

**CITY OF BIRMINGHAM  
PLANNING BOARD ACTION ITEMS  
OF WEDNESDAY, SEPTEMBER 13, 2017**

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**CITY OF BIRMINGHAM**  
**REGULAR MEETING OF THE PLANNING BOARD**  
**WEDNESDAY, SEPTEMBER 13, 2017**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Planning Board held on September 13, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice-Chairperson Gillian Lazar, Bryan Williams

**Absent:** Board Member Janelle Whipple-Boyce; Alternate Board Members Lisa Prasad, Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

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

**09-169-17**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF AUGUST 23, 2017**

**Motion by Ms. Lazar**  
**Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of August 23, 2017 as presented.**

**Motion carried, 6-0.**

**VOICE VOTE**  
Yea: Lazar, Clein, Boyle, Jeffares, Koseck, Williams  
Nay: None  
Absent: Whipple-Boyce

**09-170-17**

**CHAIRPERSON'S COMMENTS**

The Chairman advised the meeting tonight would consist of site plans as well as study sessions.

**09-171-17**

**APPROVAL OF THE AGENDA (no change)**

**OLD BUSINESS**

**Preliminary Site Plan Review**

**1. 34965 Woodward Ave. - Mixed-Use Building (former Peabody's Restaurant)**

**Request for approval of the Preliminary Site Plan to allow a new five-story mixed-use building to be constructed** (postponed from July 26 and August 23, 2017)

Chairman Clein announced that he will recuse himself on this matter as he has in the past due to a business relationship with the project. Vice-Chairperson Lazar took the gavel.

**Motion by Mr. Williams**

**Seconded by Mr. Koseck to receive and file the following correspondence received this evening:**

- Letter from Ron Rea dated 09-11-17;
- Letter from Alan M. Green of Dykema Gossett dated 09-11-17;
- Letter from Tim Currier, Beier Howlett dated 09-13-17.

**Motion carried, 6-0.**

**VOICE VOTE**

Yea: Williams, Koseck, Boyle, Jeffares, Lazar

Nay: None

Recused: Clein

Absent: Whipple-Boyce

Mr. Baka recalled that the applicant has submitted an application for Preliminary Site Plan Review to construct a five-story building in the B4/D4 District. The property is located on the west side of Woodward Ave. on Peabody at the former location of Peabody' Restaurant and the former Art & Frame Station.

On July 26, 2017 the Planning Board reviewed the CIS and Preliminary Site Plan application for 34965 Woodward Ave. At that time the Planning Board decided to accept the Community Impact Statement but postponed the Preliminary Site Plan Review. The board requested additional information regarding the interfacing of the proposed building with the adjacent buildings on each side along with renderings of the new building in context with the adjacent buildings. Additionally, the postponement was granted to provide the applicant time to engage with the neighboring property owners in light of public comments made at the meeting.

Mr. Baka recalled this proposal has been reviewed at several previous meetings. The last time it was discussed was on August 23, 2017. At that time there was extensive discussion about the interface of the proposed building with the two adjacent buildings. The Planning Board requested staff to do some research on the history of those buildings. The stated intent of providing this information was to determine if the buildings to the north and south of the subject site were encouraged or required to provide windows that abut the shared property lines of 34965 Woodward Ave.

A thorough review of the minutes and staff reports revealed no encouragement or requirements by the Planning Board or staff to install windows on the property lines abutting the 34965

Woodward Ave. site. The only comment was from the Building Dept. that indicated windows were not permitted on the property line. This was later resolved through the use of fire rated glass.

There have been no revisions to the plans that the board has already seen.

The plans do not display any off-street loading spaces. *The applicant will need to submit plans demonstrating the size and location of three usable off-street loading spaces, or obtain a variance from the Board of Zoning Appeals ("BZA").*

Mr. Richard Rassel, Williams, Williams, Rattner and Plunkett, 380 N. Old Woodward Ave., spoke to represent Alden Development Group. With him was the Project Architect, Mr. Chris Longe and members of the ownership group. Mr. Rassel encouraged the board to move the project through Preliminary Site Plan Review. He noted that the Master Plan and the Zoning Ordinance in all respects treat this project as compliant. They are willing to work with their neighbors on the aspect of final design to try to achieve the best possible project for this important gateway to the City.

Mr. Alan Greene, Dykema Gossett, 39577 Woodward Ave., said he represents the owners of the Greenleaf Trust and Balmoral Buildings. He has presented information as to why this proposed new building is not compatible on the north and south side with the structures that exist. Ninety-seven windows on these two buildings are going to look out at a blank wall. Also, those buildings would be deprived of light and air which is a specific standard of the ordinance. Further, the material value of the buildings will be negatively impacted. They have also pointed out there will be numerous issues with respect to ongoing maintenance and repair of all three buildings. There are many alternatives that can address these concerns, but the site plan has not been revised since it was presented. The applicant is trying to maximize the space. He asked that this particular site plan be denied.

Mr. Williams gave a lengthy statement for inclusion in the record:

Since our meeting on August 23, 2017, I have had the opportunity to review more carefully the materials submitted by the applicant and by the neighboring property owners in the context of the full Zoning Ordinance. I have also listened to the comments tonight.

I want to thank Matt and Jana for researching approval documentation for the Greenleaf Trust & Balmoral Buildings. Their conclusion that there was no encouragement or requirement by the Planning Board or staff to install windows on the South & North property lines, respectively, is important.

I have concluded that the Applicant's proposal meets the requirements of the Zoning Ordinance for Preliminary Site Plan approval. The report of the staff makes that abundantly clear, as do the letters of Beier, Howlett dated August 23, 2017, and September 13, 2017 which have also been incorporated into the record and which form part of the basis for my comments.

The adjoining property owners' objections are detailed and weighty, but they do not justify denying the site plan. Let me respond to each of the major points which they have raised:

1. **The Project is not consistent with the Master Plan.**

The 2016 Downtown Plan approved in 1996 envisions one possible future for this property, but not the only possible future. The fact that the 2016 Plan recommended that the

site might ultimately be a good one for a parking deck did not mandate that it be so; and in fact the City has taken no steps to acquire the property to construct a parking deck. The proposed office and residential use is permitted by the zoning. The property owner need not wait to find out if the City will someday decide it wishes to acquire the property for parking. Nor do the drawings in the Plan that are illustrative of possible future conditions the architects mentioned in their comments constitute a limitation on the property's use.

In fact, a five-story building with the top floor residential is consistent with the Zoning Ordinance and is not inconsistent with the Master Plan.

2. **No Parking.**

The Site is in the Parking Assessment District. The site has more than enough parking to meet the requirements of the Zoning Ordinance for its residential component. On numerous occasions, this Board has made it clear that it will not and cannot prevent owners in the Parking Assessment District from developing their property because there may be a shortage of parking Monday through Friday at lunch time. The fact that the City may not have built enough public parking does not change the fact that this property owner and its predecessors, like many others, have paid into the Parking Assessment District with the understanding that it will not have to have on-site parking for non-residential uses.

3. **The Plan Violates Section 7.27.B(2), the Light and Air Clause of the Zoning Ordinance.**

Dykema Gossett has made an argument that construction of this building to the lot line will prevent adequate light and air reaching the adjacent properties in violation of Section 7.27.B(2) of the Zoning Ordinance.

I believe the significant word is "adequate".

In any event, taking the language of the ordinance at face value, there will be adequate light and air to both the Greenleaf Trust and Balmoral Buildings if this building is constructed to the lot line as proposed. Each building has unimpeded light and air on three of their four facades. The Balmoral Building's windows are set back 5 ft. on its north facade. That 5 ft. well provides adequate light and air. The affected windows on the Greenleaf Building are those at both the east and west end of the south facade, as the center of the Greenleaf Building's south facade also has a well where the windows are set back from the property line. Each one of the affected windows on the part of the south facade built to the lot line have windows that face the east and the west; that is, into the window well in the center and facing the street on the outside so that their light is at least as good, and arguably better, than that provided to the Balmoral Building.

The ordinance does not guarantee no change in the amount of light and air, merely that this Board assure itself that there is "adequate" light and air. In my opinion, there is.

4. **Section 7.27.B(3) – The Diminished Value Section.**

Counsel makes the argument that the building will diminish the value of the adjacent buildings; thus the Preliminary Site Plan cannot be approved. He supports his argument with the written opinion of the real estate broker for the Greenleaf Building that the four residential apartments on the south wall will have diminished rental income due to the loss of views. The penthouse rent will be reduced from \$14,000.00 a month to \$10,000.00 a month, still beyond my personal "budget". The other apartments "may likely" have reductions, and the office would have a reduction as well, although it is hard to estimate that amount. Presumably his

opinion would be similar for the Balmoral Building, although nothing in his letter distinguishes between those rental spaces on the window well of the Greenleaf Building and those at the wall on the property line.

Section 7.27.B(3) has two parts: one is that the location, size and height of the building won't interfere with the reasonable development of adjoining property, and it obviously does not. The second is that the development will not diminish the value of the adjoining property. Assuming that there is some reduction in rental income and that translates into some diminished value of the building, some reduction, no matter how small, is, I do not believe, what the ordinance aims at. Many property owners might object to any building being built next to them and argue that any development will diminish their property value. It neither is nor should be the job of this Board to choose between competing speculations whether proposed construction will reduce or increase value to a small degree.

Zoning is necessarily a three-pronged balance between the rights of adjoining property owners to develop their properties as they see fit; the right of their neighbor to not be disturbed; and the right of the people as embodied in the municipality to regulate land uses to achieve public purposes, some of which are listed in Section 7.24 of the Zoning Ordinance – for example, sub-section (f) “to sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of the City's favorable environment”.

The construction that is proposed was completely foreseeable. Although I do not think it is necessary for us to decide whether or to what extent the owner of the Greenleaf Building waived the right to make the objection she makes to the Preliminary Site Plan, it is noteworthy that not only was this issue foreseeable, it was actually foreseen. The Earth Retention System and Construction Barricade Agreement of November 28, 2008 specifically mentions that the owner of the Peabody site could construct a building on the lot line. The Balmoral Building inferentially knew as well, since it is constructed with a blank wall along the eastern-most part of its north facade.

The question of what amount of diminution of value would trigger the violation of the Zoning Ordinance need not be determined tonight. Reference to the basic purposes of zoning shows that the purpose of regulation is to prevent a major loss in value. Nothing suggested to us indicates that the financial return that Balmoral or Greenleaf Buildings will have after the Peabody Building is constructed will not be reasonable or economically viable, although it may not be as high as it would be if the property owner in the middle of these two buildings continued to allow it to be vacant or limited its development to one or two stories.

One of the purposes of the Zoning Ordinance is to promote public health, moral safety, comfort, convenience and general welfare. Reading the requirements of Section 7.27.B(3) as an absolute bar against any building permitted by the terms of the Zoning Ordinance that negatively affects its neighbors would turn the Zoning Ordinance from a public shield, which it clearly is intended to be, into a private sword benefitting the first to build.

##### **5. The Proposed Building Is Not Compatible With The Adjacent Properties.**

Section 7.27.B(5) of the Zoning Ordinance requires the Planning Board to determine whether or not the proposed Building “will be compatible with other uses and buildings in the neighborhood, and will not be contrary to the spirit and purpose of this Chapter”.

We heard much about compatibility at the August 23 meeting. Regardless of whether the compatibility is determined within the framework of visual appearance or on a structural

basis, such as the alignment of floor levels, height and mass, this Building proposed is compatible and does comply with the spirit and purpose of the Zoning Ordinance. The mixed-use nature is permitted. The visual effect of height, mass and floor alignment, given the grades, are compatible. The Zoning Ordinance itself, at Section 7.24.B, as Mr. Jeffares pointed out at the last meeting, discourages monotonous construction so that the objections that the building does not have masonry with punched windows is to me of no persuasive effect.

6. **Construction Will Necessarily Result In Trespass.**

Simply put, that is not an issue that is relevant to site plan review. The civil law adequately provides remedies to property owners if their neighbors invade their land without legal justification. If the developer of the Peabody site can't build what he is proposing to build without trespassing, or if doing so would be too expensive, he will necessarily have to abandon this design and resubmit for some other type of building. It is not a basis to deny a site plan.

There are plenty of reasons for these three property owners to cooperate. The comments made about maintenance alone justify cooperation between the parties. It isn't our place to dictate how those interests can or should ultimately be resolved or if they can be harmonized. I'll only point out that every communication device in use today has the capability of two-way functionality. I am loathe to hold it for or against one party that discussions have not been as frequent or as wide-ranging as we or any particular party may wish.

Some of the issues that the property owners have raised are things, as Mr. Koseck points out, that we will consider at Final Site Plan review. I can assure you that this Board will carry out a searching, comprehensive review of the criteria for Final Site Plan Approval.

**Motion by Mr. Williams**

**Seconded by Mr. Jeffares that based on these comments and on the record, including such facts and reasons as any of my colleagues willing to join in this motion articulate, I move the approval of the Preliminary Site Plan for 34965 Woodward Avenue, as submitted, subject to the following seven conditions:**

- 1. The Applicant submit plans with nine total trees or obtain a waiver from the staff arborist;**
- 2. The Applicant verify that there will be five pedestrian lights on Peabody;**
- 3. The Applicant provide a photometric plan and lighting specifications at the time of Final Site Plan Review;**
- 4. The Applicant provide specification sheets for all mechanical units to verify that the screen wall is tall enough to sufficiently screen the proposed units;**
- 5. The Applicant submit plans demonstrating the size and location of three usable off-street loading spaces or obtain a variance from the Board of Zoning Appeals;**
- 6. The Applicant comply with the requests of all City Departments; and**
- 7. The Applicant provide material and color samples at Final Site Plan Review.**

Mr. Koseck observed he doesn't think there is anything to add. He thinks Mr. Williams has touched on all of the issues that he sees. There will be constructability challenges just like there is in the building that the board saw last week.

There were no public comments at 7:57 p.m.

**Motion carried, 5-0.**

**ROLLCALL VOTE**

Yea: Williams, Jeffares, Boyle, Koseck, Lazar

Nay: None

Recused: Clein

Absent: Whipple-Boyce

**09-173-17**

**REZONING REQUEST**

**1. 191 N. Chester, First Church of Christ, Scientist**

**Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow the adaptive reuse of the existing building for office use**

Chairman Clein returned to chair the meeting.

Ms. Ecker reported that the property owner is requesting the rezoning of the property to keep the building as-is on site while renovating the inside for an office use.

The subject site is located on the west side of N. Chester, with single-family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. The subject property is in the Downtown Overlay District and was zoned C - Community Use, due to its former use as a church. At the time of the transitional rezoning the City Commission created the TZ-1 Zone District and the TZ-3 Zone District. They did not create the TZ-2 Zone District then and the property was rezoned TZ-1 which allows only a residential use and not an office use.

The applicant lists a number of reasons that with the City's adoption of TZ-2 into the Zoning Ordinance, the TZ-2 classification would be better suited. The applicant would like to repurpose the existing church building into an office use. While office use is permitted in the TZ-2 Zoning District, any office use over 3,000 sq. ft. in size would require a Special Land Use Permit ("SLUP"). The applicant has affirmed the building is not suitable for adaptive reuse to residential.

The applicant had meetings with the adjoining property owners who have indicated a desire to keep the existing building as opposed to demolishing it and increasing and changing the height and mass with a new structure. They felt building as it stands would have the least impact on the neighborhood in terms of scale, visibility, and traffic.

The applicant has tried to market the building as a religious institution but has been unsuccessful in finding someone who is interested.

The only physical modification done to the building was in 1956 when an addition was added to the existing church. The church building is still in fair condition today.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2) to permit the adaptive reuse of the building for office/commercial use. Given the recommendations of the Master Plan and the 2016 Plan, the existing mix of uses in the immediate neighborhood, and given the age and character of the building, the proposal to adaptively reuse the building is appropriate and compatible with the area. The Planning Board will make a recommendation to the City Commission and the City Commission shall make the final determination on whether this potential rezoning should be approved.

Mr. Boyle asked what design oversight there might be with this building if it was rezoned to TZ-2. Ms. Ecker replied that just the design of the building would go to the Design Review Board or come to the Planning Board for review. If they are going to propose over 3,000 sq. ft. of office use, it will come to the Planning Board because it would require a SLUP which would bring in all of the design elements as well as the signage. Then it would go to the City Commission for the final decision.

In response to Mr. Koseck, Ms. Ecker said the applicant has the option to seek a use variance for the building. The Chairman asked about the difference between TZ-1 and TZ-2 with regard to massing and height. Ms. Ecker advised that TZ-1 allows three stories and 35 ft. in height with a minimum of two stories. In TZ-2 only a two-story maximum is allowed.

Ms. Ecker explained for Mr. Boyle that there is no requirement that there must be a mix of uses on a transitional zoned property.

Mr. Williams said a question for the City Attorney would be whether the site can be rezoned to TZ-2 with the condition that the building structure remain the same. Ms. Ecker noted the Planning Board at this level has not made a recommendation to go down the conditional rezoning path.

The applicant, Mr. Sam Surnow, 320 Martin, said they have spent a lot of time over the last three years trying to figure out what to do because they acquired the property before it was rezoned to TZ-1. Based on feedback from all of the neighbors and the different departments, they have been guided in the direction of rezoning the existing building for office use. They feel it is the best choice. It seems that a residential development would have the potential to change the impact on the neighborhood. On-site parking will be needed to be marketable and to attract tenants. Therefore they will have to take away a few thousand feet in the lower level to make room for ten or fifteen parking spaces. Then, after taking away the common areas, the office space left will be much less than 16,000 sq. ft.

Mr. Surnow stated that they decided not to apply for a use variance with the BZA because having a use variance in a TZ-1 Zone that is meant for residential use only would be contradictory. Also if the City could have rezoned to TZ-2 which didn't exist at the time, it probably would have. They don't have an issue with coming up with an agreement stating they will preserve exactly what is there if the City Commission requested that.

Mr. Kevin Biddison, 320 Martin, added they are excited hopefully to be involved in another project with the Surnows. This is really a similar challenge to what they did with the post office and they are looking to do some of the very same things and create multi-uses for smaller businesses which can tuck into the very unusual nature of the building.

No one from the public came forward with comments at 8:38 p.m.

Mr. Boyle observed that office space is changing. He hoped this iconic building will be redesigned and repurposed in such a way that it can accommodate the contemporary office and how it is going to operate. Also, he thought a mixed use in some shape or form might enliven this street.

Mr. Koseck noted this is a unique building on a challenging site. The Chester Parking Structure is least used so the project could help to populate that. These developers have a proven track record and he is in favor of the proposal to rezone.

**Motion by Mr. Koseck**

**Seconded by Mr. Boyle to recommend approval to the City Commission for the rezoning of 191 N. Chester from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2).**

Chairman Clein thought the adaptive reuse that is being proposed is awesome and the rezoning to facilitate that makes perfect sense. However he has concerns about rezoning, and that means ten years from now the building could be razed and a 17,000 sq. ft. site could turn into 30,000 sq. ft. of something. He leans toward approving the request because he feels this is a fantastic project but he thinks the Commission needs to weigh those concerns.

At 8:43 p.m. there were no comments from the members of the public on the motion.

**Motion carried, 6-0.**

**ROLLCALL VOTE**

Yea: Koseck, Boyle, Clein, Jeffares, Lazar, Williams

Nay: None

Absent: Whipple-Boyce

**09-174-17**

**STUDY SESSIONS**

**1. Economic Development Liquor License Boundaries**

Ms. Ecker recalled that in 2009 the City Commission approved the creation of an Economic Development Liquor License as an incentive to encourage development in certain areas of the City. The properties that are eligible for this incentive are predominantly located on or near Woodward Ave.

On July 10, 2017, the City Commission amended the Planning Board's Action List to include a review of the Economic Development License boundaries as the third priority. Accordingly, the

Planning Board began discussions again regarding the expansion of the Economic Development Liquor License areas to include the Triangle and/or Rail District(s) or other areas of the City.

On August 9, 2017, the Planning Board discussed the expansion of the Economic Liquor License areas, specifically to expand the opportunities in the Triangle District, and to allow such licenses in the Rail District. Board members discussed several options, and ultimately directed staff to come back to the board with revised ordinance language and a revised map to include all of the Triangle District, with the exception of the single-family residential area at the north end; all of the Rail District with the exception of the Crosswinds development; and parcels along the east side of Adams adjacent to the Triangle District which do not abut single-family residential zoned parcels.

Board members made the following changes to the Economic Development License boundaries that were depicted on the revised map that was provided:

- Take out the parcel behind All Seasons because it butts up to single-family even though it is zoned O-1.
- Include two parcels to the west of Elm between Holland and Lincoln in the Triangle District. Exclude the two parcels east of Elm;
- Continue to leave Baker's Square out.

With regard to the southwest corner of Quarton and Woodward Ave., Ms. Ecker said there is a judgment on record which has established the terms for future development.

Chairman Clein called for comments from the audience at 9:07 p.m.

Mr. Rick Rattner, 380 N. Old Woodward Ave., stated there are 39 liquor licenses in the City and all of them except four are in the Downtown Development Overlay District. He submitted that the whole Downtown District should be part of the Economic Development License Boundary map. Developers are spending incredible amounts of money along Woodward Ave. and Old Woodward Ave. and that area is the engine of this community. The developers should be allowed to apply for a Special Land Use Permit and then go about getting the license as economically as possible.

Secondly, the piece of property at Quarton and Woodward Ave. belongs to his client. It has been vacant since 1989 when a gas station was torn down and they had a lawsuit with the City. The property was too small to do anything with until the Road Commission for Oakland County abandoned 33 ft. of the right-of-way. On the other side is a very small DTE station. In the back is a public alley, and then Gasow Veterinary to the south. So it is a very good buildable piece and he doesn't know why it hasn't sold.

Mr. Williams thought that a rather limited area of the Rail District could use a big investment. Mr. Koseck noted his sense is that the intention of the Economic Development Liquor License was to shift attention to areas that are under developed. He is happy with the map as the board has amended it. Mr. Williams was also in favor of the map. The Downtown area currently has a lot of places to get a drink so he thinks this tool should go east because both of those districts are underdeveloped in terms of \$10 million type of developments. From the City's standpoint those are the two areas this group sees as being ripe for such development.

The group agreed as to the expansion into the Triangle area and the Rail District as modified tonight.

**Motion by Mr. Williams**

**Seconded by Mr. Boyle to set a public hearing for October 25, 2017 to expand the boundaries of the Economic Development Liquor License to include the south end of the Triangle District and from Holland south in the Rail District.**

There were no comments from the public on that motion at 9:34 p.m.

**Motion carried, 6-0.**

**VOICE VOTE**

Yea: Williams, Boyle, Jeffares, Clein, Koseck, Lazar

Nay: None

Absent: Whipple-Boyce

**Motion by Mr. Jeffares**

**Seconded by Mr. Williams to include in the boundaries of the Economic Development Liquor License map the one parcel at the SW corner Woodward Ave. and Quarton.**

There were no comments from members of the public on the motion.

**Motion carried, 4-2.**

**ROLLCALL VOTE**

Yea: Jeffares, Williams, Koseck, Lazar

Nay: Boyle, Clein

Absent: Whipple-Boyce

09-175-17

## **2. Bistro Regulations**

Mr. Baka noted that in 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license. Bistros are defined in Article 09 of the Zoning Ordinance as restaurants with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") along with several conditions.

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining.

There have been several issues raised:

- Use of Eisenglass – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- On-street Dining/Rooftop Dining – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- Parking Needs – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;

- Building Code Requirements – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

At the joint City Commission/Planning Board meeting of June 19, 2017 the issue of clarifying bistro regulations was discussed at length. On July 24th, 2017 the City Commission moved the review of bistros up on the Planning Board's Action List.

On August 9, 2017 the Planning Board held a study session to begin to consider addressing the issues of parking, outdoor dining and Eisenglass enclosures. Discussion revealed that the Planning Board did not support regulating the number of outdoor dining seats, or requiring additional parking for such outdoor dining areas. There was unanimous support on the board for restricting the use of enclosures on outdoor dining areas to ensure that outdoor dining is truly seasonal. There was also discussion about setting different standards for the interior number of seats in different areas.

Accordingly the draft language has been revised to provide options that would eliminate the ability to utilize enclosures year round. The language is now silent on the issues of limiting the number of outdoor seats and requiring additional parking for those seating areas.

At this time four proposed options have been added to the ordinance language:

- Permanent enclosures shall not be permitted for outdoor dining areas.
- Weather proof enclosures facilitating year around dining outdoors are not permitted.
- Outdoor dining is not permitted between November 16 and March 31.
- The use of any type of enclosure system (including but not limited to fabric, Eisenglass, vinyl panels, drapes, plant materials shall not be permitted for outdoor dining areas.

Mr. Koseck indicated that in his mind outdoor dining areas should not be framed with walls whether they are temporary or permanent. These areas were never intended to be quasi interior space. Discussion considered eliminating the date restriction and eliminating walls and plastic enclosures. People can sit outdoors on a nice winter day if they choose; however outdoor furniture must be brought inside each night and platforms have to come down in the winter. Board members thought that railings on decks in the street should be limited to 42 in. in height.

To sum up the issues that were previously discussed:

- The use of Eisenglass and the Building Code requirements of such enclosures have been covered in that outdoor dining areas must truly be outdoors, not within enclosed areas;
- The board was not interested in adding extra parking requirements for outdoor dining;
- Setting a maximum number of outdoor dining seats is not a concern as they are all SLUPs and thus subject to individual review;
- Everyone was okay with rooftop dining, but the priority is that there must be outdoor dining in the front first and foremost.

Mr. Jeffares was in favor of increasing the capacity of bistros for the Triangle and Rail Districts and Mr. Williams liked that concept. It was discussed that providing shared parking might be an incentive to increase inside seating from 65. However, Mr. Koseck thought that requiring shared parking complicates things. Mr. Baka agreed to bring draft ordinance language for the next meeting.

### **3. Renovation and New Construction of Commercial and Mixed-Use Buildings**

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and it is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board and the Historic District Commission.

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the Historic District Commission and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 states that for all new non-historic construction projects the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alterations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB. Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required.

City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain only design review.

At the joint City Commission/Planning Board meeting on June 19, 2017 discussion occurred regarding current planning issues in the City. When discussing the regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

In an attempt to create objective criteria to delineate between what requires site plan review and what requires design review, the Planning Staff has provided draft ordinance language which would codify the existing City policy as described above.

The issue was discussed at the Planning Board meeting on August 9, 2017. The meeting reaffirmed the issue that right now there is no distinction between minor renovations and major re-builds of commercial buildings in Birmingham, and the possibility of a threshold being introduced to determine which board (DRB or PB) will perform the review. Members of the Planning Board agreed that the ordinance language should be clarified to say:

- A full Site Plan Review is required if more than 33.3% of the exterior elevations are torn down;

- The addition of square footage to any development shall be considered an expansion which requires site plan review;
- Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require Site Plan Review.

Accordingly, the Planning Division is once again providing the draft ordinance language for comment by the Planning Board.

Mr. Baka explained if this ordinance language was in place Fred Lavery Audi Dealer would not have received approval offa demolition permit because they would not have had Site Plan Review, which would have been required as more than 33.3% of the building sides were removed. The DRB looks at the site, but does not consider the streetscape requirements.

Chairman Clein stated they are trying to avoid four walls going away and being rebuilt that feel like new construction but with no regard to any other site plan issues.

It was agreed to defer this topic to a future date.

**09-177-17**

## **MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

- a. Communications
- b. Administrative Approval Request

- 298 S. Old Woodward Ave., boutique hotel

Chairman Clein recused himself for business reasons and Ms. Lazar recused herself for familial reasons. Mr. Boyle took over chairmanship.

Mr. Charlie Stetson, Booth Hanson Architects, showed in a PowerPoint a few items they have worked on that have varied from the approved plans:

- Loading dock and garage entry have been flipped;
- Door to the loading dock is screened with open air wire mesh material;
- The entrance on Brown St. has been eliminated;
- Main entry to the hotel has been revised to have two pairs of doors with a vestibule and no revolving door, basically the same materials;
- Pre-function space has been moved into a bay to the north;
- In lower level 1 they propose removing three parking spots and adding a salon. Required parking per the Ordinance is 22 spaces and now they will have 53 spots;
- Mezzanine level openings in the wall to the loading dock below are new;
- Exterior stone colors have been changed to soften the contrast between the darker stone elements and the lighter. Samples of the original limestone were passed around along with the lightened limestone that was chosen.
- The metal was lightened up so it is in the color range of the other two materials;
- Frames around the windows are proposed to be the darker of the two stones;
- Frosted glass panels were introduced inside the garage entry and exit doors that previously were painted metal. Ms. Ecker said that under the ordinance frosted glass cannot be used;
- Add new opening to provide fresh air next to the loading dock outside.

Mr. Koseck said he liked the plan before and he likes it now. It is easier to carry luggage through a vestibule than through a revolving door. Mr. Williams said the closing of the Brown St. entrance is a non-event for him. None of the board members had any concerns.

**Motion by Mr. Williams**

**Seconded by Mr. Jeffares to administratively approve all of the proposed changes with the exception of the frosted glass on garage doors.**

**Motion carried, 4-0.**

**VOICE VOTE**

Yea: Williams, Jeffares, Boyle, Koseck

Nay: None

Recused: Clein, Lazar

Absent: Whipple-Boyce

c. Draft Agenda for the Regular Planning Board Meeting on September 27, 2017

- 525 Southfield, Preliminary Site Plan for new attached single-family residential units;
- 33353 Woodward Ave., revised Final Site Plan and SLUP for dry cleaning delivery to cars;
- 2000 - 2070 Villa, new submittal for expired site plan; and
- 505 N. Old Woodward, Salvador Scaloppini SLUP and Final Site Plan Review.

d. Draft Agenda for the Regular Planning Board Meeting on October 25, 2017

- Economic Development public hearing
- 271 Euclid, Preliminary Site Plan Review

e. Other Business

- Joint Planning Board/City Commission meeting September 18 at DPS;
- Ms. Lazar observed Hawthorne Electric windows are completely covered.

**09-178-17**

**PLANNING DIVISION ACTION ITEMS**

a. Staff report on previous requests (none)

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

**09-179-17**

**ADJOURNMENT**

No further business being evident, the Chairman adjourned the meeting at 10:45 p.m.

Jana Ecker  
Planning Director

DRAFT