

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 22, 2020**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 22, 2020. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Member Robin Boyle, Stuart Jeffares

Administration: Jana Ecker, Planning Director
Brooks Cowan, City Planner
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

01-09-20

B. Approval Of The Minutes Of The Regular Planning Board Meeting of January 8, 2020

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to approve the minutes of the Regular Planning Board Meeting of January 8, 2020 as submitted.

Motion carried, 6-0.

VOICE VOTE

Yeas: Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Abstain: Williams

01-10-20

C. Chairperson's Comments

Chairman Clein explained standard Planning Board meeting procedures.

01-11-20

D. Approval Of The Agenda

There were no changes to the agenda.

01-12-20

E. Community Impact Study Review and Preliminary Site Plan Review

1. 35001 Woodward (Parking lots & Hunter House) - Revised Community Impact Study Review to allow construction of a new 5 story mixed use building containing retail, office and residential uses

Planning Director Ecker presented the item. She confirmed that 35001 Woodward is located in the Parking Assessment District (PAD).

Motion by Mr. Williams

Seconded by Mr. Share to accept for filing the memorandum from Assistant City Engineer Austin Fletcher dated January 22, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Kevin Biddison, architect for the project, commented on the fact that the 11 extra parking spaces could be used by the general public because the stairway and elevator accessing the residential areas of the building would be keycoded to prevent unauthorized entry.

Kelly Cobb, owner of Hunter House Hamburgers, stated that the wait time on Hamilton will increase if the number of parking spots available to Hunter House decreases.

Mr. Williams explained he had previously voted against the Community Impact Study (CIS) for this project due to concerns regarding potential congestion at Park and Maple stemming from an entrance to the site being located too close to Maple. He said that the current CIS corrected that issue.

Motion by Mr. Share

Seconded by Mr. Williams to accept the CIS as provided for the proposed development at 35001 and 35075 Woodward – with the following conditions:

- 1) Provide copies of Phase I and II Environmental Assessments;**
- 2) Applicant must provide mitigation strategies for control of noise vibration and dust during construction;**
- 3) Applicant will be required to bury all utilities on the site;**
- 4) Applicant must distinguish an area for the separation and storage of recycling;**
- 5) Applicant must conform to the streetscape design as outlined in the new E. Maple streetscape project; and,**

6) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Department.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Mr. Biddison explained the trash receptacles would be stored and obscured behind the wall meaning they would only be visible to stationary observers, looking into the building at a certain angle, while the glass doors are rolled up to allow entry or egress.

Ms. Whipple-Boyce shared concern regarding the fact that if one were to enter the garage in their vehicle and discover that the cluster of three parking spaces allotted to Hunter House were full, one would have to either reverse onto Hamilton or execute a multi-point turn to exit back onto the street.

Mr. Share and Mr. Koseck shared concern regarding the parking layout on the site as well.

Mr. Biddison stated that the eleven or twelve parking spaces being discussed as public spaces could also be executive or residential spaces, meaning they could be private instead and tied to an office or retail lease.

Mr. Cobb spoke, saying:

- Hunter House employees will continue parking in the parking deck, for which they are reimbursed, as opposed to parking in the three parking spaces in the garage off Hamilton.
- According to the deed the developer is required to provide Hunter House with 14 parking spaces which shall also be located on Hunter House property.
- If he were to enter the three-space section in the garage in his truck and discover those spots full, he would not be able to execute a turn that would allow him to leave given the insufficient space.
- There have been a number of deed violations on the part of the developer in this process including not seeking Mr. Cobb's approval of plans for the site before the plans' submission to the City, not seeking Mr. Cobb's approval for planning to build a non-hotel development, and proposing to leave a space for Hunter House that Mr. Cobb says would be unusable for operating the restaurant.
- He proposed multiple compromises to the developer which would allow Hunter House to continue and for a development to be built on the lot, all of which were passed on by the developer.
- If the developer and the Hunter House cannot reach an understanding, Mr. Cobb would pursue legal action. He said that legal action could result in a delay of the development for seven to ten years. Mr. Cobb said that the City, the developer, and himself should sit down together and try to reach an agreement amenable to all parties in order to avoid such a delay.

Chairman Clein said that in many respects he was in strong favor of the plan submitted for this site, including three stories of residential with units under 1,000 square feet, less reliance on office space, and well designed facades on most of the project. He continued that he sympathized with the Hunter House, which he said was being pulled from a park-and-go model to an urban center model. Chairman Clein said there were also aspects of the plan that gave him pause, including the functionality of the three parking space area in the garage and the Hunter House's charge that their space as laid out in these plans would be unusable. He acknowledged that it is not within the Board's purview to get involved in a dispute between two private parties. He stated that it is within the Board's purview to make sure all elements of the plans are functional and adhere to ordinance, however, and that he was unclear if the three parking space area off of Hamilton met those requirements.

Mr. Williams said he would not approve plans that include the three space parking area off of Hamilton because that layout creates more problems than it solves or propose a restaurant layout that would not comply with various laws, including health codes and ADA regulations. He concurred with the Chairman that the Board should not intervene in a matter between private parties, but knowing that the restaurant could not operate legally is a matter within the Board's purview.

Mr. Share also emphasized that the Board should not be involved in a dispute between two private parties. He said the Board has ruled on projects before that have resulted in legal action between two private parties subsequent to the approval. Mr. Share said he would consider moving forward on a preliminary site plan ~~under those~~ **despite these** circumstances, but that this particular site plan was deficient under Article 7, section 7.27 of the Zoning Ordinance in a couple of respects including the three parking space area off of Hamilton and the parking designated for the public off of Park Street. He said that the parking off of Park Street could become hazardous unless there was a traffic flow plan presented.

Mr. Koseck concurred with his colleagues' previous comments that the dispute between the Hunter House and the developer is not within the Board's purview. Continuing, he said that the plans are an improvement over previous plans submitted for the development, and that the building complies with ordinance. He stressed that the Board's only present obligation regarding this development was to ensure that residential parking would be included onsite. Mr. Koseck suggested that if the development included an egress across from the loading dock, a vehicle could move straight through the garage from Hamilton onto Park Street if it saw no free parking spaces in the three space area off of Hamilton. In that design, it could also turn into the three parking space area if there were a vacant space. This would avoid the need for either a vehicle reversal onto Hamilton or a multi-point turn in the case of full spaces. Mr. Koseck said he would approve the plans if that possibility were present.

Mr. Biddison confirmed that such a route through the garage would be possible. He stated he would need the owner to comment further on how the route would be designed.

Ms. Whipple-Boyce said that from a Board perspective the site should not include the parking off of Hamilton because it is not required by ordinance and creates an unsafe situation. She said she understood the legal agreement between the developer and the Hunter House required 14 spaces, but that was not the Board's concern. She expressed great enthusiasm for the majority

of the project in general, and frustration that the contention between the developer and the Hunter House was resulting in poor design in certain areas. She conceded that Mr. Koseck's proposal of being able to pass through from Hamilton onto Park would in theory solve the issue, but that the best outcome from a City perspective would be to eliminate the spaces off of Hamilton.

Mr. Emerine said he was also very enthusiastic about most aspects of the project with the exception of the issues with the parking off of Hamilton. He said he could not support the plans without a resolution to the Hamilton parking issue which could include Mr. Koseck's proposal of allowing entry off of Hamilton and egress onto Park.

Mr. Share said he would offer an editorial comment to the developer and the Hunter House, recommending that the parties actually speak to one another and resolve their issues.

Chairman Clein agreed, and said a future City Commission discussion of potential public land use by this development would prove very difficult if the issues between the Hunter House and the developer are not resolved.

Motion by Mr. Williams

Seconded by Mr. Koseck to schedule a special meeting of the Planning Board for the evening of February 27, 2020 at 7:30 p.m. to be held in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Ramin, Whipple-Boyce, Clein, Emerine

Nays: None

Motion by Mr. Williams

Seconded by Mr. Share to postpone consideration of the preliminary site plan for 35001 Woodward to February 27, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Whipple-Boyce, Clein, Emerine, Koseck, Ramin

Nays: None

01-13-20

F. Special Land Use Permit Reviews

- 1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Amendment of Special Land Use Permit at 34350 Woodward to include the property at 907-911 Haynes to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350**

Woodward

City Planner Cowan, Fred Lavery, owner, John Gardner, architect, and Rick Rattner, attorney, reviewed the item for the Board.

Chairman Clein asked Mr. Rattner:

- How the Board could support approval of this proposal when it does not seem to support the purpose of the Triangle District as required by ordinance; and,
- Whether the Board's approval of the proposal would amount to the expansion of a legal non-conforming use, which the Board is not permitted to do.

Mr. Rattner said the proposal supports the Triangle District plans because the surface lot would function as a placeholder for the eventual Worth Street realignment. He said it would not be expanding a legal non-conformity because the lot combination would be allowed under a SLUP as an auxiliary use.

Mr. Share noted that the combined lot could require a variance since the parking lot frontage would be greater than ordinance allows.

After Board discussion, Planning Director Ecker received confirmation from the Board that they were requesting clarification from the Building Official and City Attorney regarding whether the Board has authority to consider granting the requests put forth by the applicant, what impediments exist to granting the requests, and what the remedies to the impediments could be. She said the remedies could include a variance if the City chose to allow more than 25% of the frontage to be parking, an expansion of an existing non-conformity because the lots will be combined, or some other factor in a lot combination that could affect the result.

Motion by Mr. Share

Seconded by Mr. Koseck to postpone consideration of the SLUP amendment for 34350 pending a response from the City Attorney and/or Building Official regarding whether the Board has authority to consider granting these requests, what impediments exist to granting the requests, and what the remedies to the impediments could be.

Mr. Rattner said it would be useful to know what effect an agreement with the City would have vis-a-vis resolving these problems. Mr. Rattner then stated that Mr. Lavery requested to withdraw his application for the SLUP amendment.

The Board allowed Mr. Lavery to withdraw his request and accordingly took no action on the motion.

01-14-20

G. Final Site Plan & Design Reviews

- 1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Final Site Plan & Design Review for**

the entire site to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350 Woodward

Matter withdrawn by the applicant during the Planning Board's January 22, 2020 meeting.

2. 501 S. Eton (Whistle Stop) - Final Site Plan & Design Review for construction of rear addition to the existing building and changes to existing building

City Planner Dupuis, Elda Xhomaqi, owner and Jawan Matti, architect, presented the item. City Planner Dupuis confirmed that the Zoning Ordinance requires a formal agreement for shared parking to be approved by the Planning Board.

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the memorandums from Assistant City Engineer Fletcher dated January 22, 2020 and from the Building Department dated January 21, 2020, and an email from Norman LePage to Planning Director Ecker and City Planner Dupuis dated January 22, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Whipple-Boyce, Clein, Emerine, Koseck, Ramin

Nays: None

Mr. Koseck said the Whistle Stop could be positively improved if the windows were made more transparent from the exterior.

Ms. Xhomaqi said she would consider updating the windows.

Chairman Clein invited public comment.

Karen Fithe said the landscaping in the neighborhood around Whistle Stop is rather lacking and asked that more effort be into the upkeep of the Arborvitaes near the entrance to the parking lot that the Whistle Stop shares with the Griffin Claw. She said that the Arborvitaes on Hazel Street are well maintained. She said there is no landscaping behind the Whistle Stop along the fencing of the condominium complex on Graten Street and that a line or Arborvitaes could be appropriate there as well. Ms. Fithe said she was also concerned that patrons of the Griffin Claw would congregate in the outdoor seating section of the Whistle Stop in the evening, contributing to noise in the neighborhood. She said pulling onto Eton from Hazel is difficult when large vehicles are parked in front of the Whistle Stop, which contributes to unsafe traffic conditions. Ms. Fithe concluded by saying she hoped that the freezers at the Whistle Stop will not be too noisy, as she said the Griffin Claw freezers are noisy enough to impact residential living.

Chairman Clein invited Ms. Matti and Ms. Xhomaqi to reply to Ms. Fithe's concerns.

Ms. Xhomaqi said that the outdoor seating would only be available in the summer, and not likely early in the morning.

Ms. Matti noted that the freezer Whistle Stop would be installing would be much smaller than the one at Griffin Claw, so noise would not likely be an issue. She said Arborvitaes could be added in some of the areas Ms. Fithe suggested, and that the Whistle Stop could add a bicycle rack to help reduce the number of vehicles parking in front of the restaurant.

Mr. Williams said that the City needs to consider putting a stop sign at Eton and Hazel in order to allow vehicles to exist Graten. He stressed that the lack of stop sign at that intersection is highly hazardous, and that he has been saying that for ten years.

Ms. Whipple-Boyce expressed her enthusiasm for the project, and said she would not require that the applicant add landscaping to the back property line since it is an asphalt parking lot. She said that it would make sense to add landscaping to the area near the entrance to the parking lot, noting that an adjacent building had successfully grown ornamental tall grasses on a similar strip of land. She said that it would likely be possible to find plants that could withstand being located close to a parking lot. Ms. Whipple-Boyce said she would also like to see the Whistle Stop enter into a formal shared parking agreement with the owners of Griffin Claw.

Chairman Clein expressed his support for the project. He encouraged Whistle Stop to be responsive to nearby residents' concerns in order to ensure the restaurant's continued success. Chairman Clein emphasized that the applicant can either enter into a formal parking agreement or pursue a variance from the Board of Zoning appeals.

Mr. Williams pointed out that while normally the Planning Board would review a formal shared parking agreement, it should be acceptable to allow the Planning Division to approve an appropriate shared parking agreement for this item should one occur.

Chairman Clein agreed. He invited the applicant to talk with Planning Director Ecker further to explore options for satisfying the parking requirements, including potentially counting adjacent street parking if approved by the City Commission to do so. For the benefit of the Board of Zoning Appeals, Chairman Clein stated that as long as relations remain amicable between the Whistle Stop and its neighbors he is happy to see the business continue with investments in the building.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to Motion to approve the Final Site Plan and Design Review for 501 S. Eton St. – Whistle Stop diner – with approval of the LED Litebars as architectural enhancements and with the following conditions:

- 1. The applicant must provide 26 additional off-street parking spaces, enter into a written shared parking agreement with the adjacent property owner subject to review and approval by the Planning Division, or obtain a variance from the Board of Zoning Appeals;**
- 2. The applicant must revise the lighting proposals and photometric plan to not exceed 1.5 foot-candles at all property lines or obtain a variance from the Board of Zoning Appeals;**

- 3. The applicant receive administrative approval from the Planning Division for the proposed tables and chairs to ensure they are constructed primarily of metal, wood, or material of comparable quality and submit new plans with outdoor dining hours and add a trash receptacle within the outdoor dining area;**
- 4. The applicant must provide details to the Planning Division and/or the Design Review Board for approval for all proposed signage;**
- 5. The applicant must submit material samples; and,**
- 6. Comply with the requests of the Planning Board and all City departments.**

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Williams, Share, Clein, Emerine, Koseck, Ramin

Nays: None

3. 1026 Canterbury Street (House) - Design Review to consider installation of solar panels on roof of single family home

City Planner Dupuis presented the item.

Mr. Williams noted a lot of foliage to the west of the house that would block solar panels on the side. He also observed that foliage in front of the home would not block the solar panels but would prevent the solar panels from being obtrusive to the across-the-street home.

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Design Plan for 1026 Canterbury based on the plans submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

4. 1800 Pine Street (House) - Design Review to consider installation of solar panels on roof of single family home

City Planner Dupuis presented the item.

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Design Plan for 1800 Pine based on the plans submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

01-15-20

H. Pre-Application Discussion

1. 219 Elm Street (existing chiropractic office)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to permit the January 22, 2020 Planning Board meeting to continue until 11:15 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Koseck, Share, Clein, Emerine, Ramin

Nays: None

Mark Highlen of Beztak presented the item. He explained the residents of Beztak's five current sites are 75 and older. The proposed expansion into 219 Elm Street would be for residents 55 and older seeking upscale apartments ranging from 1,140 square feet to 1,500 square feet in size. Mr. Highlen said they would be replacing the building at 219 Elm with a five-story building with stepped back upper floors, LEED certification, and the City's required parking contribution. There would be a total of 27 parking spaces for 24 units.

In response to Chairman Clein, Mr. Highlen stated he checked with the Planning and Building Departments to ensure ordinance compliance, and that at this time the project seemed like it would not require any variances.

01-16-20

I. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

Planning Director Ecker explained that Joe Barbat, future owner of the Forefront Building, is looking to increase the number of residential units on the second and third floor while reducing the size of the units and keeping the overall footprint of the building the same. She clarified that this change would change the building's parking requirements, leaving a shortfall of 13 spaces. There are no spaces on the street that could be counted towards meeting the parking requirement. The owners would have the option of entering into a formal shared parking agreement or pursuing a variance from the Board of Zoning Appeals.

Mr. Barbat stated the project would be working with Tom Roberts Architects, and has a total of 18 at-grade parking spaces within the building. Another 13 residential parking spaces would be

provided at the Pierce Street parking deck which is 400 feet away from the Forefront Building. The apartments would be between 600 square feet and 1,000 square feet in size, and the number of units in the building would increase from 10 to 30. He added there are another five parking spaces onsite which are used by retail during the day but could be used for residential parking in the evening when the retail businesses are closed.

Planning Director Ecker clarified that while the draft master plan is looking at allowing spaces in the public parking decks to be counted towards a building's parking requirements, at this time City ordinance does not allow parking deck spaces to be used to meet a building's parking requirements.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to permit the January 22, 2020 Planning Board meeting to continue until 11:30 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Koseck, Share, Clein, Emerine, Ramin

Nays: None

Chairman Clein stated he liked the idea of smaller units and liked the idea of leveraging the parking decks for residential parking in the evenings. He said the Board could not likely make a full determination on the impact of specifically going from 10 to 30 units at the end of a meeting, but that moving towards smaller units was in-line with the City's aims.

In reply to Planning Director Ecker, the Board expressed consensus with Chairman Clein's statement.

c. Draft Agenda for the next Regular Planning Board Meeting (February 12, 2020)

d. Other Business

Motion by Mr. Share

Seconded by Mr. Koseck to hold a special meeting of the Planning Board on April 9, 2020 at 7:30 p.m. in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Koseck, Williams, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

Please note: Per an email subsequent to this meeting, the date of the Planning Board's April special meeting was moved to April 7, 2020, 7:30 p.m., in order to avoid a conflict with Passover.

01-17-20

J. Planning Division Action Items

- a. Staff Report on Previous Requests**
- b. Additional Items from tonight's meeting**

01-18-20

K. Adjournment

No further business being evident, the Chairman adjourned the meeting at 11:20 p.m.

Jana L. Ecker

Planning Director

APPROVED