

BIRMINGHAM CITY COMMISSION MINUTES
FEBRUARY 25, 2013
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

George Dilgard, Mayor, called to order at 7:31 PM.

II. ROLL CALL

ROLL CALL: Present,	Mayor Dilgard Commissioner Hoff Commissioner McDaniel Mayor Pro Tem Moore Commissioner Nickita Commissioner Rinschler Commissioner Sherman
Absent,	None

Administration: City Manager Bruner, Attorney Currier, Clerk Broski, DPS Director Wood, Police Chief Studt, Planning Director Ecker, Planner Baka, Building Official Johnson, City Engineer O'Meara, Assistant City Engineer Cousino

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

01-59-13 APPOINTMENT TO THE CABLECASTING BOARD

MOTION: Motion by Rinschler:

To appoint Matthew McAlear, 1742 Latham, to the Cablecasting Board to complete a three-year term to expire March 30, 2015.

VOTE: Yeas, 7
Absent, None

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

01-60-13 APPROVAL OF CONSENT AGENDA

Commissioner Hoff confirmed the public hearing dates for Item G and Item I are as listed on the agenda.

The following item was removed from the consent agenda:

- Item E (In the Park Concert Special Event Request) by Commissioner Nickita

MOTION: Motion by McDaniel, seconded by Nickita:

To approve the consent agenda as follows:

- A. Approval of City Commission minutes of February 11, 2013.
- B. Approval of warrant list, including Automated Clearing House payments, of February 13, 2013 in the amount of \$501,769.52.
- C. Approval of warrant list, including Automated Clearing House payments, of February 20, 2013 in the amount of \$1,988,697.30.
- D. Resolution approving the spring 2013 annual flower purchase from Prielipp Farms & Greenhouse in the amount not to exceed \$14,887.50. Funds are available from the General Fund–EPS–Property Maintenance–Operating Supplies account #101-441.003-729.0000.
- F. Resolution awarding the Cole Ave. Paving Project, Contract #2-13(P), to DiPonio Contracting, Inc. of Shelby Township, MI, in the amount of \$1,410,047.38, to be funded from the following accounts:

Sewer Fund	590-536.001-981.0100	\$ 487,963.00
Water Mains Fund	591-537.004-981.0100	\$ 295,066.00
Local Streets Fund	203-449.001-981.0100	<u>\$ 627,018.38</u>
	TOTAL	\$1,410,047.38
- G. Resolution setting a public hearing of necessity for the installation of lateral sewers within the Cole Ave. Paving project area on Monday, March 18, 2013, at 7:30 P.M. and setting a public hearing to confirm the roll for the installation of lateral sewers in the Cole Ave. Paving project area on Monday, April 8, 2013, at 7:30 P.M.
- H. Resolution accepting the bid submitted by Bob Adams Towing, Inc. and authorizing the mayor and the city clerk to execute the contract on behalf of the city.
- I. Resolution setting a public hearing date for March 18, 2013 to consider approval of the Final Site Plan and Special Land Use Permit for the medical office building at 2400 E. Lincoln, pursuant to Chapter 126, Article 2, section 2.39, Zoning, of the Birmingham City Code.
- J. Resolution setting a Public Hearing for March 18, 2013 to consider the proposed subdivision of 2400 E. Lincoln.

ROLL CALL VOTE: Yeas, Commissioner Hoff
 Commissioner McDaniel
 Mayor Pro Tem Moore
 Commissioner Nickita
 Commissioner Rinschler
 Commissioner Sherman
 Mayor Dilgard

 Nays, None
 Absent, None
 Abstentions, None

**02-61-13 SPECIAL EVENT REQUEST
 IN THE PARK CONCERTS**

Ms. Wood confirmed for Commissioner Nickita that the Band Jam would be done by 10:00 PM.

MOTION: Motion by Nick, seconded by Hoff:

To approve a request from the City of Birmingham to hold the In the Park Concerts on Wednesday evenings from June, 2013 through August, 2013 and the Band Jam, ending at

10:00PM, on Friday, June 14, 2013 in Shain Park, contingent upon compliance with all permit and insurance requirements and payment of all fees, and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

VOTE: Yeas, 7
 Nays, None
 Absent, None

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

01-62-13 PUBLIC HEARING TO CONSIDER REZONING 404 PARK STREET

Mayor Dilgard opened the Public Hearing to consider approval of a Conditional Rezoning request for the rezoning of the vacant property at 404 Park Street from R-2 (Single-Family Residential) to B2C (General Business), with the voluntary restriction of the applicant to allow only residential uses on the site at 7:38 PM.

Ms. Ecker presented the request to rezone the property at 404 Park to B2C as requested by the applicant. She pointed out that the applicant has voluntarily agreed to enter into an agreement limiting the site to residential use only. Ms. Ecker explained the proposal is for a six unit multi-family, two story building. She confirmed for Mayor Dilgard that each unit contains a two car garage.

Commissioner Rinschler noted that the proposal is a preliminary site plan that would still have to go for final approval. He stated the contract would limit the site to six units.

Chuck DiMaggio, Burton Katzman, presented the proposed development. He explained that each unit is approximately 1500 square feet. He discussed the transitional function of the property and the other rental properties in the neighborhood. The traffic pattern was discussed. Mr. DiMaggio stated that they have agreed to install a no right turn sign.

Commissioner Hoff questioned what type of buffer will be utilized between the rear of the building and the residential home next door. Mr. DiMaggio explained that there will be an access drive, a screening wall and landscaping.

The Commission discussed conditional rezoning. Ms. Ecker confirmed that the Planning Board review of conditional rezoning would take a minimum of three to four months. Mr. Currier explained that the Michigan Zoning Enabling Act allows for conditional rezoning and explained the process.

Mayor Pro Tem Moore and Commissioner Sherman agreed stated that this is a policy decision and that the City should develop its standards first. Commissioner McDaniel suggested the Planning Board review the appropriate zoning for the property in question.

The following individual spoke in opposition:

Benjamin Gill, 520 Park
Frida Gill, 520 Park
Gordon Nelson, 576 Park

Richard Nadjarian, 439 Park
Dorothy Conrad
Randy Safford, 211 Ravine
Brad Host, owner of house next door
Kristen Tait, 692 Brookside
Paul Gillin, 391 Ferndale
Hong Jiang, 330 Ferndale

David Bloom agreed transition areas need additional review.

Bob Ziegelman, Ziegleman Architects, stated that there are many options to integrate the area with what is currently there and what it should grow to.

The Mayor closed the Public Hearing at 9:21 PM.

Commissioner Nickita expressed that the site should be addressed as it is an unusual transition zone. He stated this needs to be handled proactively, not reactive. He stated that the two issues that need to be discussed are contract zoning and the vision of this area in the future.

MOTION: Motion by Hoff, seconded by McDaniel:

To deny the conditional rezoning request without prejudice and to ask the Planning Board to consider in the short term zoning for this particular area and in the long term the overall plan on conditional rezoning.

Carroll Deweese, 923 Purdy and member of the Planning Board, commented that the motion gives the Planning Board direction and they will work with due diligence on both issues.

VOTE: Yeas, 7
 Nays, None
 Absent, None

The Commission received communications opposed to the proposed conditional rezoning.

The Commission recessed at 9:40 PM.

The Commission reconvened at 9:45 PM.

**01-63-13 PUBLIC HEARING TO CONSIDER SUBDIVISION
 740 NORTH ADAMS**

Mayor Dilgard opened the Public Hearing to consider the proposed subdivision of 740 N. Adams at 9:46 PM.

Mr. Baka explained that the property is currently four lots. He stated that at one time Manchester Road existed in this area, however the road was vacated. The applicant has proposed to rebuild the road. Because of the vacation, half of the previous road now belongs to the southern property owner. Property from the parcels must be used to create a new road.

In response to a question from Mayor Dilgard, Mr. Baka explained the intent to replace trees over and above what is currently there. Mayor Dilgard noted there was no direction from the Planning Board in how or when the trees would be planted.

Mr. Baka confirmed for Commissioner Hoff that the developer will pay to construct the road and the City will maintain the road.

Bill Anderson, A-Team Associates and engineer for the project, explained that the road will provide service to the four lots. He stated the intent is to demolish the existing home and build four single family homes. He explained a six foot privacy fence and a full row of arborvitae will be installed.

Jim Allen, Allen Design, landscape architect for the project, discussed the location of the large trees and the water line.

The Mayor closed the Public Hearing at 10:06 PM.

MOTION: Motion by McDaniel, seconded by Rinschler:
To approve the proposed subdivision of 740 N. Adams.

VOTE: Yeas, 7
Nays, None
Absent, None

**01-64-13 PUBLIC HEARING OF NECESSITY
INSTALLATION OF LATERAL SEWERS
PIERCE ST & MERRILL ST PAVING PROJECT AREA**

The Mayor opened the Public Hearing of Necessity for the installation of lateral sewers within the Pierce St. & Merrill St. Paving project area at 10:07 PM.

The Mayor closed the Public Hearing at 10:08 PM.

MOTION: Motion by Rinschler, seconded by Sherman:
To declare necessity for the installation of lateral sewers within the Pierce St. & Merrill St. Paving project area. The public hearing to confirm the roll will be held on March 4, 2013:
WHEREAS, The City Commission has passed Ordinance No. 1906, to establish and adopt requirements and procedures for the replacement of sewer lateral lines when the City street is open for repairs or reconstruction; and
WHEREAS, The City Commission is of the opinion that replacement of sewer laterals not meeting current criteria as a part of the planned road paving project is declared a necessity; and
WHEREAS, formal bids have been received and the actual cost per foot for replacement of the sewer laterals has been determined,
RESOLVED, that all sewer laterals not meeting current criteria located within the limits of the following streets shall be replaced as a part of the paving project on the following streets:
Pierce St. Maple Rd. to Merrill St.
E. Merrill St. Pierce St. to Old Woodward Ave.
RESOLVED, that at such time as the Assessor is directed to prepare the assessment (calculated at the rate of a price per lineal foot) shall be charged to the adjoining property owners benefiting from the sewer lateral,
RESOLVED, that there be a special assessment district created and special assessments levied in accordance with benefits against the properties within such assessment district, said special assessment district shall be all properties, within the following district:
"Merrill's Plat"
Lot 1, Lot 2 except the westerly 13 ft. of the northerly 80.75 ft.

"Assessors Plat No. 24"

Lot 10, also the 90.01 ft. wide portion of lots 15 through 17 located south of a point measuring 178.52 ft. south of the north section line of Sec. 36.

"Assessors Plat No. 25"

Lot 3, except that portion north of lots 19 and 20 measured from a point 119.27 ft. from the NW corner of lot 19, also the northeasterly 9.78 ft. of Lot 4.

RESOLVED, that the Commission shall meet on Monday, March 4, 2013, at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the replacement of sewer laterals within the Pierce St. & Merrill St. Paving Project.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**01-65-13 PUBLIC HEARING TO SPECIAL LAND USE PERMIT
 CRUSH, 555 SOUTH OLD WOODWARD**

Mayor Dilgard opened the Public Hearing to consider approval of the Final Site Plan and Special Land Use Permit for Crush, at 555 S. Old Woodward, pursuant to Article 7, section 7.34, Zoning, of the Birmingham City Code at 10:09 PM.

Mr. Baka explained that the difference between the bistro request and the economic development request is that this request is proposing seating on the eastern terrace. He pointed out that the applicant is not proposing to enclose the outdoor seating areas.

Rick Rattner, representing Crush, explained that Crush will be considered a condo unit and the master deed will be amended. He explained the site plan and discussed the number of seats. He stated that at this time outdoor dining is only proposed for the six months allowed and that, at the moment, there is no intention to enclose the Woodward Ave terrace.

Mr. Rattner explained the calculation used to determine the 500% increase in assessed value to qualify for an economic development license. He stated that the calculation was based off the current value of the land compared to the post-development value, which is estimated to be in excess of 500%.

The Commission discussed the proposed location in relation to other restaurants. Commissioner Hoff expressed concern with the parking. Mr. Baka confirmed for Commissioner Hoff that additional parking would have to be provided if the terraces were permanently enclosed.

Commissioner Nickita expressed concern with potential odors going into the neighborhood and questioned the ventilation system and if the exhaust will be treated in any way.

Cory Campell, architect for the project, explained that the exhaust will go three stories above the seating area. He stated the detail has not been worked out yet. Jack Reinhardt stated that the system will be thoroughly reviewed.

The Commission received a communication from Lynn Groth, Galyn Associates, expressing concern with the patron parking for Crush.

Dorothy Conrad expressed concern with the ventilation system. She questioned if anything would be done to improve the rest of the building. Mayor Dilgard noted that the applicant has significant improvement planned for the façade.

Susan Peabody, Peabody's Restaurant, expressed concern with the number of restaurants coming into the City.

The Mayor closed the Public Hearing at 11:17 PM.

MOTION: Motion by Rinschler, seconded by McDaniel:

To approve the Final Site Plan and Special Land Use Permit for Crush, at 555 S. Old Woodward, pursuant to Article 7, section 7.34, Zoning, of the Birmingham City Code to allow Crush to operate with an economic development liquor license:

WHEREAS, CRUSH filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a new restaurant with an Economic Development License in accordance with Article 3, Section 3.04(c) of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of S. Old Woodward between Bowers and Haynes;

WHEREAS, The land is zoned B-3, and is located within the Downtown Birmingham Overlay District, in the area identified on Map 3.1 of Chapter 126, Zoning, which permits the use of Economic Development Licenses with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit and Final Site Plan to operate Crush as a Restaurant using an Economic Development License;

WHEREAS, The Planning Board on January 23, 2012 reviewed the application for a Special Land Use Permit and recommended approval with the following conditions;

- 1) The applicant provide a signed copy of the contract with the City;
- 2) Obtain an outdoor dining license;
- 3) Applicant submit an economic impact statement to the Planning Dept. for review prior to appearing before the City Commission;
- 4) Applicant obtain approval of the City Commission to include the 36 on-street parking spaces into the required parking;
- 5) Applicant provide documentation terminating the parking agreement with Fred Lavery in order to make those spaces available for the parking requirement;
- 6) Applicant provide documentation granting permission from the 555 Residential LLC and/or 555 Commercial LLC to use the available parking;
- 7) Applicant provide floor plans for all levels of the parking deck to allow verification of proposed re-striping and submit for Administrative Approval;
- 8) Applicant install signage indicating that exiting the residential drive directly onto Woodward Ave. is prohibited;
- 9) Applicant indicate the intended kitchen hours will be from 11 a.m. to 12 midnight;
- 10) The location of a grease trap at the corner of Woodward Ave. and Bowers is eliminated from that location; the applicant provide details regarding the trash disposal for the operation and that an acceptable location for the grease trap be identified with screening details;
- 11) Applicant submit revised plans that indicate whether umbrellas are proposed for the street level outdoor dining area;
- 12) Applicant correct the landscape plan on page 25 to reflect the proper location of the planters;

- 13) Applicant provide specification sheets for the proposed outdoor dining tables;
- 14) The trash receptacle on the street level must be located within the outdoor dining area as required;
- 15) The applicant indicate which planters will remain out year-round and how those planters will be treated once the annuals are no longer in bloom;
- 16) The applicant identifies the planting on the edge of the west terrace;
- 17) Applicant reconstruct all streetscape elements in accordance with current standards as recommended by the Engineering Dept.;
- 18) The Planning Board approves the non-cut-off fixtures as permitted by Article 04 section 4.21 LY-01 (D);
- 19) The applicant verify that all four signs are the same size and whether the signs on the north and south elevation are backlit;
- 20) The applicant add a Knox Box and make other changes required by the Fire Dept.;
- 21) Upper decks may only be used on or between April 1 to November 15;
- 22) Add a rail by the outdoor dining area on the first floor subject to the approval of the Planning Dept.;
- 23) Place disabled parking close to the second-floor entrance subject to the approval of the Planning Dept.;
- 24) No clear zip-down windows as indicated on the plan;
- 25) All health and sanitary facilities must meet Michigan Code; and
- 26) Seventy percent clear glazing from 1 ft. to 8 ft. above grade on all facades that front a street (the north, east and west), subject to Planning Dept. approval.

WHEREAS, The Birmingham City Commission has reviewed Crush's Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that the Crush application for a Special Land Use Permit authorizing the operation of a restaurant with an Economic Development license at 555 S. Old Woodward in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. Crush shall abide by all provisions of the Birmingham City Code;
2. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest;
3. Crush shall provide for the removal of disposable materials resulting from the operation and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area;
4. Crush shall enter into a contract with the City outlining the details of the proposed restaurant operating with an economic development license.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Crush and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Crush to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that Crush, which will do business at 555 S. Old Woodward, Birmingham, Michigan, 48009, is located in the Principal Shopping District which was designated as a Redevelopment Project Area, pursuant to Section 521a (1)(b) of the

Michigan Liquor Control Code of 1988, being MCL 36.1521a(1)(b), by Birmingham City Commission Resolution adopted September 24, 2007; and

MAY IT BE FURTHER RESOLVED that Crush Bistro is recommended for the operation of a restaurant operating with an economic development license, with a Class C Liquor License, at 555 S. Old Woodward, Birmingham, Michigan, 48009, above all others, pursuant to Chapter 10, Alcoholic Liquors, of the Birmingham City Code, subject to final inspection.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**01-66-13 OFF-STREET PARKING REQUIREMENTS REQUEST
 555 SOUTH OLD WOODWARD**

MOTION: Motion by Moore, seconded by Sherman:

To approve the use of 36 abutting right of way parking spaces on S. Old Woodward Avenue and Hazel to fulfill a portion of the off-street parking requirements per Article 4, section 4.43 (G)(1) of the Zoning Ordinance for 555 S. Old Woodward Avenue.

Commissioner Hoff expressed concern that this is manipulation of the parking system as the applicant claimed they have plenty of parking.

Commissioner McDaniel pointed out that there is much unused parking south of the 555 building on both sides of Old Woodward. He stated that a carriage walk is needed next to the parking meters on the east side of Old Woodward. He expressed concern with the one hour time-limit in front of the restaurant.

Commissioner Nickita expressed concern with the parking in this area. He suggested pedestrian awareness be increased in this area.

The Commission requested staff review this area as discussed.

VOTE: Yeas, 6
 Nays, 1 (Hoff)
 Absent, None

01-67-13 BALDWIN PUBLIC LIBRARY BUILDING PROGRAM

The Commission postponed this item to the March 4, 2013 meeting.

01-68-13 PIERCE ST & MERRILL ST STREET LIGHT REPLACEMENT

Mr. O'Meara explained that thirty-eight street lights will be replaced during the Pierce and Merrill construction. He explained that DTE is offering a LED option to reduce the overall annual cost to operate the lights. He noted that a prototype was installed on Henrietta, but he was disappointed with the glow.

Commissioner Rinschler noted that there are other options for the light. Commissioner Sherman suggested the 5,500K light be reviewed.

The Commission discussed the lighting option including to install the current lighting, then retro-fitting for the LED, as well as the color range of the LED lights.

MOTION: Motion by Hoff, seconded by McDaniel:

To direct DTE Energy to proceed with ordering the necessary hardware for the Pierce St. & Merrill St. street light replacement, using the current metal halide fixtures matching those used on previous downtown projects, with the understanding that the City Engineer will also order the 5500 LED light so the Commission can see it, but to move forward to order the necessary hardware.

Commissioner Sherman expressed concern that there is no contract from DTE and that the exact cost is unknown.

VOTE: Yeas, 5
 Nays, 2 (Rinschler, Sherman)
 Absent, None

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

**01-69-13 MICHIGAN MUNICIPAL LEAGUE
 ROAD FUNDING RESOLUTION**

The Commission received the resolution from the Michigan Municipal League regarding road funding.

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

X. REPORTS

01-70-13 COMMISSIONER COMMENTS

Commissioner McDaniel stated that the Joint Senior Services Committee is meeting on Thursday to receive the report from the consultant on the focus groups which will start the process to define what is needed, the cost, and funding recommendations.

**01-71-13 JOINT SENIOR SERVICES COMMITTEE
 MID-TERM REPORT**

The Commission received the Joint Senior Services Committee Mid-term Report.

XI. ADJOURN

The Mayor adjourned the meeting at 11:45 PM.

Laura M. Broski
City Clerk