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APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, NOVEMBER 9, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on November 9, 2016. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Colin Cousimano (left at 9 p.m.)

Absent: Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Bruce Johnson, Building Official
Mike Morad, Building Inspector
Carole Salutes, Recording Secretary
Scott Worthington, Asst. Building Official
Jeff Zielke, Building Inspector

11-189-16

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF OCTOBER 26, 2016**

Ms. Lazar made the following corrections:

Page 4 - Second to last paragraph replace "aspect" with "hazard."

Page 4 - Last paragraph, and Page 6, second paragraph replace "Bolliard" with "Bolyard."

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to approve the Minutes of October 26, 2016 as amended.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Abstain: Williams

Absent: None

11-190-16

CHAIRPERSON'S COMMENTS (none)

11-191-16

APPROVAL OF THE AGENDA

There has been a request for postponement of the Final Site Plan Review for 100 - 450 Woodland Villa (existing duplexes).

11-192-16

STUDY SESSION ITEMS

1. Dormer Regulations

Mr. Baka noted that as a result of the discussion at the joint meeting of the City Commission and the Planning Board on June 20, 2016, the City Commission subsequently directed the Planning Board to review the dormer and habitable attic regulations. Specifically, to conduct a detailed public input and review process.

The Building and Planning Departments have drafted ordinance amendments aimed at addressing the issues enumerated by the City Commission. Two amendments are proposed. One limits the size of dormers with interior lot lines restricted to 33% of the roof, and 50% facing a frontage line. Also, there is a revised definition for habitable attic.

Mr. Koseck thought the ordinance is good in that it establishes in a gable house that the pitch of the roof will be a function of the height measured to the mean. The 50% rule is appropriate facing a street and the reduction to 33% is fine for internal lots. But then, Mr. Koseck recommended going a step further and saying that no dormer shall exceed 8 ft. in width. Mr. Johnson recommended that should be measured on an interior dimension. An internal stairway on the outside wall would work fine with that.

Ms. Whipple-Boyce was comfortable with not specifying a percentage of floor for the habitable attic. Also she was comfortable with the idea of a corner lot being able to have 50% dormers on the street side. She agrees with Mr. Koseck about dividing dormers into 8 ft. widths so they don't end up with one 20 ft. long dormer. Also she was in favor of not making it super easy to get a stairway to the third floor. **Ms. Whipple-Boyce stated her concern is not with the ease in creating a stair, located on an exterior wall, resulting in an oddly placed attic dormer, but with the exterior appearance and thoughtfulness that should be given to attic dormers.**

There was consensus to add a line to the suggested language for Chapter 126, Zoning, of the Code of the City of Birmingham (B) that says individual dormers shall not exceed 8 ft. as measured on the interior.

No one from the public cared to comment at 7:50 p.m.

Motion by Mr. Williams

Seconded by Mr. Koseck to schedule a public hearing on rooftop dormers in the single-family zone districts for December 14, 2016.

No public comments were heard.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

Mr. Williams asked the Building Dept. to start to put together their thoughts for the Master Plan in dealing with the neighborhoods. Involve the neighbors and neighborhood associations in discussion.

11-193-16

APPLICATIONS FOR REZONING AND ZONING ORDINANCE AMENDMENTS

1. 412-420 E. Frank St.

Frank Street Bakery and Petrella Designs

Request for rezoning of the property from R-3 (Single-Family Residential), B-1 (Neighborhood Business), and B-2B (General Business) to TZ-1 (Transition Zone) (continued from October 26, 2016)

Ms. Ecker noted the subject property is located on the southeast corner of Frank St. and Ann St., and includes one corner lot (Lot 32, Blakeslee Addition); one lot immediately to the south facing Ann St. and running parallel to Frank St. (Lot 31, Blakeslee Addition); and the rear 32 ft. of lots 3 and 4 of the Blakeslee Addition that front on S. Old Woodward Ave.

The applicant is requesting that the Planning Board hold a public hearing to consider the rezoning of the western portion of the property (412 E. Frank Street, parcel #19-36-253-001) from R-3 (Single-Family Residential) to TZ-1 (Transition Zone); and the central

portion of the property (420 E. Frank Street, parcel #19-36-253-002) from B-1 Neighborhood Business to TZ-1 (Transition Zone); and the eastern portion of the

property (no known address, parcel #19-36-253-003) from B2-B to TZ-1 (Transition Zone).

On October 26, 2016, the applicant appeared before the Planning Board to discuss the requested rezoning to TZ-1. After much discussion and public input, the applicant agreed to postpone the request to November 9, 2016 and to study what could be done with the site by placing a single-family-home on the western portion of the property at the corner of Ann and Frank, and a multi-family residential building on the central and eastern portions of the property using the TZ-1 development standards.

Mr. Alex Bogarts, Architect for the petitioner, apologized that their materials were only submitted this evening. Chairman Clein said he does not like to be put on the spot to analyze plans received at the last minute. Mr. Williams stated in advance he will not vote yes or no for any proposal this evening. He does not want to deal with specific parcels of property, as the City has embarked upon a Master Plan for the whole City. Mr. Boyle agreed with not rushing to judgment, but thought the board should not miss this opportunity to see what might be possible.

Mr. Mark Abernatha, Sr. Vice President from Mr. Bogart's office, took the board through a PowerPoint that depicted what they think is the highest and best use for each of the properties. In conclusion, they feel that a multiple family combined parcel is a wonderful transition from the surrounding commercial area and it won't generate much traffic.

Mr. John Sarkesian spoke to represent the developer. The property is under contract to them. They are willing to go on record as to what they will build. Mr. Bogarts pointed out they see this as down zoning because they are taking the property from business down to residential. The plan is for three stories containing five units plus parking. As seen on the concept rendering, the building has a lot of visual break up on the front including the detail of a drive-in under the building. The traffic and pedestrian access is closest to N. Old Woodward Ave. The building will be brick and limestone and there are 15 parking spaces on-site. These are for sale condominiums and the price point will be between \$1.2 million and \$2 million.

Chairman Clein went on record to state that he is not prepared to move this forward tonight because the materials are new and they need to be reviewed by staff. It was discussed that the Planning Board has no authority to accept contract zoning. The board can make a recommendation that will go to the City Commission and they will deal with it.

At 8:30 p.m. the Chairman asked for public comment.

Mr. Eric Morganroth, 631 Ann St., said he met with the applicant and determined there are some things about their proposal that he appreciates. It would represent the caliber of home that he lives in and would not depreciate his property. Further, he appreciates that all of the parking is self-contained and he likes the idea of the

staggered elevation. Therefore, he is not opposed to this particular project with the criteria described and would like to see a project in that realm.

Mr. Paul Reagan said the applicant has come back largely with what they had last time. The existing zoning in the surrounding area is mostly R-3 and it should remain so. It is not the responsibility of this board to optimize the financial gain of an applicant. The proposal is for a big building, out of scale with the rest of the neighborhood. The applicant has failed to offer a good reason why the zoning must change.

Mr. Boyle discussed how well the six-unit Wallace Frost condominiums transition into his single-family Poppleton Park neighborhood. Mr. Williams indicated he would have liked to see concepts of how the two parcels to the east could be developed without the third parcel on the corner. They didn't see that, other than as a commercial building.

Chairman Clein noted the rendering is clouding the intent of the board's discussion which is whether R-3, B-2B, and B-1 are obsolete on the site. What the board asked for was to show what could go on the existing lots to prove or disprove the viability of the current zoning. Staff still has to review the assumptions that were made. Further, he noted that the RFP for the Master Plan has not yet been issued and this board cannot just stop the course of business until there might be someone on board who can take them through an 18 month development of a Master Plan. The board has to continue to push forward with the rules that are in place.

Mr. Koseck said he would like to see a rendering of the residential property developed with a detached garage. Additionally, he was curious what could be done on the B-1 and B-2B parcels if they were residential. Mr. Sarkesian responded if the two parcels were rezoned to TZ-1 it would be three units so the property would have a total of four units rather than the five they are looking for. However, the anchor of the small single-family would be impractical for them pursue.

Ms. Whipple-Boyce told the applicants if they do come back to the board and are still looking to have the TZ-1 zoning with a unit as shown and with deed restrictions and contract zoning without calling it contract zoning, ultimately it will not be the Planning Board's decision anyway. Mr. Sarkesian said they have no problem doing any further studies, but they would not be interested in pursuing this property unless they can do a residential project. Chairman Clein said their role is to prove to this board that R-3 is obsolete and will not work on this site. On the other two sites prove to the board that based on setbacks and heights the new TZ-1 zoning classification would fit in with the surrounding neighborhood.

Mr. Williams thought the City Commission needs to tell this board what their policy is with respect to contract zoning.

Motion by Mr. Boyle

Seconded by Mr. Williams to continue 412-420 E. Frank St., Frank Street Bakery and Petrella Designs to December 14, 2016.

There was no discussion from members of the public on the motion at 8:58 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

11-194-16

**2. 2100 E. Maple Rd.
Whole Foods**

Request to amend Zoning Ordinance and/or Zoning Map to clarify the boundaries of the Rail District to include this site in the Rail District, and to allow bistro uses on parcels within the Rail District. (continued from October 26, 2016)

Ms. Ecker recalled that on October 26, 2016, the Planning Board discussed the applicant's request to clarify the boundaries of the Rail District, and to consider including 2100 E. Maple Rd. within the boundaries of the Rail District. Board members were in agreement that the boundaries of the Rail District should be defined, and codified in the Zoning Ordinance. Board members also stated that the map with the boundaries as presented that evening looked good. There was further discussion about the possibility of allowing the use of an Economic Development License at 2100 E. Maple Rd., other locations along Maple and / or discussing allowing the use of Economic Development Licenses throughout the City. The Planning Board indicated a desire to further discuss the use of an Economic Development License as an option at 2100 E. Maple Rd.

Presented was ordinance language to establish the boundaries of the Rail District, including the property at 2100 E. Maple Rd. and to allow bistros within the Rail District, as well as an updated map and ordinance language to expand the area in which Economic Development Licenses may be utilized, including the property at 2100 E. Maple Rd. as per the direction of the Planning Board.

Ms. Whipple-Boyce announced that she thinks the Whole Foods site is part of the Rail District and a bistro there would be a cool idea. With a Bistro License the City would have more control over what goes on at Whole Foods with their alcohol adjacent to the single-family neighborhood that is across the street. Mr. Boyle noted the compelling argument for him is control adjacent to a residential neighborhood.

Chairman Clein asked for members of the public to come forward and comment at 9:10 p.m.

Ms. Kelly Allen, Adkison, Need, Allen, & Rentrop, Attorney for Whole Foods, said that Whole Foods is in favor of the Economic Development option. They have been in touch with the Pembroke Association residents and they have no problem. The area that is being set aside inside of the grocery store looks like a bistro but it qualifies for an Economic Development License. Whole Foods would have a chance of getting that license sooner as opposed to competing with two or three other contenders for a Bistro License.

Answering Ms. Whipple-Boyce, Ms. Allen said the Economic Development License does not restrict hours of operation. However, Whole Foods will not keep their little restaurant open beyond their hours of operation. Additionally, this will be controlled by a Special Land Use Permit ("SLUP") the same as a Bistro License.

Chairman Clein asked that the parcels along Maple Rd. be removed from the Economic Development map. Just add the Whole Foods site.

Motion by Mr. Boyle

Seconded by Mr. Jeffares to hold a public hearing on December 14, 2016 for the requested Zoning Ordinance Amendment to clarify the boundaries of the Rail District to include the Whole Foods site in the Rail District, and to amend the Economic Development License map to include the Whole Foods site and the Zoning Ordinance Amendments that go with it.

There was no input on the motion from members of the audience at 9:17 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Ms. Ecker was requested to speak to the City Manager about ensuring that the public is notified about what is going on.

11-195-16

3. 211 S. Old Woodward Ave.

Birmingham 8 Theaters

Request for Zoning Ordinance Amendment to allow Liquor Licenses for theaters in Downtown Birmingham

Ms. Ecker advised that the owners of the Birmingham 8 Theaters have submitted a request for an amendment to Chapter 10, Alcoholic Liquors, of the City Code to create a new Division 5 to establish a new category of liquor licenses for theaters in Downtown Birmingham.

As a response to the request of the applicant, the City Attorney has drafted ordinance language and amendments that would create a new division 5 in Chapter 10, Alcoholic Liquors. In addition, in order to permit the use of such theater licenses, proposed zoning amendments are also attached that would allow the use of theater licenses, with a Special Land Use Permit ("SLUP") in the B-4 (Business-Residential) Zone District. Both the Birmingham 8 Theater and the Emagine Theater are located in the B-4 Zone District.

Ms. Kelly Allen, Adkison, Need, Allen, & Rentrop, Attorney for Birmingham 8 Theaters, was present along with Ms. Janet Leikas from theater management. Ms. Allen said the theater would be purchasing an Oakland County transferable license or possibly a Resort License. The reason the theater has come forward is because of the trend with regard to licensing theaters. This license would give the Birmingham 8 the ability to compete with theaters around the tri-county area and bring people into the core Downtown. According to the ordinance drafted the license cannot move from the property.

Discussion concluded that non customers would not be drawn to the theater just to have a drink. The concession area on the second floor will be converted to a small bar in order to service the customers who are already coming to the theater.

There was no one from the public that wished to comment at 9:37 p.m.

Motion by Mr. Williams

Seconded by Mr. Jeffares to set a public hearing for January 11, 2017 to amend Chapter 126 of the City Code, Article III, section 2.37 (B4) to allow the use of liquor licenses for theaters.

There was no discussion by members of the audience at 9:40 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

11-196-16

FINAL SITE PLAN REVIEWS

1. 100 - 450 Woodland Villa (existing duplexes)

Request for Final Site Plan approval to add a gate across Woodland Villa south of W. Maple Rd. (continued from September 28, 2016, request to postpone to December 14, 2016)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to postpone the hearing for 100 - 450 Woodland Villa to January 25, 2017.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

11-197-16

PRELIMINARY SITE PLAN REVIEWS

1. 33353 Woodward Ave. (Tuffy Car Repair)

Request for approval of a new 7,227 sq. ft. one-story retail building with parking

One letter has been received in opposition to the proposal and Ms. Ecker read it into the record.

Motion by Mr. Boyle

Seconded by Mr. Koseck to accept the letter from the Platts at 1308 Davis Ave. and put it into the official packet.

Motion carried, 7-0,

VOICE VOTE

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

Nays: None

Absent: None

Mr. Baka explained the subject site is located at 33353 Woodward Ave., on the west side of Woodward Ave. between Davis Ave. and Smith Ave. and is the current location of Tuffy Automotive Repair. The plan proposes to demolish the existing structure and parking lot to construct a new one-story multi-tenant building and on-site parking. The property is zoned B2-B General Business. The new tenants of the building have not

been determined but the potential mix of uses will be restricted by the available parking.

The applicant is proposing to place the building all the way up to the front property line with a zero setback. On the south side, the side setback would be 0' abutting the neighboring building. To the north along Davis there would be a 55 ft. setback for the parking lot. In the rear they propose 24.7 ft. from the rear property line which would allow additional parking.

No information on rooftop mechanical has been provided. All rooftop units must be screened in accordance with Article 5, section 4.53 of the Zoning Ordinance or the applicant must obtain a variance from the Board of Zoning Appeals ("BZA").

A permit from M-DOT will be required for any changes in the right-of-way along Woodward Ave.

Based on the retail / office requirement the new structure would require twenty-four (24) parking spaces. The plans submitted indicate twenty-six (26) new parking spaces provided, plus nine (9) spaces in the M-DOT right-of-way. The applicant will be required to obtain approval from the City Commission for the use of the abutting right-of-way parking.

Design Review

In accordance with the Birmingham Zoning Ordinance, Design Review for the new building is required to be performed at the time of Final Site Plan Review. The applicant has provided color elevations depicting the front elevation of the new one-story retail building. The applicant must provide detailed scaled elevations of all sides of the building and material samples at Final Site Plan Review.

Sign Review

The applicant has not submitted detailed signage specifications at this time. This can be done at Final Site Plan Review or through administrative approval once the tenants have been identified.

Mr. John Abro with the design firm for the building was present with Mr. Mike Penow with Stonefield Engineering and Design, and Mr. Duane Barbat, the developer. Mr. Abro indicated the rooftop mechanical will be screened. The retail will have fast casual type users and office type businesses. The glazing in front will be 12 to 14 ft. high. The building material will be masonry with metal panel striping. Mr. Baka informed him that the requirement for the back of buildings and the parking lot is 35% between 1 ft. and 8 ft. above grade.

Mr. Duane Barbat felt his development will be a huge improvement to what is there now. The parking that is planned in the rear off the alley faces two other parking lots.

Chairman Clein wondered why they chose to create a surface parking lot at the corner of Woodward Ave. and Davis as opposed to addressing the building to that corner and

parking between the commercial buildings. Mr. Barbat replied it affords adjacent parking for the north high visibility tenant plus there is easier access to parking.

Mr. Koseck observed that typically the Planning Board is trying to promote dialogue between sidewalk and buildings; not sidewalk and rear bumpers. This could be a really dominant corner building by shifting the parking lot. Mr. Barbat replied if they did that they would lose a couple of parking spots. Mr. Koseck indicated he could not support the project as proposed. He cares about how it fits the fabric of his community as opposed to the loss of two parking spaces. They should use the building to be the screenwall for the parking.

Mr. Mike Penow said the thought is that cars can come right into the parking lot. Cars coming through the middle of the building have to go all the way around and come back onto Woodward Ave. if they can't find a parking space. Chairman Clein was adamant that he would not approve a big parking lot right at the corner on Woodward Ave.

Mr. Barbat indicated that a Phase 1 Environmental Report and other requirements have been completed for the site. Only a little cleanup will be required because they are not going below grade. Additionally, it was discussed what will happen to the existing bus stop in front along Woodward Ave. Ms. Ecker said SMART will have to decide whether it can be moved. Mr. Barbat said they will make sure to resolve it before coming back for Final Site Plan Review.

Mr. Koseck noticed the project faces east and he thought canopies might be needed to prevent sun penetration into the large expanses of glass. Mr. Barbat replied they are considering aluminum continuous horizontal fins.

Public comments were taken at 10:30 p.m.

Dr. David Sperling said his office is just south of the proposed building. He noted the signage on his building will be blocked. He understands the board is not interested in having the proposed building pushed further south to abut his building. However, he has a medi spa at the north end inside his building, so to have the proposed building abutting his building would keep things quiet. It would make the spa very noisy. If the building is pushed to the corner and there is a parking lot right next to his spa.

Ms. Ann McRay, 1332 Davis, said she is concerned with the traffic pattern in the parking lot coming in off of Woodward Ave. and exiting into the alley. Further, she is apprehensive about the stores that will be coming in and what kind of traffic pattern they will cause. Excess parking will end up on her street.

Mr. Brian Fishman, 1344 Davis, said he is afraid traffic will go down Davis a lot and there are children in the area. Their street will probably need permit parking.

Mr. Koseck thought this is a great project; however there are a number of issues to be resolved and he would like to see it again before moving to Final Site Plan Review. He will not support the proposal unless the building is pushed north.

Chairman Clein said he appreciates the concern of the neighboring business. However he doesn't think what has been presented is the best solution. Therefore, he will not support it.

Ms. Whipple-Boyce and Mr. Jeffares announced they too will not support the proposal if the building is not moved to the corner.

Motion by Mr. Boyle

Seconded by Mr. Koseck to approve the Preliminary Site Plan Review for 33353 Woodward Ave. pending receipt of the following:

- 1. The applicant provide calculations demonstrating the exact size of the parking areas to determine if the parking lot landscaping requirements apply;**
- 2. Obtain City Commission approval for use of parking in the right-of-way;**
- 3. Install trees along the frontage of the subject parcels or obtain a waiver from the staff arborist;**
- 4. Obtain a permit from M-DOT for changes in the right-of-way along Woodward Ave.;**
- 5. Screen all roof top units or obtain a variance from the Board of Zoning Appeals; and**
- 6. The applicant bring the appropriate site plan indicating moving the building line to the north at the corner of Davis and Woodward Ave.**

Board members agreed they could deal with those changes and Final Site Plan Approval in one meeting.

The chairman called for comments from the audience at 10:48 p.m.

Dr. David Sperling asked for suggestions about how to keep his med spa quiet.

Motion carried, 6-1.

ROLLCALL VOTE

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

Nays: Williams

Absent: None

11-198-16

MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA (none)

11-199-16

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

b. Administrative Approval Correspondence

Ms. Ecker brought forward the following:

- The developers of 856 N. Old Woodward Ave., Pearl, have asked to use cast stone in lieu of limestone. The board's consensus was for them to come back.
- Mr. Paul Robertson and Mr. Eric Larson, developers of 748 - 750 Forest, are requesting to use super white dryvitt in lieu of the fiber cement rain screen panels. The board was not in favor.
- Mr. Duane Barbat asked if he could replace the existing beer and wine sign on the gas station with a liquor sign in the same material and size. It is a more accurate description of what they sell. He said his competitors all advertise liquor. It was determined the new sign could be administratively approved if Mr. Barbat complies with all of the new standards for outdoor storage.

c. Draft Agenda for the Regular Planning Board Meeting on December 14, 2016

- Public hearing on Zoning Ordinance Amendment to clarify the boundaries of the Rail District to include the Whole Foods site in the Rail District, and to amend the Economic Development License map to include the Whole Foods site and the Zoning Ordinance Amendments that go with it.
- 412-420 E. Frank St., Frank Street Bakery and Petrella Designs request for rezoning.
- Public hearing on rooftop dormers in the single-family zone districts.

d. Other Business (none)

11-200-16

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

b. Additional items from tonight's meeting (none)

11-201-16

ADJOURNMENT

No further business being evident, the chairman adjourned the meeting at 11 p.m.

**Jana Ecker
Planning Director**

APPROVED