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<p><b>5.07, 5.08, 5.10, 5.11, 5.12, 5.13 and Definitions: Bistro in section 9.02, all as set forth in the materials.</b></p> <p><b>Motion carried, 7-0.</b></p>	
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<p><b>Seconded by Mr. Boyle that the Planning Board schedule a public hearing for September 12, 2018 utilizing the revised definition and the 28 amendments to Chapter 126, Zoning of the City Code that are set forth in the materials.</b></p>	6
<p><b>Motion carried, 7-0.</b></p>	
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APPROVED

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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, AUGUST 8, 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 August 8, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative Ellie McElroy

**Absent:** Board Members Daniel Share, Janelle Whipple-Boyce; Student Representatives Madison Dominato, Sam Fogel

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

**08-138-18**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JULY 25, 2018**

**Motion by Mr. Boyle  
Seconded by Mr. Koseck to approve the Minutes of the Regular Planning Board Meeting of July 25, 2018 as presented.**

**Motion carried, 6-0.**

**VOICE VOTE**

Yeas: Boyle, Koseck, Clein, Emerine, Ramin, Williams

Nays: None

Abstain: Jeffares

Absent: Share, Whipple-Boyce

**08-139-18**

**CHAIRPERSON'S COMMENTS** (none)

**08-140-18**

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

**08-141-18**

## **PUBLIC HEARING**

The Chairman opened the public hearing at 7:33 p.m.

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

TO AMEND SECTION 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.06, O1 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.07, O2 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 9.02, DEFINITIONS: BISTRO.

Ms. Ecker recalled this topic was initiated at the joint City Commission/Planning Board in June of 2017. There was discussion about putting additional regulations in place for bistros. So, over several months the Planning Board has studied existing bistros and discussed the future goals of the bistro program. One of the issues has been the number of seats that are permitted for outdoor dining. The Planning Board had determined that they wanted to review outdoor dining seating on a case-by-case basis. They sent that proposal to the City Commission; however the Commission sent it back saying they felt it was competing with the Class C Liquor License holders. Also they asked the Planning Board to review rooftop dining. The general consensus from the City Commission has been that they like the 42 in. rail standards as well as the rule banning year-round outdoor dining enclosures.

On June 13, 2018, the Planning Board considered the City Commission's request to discuss the number of outdoor dining seats bistros are allowed as well as permissible rooftop dining. The Board decided to examine language stating that outdoor seating may not exceed the number of permissible seats indoors. Also, they decided to evaluate language that would permit rooftop dining as long as adequate street level dining is provided.

On July 11, 2018 language regarding the number of permissible outdoor dining seats and rooftop dining was finalized with amendments including conditions that rooftop dining may not impact surrounding properties in a negative manner and that rooftop dining is only permitted if adequate street level dining is provided as determined by the Planning Board and City Commission. Also added was that rooftop dining seats count towards the total number of permissible outdoor dining seats.

The other change was to the definition of bistro. That limited the number of outdoor seats and also created two different size requirements depending on the district where the bistro is located. For bistros in the Downtown Overlay, no more than 65 indoor dining seats are permitted. When located in the Triangle or Rail District, a bistro is a restaurant with interior seating for no more than 85 people. Outdoor seating in all of the districts is limited to match what is allowed inside.

The Planning Board passed a motion to hold a public hearing on August 8, 2018. No public was present.

Board members reviewed the ordinance amendments and concluded that paragraph 11 in all zone districts should be changed to read "Outdoor rooftop dining is permitted . . . "

**Motion by Mr. Williams**

**Seconded by Mr. Koseck that subject to the additional language discussed, to recommend approval to the City Commission of the amendments to Chapter 126, Zoning, of the Birmingham City Code, sections 3.04, 5.06, 5.07, 5.08, 5.10, 5.11, 5.12, 5.13 and Definitions: Bistro in section 9.02, all as set forth in the materials.**

**Motion carried, 7-0.**

**VOICE VOTE**

Yeas: Williams, Koseck, Clein, Boyle, Emerine, Jeffares, Ramine

Nays: None

Absent: Share, Whipple-Boyce

The Chairman closed the public hearing at 7:45 p.m.

**08-142-18**

**STUDY SESSION**

**1. Projections Into the Right-of-Way**

Ms Ecker advised this was another matter that came up at the joint City Commission/Planning Board in June of 2017. She noted that the City permits projections of certain architectural elements into the right-of-way, including awnings, signage, canopies, marquees, planters and other similar elements. The recent renovation of the 100 S. Old Woodward Ave. building and the 335 E. Maple Rd. building have raised questions as to whether projecting elements should be permitted; and if so, whether there should be restrictions on the materials used. The City Code does not contain any comprehensive standards or regulations governing the projection of awnings, architectural details, balconies etc. into the right-of-way. However, the regulations that do exist are scattered in several locations:

## Chapter 126, Zoning Ordinance Regulations

The only regulations dealing with projections currently in the Zoning Ordinance can be found in Article 3, Overlays. The Zoning Ordinance allows for the projection of awnings into the public right-of-way as long as 8 ft. of clearance is provided, and upper floor awnings do not project into the right-of-way more than 3 ft. However, this regulation only applies in the Downtown Birmingham Overlay District. There are no other such regulations governing properties outside of the Downtown Birmingham Overlay District. The Board might want to expand the regulation to include different encroachments and make those rules apply throughout the City.

## Chapter 98, Streets, Sidewalks and Other Public Places Regulations

Additional regulations concerning potential projections into the right-of-way can be found in Chapter 98 of the City Code. Section 2 of Chapter 98, Streets, Sidewalks and Other Public Places. Section 2 of Chapter 98, Streets, Sidewalks and Other Public Places provides regulations dealing with the construction and maintenance of awnings, canopies and marquees, which implies, but does not specifically state, that they are permitted to extend over a street, sidewalk or other public space. Section 2 also states that such structures must be constructed in accordance with Chapter 22, which adopts the regulations of the Building Code.

## Michigan Building Code

Chapter 32 of Michigan's Building Code, Section 3202, Encroachments in the Public Right-of-Way, addresses encroachments, and provides specific requirements based upon the height of encroachments above grade.

Section 3202.2 states that encroachments above grade and below 8 ft. in height are prohibited, unless they meet one of certain exceptions for steps, architectural features, and awnings. Section 3202.3 further states that encroachments 8 ft. or more above grade are permitted but must comply with certain conditions. Finally, section 3202.3.23 further states that encroachments 15 ft. or more above grade shall not be limited. Ms. Ecker thought that the Building Code sets some basic parameters for the discussion of projections.

Mr. Jeffares noted in the wintertime icicles that form on balconies over a sidewalk could fall and injure somebody.

Chairman Clein advised that the City of Detroit requires a special approval permit which is a grant of right by the City to allow certain things to be installed projecting into the right-of-way. The applicant has to show what they are and receive authorization which then becomes a condition of the site plan.

He wanted to have a conversation about what is actually encroaching, such as interior space that may be occupied outside the footprint of the building, which is quite different than exterior features.

Ms. Ecker indicated she will bring back language for future discussion.

**08-143-18**

## **2. Church/Religious Institutions**

Ms. Ecker advised that the City of Birmingham has allowed churches and religious institutions across the City for many years. Thus far, the City has considered "church" to be an overarching categorical term in the decision making process. However, use of the word "church" implies the inclusion of only Christian religions, and potentially excludes all other religions or belief systems based on standard dictionary definitions. Neither church nor religious institution is defined in the Zoning Ordinance.

Thus, it may be more inclusive to use the term "religious institution" to replace the word "church" throughout the Zoning Ordinance to ensure that all religions are included as permitted uses.

There is no common definition for a religious institution, but an institution is defined as an organization founded for a religious, educational, professional, or social purpose, or, a significant practice, relationship, or organization in a society or culture by the Oxford and Webster's dictionaries, respectively.

The Planning Division recommends that the word "church" be replaced with "religious institution" in all instances across the Zoning Ordinance. This would make religious institutions permitted in the B-1, B-2, B-2B, B-2C, and B-4 zones, while also being permitted under a Special Land Use Permit in the R-1A, R-1, R-2, R3, R-4, R-5, R-6, R-7, O1, P, MX, TZ-2 and TZ-3 zones. Religious institution should also be added as a defined term in Article 9, section 9.02. A suggested definition:

Religious Institution: A building housing an organization founded on an established religion, such as a church, synagogue, mosque, temple, or other house of worship.

The use of the term "religious institution" as defined above to replace the word "church" throughout the Zoning Ordinance will ensure that all religions are addressed consistently and included as permitted uses in the appropriate zone district(s).

Mr. Williams thought this seems quite simple; all they need to do is expand the definition of "church." It was agreed to change the Religious Institution definition to read "A building housing worship by an organization . . ."

**Motion by Mr. Williams**

**Seconded by Mr. Boyle that the Planning Board schedule a public hearing for September 12, 2018 utilizing the revised definition and the 28 amendments to Chapter 126, Zoning of the City Code that are set forth in the materials.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Williams, Boyle, Clein, Emerine, Jeffares, Koseck, Ramine

Nays: None

Absent: Share, Whipple-Boyce

**08-144-18**

**3. Payment in Lieu of Parking in Triangle District**

Ms. Ecker explained that In Birmingham's Triangle District, developers are required to maintain a maximum building height depending on the Zoning District being built upon. However, unique to

the Triangle District, there are a series of provisions that allow for the addition of building height if completed.

Additional Building Height: Buildings or portions of buildings that are 100 ft. or more from a Single-Family Residential Zoning District may have the additional building height (in number of stories and/or feet of height) noted in Section 3.08B, Section 3.08C, and Section 3.08D where two or more of the following are provided as part of the development. Additional stories shall be stepped back at a 45-degree angle from the top story allowed by right without the height bonus.

1. The applicant may provide payment-in-lieu to the City for construction of parking in a public parking deck at an offsite location at the rate of \$15,000 per parking space.
2. Dedication of an improved public plaza with an area that is at least equal to 25% of the additional floor area of building area allowed in the additional stories.
3. A mixed-use building that provides residential dwelling units above first-floor commercial where a minimum of 50% of the building's floor area is residential.
4. Leadership in Energy and Environmental Design ("LEED") building design, accredited based upon the rating system of the United States Green Building Council.
5. Transfer of development rights for additional floor area that zoning would permit on a site containing an historic building or resource designated under Section 127 of the Birmingham Code.

Ms. Ecker observed that pretty much everyone that comes in picks residential first and LEED certification is almost always their second option.

The City has recently discussed the dollar amount in the first requisite item option for a height bonus in the Triangle District shown in Section 3.08 (E) (1). The City understands that the price of constructing structured parking may increase as time goes on. In 2007, when this provision was added, the City deemed the amount of \$15,000 per space to be enough money to satisfy the first item in the additional height bonus section.

However, a study performed by Carl Walker, Inc. determined that the national median cost per parking space in the United States in 2017 was \$19,700 per space, and \$59.06 per square foot.

it can be estimated that the cost of a structured parking space might increase by at least 3.2 percent in 2018, bringing the national median cost per parking space to \$20,330. In an effort to stay current with the pricing trends in the parking structure construction market, the City of Birmingham would like to update its ordinance to reflect a yearly percentage increase in the figure presented in the Ordinance. The proposed language of Section 3.08 (E)(1) may be amended to calculate parking rates as follows:

- a. The rate of \$20,330 per space to match the national median cost per above-ground structured parking space in 2018.
- b. Starting July 1 2019, the rate of payment per parking space shall be increased by 3 percent each year.

Mr. Koseck noted that a public parking deck at an offsite location may not serve or benefit the people paying into a parking fund.

Mr. Emerine suggested using Detroit values as opposed as the national average that Carl Walker used. Mr. Koseck said if the number is short it would benefit everybody because it will make for better development. Mr. Jeffares hoped that the money going into a parking fund will be



earmarked expressly for parking. Ms. Ecker advised that generally a separate fund is set up that is required to be used only for the designated purpose.

Board members agreed that (1) should read: "The applicant may provide payment-in-lieu to the City for construction of parking in a public parking deck at an offsite location within the Triangle District . . . "

It was discussed that since the amount required is lower than the actual cost to construct a parking space, the intent of the amendment may be to encourage development and to encourage public parking in the Triangle District.

Ms. Ecker established that developers have to provide on-site parking for all of the as of right floors. Then if they pick option (1) the required spaces for the sq. ft. contained on the bonus floors have to be paid for.

The group agreed to defer this discussion to September when Ms. Ecker can ask the City Commission whether the intent is to tie the cost to some form of current market rate, or is the intention that the Commission wants a recommendation incentivizing this policy by taking market rate minus some factor that this group recommends.

**08-145-18**

#### **4. Review of Planning Board's Action List**

Ms. Ecker recalled at the July 25, 2018 meeting of the Planning Board during a review of proposed design changes to the Daxton Hotel at 298 S. Old Woodward Ave., several board members raised questions regarding the prohibition on glass railings in the Downtown Overlay. In addition, board members questioned why metal panels were not included in the list of permitted high quality materials which must be used on at least 90% of the building facades. A request was made to consider adding these items to the Planning Board's 2018 Action List.

Mr. Williams suggested that each Board member come up with a list of action items by the end of the month and e-mail it to Ms. Ecker. After receiving the items she could compile them and present the list for Planning Board review in September. It would then be put on the agenda for the joint Planning Board/City Commission meeting in October. At that time the Board could ask the City Commission to direct them to study those items.

**08-146-18**

#### **MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

- a. Communications (none)
- b. Administrative Approval Requests
  - 1193 Floyd, Parkside Lofts
    - East side elevation - Scupper and downspout moved to south elevation and privacy fences removed;
    - West side elevation - Scupper and downspout moved to south elevation; 8 in. metal sign moved to screenwall; privacy fences removed.

- 375 Eton - Requesting administrative approval for the addition of a four-story elevator to the existing parking structure. The elevator will service 1-4 of the existing parking structure.
- 592 Riverstone - Requesting permit to tear down existing 10 ft. x 30 ft. patio and rebuild 20 ft. x 30 ft. brick paver patio at the above location.
- 1684 Southfield Rd., Eton Square Apartments - Fencing.
- 347 Eton, Bldg. A - Tear off and re-roof.
- 359 Eton, Bldg. B - Tear off and re-roof.
- 361 Eton, Bldg. C - Tear off and re-roof.
- 1886 - 1882 Graefield - Remove and replace porch 5 ft. x 10 ft. and 9 ft. x 4 ft. per DCAM contract dated 09-19-17.
- 1798 Graefield - Remove and replace 4 in. SWK 30 x 3 per DCM contract dated 09-19-17.
- 736 Graefield Ct., Rear - Remove and replace porch 5 ft. x 5 ft. per DCM contract dated 09-19-17.
- 1695 Graefield - Remove and replace 4 ft. x 5 ft. porch 3 per DCM contract dated 09-19-17.
- 1800 - 1806 Graefield - Remove and replace porch 18.7 ft. x 5 1/2 ft. and replace 4 in SWK 16 x 3, 6 x 4 per DCM contract dated 09-19-17.
- 1858-46 Graefield - Remove and replace porch 18.7 ft. x 5.6 ft. and 4 in. SWK 18 x 18, 4 x 4, 4 x 4 per DCM contract dated 09-19-17.
- 634 Graefield, Rear - Remove rear porch and 4 in. SWK 3 per DCM contract dated 09-19-17.

Temporary Use Permits:

- 33703 Woodward Ave., The Original Pancake House - Friday, August 17, 4 p.m. to 10 p.m. Fundraiser.

c. Draft Agenda for the next Regular Planning Board Meeting of September 12, 2018

- Public Hearing for the Overlay Sign Standards;
- Public Hearing on Churches/Religious Institutions;
- Study Session on Projections into the right-of-way as well as the Action List;
- Study Session on Parking.

d. Other Business (none)

**08-147-18**

**PLANNING DIVISION ACTION ITEMS**

a. Staff report on previous requests

- Ms. Ecker reported that on Monday, August 13, 2018 there was supposed to be a public hearing at the City Commission on the rezoning of 469-479 S. Old Woodward Ave. However, the applicant has asked for postponement of the public hearing because they have additional information that wasn't presented when the Planning Board discussed the rezoning. So, they would like to bring the new information back to the Planning Board.
- Social has also sent a letter requesting to cancel their public hearing on Monday, August 13, 2018 in front of the City Commission. They want to reconsider their design details and then come back.
- The RFP on the Retail Consultant is going to the Commission on Monday as well as the Parking Consultant RFP.

- De-designation of the historic building at 361 E. Maple Rd. will go before the Commission on Monday.
  - There was a meeting of the Ad Hoc Master Plan Selection Commission and they narrowed the proposals down to two who will be interviewed on August 29th. A letter was sent out to a third applicant thanking them for their interest. That consultant opted not to include a parking study in the Master Plan when it was specifically asked for. The two applicants that were selected were DPZ out of Florida and MKSK.
- b. Additional items from tonight's meeting (none)

**08-148-18**

**ADJOURNMENT**

No further business being evident, the Chairman adjourned the meeting at 8:47 p.m.

Jana L. Ecker  
Planning Director