

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 XX, GENERAL PROVISIONS, DIVISION 2, SITE PLAN REVIEW, SECTION 126-494, REQUIREMENTS BY DELETING EXISTING SPECIFIC STANDARD (B) IN ITS ENTIRETY AND INSTALLING A NEW SECTION 126-494(B) IN ITS PLACE TO PROVIDE EXPANDED CONDITIONS FOR GAINING SITE PLAN APPROVAL.

Section 126-494. Requirements, subsection (b) shall be amended as follows:

- ~~(b) — The planning board or the historic district and design review commission shall not grant approval for any development unless the conditions given in this subsection have been met.~~
- ~~(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 building.~~
- ~~(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 nor 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.~~

Standards for Review

- (b) The planning board or the historic district and design review commission shall not grant final approval for any development unless the conditions of this subsection have been met.**

Topography, Lot, and Adjacent Property

- (1) All elements of the site plan must take into account the topography, the size and shape of the lot, the features of adjoining properties and the type and size of buildings existing on the lot and on adjacent properties.
 - (i) The location, size and height of the building, walls and fences must allow adequate landscaped open space that provides light and air to the persons occupying the building and abutting buildings.
 - (ii) The location, size and height of the building, walls, fences and finished grade must not hinder the reasonable development of adjoining property nor diminish the value thereof, nor negatively nor unreasonably affect the sunlight or air of neighboring residential or historic properties.
 - (iii) The site plan for the development must reflect the natural aspects of the site. Buildings, lots, and support facilities must be clustered in those portions of the site that least affect the natural aspects. Environmentally sensitive areas including but not limited to wetlands, steep slopes, floodplains, natural water and drainage systems, significant wildlife habitats, scenic areas, habitats for rare and endangered plants and animals, and unique natural areas must be maintained and preserved.

Compatibility with Nearby Uses and Buildings

- (2) The proposed development must be compatible with other existing uses and buildings in the surrounding area and must not be contrary to the spirit and purpose of this chapter.
 - (i) The visual impact of a building must be compatible with adjacent buildings on both sides of the street along all blocks on which the building fronts. Visual impact is measured by the relationship to other buildings on the lot, design of the front of the building, and the rhythm of buildings and open spaces along the block(s) on which the building fronts.
 - (ii) Large new buildings or structures proposed in developed areas where their size and other features are significantly different from other buildings in the immediate vicinity must be designed to be compatible in scale and proportion with adjacent buildings.
 - (iii) The design of a building and the site layout must provide reasonable visual and sound privacy for all dwelling units located therein. Fences, walks, barriers and landscaping

must be used for the protection and enhancement of property and for the privacy of the persons occupying the building.

- (iv) Developments abutting an existing parkland or natural public space must be designed to harmonize with the natural setting through appropriate use of building scale, construction materials, color and landscaping.
- (v) Lighting must not directly or indirectly produce deleterious effects on abutting properties or impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures must be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings, and to limit the amount of light given off into the night sky.

Relationship to Vehicular and Pedestrian Traffic

- (3) The site layout and its relation to streets, driveways and sidewalks, must not interfere with vehicular or pedestrian traffic, nor negatively nor unreasonably affect neighboring residential or historic properties.
 - (i) Access, parking and loading areas are to be constructed to minimize dust, erosion, and run-off conditions that would have a detrimental effect on abutting properties and public rights-of-way, and must be designed to ensure the safety of vehicles and pedestrians.
 - (ii) All buildings must be arranged to permit emergency vehicle access, as determined by the Birmingham Fire Department.
 - (iii) Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development, as determined by the Engineering Department.
 - (iv) The arrangement of public or common ways for vehicular and pedestrian circulation on the site must be integrated with the pattern of existing streets and pedestrian or bicycle pathways in the area.
 - (v) Safe, convenient and well-defined vehicular and pedestrian circulation must be provided within and accessing the site.
 - (vi) Drive-through facilities must be designed to minimize the impact on abutting properties. No drive-through service area shall be located along a residential lot line immediately adjacent to a residential use or a residential zone. Communication systems must not be audible on adjacent residential properties. Vehicle lights must not have an

unreasonably negative effect on neighboring residential properties. Vehicular access to the drive-through must be through a separate lane that prevents vehicle queuing within normal parking areas.

Adequacy of Public Utilities

- (4) **The applicant must demonstrate that the project can be adequately serviced by public utilities. New utility lines and facilities must be screened from view as much as possible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.**

Phased Development

- (5) **All phases of development shall be in a logical sequence so that any one phase will not depend upon a subsequent phase for adequate access, public utility services, drainage, or erosion control.**

Standards of Other Governmental Agencies

- (6) **The applicant shall demonstrate that the site plan meets the standards of other government agencies, where applicable.**

ORDAINED this _____ day of _____, 2003 to become effective upon publication.

Seth Chafetz, Mayor

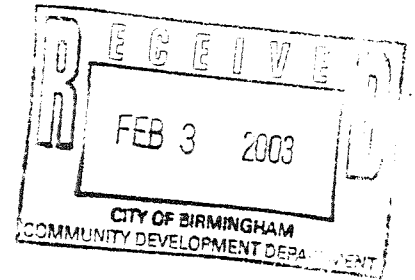
Nancy Weiss, City Clerk

BEIER HOWLETT
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
200 EAST LONG LAKE ROAD, SUITE 110
BLOOMFIELD HILLS, MICHIGAN 48304-2361
TELEPHONE (248) 645-9400

DANIEL C. DEVINE, SR.
LAWRENCE R. TERNAN
STEPHEN W. JOAN
FRANK S. GALGAN
KENNETH J. SORENSEN
JEFFREY K. HAYNES
MARK W. HAFELI
TIMOTHY J. CURRIER
MARY T. SCHMITT SMITH
JOSEPH P. YAMIN
JOHN D. STARAN
LAURA M. HALLAHAN
PHYLLIS AIUTO ZIMMERMAN
P. DANIEL CHRIST
PATRICIA E. KEPALAS DUDEK
THOMAS V. TRAINER
LAUREN M. UNDERWOOD
MICHAEL C. GIBBONS
MICHAEL P. SALHANEY
C. LYNN GATES
MARY M. KUCHARAK
L. RIDER BRICE, III
ELIZABETH L. LUCKENBACH
JEFFREY S. KRAGT
TIMOTHY P. BERGLUND
KEITH C. JABLONSKI
VICTOR A. VEPRASKAS, IV

OF COUNSEL
DEAN G. BEIER
JAMES L. HOWLETT
ROBERT G. WADDELL
ROBERT R. SHUMAN
PONTIAC TELEPHONE
(248) 338-9903
FACSIMILE
(248) 645-9344
beierhowlett.com

January 30, 2003



Ms. Janet Ecker, City Planner
City of Birmingham
PO Box 3001
Birmingham, MI 48012-3001

Re: Proposed Ordinance to Amend Chapter 126, Section 126-494 – Conditions for
Gaining Site Plan Approval

Dear Ms. Ecker:

You have asked our office to review the proposed changes to Section 126-494(b). We have reviewed the proposed ordinance and now provide the following thoughts and comments.

The preamble indicates that the conditions set forth in this section are “conditions” for gaining site plan approval. Upon review of these “conditions,” there are a few concerns that we would like to bring to your attention. When a list of “conditions” is given to the public in the form of ordinances, the public must know what is required of them. Our concern surrounds the amount of nebulous requirements set forth in the proposed ordinance. While it is true that there will be a certain amount of subjectivity involved, the more unquantifiable conditions placed on an applicant, the more scrutiny will be attached to it.

For example, in section (b)(1)(i), there is a requirement that the location, size and height of the building walls and fences must allow “adequate landscaped open space.” A question that arises is what is going to be deemed “adequate.” What may be adequate for one may not be adequate for another and, thus, you are making purely subjective decisions without a stated measure. In the next two sections, a similar issue arises in that the “condition” is that these items not “hinder the reasonable develop of” nor “diminish” the value nor “negatively nor unreasonably affect the sunlight.” Again, there is no standard against which these words will be applied.

In subparagraph (2)(i), I am concerned with the use of “adjacent” in this subsection. Has the word “adjacent” been defined anywhere in the Code? My concern is that a common meaning of adjacent means right next to. Using this common meaning, it does not make sense in this provision in that it says adjacent buildings on both sides of the street along all blocks on which

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the building fronts, perhaps creating confusion as to what buildings are going to be used for comparison purposes. In (iii) of this subsection, what is "reasonable visual and sound privacy" and under what standard are we using to make the requirement that the owner must "limit the amount of light given off into the night sky" in section (v)?

In subsection (3)(vi), we have some concerns with the requirement that

"communication systems must not be audible on adjacent residential properties. Vehicle lights must not have an unreasonably negative effect on neighboring residential properties."

Are we trying to make the absolute condition that no noise whatsoever be heard from adjoining or neighboring residential properties, or that attempts should be made to limit the noise coming from these properties? If the drive-thru facility is a permitted use and a communications system is appropriate for that use, should the building owner be held to this near impossible standard? In addition, are there any other uses that would have this prohibition from noise generated on the property (i.e. is a service station prohibited from having any noise generated on the property that could be heard from any adjoining residential property, or is a residence prohibited from making noise that would carry over onto an adjoining resident property)? Finally, what is a "unreasonably negative affect" with regard to vehicle lights? Certainly the argument can be made that any property is subject to having some amount of vehicular lights casting light on the property regardless of what zone district or the use may be.

In sum, while a certain amount of subjectivity is unavoidable in making standards such as the above, it goes a step further when there are absolute "conditions" imposed that stem from purely subjective and unquantifiable applications. Should the ordinance pass through to the Commission, you should understand that the way it is phrased is that a property must meet each and every one of these conditions, rather than using this as a reference tool.

Very truly yours,

BEIER HOWLETT, P.C.


Jeffrey S. Kragt

JSK:jmh

cc: Mr. Thomas Markus, City Manager
Timothy J. Currier, Esq.