
**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JULY 12, 2017**

Item	Page

APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 12, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 12, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Lisa Prasad; Student Representative Ariana Afrakhteh

Absent: Board Member Bert Koseck; Alternate Board Member Daniel Share; Student Representative Isabella Niskar

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

07-126-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JUNE 28, 2017

Mr. Jeffares:
Global correction - replace "efface" with "EFIS."

Mr. Boyle:
Global correction - replace "Cline" with "Clein."

Ms. Ecker:
Page 11 - replace "exterior insulation finish system" with "exterior finish insulation system."
Page 4 - third paragraph, first line, replace "of" with "off."

Ms. Lazar:
Page 4 - replace "Kriger" with "Krieger."
- replace "Higgins" with "Higham."

**Motion by Mr. Boyle
Seconded by Ms. Whipple-Boyce to approve the Planning Board Minutes of June 28, 2017 as corrected.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Clein, Jeffares, Lazar, Williams

Nays: None

Abstain: Prasad

Absent: Koseck

07-127-17

CHAIRPERSON'S COMMENTS

Chairman Clein noted there will be several categories of business this evening.

07-128-17

APPROVAL OF THE AGENDA (no change)

07-129-17

OLD BUSINESS

1. 211 S. Old Woodward Ave.

Birmingham Theater

Request for approval of a Special Land Use Permit ("SLUP") and Final Site Plan Review to serve alcoholic liquors in the existing theater operating under a Class C Liquor License (postponed from the meeting of June 28, 2017)

Ms. Ecker advised the subject site is located on the east side of S. Old Woodward Ave. just south of Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Birmingham Teatro, LLC, is applying for a SLUP to operate with a Class C Liquor License under the new ordinance allowing a movie theater to operate with a liquor license. Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.

Ms. Ecker stated she had reviewed this application thoroughly at the last meeting. The board had a few questions for the applicant who was not present for the last meeting.

Ms. Kelly Allen, Adkison, Need, Allen & Rentrop, LLC, appeared on behalf of the applicant, Birmingham Teatro, LLC. She apologized for not being present at the last meeting.

She responded to questions from last time:

- Why they are requesting to serve liquor until 1 a.m.?
The answer is they will stop serving liquor an hour before the movies are over but in any event, no later than 1 a.m.
- Can anyone come in and go upstairs to the little bar area?
Customers must purchase a ticket to enter the theater. To get upstairs they must provide a ticket.

- The concession area has not changed except for new tile and paint. There will no longer be popcorn there. There are four tables with chairs for people to sit. The idea is that patrons can carry their beverage into the movie theater.

Ms. Whipple-Boyce received confirmation that liquor will only be served upstairs.

No one from the public wished to comment on this appeal at 7:38 p.m.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that based on a review of the site plans submitted, the Planning Board recommends approval to the City Commission of the applicant's request for Final Site Plan and a SLUP for 211 S. Old Woodward Ave., Birmingham Theater.

Motion carried, 7-0.

No one spoke from the public at 7:39 p.m.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Lazar, Prasad

Nays: None

Absent: Koseck

07-130-17

PUBLIC HEARINGS

1. An ordinance to amend Chapter 126, Zoning as follows:

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

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.

Ms. Lazar recused herself due to a familial relationship with the applicant.

The Chairman opened the public hearing at 7:40 p.m.

Mr. Clein stated that based on the discussion between the City Commission and Planning Board at the June 19, 2017 joint meeting regarding the definition of retail, the City Manager has provided a memo outlining the course of action considered at that time. This discussion suggested postponing the public hearing to a date certain and holding a study session in lieu of the public hearing to consider the definition of personal services and to review the Redline Retail District as prescribed in the Downtown Birmingham 2016 plan for background and intent in regards to personal services.

Motion by Mr. Williams

Seconded by Mr. Boyle to continue the public hearing to Wednesday evening, August 9, 2017.

There was no discussion from the public on that motion.

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Boyle, Clein, Jeffares, Prasad, Whipple-Boyce

Nays: None

Recused: Lazar

Absent: Koseck

Chairman Clein closed the public hearing for tonight at 7:41 p.m.

07-131-17

STUDY SESSIONS

1. Definition of Personal Services

Ms. Lazar continued to be recused for this study session.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to accept and file the following communications as part of the official record:

- **E-Mails from various individuals -**
 - **Elizabeth Elkin on July 10;**
 - **Tom Booth on July 10;**
 - **Karen Mucha on July 10;**
 - **Andrea Rehm on July 5.**
- **E-Mail to Planning Board members from Christopher Longe on July 11.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Prasad

Nays: None

Recused: Lazar

Absent: Koseck

Ms. Ecker advised there is a desire by the City Commission to provide clarification on the definition of personal services in the Zoning Ordinance. The current definition of retail use includes commercial use as a permitted use. Commercial use, as defined, includes the category of personal services. However, the term personal services is not defined and left to the interpretation of City Staff.

Ms. Ecker advised the City Manager has provided a letter that makes clear the direction from the City Commission to the Planning Board at the joint Planning Board/City Commission meeting held on June 19, 2017, which is as follows:

1. Postpone the public hearing set for July 12, 2017 to a date certain in the immediate future.
2. Hold a study session on July 12, 2017 to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, then review the current draft definition of personal services as reviewed by the Planning Board on June 14th for appropriate application.
3. Conduct a future public hearing on the proposed definition for personal services following this study session and provide a recommendation to the City Commission on a proposed definition at the earliest opportunity.

The latest draft definition for personal services reviewed at the Planning Board's June 14, 2017 meeting does provide a definition for further discussion - however, the City Manager's comment was that the draft language should be modified to only include the services that are permitted and not identify excluded services. This will help further clarify the application of the proposed definition by City Staff.

Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

Further direction from the City Manager states that because Community Use is already defined and does not pose this same immediate issue, this can be further reviewed in the second stage of discussion on the definition of retail.

Consensus was that at this time, the board's direction is to focus only on the definition of Personal Services.

Mr. Williams wanted to know by the time of the public hearing how many vacancies there are in the Redline Retail District and what the current mix is, by percentage of square footage and number of units. Also, if information is available what new vacancies will come up in the immediate future.

Mr. Jeffares summarized his view that the core of personal services is from a business (B) to an individual consumer (C), rather than from a business (B) to a business (B) which deals with large corporate clients and doesn't cater to individuals.

Mr. Williams thought the current definition is way too restrictive. He doesn't like making lists. Since the Building Official is the one who must deal with the practical application issues, it would be nice to have him present to provide input. Also, he wanted to hear from the representative of the Birmingham Shopping District ("BSD"). Ms. Whipple-Boyce agreed it is very difficult to provide a list of permitted uses and keep it current. In her opinion it would be

more logical to list businesses that they don't want to see Downtown. She worries what may be left out in the present list of permitted services.

Mr. Boyle suggested they want the Downtown to operate as accessible, vibrant, colorful, safe, walkable. They have achieved that. Now he is worried that attempts to define all of the individual uses might backfire. So he thought the board might pay more attention to what they want the City to be and not try to tell people what uses they can or cannot have. Mr. Williams agreed. He feels the City needs a new Master Plan and thinks interim solutions are a mistake. He would rather have a definition that is more expansive and focused on individual services as opposed to corporate or institutional services. He also does not like lists, as they are soon outdated. He supports a broader statement of intended uses by persons in activating the street.

Several board members agreed that they don't want lists. It would be better to offer guidance. Regardless of what uses they come up with, there will always be a body of uses that will not be defined.

The board then discussed whether they concur with the definition of personal services if the list of services is taken out. Ms. Whipple-Boyce observed that the ordinance contains pages and pages of lists. That is part of what makes it work for the Building Official and for people who are looking to do certain things in certain areas. They know exactly what is permitted there. Ms. Prasad agreed it is important for the board to provide examples and direction for the types of uses they want to see.

Mr. Williams did not understand why the board cannot list excluded categories.

Chairman Clein synthesized what he has heard: An establishment that is open to the general public and is primarily engaged in providing services directly to the consumer; including but not limited to personal care, care for apparel and other personal items, and any other service directly sold to the consumer; but does not include business to business services, medical, dental, or mental health services.

At 8:58 p.m. he invited members of the public to come forward to talk about Personal Service.

Mr. Richard Huddleston appeared on behalf of Unit 1 at Birmingham Place, 401 S. Old Woodward Ave., which is approximately 110,000 sq. ft. of commercial and retail space. After walking the Redline Retail District Mr. Huddleston found 10 vacancies out of 110 total storefronts, of which about forty were not retail type uses. He offered his opinion that what is good for retail is foot traffic, and the biggest source of foot traffic in a retail area is high density office.

Ms. Jeanette Smith, VP of Marketing for Core Partners, urged that before a public hearing is held an advisory group be formed that includes people from different walks of life who can weigh in. An interim solution seems a little premature.

Mr. Richard Sherer said his family owns property on Pierce and W. Maple Rd. He stated that any attempt to legislate what can be in buildings is very nebulous. It will be extremely damaging to landlords.

Ms. Cheryl Daskas who is a resident, a retailer, and a property owner, said she does not want to see first-floor offices in her town. As Tom Markus once said, It takes three things: it's your

downtown, your neighborhoods, and your school system. If one falters, then the whole thing crumbles. She noted first-floor offices stop the foot traffic.

Ms. Ecker said what she heard from the majority of members is that Personal Services is an establishment that is open to the general public and engaged primarily in providing services directly to an individual consumer; including but not limited to personal care services, care of apparel and other personal items; and not including business to business services, medical, dental, and/or mental health services.

Mr. Boyle stated the board needs to have a serious conversation about the Downtown. Everyone knows there is a lot of change happening. His thought was that it behooves the City Commission to take the leadership and create some form of opportunity for people to weigh in on this issue of the nature of our Downtown. So he strongly recommended to the City Commission to give that serious consideration and get it moving in advance of yet more delays on the Master Plan.

07-132-17

2. Shared Parking

Ms. Lazar rejoined the board.

Ms. Ecker recalled that on June 19th, the City Commission and Planning Board discussed shared parking at their joint meeting. It seemed there was some support for shared parking. The comments that were made were:

1. There should be a shared parking agreement in writing; and
2. They wanted some idea of the success or failure of shared parking in other communities.

In the draft language the recommendation would be to add the requirement for an executed Shared Parking Agreement with a minimum term of five years. Additionally, if some of the uses change or one owner decides not to share parking anymore, a revised executed Shared Parking Agreement with a minimum term of five years must be submitted to the City.

After contacting other communities about shared parking, no firm statistics were received as none of the communities track shared parking data.

Chairman Clein spoke regarding credits for shared parking. He had a hard time with agreeing the City would allow a 50% reduction in site landscaping requirements. Ms. Whipple-Boyce commented she would expect to see less landscaping in parking lots in the MX District. In her mind the various districts are different places and they shouldn't be lumped together.

Ms. Lazar wondered what incentive there is for a building owner to provide shared parking when it basically ties their hands for a period of time. It was noted that it might allow them to have a bigger building with different uses on their property if sharing with a building next door that has different uses and peak times.

The Chairman indicated he is not ready for a public hearing because he does not agree with the examples of credits that incentivize people to enter into shared parking. He is not sure credits are even needed.

Ms. Whipple-Boyce thought it might be helpful to see other options for credits. An opportunity for rooftop uses would be a big carrot in the MX District.

There was agreement to bring this matter back for further discussion.

07-133-17

3. Parking Issues to be Included In the Master Plan

Mr. Baka advised that the Planning Board has been asked by the City Commission to provide input on potential issues that should be studied as part of the upcoming Master Plan project. The City of Birmingham has been preparing a Request for Proposals that will be issued to initiate the first comprehensive Master Plan update since the early 1980s. This process is expected to encompass all of the commercial areas of the City that are currently guided by an overlay district or a sub-area plan as well as the residential areas. In addition, these proposals are expected to include a comprehensive review of the parking standards and policies that are currently in effect in the City. This could include, but is not limited to, residential and commercial parking space requirements, shared parking agreements, and screening requirements.

Board members listed the following:

- Perceived parking issues within Downtown;
- A conscious and thorough study of the parking policies that exist Downtown as they relate to desired future land use;
- A comprehensive review of the parking standards that apply outside of the Parking Assessment District;
- Provide more public parking as part of the Master Plan;
- Assess the need for additional Parking Assessment Districts;
- Focus on the need for other public parking structures and locations along with ideas on financing strategies;
- Conduct a study of build-out capacity as it relates to parking needs.

07-134-17

4. Bistro Regulations

Mr. Baka recalled that In 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license if they have no more than 65 seats, including 10 at a bar, and low key entertainment only. Mr. Baka observed that as the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their 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 – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- 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.

At the joint City Commission/Planning Board meeting of June 19, 2017 this issue was discussed at length. There seemed to be consensus that a review of the bistro requirements and how they relate to the various areas in which they are permitted is warranted. Accordingly, the Planning Division is now requesting that the Planning Board begin discussions on how these concerns should be addressed.

Mr. Williams indicated he never envisioned 10 years ago that some of the sites would be so disproportionately large based on outdoor dining. Ms. Whipple-Boyce said the bistros should be looked at from the standpoint of their locations in different districts throughout the City. Chairman Clein thought there is a need to study the general parking requirement in the MX District based on the number of outdoor dining seats. Mr. Boyle added that bistros might be incentivized there by allowing more seating outside. Further, also consider that the Triangle District is different.

Mr. Williams noted the single biggest thing the board never anticipated was the extent to which Eisenglass would provide for almost four season use.

Ms. Ecker added maybe the board doesn't mind having Eisenglass on a rainy day but they don't want to see it extend the season past November 1st through March 31st. There are two issues: the look of it, and whether it changes the character of use from seasonal to permanent.

There was consensus to look at including the opportunity for rooftop dining for bistros.

Ms. Lazar agreed the larger spaces, particularly in the MX District, might be increased. But, the neighbors may be upset if they feel there will be increased intrusion into the neighborhoods as a result. Maybe some type of parking requirement might have to be imposed. Chairman Clein thought that Residential Permit Parking might be needed in that case.

07-135-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Correspondence
 - 33477 Woodward Ave. - Renovate parking lot in accordance with previously approved plan.
 - 35975 Woodward Ave., August, LLC - Changes in response to Building Permit review comments from the Planning Dept.
 - 662 Purdy, Residential Condominiums - Existing parking lot (asphalt in poor condition) is proposed to be milled off and replaced with concrete pavement. The pavement area doesn't change; just the pavement itself.
 - 180 Pierce, Airmaster Heating and Cooling - Removing condensing unit on roof.

- c. Draft Agenda for the Regular Planning Board Meeting on July 26, 2017
- 375 S. Eton, District Lofts, Phase 2 - Special Land Use and Final Site Plan to allow an office use on the first floor greater than 6,000 sq. ft.;
 - 298 S. Old Woodward Ave., boutique hotel - Final Site Plan;
 - Former Peabody's Restaurant Site - Community Impact Study and Preliminary Site Plan;
 - 2010 Cole - Preliminary Site Plan.
- d. Other Business (none)

07-136-17

PLANNING DIVISION ACTION ITEMS

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

07-137-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 9:58 p.m.

Jana Ecker
Planning Director