

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, NOVEMBER 14 2018**

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<p>E. REZONING APPLICATION</p> <p>1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) Rehearing of application to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building (postponed from October 10, 2018)</p> <p>Motion by Mr. Boyle Seconded by Mr. Koseck that in light of the statements from the applicant that we postpone this rezoning application for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) to the Planning Board meeting scheduled for December 12, 2018.</p> <p>Motion carried, 7-0.</p> <p>F. PRELIMINARY SITE PLAN REVIEW</p> <p>1. 361 E. Maple Rd. (Historic Resource - Hawthorne Bldg.) Addition of four stories on top of the existing one-story historic resource (Applicant has requested postponement to November 28, 2018)</p> <p>Motion by Ms. Whipple-Boyce Seconded by Mr. Jeffares to postpone the Preliminary Site Plan Review for 361 E. Maple Rd. to the Planning Board meeting of November 28, 2018.</p> <p>Motion carried, 7-0.</p>	<p>2</p> <p>3</p> <p>4</p> <p>4</p> <p>4</p> <p>4</p>

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, NOVEMBER 14, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on November 14, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce; Alternate Board Member Jason Emerine; Student Representative Ellie McElroy

Absent: Board Member Bryan Williams; Alternate Board Member Nasseen Ramin; Student Representatives Madison Dominato, Sam Fogel

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

11-186-18

B. APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF OCTOBER 24, 2018

Motion by Mr. Share

Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of October 24, 2018 as presented.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Abstain: Emerine

Absent: Williams

11-187-18

C. CHAIRPERSON'S COMMENTS (none)

D. APPROVAL OF THE AGENDA (no change)

E. REZONING APPLICATION

- 1. 469-479 S. Old Woodward Ave.** (former Mountain King and Talmer Bank)
Rehearing of application to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building (postponed from October 10, 2018)

Mr. Rick Rattner, 380 N. Old Woodward Ave., said that after many hours of work they thought it might be helpful if they were given a chance to talk to the Birmingham Place neighbors and see if they could come to some conclusion about how they might accommodate each other. Therefore, they ask that the application be postponed to a date certain.

Mr. Clein announced that communication between parties is always something this board has strived for. Therefore, he would be willing to wait in order to allow that to happen.

Mr. Share assured that the Planning Board would not simply rubber stamp the agreement that was made, should they make one.

Mr. Koseck added that through communication there is always a better result, better planning, and happier people. So he was in favor of the request.

At 7:35 p.m. the Chairman asked for public discussion.

Ms. Susan Friedlander, who represents Birmingham Place Residential Condominium Assoc., said this is the first they are hearing about the postponement request. Her clients are upset about it because this is their fifth time in front of the Planning Board. It has gotten really expensive for them as well as time consuming. Further, they lose people every time their hearing is put off. Therefore, they want to just go ahead this evening. Additionally, she questioned why they were not notified of the postponement before tonight's meeting.

Mr. Jason Able spoke on behalf of the Condominiums of Birmingham Place Master Assoc. He echoed Ms. Friedlander's words. Every time this appeal is postponed less people show up.

Mr. Larry Rockind, resident of Birmingham Place, said at a minimum the applicant should be required to give some indication of what they have in mind. Also they should talk about paying the costs that the residents have incurred as a result of the delays.

Mr. Mickey Schwartz, resident of Birmingham Place, noted that in other developments like the Frank St. project the developer met with the neighborhood before submitting anything to the Planning Dept., which is the appropriate way of doing something. This has been going along for a long time and he doesn't see any grounds for further postponement. So, he asked the Board not to extend the hearing. If the hearing is extended he asked that it be for a period of six months in order to accommodate the residents who will be away for the winter.

Mr. Duraid Markus, one of the principals of the ownership of the two buildings, said he understands the concerns. He asked for a chance to show the residents of Birmingham Place what the development would look like at five and nine stories and what he can or cannot accommodate them with. He wants to do a lot to appease their fears. It came to this late juncture because they finally finalized the plans.

Discussion clarified that tonight the Board is dealing with massing and the intensity of use.

Ms. Whipple-Boyce asked Mr. Markus if anything he is planning to discuss with the residents of Birmingham Place has to do with him not rezoning the property. Mr. Markus responded that if he can show the residents a rezoning plan that they are happy with maybe there will be less opposition.

Mr. Share explained that the Board is well aware of the intensity of the feelings of the residents of Birmingham Place. Their letters are all part of the record. Therefore, ~~no matter how many~~ **if fewer** people show up for the hearing it won't influence the Board's decision.

Mr. Koseck hoped this would be a win-win and the residents would see something positive in what is being proposed by the applicant.

Mr. Jeffares said the Board has seen where something received complete opposition and they worked on it and came up with a great outcome. That is what he would like to strive for and have everybody be happy. Maybe it will work or not work, but why not give it a shot.

Mr. Emerine thought it is important that people get together and discuss this. He was in favor of postponement. Mr. Boyle said he is of the same mind. From his experience on this Board, the more conversation there is outside of this room, the better understanding there is between parties. Chairman Clein was in general agreement with those feelings.

Mr. Markus indicated that December 12th would be fine to come back.

Motion by Mr. Boyle

Seconded by Mr. Koseck that in light of the statements from the applicant that we postpone this rezoning application for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) to the Planning Board meeting scheduled for December 12, 2018.

There were two further comments from the public on the motion at 7:58 p.m.

Mr. Mickey Schwartz, resident of Birmingham Place, said tonight's hearing is about rezoning. It seemed to him they have digressed into talking about the specifics of the project that have nothing to do with rezoning. He heard Ms. Whipple-Boyce ask Mr. Markus whether or not he would request a rezoning change. However, he didn't hear him answer her question, and gave a non-responsive answer. If this is really about the rezoning then maybe they should talk about that tonight. They can always talk about the specifics of the project if the Board agrees to the rezoning request.

Ms. Tony Schwartz, resident of Birmingham Place, said this is a rezoning and why discuss a project that may not even happen if it is not approved. It is hard for her to believe that when the developer originally bought the property he did not have the intention of building to ten stories.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Koseck, Clein, Jeffares, Emerine, Share, Whipple-Boyce

Nays: None

Absent: Williams

F. PRELIMINARY SITE PLAN REVIEW

1. 361 E. Maple Rd. (Historic Resource - Hawthorne Bldg.)

Addition of four stories on top of the existing one-story historic resource

(Applicant has requested postponement to November 28, 2018)

Mr. Christopher Longe, the architect, stated that the property owner is out of the country and wants to be present for the hearing.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to postpone the Preliminary Site Plan Review for 361 E. Maple Rd. to the Planning Board meeting of November 28, 2018.

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Jeffares, Boyle, Clein, Emerine Koseck, Share

Nays: None

Absent: Williams

11-189-18

G. STUDY SESSION ITEMS

1. Projections in the Public Right-of-Way

Mr. Baka recalled that on October 24, 2018 the Planning Board requested that the staff review ordinances from other cities to glean information on what types of architectural elements are regulated and what methods are used to regulate encroachments. Accordingly, per the suggestion of the Chairperson, the ordinances regulating encroachments for the Cities of Portland OR, New York NY, Denver CO, and San Francisco CA, have been included for the Board's review. The Portland OR regulations are clearly the most comprehensive of the four.

While each city deals with the encroachments differently to varying degrees, generally these documents predominately rely on Chapter 32 of the International Building Code ("IBC") to regulate encroachments that are elements of a building. These elements include the following:

- Below grade encroachments
- Above grade encroachments below 8 ft.
- Above grade encroachments above 8 ft.

Below grade encroachments include items such as footings, vaults, areaways and tunnels. Above grade encroachments include items such as entrance details, architectural details (such as cornices, eaves, bases, sills, headers, band courses, opening frames, rustications, (and other similar elements), balconies, marquees, lights, flagpoles and signs.

The ordinances also provide classifications for encroachments that dictate the level of review required.

Mr. Baka felt that Portland certainly was the most developed of the four ordinances that they reviewed. It is split into two different types of encroachments, major and minor. The difference

is that the major encroachments are essentially permanent such as skyways and tunnels, whereas the minor encroachments are things that could be removed.

Even though something is permitted by the IBC doesn't mean it is right for Birmingham.

There are certainly elements that could be taken from these documents and adapted for the specific needs of Birmingham. In addition, drafting an Intent section that outlines the goals of Birmingham and what the experience in the right-of-way is intended to be could provide useful guidance to developers and property owners when they are considering an application for redevelopment.

Mr. Share thought it was interesting that Portland's ordinance comes out of their transportation section. He thought Denver was very similar. New York, as a denser place, wasn't quite so helpful. He likes the idea of developing a Birmingham Intent section. He felt the City would benefit from being more restrictive on awning encroachments toward the street than what the IBC allows and what these ordinances allow.

Mr. Boyle asked if they need to be as comprehensive as Portland because some of the items are already covered in other City Code sections.

Ms. Ecker advised that what the Board is talking about here are certain elements related to buildings. Any type of projection section drafted should deal with at grade, below grade, and above grade projections.

Discussion disclosed that if a building is cluttered with too many of the same projections it is a design issue and it could be denied. The ordinance contains a list of criteria for design review. Further it was agreed that the Board should not be so specific with details. Instead talk about the types of things that would be permitted and any restrictions.

Mr. Share indicated he would like to get rid of awnings with vertical supports in the walkway. The path should be kept clear for pedestrians. Further, he wanted the board to think about the future as materials develop and architecture changes. Chairman Clein was in favor of thinking about a recommendation on scaling an awning to the width of the sidewalk.

Mr. Baka advised that the City Attorney has opined that no one has the right to encroach on anyone else's property or into the public right-of-way.

Staff will present another draft at the next meeting.

11-190-18

2. Regulated Use / Special Land Use Review Process

Ms. Ecker recalled at the last meeting the board had asked staff to get answers from the City Attorney on regulated uses now that they are also Special Land Use Permits ("SLUPs"). A letter has been received from Mr. Currier regarding the findings of fact that the Planning Board must determine in order to rule on a regulated use and/or a SLUP. Mr. Currier recommends that the Planning Board make findings of fact for each category separately, thereby going through each of the required findings for a regulated use, making the findings on the record, and then going through of the findings required for a SLUP and making those findings on the record as well. This

will ensure that all bases are covered and will add to the clarity of their decision, should anyone wish to appeal it to the Board of Zoning Appeals.

Chairman Clein summarized the Board would be doing a Regulated Land Use, a Special Land Use, Site Plan, and perhaps a CIS.

Mr. Share suspected that the City Attorney's concern is to make sure all of the ordinance pieces are covered in a way that would make it easy for a reviewing body. The Board needs flexibility to make decisions in an appropriate logical order. He likes the idea of following the Rules of Procedure. However, it is better to have the ability to make the right decision than to slavishly follow a Rules of Procedure process that doesn't fit.

Ms. Ecker said the Board may hear certain elements on different nights but the intent is to send them all back together in a package to the City Commission.

The Board discussed that in Michigan by statute the public utilities have certain statutory rights to utilize public right-of-way.

Chairman Clein wanted to review the Rules of Procedure at the next open study session.

11-191-18

H. MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Ms. Ecker reported that the City Commission has updated the Planning Board's Action List based on discussions at their joint meetings with the Planning Board. Further, they have established a process to address needed amendments to the Action List.
- The City Commission has approved moped / scooter parking in the triangular dead zones adjacent to angled parking on Old Woodward from Brown St to Oakland.
- The City Manager has directed staff to change the introduction for the RFP for retail to make it more clear. Then it will be sent out to all of the firms that expressed interest and posted on MITN again, as only one firm submitted a bid previously.

b. Administrative Approval Requests

- 255 S. Old Woodward Ave., Park Plaza - Landscape work out front of 255 S. Old Woodward Ave.
- 35975 Woodward Ave., August, LLC – Request for an approval for the proposed substitution of landscape hedges in lieu of two (2) screen walls along Woodward Ave. at the south end of the site. The soils in this area are extremely poor and cannot support shallow foundations. The soil bearing capacity gets worse the further south you go. The structural engineer does not foresee a good option for supporting these screen walls without them settling, unless 25 ft. deep foundations are provided. Thus, the applicant requests a hedge in lieu of the screen wall, per Zoning Ordinance section 4.54 (B) (1). There was consensus by the Planning Board members to have staff grant an Administrative Approval for the hedge as screening.

c. Draft Agenda for the next Regular Planning Board Meeting of November 28, 2018

- Planning Board Action List;
- 361 E. Maple Rd. (just postponed tonight);
- Corner of Southfield Rd. and Brown – Phase 2;
- Projections in the right-of-way;
- Rules of Procedure.

d. Other Business (none)

11-192-18

I. PLANNING DIVISION ACTION ITEMS

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

APPROVED

J. ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 8:45 p.m.

Jana L. Ecker
Planning Director

APPROVED