

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JANUARY 10, 2018**

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Motion by Mr. Williams Seconded by Mr. Boyle to set a public hearing on February 28, 2017 to amend Article 7, sections 7.26 and 7.34.	11
Motion carried, 7-0.	11

APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 10, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 10, 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, Bryan Williams Alternate Board Members Nasseen Ramin, Daniel Share

Absent: Board Member Vice-Chairperson Gillian Lazar; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

01-01-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF NOVEMBER 29, 2017

Mr. Williams amended:

Page 8 - Third paragraph, second to last line, insert "master" after the word "some" and before the word "planning."

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of November 29, 2017 as amended.

Motion carried, 5-0.

VOICE VOTE

Yeas: Williams, Boyle, Clein, Jeffares, Koseck

Nays: None

Abstain, Koseck, Share

Absent: Lazar

01-02-18

CHAIRPERSON'S COMMENTS (none)

01-03-18

APPROVAL OF THE AGENDA (no change)

01-04-18

STUDY SESSION

1. Review of Historic District Study Commission Report on 361 E. Maple Rd.

Mr. Williams announced he would need to recuse himself from consideration of this item. His law firm represents an adjacent property owner. Ms. Ramin came forward to join the board for this matter.

Mr. Baka reported the owner of the property located at 361 E. Maple Rd. has requested that the City Commission consider removing the historic designation of their building as a Contributing Historic Resource within the City of Birmingham. The property owner has submitted an application to the City requesting to demolish the building as part of a redevelopment proposal.

The City Commission issued a resolution on July 24, 2017 directing the Historic District Study Committee ("HDSC") to prepare a preliminary study committee report on the subject property in accordance with the City Code and execute the additional steps required by the Code in order to make a recommendation to the City Commission.

The HDSC is required to follow the procedures as set forth in Section 127-4, Birmingham Historic Districts, of the City Code as amended. The procedure requires the issuance of a preliminary report, holding a public hearing, and issuing a final report with the intent of showing one or more of the following in order to justify the de-listing of a designated property:

1. The historic district has lost those physical characteristics that enabled the establishment of the district.
2. The historic district was not significant in the way previously defined.
3. The historic district was established pursuant to defective procedures.

The preliminary study committee report has now been completed by the HDSC and has been forwarded to the State Historic Preservation Office ("SHPO") for comment. The HDSC feels that the request does not meet any of the three established criteria in the City Code and they are recommending that the building not be de-designated. The City Code also requires the report be presented to the Planning Board for comment.

At 7:45 p.m. the Chairman asked for comments from members of the public.

Mr. John Gaber, Attorney with Williams, Williams, Rattner & Plunkett, spoke to represent Mr. Victor Simon who is the property owner of 361 E. Maple Rd. He passed out a report they prepared with the assistance of Mr. William Finnicum who is a historic architect. Mr. Gaber highlighted several conclusions from the report:

- They believe that 361 E. Maple Rd. really is insignificant.
- The inventory form that was done in 1983 by Max Horton of the Historic District Commission indicates the architectural significance is that the building was constructed in 1927.
- The form also lists the historical significance as none.

- Notable features of the building state that it is an example of a 1920's small commercial building.
- In 1983 the Historic District Commission thought that 361 E. Maple Rd. was a good example of the streetscape at that time and it was in good condition. Therefore they designated it as one of the 29 landmarks within the Central Business Historic District.

Mr. Gaber noted that only one of the criteria for de-listing that Mr. Baka mentioned needs to be satisfied. He went on to focus on the significance of the building's physical characteristics. They believe this property has lost the physical characteristics that enable its establishment as a landmark building. It is important to maintain the characteristics of not only the landmark building but the surrounding buildings as well.

Mr. Horton in his 1983 letter to the City Commission says *to select the individual structures for designation without regard to the other structures is contrary to the purpose of creating an historic district.*

What has happened since 1983 is that the City adopted the Birmingham 2016 Plan and subsequently adopted the Downtown Overlay District. That allowed for change in the character of a lot of the Central Business Historic District, particularly the E. Maple Rd. corridor. Most of the other 28 landmarks have something that sets them apart, such as their mass and scale. So, there is not going to be anything adjacent to them that will really detract from their significance. Then there are other buildings that are maybe smaller but have strong architectural features. What happened on E. Maple Rd. is that 361 is really overwhelmed by the adjacent development. So you can't look at the building in isolation, you have to look at the character of the district as well. Their building doesn't have the mass of some of the other buildings; it doesn't have architectural prominence of any significance; and it is not a stand-alone structure. So it doesn't have the ability to protect itself from the influence of surrounding buildings. Therefore, they believe the physical characteristics that led to the designation of this building as a landmark are no longer present. That is why they are requesting the de-listing of the building. They don't believe it sets a precedent because of the building's uniqueness.

Mr. Justin Zakoff, Attorney at Dickinson Wright, came forward to represent Mr. Mel Kaftan, an adjacent property owner at 369 E. Maple Rd. They concur with the HDSC recommendation not to de-designate 361 E. Maple Rd. as historic. The building has not changed since it was designated historic. This is a stand-alone historically designated structure and its Art Deco style is significant. If it is de-designated it will certainly change the character of the neighborhood and open the door to further de-designation requests.

Although not necessarily a consideration of the HDSC, Mr. Zakoff pointed out that Mr. Kaftan relied on the historic designation when he constructed his building.

Mr. Zakoff said his understanding of the Inventory Form is that where it says the building has no historical significance, it doesn't refer to the architecture or the neighborhood; but rather it refers to whether a historical event occurred there.

Mr. Koseck pointed out there are examples all over the country where historic buildings have been added on to. There are other things that could be explored that would add more density.

Mr. Jeffares observed if you look at how structures could get built up around this building, it will look pretty weird.

Motion by Mr. Share

Seconded by Mr. Jeffares to accept the report that was submitted on January 8, 2018 by Mr. William Finnicum.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Recused: Williams

Absent: Lazar

Mr. Boyle commented that he thinks historic designation is a valuable and important tool that cities can bring to bear on their properties. However, it needs to be aware of change that occurs. Perhaps the current designation may be standing in the way of progress. So in terms of keeping this designation living and relevant, he personally would go against the recommendation of the HDSC and suggest that this building be de-designated without fundamentally affecting the overall concept of the historic district.

Mr. Share said from a planning perspective it strikes him that the building is not imposing enough to hold interest on its own if it is surrounded by three to five story buildings. He likes Mr. Koseck's idea where the historic building is preserved but the building is expanded around the existing front historic elevation.

01-05-18

2. Bistro Regulations

Mr. Williams rejoined the board and Ms. Ramin left.

Mr. Baka advised that recently there has been discussion between the City Commission and the Planning Board that perhaps there should be a re-examination of the bistro requirements which already began last year with several study sessions.

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- Use of Eisenglass – Doing so extends the time period outdoor dining areas are in operation which increases the number of seats for the restaurant as a whole for a majority of the year;
- District Requirements – The Downtown District, Triangle District, and Rail District have different opportunities which could merit different requirements for bistros locating within them;
- On-street Dining/Rooftop Dining –The use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – The expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- Building Code Requirements – The enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

- Incentivizing Seating Capacity Tiers – Allowing an increased amount of indoor seating and/or outdoor dining seating for bistros based upon conditional standards such as shared parking, landscaping, green space, etc.

At the joint City Commission/Planning Board meeting of June 19th, 2017 the issue of bistro regulations was discussed at length. There was consensus that a review of the requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

The Planning Board held several study sessions on this matter and potential revisions and additions to the bistro standards were discussed. Draft language was created to provide options that would eliminate the ability to utilize enclosures year-round, and would not limit the number of outdoor dining seats or require additional parking for those seating areas. There was discussion on whether or not the 65 seat limit should be revised, or whether rooftop dining should be encouraged and what an acceptable railing height is for platform decks. It was suggested that perhaps the Triangle District and Rail District could establish different standards for maximum seating. New draft language was presented that expands interior seating for bistros in the Triangle and Rail Districts to 85 seats with 15 at the bar, while interior seating for the Downtown District remains at 65. Current rooftop dining standards were deemed acceptable, but the board wished to see railings on platform decks limited to 42 in. in height.

There was not a consensus on requiring shared parking as an incentive to get more seats at the bar.

Mr. Baka discussed Chapter 126 of the Code, sections 3.04, 5.06, 5.07, 5.08, 5.10, 5.11, 5.12, 5.13 and 9.02.

Consensus was for sections 3.04, 5.06, 5.07, 5.08, 5.10, 5.11, 5.12, change "enclosed platform" to "enclosed platform with a guard rail." Also find a way to consolidate I., J., and K in section 3.04 and other sections with the same language to a more precise limitation for enclosure systems for outdoor dining areas.

Mr. Baka clarified for Ms. Whipple-Boyce that vegetation can be planted above the 42 in. railing height.

There was general support for a larger number of indoor seating allowed by right for bistros located in the Rail and Triangle Districts.

Ms. Whipple-Boyce said it has been proven now that the Class C Liquor License holders and the bistro license holders are succeeding well side-by-side. Therefore, she is very supportive of allowing 85 indoor seats in the Rail and Triangle Districts. Losing parking spaces in the summer with more on-street dining doesn't concern her.

Mr. Williams observed that the issue of bistro locations in the Rail District has not been addressed. Ms. Ecker advised that currently they are allowed anywhere within the boundaries of the Rail District with a Special Land Use Permit ("SLUP"). Mr. Williams thought a bistro would significantly adversely impact the residential and live/work areas in the neighborhood.

Ms. Whipple-Boyce agreed with establishing some boundaries. From DPS north it is pretty well developed. She would like to see a bistro somewhere south of DPS.

Mr. Jeffares was not in favor of boundaries because he would like to see all applications. Mr. Koseck agreed with Mr. Jeffares.

Mr. Williams thought maybe it is enough to say there are sensitive areas both in the Rail District and in the Triangle District that need attention whenever a SLUP comes up. Other members agreed.

Mr. Williams stated he is in favor of expanding the number of outdoor dining seats in the Rail and Triangle Districts, but is adamantly opposed to increasing them Downtown. That is where most of the Class C Licenses are and he noted that one just closed. There is no question in his mind that bistros have had an effect on some of the Class C licenses in the Downtown area.

Further, he suggested having the new rules apply to existing bistros. Ms. Ecker explained that could happen if they came back for any changes.

Board members discussed putting a maximum formula in effect for outdoor dining in relationship to indoor dining in the Rail and Triangle Districts. Mr. Share was in favor of a 200% cap there that applies to all outdoor dining, thus outdoor dining (including rooftop dining) could be no more than twice the number of interior dining seats.

Mr. Jeffares did not want a cap. He said he would rather have the Planning Board be able to make decisions on the applications vs. having strict rules and not having any applications.

The board's consensus was to see this one more time before moving forward.

01-06-18

3. Review Process for Renovation/Reconstruction Projects

Mr. Baka advised that questions have been posed as to the procedure for determining what level of board review is required for the renovation of a building or construction of a new building. Currently there are three boards that review proposed modifications to buildings: the Planning Board, the Design Review Board ("DRB"), and the Historic District Commission ("HDC").

Currently, the Planning Dept. has discretion to determine what plans go to the Planning Board vs. the DRB as per section 7.08 of the Zoning Ordinance.

Currently, site plan review is required by the Planning Board for:

- new construction;
- increasing or decreasing the principal building's square footage and / or changing the building footprint;
- significant changes that are proposed to the circulation patterns of the site; and
- modifications are proposed to a previously approved site plan that are of lesser quality design or materials than previously approved.

Currently, design review is required by the Design Review Board Review for:

- the alteration or painting of the exterior of any building;
- the addition of any lighting;

- the addition of signage; and
- the addition of equipment or other structures which substantially alter the exterior appearance as determined by the City Planner.

The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger Site Plan Review.

At the Planning Board meeting of September 13, 2017, the board suggested revising the draft ordinance language to require site plan approval if more than 33.3% of the exterior elevations are torn down.

Staff has provided draft ordinance language that adds to section 7.25 as follows:

- for the purpose of this section new construction shall include the partial demolition and reconstruction of an existing building where 33.3% or more of the exterior elevations are demolished;
- for the purpose of this section the addition of square footage to any development shall be considered an expansion which requires Site Plan Review;
- any alteration which significantly alters the traffic or pedestrian circulation on a site as determined by the City Planner shall also require Site Plan Review.

Draft ordinance language added to section 7.08 strikes "new construction" from the description of all plans not requiring Site Plan Review or Historic District Review.

Answering Mr. Koseck, Mr. Baka explained that "exterior elevations" means all four sides. The intent was 33.3% of the exterior envelope.

Ms. Ecker clarified that if square footage is added to a building they would have to meet the parking requirements including the mezzanine, unless the property is in the Parking Assessment District.

Mr. Koseck offered staff his recommendations for language that simplifies the explanation of what types of reviews go to each board.

It was determined that the Planning Board would need to see this one more time with the language changes before it goes to the City Commission.

01-07-18

4. Retail Discussion

Mr. Share recalled that in prior meetings he has recused himself from discussions about the definition of "Personal Services" in retail. At that time he was representing his aunt who owns 442 S. Old Woodward Ave. in negotiating a lease with the current tenant who is Ms. Lazar's employer. That lease is completed now and presently he is not actively engaged on his aunt's behalf and he doesn't feel that the conflict continues to exist. Therefore, his intention is to not recuse himself from these discussions unless the board feels that it would be more appropriate that he do so.

Board members accepted his disclosure and thought he ought to stay. Chairman Clein added his suggestion that before the board gets into any matters specific to that parcel or to voting, perhaps Mr. Share might want to have a conversation with the City Attorney to get his opinion as well.

Ms. Ecker advised that on March 29, 2017, the Planning Board began a detailed discussion on the retail requirements Downtown, and potential options to strengthen the definition of retail throughout the Redline Retail District. Then the City Commission asked the board to focus on the definition of "Personal Services," which they did and that is wrapped up now.

Now the board is back to the study of retail. Last time they discussed this issue in the spring of 2017 the board had identified a number of different issues that they were interested in pursuing. Back in November of 2017 when the City Commission adopted the definition of Personal Services, the Commission also directed the Planning Board to continue studying the larger issue of retail use in Downtown Birmingham. Formal direction was provided in a memo from the City Manager:

- Evaluate the current geographic boundary of the Retail District for possible modification and also consider a priority level hierarchy consisting of the Downtown core and other areas within the current Retail District boundary;
- Evaluate current properties in the Retail District that were not built to support first-floor retail uses and provide recommendations to address this issue;
- Evaluate a prohibition of desks, workstations, and office-related amenities within that first 20 ft. and recommend ordinance language to address that.

Chairman Clein suggested that perhaps for tonight's session board members might consider what sort of resources they might need to prepare for discussion of each area of study.

Retail District Boundaries: Most of the research on creating great urban retail districts that the Planning Board began studying last spring emphasized the importance of strictly controlling the types of retail permitted in the core urban shopping district, and also limited the core retail area to no more than 2 - 4 blocks in size. Outside of the main retail, other quasi-retail uses may be permitted.

Retail Depth Requirement: Last spring, the Planning Board also reviewed the minimum retail depth requirements in the Redline Retail District, which are currently 20 ft. Based on the direction of the City Commission, the Planning Board should make sure there is a strong presence in that 20 ft. that allows storefront interest. The City Commission does not want to see desks, cubicles or other office-type amenities in that space. Another issue in the same vein is whether the remaining depth behind the required storefront retail use is permitted to be office use.

First Floor Lobby Allowances: While the Zoning Ordinance currently allows 50% of the first floor retail space to be used for lobbies, in large buildings, this allows lobbies to occupy a large expanse of the storefront space, thus creating a less active and less visually attractive section of storefront that breaks up the retail area. Many other communities have provisions to offer some first floor retail space for lobbies for upper story uses, but place a maximum dimension on the lobby space.

Retail Use Requirements in Existing Buildings: Finally, the City Commission has directed the Planning Board to evaluate current properties with buildings located in the Redline Retail District that have not been constructed to support first floor retail uses.

Once the Planning Board has determined the recommended geographic boundaries of the Retail District, the board may wish to identify the buildings with design constraints that may limit their first floor use, and draft regulations to allow for exemptions from the retail use standards and/or to allow for non-retail uses to be grandfathered in as non-conforming until major construction or renovation is proposed for the building.

Mr. Williams wanted to see:

- a bigger map of the district with specificity and pictures of the establishments within the area;
- the context in which a building sits; and
- the underlying zoning if a retail requirement is eliminated.

Mr. Jeffares asked additionally for a color chart of what is retail now and what it has migrated to.

Mr. Williams asked if the board is going to get outside professional assistance. Ms. Ecker advised there is a new retail consulting firm that is working with the merchants and brokers. Chairman Clein thought any ideas they might have would be very helpful.

Mr. Share wanted to find out what the BSD and the local broker community is hearing from the potential retailers as to why they are interested or not interested.

Mr. Jeffares advised the board needs to think about establishments that the board determines would be allowed to have a desk as part of their business.

Ms. Whipple-Boyce added that something they don't know is whether rents are reasonable and how Birmingham compares to other communities in that respect. As to evaluating the size of the retail district, she would like to know:

- what is a quarter mile from the central core, and is the center of the core located at Maple Rd. and Old Woodward Ave.;
- are there other significant streets or blocks that make sense to include; and
- a list of the garden level properties are that the board is supposed to evaluate.

It was discussed that it would be advantageous to bring in experts to assess for the board what retailers want. Maybe the BSD consultants are not the right persons to act as the Planning Board's expert. Mr. Williams thought the Planning Board should suggest to the City that they get an independent expert as opposed to someone who will be embroiled in the middle of conflicts between landlord and tenant and the municipality.

Chairman Clein advised that the board put together lists of things they need and then go to the City and respectfully request outside services for very specific things.

Mr. Williams emphasized that this study needs to be done and the board needs to do it with the professional assistance that has been discussed. Without expertise it takes a lot longer, time is money and the quality may not be as high.

Mr. Boyle pointed out for the record that the Duany Plan written in 1996 included a review of ordinance language. There was also a consultant brought on board called the Green Group and they were the retail and economic analysts who gathered and analyzed data as a basis for understanding the ordinance amendments that were needed. The Planning Board is being directed to go ahead on an architectural basis only that is insufficient to do the quality job that they want. The board needs the numbers and market materials brought to the table.

01-08-18

5. Site Plan Submittal Requirements for Adjacent Properties

Ms. Ecker explained that on December 4, 2017, the City Commission reviewed and approved the Special Land Use Permit ("SLUP") and Final Site Plan & Design Review for 33353 Woodward Ave. to allow Tide Dry Cleaners to open a storefront with service to patrons that remain in their vehicles. During this review, several questions were raised by Commissioners and neighbors regarding the layout and proximity of adjacent properties, and the potential impact of the drive-in dry cleaning facility on the surrounding property owners. At the end of the meeting, Commissioner Nickita specifically requested that the Planning Board review the existing submittal requirements for site plan reviews and SLUP reviews, and determine if amendments should be made to add additional details regarding the subject site and/or adjacent sites to provide context for discussion. This direction to the Planning Board was provided by the City Manager.

In the past, Planning Board members have also raised the issue about applicants providing details on the surrounding properties to allow for a complete evaluation of the impact of a proposed development on one site to the surrounding properties and the neighborhood as a whole.

Accordingly, the Planning Board may wish to consider proposed draft ordinance language that amends the submittal requirements for Site Plan Review and SLUP Review by adding that all site plans submitted for review and approval must show the subject site in its entirety, must include all property lines, buildings and structures, and must show the same details for all adjacent properties within 200 ft. of the subject site's property lines.

Mr. Boyle remarked that the website is pretty clear that if someone wants to build in Birmingham, adjacencies must be shown in the application. Mr. Williams believed that language is needed in the ordinance, not just on the website. It was concluded that the requirement could be satisfied by a current aerial photo of all properties within 200 ft.

Motion by Mr. Williams

Seconded by Mr. Boyle to set a public hearing on February 28, 2017 to amend Article 7, sections 7.26 and 7.34.

There was no further discussion from the public at 9:58.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lazar

01-09-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

b. Administrative Approval Requests

- Mr. Baka explained that Mr. Duane Barbat was present to request a change to the west elevation facing the alley of his building at 33353 Woodward Ave. End caps of glass and two glass doors with sidelites and transoms were approved. The proposal is to change to one door with a sidelite and transom and double steel doors to the left. This change would meet ordinance glazing requirements.

Mr. Barbat explained the double steel doors will be painted to match the color of the brick. It will be used to bring racks of clothes in and out of the drycleaners. The board's consensus was to administratively approve the request.

c. Draft Agenda for the Regular Planning Board Meeting on January 24, 2018

- 33588 Woodward Ave., Shell Gas Station Final Site Plan & Design Review and SLUP Amendment request to add a bathroom and new signage;
- 191 Chester - Final Site Plan & Design Review and SLUP request to convert a vacant church into an office building with tenant spaces over 3,000 sq. ft.;
- 885 Redding, Final Site Plan Review for a new duplex.

d. Other Business

- Ms. Ecker reminded everyone that the Long Range Planning Meeting is scheduled for January 27, 2017.
- Ms. Whipple-Boyce noticed the screenwall fell down at the vacant bridal salon on the northeast corner of Lincoln and Woodward Ave. Since then it has been replaced with bright blue bollards. Ms. Ecker agreed to check with Code Enforcement.
- Further, Ms. Whipple-Boyce indicated she is disappointed with the view from E. Maple Rd. into Whole Foods. Ms. Ecker advised they were supposed to come up with a plan to address some of those issues. She will check on that.
- Ms. Whipple-Boyce observed that Sav-On Drugs has been bought out by CVS. Discussion concluded that there may be an opportunity to have the floor plan changed so that racks filled with merchandise do not block the view from Woodward Ave.

01-10-18

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

b. Additional items from tonight's meeting (none)

01-11-18

ADJOURNMENT

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

Jana L. Ecker
Planning Director

ADJOURNED