can't wait to eat out.</td>
<td>31.72%</td>
</tr>
<tr>
<td>Yes, I plan to race out as soon as I can.</td>
<td>14.13%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>2.35%</td>
</tr>
</tbody>
</table>

Total Respondents: 807
<table>
<thead>
<tr>
<th>#</th>
<th>OTHER (PLEASE SPECIFY)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Will wait at least 3 weeks most likely.</td>
<td>6/3/2020 7:16 PM</td>
</tr>
<tr>
<td>2</td>
<td>Outside yes</td>
<td>6/3/2020 7:05 PM</td>
</tr>
<tr>
<td>3</td>
<td>I will go to a restaurant outdoors</td>
<td>6/3/2020 5:58 PM</td>
</tr>
<tr>
<td>4</td>
<td>I’ll be eating at restaurants that have outdoor seating ASAP</td>
<td>6/3/2020 5:35 PM</td>
</tr>
<tr>
<td>5</td>
<td>Not quite sure, the situation is ever changing. I think outdoor dining, away from other customers, with the server wearing mask might work. Although, I’m assuming I will have to use a bathroom during the visit which makes it tough.</td>
<td>6/3/2020 5:21 PM</td>
</tr>
<tr>
<td>6</td>
<td>I am partial to outdoor seating</td>
<td>6/3/2020 4:58 PM</td>
</tr>
<tr>
<td>7</td>
<td>I will go to establishments that don’t implement crazy restrictions</td>
<td>6/3/2020 4:37 PM</td>
</tr>
<tr>
<td>8</td>
<td>Want to see how things go after a few weeks of opening</td>
<td>6/3/2020 4:27 PM</td>
</tr>
<tr>
<td>9</td>
<td>Prefer outdoor seating</td>
<td>6/3/2020 4:23 PM</td>
</tr>
<tr>
<td>10</td>
<td>I’ll continue with curbside for awhile.</td>
<td>6/3/2020 4:20 PM</td>
</tr>
<tr>
<td>11</td>
<td>I would eat outside if tables were far enough apart and serving staff had masks on. I will continued to do curbside as well.</td>
<td>6/3/2020 4:12 PM</td>
</tr>
<tr>
<td>12</td>
<td>On the fence for indoor dining. Ready for outdoor yesterday</td>
<td>6/3/2020 4:01 PM</td>
</tr>
<tr>
<td>13</td>
<td>My family has a new baby and this is why we will not be dining in anytime soon.</td>
<td>6/3/2020 3:59 PM</td>
</tr>
<tr>
<td>14</td>
<td>I’ll eat outside if restaurants offer it</td>
<td>6/3/2020 3:50 PM</td>
</tr>
<tr>
<td>15</td>
<td>Outside dining first, and then indoor dining based on what the individual restaurant is doing to maintain social distancing and requirements of masks</td>
<td>6/3/2020 3:36 PM</td>
</tr>
<tr>
<td>16</td>
<td>Yes, but looking for outdoor seating will be a priority</td>
<td>6/3/2020 3:33 PM</td>
</tr>
<tr>
<td>17</td>
<td>Likely will order take out from restaurants instead of dining in</td>
<td>6/3/2020 3:24 PM</td>
</tr>
<tr>
<td>18</td>
<td>i would probably eat on a patio</td>
<td>6/3/2020 3:21 PM</td>
</tr>
<tr>
<td>19</td>
<td>I will only eat fast food</td>
<td>6/3/2020 7:21 AM</td>
</tr>
</tbody>
</table>
Q3 Are you anticipating that some of your favorite restaurants may have to change their menu and/or their style of service?

Answered: 806  Skipped: 2

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, I would expect changes</td>
<td>87.10%</td>
</tr>
<tr>
<td>I am indifferent.</td>
<td>5.71%</td>
</tr>
<tr>
<td>No, I am hoping to be able to return to the restaurant exactly as it was before Covid-19.</td>
<td>5.71%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>1.49%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
<tr>
<td>#</td>
<td>OTHER (PLEASE SPECIFY)</td>
</tr>
<tr>
<td>----</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>I hope key menu items are still available</td>
</tr>
<tr>
<td>2</td>
<td>I think it depends on the restaurant.</td>
</tr>
<tr>
<td>3</td>
<td>I know there will be changes, but wish things would just be normal!</td>
</tr>
<tr>
<td>4</td>
<td>Based on supply chain challenges and food costs changing adopting a different menu is understandable. Consider coming out with “new” items based on the supply chain that is available.</td>
</tr>
<tr>
<td>5</td>
<td>I would like to see us go back to the way things were but understand things may need to change</td>
</tr>
<tr>
<td>6</td>
<td>I am assuming waitresses/bartenders will wear face masks, that makes me uncomfortable, I hoping that changes soon! Moving tables further apart is fine! Obviously not something you can co from given restrictions.</td>
</tr>
<tr>
<td>7</td>
<td>Style of service, most definitely. If some favorite menu items are dropped, I'll be sad</td>
</tr>
<tr>
<td>8</td>
<td>Menu no , service a bit</td>
</tr>
<tr>
<td>9</td>
<td>Hopeful for a full menu but understand if not available to accommodate at first</td>
</tr>
<tr>
<td>10</td>
<td>I would hope the menu is largely the same but of course the style and manner of service will change- thats a given. Not sure if combining those two aspects is a good idea for this survey.</td>
</tr>
<tr>
<td>11</td>
<td>I believe they will modify some, but hopefully not the product!</td>
</tr>
<tr>
<td>12</td>
<td>I hope the menu is similar as before</td>
</tr>
</tbody>
</table>
Q4 If you were able to go to your favorite restaurant, would you appreciate it if you had the option to eliminate contact with a server or bartender?

Answered: 805  Skipped: 3

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, I want to have as little person-to-person contact as possible.</td>
<td>15.65%</td>
</tr>
<tr>
<td>I am okay with minimal contact as long as I feel they are observing appropriate protocol.</td>
<td>66.71%</td>
</tr>
<tr>
<td>No, I want a normal restaurant experience and I am not overly concerned about having contact.</td>
<td>15.78%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>1.86%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
<tr>
<td>#</td>
<td>OTHER (PLEASE SPECIFY)</td>
</tr>
<tr>
<td>----</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>I recognize &quot;normal&quot; may not be what we think; but I am not overly concerned about contact... I'm sort of in-between #2 and #3</td>
</tr>
<tr>
<td>2</td>
<td>I enjoy the restaurant experience but want to make sure the staff is following all correct protocol</td>
</tr>
<tr>
<td>3</td>
<td>They should have a mask on</td>
</tr>
<tr>
<td>4</td>
<td>I would be more likely to go somewhere that was trying to employ and provide for staff</td>
</tr>
<tr>
<td>5</td>
<td>I'm ok with contact if protocols followed. I like having no contact at least until this clears more. I really don't want servers to still not interact and lose their livelihood.</td>
</tr>
<tr>
<td>6</td>
<td>Servers wearing a mask, disposable menus or menu on my own phone.</td>
</tr>
<tr>
<td>7</td>
<td>WOULD LIKE NORMAL CONTACT BUT IF NOT IT IS OK</td>
</tr>
<tr>
<td>8</td>
<td>I am in between the minimal contact and the normal restaurant experience. Servers and staff should be observing appropriate protocol but I want as close to a normal restaurant experience as possible.</td>
</tr>
<tr>
<td>9</td>
<td>I love the in person contact with servers and bartenders but with this going on that is not feasible.</td>
</tr>
<tr>
<td>10</td>
<td>I'm okay with minimal contact as long as we all are following protocol, not just the servers but diners as well</td>
</tr>
<tr>
<td>11</td>
<td>I am happy with whatever makes the restaurant and staff comfortable. I'm not overly concerned about having contact, but if the team is, do what is right for them</td>
</tr>
<tr>
<td>12</td>
<td>I am okay with contact and would not want to see person-to-person contact eliminated. That is part of the dining experience.</td>
</tr>
<tr>
<td>13</td>
<td>If no/minimal contact is an option, provided it works effectively (i order a drink and get in a reasonable amount of time) I think it could be great, but it may also detract from the overall experience, suppose im undecided.</td>
</tr>
<tr>
<td>14</td>
<td>I want a server but want to ensure that they appear to be following proper protocols.</td>
</tr>
<tr>
<td>15</td>
<td>I am fine with contact, just not up close. -BH</td>
</tr>
</tbody>
</table>
Q5 When restaurants are allowed to re-open, are you likely to continue to order curbside carry out?

Answered: 807   Skipped: 1

**ANSWER CHOICES**

<table>
<thead>
<tr>
<th>Response</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very likely, I will continue to only order carry out.</td>
<td>22.80%</td>
</tr>
<tr>
<td>Likely, I will use carry out, but would also dine in at times.</td>
<td>50.56%</td>
</tr>
<tr>
<td>Neither likely nor unlikely.</td>
<td>8.30%</td>
</tr>
<tr>
<td>Unlikely, I don’t enjoy carry out, but I have ordered because it has been my only option.</td>
<td>16.36%</td>
</tr>
<tr>
<td>Very unlikely, I have not ordered carry out and I don’t think I will anytime soon.</td>
<td>3.72%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>1.24%</td>
</tr>
</tbody>
</table>

*Total Respondents: 807*
<table>
<thead>
<tr>
<th>#</th>
<th>OTHER (PLEASE SPECIFY)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Will go to restaurants and occasionally order curb side carry out</td>
<td>6/3/2020 4:50 PM</td>
</tr>
<tr>
<td>2</td>
<td>Have not ordered carry out, but have seriously considered getting it now that the restrictions are being eased.</td>
<td>6/3/2020 4:37 PM</td>
</tr>
<tr>
<td>3</td>
<td>Preferably curbside</td>
<td>6/3/2020 4:26 PM</td>
</tr>
<tr>
<td>4</td>
<td>I ordered take out only because that was only option. We never liked it</td>
<td>6/3/2020 4:12 PM</td>
</tr>
<tr>
<td>5</td>
<td>we have not done curbside</td>
<td>6/3/2020 3:57 PM</td>
</tr>
<tr>
<td>6</td>
<td>Carry out and outdoor dining</td>
<td>6/3/2020 3:50 PM</td>
</tr>
<tr>
<td>7</td>
<td>I prefer dine-in but will continue to use carry out on occasion.</td>
<td>6/3/2020 3:33 PM</td>
</tr>
<tr>
<td>8</td>
<td>Carry out until I feel dining in is safe</td>
<td>6/3/2020 3:31 PM</td>
</tr>
<tr>
<td>9</td>
<td>You've done a fab job on your carry-out and would love to continue that.</td>
<td>6/3/2020 3:28 PM</td>
</tr>
<tr>
<td>10</td>
<td>In</td>
<td>6/3/2020 3:24 PM</td>
</tr>
</tbody>
</table>
Q6 If you do come to dine with us, what would be your seating preference?

Answered: 802   Skipped: 6

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>I enjoy sitting at the bar, and I will feel comfortable sitting there when you re-open.</td>
<td>11.72%</td>
</tr>
<tr>
<td>I enjoy sitting at the bar, but I think I will feel more comfortable at a table for the time being.</td>
<td>19.08%</td>
</tr>
<tr>
<td>I do not typically sit at the bar, but I'm indifferent about where I sit.</td>
<td>16.33%</td>
</tr>
<tr>
<td>I will want to sit at a table as far away from any other guests as possible.</td>
<td>45.14%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>7.73%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
<tr>
<td>#</td>
<td>OTHER (PLEASE SPECIFY)</td>
</tr>
<tr>
<td>-----</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Table</td>
</tr>
<tr>
<td>2</td>
<td>Outdoors</td>
</tr>
<tr>
<td>3</td>
<td>Tables but with separation.</td>
</tr>
<tr>
<td>4</td>
<td>Outside seating</td>
</tr>
<tr>
<td>5</td>
<td>I liked the high tops in the back area.</td>
</tr>
<tr>
<td>6</td>
<td>outside</td>
</tr>
<tr>
<td>7</td>
<td>Either is fine.</td>
</tr>
<tr>
<td>8</td>
<td>I would hope the tables are spaced out appropriately</td>
</tr>
<tr>
<td>9</td>
<td>We typically like the high tops that provide some room and privacy.</td>
</tr>
<tr>
<td>10</td>
<td>I will only sit outside. No patio no dine in</td>
</tr>
<tr>
<td>11</td>
<td>I can sit anywhere so long as social distancing is incorporated in the layout</td>
</tr>
<tr>
<td>12</td>
<td>We usually sit at a table and prefer to be not too close to our neighbors</td>
</tr>
<tr>
<td>13</td>
<td>Outdoors for now</td>
</tr>
<tr>
<td>14</td>
<td>Outdoor seating</td>
</tr>
<tr>
<td>15</td>
<td>I’ll sit wherever</td>
</tr>
<tr>
<td>16</td>
<td>Outside</td>
</tr>
<tr>
<td>17</td>
<td>I will sit at a table with appropriate social distancing.</td>
</tr>
<tr>
<td>18</td>
<td>We have kids! And if I go out with my hubby we will not sit at the bar because of covid</td>
</tr>
<tr>
<td>19</td>
<td>I usually sit at tables anyway, not as much the bar!</td>
</tr>
<tr>
<td>20</td>
<td>just maintain the 6’ distancing.</td>
</tr>
<tr>
<td>21</td>
<td>Was</td>
</tr>
<tr>
<td>22</td>
<td>Outdoor</td>
</tr>
<tr>
<td>23</td>
<td>outside</td>
</tr>
<tr>
<td>24</td>
<td>Love sitting at the bar with no concern about contact... as well as enjoy a table on occasion and not worried about who’s sitting near me.</td>
</tr>
<tr>
<td>25</td>
<td>I like the bar but would want some space between other guests.</td>
</tr>
<tr>
<td>26</td>
<td>I prefer a table but have sat at the bar if more expedient</td>
</tr>
<tr>
<td>27</td>
<td>Depends on crowd size and precautions in place</td>
</tr>
<tr>
<td>28</td>
<td>In the beginning until I see how this go. Love the bar though</td>
</tr>
<tr>
<td>29</td>
<td>I will want to sit at a table, at an appropriate distance from other guests.</td>
</tr>
<tr>
<td>30</td>
<td>Outside</td>
</tr>
<tr>
<td>31</td>
<td>Sit as far away from other guests as possible and also would like to be able to sit outside away from other guests</td>
</tr>
<tr>
<td>32</td>
<td>Tables are fine too</td>
</tr>
<tr>
<td>33</td>
<td>Outdoor seating</td>
</tr>
<tr>
<td>34</td>
<td>Sit at a table observing protocol 6 ft.</td>
</tr>
<tr>
<td>35</td>
<td>outdoor</td>
</tr>
<tr>
<td>36</td>
<td>Table or bar is fine, with social distancing followed</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>37</td>
<td>Bar or table</td>
</tr>
<tr>
<td>38</td>
<td>I will want to sit at a table as usually I am with friends or family</td>
</tr>
<tr>
<td>39</td>
<td>Hhh</td>
</tr>
<tr>
<td>40</td>
<td>Anwwhere is good - outdoor is just awesome weather permitting.</td>
</tr>
<tr>
<td>41</td>
<td>Happy to sit at the bar or a table, don't really have any concerns</td>
</tr>
<tr>
<td>42</td>
<td>Outside of offered</td>
</tr>
<tr>
<td>43</td>
<td>I would prefer outdoor seating, socially distanced if possible.</td>
</tr>
<tr>
<td>44</td>
<td>Outside if possible</td>
</tr>
<tr>
<td>45</td>
<td>Bar or table</td>
</tr>
<tr>
<td>46</td>
<td>J</td>
</tr>
<tr>
<td>47</td>
<td>I enjoy sitting at the bar however I would be comfortable sitting wherever suggested based on new protocols.</td>
</tr>
<tr>
<td>48</td>
<td>Booth</td>
</tr>
<tr>
<td>49</td>
<td>outside seating</td>
</tr>
<tr>
<td>50</td>
<td>I will sit anywhere as long as their is appropriate distance between myself and other guests whether that is at the bar or not</td>
</tr>
<tr>
<td>51</td>
<td>Outside</td>
</tr>
<tr>
<td>52</td>
<td>I like sitting at the bar but seems like there needs to be a little spacing between groups.</td>
</tr>
<tr>
<td>53</td>
<td>No change</td>
</tr>
<tr>
<td>54</td>
<td>as long as tables and bar seats are spaced out appropriately, I will feel comfortable.</td>
</tr>
<tr>
<td>55</td>
<td>I love sitting at a bar, but only if social distancing is strictly enforced...I don't want anyone walking up next to me to order a drink and chairs should be 6 feet apart. I feel it's the restaurant's responsibility to enforce this.</td>
</tr>
<tr>
<td>56</td>
<td>Bar seating or table seating is fine- just as long as there is a little more separate between the people.</td>
</tr>
<tr>
<td>57</td>
<td>I like the bar, but would be cautious that i had my own area for me and my friends/family</td>
</tr>
<tr>
<td>58</td>
<td>high top tables - i believe table 12 :)</td>
</tr>
<tr>
<td>59</td>
<td>I can't answer this as I'm confident we won't be dining out any time soon.</td>
</tr>
<tr>
<td>60</td>
<td>I personally love the bar, but now have kids. So table for us, and realistically a little space would be appreciated.</td>
</tr>
<tr>
<td>61</td>
<td>Outdoors if possible for better ventilation</td>
</tr>
<tr>
<td>62</td>
<td>table</td>
</tr>
</tbody>
</table>
Q7 If you do go out, are you likely to stay close to home?

Answered: 803  Skipped: 5

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, I will stay as close to home as possible.</td>
<td>22.67% 182</td>
</tr>
<tr>
<td>I am indifferent.</td>
<td>27.90% 224</td>
</tr>
<tr>
<td>No, I will venture out to whatever place suits me, regardless of it's location.</td>
<td>49.56% 398</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>1.12% 9</td>
</tr>
</tbody>
</table>

Total Respondents: 803

<table>
<thead>
<tr>
<th>#</th>
<th>OTHER (PLEASE SPECIFY)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Don’t know</td>
<td>6/3/2020 11:45 PM</td>
</tr>
<tr>
<td>2</td>
<td>Tend to go to my local neighborhood restaurants in B’ham</td>
<td>6/3/2020 8:40 PM</td>
</tr>
<tr>
<td>3</td>
<td>Only for the sake of not feeling safe in an Uber/Lyft. I will Want to be in my own car</td>
<td>6/3/2020 6:20 PM</td>
</tr>
<tr>
<td>4</td>
<td>Far away from riots!!!!!</td>
<td>6/3/2020 4:51 PM</td>
</tr>
<tr>
<td>5</td>
<td>I will go out to areas based on cdc case data by county/city</td>
<td>6/3/2020 4:46 PM</td>
</tr>
<tr>
<td>6</td>
<td>I’m less concerned with distance from home and more concerned with places observing mindful protocol.</td>
<td>6/3/2020 3:44 PM</td>
</tr>
<tr>
<td>7</td>
<td>Not dining in at a restaurant anytime soon.</td>
<td>6/3/2020 3:28 PM</td>
</tr>
<tr>
<td>8</td>
<td>Same answer as above</td>
<td>6/3/2020 3:26 PM</td>
</tr>
<tr>
<td>9</td>
<td>If I do go out it will be to wherever I want regardless of location</td>
<td>6/3/2020 3:21 PM</td>
</tr>
</tbody>
</table>
NOTICE OF INTENTION TO APPOINT TO RETIREMENT BOARD

At the regular meeting of Monday, June 8, 2020, the Birmingham City Commission intends to appoint one member to serve a three-year term to expire July 1, 2023.

The retirement board shall consist of seven voting trustees as follows:

1. The mayor.
2. A city commissioner to be selected by the city commission and to serve at the pleasure of the city commission.
3. The city manager.
4. A citizen, who is an elector of the city, and who is not eligible to participate in the retirement system as a member or retired member, to be appointed by the mayor by and with the consent of the city commission.
5. A police member to be elected by the police members.
6. A fire member to be elected by the fire members.
7. A general member to be elected by the general members.

In addition, there shall be one nonvoting ex officio retired member/beneficiary member to be elected by the retired members and beneficiaries currently receiving benefits from the system.

RETIREMENT BOARD DUTIES

The retirement board consists of seven members who serve three-year terms without compensation. The retirement board shall hold meetings regularly, at least one in each quarter year. The retirement board shall have the power to administer, manage, and properly operate the retirement system, and to make effective the applicable provisions of the City Code.

Interested citizens may submit an application available at the city clerk’s office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk’s office on or before noon on Wednesday, June 8, 2020. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

<table>
<thead>
<tr>
<th>Criteria/ Qualifications of Open Position</th>
<th>Date Applications Due (by noon)</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elector of the city who is not eligible to participate in the retirement system as a member or retired member.</td>
<td>7/8/2020</td>
<td>7/13/2020</td>
</tr>
</tbody>
</table>

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.
NOTICE OF INTENTION TO APPOINT TO THE MUSEUM BOARD

At the regular meeting of Monday, July 13, 2020, the Birmingham City Commission intends to appoint three regular members to the Museum Board to serve three-year terms to expire July 5, 2023, and a regular member to serve the remainder of a three-year term to expire July 5, 2022.

Interested parties may submit an application available at the City Clerk's office on or before noon on Wednesday, July 8, 2020. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Board Duties
The Museum Board is charged with collecting, arranging, cataloguing and preserving historical material. The Board may locate and erect plaques or markers at historic sites, buildings or properties in the City of Birmingham with the consent of the owner or owners of any such property and subject to the approval of the City Commission with respect to properties that, in the opinion of the Board, have historic significance. Further, the Board shall have the power to develop, operate and maintain the Allen House as a museum and to exercise authority, control and management over the Hunter House and John West Hunter Memorial Park.

<table>
<thead>
<tr>
<th>Criteria/Qualifications of Open Position</th>
<th>Date Applications Due (by noon)</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shall be qualified electors of the City.</td>
<td>07/08/2020</td>
<td>07/13/2020</td>
</tr>
</tbody>
</table>

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.
NOTICE OF INTENTION TO APPOINT TO THE GREENWOOD CEMETERY ADVISORY BOARD

At the regular meeting of Monday, July 13, 2020 the Birmingham City Commission intends to appoint two regular members to the Greenwood Cemetery Advisory Board to serve three-year terms to expire July 6, 2023.

Members must be chosen from among the citizens of Birmingham and, insofar as possible, represent diverse interests, such as persons with family members interred in Greenwood Cemetery; owners of burial sites within Greenwood Cemetery intending to be interred in Greenwood Cemetery; persons familiar with and interested in the history of Birmingham; persons with familiarity and experience in landscape architecture, horticulture, law or cemetery or funeral professionals.

Interested citizens may submit a form available at the City Clerk's Office on or before noon on Wednesday, July 3, 2019. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

**Committee Duties**

In general, it shall be the duty of the Greenwood Cemetery Advisory Board to provide recommendations to the City Commission on:

1. Modifications. As to modifications of the rules and regulations governing Greenwood Cemetery.
2. Capital Improvements. As to what capital improvements should be made to the cemetery. Future Demands. As to how to respond to future demands for cemetery services.
3. Day to Day Administration. The day to day administration of the cemetery shall be under the direction and control of the City, through the City Manager or his/her designee.
4. Reports. The Greenwood Cemetery Advisory Board shall make and submit to the City Commission an annual report of the general activities, operation, and condition of the Greenwood Cemetery for the preceding 12 months. The Greenwood Cemetery Advisory Board shall, from time to time, as occasion requires, either in the annual report, or at any time deemed necessary by the Greenwood Cemetery Advisory Board, advise the City Commission in writing on all matters necessary and proper for and pertaining to the proper operation of Greenwood Cemetery and any of its activities or properties.

All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.
<table>
<thead>
<tr>
<th>Criteria/Qualifications of Open Position</th>
<th>Date Applications Due (by noon)</th>
<th>Date of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must be a resident of Birmingham and, insofar as possible, represent diverse interests, such as persons with family members interred in Greenwood Cemetery; owners of burial sites within Greenwood Cemetery intending to be interred in Greenwood Cemetery; persons familiar with and interested in the history of Birmingham; persons with familiarity and experience in landscape architecture, horticulture, law or cemetery or funeral professionals.</td>
<td>07/08/2020</td>
<td>07/13/2020</td>
</tr>
</tbody>
</table>
May 22, 2020

City Clerk
City of Birmingham
P.O. Box 3001
151 Martin St
Birmingham, MI 48009-3368

Attn: City Clerk,

At WOW!, we work hard to ensure that our customers receive reliable, easy and pleasantly surprising Internet, cable and phone services at a fair and competitive price.

Every year, broadcasters’ demands get more extreme. In fact, the rates to carry cable and broadcast TV channels are expected to rise approximately 35% in the next five years. Increases like this can negatively affect our customer’s service and put additional upward pressure on the rates that providers charge for cable services.

To meet broadcast and cable network’s extreme price hikes, the rates for cable service will be adjusted with the July 1, 2020 billing cycle.

Residential Customers

- The majority of our residential customers with cable services, bundles and a la carte, will receive a monthly increase listed below based on the level of service they subscribe to:
  
  - Medium/Basic Cable: $10.00
  - Digital Basic Cable: $10.00
  - Large/Digital Signature Cable: $10.00

Business Customers

- Customers with cable services will receive a monthly increase listed below based on the level of service they subscribe to:
  
  - Basic Cable: $10.00

In addition, the rates for the Broadcast TV Fee and the Sports Surcharge will be adjusted with the July 1, 2020 billing cycle.

- The Broadcast TV Fee, which is not a government tax or fee, will increase $2.28 per month. This fee recovers costs associated with retransmitting television broadcast signals and is in addition to other charges associated with WOW! Cable services.

- The Sports Surcharge, which is not a government tax or fee, will increase $2.00 per month (Small Cable and Limited Cable are excluded from this surcharge). The Sports Surcharge offsets some of the costs WOW! must pay to sports programming networks even during this unprecedented time when live sporting events have been impacted.

All customers will receive a notice based on their current level of service. Samples of the letters are enclosed. Thank you for your continued support and cooperation. If you have any questions, please contact me at 248-677-9080.

Sincerely,

Terrell Priester
Everyone’s Friend, Family Focused, Sports Fan
Director, Operations of WOW! Southeast Michigan
WOW! Internet, Cable and Phone

0300258

INFORMATION ONLY
Important Information
About Your WOW! Bill

At WOW!, we work hard to ensure our customers receive reliable, easy and pleasantly surprising Internet, cable and phone services at a fair and competitive price. Each year, cable TV programming is our single largest expense as licensing fees charged by broadcast and cable networks continue to dramatically increase in price year after year.

Every year, broadcasters’ demands get more extreme. In fact, the rates to carry cable and broadcast TV channels are expected to rise approximately 35% in the next five years. Increases like this can negatively affect our customer’s service and put additional upward pressure on the rates that providers charge for cable services.

To meet broadcast and cable network’s extreme price hikes, the price for your WOW! service will increase $10.00 per month, which will be reflected in next month’s bill.

In addition, the rates for the Broadcast TV Fee and the Sports Surcharge will increase.

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We will continue to negotiate with broadcast and cable networks on behalf of our customers for reasonable network rates, and we will do everything in our power to minimize our price adjustments despite these cost increases. As a smaller cable provider, we fight to keep our services competitive and fair in order to provide our customers with reliable, easy and pleasantly surprising service. If you would like to better understand the cost of cable programming, visit wowway.com/aboutprogramming.

Although we do our best to keep prices low, cable services can be expensive and may not make financial sense for everyone. If you are looking at ways to lower your monthly Cable TV expense you may want to consider one of our video streaming partners. Please call us at 1-866-496-9669 to discuss these options.

We are grateful to be your Internet, cable and phone provider and we’ll keep working to earn the privilege of serving you.

Thank you for choosing WOW!. 
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Thank you for choosing WOW!. 