

**CITY OF BIRMINGHAM  
PLANNING BOARD ACTION ITEMS  
OF WEDNESDAY, APRIL 8, 2015**

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APPROVED

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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, APRIL 8, 2015  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Planning Board held on April 8, 2015. Vice Chairperson Gillian Lazar convened the meeting at 7:30 p.m.

**Present:** Vice-Chairperson Gillian Lazar; Board Members Carroll DeWeese, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Daniel Share (left at 8:45 p.m.)

**Absent:** Chairman Scott Clein; Board Member Robin Boyle; Alternate Board Member Stuart Jeffares; Student Representatives Scott Casperson, Andrea Laverty

**Administration:** Matthew Baka, Sr. Planner  
Timothy Currier, City Attorney  
Jana Ecker, Planning Director  
Shalaka Puranik, Assistant City Planner  
Carole Salutes, Recording Secretary

**04-65-15**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING  
HELD MARCH 25, 2015**

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. DeWeese to approve the Minutes of the regular Planning Board meeting on March 25, 2015 as presented.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Whipple-Boyce, DeWeese, Koseck, Lazar, Share, Williams

Nays: None

Absent: Boyle, Clein

**04-66-15**

**CHAIRPERSON'S COMMENTS (none)**

04-67-15

**APPROVAL OF THE AGENDA**

**Motion by Mr. Williams**

**Seconded by Mr. DeWeese to move the study session on MX Ordinance Amendments and Medical Marijuana to the top of the agenda and otherwise the agenda is unchanged.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Williams, DeWeese, Koseck, Lazar, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Clein

**Motion carried, 6-0.**

04-68-15

**STUDY SESSION**

**MX Ordinance Amendments and Medical Marijuana**

Ms. Puranik advised that since the reformatting of the Zoning Ordinance in 2005, several errors have been identified in the new graphic format of the Zoning Ordinance. These changes were inadvertently made while switching formats.

*Text Amendments:*

The following text errors need to be corrected in the Zoning Ordinance:

- In section 2.39(MX), add “Residential use combined with permitted nonresidential use in the same building complex” to Residential Permitted Uses.
- In section 2.39 (MX), add “catering” to commercial permitted uses.
- In section 2.39 (MX), add “uses with expanded hours past 7 a.m. to 11 p.m.” as a use requiring a Special Land Use Permit.

*Land Use Matrix Changes:*

The following errors need to be corrected in Appendix A of the Zoning Ordinance:

1. In the MX District column, “photography studio” should be changed to Permitted (P).
2. In the MX District column, “catering” should be changed to Permitted (P).

In addition, the City Attorney previously requested that the Planning Board consider amending the Zoning Ordinance to allow and control medical marijuana establishments in the City. Previously, the City prohibited medical marijuana establishments as they were prohibited by Federal law. As a result of recent court rulings, the City can no longer prohibit such establishments as they are expressly permitted in the State of Michigan.

Thus, the Planning Board was asked to consider allowing medical marijuana establishments in certain zone districts, and to consider any controls that may be needed. The Planning Board held a public hearing on May 14, 2014.

The issue was again discussed by the Planning Board on February 25, 2015 and the board recommended discussing the subject with the City Attorney and the Police Dept.

Ms. Ecker recalled the last time the board discussed this they thought medical marijuana uses should be allowed Downtown. However, the Deputy Police Chief and the City Attorney have too many concerns with putting these facilities Downtown. They recommend the best place for them is in the MX District as a regulated use and Special Land Use Permit ("SLUP").

Mr. Williams did not see the point in limiting the distance of marijuana uses just from single-family residences rather than from multi-family residences as well. Crosswinds contains a lot of residences and two new residential locations along Lincoln have just been approved by the Planning Board. He recommended locating the establishments on the east side of the railroad tracks south of Maple Rd.

The City Attorney said that one of the major issues the Deputy Police Chief has found with the grow operations is that they are targeted for robberies by a criminal element. Secondly, such facilities generate a pungent odor and effective vertical ventilation must be required. The Police Dept. prefers the MX District on the west side of the railroad tracks because it is more or less enclosed and there is a significant police presence in the area. Police officers gas up at DPS; and further, the police pistol range is nearby.

A primary caregiver is allowed to cultivate marijuana for up to five qualifying patients and is permitted a total of 12 marijuana plants per patient - 60 plants which must be stored in an enclosed, locked facility. A reasonable amount of property that the City must provide for marijuana facilities will be the judgment of the court.

Mr. Williams stated that maybe the answer is 300 ft. from all single-family and multi-family residential which pushes it into the center of the MX District. He would rather impinge on commercial rather than any form of residential. Further discussion determined the map should be re-done to depict 200 ft. and 300 ft. from single-family and multi-family residential so that the allowable area for marijuana facilities is clearly identified.

Ms. Whipple-Boyce was afraid they would end up in a position where they have not given enough area for these operations to exist. She thought the area on the east side of the railroad tracks is the ideal spot for them.

Vice-chair Lazar called for comments from the public at 8:09 p.m.

Mr. William Anderson who lives in Royal Oak asked if personal, in-home use of marijuana is allowed in Birmingham. Mr. Currier replied that currently there is no ordinance that either permits it or prohibits that.

**FINAL SITE PLAN REVIEW**

**1964 Southfield Rd.**

**Market Square**

**Application for Final Site Plan and Design Review to allow an addition to the market and improvements in the public space to the north of the property**  
(postponed from the meeting of March 25, 2015)

Ms. Ecker explained the subject site is located at the northwest corner of Fourteen Mile and Southfield Rd. The existing store is 10,280 sq. ft. in size. At this time the applicant is proposing to construct a 2,935 sq. ft. addition to the north of the existing building.

Signage changes are also proposed, and the applicant will be required to obtain approval for all new signage. Parking for the existing building is provided in the R-O-W along both Fourteen Mile Rd. and Southfield Rd., as well as across the alley to the west on adjacent property. The applicant is now proposing to lease land to the north from the City to construct six new parking spaces and an open air pavilion for displaying merchandise, with an outdoor seating area open to the public. The City property is approximately 7,500 sq. ft. in area, and the applicant is proposing to lease a total of 3,898 sq. ft.

On July 9, 2014, the Planning Board granted Preliminary Site Plan approval for the building addition with several conditions.

On March 25, 2015, the applicant appeared before the Planning Board for Final Site Plan and Design Review. The board postponed the matter until the April 8, 2015 meeting to allow the applicant to amend the plans to add an entry to the store from the plaza area north of the building, and to allow the applicant to study options for placement and sizing of the proposed pavilion and plaza area and to improve the flow into the public property area.

*Design Review*

The proposed addition to the north will be constructed of the same brick with stone cap to match the existing building, and aluminum downspouts and gutters will be used that match the existing building. One new triple bay of windows will be added to the east elevation, with an awning that will match the existing awnings on that elevation.

The applicant is now proposing to add another triple bay of windows and an entry door on the new north elevation, as requested by the Planning Board. A new awning is proposed on the north elevation as well. Further, the applicant is now proposing a coffee bar and pastry counter with a checkout just inside of the new door.

It appears that one of the windows on the south elevation is obstructed by the back of shelves in the wine area. In addition, the new north elevation facing public property is required to contain 70% glazing. **Thus the applicant will be required to obtain a variance from the Board of Zoning Appeals for both the blocked window on the**

***south elevation and the amount of glazing on the new north elevation, or meet the Ordinance requirements.***

The pavilion is proposed to be used to display seasonal merchandise for sale at Market Square. The pavilion itself will be constructed with six wood and steel support posts and roof joists, with a copper roof. A decorative cupola with a window is proposed for the center of the peaked roof. Stainless steel mesh panels are proposed to enclose the area under the roof of the pavilion to allow the pavilion to be secured when Market Square is closed. The east side of the pavilion will be open during business hours, and a retractable door will come down after business hours. The plaza area outside of the new pavilion has been expanded to wrap around to the north and accommodate an expanded outdoor dining area overlooking the public property. The central feature of the plaza space will be a fountain with a 6 ft. diameter brick and stone base to match the Market Square building. Around the fountain, an outdoor seating area is also proposed.

***Building Signage***

The plans as submitted indicate that the proposed building will have 134.2 ft. of principal building frontage permitting 134.2 sq. ft. of signage. The applicant is proposing to keep two existing signs on each of the east and south elevations, and to add additional name letter signage on the east elevation for a total of 97.06 sq. ft. of signage. All new signs are proposed to be mounted at a height of 12' above finish grade. No lighting is proposed for the new signage.

It was discussed the notion does not make sense that the store needs windows along the back side where all the service things are. One of the board's first actions should be to change the ordinance. The question came up as to whether patrons would be allowed to consume alcohol on premises that they have purchased in the store.

Mr. Victor Saroki, Architect for the project, was present with John and Dianne Karmo, the business owners, and Laith Karmo, their son; along with Yvonne Yaldoo from his office. Mr. Saroki said there has been some talk about holding wine tastings. Mr. John Karmo advised there is a Liquor License that is available on a per-day basis for a wine tasting. Other than that, no alcoholic beverages are allowed to be consumed on the premises.

There were no comments from members of the public at 8:30 p.m.

Mr. Williams commented that Mr. Saroki always seems to meet the Planning Board's suggestions. He feels the project will be a tremendous asset to the neighborhood. Mr. Koseck agreed and added this presentation is a great improvement over last time. Ms. Whipple-Boyce appreciates the new relationship to the park.

**Motion by Ms. Whipple-Boyce  
Seconded by Mr. Williams to approve the Final Site Plan and Design Review for 1964 Southfield Rd., Market Square, with the following conditions:**  
**1. Provide specification sheets for any new mechanical equipment and screening for administrative approval;**

2. The Planning Board approves an evergreen screenwall along the north edge of the parking on public property, but the plantings must form a solid hedge and be installed and maintained at a minimum of 32 in. in height;
3. Provide all lamp wattages and a photometric plan for administrative approval of all site lighting levels;
4. The Planning Board grants a waiver of the cut-off light fixture requirement for all fixtures on the east and south elevations;
5. Applicant comply with the requirements of the Fire Dept. and Engineering Dept.;
6. Obtain a ruling from the building official or a variance from the BZA if needed for the amount of glazing on the new north elevation or meet the Ordinance requirements; and
7. Enter into a lease agreement with the City for the use of public property and obtain an Outdoor Dining Permit.

There was no discussion from the audience at 8:35 p.m.

Mr. Saroki noted with regards to the windows on the south side of the building, those conditions are existing and there are cases there now. Artistic murals are hung on the inside of the glass. He thought those windows could be grandfathered in. The windows on the north side are not fronting on a street, parking area, plaza, or park. Rather, they front on a lawn area. Therefore, he hoped the building official would agree and they would not have to go before the BZA.

Discussion compared this project to the case of the Sav-On Drugstore that also has shelving in front of their windows which must be removed if they add a drive-through. Drive-throughs are considered to be problematic and so they fall under a SLUP. Market Square does not require a SLUP.

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Whipple-Boyce, Williams, DeWeese, Koseck. Lazar, Share

Nays: None

Absent: Boyle, Clein

**04-70-15**

## **STUDY SESSION**

### **Transitional Zoning**

Mr. Share recused himself from this study session because of a conflict of interest. One of his clients has property in one of the zones.

Mr. Baka recalled that the Planning Board has held several study sessions over the past several years in order to develop the Zoning Transition Overlay ("ZTO") that could be applied to areas that abut single-family residential zones and are adjacent to commercial zones and/or located on major thoroughfares. The goal of these study



sessions was to identify and revise the zoning classifications of these properties to provide a transition or buffer to the single-family neighborhoods. The Planning Board selected fourteen (14) locations throughout the City where these zones are proposed to be implemented.

The city manager has directed staff to review the ordinance and recommend changes based on any concerns they might have. The draft ordinance language was reviewed and several changes were suggested by the Building and Engineering Departments as well as the city attorney.

#### *Article 04*

In addition to the regulations provided in Article 02 of the Zoning Ordinance, the Planning Dept. identified many additional development standards contained in the draft of the ZTO that would generally be found in Article 04, Development Standards. The Planning Dept. is now providing draft ordinance language for those development standards in a format that would allow for integration into Article 04 of the Zoning Ordinance. Also, sections of the ZTO have been identified that could be eliminated and covered by existing sections of Article 04 as indicated.

#### *Article 05*

The creation of the new zoning classifications would also require additions to Article 05, Use Specific Standards, for any permitted uses allowed in the TZ Zones. The only thing that would have to be included are restrictions on hours of operation.

#### *Single-family dwellings in Transition Zones*

Under the heading "Residential Permitted Uses" of each two-page layout where "dwelling – one-family" is listed as a permitted use, the set of development standards that apply are shown in parentheses. As discussed at the last study session, the standards that have been applied are R-3, which is consistent with the rest of the Zoning Ordinance.

Mr. Williams' feeling was to go forward and address the 14 parcels as a rezoning. However, it ought to be decided by the City Commission. Mr. DeWeese agreed. Schedule a public hearing, send it to the City Commission as a rezoning, and let them decide.

There were no comments from the public at 8:50 p.m.

Mr. Baka went through points that were not translated from the Overlay into the new zoning classifications because they are already covered in the ordinance.

#### **Motion by Mr. DeWeese**

**Seconded by Mr. Williams to schedule a public hearing for May 27.**

Mr. Chuck DiMaggio with Burton Katzman, the owners of 404 Park St., gave permission to put a notification of rezoning sign on their property.

**Motion carried, 5-0.**

VOICE VOTE

Yeas: DeWeese, Williams, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Boyle, Clein, Share

**04-71-15**

**MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA** (no discussion)

**04-72-15**

**MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

a. Communications

- Request for Planning Board member to be appointed to the new Ad Hoc Parking Development Committee

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Williams to nominate Scott Clein if he agrees.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Whipple-Boyce, Williams, DeWeese, Koseck, Lazar

Nays: None

Absent: Boyle, Clein, Share

b. Administrative Approvals

- 250-270 N. Old Woodward Ave., Palladium of Birmingham - Addition of elevators, exterior door relocation, mechanical unit screening relocation.
- 33588 Woodward Ave., B5 Investments - Per M-DOT request : eliminate one of two proposed approaches; revise landscape plan; no changes to site plan, only in the R-O-W.

c. Draft Agenda for the Regular Planning Board Meeting on April 22, 2015

- Two rezoning applications for 2100 E. Maple Rd. to allow retail and commercial uses;
- Sav-On Drugs drive-through;
- Pre-application discussion for Brookside Terrace.

d. Other Business

- Ms. Whipple-Boyce discussed a condition where there is a corner property that is very shallow and the house can only be 25 ft. wide. In order for the house to have a garage it needs to be attached. However, attached garages on side lots have to be 5 ft. back. Therefore the garage from front to back is only 20 ft. deep. She wondered if there is an opportunity to add a provision that considers a narrow lot with a maximum house width of 25 ft. She doesn't think it is fair for the owners to have to go to the BZA when they have a condition like this that makes it impossible for them to have their garage. It was determined that she could go to the City Commission to make that suggestion during the public hearing.

**04-73-15**

**PLANNING DIVISION ACTION ITEMS**

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

**04-74-15**

**ADJOURNMENT**

No further business being evident, Vice-chair Lazar adjourned the meeting at 9:15 p.m.

Jana Ecker  
Planning Director