

CITY OF BIRMINGHAM
VIRTUAL REGULAR MEETING OF THE PLANNING BOARD
THURSDAY, APRIL 22, 2020

Held Remotely Via Zoom And Telephone Access

Minutes of the virtual regular meeting of the City of Birmingham Planning Board held on April 22, 2020. Chairman Scott Clein convened the meeting at 7:41 p.m.

A. Roll Call

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams (joined at 7:59 p.m.); Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Student Representatives Rachel Hester, June Lee

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

04-36-20

B. Approval Of The Minutes Of The Regular Planning Board Meeting of March 11, 2020

Motion by Mr. Boyle

Seconded by Mr. Jeffares to approve the minutes of the Regular Planning Board Meeting of March 11, 2020 as submitted.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

04-37-20

C. Chairperson's Comments

Chairman Clein explained the evening's meeting was being held virtually as a result of the Covid-19 pandemic and asked for everyone's patience while new technology was being navigated. He stated that the meeting was being held under the guidance of the City administration and attorney, and complied with Governor Whitmer's direction to continue City meetings virtually where possible. Chairman Clein explained how meeting procedures would be handled in this virtual setting.

04-38-20

D. Review Of The Agenda

Planning Director Ecker confirmed for Chairman Clein that 219 Elm Street did not have proper onsite signage noticing the public of its impending community impact study review and preliminary site plan review, and as a result both items needed to be postponed until the Planning Board meeting of May 13, 2020.

Motion by Mr. Boyle

Seconded by Mr. Jeffares to suspend the Rules of Procedure for the May 13, 2020 Planning Board meeting to allow for the site plan review for 219 Elm Street.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Motion by Mr. Boyle

Seconded by Mr. Jeffares to postpone the review of the Community Impact Study and Preliminary Site Plan for 219 Elm Street until the May 13, 2020 Planning Board meeting.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

04-39-20

E. Old Business

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

Planning Director Ecker reviewed the item.

Mr. Williams said references to the Hunter House in the site plans and documentation should be replaced with a designation indicating that it is retail space, as the City should neither be specifying tenants of a project nor specifying where tenants may be located. Mr. Williams noted he found references to the Hunter House on pages 54, 60, 63 and 64 of the supplementary materials. He said that if a motion for approval followed the evening's discussion, an eighth condition should be added to remove all specific references to the Hunter House on the first floor

plan and in supplementary documentation because he did not want the City to seem to be opining on anything related to the present, private conflict between the Hunter House and the applicant.

Motion by Mr. Williams

Seconded by Mr. Boyle to receive and file for the record a letter dated April 21, 2020 from Kelly William Cobb, vice president of Hunter House Hamburgers, a copy of which the Planning Board has received.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Kevin Biddison, architect, reviewed updates to the plans. He stated that the applicant team and Hunter House management had met twice since the last Planning Board review of these materials to try and reach an agreement, but that none was forthcoming. Mr. Biddison explained that Hunter House was offered its current square footage within the plans, with additional lease space and a couple of parking spaces. He continued that he emailed Planning Director Ecker additional drawings immediately prior to the meeting which showed the two interior 10 foot by 40 foot loading zone areas, and that the applicant team will make sure the plans adhere to all other City requirements.

Seeing no questions from the Board, Chairman Clein welcomed public comment.

Kelly William Cobb reviewed the contents of his April 21, 2020 letter to the Board for the public. Mr. Cobb contested Mr. Biddison's assertion that the Hunter House is being offered square footage in the plans equal to the restaurant's current square footage. He said the way these discussions have been progressing is unfortunate for the community.

Seeing no further comments from the public, Chairman Clein replied to Mr. Cobb's comments, stating that he understood Mr. Cobb's frustration with the situation. Chairman Clein continued that the Planning Board has direction from the City Attorney that it is not the Board's domain to enforce private contract law or deed restrictions resulting from private contracts. The owner of the property does have a legal right to submit a site plan, and a legal right to pursue approval.

Chairman Clein then welcomed comment from the Board.

Mr. Share reiterated Mr. Williams' previous comment that the Board should not be construed to be taking any position whatsoever regarding the private conflict between the applicant and Hunter House.

Chairman Clein agreed.

Motion by Mr. Boyle

Seconded by Mr. Share to approve the Revised Preliminary Site Plan for 35001 & 35075 Woodward – The Maple – with the following conditions: 1) Submit

specification sheets on all of the proposed rooftop units and material/dimensional information on the screen wall to ensure full screening; 2) Revise the streetscape plans to meet all City requirements with regards to street lighting, furnishings and sidewalks; 3) Submit plans showing three usable off-street loading spaces measuring 40 x 12 x 14, or obtain a variance from the Board of Zoning Appeals; 4) Submit a photometric plan and specifications on all proposed lighting and materials, along with material samples at Final Site Plan and Design. 5) Work with the City to negotiate a lease for the use of City property below, at and above grade; 6) The Planning Board approves of the 2' projection into the right-of-way for the entry canopy at the corner of Maple and Woodward; 7) Comply with the requests of all City Departments; and, 8) In all cases, delete the term 'Hunter House' from drawings and any text.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Chairman Clein reiterated the Board's direction from past meetings to the applicant to attempt to resolve the conflict with the Hunter House through ongoing dialogue, and said he hopes to see a resolution of which the City, the applicant, and the Hunter House can all be proud.

04-40-20

F. Rezoning Request

1. 469 – 479 S. Old Woodward (Former Mountain King and Talmer Bank) – Request for rezoning from B3/D4 (up to 5 stories) to B3/D5 (over 5 stories).

Chairman Clein said he would use the Chair's discretion to make a few comments before review of this item commenced. He explained that:

- He had been reflecting deeply for the past week about how best to navigate this first Board meeting in virtual space.
- Correspondence included in the evening's agenda packet included items suggesting that discussing this item in a virtual meeting would be inappropriate, or perhaps not even allowed under Governor Whitmer's executive orders.
- Also in the evening's agenda packet was a letter from the City Attorney outlining the City's position, which was to the contrary of the other referenced correspondence and maintained the City's right and obligation to continue City business virtually.
- While the Board has a right to hear this item during the present meeting, he would be respectfully requesting a motion from the Board to postpone the public hearing on this petition until the regular Planning Board meeting of May 27, 2020.
- Unlike other matters on the meeting's agenda, this petition would likely draw considerable public input. He noted that there were over 50 people in the present Zoom meeting, and that he could tell from the names that a majority of those present were seeking to comment on this item.

- While public engagement is a hallmark of the democratic process, he was concerned that the volume of comments would significantly test his ability as Chair to moderate conversation since this hearing would occur during the first hour of the Board's first virtual meeting.
- He suspected that many of the pending public comments would center on the appropriateness of the virtual public hearing, rather than the appropriateness of the petition, despite the clear opinion of the City Attorney. He acknowledged that the opinion of the City Attorney was released on the Friday before the present meeting, which allowed little time for rebuttal and explained why some members of the public would likely seek to voice their related concerns presently.
- Given the Board and City's relative technological inexperience using the Zoom platform, the volume of pending comments, and the focus on procedural matters, Chairman Clein warned that the Board's ability to document findings of fact from the evening's public hearing could be significantly hindered. This would result in the City Commission receiving inadequate information from which to judge the merits of the Planning Board's recommendation.
- In the event of an incomplete record, it could leave any decision the City Commission would make as questionable in the eyes of the courts, or could result in the matter being returned to the Planning Board for another public hearing, which Chairman Clein ventured none present would want.
- By postponing this public hearing until May 27, 2020, the Board would have the opportunity over the duration of this meeting and another meeting to develop more familiarity with Zoom technology. This would serve the public, applicant, and Board in allowing the City to preserve a clear and complete record of the public hearing proceedings.
- The delay would also allow sufficient time for any concerned parties to submit comments to the City related to the City Attorney's opinion on virtual meetings. He hoped that additional time would allow the Board to focus its discussion on May 27, 2020 on the merits of the petition and not on any procedural machinations regarding the meeting itself.
- The applicant has every right to petition the City for the rezoning of this property, and has every right to be heard by the City. The City also has every right to act upon the petition request under the direction of Governor Whitmer's order and consistent with the City Attorney's recommendations.
- While both these processes will be carried out, the present meeting is not the appropriate time to do so.
- Any attempt to delay this petition beyond one month, for any reason including a hope that the matter could be heard in person at a later date, would be highly inappropriate. There is no way for the City to know when that could occur, and it would be an undue burden borne by the applicant.
- A one month delay to ensure that all parties are familiar with the technology and that a clear and accurate record can be preserved would be, however, warranted.
- Given this, he requested the Board move to postpone the public hearing on this matter until May 27, 2020.

Mr. Williams stated he had no objection to Chairman Clein's recommendation. He continued that counsel for the Birmingham Place Residential Condominium Association, counsel for Birmingham Place Commercial Condominium Association, and counsel for the applicant should submit any

written opinions regarding the merit of the rezoning request to the Planning Department by May 19, 2020 in order to allow the City Attorney time to reply in writing before materials for the May 27, 2020 meeting are distributed to the members of the Planning Board on May 22, 2020.

Mr. Boyle said he would be in support of the Chair's recommendation.

Mr. Share agreed that postponing the public hearing for one month would be reasonable. He also suggested that counsel for all parties might be able to meet prior to the May 27, 2020 meeting and decide on some procedures which could streamline the process of providing comment without preventing any parties from expressing their views.

Motion by Mr. Williams

Seconded by Mr. Share to postpone consideration of the rezoning request for 469-479 S. Old Woodward to Wednesday, May 27, 2020.

Duraid Markus, applicant, said he did not see what would be gained by postponing the hearing for a month. He stated that all items on the evening's agenda up to this point had proceeded smoothly and that he did not suspect this item would proceed any differently.

Chairman Clein reiterated his previous points, including the fact that all parties would be more familiar with the technology being used, which would mean the ability to preserve a clearer record.

Mr. Markus expressed frustration at the intent to delay the hearing, noting that he had done much preparation to have this item ready for this evening, that all parties had counsel present, and that the public had been given many opportunities to comment on the item during previous meetings. He said that the public hearing on the item should proceed during this evening's meeting as scheduled.

Chairman Clein told Mr. Markus that he understood his frustration and that his comments were noted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Chairman Clein thanked all parties who attended the present meeting to discuss this item, and said there would be a public hearing on May 27, 2020 regarding the petition to rezone these properties.

04-41-20

G. Special Land Use Permit Review and Final Site Plan & Design Review

1. 1800 W. Maple (Lutheran Church of the Redeemer) - Special Land Use

Permit Amendment to allow renovation and expansion of the Church.

City Planner Cowan presented the item.

Mr. Boyle said that he had never struggled with a site plan as much as he had with the one for this proposal. He asked whether the proposed changes would result in a building that is dimensionally different from the present building, and if so where those changes would occur.

City Planner Cowan stated that the applicant would better be able to explain what parts of the building would remain or change, but that the horizontal dashed lines on the plan were meant to indicate the proposed changes.

In reply to Mr. Boyle, City Planner Cowan said the height of the building would be remaining at 27 feet as measured to the middle of the pediment.

In reply to Mr. Williams, City Planner Cowan stated the plans would add an additional 8.3% in square footage to the building.

Steve Schneeman, architect, provided further information about the project. He explained the goal of the rebuild is to make a more modern interior space for the congregation while preserving the style of the church facade. He said the sanctuary and practice space would be expanded, the office space on the east side of the building would be relocated to another area in the building, and that the steeple would be replaced with a brand new steeple.

In reply to Mr. Koseck, Mr. Schneeman confirmed that the owner of the building would be amenable to linking the property's pedestrian system to the City's that runs along the north side of Maple. He said that would likely be located on the east side of the entry and onto Maple. He said adding a sidewalk to the west of the entry had not yet been discussed.

Steve Scheidt, representative for the owner, said public access off the south sidewalk would make a lot of sense. He said he was interested in increasing pedestrian connectivity on the east side of the entry while noting that there are large evergreen trees to the west side of the entry. He said the congregation would hope to retain the evergreen trees, but that ultimately they would do whatever the Planning Board recommends.

In reply to Chairman Clein, Mr. Koseck confirmed he would be comfortable with allowing administrative approval for the plans for further pedestrian access.

Mr. Williams noted the applicant agreed to a sidewalk on the east side of the entry.

Mr. Koseck agreed with Mr. Williams, but said the Planning Board should allow for administrative approval of the design since the Board can neither design the sidewalk nor approve the plans presently.

Seeing no further Board discussion, Chairman Clein invited public comment.

Jon Bobrowski explained that he is a Bloomfield Township resident who lives directly to the west of the church. He expressed concern that construction might commence while the state lockdown is in order, which would mean that he may be sheltering at home during the day while construction occurs. He said the noise from the construction could be very taxing on the neighbors of the church. Mr. Bobrowski said that during past church construction projects construction vehicles would idle in the church parking lot before the ordinance permitted construction start time. Mr. Bobrowski also asked where the vehicles and construction materials would be stored.

Chairman Clein asked Mr. Schneeman to comment on how the quality-of-life issues potentially raised by the construction would be mitigated for neighbors of the church.

Mr. Schneeman said the original plan was to begin the construction in the late fall of 2020. He said that if there are still construction prohibitions present in the late fall that the project would not commence then. Mr. Schneeman continued that the construction manager would be required to adhere to all the noise ordinances and other regulations within Birmingham. In addition, if there are more specific concerns not covered directly by ordinance the church would take those into consideration since the congregation is very keen on maintaining good relationships with the neighbors. Staging could be planned in a way that the impact on the neighbors would be minimized.

Chairman Clein recommended that the applicant make a concerted effort while going through the construction startup to meet with the neighbors and build consensus on any issues that could arise to avoid having to get the City involved.

Mr. Schneeman confirmed that the applicant would do so.

Mr. Scheidt said it was firmly the congregation's intention to build relationships with the neighbors, and told the Board that the church had a meeting scheduled to meet with the neighbors on March 12, 2020 which had to be cancelled due to escalating Covid-19 concerns at the time. He explained that a person from the congregation has been appointed to facilitate conversations with the neighbors and that there is an online group through which the congregants can discuss ways of further mitigating the impact on the surrounding area.

Seeing no further questions for the applicant, Chairman Clein returned the conversation to the Board.

Mr. Boyle stated that it was only in questioning that he was able to determine that the plan is to demolish and rebuild a portion of the church. He said this process raised issues for him regarding how the City handles the demolition of a very prominent building. Mr. Boyle said he wanted it on the record that in some ways the Board was misled in terms of the plans that were presented to the Board.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend approval to the City Commission for the Final Site Plan for 1800 W. Maple and to recommend approval to the City Commission for the Special Land Use Permit Amendment for 1800 W. Maple.

Mr. Koseck asked if the City had the required information for this to be a final site plan approval. He said he agreed with Mr. Boyle's statement to an extent. He said this is a very pretty building and asked how that aesthetic appeal would be carried forward and maintained.

Chairman Clein cautioned the Board that the comments should be related to the motion, and that further discussion regarding the item should pause until the motion has undergone a vote.

Mr. Williams said he agreed with Mr. Boyle and Mr. Koseck, saying that final site plan approval seemed inappropriate since the applicant had not provided all the information the Board usually requires for a final site plan approval.

Ms. Whipple-Boyce said she believed that the write-up of the item stated that the construction would be using matching materials, and also noted that a materials list was provided as well. She said the Board could seek confirmation as to whether the materials would indeed be matching.

Planning Director Ecker confirmed Ms. Whipple-Boyce's recollection that the construction materials would be matching.

Chairman Clein invited public comment on the motion.

Mr. Bobrowski said he doubted that it was clear to any of the neighbors before this evening that the plan was to substantially demolish and rebuild the church. He said his concerns remained the same as his earlier comments.

In reply to a query by Chairman Clein, City Planner Cowan stated that the existing building to remain would be about 37,000 square feet, new construction would be about 11,000 square feet, and the demolition would be about 8,000 square feet.

Motion carried, 6-1.

VOICE VOTE

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

Nays: Boyle

Chairman Clein thanked both Mr. Schneeman and Mr. Scheidt for their attendance and enjoined them again to work with the neighbors to achieve a pleasant and conflict-free project.

04-42-20

I. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

c. Draft Agenda for the next Regular Planning Board Meeting (May 13, 2020)

- 219 Elm Street CIS and Preliminary Site Plan Review
- Study Session
- A discussion of how to restart the master plan public input process and a review of what was learned from the previous two sessions
- A discussion of how the virtual meeting process can be improved

Mr. Williams said the Board should schedule a joint meeting with the City Commission to see whether there was Commission feedback regarding the first two public input meetings for the master plan, and to see whether the City Commission wanted the Board to continue with the public input process for the master plan.

Chairman Clein said Mr. Williams' point was a useful one.

Mr. Boyle said he had a concern regarding some of the documentation submitted for 219 Elm. In reply to Chairman Clein, Mr. Boyle confirmed he would address those concerns separately to Planning Director Ecker after the conclusion of this meeting since discussion of 219 Elm was not on the present agenda.

Mr. Koseck said the site plans for 219 Elm were very difficult to understand, commenting that they did not show context or adjacencies. He said that he walked the site earlier in the day and that even after having done that he could not understand the site plans. He told Planning Director Ecker that he would have a difficult time reviewing the item during the next meeting if the material to be reviewed remains the same as it is presently.

Chairman Clein and Mr. Jeffares also said they had some difficulty with the site plans for 219 Elm.

Mr. Jeffares said it would be helpful for the shared screen to have the text of the motions up as the Board draws close to making a motion on an item.

Chairman Clein said it was clear to him that people entering the meeting after the start time were both able to unmute themselves and to turn on their own video. He said it would be better if members of the public were not able to unmute themselves or share their own video.

Planning Director Ecker agreed, and said the meeting had been set to prevent unmuting and sharing video by members of the public. She noted that some people came into the meeting muted and some did not, and said that the City's IT staff would look into the settings further.

d. Other Business

04-43-20

J. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

04-44-20

K. Adjournment

No further business being evident, the Chairman adjourned the meeting at 9:36 p.m.

Jana L. Ecker

Planning Director

APPROVED