

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 14, 2017**

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PUBLIC HEARINGS	
1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM AS FOLLOWS:	2
TO AMEND ARTICLE 03 DOWNTOWN OVERLAY DISTRICT, SECTION 3.04 (E) ARCHITECTURAL STANDARDS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;	
TO AMEND ARTICLE 03 TRIANGLE OVERLAY DISTRICT, SECTION 3.09, COMMERCIAL/MIXED USE ARCHITECTURAL REQUIREMENTS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;	
TO AMEND ARTICLE 04 DEVELOPMENT STANDARDS, SECTION 4.90, WN-01 (WINDOW STANDARDS) TO ALTER THE REQUIRED GLAZING ON COMMERCIAL BUILDINGS;	
TO AMEND ARTICLE 07 ARCHITECTURAL DESIGN REQUIREMENTS, SECTION 7.05, REQUIREMENTS TO REMOVE INCONSISTENT PROVISIONS; AND	
TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD DEFINITIONS FOR CLEAR GLAZING AND LIGHTLY TINTED GLAZING.	
Motion by Mr. Share Seconded by Ms. Lazar to recommend to the City Commission adoption of the proposed Ordinance changes to section 3.04 (E), section 3.09, section 4.90, section 7.05 and section 9.02 of the Zoning Ordinance to amend the glazing standards with the one modification discussed tonight.	3
Motion carried, 6-0.	
STUDY SESSION ITEMS	4
1. Definition of Retail	
Motion by Ms. Whipple-Boyce Seconded by Ms. Prasad to set a public hearing date of July 12, 2017 at the Planning Board to consider the following ordinance amendments to Chapter 126, Zoning:	
1) Article 3, Section 3.04, Specific Standards, to amend the Downtown	

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Birmingham Overlay Standards to exclude community and personal service uses as permitted uses in the Redline Retail District; and	4
2) Article 9, Section 9.02, Definitions, to add a definition for personal services, to amend the definition of commercial use to exclude personal services and to amend the definition of retail use to include retail bank branches and personal services.	8
Motion carried, 5-0.	9

APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 14, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 14, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Alternate Board Members Daniel Share; Lisa Prasad

Absent: Board Members Robin Boyle, Bryan Williams; Student Representatives Ariana Afrakhteh, Isabella Niskar

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

06-108-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF MAY 24, 2017

Mr. Share made the following changes:

Page 5 - He voted rather than Ms. Lazar who was recused from that vote.

Page 10 - He recused himself because of a conflict of interest.

Motion by Mr. Koseck

Seconded by Ms. Prasad to approve the Planning Board Minutes of May 24, 2017 as amended.

Motion carried, 5-0.

VOICE VOTE

Yeas: Koseck, Prasad, Jeffares, Lazar, Share

Nays: None

Abstain: Clein, Whipple-Boyce

Absent: Boyle, Williams

06-109-17

CHAIRPERSON'S COMMENTS

Chairman Clein announced the study session that will be held after the public hearing on glazing ends will not be the final determination on anything that has been discussed.

06-110-17

APPROVAL OF THE AGENDA (no change)

06-111-17

PUBLIC HEARINGS

1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM AS FOLLOWS:

TO AMEND ARTICLE 03 DOWNTOWN OVERLAY DISTRICT, SECTION 3.04 (E) ARCHITECTURAL STANDARDS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;

TO AMEND ARTICLE 03 TRIANGLE OVERLAY DISTRICT, SECTION 3.09, COMMERCIAL/MIXED USE ARCHITECTURAL REQUIREMENTS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;

TO AMEND ARTICLE 04 DEVELOPMENT STANDARDS, SECTION 4.90, WN-01 (WINDOW STANDARDS) TO ALTER THE REQUIRED GLAZING ON COMMERCIAL BUILDINGS;

TO AMEND ARTICLE 07 ARCHITECTURAL DESIGN REQUIREMENTS, SECTION 7.05, REQUIREMENTS TO REMOVE INCONSISTENT PROVISIONS; AND

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD DEFINITIONS FOR CLEAR GLAZING AND LIGHTLY TINTED GLAZING.

The public hearing opened at 7:34 p.m.

Mr. Baka recalled that the City Commission has held a public hearing and the Planning Board has held several study sessions to discuss the issue of window standards and examine potential changes to the Ordinance to address the concerns of the City Commission. As a result of those discussions, a general consensus was reached that prohibiting the tinting of first floor windows would promote the intent of creating a pedestrian friendly interactive condition in the commercial areas of the City.

There are three sections of the ordinance that dictate how glazing on buildings is regulated: the Downtown Overlay District (much of Downtown); the Triangle Overlay District (bound by Woodward Ave., Adams, and Maple Rd.); and all other commercial properties.

For the Downtown Overlay It is proposed to now ~~allow~~ **require** clear glass on the first floor and light tinting on the stories above. It is also proposed that first-floor windows cannot be blocked by opaque materials or the backs of shelves. For the Triangle Overlay it is clarified that first-floor glazing shall be clear and that lightly tinted glazing is permitted on the upper floors. In all other commercial zones clear glazing is ~~permitted~~ **required** on the first floor and lightly tinted on the floors above; and again the first-floor windows shall not be blocked with opaque materials or the backs of shelves. On elevations that are not a facade but also have a public entrance it is being considered that 30% clear glazing shall be provided between 1 and 8 ft.

above grade as opposed to the 70% that is required for the other facades. Further, blank walls of longer than 20 ft. on the ground floor facade shall not face a plaza, park, parking area, or public street. This provision is already included in the Downtown and Triangle Overlays. Also, openings above the first story shall be a maximum of 50% of the total facade area and windows shall be vertical in proportion. The proposal eliminates Article 07.05 B that requires 50% glazing on first-floor facades.

Finally, the reviewing body is given some flexibility in these areas, without forcing applicants to go before the Board of Zoning Appeals to acquire a variance.

Definitions for clear glazing, and lightly tinted glazing are proposed to be added to Article 09 section 9.02.

Ms. Lazar received clarification that buildings which already have a manually applied screening material to keep out sunlight are considered grandfathered in for the duration of the tenancy. Also, something that obstructs the view into the window would be considered a violation. Thirdly, blinds or shutters are permitted.

Mr. Share noticed in section 3.09 (Triangle Overlay) there was no reference to furniture blocking windows, whereas in sections 4.90 (Window Standards) and 3.04 (Downtown Overlay) there are those references. The consensus was to reduce restrictions in sections 4.90 and 3.04 to make them the same as section 3.09. Basically furniture and products would be removed from those sections.

At 7:45 p.m. no one from the public had a comment on window glazing.

Ms. Whipple-Boyce announced she is not supportive of permitting tinting on the upper floors and for that reason she will not support the proposal tonight.

Motion by Mr. Share

Seconded by Ms. Lazar to recommend to the City Commission adoption of the proposed Ordinance changes to section 3.04 (E), section 3.09, section 4.90, section 7.05 and section 9.02 of the Zoning Ordinance to amend the glazing standards with the one modification discussed tonight.

Mr. Koseck thought everyone will sense the benefit of the clear glass at the first floor and will not notice the slight tinting above.

There were no public comments on the motion at 7:49 p.m.

Motion carried, 6-01.

VOICE VOTE

Yeas: Share, Lazar, Clein, Jeffares, Koseck, Prasad

Nays: Whipple-Boyce

Absent: Boyle, Williams

The Chairman closed the public hearing at 7:50 p.m.

STUDY SESSION ITEMS

1. Definition of Retail

Mr. Share recused himself because of a conflict of interest. Ms. Lazar also recused herself based on her part ownership of a commercial building in Birmingham.

Chairman Clein reiterated this is not a public hearing. The only action the board could take tonight would be if they decided to set a public hearing. This board does not approve or deny any ordinance language, they only make a recommendation to the City Commission.

He explained that the City Commission has sent forth instructions to the Planning Board to study and provide a recommendation along with a directive for a particular course of action.

Ms. Ecker advised the Planning Board has been assessing this matter for probably six months or so. Specifically the City Commission directed the Planning Board to hold a public hearing on amendments to Article 3, section 3.04 (C) (6) of the Downtown Overlay District and the Redline Retail District to take away Community Uses and Personal Service Uses as permitted uses on the first floor. They also specifically directed the board to state what would be included in retail and to come up with the definitions of Personal Services and Community Uses.

This proposal clarifies exactly what uses would be allowed on the first floor within the Redline Retail District. This is what the City Commission has asked the Planning Board to consider as a temporary measure while the board further discusses the bigger picture of retail. It would halt some of the changes they have been concerned about in terms of the types of tenants that have been coming in on the first floor and the parking implications of those tenants.

Ms. Ecker advised that the Planning Division has been working with the City Manager and the Birmingham Shopping District ("BSD") to obtain all relevant data as to the current mix of uses on the first floor in the Redline Retail District and the changes to this mix that have occurred since the inception of the 2016 Plan in 1996. Discussion followed regarding information provided by the BSD data base regarding office uses on the first floor in the Redline Retail District.

Mr. Jeffares observed the proposal would be a temporary fix but it would turn into a permanent change if the board's study continues on for a long period of time.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to add the following communications to the record:

- **Mr. Eric Wolfe in favor of the proposed ordinance changes;**
- **Mr. James Esshaki opposed;**
- **Mr. Rick Huddleston opposed.**

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Recused: Lazar, Share

Absent: Boyle, Williams

At 8:09 p.m. the chairman invited members of the public to speak.

Mr. Richard Huddleston said he represents VS Birmingham Holdings, LLC, the owner of Birmingham Place which contains 108,000 sq. ft. of office and retail. It was noted that the portion of his building that fronts on S. Old Woodward Ave. is in the Redline Retail District. They are opposed to the ordinance proposal because they believe that landlords need more flexibility to deal with 21st Century retail. He wondered if Birmingham can sustain increasing the vacancy rate by 30 or 40% and still retain the viable Downtown that everyone knows and loves.

Mr. Peter Sobelton indicated he is a resident and also a commercial property owner in Birmingham. He highlighted what most recently occurred at Fairlane Towne Center where Lord and Taylor had a 250,000 sq. ft. location. That has been converted to office use for 1,500 Ford Motor Co. employees. There was an immediate increase in traffic and the most significant increase was at the food and beverage courts. He encouraged that people not be put in a position where they are forced into only one area of commerce; i.e., retail.

Ms. Rene Acho, resident and business owner in Birmingham, said to jeopardize the balance that Downtown has had for so many years could be detrimental. Everyone can remember what happened in 2008 and 2009 when all of the retailers went down and no one was there to take those spaces. That could again be an issue for all of us.

Mr. Bedros Avedian said he owns 261-275 E. Maple Rd., the Jos. A Bank Building. Also, he owns 297-323 E. Maple Rd. He went on to name a number of Downtown businesses that have failed. He has had to reduce rents but his taxes haven't gone down. That is a big hit on all of the real estate owners.

Mr. Ken Kajoian who lives on Lakepark and owns two buildings in the Redline Retail District thought the proposed plan does not allow for the diversity that is needed in Birmingham. He noticed that Hamilton is not in the Redline Retail District and that is not equitable. He agreed it is nice to have more retail, but with the dynamics of the economy and what is going on with retail, that is not viable right now.

Ms. Jeanette Smith was present on behalf of James Eshaki. She thought the board ought to take time to really understand the data and understand what could happen as others have said. Blanket rules open the door to some issues. She asked the board to consider Birmingham's realities, the market forces at work, and the retail landscape that is changing rapidly. Keep the landlords empowered to do what they do best.

Mr. Paul Chicorian said he is Executive Manager Director for Colliers International, a commercial real estate firm. Also he is a resident at 1076 Fairfax. He believes if this change were approved it would severely damage the City and its residents. During the slowdown buildings were empty and landlords couldn't get tenants. Now things are better, and it may seem like a good idea to switch everything to retail. But if the economy goes back into a slowdown which it inevitably will, Birmingham will have vacancies and ultimately Gypsy retails will come in and out. The present mix is ideal, so don't try to fix it.

Mr. Mark Alhermizi indicated he lives on Frank and has been a commercial tenant for the last ten years. He rents about 3,000 sq. ft. of office space in a commercially zoned building. He currently is looking for 6,000 sq. ft. and his options are extremely limited. This proposed change would only make it more difficult or impossible to attract more business prospects to this great town.

Mr. Dan Jacob noted he has been a broker in Birmingham for 28 years. He has done the majority of brokerage deals in town. It is the daytime population that co-exists with the residential that gives Birmingham its synergy. Services are needed from the people that work in town. It would be really devastating if the landlords' hands were tied so they didn't have flexibility that is reactive to the times. It is necessary to be cognizant of who wants to be here and who does not. He explained it isn't like retailers are knocking on our door, they don't have that urgency to come here.

Mr. Brian Najor said he owns several buildings Downtown. He wanted to echo everything he has heard tonight. It troubles him the board is trying to make a very important decision but doesn't have all of the facts. He has heard a lot about why this change shouldn't be done but hasn't heard a lot about why it should. Obviously more needs to be done in terms of studies. The proposal that has been discussed seems very counterintuitive. Everyone that has spoken tonight has provided evidence and facts and understands the market. He urged the City Commission to walk down the streets and talk to the owners, retailers, and the real estate brokers in order to educate themselves on where the market is today.

Mr. Dan Jacob spoke again to ask for a foot traffic study. That is very critical when you want to restrict uses to only retail and not allow quasi retail.

Chairman Clein clarified this volunteer board is not attempting to push a particular change up to the City Commission. The board was asked to start studying retail and its definition. That study would need to include all of the details that have been discussed this evening. The reason everyone is here tonight is that the City Commission passed a resolution specifically asking this board to do exactly what is at hand. The Planning Board is grappling with the same questions that the audience asks. What is the data; why are we doing this; all of these questions. The board is trying to work through a process that was specifically requested of them by the elected leaders who set policy.

Ms. Christine Jackson, the owner of Scandia Home, stated that she has lost the other two retail stores that are on her block. Now she doesn't get a lot of foot traffic. She is a destination store so people still tend to come. She proposed there will need to be some type of a compromise. Perhaps the Redline District could be narrowed down some more so all of the retailers are in context to one another. That way they will prosper and won't go out of business. Brick and mortar is different from on-line and there will always be people who want to come and experience what they are buying.

Mr. Richard Sherer stated that he presently owns 175-185 W. Maple Rd. and his sister has several stores on Pierce. His property at 185 W. Maple Rd. has been vacant for a year. That is his reality, and to further constrict restricts free enterprise and he is entirely opposed. He questioned what the ordinance proposes to do for building owners who have long-term skin in the game.

Mr. Matt ~~Ferrill~~ **Farrell**, CEO and founder of Core Partners, a commercial brokerage company, spoke. They property manage, broker, and advise on commercial real estate transactions throughout the State of Michigan. He is opposed to the intended implication. His company tries to educate their clients that flexibility, creativity and an open market are key when it comes to marketing and advertising commercial real estate space. Any limiting factors to that and further hampering will change the result of the market condition. The reason the vacancy factor in Birmingham is in the 6% range when you look at office, retail, and multi-family combined has

nothing to do with the rental rates, walkability, or urbanization; but has everything to do with being able to accommodate people coming in and out of town and the parking constraints.

Mr. Kevin Denha, the owner of 700 N. Old Woodward Ave. in the Redline Retail District as well as the building on Lincoln and Adams where Great Harvest Bread is located, added a couple of things. He thought any tweak to the ordinance needs to be analyzed very seriously and also questions why this is happening.

Mr. James Esshaki, Essco Development, said he owns three buildings that are all being affected by the proposed legislation: Park Plaza, Plaza of Birmingham, and the Wabeek Building. He noted the following:

- These buildings were purchased and built based on existing ordinances. If the City were to enforce the new ordinances, it would have a devastating effect on real estate. It would reduce the value of his holdings by 20 to 30%.
- He does not know of any retailer who wanted to come to this town that has been turned away.
- Birmingham is not a retail destination as large cities are. Large national tenants will not come here because it is not conducive to their type of product. So, chasing these people is like chasing moonbeams.
- If office tenants close down and people try to replace the spaces with retail, a lot of foot traffic will be lost across the City. The retail may have six or seven employees versus 100 or 150 office workers.
- There are spaces that would have to be made retail where retail could not fit, such as Google and Schecter. These will end up as permanent vacancies.

Chairman Clein announced he would not support the proposed amendment to restrict uses. The board has not had spent enough time having the detailed discussions and reviewing relevant data to support restricting uses in this way. However, the City Commission has directed the board to set a public hearing. At the joint Planning Board/City Commission meeting on Monday of next week he will be expressing his concerns about the process.

Mr. Koseck indicated the one comment he thought was brilliant was that maybe the Redline Retail District needs to be changed. He feels uncomfortable with pushing the proposal to a public hearing because he thinks it needs study. This matter can be discussed at the joint meeting.

Mr. Jeffares observed the amount of information that came out tonight was extremely helpful. Hopefully more information can be obtained from the BSD so the best possible choice can be made.

Ms. Ecker stated the direction from the City Commission is clear. The Planning Board should hold a public hearing, review it, and decide on a recommendation. Ultimately it will be up to the City Commission to make the final decision.

Ms. Whipple-Boyce thought the City Commission wants absolute clarity about what office is by today's standards. She feels it is important to get additional data on national trends along with information that will shed some light on this matter. For example, is retail dead? Or do online sales only make up 8%? For now it is clear to her that the City Commission has instructed this board to set a public hearing and she believes that should be done tonight.

Motion by Ms. Whipple-Boyce

Seconded by Ms. Prasad to set a public hearing date of July 12, 2017 at the Planning Board to consider the following ordinance amendments to Chapter 126, Zoning:

- 1) Article 3, Section 3.04, Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted uses in the Redline Retail District; and**
- 2) Article 9, Section 9.02, Definitions, to add a definition for personal services, to amend the definition of commercial use to exclude personal services and to amend the definition of retail use to include retail bank branches and personal services.**

Public comments on the motion were heard at 9:20 p.m.

Mr. Brian Najor came forward again. He questioned if there is any mechanism to hold a town hall meeting. He noted this matter is being pushed down the road to the City Commission where, if the Commission decides, it could potentially pass very quickly and that is a big change. There needs to be some discussion and the City Commission needs to convince the board that this is the right thing to do and this is what needs to be passed. Ms. Ecker responded that the joint meeting next week is the best time for them to come together and have a discussion. Mr. Koseck added the public is welcome to come to that meeting next Monday.

Mr. James Eshshaki said he thinks the public has spoken. Everybody was against the proposed amendment except for one person who was not 100% against or for. He doesn't know why so many additional meetings are needed.

Mr. Ken Kajoian said just as the 2016 Plan was crafted over a period of years, it is necessary to figure out how to craft this plan by implementing positive changes in certain areas. This is happening way too fast. On Monday night perhaps board members could talk about the key elements that need to be put together in terms of what other downtowns similar to Birmingham are doing; what is their makeup. Then, do these studies.

Mr. Richard Sherer added three retailers to the list of upcoming vacancies in town.

Mr. Bedros Avedian received clarification that if the changes are approved by the City Commission they would take effect seven days after publication in the newspaper and would restrict first-floor retail space to retailers, retail bank branches, beauty salons and other personal services, along with restaurant and bistro uses, artisan uses, and entertainment uses. These uses would not include business services, medical, dental, or mental health services. Mr. Avedian asked if he could lease to a live/work tenant in his building at Maple Rd. and Old Woodward Ave. if the ordinance amendment has not gone through yet. Ms. Ecker answered the tenant would have to sell either products or services to the public within the first 20 ft.

Motion carried, 5-0.

ROLLCALL VOTE

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

Nays: None

Recused: Lazar, Share

Absent: Boyle, Williams

Chairman Clein thanked the public for its time and input.

06-112-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Correspondence
 - 277 W. Brown, Butler Heights Condo Assoc - Tear out and replace 24 x 90 driveway. Install new grates/drains in front of each garage. Tie in downspouts to storm drain. Pour concrete 4 in. thick to bring mix w/fiber mesh. Tear out and replace 7 x 24 approach, pour 6 in. thick.
 - 34915 Woodward Ave., Birmingham Roast - Railing installment for the site plan approval.
 - 280 W. Maple Rd., Wabeek Building - Re-roof high section of building with a PVC white Duro-Last roofing system using 50 mill deck sheets. Install 2pc metal fascia (5 in. face). Color of metal is ash gray which matches paint on north wall.
 - 300 Hamilton, Commonwealth Cafe - denied approval for a larger outdoor dining deck in front.
 - Mr. Baka noted that Mr. Duane Barbat, owner of the building at 33477 Woodward Ave. where U.S. Mattress is located, is asking for administrative approval to renew the same exact plan for redoing the parking lot that was previously approved by the board. Everyone was in agreement.
- c. Draft Agenda for the Regular Planning Board Meeting on June 28, 2017
 - 2010 Cole;
 - 211 S. Old Woodward Ave., Birmingham Theatre - Special Land Use Permit and Final Site Plan Review for a Theater Liquor License;
 - 412-420 E. Frank - Final Site Plan Review;
 - 300 Hamilton, Commonwealth Cafe - denied approval for a larger outdoor dining deck in front.
- d. Other Business (none)

06-113-17

PLANNING DIVISION ACTION ITEMS

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

06-114-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 9:53 p.m.

Jana Ecker
Planning Director

APPROVED