

CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 8, 2020
Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 8, 2020. Chairman Scott Clein convened the meeting at 7:32 p.m.

A. Roll Call

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative Rachel Hester

Absent: Student Representative June Lee

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

F&V: Julie Kroll

07-78-20

B. Approval Of The Minutes Of The Regular Planning Board Meeting of June 24, 2020

Ms. Whipple-Boyce said she believed that it was her, and not Mr. Williams, that moved to approve the Preliminary Site Plan for 469-479 S. Old Woodward.

A check of the audio from the June 24, 2020 meeting showed Ms. Whipple-Boyce to be correct.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of June 24, 2020 as amended.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

Abstain: Boyle

07-79-20

C. Chairperson's Comments

Chairman Clein welcomed everyone to the meeting and reminded everyone that the meeting was being held under the guidance of the City Attorney and City administration to ensure compliance

with Governor Whitmer's executive orders. Chairman Clein then reviewed procedures for the meeting.

07-80-20

D. Review Of The Agenda

There were no changes to the agenda.

07-81-20

E. Final Site Plan & Design Reviews

1. **545 W. Brown Street (Single Family Residence)** – Request for Design Review to allow an addition to the second floor of a single family home in an R8 zoning district.

City Planner Dupuis presented the item. He stated that the request received a letter of support from the neighbors to the south.

Janine Brycz, homeowner, was present as the applicant.

Following brief discussion, there was Board consensus that the Design Review application could be approved.

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Design Review application for 545 W. Brown with the understanding that the Planning Board found the design compatible with the neighborhood and with the following condition:

1. **The applicant must obtain a variance for the 16 ft. addition into the required rear setback.**

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

2. **34745 Woodward (JAX Car Wash)** – Request for Revised Final Site Plan & Design Review for site plan and design changes to Jax Car Wash.

Motion by Mr. Williams

Seconded by Mr. Share to formally accept for filing a letter from Fleis and Vandenbrink dated July 8, 2020 from Julie Kroll to Planning Director Ecker; a letter from Tim Currier, City Attorney, dated July 8, 2020; and a memorandum containing engineering comments dated July 8, 2020 from Assistant City Engineer Fletcher.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Planning Director Ecker reviewed the item. She explained that:

- MDOT would be willing to allow contraflow traffic in their right-of-way if the City indemnifies them for the practice.
- City Attorney Currier, in contrast, would like a letter from MDOT stating that they accept and approve of contraflow traffic in their right-of-way and that the City has no liability for the use.
- MDOT is the fee owner between the sidewalk and the curb on the east side.
- MDOT was likely not noticed as an adjacent property owner for the current review since there is no address associated with that property, and the Planning Department notices addresses within 300 feet of an application.

Chairman Clein stated that just because Jax has encouraged contraflow traffic for years does not mean that it is a wise or safe practice for the City to endorse. He continued that adding six detail stations to the front would likely increase the amount of contraflow traffic.

Mr. Share said:

- He had serious concerns about the accuracy of the memo submitted by Bradley Scobel, attorney for the project.
- The memo addressed a right-of-way that goes over a private property owner's property.
- In the classic situation, if a property owner owns property on a section line road, the state, by statute, has taken 32 feet on each side of the center line, or section line, for roadway purposes.
- The above is a different situation from the one that seems to exist in these plans, where the MDOT right-of-way does not permit MDOT to go over Jax's property; rather, MDOT is the property owner.
- The City would need City Attorney Currier to review the issue and comment since it bears on some of Mr. Scobel's points.
- If MDOT owns Woodward and part or all of the area that the contraflow is proposed to go into, then it would be in all parties' best interests to have a formal legal easement that delineates each party's rights.
- It would not be appropriate for the Board to approve site plans where one party proposes to build on another party's property without any formal indication that the latter has granted the former approval for that work.

Jason Milen, owner, Bryan Lawson, architect, Mr. Scobel, attorney, and Greg Roselli, general manager of the Birmingham Jax location were all present on behalf of the applicant.

Mr. Milen stated:

- The plans would double the existing on-site stacking available before vehicles go through the wash.

- In an effort to make the process safer, customers would exclusively drive their own vehicles at the Birmingham location. All interior vacuuming would be done by Jax employees.
- Any proposed landscaping could be modified to the City's satisfaction.
- His team only became aware of the content of the memos from the City Attorney, F&V, and City Engineering during the same day as the present meeting, and said they would be happy to address all issues raised.
- 65% of customers at the Birmingham location receive exterior-only services and those numbers would increase with the location's ability to process a larger number of exterior washes. Any customers that receive exterior-only services would not need to drive contraflow.
- His team has looked at every possible option for compliance with City ordinance. If vehicles turned out of the wash tunnel sooner then the site would not have as many spaces to do the vacuuming and interior cleaning. The conflicts with ordinance arise not from financial concerns, but from efforts to improve traffic flow, to improve safety, and to improve efficiency.
- Perhaps the safety of the sidewalk near the contraflow could be improved by painting that part of a sidewalk a different color, or by installing a different color brick, to better alert pedestrians.
- MDOT has never raised an issue with Jax over contraflow traffic in the right-of-way.

Mr. Jeffares said that even though removing one vacuum station would cause the site to lose one interior detailing space, it would be worthwhile to do so to allow the vehicles to turn sooner. He said this would eliminate the contraflow issue and make traffic on and around the site significantly safer.

Mr. Milen said that removing one interior detailing space would cause a loss of efficiency that could cause backups elsewhere on the site given current demand. Turning left out of the spot on the north side, before the sidewalk, would prevent them from being able to align the vehicles on the north side of the property. It would also require three-point turns which would likely be more dangerous than the wide-clearance turn that would otherwise occur.

In reply to Mr. Share, Mr. Lawson confirmed that the east property line as shown on the plans is correct.

Mr. Scobel stated that the portion of Jax's property that is encumbered by the right-of-way is not under the jurisdiction of MDOT. He said that while MDOT can prevent building on that right-of-way it could not control how it is used. He agreed with Mr. Share's supposition that if MDOT is the fee owner of the property in question that it would change Mr. Scobel's analysis. He reiterated the fact that the Jax team only received City Attorney Currier's memo earlier on July 8, 2020, and said he was not yet sure on what legal research City Attorney Currier based his opinion. Jax would need permission from MDOT to landscape in the right-of-way. There would be an absence of governmental liability through the Governmental Liability Act regarding contraflow traffic in the right-of-way. In addition, if Jax has the ability to use the right-of-way for contraflow traffic in a way that MDOT cannot regulate, then MDOT can also not be held liable for contraflow traffic in the right-of-way.

In reply to Mr. Boyle, Planning Director Ecker confirmed that vegetation screening is not required, and masonry screening would be an option along Brown.

Mr. Boyle said masonry screening would be a preferable option.

Mr. Milen stated that the vacuum tubes could be run underground instead of going over the building.

In reply to Chairman Clein, Mr. Milen said that it is more efficient to vacuum after a wash, instead of before.

Chairman Clein explained that Jax's presentation largely asked the Board to put the efficiency of the business before the interests of the public in terms of both safety and adherence to ordinances. Chairman Clein said that the concerns raised by Board members were rooted in their obligation to protect the public interest.

Mr. Jeffares concurred with Chairman Clein.

Mr. Milen said that doing the vacuuming second is an effort to decrease pedestrian activity on-site, which would increase safety. He also reiterated that the team would be more than willing to do something to the sidewalk to signify that vehicles were exiting from the Jax site at that location.

Chairman Clein shared his surprise that no one on the Jax team could fully answer the questions about ownership and property rights in regards to the east side. He said that if the Board reviews the plans again in the future he would need the applicants to return with a survey and clarification of that information.

In reply to Mr. Koseck, Mr. Milen confirmed that any landscaping on the site would be maintained to the highest standards.

Mr. Williams said he would want to see a more detailed survey, more legal clarification regarding ownership, a more detailed response from City Attorney Currier in reply to the project's legal position, and more clarity regarding MDOT's legal position before any action could be taken on this item. He said the Board should not recommend that the City Commission provide indemnification vis-a-vis the contraflow traffic since he was relatively confident they would not be willing to do that. He stated that he agreed with Mr. Boyle that masonry screening would be more appropriate. He said that while the proposal still needed work, he thought it would help get traffic off Brown which would increase safety and traffic efficiency.

Mr. Share concurred with Mr. Williams regarding the further information required.

Mr. Koseck said he was reluctantly concerned that the plans were not the best they could be, and said the Jax team should look for more creative solutions that could increase safety and adherence to ordinance. He said:

- He was unsure why the main entrance would be 35 feet wide if it was one-way, and why the one-way exit would be 23.9 feet wide.
- The brown canopy is not ideal in terms of site aesthetics.

- The escape lane may not be necessary.
- He would want to see effort to increase the safety of pedestrians using the sidewalk along the Woodward edge of the property.

Chairman Clein said that the added queuing off Brown would be a positive improvement, and noted that the applicant added additional screening where it was requested by the Board. Chairman Clein continued that he still had some fundamental concerns about the plans. He said there were too many vacuums proposed for the site, and that the traffic flow proposed for the site overall seemed unlikely to work well. He said that while he appreciated the challenges of the site he was concerned about how the plan implementation would negatively impact both vehicular and pedestrian safety. He said he was supportive of the aims of the applicant and said he wished they could find another way to achieve their goals while increasing safety and adhering to ordinance.

Ms. Whipple-Boyce stated that she went back through previous minutes regarding the site and said she believed that this was the Board's fifth time discussing Jax. She said that if a sixth review were scheduled for the end of August she would like some way of knowing that the applicant would return with the necessary and acceptable changes to the plan. She said the Board has asked for essentially the same changes at each one of their five reviews of this item and that there has been relatively little progress made towards those changes on the part of the applicant.

Mr. Milen replied that they looked into the MDOT issue and increased screening. He said he believed it was four reviews, and that if the Board compared the current plans to the original plans they would see a significant difference.

Mr. Jeffares said that while the proposed plans improve the safety and efficiency of the site there were probably options that would make the site even safer. He agreed with Mr. Koseck that the brown vinyl tent is unsightly and said the Board often does not approve tents that are significantly more attractive than that. Mr. Jeffares said that while a car wash is not the optimal activation of the street that the City seeks in its planning, it is activation just the same and helps keep the City looking lively. He said he would be in favor of giving the applicant one more chance to return with plans that sufficiently address the Board's concerns. He said he saw that there had been a number of small improvements, but said he would need to see significant changes to the plans to consider approval come August. He said that five vacuum stations would be one of the changes the applicant should seriously consider.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the Final Site Plan and Design Review for 34745 Woodward – Jax Kar Wash – until the regular Planning Board meeting of August 26, 2020.

Ms. Whipple-Boyce said she would not support the motion because she did not believe a sixth review of the project would yield the necessary changes anymore than the previous five reviews had. She stated that the Board had been very clear about the requisite changes from the start, and that only small steps had been taken in that direction by the Jax team.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Share, Williams, Koseck, Boyle, Clein, Jeffares

Nays: Whipple-Boyce

07-82-20

F. Study Session Items

1. Planning Board Action List

Planning Director Ecker presented the item.

Mr. Jeffares said he had two suggestions for the list: reviewing the appropriate size of elevator vestibules on roofs, and seeing if there would be a way to remove the Board from consideration of changes to single-family homes in multi-family districts.

Ms. Whipple-Boyce said the Board would need more specific information from staff in order to explore item six. She also said that item sixteen could likely be broken down into smaller items, like window glazing, that the Board could review. She said she was unsure why further work on that item was predicated on the master plan and would like to see the Board work on some of those smaller related issues sooner.

Mr. Koseck said he would be ready to discuss glazing standards at the Board level soon. He said he would like to review mixed use requirements. Since LEED certification can be one way for a development to receive allowances for extra floors, he asked how LEED certification benefits Birmingham and why the City incentivizes it. He said that the City's energy codes are largely so stringent that buildings tend to get almost to LEED levels by default. Mr. Koseck said that instead of LEED certification, the City could offer developers the option to pay into a fund that could be used build a park in the neighborhood or to undertake some other neighborhood investment.

In reply to Mr. Williams, Planning Director Ecker explained that the Board made no recommendations regarding the lot combination process because it exists within the Subdivision Ordinance chapter of the City Code and not in the Zoning Ordinance.

Chairman Clein said it could be helpful to request further clarification from the Commission regarding items five and six. For item five, he said it would be helpful to know which variables the Commission would like the Board to explore, for example, whether the options should be short-term or long-term or whether they should be specific to a particular area of the City or more general. For item six, he said it would be helpful to know what the Commission would like the Board to consider since the lot combination process, being in the Subdivision Ordinance, is not within the Board's jurisdiction.

Mr. Williams said items five and six would require that the Board receive substantial information from experts and staff before they could even begin to consider potential

recommendations to the Commission. He noted that financial incentives, for instance, is an extensive topic within state law.

Chairman Clein agreed. He said it would be helpful to know the Commission's intent regarding the Board's role in discussions of land planning and/or public policy, since he said a number of items on the action list are public policy issues.

Mr. Williams agreed that most of the items on the action list are matters of public policy.

Ms. Whipple-Boyce said she agreed with an earlier comment from the Chairman that proposed one action list related to the master plan and one action list for items that can be dealt with outside of the master plan. She said the Board could likely wrap up a number of items on the latter list while also carrying on with the master plan discussions.

Mr. Jeffares noted that the City's largest land planning issue, Bates Street, was not on the Board's action list. He said it did not make sense to him to not have anyone in the City working on it. While he acknowledged a comment from Chairman Clein that the Board cannot resolve every land planning issue they would like to, Mr. Jeffares ventured that Bates Street would be one of the most important ones to resolve.

Mr. Share said he was in favor of the Chairman's suggestion for two action lists. He said that the economic stimulus question is one of municipal finance and not one of land planning. He said he agreed with Mr. Koseck that it would be a good idea for the Board to review what entitles a developer to extra stories on a building.

Chairman Clein said that in terms of economic stimulus, the Board could review some short-term, land planning related options. He cited temporarily closing some streets to vehicular traffic and expanding restaurants' outdoor seating as one option worth discussing.

Mr. Boyle said he agreed with Chairman Clein's suggestion, and that he would take it further. He said that economic stimulus discussions have been part and parcel of land planning for as long as land planning has existed, and that to imagine the Board has no part in that discussion would be a mistake. He said that while it is a topic grounded in taxation and municipal funding, any options pursued would have implications for land use. He said that the Board could perhaps narrow its consideration of the economic stimulus question for the action list, framing it as "What are the implications of Covid-19 for the City from a spatio-economic perspective?"

Mr. Boyle added that he would be in favor of reviewing the City's ordinances regarding mixed use as well.

Chairman Clein suggested that items one through six remain on the Board's action list, and that items seven through twelve either be removed from the Board's current considerations or moved to a checklist of items that are inextricably related to the master plan. He further recommended that item 13 stays on the action list and be moved up in priority; that item 14 be moved to the master plan checklist; that items 16 stays on the action list; that item 17 goes on the master plan checklist; and that item 18 remains on the action list.

Mr. Williams said he would be comfortable having item six remain on the list as long as the Commission is advised that the Board would be looking at it from the perspective of land use per Mr. Boyle's suggestion.

Mr. Koseck said that item 11 should be moved to the master plan checklist since it is a part of the master planning process.

The Board agreed that item 15 should be removed from their action list.

07-83-20

G. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

Planning Director Ecker reviewed a question regarding 600 Riverside Drive. She explained that the applicant proposed to add a significant amount of landscaping and a deck in the rear of the home on top of an existing retaining wall.

Ryan Youngblood, landscape architect for the project, was present on behalf of the application. He explained that these plans would have no building, excavation or walls in the flood plain.

In reply to the Chairman, Planning Director Ecker stated that nothing in the ordinance would prohibit the deck as proposed.

There was Board consensus that the project could be administratively approved.

c. Draft Agenda for the next Regular Planning Board Meeting (July 22, 2020)

Since there were no items scheduled for the July 22, 2020 meeting as of the July 8, 2020 meeting, the Board asked Planning Director Ecker to choose two to three smaller items from their action list to discuss at their next meeting.

d. Other Business

City Planner Dupuis explained he was working with a food and drink establishment in the O2 district that would be replacing a previous food and drink establishment at the same address. He explained that the space's legal non-conforming status was voided because the previous tenant was out of the space for more than six months. He explained that there would be no changes at all to the interior or exterior of the building with the exception of paint and a few minor touch-ups. Being in an O2 district, the restaurant would require a special land use permit (SLUP) even though no alcohol service is proposed. Since so few changes were proposed, he asked what the Board would want to see in the way of information from the applicant. He noted that the information required is up to the discretion of the Board according to Article 7. He explained that

he was hoping to make the process a little less onerous for the applicant since they were having to apply for a SLUP which, if not for the location, would not otherwise usually be required for this use.

Chairman Clein said he would be hard pressed to recommend that an applicant provide less information knowing that the ordinance does not allow food and drink establishments in the O2 district without a SLUP and knowing that the SLUP would have to be approved by the Commission as well.

Mr. Koseck said that if he saw unchanged before-and-after photographs, including aerial shots, that would likely be sufficient information for him. He said issues only usually arise when there is inaccurate or insufficient information presented for the Board's review.

The Board agreed with Mr. Koseck.

07-84-20

H. Planning Division Action Items

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

07-85-20

I. Adjournment

No further business being evident, the Chairman adjourned the meeting at 10:14 p.m.

Jana L. Ecker

Planning Director