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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JUNE 13, 2018**  
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 May 23, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Nasseen Ramin

**Also Present:** Alternate Board Member Jason Emerine

**Absent:** Board Member Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

**Administration:** Brooks Cowan, Planner  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

**06-98-18**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF May 9, 2018**

Mr. Jeffares noted that Mr. Emerine's name is misspelled.

**Motion by Mr. Boyle**

**Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of May 9, 2018 as corrected.**

**Motion carried, 5-0.**

VOICE VOTE

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

Nays: None

Abstain: Ramin, Share

Absent: Williams

**06-99-18**

**CHAIRPERSON'S COMMENTS**

The chairman announced this meeting is usually a study session; however the rules were suspended tonight to help move things along.

**06-100-18**

**APPROVAL OF THE AGENDA** (no change)

**06-101-18**

**SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT  
REVISED FINAL SITE PLAN AND DESIGN REVIEW**

**1. 33588 Woodward Ave. (Shell Gas Station/Dunkin Donuts)  
Request for approval of a SLUP Amendment to allow for construction of a small  
addition for a restroom and new signage (postponed from May 23, 1018)**

Ms. Ecker recalled the 0.34 acre subject site is located at the corner of Woodward Ave. and Chapin. The applicant is seeking a SLUP Amendment to relocate the bathroom within the building, which will include a small addition of square footage to the building. The total added area to the building is roughly 79 sq. ft. at the south-western portion of the building, facing the parking lot. The addition will displace the ice and propane storage machines, which are proposed to be relocated to the side of the building, adjacent to the rear parking area.

On January 24, 2018 the Planning Board recommended approval of the SLUP Amendment to the City Commission with the condition that they make modifications to the site that would compensate for the lost pedestrian path. However, the applicant had not yet devised a solution to the issue by the time they reached the City Commission for the public hearing. The Commission voted to send the applicant back to the Planning Board to resolve the issue so they could review a complete plan that would not be subject to further change after the public hearing.

On April 11, 2018 the applicant appeared before the Planning Board for review of the proposed pedestrian path that consisted of blue striping along the edge of the raised sidewalk abutting the building. At that time the Planning Board postponed the review and instructed the applicant to revise the plans so the existing raised curb is extended and re-establishes a pedestrian walkway along the building as currently exists.

On May 9, 2018, the Planning Board once again postponed the SLUP application to June 13, 2018 as the applicant had not yet submitted a detailed site plan as requested by the board.

At this time, the applicant has submitted an engineered site plan including all topographic details on the site and the proposed sidewalk and ramps in the vicinity of the new addition to the building. The applicant has also moved the ice maker and propane outdoor storage from the southern elevation of the building to behind the screenwall that screens the row of parking along the alley from Woodward Ave. This will narrow the walkway along the screenwall; however it will now provide a clear walkway for adjacent neighbors to access the site from the alley. Finally, the applicant has provided a building elevation for the west elevation to show the existing ramp conditions and how the grades will match with the proposed sidewalk addition.

**Design Review**

The proposed 79 sq. ft. addition to the south-west portion of the building will be for the relocation of a restroom to allow for more counter space for the establishment. The applicant

has indicated on the site plan that the addition will be constructed with the same brick and paint as the existing building.

Ms. Whipple-Boyce pointed out that that there are two solid blacked out panels to the left and right of the door.

Mr. Koseck noticed that "LIQUOR" on the glass underneath the Beer and Wine sign is larger than the sign.

Mr. Chris Barbat spoke for the applicant. He clarified that the Planning Board had approved getting rid of "Beer and Wine" and replacing it with "Liquor" in the same font and size. They would then take away the two vinyl stickers on the window. The glass is tinted to the left and right of the door because the back of some machinery is against the glass. Ms. Ecker did not believe that was approved and said the tinted glass is not allowed without approval of the board. Also furniture and equipment is not allowed to block the window. Board members stated that this should be corrected.

No one from the public wished to provide input at 7:43 p.m.

**Motion by Mr. Boyle**

**Seconded by Mr. Share to recommend approval to the City Commission of the SLUP Amendment and Final Site Plan approval for 33588 Woodward Ave., Birmingham Shell.**

There were no comments from the public on the motion.

Mr. Koseck indicated his support for the motion and thanked the applicant for easy to understand graphics. Chairman Clein suggested that the applicant be as clear as possible in front of the City Commission to make sure they understand the proposal.

**Motion carried, 7-0.**

**VOICE VOTE**

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

Nays: None

Absent: Williams

**06-102-18**

**STUDY SESSION**

**1. Planning Board Rules of Procedure**

Ms. Ecker recalled the City Commission recently approved ordinance amendments for Site Plan Review requirements to require additional information on adjoining properties. There was some discussion about making this very clear in the application process. As a result of the discussion at that meeting, the City Manager directed the Planning Board to amend the Rules of Procedure to incorporate the new submittal requirements, and also to add the new requirements to the existing Planning Board applications.

On May 9, 2018, the Planning Board discussed amending the Rules of Procedure to comply with the new site plan submittal requirements that had been approved by the City Commission. The board reviewed draft revisions that incorporated the new submittal requirements. Given the length of time since the last review of the Rules of Procedure, the Planning Board also discussed amending other provisions, and verifying that all references to the Open Meetings Act remained correct.

Also, in Article VI – Code of Ethics, the board suggested that the third paragraph dealing with ethics standards be revised to require compliance with the City's Ethics Ordinance which was not in place when the rules were last updated. Other changes to Article VI relate to paragraph 8 which states, "Make decisions for the good of the community as a whole and avoid any act or decision that would tend to promote individual or special interests at the expense and/or integrity of community planning."

Further, the Planning Board requested that the required submittal language on all application forms match the exact wording used in the Rules of Procedure to eliminate confusion. Some other changes were to say that the Chairperson may ask speakers to limit their comments, and also that a person may be expelled from the meeting for "disruptive conduct" rather than "breach of the peace."

A revised draft of the Rules of Procedure containing the proposed changes along with a sample revised Application Form were presented.

With respect to Article III, Procedure (d), it was discussed whether a penalty would be put on the applicant by having to wait for a signed clearance letter from DTE approving the location of all lines, transformers, etc. Mr. Boyle thought it would be wrong for the board to accept the location in advance of the hearing. Concurrence was to strike the requirement (d) for a DTE clearance letter.

Board members made the following changes to the Rules of Procedure along with the Application Form:

- Article V, Citizen Participation - Replace "community of residence" with "address."  
- Replace "request" with "require."
- Article III, Procedure (B) (2) (a)
  - Replace "Colored elevation drawings" with "Colored renderings of exterior building elevations."
  - Change "hard copies" to "paper copies."
  - Replace "Community Development Dept. with "Planning Dept."
  - Change the first bullet point to: "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 details for all adjacent properties within 200 ft. of the subject site's property lines."
  - Change the second bullet point to: "A detailed and scaled site plan depicting accurately and in detail the proposed construction, alteration, or repair and all modifications to buildings, curbs, roadways, utilities."
- The requirements are changed on the Preliminary Site Plan Review Application form to conform with Article III, Procedure (B) (2) (a) and are numbered instead of the bullet points.

- Article II, Hearings (F) - The order of business was changed as follows:
  1. Roll Call
  2. Review of minutes of the previous meeting
  3. Review of the Agenda
  4. Unfinished Business
  5. Rezoning Applications
  6. Community Impact Statement
  7. Special Land Use Permit Review
  8. Site Plan and Design Review
  9. Study Session
  10. Meeting Open to the Public for Items not on the Printed Agenda
  11. Miscellaneous Business and Communications
  12. Adjournment
  
- Fee Schedule - Change "even" to "event."
  - Conform the formatting for fees.

**Motion by Mr. Share**

**Seconded by Mr. Koseck to amend the Planning Board's Rules of Procedure and to direct Staff to conform the various applications to the approved Rules of Procedure.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Williams

**06-103-18**

**2. Bistro Regulations**

Mr. Cowan advised that 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. At the joint City Commission/Planning Board meeting last year, the issue was discussed and there was consensus that a review of the bistro regulations is warranted.

Accordingly, the Planning Board began studying the existing bistro regulations and discussing potential new regulations. Over several months the Planning Board studied existing bistros and discussed the goals of the bistro program in the future.

On August 9, 2017 the Planning Board considered ordinance language suggesting outdoor seating on public property should not exceed 40 seats. The discussion on this topic was that some may not agree with an exorbitant amount of outdoor seating but each bistro should be reviewed on an individual basis. There was unanimous support for restricting the use of enclosures on outdoor dining to ensure that outdoor dining is truly seasonal.

On September 13, 2017 the Planning Board revisited the issue of limiting the number of outdoor seating and decided it should be reviewed on a case-by-case basis. There was also

general consensus that if the board thinks the number of seats exceeds what is reasonable they will ask the applicant to change that number. Rooftop dining was also discussed and the board decided it should be reviewed on an individual basis. It was noted that outdoor dining on the street level was preferable, and if the applicant met this requirement, then the Board would generally be in support of rooftop dining.

On April 11, 2018, the Planning Board conducted a public hearing and unanimously passed a motion recommending approval of the attached ordinance amendments for bistro regulations to the City Commission. Language related to the maximum number of outdoor seats or rooftop dining was not included because the board had agreed that these should be reviewed on an individual basis.

On May 14, 2018, after reviewing the proposed changes, the general consensus from the City Commission was that they like the 42 in. rail standards as well as the rule banning year-round outdoor dining enclosures. However, the Commission did not vote on the proposal because they wanted the Planning Board to reconsider setting a limit on the number of outdoor seating allowed at bistros, and to address rooftop dining.

Therefore, as directed by the City Commission, issues for discussion related to bistro requirements include:

- Maximum number of outdoor dining seats bistros are allowed; and
- Permissible rooftop dining.

Ms. Ecker thought the main point that the Commission was trying to get across was they feel that with the outdoor dining being so large, it makes a bistro too close to the size of what a Class C establishment could be. Some of the existing Class C holders could potentially be upset that a bistro was morphing into a standard Class C establishment.

Ms. Whipple-Boyce thought that what the Commission would really like from the Board is to put a restriction on the number of outdoor seats in the Rail and Triangle Districts.

Mr. Koseck said he likes the quaintness and smallness of a bistro. Ms. Whipple-Boyce added that she thinks it is all about fairness to the quota license holders and she believes the Commission wants a cap on the number of outdoor seats so as not to compete with the quota license holders.

Chairman Clein noticed that there are a few bistros that have more seats outside than they are allowed to have inside, doubling their size and allowing them to get quite close to the quota license capacity.

Mr. Jeffares received confirmation that what is decided will not affect any existing bistro.

Mr. Boyle said the chart that reflects the bistros should be amended to include Whole Foods. Also, the Planning Board is being asked to make a decision because it would be fair to another license holder. That is a political decision and it should be taken up by the political body and not the Planning Board.

Chairman Clein made it clear that in his opinion the motivation of this board has not been to look at this as fairness or equity or economics. However, the motivation of the elected officials may have been that, and thus their reasoning for sending it to the Planning Board to look at it from a land planning perspective.

Ms. Whipple-Boyce proposed saying that outdoor seating for bistros should not exceed their permissible maximum indoor seating. However, Mr. Share did not see that it makes sense from a planning perspective to impose an artificial number Downtown. He likes the ability to control and react to individual situations.

It was thought that this matter can be discussed at the end of the joint Planning Board/City Commission meeting.

Mr. Jeffares did not think that long-term, rooftop dining will be a big issue because of the limited number of sites where it could exist.

Mr. Boyle said that other than Griffin Claw and Big Rock they have not seen that bistros work effectively outside of Downtown. It strikes him as odd that the board is trying to weaken the incentive for bistros in the Rail and Triangle Districts rather than improving it.

The Chairman said with respect to rooftop dining they could say that it is allowed with approval of the City Commission and provided the applicant has satisfied street level outdoor dining requirements and there is no negative impact on surrounding properties. He added they will have had the joint meeting before the next regular Planning Board meeting and will be able to make a determination on the language. The hours of operation for rooftop dining can also be discussed.

**06-104-18**

### **3. DOWNTOWN BIRMINGHAM REDLINE RETAIL DISTRICT**

Mr. Cowan explained that Birmingham has 3.25 linear miles of a Redline Retail District that consists of 278 businesses. After approving a definition for personal services in relation to the definition of commercial uses in retail, the City Commission has asked the Planning Board to evaluate the Redline Retail boundaries and identify buildings that may be less suitable for retail. The Planning Board has reviewed maps categorizing the range of uses throughout the District, evaluated the distribution of asking rents, vacancy locations, and examined images of existing building frontages.

The Planning Board has also reviewed maps of storefronts' proximity to metered parking and structure parking in relation to retail use. General findings were that Maple Rd. and the downtown core have the highest demand for retail, while secondary locations further from the downtown core, and further from on-street parking have a broader range of existing uses.

At the April 11, 2018 meeting where the Board examined the possibility of different tiers with a different set of permissible uses within each tier. The members started out by looking at the Birmingham Shopping District assessment area and they wanted to know what the difference in prices is. A map showing the distribution of rents was requested in order to help gauge the demand for different areas.

On May 9, 2018 the Board decided that the uses from the "Non-Conforming" 4th tier be merged with the General Greenline 3rd tier. The main difference between tiers 2 and 3 is that tier 2 allows retail services (Personal Services) while tier 3 allows retail services, office and medical. There seemed to be consensus that uses could be expanded on the north and south ends of the redline boundary. Much of the concern and debate regarding the boundaries of the proposed

tiers has been in areas identified as Anchor Zones in the Downtown Birmingham 2016 Plan, and how they connect to the outer edges of Downtown.

An issue for discussion could be whether or not these developments have "spread out retail" and "encouraged pedestrian movement between shopping districts" as the 2016 Plan suggested. This is especially relevant in the North Anchor Zone at Oakland/Willits and N. Old Woodward Ave,

In the North Anchor Zone there have been four developments constructed as listed below, and there is one currently under construction (Brookside), and one currently under proposal (Bates St. Project):

- Palladium;
- The Willits;
- 325 N. Old Woodward Ave.; and
- 322 N. Old Woodward Ave.;

In relation to the intent of the Downtown Birmingham 2016 Plan, issues for discussion are:

- 1.) Is there enough demand for retail in Birmingham to justify 3.25 miles of a Redline Retail Boundary?
- 2.) Have the new developments in anchor zones demonstrated that there is sufficient demand for first floor retail - that it would expand and connect the retail areas that are identified in the Plan?
- 3.) Does/will development in the identified anchor zones act as a transition and encourage continuity of walkability between the three retail districts?
- 4.) Or, are the CBD, N. Old Woodward, and S. Old Woodward separate districts of themselves that are complimented by the businesses and people in the anchor zones?

In answer to questions from the board, Mr. Cowan stated there are currently two vacancies in the North Anchor Zone: the former Mitchell's Fish House, and the former Au Couchon and Arthur Ave. restaurants, where there is a pending application.

It was clarified that on the maps presented by Mr. Cowan redline is retail (retail goods, restaurants, salons, spas and entertainment) and blueline is retail-services (financial, mortgage, and real estate offices). Greenline includes ground-floor general offices (lawyers, accountants, tax preparers).

Mr. Jeffares did not think the general category of offices **use for business to business services** should be allowed on the first floor.

Mr. Share said it seems to him they have an environment where the retail of 20 years ago isn't the retail of today. So the notion of three zones makes sense. If you want office on the first floor, then there must be something in front. Also, the issue for him is what to do with the outside of the super successful retail core.

Ms. Ecker indicated that one of the questions that will be posed at the joint Planning Board/City Commission meeting in the retail discussion is whether or not the Commission is inclined to give the Board some professional assistance on the question of whether there is enough demand to justify 3.25 miles of redline retail in Birmingham.



It was concluded that it would be better to describe the tiers broadly to the Commission by saying that uses are increased as you move from red to blue to green.

Mr. Koseck said he would extend the red line along the west side of the Palladium building so that retail is across the street from retail. Further, he went on to predict that the proposed new developments will change the dynamics. Mr. Share noted the most they can expect from a retail expert will be probabilities.

Chairman Clein said all five maps can be shown to the City Commission. They reveal five variations on themes where the Board struggles with where the boundaries between different colors lie. They feel they don't have adequate information and could use the assistance of an expert to help.

#### 06-105-18

### MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Requests
  - 137 W. Maple Rd., Dri Bar - A/C location and three exterior caps.
  - 33477 Woodward Ave., Woodward Commons - Show canopy touching the building.
- c. Draft Agenda for the next Regular Planning Board Meeting of June 27, 2018
  - 469-479 S. Old Woodward Ave.- Rezoning Request;
  - 469-479 S. Old Woodward Ave. Preliminary Site Plan and CIS;
  - 2010 Cole St. - Rehab of the existing building;
  - The Morrie - SLUP to revise it to allow a dance floor.

Chairman Clein expressed his concern about having all three reviews for 469 – 479 S. Old Woodward Ave. requests on one agenda.

- d. Other Business (none)

#### 06-106-18

### PLANNING DIVISION ACTION ITEMS

Staff report on previous requests (none).

Additional items from tonight's meeting (none)

#### 06-107-18

### ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at .9:57 p.m.

**Jana L. Ecker**  
**Planning Director**