

**VIRTUAL MEETING OF THE BIRMINGHAM PLANNING BOARD**  
**WEDNESDAY, June 9<sup>th</sup>, 2021**  
**7:30 PM**

**<https://zoom.us/j/111656967> or dial: **877-853-5247 Toll-Free, Meeting Code: 111656967****

---

- A. Roll Call
- B. Review and Approval of the Minutes of the regular meeting of **May 26, 2021**
- C. Chairpersons' Comments
- D. Review of the Agenda
  
- E. Special Land Use Permit Review
  - 1. **501 S. Eton – Whistle Stop** – Request for a Special Land Use Permit to consider approval of a new bistro serving alcoholic liquors in an existing building.
  
- F. Final Site Plan and Design Review
  - 1. **501 S. Eton – Whistle Stop** – Request for a Special Land Use Permit to consider approval of a new bistro serving alcoholic liquors in an existing building.
  
- G. Study Session Items

Rules of Procedure for Study Sessions: Site Plan and Design Review, Special Land Use Permit Review and other review decisions will not be made during study sessions; Each person (member of the public) will be allowed to speak at the end of the study session; Each person will be allowed to speak only once; The length of time for each person to speak will be decided by the Chairman at the beginning of the meeting; Board members may seek information from the public at any time during the meeting.

  - 1. **Public Hearing – Solar Panel Regulations**
  - 2. **Public Hearing – Glazing Standards**
  
- H. Miscellaneous Business and Communications:
  - 1. Communications
  - 2. Administrative Approval Correspondence
  - 3. Draft Agenda for the next Regular Planning Board Meeting (**June 23, 2021**)
  - 4. Other Business
  
- I. Planning Division Action Items
  - 1. Staff Report on Previous Requests
  - 2. Additional Items from tonight's meeting
  
- J. Adjournment

---

**Notice: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only.** Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

*Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).*

**City Of Birmingham**  
**Regular Meeting Of The Planning Board**  
**Wednesday, May 26, 2021**  
Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on May 26, 2021. Chair Clein convened the meeting at 7:30 p.m.

**A. Roll Call**

**Present:** Chair Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Nasseem Ramin; Student Representative Daniel Murphy

All located in Birmingham, MI.

**Absent:** Alternate Board Member Jason Emerine; Student Representative Jane Wineman

**Administration:** Jana Ecker, Planning Director ("PD")  
Nick Dupuis, City Planner ("CP")  
Laura Eichenhorn, City Transcriptionist

**05-067-21**

**B. Approval Of The Minutes Of The Regular Planning Board Meeting of April 28, 2021**

**Motion by Mr. Share**

**Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of April 28, 2021 as submitted.**

**Motion carried, 6-0.**

ROLL CALL VOTE

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

Nays: None

Abstain: Clein

**05-068-21**

**C. Chair's Comments**

Chair Clein acknowledged the upcoming Memorial Day holiday and thanked those who served for their service.

Chair Clein also acknowledged that May 31, 2021 would be the hundredth anniversary of the Tulsa Race Massacres. He said that the legacy of the Tulsa Race Massacres could partially help highlight how zoning and land use can be used for malign purposes. He asked that those present remember the impact that planning decisions and ordinances can have.

Chair Clein then welcomed everyone to the virtual meeting and reviewed the meeting's procedures.

**05-069-21**

**D. Review Of The Agenda**

There were no changes to the agenda.

**05-070-21**

**E. Special Land Use Permit Reviews and Final Site Plan and Design Reviews**

**1. 239 N. Old Woodward - Bloom Bistro (former Pita Café)** Request for a Special Land Use Permit and Final Site Plan and Design Review to consider approval of a new bistro serving alcoholic liquors in an existing building.

CP Dupuis reviewed the item. He added that the ordinance requires a 10-foot wide clear zone for all active vias in the activation overlay district.

A number of Board members shared concern regarding the lack of departmental comments from Engineering.

Mr. Jeffares stated that if applicants provide their documentation on time the City must also provide its feedback on time. He said that if processes had to be updated to enable City departments to be able to do that, that should occur.

In reply to an inquiry from Ms. Whipple-Boyce, CP Dupuis said that in future SLUP reviews for bistros he would include the business hours of other currently-operating bistros in the City for reference.

Mr. Jeffares observed that the number of business users allowed for a dumpster or trash compactor should partially depend on the type of user.

Ron Rea and Roman Bonislawski, architects, and Matthew Kenney, food consultant, were present on behalf of the application.

Mr. Kenney provided a brief overview of Bloom Bistro's proposed cuisine.

Mr. Bonislawski confirmed that Bloom Bistro would be replacing Pita Cafe in their use of the compactor.

It was noted that Stacked Deli also uses the compactor, and the rest of the uses were lower-intensity than restaurants.

Mr. Bonislowski said the revised proposal for signage was submitted with the intent to meet the ordinance, and that the applicants would be adding additional trash receptacles as recommended.

Mr. Jeffares and Mr. Boyle spoke in favor of the proposal, concurring that it could be exemplary of what Birmingham has been striving for in the activation of its vias.

The Chair asked for public comment and seeing none returned the discussion to the Board. He asked Planning Staff to provide more guidance in SLUP and Final Site Plan and Design reviews regarding the use of trash compactors and dumpsters in the future.

Mr. Williams concurred with Chair Clein.

Ms. Whipple-Boyce said she was unconcerned with the number of users of the trash compactor in this case.

Chair Clein concurred.

Ms. Whipple-Boyce said she did have concerns about the hours given proximity of the bistro to residential uses on Willits.

While Mr. Boyle and Chair Clein both shared in the concern regarding the lack of Engineering comments more generally, they both cautioned that it was a via, not a roadway, being evaluated and as a result should not hold up the application.

A number of Board members expressed appreciation for the concept and plans.

Chair Clein recommended moving the approval forward, stating that the applicant should not be penalized for the City's lack of punctuality in providing feedback on the plans. He added he was specifically less concerned in this case since the conditions were not very problematic from an engineering perspective.

**Motion by Mr. Jeffares**

**Seconded by Mr. Boyle to recommend approval to the City Commission for the Special Land Use Permit for 239 N. Old Woodward – Bloom – subject to the following conditions: 1. The applicant must receive Historic District Commission approval for all exterior changes proposed; 2. The applicant must submit revised site plans showing non-public trash receptacles in each outdoor dining area; 3. The Planning Board approves the projection into the Willits Alley right-of-way; 4. The applicant must submit specification sheets with Visual Light Transmittance figures for all proposed glazing; 5. The applicant must revise the sign concept for Bloom to meet the dimensional requirements of the Sign Ordinance; 6. The applicant must comply with the requests of all City Departments; and, 7. The Planning Board approves outdoor dining in the Willits Alley.**

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Jeffares, Boyle, Koseck, Whipple-Boyce, Williams, Clein, Share  
Nays: None

**Motion by Mr. Jeffares**

**Seconded by Mr. Boyle to recommend approval to the City Commission for the Final Site Plan & Design Review for 239 N. Old Woodward – Bloom – subject to the conditions of Special Land Use Permit approval.**

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Jeffares, Boyle, Koseck, Whipple-Boyce, Williams, Clein, Share  
Nays: None

**2. 115 Willits Street – Mare Mediterranean (former Cameron’s Steakhouse),**  
Request for a Special Land Use Permit and Final Site Plan and Design Review to consider approval of new restaurant serving alcoholic liquors in an existing building.

PD Ecker reviewed the item.

Mr. Williams and Chair Clein agreed that the hours should not go past 12 a.m.

Applicant and owner Nino Cutraro agreed. Kelly Allen, attorney for the project and Simon Morrow, architect, were also present.

In reply to Mr. Jeffares, PD Ecker stated that she reached out to DPS to find out why there were only two trees between Bates and Old Woodward but had not yet heard back.

The applicant team confirmed they would adhere to the ordinance requirements regarding the dumpster and would adhere to the Fire Department’s comments.

There were no public comments.

Chair Clein said he would be comfortable allowing the remaining items outstanding to be administratively approved.

**Motion by Mr. Share**

**Seconded by Mr. Jeffares to recommend approval to the City Commission for the Special Land Use Permit for 115 Willits – Mare Mediterranean based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance and pending receipt of the following: 1. Details on the businesses sharing the trash facilities on site; 2. Applicant comply with all City Department requests; 3. Detailed sign plans for any proposed business signage to allow the Planning Department to complete their review of the recently submitted plans; 4. Outdoor dining be closed at midnight; and, 5. Specification sheets on the proposed tables, chairs, trash receptacle and railing system proposed in the outdoor dining area.**

Chair Clein stated that if documentation was not submitted to PD Ecker in time to allow for administrative review and approval that he did not want this item to proceed to the Commission for review.

Mr. Boyle commented that this applicant provided one of the best cover sheets he had ever seen for a site plan. He asked Planning to encourage other applicants to do the same.

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**3. 176 S. Old Woodward – Sushi Japan (former 2941 Street Food),** Request for a Special Land Use Permit and Final Site Plan and Design Review to consider approval of new bistro serving alcoholic liquors in an existing building

PD Ecker reviewed the item. She noted that she was able to track down the Engineering Department for comments, and that they indicated that the dimensions for the outdoor dining appeared to be inaccurate but did not specify how. The Engineering Department did clarify that they wanted to see the outdoor dining adjacent to the building limited to no more than five feet, eight inches from the building to make sure the five-foot pedestrian pathway would remain unimpeded. They also expressed concern that vehicles parking in front of the building may overhang the parking space and thus interfere with the planters. The Engineering Department recommended that the planters be moved in some way to reduce potential interference with parked vehicles. PD Ecker said the likely purpose of the planters was to deter vehicles from overhanging the parking space.

Two Board members commented that confusion might result from the restaurant being called 'Sushi Japan' when much of the menu includes Chinese cuisine.

Mr. Jeffares expressed concern that the parking could possibly push one of the planters into someone sitting in the outdoor dining area.

Kelly Allen, attorney for the applicant, Charlie Yu, applicant and owner, and John Gardner, architect, were present.

In reply to Mr. Share, Mr. Gardner stated that to raise the glazing to 70% would require an increase of 11.5 sq. ft.

Mr. Share noted that if the Board did require the glazing to be increased it would require the applicant to make another hole in the facade and to return to the Historic District Commission for review.

PD Ecker said that requiring the applicant to increase the glazing would also disrupt the rhythm of the facade.

Mr. Gardner stated that the English ivy could be replaced with another climbing vine. He stated that he would speak with the Engineering Department regarding their comments about a discrepancy in the outdoor dining measurements since he did the field measurements himself. He said he could also remove any planters Engineering recommended to make the interaction between parking and outdoor dining safer.

It was noted that the previous restaurant used the same shared trash compactor as the one Sushi Japan would use.

There were no public comments.

Mr. Williams and Chair Clein were fine with leaving the glazing at 65%.

Chair Clein continued that he was not inclined to ask a small business to put a shield around a shared dumpster/trash compactor or to paint the mechanical equipment behind the building.

PD Ecker confirmed for Mr. Jeffares that this via was next on the list in the City's via plan to be redone.

Chair Clein said that the issue of the dumpsters in this via should be addressed as part of the upcoming improvements. He expressed mild concern that there was seating proposed on both sides of the pedestrian walkway but said that given how few seats there were on the side further from the restaurant he was not overly concerned.

Mr. Jeffares asked Planning to discuss with Engineering to determine how to prevent parking vehicles from hitting diners while parking.

**Motion by Mr. Williams**

**Seconded by Mr. Share to recommend approval of the Special Land Use Permit to the City Commission to permit a bistro license for Sushi Japan at 176 S. Old Woodward based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance with the following conditions: 1. The Planning Board approves of the proposed 65% storefront glazing; 2. The applicant comply with the requests of all City departments; and 3. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license.**

Bert Whitehead spoke in support of the motion.

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**Motion by Mr. Williams**

**Seconded by Ms. Whipple-Boyce to recommend approval of the Final Site Plan and Design Review to the City Commission to permit a bistro license for Sushi Japan at 176 S. Old Woodward based on a review of the plans submitted and their adherence to Article 07, section 7.27 and Article 07, section 7.34 of the Zoning Ordinance with the following conditions: 1. The Planning Board approves of the proposed 65% storefront glazing; and, 2. The applicant comply with the requests of all City departments.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**05-071-21**

**G. Miscellaneous Business and Communications:**

**a. Communications**

PD Ecker reminded the Board there would be a joint meeting between the Planning Board and the Commission on June 21, 2021. She asked if there were any particular topics the Board would like to see addressed.

Chair Clein said he wanted guidance from the Commission regarding the Board's upcoming work on outdoor dining.

Mr. Williams said that parking ordinances needed to be reviewed. Mr. Share concurred.

**b. Administrative Approval Correspondence**

**c. Draft Agenda for next meeting**

**Motion by Mr. Koseck**

**Seconded by Mr. Jeffares to change the rules of procedure for the June 9, 2021 Planning Board meeting to allow a site plan review for Whistle Stop.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**d. Other Business**

**05-072-21**

**H. Planning Division Action Items**

**a. Staff Report on Previous Requests**

**b. Additional Items from tonight's meeting**

**05-073-21**

**I. Adjournment**

No further business being evident, the Chair adjourned the meeting at 10:02 p.m.

Jana L. Ecker

Planning Director

DRAFT



# MEMORANDUM

Planning Division

**DATE:** June 9<sup>th</sup>, 2021

**TO:** Jana Ecker, Planning Director

**FROM:** Nicholas Dupuis, City Planner

**SUBJECT:** 501 S. Eton – Whistle Stop – Special Land Use Permit, Final Site Plan & Design Review

---

The subject site, 501 S. Eton, is currently used as a restaurant within an existing one-story commercial building fronting S. Eton. The applicant has submitted a Special Land Use and Final Site Plan/Design Review application requesting a bistro license for the Whistle Stop Diner.

On January 22<sup>nd</sup>, the Planning Board reviewed and approved a Design Review application for extensive façade renovations at the Whistle Stop which included an expansion into the adjacent tenant space. The applicant is proposing minor exterior changes to the building/site as a part of this Special Land Use Permit and Final Site Plan/Design Review application, which revolve around the placement of the proposed outdoor dining facility.

The Whistle Stop was selected by the City Commission on October 26, 2020 as the sole bistro application to move forward to contend for one of the two bistro licenses that may be approved for an existing establishment each calendar year. During the selection process, the applicant described the Whistle Stop as a true family friendly restaurant with a delicious assortment of offerings for breakfast, brunch and lunch.

The Birmingham Code of Ordinances states that a contract for transfer and a Special Land Use Permit are required for all licenses approved under Chapter 10 – Alcoholic Liquors. The licensee must comply with all provisions of the contract and Special Land Use Permit, and any amendments thereto as a condition of granting of a requested transfer. Accordingly, the applicant must obtain a recommendation from the Planning Board on the Special Land Use and Final Site Plan/Design Review application, which is then reviewed for final consideration by the City Commission.

## 1.0 Land Use and Zoning

- 1.1 Existing Land Use – One-story multi-tenant commercial building.
- 1.2 Zoning – MX (Mixed-Use)

1.3 Summary of Adjacent Land Use and Zoning –

	North	South	East	West
<b>Existing Land Use</b>	Multi-Family	Commercial	Multi-Family/ Commercial	Single-Family Residential
<b>Existing Zoning District</b>	MX (Mixed-Use)	MX (Mixed-Use)	MX (Mixed-Use)	R3 (Single-Family Residential)
<b>Overlay Zoning District</b>	N/A	N/A	N/A	N/A

**2.0 Bistro Requirements**

Article 9, Section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining for no more than 65 people.

Article 3, Section 3.04(C)(10) of the Zoning Ordinance permits bistros in the Downtown Overlay District as long as the following conditions are met:

- a. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- b. Alcohol is served only to seated patrons, except those standing in a defined bar area;
- c. No dance area is provided;
- d. Only low key entertainment is permitted;
- e. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- f. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;
- g. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- h. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- i. Enclosures facilitating year round dining outdoors are not permitted.

- j. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
- k. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.

At this time, the applicant appears to meet the requirements listed above. On the interior, the proposed bar counter contains 8 seats. There is no dance floor, and there are no indications on the plans there any entertainment will be provided at the proposed restaurant. In totality, the applicant is proposing 64 interior seats, including the 8 at the bar.

As far as exterior conditions, a 28-seat outdoor patio is proposed along the front of the building, which is a change from the January 2020 Design Review in which the applicant proposed to erect a platform in the grassy easement across the sidewalk. The outdoor dining area is proposed to be enclosed by a removable railing that measures 36 in. in height, contains a trash receptacle, and is accessed by two overhead garage doors and one typical entry door. Additionally, although the outdoor dining area appears to be located on public property, the applicant is proposing to repave the 453 sq. ft. area with pervious concrete to help mitigate the loss of greenspace caused by the relocation of the patio. Further streetscape/landscaping changes will be discussed below. Finally, the applicant has provided glazing calculations at 67%, which will be discussed in detail below.

The Whistle Stop has indicated that the introduction of a bistro license will not change the hours of operation for the indoor or outdoor dining areas. The Whistle stop plans to maintain the current hours of operation of 7 AM – 3 PM, Monday-Saturday, and 8 AM – 3 PM on Sundays. The proposed hours of operation for the restaurant, and subsequently the outdoor patio, meet the requirements of the Zoning Ordinance as they close well before 10 PM.

### **3.0 Setback and Height Requirements**

Please see the attached zoning compliance summary sheet for details on setback and height requirements. There are currently no issues with bulk, height or placement with the Special Land Use Permit, Final Site Plan/Design Review application submitted.

### **4.0 Screening and Landscaping**

- 4.1 Dumpster Screening – There are no changes proposed to the dumpster or screening on site.
- 4.2 Parking Lot Screening – There are no changes proposed to the parking lot or associated screening.
- 4.3 Mechanical Equipment Screening – There are no changes proposed to the mechanical equipment or screening on site.
- 4.4 Landscaping – The applicant is proposing to install new boxwood plantings and one new maple tree in front of the existing parking lot screen wall at the southwest corner of the property. The proposed new landscaping is an attempt to introduce new greenspace and tree cover to the right-of-way to make up for the greenspace and tree proposed to be removed in the easement, which is discussed in detail below.
- 4.5 Streetscape – As noted above, the proposed relocation of the outdoor dining area from a platform in the easement to a typical patio adjacent to the building has necessitated a proposed re-design of the streetscape in front of the building. The applicant is proposing to remove 1 of 3 existing street trees and the majority of the grass in the easement to repave and rework the sidewalk around their newly proposed outdoor dining area. The resulting streetscape will contain a small grassy area and tree at the south end of the streetscape, an existing tree in a new planter at the north end, and a 6 ft. clear walking path that curves around the patio to the west.

Article 4, Section 4.20 (G) requires at least 1 street tree for each 40 ft. of frontage. The entire building contains 130 ft. of frontage, which requires 3 street trees. Although the applicant is proposing to remove one of the 3 existing trees, they are proposing to replace the tree at the south end of the property. At this time, however, it is unclear as to whether or not the new tree is proposed on public or private property. Additionally, the spacing of the trees would be mismatched/uneven based on the rest of the S. Eton streetscape. The property line indicated on the site plan submitted extends roughly 5 ft. beyond the face of the building, whereas City records indicate that the S. Eton right-of-way may extend all the way to the face of the building. The Applicant has not yet submitted a Certified Land Survey to confirm the location of the property lines.

At this time, the applicant has not proposed any additional streetscape improvements such as benches, bike racks, waste receptacles, or streetlights. The Planning Board may wish to require the applicant to provide some of these

streetscape improvements as a part of the Special Land Use Permit, Final Site Plan/Design review application submitted.

## **5.0 Parking, Loading and Circulation**

- 5.1 Parking – There are no changes to the parking requirements on site. The applicant has a 13-space on-site parking facility, 8 spaces in the ROW that were approved to be counted towards the off-street parking required (2007), and received a variance of 17 parking spaces in 2020 for a total of 38 spaces.
- 5.2 Loading – There are no changes proposed to the loading requirements.
- 5.3 Vehicular Circulation and Access – There are no changes proposed to the vehicular circulation and access.
- 5.4 Pedestrian Circulation and Access – The pedestrian circulation along S. Eton is proposed to be altered by redirecting the sidewalk west to make room for the newly proposed outdoor dining area. All entrances/exits are proposed to remain as existing.

It is worth noting at this time that there are currently no sidewalks located on the north (Hazel) and south (Palmer) sides of the property. These areas are currently inhabited by greenspace and arborvitae. As a longstanding neighborhood eatery and destination, it would be beneficial in the near future to work together on ways to improve connectivity to the site for pedestrian access from Hazel and Palmer.

## **6.0 Lighting**

There are no new light fixtures or changes in lighting proposed.

## **7.0 Departmental Reports**

- 7.1 Engineering Division – The Engineering Division has provided the following comments:
  - 1. The plans propose to remove at least one street tree, while the other two are noted as “in existing planters,” which do not exist. The current condition has the street trees in grass/mulch.
  - 2. The applicant is proposing to remove a lot of pervious area and the Engineering Division would like to balance that out. The applicant is proposing pervious concrete in the patio space, and we would like to see the drainage plan, as the pervious space would only be as successful as

its drainage area. Additionally, a maintenance plan might be needed depending on the design. Lastly, there does not appear to be any greenspace around the tree at the north of the streetscape where there may be room for some.

3. There seems to be a significant fall between the existing walk at the building and existing top of curb, which may make extending the sidewalk challenging for ADA. Simply raising the curb height is not permitted as it would affect cars parking there from opening their doors and potentially be a hazard to drivers.
4. The existing curb does not look to be in great shape, and may need repairs if the walk were pushed to the edge. The pavement adjacent to the curb looks to be in poor condition, too, and any work on the curb may result in additional pavement replacement.
5. The fence for the outdoor dining area ends very close to the neighboring tenant space door at the south end of the outdoor dining area. The Engineering Division would suggest the applicant gain written approval for this condition.
6. When sidewalks are pushed to the curb, we would prefer a wider sidewalk than 5 feet. Even though parking is here, not a traveled lane, when a door is open, there has to be at least 30 inches of space for ADA compliance, which would reduce the sidewalk width and potentially interrupt the flow of pedestrians.

7.2 Department of Public Services – The Department of Public Services has not provided any comments at this time.

7.3 Fire Department – The Fire Department has provided the following comments and requests for information:

1. Determined occupant load by Building Department and Fire Marshal.
2. Hood suppression acceptance test.
3. Keys provided for Knox box.
4. Fire extinguisher placement.
5. Final site inspection required.

7.4 Police Department – The Police Department does not have any concerns at this time, but noted that the formal police liquor license investigation has not yet been initiated.

7.5 Building Division – The Building Division has provided the following comments:

As requested, the Building Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department

for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Design Review purposes and applicant consideration:

Applicable Building Codes:

- 2015 Michigan Building Code. Applies to all buildings other than those regulated by the Michigan Residential Code.
- 2015 Michigan Mechanical Code. (Residential requirements for mechanical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- 2015 Michigan Plumbing Code. (Residential requirements for plumbing construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- 2017 National Electrical Code along with the Michigan Part 8 Rules. (Residential requirements for electrical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)

Review Comments:

- No building codes concerns at this time. The applicant will need to submit revised construction documents for the proposed changes to the existing approved plans.

## **8.0 Design Review**

As noted above, the only new exterior change proposed on the building are the addition of two new overhead garage doors on the west façade, which will act as access to the outdoor dining area and provide more interaction between the restaurant and the streetscape. The two garage doors are constructed of black metal and glass.

### Glazing

Because the applicant is proposing to rework the storefront, and subsequently the glazing, the Planning division requested that the applicant submit glazing calculations

for the proposed storefront to compare to the Window Standards in Article 4, Section 4.90, as well as the bistro standards in Article 3, Section 3.04 of the Zoning Ordinance. The applicant has submitted glazing calculations that indicate a glazed area of 67% between 1 ft. and 8 ft. from grade. The Zoning Ordinance requires storefronts to contain a minimum of 70% glazing in between 1 ft. and 8 ft. from grade.

However, to allow flexibility in design, these standards may be modified by a majority vote of those appointed and serving on the Planning Board, Design Review Board for architectural design considerations provided that the following conditions are met:

- a. The subject property must be in a zoning district that allows mixed uses;
- b. The scale, color, design and quality of materials must be consistent with the building and site on which it is located;
- c. The proposed development must not adversely affect other uses and buildings in the neighborhood;
- d. Glazing above the first story shall not exceed a maximum of 70% of the façade area;
- e. Windows shall be vertical in proportion.

At this time, the applicant appears to meet the above conditions. **Thus, the applicant must receive approval from the Planning Board to provide 67% glazing on the storefront façade, provide additional glazing, or obtain a variance from the Board of Zoning Appeals.**

Furthermore, the applicant has not submitted specification sheets with Visual Light Transmittance (VLT) figures that are required with any new glazing proposed. The new glazing is required to meet the current Window Standards which is 80% VLT. At this time, the Planning Division has been advised that it will be clear and complement the existing glass. The Planning Board may cite the ordinance language above to modify the clarity requirements slightly if the applicant is unable to meet the 80% VLT requirements. Thus, **the applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals.**

#### Outdoor Dining

Although the materials proposed within the outdoor dining area have not changed from the Design Review in 2020, the applicant has re-submitted the specification sheets for the furniture for convenience. The proposed tables and chairs are constructed of metal as required by Article 4, Section 4.44 of the Zoning Ordinance. The tables are proposed to be "Black" in color, while the chairs are proposed in "Cherry Red". The applicant is also proposing two umbrellas, which are "Logo Red" in color.

**9.0 Required Attachments**

	<b>Submitted</b>	<b>Not Submitted</b>	<b>Not Required</b>
Existing Conditions Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Detailed and Scaled Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certified Land Survey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interior Floor Plans	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Landscape Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photometric Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Colored Elevations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Specification Sheets	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Samples	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Site & Aerial Photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Although the applicant has submitted a letter stating that they have contracted with Survey Tech for a land survey, the applicant has not yet submitted a Certified Land Survey or Existing Conditions Plan. **The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission.**

**10.0 Bistro Criteria**

Chapter 10, Alcoholic Liquors, section 10-82 provides a limitation on the number of Bistro Licenses that the City Commission may approve, and provides selection criteria to assist the Planning Board and City Commission in evaluating applications for Bistro Licenses. Section 10-82 states:

- (1) New establishments. Two (2) Bistro Licenses may be approved each calendar year to applicants who do not meet the definition of existing establishments as set forth in (a)(1) above. In addition to the usual criteria used by the city commission for liquor license requests, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the new establishment applicants, if any, should be approved:
  - a. The applicant’s demonstrated ability to finance the proposed project.
  - b. The applicant’s track record with the city including responding to city and/or citizen concerns.
  - c. Whether the applicant has an adequate site plan to handle the bistro liquor license activities.
  - d. Whether the applicant has adequate health and sanitary facilities.
  - e. The establishment’s location in relation to the determined interest in the establishment of bistros in the Overlay District and the Triangle District.

- f. The extent that the cuisine offered by applicant is represented in the city.
- g. Whether the applicant has outstanding obligations to the city (ie property taxes, utilities, etc.).

During the Bistro Selection process at the City Commission, the applicant demonstrated their ability to continue to finance the renovation/bistro project that has already begun. The acquisition of a liquor license, and subsequently a Special Land Use Permit from the City is the final step in this ongoing process. The applicant has also noted that they have a good track record with the City of Birmingham, as well as the City of Pleasant Ridge where the second Whistle Stop location is located. The proposed site plan appears to be able to handle the bistro liquor license activities and contains improved health and sanitary facilities. Finally, this would be the first bistro liquor license in the Rail District, and the Whistle Stop is the sole purveyor of breakfast/brunch cuisine in the area.

### **11.0 Approval Criteria**

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

In addition, Article 7, Section 7.26 requires applications for a Special Land Use Permit to meet the following criteria:

- (1) The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.

- (2) The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of public services and facilities affected by the land use.
- (3) The use is consistent with the public health, safety and welfare of the city.
- (4) The use is in compliance with all other requirements of this Zoning Ordinance.
- (5) The use will not be injurious to the surrounding neighborhood.
- (6) The use is in compliance with state and federal statutes.

## 12.0 Recommendation

Based on a review of the site plan submitted, the Planning Division recommends that the Planning Board recommend **APPROVAL** to the City Commission the Special Land Use and Final Site Plan/Design Review application for 501 S. Eton – Whistle Stop – with the following conditions:

1. The Planning Board APPROVES the proposed 67% glazing on the storefront façade;

*OR*

1. The applicant must provide additional glazing, or obtain a variance from the Board of Zoning Appeals;
2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission; and
4. The applicant must comply with the requests of all City Departments.

## 13.0 Sample Motion Language (*Final Site Plan & Design Review*)

Motion to recommend **APPROVAL** to the City Commission the Final Site Plan & Design Review for 501 S. Eton – Whistle Stop – with the following conditions:

1. The Planning Board APPROVES the proposed 67% glazing on the storefront façade;

*OR*

1. The applicant must provide additional glazing, or obtain a variance from the Board of Zoning Appeals;

2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission; and
4. The applicant must comply with the requests of all City Departments.

**OR**

Motion to **POSTPONE** the Final Site Plan & Design Review for 501 S. Eton – Whistle Stop – pending receipt of the following:

1. The applicant must receive approval from the Planning Board to provide 67% glazing on the storefront façade, provide additional glazing, or obtain a variance from the Board of Zoning Appeals;
2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission; and
4. The applicant must comply with the requests of all City Departments.

**OR**

Motion to recommend the **DENIAL** to the City Commission the Final Site Plan & Design Review for 501 S. Eton – Whistle Stop – for the following reasons:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**14.0 Sample Motion Language (*Special Land Use Permit*)**

Motion to recommend **APPROVAL** to the City Commission the Special Land Use Permit for 501 S. Eton – Whistle Stop – subject to the conditions of Final Site Plan & Design Review approval.

**OR**

Motion to **POSTPONE** the Special Land Use Permit for 501 S. Eton – Whistle Stop – pending receipt of the following:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**OR**

Motion to recommend **DENIAL** to the City Commission the Special Land Use Permit for 501 S. Eton – Whistle Stop – for the following reasons:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Zoning Compliance Summary Sheet  
Final Site Plan Review  
501 S. Eton – Whistle Stop**

---

**Existing Site:** 1-Story Commercial Building

Zoning: MX (Mixed-Use)

Land Use: Commercial

**Existing Land Use and Zoning of Adjacent Properties:**

	North	South	East	West
<b>Existing Land Use</b>	Multi-Family	Commercial	Multi-Family/ Commercial	Single-Family Residential
<b>Existing Zoning District</b>	MX (Mixed-Use)	MX (Mixed-Use)	MX (Mixed-Use)	R3 (Single-Family Residential)
<b>Overlay Zoning District</b>	N/A	N/A	N/A	N/A

<b>Land Area:</b>	Existing:	0.26 ac.
	Proposed:	0.26 ac.
<b>Dwelling Units:</b>	Existing:	0 units
	Proposed:	0 units
<b>Minimum Lot Area/Unit:</b>	Required:	N/A
	Proposed:	N/A
<b>Min. Floor Area /Unit:</b>	Required:	N/A
	Proposed:	N/A
<b>Max. Total Floor Area:</b>	Required:	100%
		6,000 sq. ft. for commercial, office, and service uses
	Proposed:	3,893 sq. ft. (no changes proposed)
<b>Min. Open Space:</b>	Required:	N/A
	Proposed:	N/A
<b>Max. Lot Coverage:</b>	Required:	N/A

	Proposed:	N/A
<b>Front Setback:</b>	Required:	0 ft.
	Proposed:	5 ft. (no changes proposed)
<b>Side Setbacks</b>	Required:	0 ft.
	Proposed:	8 ft. (no changes proposed)
<b>Rear Setback:</b>	Required:	10 ft.
	Proposed:	5 ft. (no changes proposed)
<b>Min. Front+Rear Setback</b>	Required:	N/A
	Proposed:	N/A
<b>Max. Bldg. Height:</b>	Permitted:	45 ft., 4 stories
	Proposed:	16 ft., 1 story (no changes proposed)
<b>Min. Eave Height:</b>	Required:	18 ft.
	Proposed:	14 ft. (no changes proposed)
<b>Floor-Ceiling Height:</b>	Required:	12 ft.
	Proposed:	None listed
<b>Front Entry:</b>	Required:	On frontage line
	Proposed:	On frontage line (no changes proposed)
<b>Absence of Bldg. Façade:</b>	Required:	32 in. screenwall
	Proposed:	32 in. screenwall (no changes proposed)
<b>Opening Width:</b>	Required:	25 ft.
	Proposed:	3 ft. (no changes proposed)
<b>Parking:</b>	Required:	38 off-street spaces
	Proposed:	38 off- street spaces (private, ROW & variance)
<b>Min. Parking Space Size:</b>	Required:	180 sq. ft.
	Proposed:	180 sq. ft. (no changes proposed)
<b>Parking in Frontage:</b>	Required:	Off-street parking contained in the first story shall not be permitted within 10 feet of any building facade on a frontage line or between the building facade and the frontage line.
	Proposed:	No parking in 1st story (no changes proposed)
<b>Loading Area:</b>	Required:	None

Proposed: None

**Screening:**

Parking: Required: 32 in. masonry screen wall  
Proposed: 32 in. masonry screen wall (no changes proposed)

Loading: Required: Minimum 6 ft. screen wall  
Proposed: N/A

Rooftop Mechanical: Required: Fully screened from public view  
Proposed: Corrugated metal panels (no changes proposed)

Elect. Transformer: Required: Obscured from public view  
Proposed: N/A

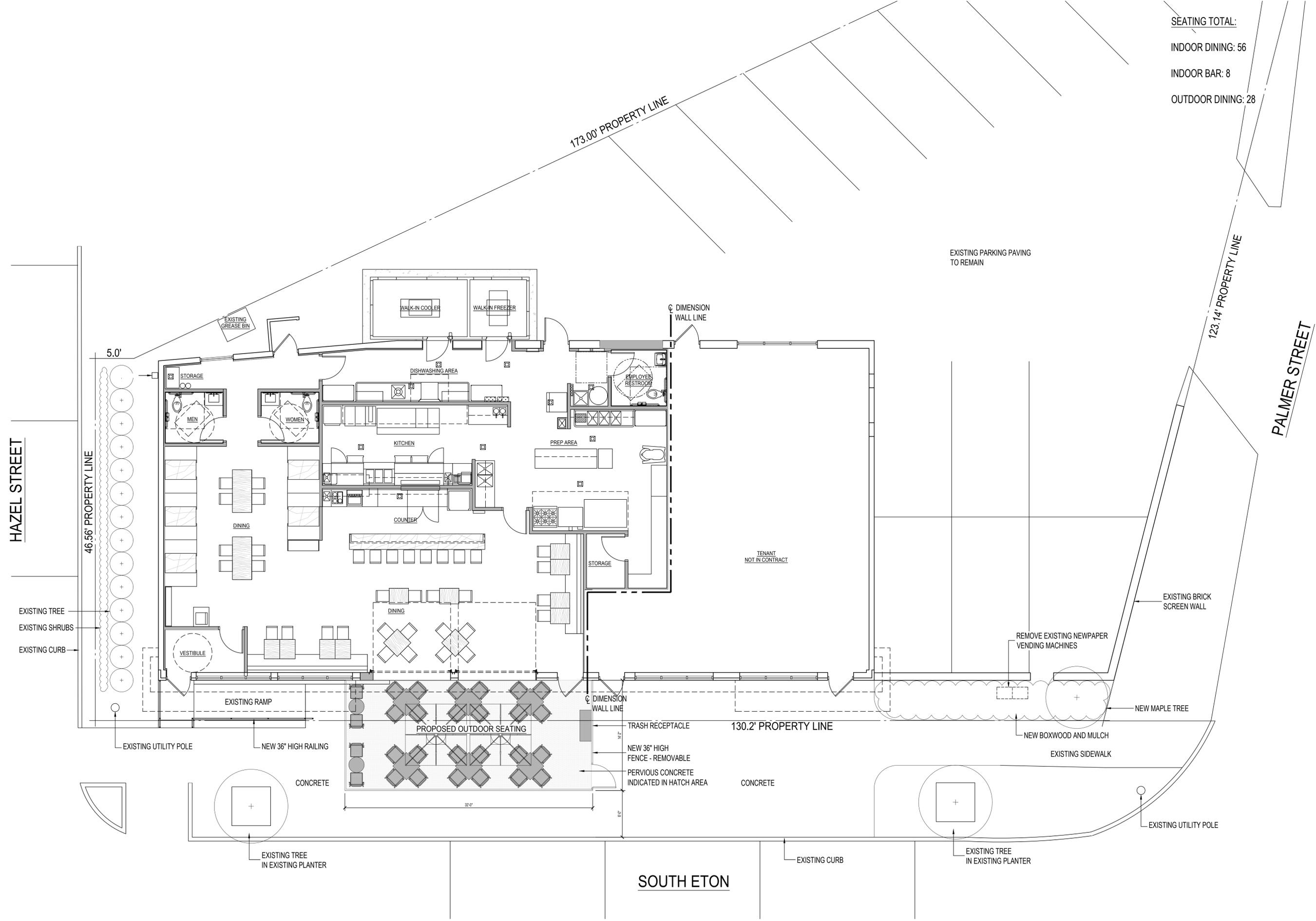
Dumpster: Required: 6 ft. masonry w/ wood gate  
Proposed: None (no changes proposed)

SEATING TOTAL:  
 INDOOR DINING: 56  
 INDOOR BAR: 8  
 OUTDOOR DINING: 28

JAWAN MATTI  
 586-321-7727  
 jawanmatti@gmail.com

PROJECT:  
 WHISTLE STOP  
 501 SOUTH ETON  
 BIRMINGHAM, MICHIGAN

SHEET TITLE:  
 ARCHITECTURAL SITE PLAN



(DO NOT SCALE DRAWING)

DATE: 5/10/2021 ISSUED FOR: BISTRO LICENSE

PROJECT NO: 18052

SHEET NUMBER: PRELIMINARY  
 NOT FOR CONSTRUCTION

1 ARCHITECTURAL SITE PLAN  
 AS100 SCALE: 1/8" = 1'-0" NORTH

AS100



JAWAN MATTI  
586-321-7727  
jawanmatti@gmail.com

PROJECT:  
WHISTLE STOP  
501 SOUTH ETON  
BIRMINGHAM, MICHIGAN

SHEET TITLE:  
EXTERIOR

(DO NOT SCALE DRAWING)

DATE: 9/10/2021 ISSUED FOR: BISTRO LICENSE

PROJECT NO: 18052

SHEET NUMBER: PRELIMINARY  
NOT FOR CONSTRUCTION

A200

GLAZING CALCULATION:

AREA: 384 S.F.

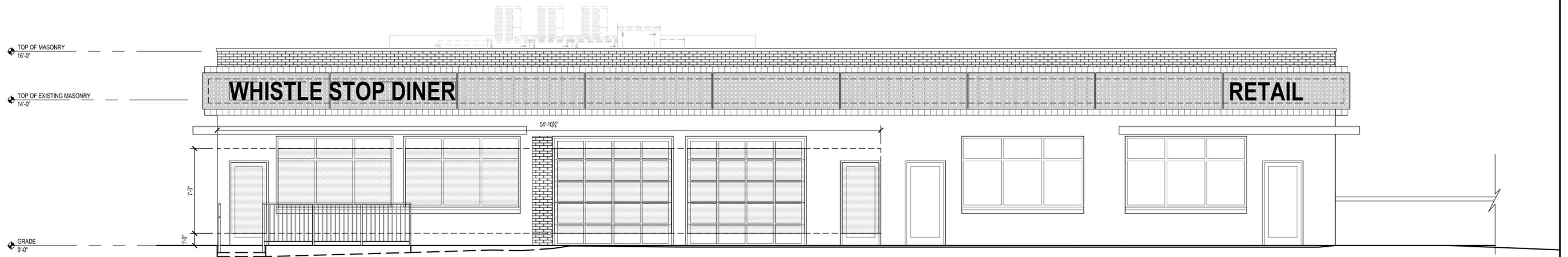
GLAZING AREA: 258 S.F.

PERCENTAGE: 67%

JAWAN MATTI  
586-321-7727  
jawanmatti@gmail.com

PROJECT:  
WHISTLE STOP  
501 SOUTH ETON  
BIRMINGHAM, MICHIGAN

SHEET TITLE:  
EXTERIOR



1 WEST (ETON) ELEVATION  
A201 SCALE: 1/4" = 1'-0"

(DO NOT SCALE DRAWING)

DATE: 5/10/2021 ISSUED FOR: BISTRO LICENSE

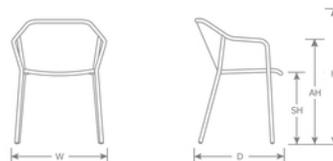
PROJECT NO: 18052

SHEET NUMBER: PRELIMINARY  
NOT FOR CONSTRUCTION

A201



DETAILS



H	W	D	SH	AH	Lbs
30.5"	23.5"	21.5"	18"	27"	12.5

Download Collection Brochure [HERE](#)

Outdoor/Indoor Stacking Armchair

E-coated powder coat finish

Frame: Tubular Steel

Seat/Back: Extended Steel Mesh

Stackability: 8

SHIPPING

Master Pack Quantity:	4
Master Pack Dimensions:	36"x28"x25"
Master Pack Weight:	61 Lbs.
Master Cartons/Pallet:	6
Freight Class:	150
FOB:	PA 17042

Quick Ship Finishes:

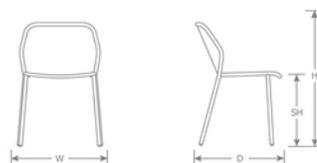


Special Order Ship Finishes:





DETAILS



H	W	D	SH	Lbs
30.5"	21"	21.5"	18"	10.5

Download Collection Brochure [HERE](#)

Outdoor/Indoor Stacking Side Chair

E-coated powder coat finish

Frame: Steel

Seat/Back: Extended Steel Mesh

Stackability: 8

SHIPPING

Master Pack Quantity: 4

Master Pack Dimensions: 22"x27.5"x36"

Master Pack Weight: 52 Lbs.

Density: 4.13

Freight Class: 150

FOB: PA 17042

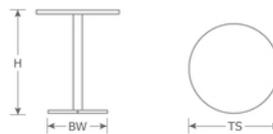
Quick Ship Finishes:

-   
 23  
 A/White
-   
 24 A/Black
-   
 37 A/Moss  
 Grey  
 LIMITED  
 QTY
-   
 50  
 A/Cherry
-   
 73  
 A/Cement

Special Order Ship Finishes:

-   
 22 A/Iron
-   
 41 A/Bronze
-   
 75 A/Dark Green

DETAILS



H	TS	Lbs
29"	24" Dia"	26

Download Collection Brochure [HERE](#)

Outdoor/Indoor Tilt Top Nesting Table

E-Coated powder coat finish

Top Thickness: 3/4"

Top: Solid Steel

Base: Solid Steel

Assembly Required: Yes

SHIPPING

Master Pack Quantity: 1

Master Pack Dimensions: 6.5"x25"x25"

Master Pack Weight: 30 Lbs.

FOB: PA 17042

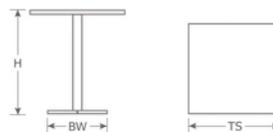
Quick Ship Finishes:

-  23 A/White
-  24 A/Black

Special Order Ship Finishes:

-  22 A/Iron
-  37 A/Moss Grey
-  41 A/Bronze
-  50 A/Cherry
-  71 A/Taupe
-  73 A/Cement
-  75 A/Dark Green
-  86 A/Corten

DETAILS



H	BW	TS	Lbs
29"	20"	32" Sq"	35

Download Collection Brochure [HERE](#)

Outdoor/Indoor Tilt Top Nesting Table

E-Coated powder coat finish

Top Thickness: 3/4"

Top: Solid Steel

Base: Solid Steel

Assembly Required: Yes

SHIPPING

Master Pack Quantity:	1
Master Pack Dimensions:	33"x5"x33"
Master Pack Weight:	40 Lbs.
Master Cartons/Pallet:	15
Freight Class:	70
FOB:	PA 17042

Quick Ship Finishes:

-   
 23  
A/White
-   
 24 A/Black
-   
 37 A/Moss  
Grey  
LIMITED  
QTY
-   
 41  
A/Bronze  
LIMITED  
QTY

Special Order Ship Finishes:

-   
 22 A/Iron
-   
 50  
A/Cherry
-   
 71  
A/Taupe
-   
 73  
A/Cement
-   
 75 A/Dark  
Green
-   
 86  
A/Corten

The Ocean Master Classic market style parasol is the culmination of durable engineering, stylish profiles and functional shade design. Manufactured to marine specifications, all Ocean Master parasols feature 100% replaceable parts for easy service and a 15/5-year warranty. Classic beauty. Classic TUUCI.



*finish options*

*standard*



*powder coat*



*shapes & sizes*



*square*

ft. / m.  
5.5' / 1.65  
6.5' / 2.0  
7.5' / 2.25  
\*8.5' / 2.6



*octagon*

ft. / m.  
6.0' / 1.8  
7.5' / 2.25  
\*9.0' / 2.75  
\*10.5' / 3.2  
\*11.5' / 3.6



*hexagon*

ft. / m.  
7.0' / 2.15  
\*8.5' / 2.6  
\*10.0' / 3.0  
\*11.0' / 3.4



*rectangle*

ft. / m.  
5' x 8' / 1.5 x 2.45  
\*6' x 9' / 1.8 x 2.75

*rectangle*

*auto-scope*  
ft. / m.  
\*8' x 12' / 2.45 x 3.65

*finial options*



venice  
aluminum



*features:*

- a. Manual Lift w/ Stainless Steel Security Pin
- b. "Auto-Loc" Marine Pulley Lift System
- c. "Easy Drive" Crank Lift System
- d. Reinforced Strut Joints Construction
- e. Armor-Wall Mast
- f. Reinforced Pocket Construction



8'x8'  
Sunbrella Color: Logo Red



### **City of Birmingham 2020 Bistro License Initial Application**

**Applicant:** Whistle Stop Diner (Existing Restaurant)

**Address:** 501 S. Eton, Birmingham, Michigan 48009

**Applicant's Representative:** Elda Xhomaqi, Owner  
ph. (248) 635-2554

**Applicant's Attorney:** JPHOWE, PLLC / J. Patrick Howe  
280 N. Old Woodward Ave., Suite 12, Birmingham, MI 48009  
ph. (248) 385-3112

**Applicant's Architect:** Jawan Matti  
ph. (586) 321-7727

---

### **History of Whistle Stop Diner**

It all started in 1965 when the Whistle Stop Diner originally opened. It's name comes from the fact that the Diner is located right next to the old train station where you would hear the "whistle" of the train as it came by every day. Customers would stop in to enjoy a delicious breakfast before boarding the train, or picking up a friend or family member. As the years went by, the restaurant evolved into what it has become today, which is a popular breakfast, brunch and lunch staple in City's bustling rail district. We started working here in 1999. Elda as a waitress and Valter as a cook. In 2012, we were presented with the opportunity to become the owners of the Whistle Stop Diner, and we jumped at it. We have always tried to keep the same loving menu that includes the homemade bread, buttermilk pancakes made from scratch, fresh real turkey, and the delicious desserts. In 2015, we purchased the Whistle Stop Diner in Pleasant Ridge which included a Class C liquor license. That is when we became familiar with the demand for the service of alcoholic beverages. We have developed a plan to completely renovate the

Whistle Stop Diner, which ensures that the restaurant maintains its menu and hours of operation (7:00 AM – 3:00 PM), and offer the alcoholic beverages that are served at our Pleasant Ridge location. We believe that a Bistro license will allow us to meet our customer’s demands, and bring the Whistle Stop Diner forward, while maintaining that traditional, family friendly atmosphere everyone has come to love. We are very appreciative of the opportunity to obtain a Bistro License from the City, and we look forward to working with the City to solidify The Whistle Stop Diner as a neighborhood Bistro in the City’s rail district for many years to come.

**Restaurant Experience**

The Whistle Stop Diner is owned and operated by husband and wife team of Elda and Valter Xhomaqi. They have each worked in the restaurant industry their entire lives, and are hands on, passionate operators. They currently own and operate another Whistle Stop Diner in Pleasant Ridge, Michigan, which holds a Class C liquor license. That establishment has an excellent operating record, and has not received any complaints from the City of Pleasant Ridge, or Michigan Liquor Control Commission. The Xhomaqi family will continue to be the face and the leaders of the reimagined Whistle Stop Diner. They will ensure that the proposed modified operations including the service of alcoholic beverages, are executed in a professional and responsible manner.

**Concept for Bistro**

If approved to operate as a Bistro, The Whistle Stop Diner plans to undertake a major renovation of the entire premises, as shown on the floor plan and renderings included herewith. The restaurant will have 57 indoor seats, 8 counter stools for dining, and 26 seats on an outdoor patio in front of the restaurant on City sidewalk. The outdoor patio will be fully enclosed to meet all City and State requirements. All food and beverages will be served by wait staff to seated patrons. While there is a counter area where patrons can be served directly by staff behind the counter, this area will not function as a standard bar area, and patrons will not be served unless seated at a table or counter stool. The restaurant menu is included herewith, and there will be a limited menu of alcoholic beverages available for purchase with meals. It is the applicant’s intention for alcoholic beverages to simply be offered as a compliment to its food service, and the diner will not function as a bar. In full compliance with the City of Birmingham Bistro ordinance, the Whistle Stop Dinner will:

1. Have 8 counter stools;
2. Not have any direct connection additional bar permits;
3. Only serve alcoholic beverages to seated patrons;
4. Not offering dancing or entertainment of any kind;
5. Provide tables along existing windows facing S. Eton; and
6. Provide a 26 seat outdoor patio on City sidewalk with enclosures that meet City and State requirements.

**Statement Regarding Impact Bistro Will Have on Mix of Commercial Uses in Birmingham**

The Whistle Stop Diner is a true family friendly restaurant. If converted to a Bistro, the same great food will be offered in an updated setting with outdoor dining. Alcoholic beverages will be served with meals during the hours of 7:00 AM to 3:00 PM seven (7) days per week. Converting the diner into a Bistro will attract additional guests, bring additional activity to the S. Eton corridor with a 26 seat outdoor patio, and increase commercial traffic for other businesses in the rail district.

**Sample Menu**

The Whistle Stop Diner offers a delicious assortment of offerings for breakfast, brunch and lunch. A sample menu is incorporated herein, which provides the limited assortment of alcoholic beverages that would be offered if the diner is converted to a Bistro.

**Hours of Operation**

There will be no changes to the operation of the diner if converted to a Bistro. The hours of operation would be:

Monday – Saturday 7:00 AM to 3:00 PM

Sunday 8:00 AM to 3:00 PM

Outdoor Patio will be open when weather permits from May 1<sup>st</sup> – October 31<sup>st</sup> each year

**Renovation Schedule**

The Whistle Stop Diner anticipates being closed for renovations from November 2020 through April 2021.

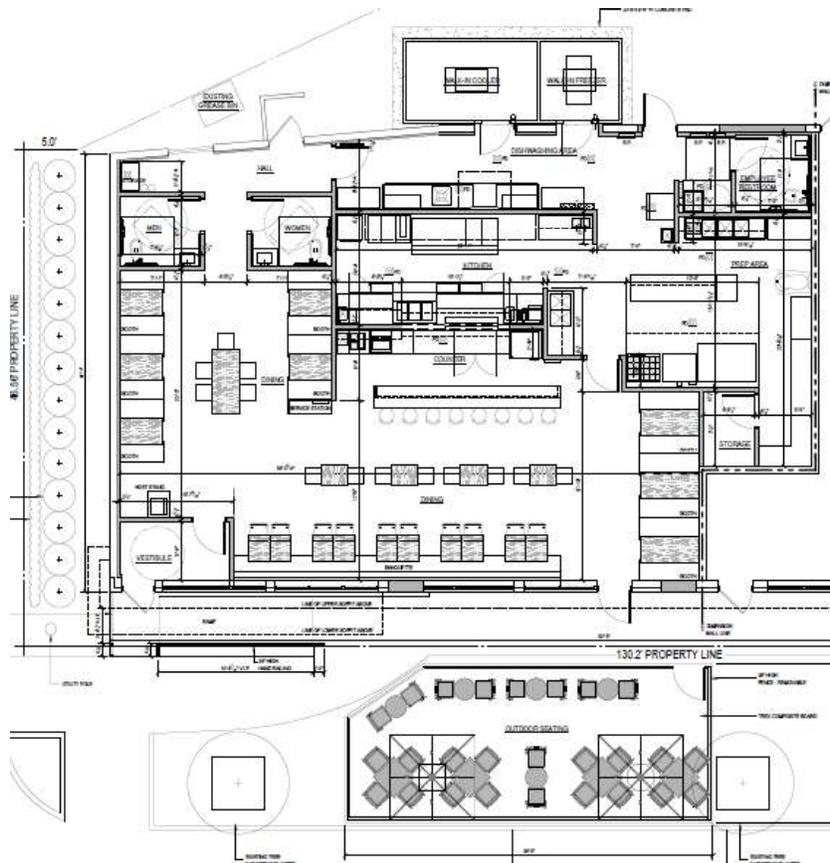
**Statement Regarding Ability to Finance, Construct & Operate Bistro**

The Whistle Stop Diner has an experienced team ready to renovate and convert the existing restaurant into a Bistro serving beer, wine and spirits. All renovations will be funded with cash on hand, and the proposed conversion of The Whistle Stop Diner to a Bistro is not contingent on obtaining financing of any kind. The Whistle Stop Diner has engaged a prominent local architect to assist with the design of the Bistro, and an experienced licensed contractor will be engaged to complete all renovations. With respect to restaurant operations, owners Elda and Valtar Xhomaqi bring a lifetime of experience to the operation of The Whistle Stop Diner, and their very experienced wait staff will ensure that the Bistro is operated in a safe and responsible manner. All employees involved in the sale and service of alcoholic beverages will be required to pass a server training course approved by the Michigan Liquor Control Commission.

Exterior Rendering for Bistro Conversion



Floor Plan for Bistro Conversion







## Special Land Use Permit Application - Bistro Planning Division

### 1. Applicant

Name: Eida Xhomaqi  
Address: 2415 Warwick Drive Troy, MI 48084

Phone Number: \_\_\_\_\_  
Fax Number: 248-635-2554  
Email Address: vali2@gmail.com

### 2. Applicant's Attorney/Contact Person

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### 3. Required Attachments

- Warranty Deed with legal description of property
- Floor Plan of Bistro Operation
- Proof of ability to finance the proposed project
- Required fee (see Fee Schedule for applicable amount)
- Photographs of existing site and buildings
- Samples and/or specification sheets of all materials to be used
- Landscape Plan showing all existing and proposed elements
- Catalog sheets for all proposed lighting & outdoor furniture

### 4. Project Information

Address/Location of Property: 501 South Eton Street

Name of Bistro: \_\_\_\_\_

Sidwell #: 20-31-203-004

Current Use: Restaurant (Assembly A-2)

Proposed Use: Restaurant (Assembly A-2)

Area in Acres: .26 acres - 11,311.75 sq. ft.

Current Zoning: MX (Mixed-Use)

Zoning of Adjacent Properties: \_\_\_\_\_

Is there a current SLUP in effect for this site?: No

### Property Owner

Name: Whistle Stop Diner  
Address: 2415 Warwick Drive Troy, MI 48084

Phone Number: 248-635-2554  
Fax Number: \_\_\_\_\_  
Email Address: vali2@gmail.com

### Project Designer/Developer

Name: Jawan Matti  
Address: \_\_\_\_\_

Phone Number: 586-321-7727  
Fax Number: \_\_\_\_\_  
Email Address: jawanmatti@gmail.com

- Completed Checklist
- Certified Land Survey
- Signed Contract
- Fifteen (15) folded copies of plans including color elevations showing all materials and an itemized list of all changes for which approval is requested with the changes marked in color
- One (1) additional set of plans mounted on a foam board, including a color rendering of each elevation

Name of Historic District site is in, if any: N/A

Date of HDC Approval, if any: N/A

Date of Application for Preliminary Site Plan: \_\_\_\_\_

Date of Preliminary Site Plan Approval: \_\_\_\_\_

Date of Application for Final Site Plan: \_\_\_\_\_

Date of Final Site Plan Approval: \_\_\_\_\_

Date of Revised Final Site Plan Approval: \_\_\_\_\_

Date of Final Site Plan Approval: \_\_\_\_\_

Date of DRB approval, if any: \_\_\_\_\_

Date of Last SLUP Amendment: \_\_\_\_\_

### 5. Details of the Nature of Work Proposed (Site plan & design elements)

---

---

---

---

---

---

---

---

**6. Buildings and Structures existing on site**

Number of Buildings on site: 1  
Height of Building & # of stories: 14' existing / 1 16' proposed / 1

Use of Buildings: Restaurant and adjacent space vacant  
Height of rooftop mechanical equipment: MUA-1 - 77"  
RTU-1 - 50"

**7. Floor Use and Area (in square feet)**

**Structures:**

Restaurant Space: 2,553 s.f.  
Office space: \_\_\_\_\_  
Total floor area: \_\_\_\_\_

Retail space: 1,175 s.f.  
Number of Residential Units: \_\_\_\_\_  
Rental or Condominium: \_\_\_\_\_

**8. Bistro Operation**

Number of Indoor Seats: 65  
Number of Outdoor Seats: 28  
Entertainment Proposed: \_\_\_\_\_  
Years of Experience in Birmingham: 9  
Previous LCC Complaints? \_\_\_\_\_  
Tables provided along street façade: 8  
Required front setback: 0  
Required rear setback: 10'  
Required total side setback: 0

Type of Cuisine: American  
Bar Area? Yes  
Number of Seats at bar: 8  
Years of Experience outside of Birmingham: 10 years  
Full Service Kitchen? Yes  
Percentage of glazing proposed: added garage doors  
Proposed front setback: No change  
Proposed rear setback: No change  
Proposed total side setback: No change

**9. Outdoor Dining Facility**

Location (sidewalk right-of-way or on-street parking space): \_\_\_\_\_  
Eton Street 3 spaces, Hazel Street 2, and Palmer Street 3 - total 8  
Hours of operation: Mon - Sat, 7 am-3 pm and Sun, 8 am-3 pm  
Width of unobstructed sidewalk between door and café (5' required): \_\_\_\_\_  
Existing 5'-6"  
Platform proposed: 32'-0" x 14'-2"  
Trash receptacles: 1

Number of tables/chairs: 8 tables and 28 chairs  
Material of tables/chairs: Metal or aluminum  
Table umbrellas height and material: 2 umbrellas, 8'-5", sunbrella  
Number and location of parking spaces: 8 off street parking and 13 parking  
Screenwall material: Existing brick lot spaces - adjacent to building  
Enclosure material: \_\_\_\_\_

**10. Required and Proposed Parking**

Number of parking spaces: 21 spaces  
Location of off site parking: Eton Street, Hazel Street and Palmer  
Screenwall material: Existing brick

Location of parking spaces: Adjacent to building  
Shared Parking Agreement?: No  
Height of screenwall: 3'-0"

**11. Landscaping**

Location of landscape areas: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposed landscape material: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**12. Streetscape**

Sidewalk width: 6'-0"  
Number of benches: 0  
Number of planters: 0  
Number of existing street trees: 2  
Number of proposed street trees: 1  
Streetscape Plan submitted?: \_\_\_\_\_

Description of benches or planters: \_\_\_\_\_  
\_\_\_\_\_  
Species of existing street trees: \_\_\_\_\_  
Species of proposed street trees: \_\_\_\_\_  
\_\_\_\_\_

**13. Loading**

Required number of loading spaces: \_\_\_\_\_  
Location of loading spaces on the site: \_\_\_\_\_

Proposed number of loading spaces: \_\_\_\_\_

**14. Mechanical Equipment**

**Ground Mounted Mechanical Equipment:**

Number of ground mounted units: \_\_\_\_\_  
Size of ground mounted units (LxWxH): \_\_\_\_\_

Location of all ground mounted units: \_\_\_\_\_

Screenwall material: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

**Rooftop Mechanical Equipment:**

Number of rooftop units: 4  
Type of rooftop units: (1) HVAC, (1) MAU, (2) Condensers

Location of all ground mounted units: \_\_\_\_\_

Size of rooftop units (LxWxH): \_\_\_\_\_

Screenwall material: Perforated metal panels - 5'-0" height of screenwall

Height of screenwall: \_\_\_\_\_

Location of screenwalls: East

Percentage of rooftop covered by mechanical units: \_\_\_\_\_

Distance from units to rooftop units to screenwall: \_\_\_\_\_

**15. Lighting**

Number of light standards on building: Please see attached photometric  
Size of light fixtures (LxWxH): \_\_\_\_\_

Type of light standards on building: \_\_\_\_\_

Height from grade: \_\_\_\_\_

Maximum wattage per fixture: \_\_\_\_\_

Proposed wattage per fixture: \_\_\_\_\_

Parking lot lighting: \_\_\_\_\_

**The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan or Special Land Use Permit. The undersigned further states that they have reviewed the procedures and guidelines for site plan review and Special Land Use Permits in Birmingham and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.**

Signature of Owner: *V. Keeler Khomari*

Date: 04/22/2021

Print Name: VALTER KHOMARI

Signature of Applicant: *Elida Khomari*

Date: 04/22/2021

Print Name: ELDA KHOMARI

Signature of Architect: *Jawan Matti*

Date: 4/22/2021

Print Name: Jawan Matti

*Office Use Only*

Application #: \_\_\_\_\_ Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_

Date of Approval: \_\_\_\_\_ Date of Denial: \_\_\_\_\_ Accepted by: \_\_\_\_\_

**13. Loading**

Required number of loading spaces: \_\_\_\_\_  
Location of loading spaces on the site: \_\_\_\_\_

Proposed number of loading spaces: \_\_\_\_\_

**14. Mechanical Equipment**

**Ground Mounted Mechanical Equipment:**

Number of ground mounted units: \_\_\_\_\_  
Size of ground mounted units (LxWxH): \_\_\_\_\_

Location of all ground mounted units: \_\_\_\_\_

Screenwall material: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

**Rooftop Mechanical Equipment:**

Number of rooftop units: 4  
Type of rooftop units: (1) HVAC, (1) MAU, (2) Condensers

Location of all ground mounted units: \_\_\_\_\_

Size of rooftop units (LxWxH): \_\_\_\_\_

Screenwall material: Perforated metal panels - 5'-0" height of screenwall

Height of screenwall: \_\_\_\_\_

Location of screenwalls: East

Percentage of rooftop covered by mechanical units: \_\_\_\_\_

Distance from units to rooftop units to screenwall: \_\_\_\_\_

**15. Lighting**

Number of light standards on building: Please see attached photometric

Type of light standards on building: \_\_\_\_\_

Size of light fixtures (LxWxH): \_\_\_\_\_

Height from grade: \_\_\_\_\_

Maximum wattage per fixture: \_\_\_\_\_

Proposed wattage per fixture: \_\_\_\_\_

Parking lot lighting: \_\_\_\_\_

**The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan or Special Land Use Permit. The undersigned further states that they have reviewed the procedures and guidelines for site plan review and Special Land Use Permits in Birmingham and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.**

Signature of Owner: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature of Architect: 

Date: 4/22/2021

Print Name: Jawan Matti

*Office Use Only*

Application #: \_\_\_\_\_ Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_

Date of Approval: \_\_\_\_\_ Date of Denial: \_\_\_\_\_ Accepted by: \_\_\_\_\_



280 N. Old Woodward  
Suite 12  
Birmingham, MI 48009

☎ 248.385.3112

☎ 248.835.2068

☎ 888.450.1682

jphowe@jphowe.com

www.jphowe.com

April 23, 2021

**VIA HAND DELIVERY**

**Ms. Jana Ecker**  
**Planning Director**  
**City of Birmingham**  
151 Martin St.  
Birmingham, MI 48009

**Re: Special Land Use Permit Application to Operate a Bistro**  
**Applicant: Whistle Stop Diner, Inc.**  
**Address: 501 S. Eton St., Birmingham MI 48009**

Dear Ms. Ecker,

On behalf of Whistle Stop Diner, Inc. we hereby submit a Special Land Use Application for our client to convert its existing restaurant at 501 S. Eton Rd. into a "Bistro" (as defined in the Birmingham City Code). The Birmingham City Commission unanimously authorized Whistle Stop Diner to move forward with a formal Bistro Application on October 26, 2020. Our Client is applying to the Michigan Liquor Control Commission to transfer an existing Oakland County Class C liquor license to its restaurant; and simultaneous to this filing, we are filing a City of Birmingham Liquor License Application with the Birmingham Police Department.

A fully executed Special Land Use Permit Application and check payable to the City of Birmingham in the amount of \$2,800 to cover the application fee are enclosed herewith. We will be supplementing this filing with various architectural drawings, and a letter outlining: (i) our Client's concept for the Bistro, (ii) why our Client meets the standards for approving a Special Land Use Permit to operate a Bistro as set forth in Section 126, Article 7 of the Birmingham Zoning Ordinance, and (iii) why our Client meets the liquor license approval conditions set forth in the Birmingham City Code.

We would appreciate you initiating your review of this application, and placing this request on the next available Planning Board agenda. Thank you for your attention to this matter.

Very truly yours,

**JPHOWE, PLLC**

*J. Patrick Howe*

Enclosure





# MEMORANDUM

Planning Division

**DATE:** June 9<sup>th</sup>, 2021

**TO:** Jana Ecker, Planning Director

**FROM:** Nicholas Dupuis, City Planner

**SUBJECT:** Solar Panel Requirements – Public Hearing

In 2009, the City Commission adopted ordinance language permitting solar panels on structure roofs in all zoning districts throughout the City. Since its adoption, there have been many solar panels installed across the City, and several in the process of being approved by the Planning Board and/or Planning Division.

On May 22<sup>nd</sup>, 2019, the Planning Board discussed the evolution of solar panels and their perception that aesthetics are no longer an issue that should require a full Design Review by the Planning Board. The Board members also revisited a suggestion that was discussed in 2009, which was to waive fees for solar panel applications to encourage alternative energy use and sustainability.

On June 17<sup>th</sup>, 2019, the Planning Board and City Commission discussed the potential for ordinance amendments to simplify the review process for solar panels. During the meeting, a consensus was reached that the City's solar ordinance was in need of an update.

On January 8<sup>th</sup>, 2020, the Planning Board reviewed revised ordinance language and directed staff to make a few minor revisions and clarifications which involved the removal of ground mounted solar facility standards and adding language for anti-reflective coatings.

On July 15<sup>th</sup>, 2020, the Planning Board reviewed the revised language a second time and made a request to learn more about ancillary equipment and what types of such may be placed on a home, and where it may be commonly placed. The Planning Division has reached out to several solar power companies, and has researched previous solar panel proposals to get a better sense of what ancillary equipment is commonly used, and general reasons why:

Equipment	Description
Large Single-Unit Inverter	Changes DC current from panel to usable AC current. Typically located near utility meter.
Micro Inverter	Changes DC current from panel to usable AC current. Micro Inverters are located on the rear of each panel, eliminating the need for one larger single-unit inverter. More common.
Sub Panels	Dedicated circuits to power specific household items (ex. fridge, laundry, etc.) Located inside adjacent to main panel.

Storage Battery	Stores excess energy collected for later use. Rated for indoor/outdoor placement, but most commonly placed inside.
Battery Disconnects	Functions as a disconnect and one-way circuit to prevent energy backflow out of storage battery. Usually located close to battery inside or outside.
Disconnect Switches	Switches that stop the flow of power. Could be more than one, and is required to be located no more than 5 ft. from the utility meter.
Junction Box	Serves as a monitoring system that detect production. Can be located inside or outside. Optional, not necessarily required.
Metal Conduit	Houses all wiring from solar panels, through ancillary equipment, and into the home.

In reviewing several of the plans for solar installations in the last two years, the information provided above appears to be confirmed by the locations of ancillary equipment on the plans, which in general is always located on the side or rear of the house near the utility meter.

On April 14<sup>th</sup>, 2021, the Planning Board motioned to set a public hearing on May 12<sup>th</sup>, 2021 to amend the alternative energy ordinance, which was rescheduled to June 9<sup>th</sup>, 2021 due to Eid al-Fitr. The Planning Board also requested that language be added to preclude wall of façade-mounted solar panels due to the potential issues with aesthetics and neighboring properties.

As the Zoning Ordinance currently reads, roof-mounted solar electric systems are permitted in all Zoning Districts, with any proposals for front, street oriented systems required to come before the Planning Board or Historic District Commission for a Design Review. The attached language offers an update to this language based on the feedback of the Planning Board and City Commission eliminating the Design Review Requirement for *non-historic homes only*. In addition, it was important for City Staff (while the subject of solar panels is active) to address and update the entire section of ordinance to remove barriers to the use of alternative energy solutions and encourage viable sustainability efforts. The proposed updates add requirements for new and emerging technologies such as solar shingles and solar energy storage, as well as address different options and that were not included in the original language, such as ground-mounted solar electric systems.

**Note:** The decision was made to move the language for solar panels from the Essential Services section to the Alternative Energy section of the ordinance, as it is a much better fit. In order to edit the ordinance properly, it was easiest to “delete” all of the existing ordinance language in Section 4.88 and create an entirely “new” Section 4.88. The language for wind energy facilities in the “new” Section 4.88 is EXACTLY the same, it is merely organized in a slightly different way. Please be advised, however, of the changes made in **bold blue** that apply to the wind energy facility language, which are changes to the Zoning Districts in which Section 4.88 apply.

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE SIGN ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.09, ESSENTIAL SERVICES, TO REMOVE ROOF-MOUNTED SOLAR ELECTRIC SYSTEMS

---

4.09 ES-01

This Essential Services Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX 01 02 P PP R1 R1A R2 R3 R4 R5 R6 R7 R8 TZ1 **TZ2** TZ3

The following essential services standard applies:

- A. Essential Services: Essential services shall be permitted as authorized and regulated by law and other ordinances of the city and are exempt from the application of the Zoning Ordinance.
  
- B. Roof-Mounted Solar Electric Systems:
  - 1. ~~Roof-mounted solar panels are permitted on buildings and structures in all zoning districts and may include integrated solar panels as the surface layer of the roof structure with no additional apparent change in relief or projection, or separate flush mounted solar panels attached to the roof;~~
  - 2. ~~Separate, non-integrated flush-mounted solar panels shall be located on a rear- or side-facing roof, which do not front any street, unless such installation is proven to be ineffective or impractical. If installation is not practical on a rear- or side-facing roof, any other placement in all zoning districts shall be subject to a Design Review by either the Planning Board (non-historic properties) or the Historic District Commission (historic properties);~~
  - 3. ~~Separate flush-mounted solar panels installed on a building or structure with a sloped roof surface shall not project vertically above the peak of the roof to which it is attached, or project vertically more than five (5) feet above a flat roof installation; and~~
  - 4. ~~No solar panels shall ever project higher than the permitted building height in any zoning district.~~

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 to become effective upon publication.

---

Pierre Boutros, Mayor

---

Alexandria Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE SIGN ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.88, ALTERNATIVE ENERGY, TO ADD AMENDED SOLAR ENERGY SYSTEMS REQUIREMENTS

---

4.88 UT-01: Alternative Energy

~~This Utility Standards section applies to the following districts:~~

~~B1 B2 B2B B2C B3 B4 MX 01 02 P TZ3~~

~~The following utility standards applies:~~

- ~~A. Purpose and Intent: The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large. The city shall allow as an accessory use, with review by the Planning Board and/or Historic District Commission, the construction and operation of wind energy facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources without significantly increasing the cost or decreasing the efficiency of such systems.~~
- ~~B. Applicability: This section applies to all on-site wind energy facilities. Any physical modification to existing wind energy facilities that materially alters the type, increases the size, or increases the adverse impact on surrounding properties, shall require a review by the Planning Board and/or Historic District Commission.~~
- ~~C. Planning Approval Required:~~
  - ~~1. Wind energy facilities shall be limited to the average needs of the structure on the same parcel and shall be a permitted accessory use, subject to the required standards of this section provided they are incidental and secondary to a permitted principal use on the same parcel. The rated capacity of wind energy facilities must correlate with consumption.~~
  - ~~2. Wind energy facilities may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility~~

~~company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with applicable state and federal law.~~

- ~~3. Wind monitoring (anemometer) towers are permitted in all non-residential zoning districts subject to the issuance of a temporary use permit and a building permit. Permanent anemometer towers shall be subject to review and approval in conjunction with wind energy facility.~~
- ~~4. No wind energy facility shall be erected, constructed, installed or modified as provided in this section without first obtaining approval from the Planning Board and/or Historic District Commission. The construction of a wind energy facility shall be permitted in non-residential zoning districts as an accessory use subject to the approval of the Planning Board and/or Historic District Commission and provided that the use complies with all requirements set forth in this section.~~

~~The Planning Board and/or the Historic District Commission have the discretion to deny plans based on aesthetics of the wind energy system. All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No approval of any board or commission shall be granted unless it is found that:~~

- ~~a. The specific site is an appropriate location for such use;~~
  - ~~b. The use is not expected to adversely affect the area;~~
  - ~~c. There is not expected to be any serious hazard to people, property or animals from the use;~~
  - ~~d. No nuisance is expected to be created by the use; and~~
  - ~~e. Adequate and appropriate facilities will be provided for the proper operation of the use.~~
- ~~5. Approvals may also impose reasonable conditions, safeguards and limitations and require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind energy facility, should they occur.~~
  - ~~6. Multiple wind energy facilities may be permitted provided they meet all requirements specified in the Zoning Ordinance and their number and placement is appropriate for the site and is architecturally and visually compatible with the surrounding area.~~

D: General Site Standards:

- ~~1. *Height:* No wind energy facility may exceed the maximum permitted or actual legal non-conforming building height by more than 20 ft. in any district~~

- ~~2. *Noise:* Except during short-term events including utility outages and severe wind storms, wind energy facilities shall be designed, installed and operated so that noise generated by the system shall be the lesser of 60 dB as measured at any closest inhabited dwelling or 55 dB at the boundary of any adjacent property line.~~
- ~~3. *Location:*
  - a. The center of a wind energy facility turbine tower shall be set back no less than 5 feet from all lot lines and rights-of-way or no less than one-half the diameter of the rotor and blades, whichever is greater.
  - b. The swept area of wind energy facilities must be set back at least 3 feet from any lot line.
  - c. Wind energy facilities may not be located between the front lot line and the front wall of the principal use.
  - d. No portion of any wind energy facility's exposed moving parts shall extend to within 20 feet of the ground, or to within 10 feet of any overhead utility lines, or as determined by a utility company.~~
- ~~4. *Screening:* Screening of ground-mounted mechanical equipment is required in accordance with Article 4, Section 4.54 SC-01 Screening of the Zoning Ordinance, in order to mitigate aesthetic impacts upon the neighborhood.~~
- ~~5. *Shadow Flicker:* Wind energy facilities shall be sited in a manner that minimizes shadowing or flicker on adjacent properties. The applicant has the burden of proving that this effect does not have significant adverse impacts on neighboring or adjacent uses through siting or mitigation.~~
- ~~6. *Access and Safety:*
  - a. Wind energy facilities shall be designed and installed so as to prevent unauthorized access to electrical and mechanical components and shall be secured or locked at all times when service personnel are not present.
  - b. Climbing apparatus shall be located in a place that is in accordance with MIOSHA standards as to prevent climbing.~~
- ~~7. *Removal:* Any wind energy facility that has not been used in 180 days, or has otherwise been determined abandoned, shall be removed by the owner and/or operator of the facility. If a wind energy facility has not been removed within 30 days a deadline specified by the City, the City of Birmingham may remove or secure the removal of the facility at the owner/operator's sole expense. All equipment associated with the facility shall be removed at the same time.~~

E. Design Standards:

- ~~1. *Color and Finish:* The Planning Board shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged. If the site is located within a historic district, the Historic District Commission will have discretion over the turbine color.~~
- ~~2. *Lighting:* Wind Energy Facilities may be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind energy facility, or related structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. If lighting is necessary a photometric plan is required.~~
- ~~3. *Signage:* Signs on the wind energy facility shall comply with the requirements of the City of Birmingham's Sign Ordinance, and shall be limited to:~~

~~Wind energy facilities shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.~~

- ~~a. Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger; and~~
- ~~b. Educational signs providing information about the facility and the benefits of renewable energy~~
- ~~4. *Utility Connections:* All utility connections for and from the wind energy facility shall be located under ground. Electrical transformers for utility interconnections may be above ground if required by utility provider but must be screened according to the Zoning Ordinance.~~
- ~~5. *Related Structures:* All related structures to wind energy facilities shall be subject to regulations concerning bulk and height of accessory structures as well as all other development standards. All related structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and adjacent buildings and shall be contained within the turbine tower whenever technically feasible. Structures shall only be used for housing equipment for this particular site.~~

F. Submittal Requirements:

- ~~1. Wind energy facilities are subject to Site Plan Review or Design Review by the Planning Board and/or the Historic District Commission.~~
- ~~2. All wind energy facilities shall obtain a building permit, along with any other permits required by federal, state and local agencies, prior to erecting a system.~~

- ~~3. Proof of Liability Insurance: The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures should there be a failure of the wind energy facility.~~
- ~~4. Site Control: At the time of application for a Site Plan Review, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean legal authority to prevent the use or construction of any structure for human habitation within the setback areas.~~
5. Site Plan:
  - ~~a. A site plan signed and sealed by a licensed engineer, of the subject property and all properties within 200 feet showing existing buildings and structures, utility lines and poles, landscaping and all other items which may effect the placement of the wind energy facility.~~
  - ~~b. An elevation drawing of the proposed location of the wind energy facility.~~
  - ~~c. Color photographs and an elevation drawing with the wind energy facility and all necessary equipment superimposed in the proposed location.~~
  - ~~d. Specification sheets for all equipment, identifying all parts of the system, including, but not limited to, the manufacturer and model, turbine, tower height and type, rotor diameter, foundation, any accessory equipment, and the manufacturers electrical plans and specifications.~~
  - ~~e. Any other information or evidence required by City Officials.~~

#### **4.88 UT-01: Alternative Energy**

**This Utility Standards section applies to the following districts:**

**R1 R1A R2 R3 R4 R5 R6 R7 R8 B1 B2 B2B B2C B3 B4 MX 01 02 P TZ1 TZ2 TZ3**

**The following utility standards applies:**

- A. Purpose and Intent: The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large.**

**B. Solar Energy Facilities:** The city shall allow the construction and operation of solar energy facilities and shall provide standards for the placement, design, construction, modification and removal of solar energy facilities that address public safety, minimize impacts on scenic, natural and historic resources without significantly increasing the cost or decreasing the efficiency of such systems.

**1. Roof-Mounted Solar Electric Systems:**

- a. Roof-mounted solar panels are permitted on buildings and structures in all zoning districts and may include integrated solar panels as the surface layer of the roof structure with no additional apparent change in relief or projection, separate flush mounted solar panels attached to the roof, associated electrical equipment such as meters, charge controllers, inverters, storage batteries, or similar ancillary equipment, or solar photovoltaic shingles;
- b. Separate, non-integrated flush-mounted solar panels shall be located on a rear- or side-facing roof, which do not front any street, unless such installation is proven to be ineffective or impractical. If installation is not practical on a rear- or side-facing roof, any other placement in all zoning districts shall be subject to review by the Planning Division. Wall or façade-mounted solar panels are not permitted;
- c. Any roof-mounted solar electric systems proposed on a historic building, or on a building or structure in an established historic district are subject to a Design Review by the Historic District Commission;
- d. Separate flush-mounted solar panels installed on a building or structure with a sloped roof surface shall not project vertically above the peak of the roof to which it is attached, or project vertically more than five (5) feet above a flat roof installation;
- e. No solar panels shall ever project higher than the permitted building height in any Zoning District;
- f. All solar electric systems proposed on the roof of a building shall be uniform in color and match or complement the color of the roof material. All frames (internal and external) shall match the color of the collector surface and all solar panels must have anti-reflective coatings to prevent glare; and

- g. All ancillary equipment installed in conjunction with roof-mounted solar electric systems is permitted on the side or rear building facades only. Storage batteries shall be installed in the interior of the building only.

2. Ground-Mounted Solar Electric Systems:

- a. Ground-mounted solar electric systems, including standard and pole mounted arrays, are not permitted.

4.89 UT-01: Alternative Energy

This Utility Standards section applies to the following districts:

R4 R5 R6 R7 R8 B1 B2 B2B B2C B3 B4 MX 01 02 P PP TZ2 TZ3

- A. Purpose and Intent: The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large.
- B. Wind Energy Facilities: The city shall allow as an accessory use, with review by the Planning Board and/or Historic District Commission, the construction and operation of wind energy facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources without significantly increasing the cost or decreasing the efficiency of such systems.
  - 1. Applicability: This section applies to all on-site wind energy facilities. Any physical modification to existing wind energy facilities that materially alters the type, increases the size, or increases the adverse impact on surrounding properties, shall require a review by the Planning Board and/or Historic District Commission.
  - 2. Planning Approval Required:
    - a. Wind energy facilities shall be limited to the average needs of the structure on the same parcel and shall be a permitted accessory use; subject to the required standards of this section provided they are incidental and secondary to a permitted principal use on the same parcel. The rated capacity of wind energy facilities must correlate with consumption.

- b. Wind energy facilities may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with applicable state and federal law.**
- c. Wind monitoring (anemometer) towers are permitted in all non-residential zoning districts subject to the issuance of a temporary use permit and a building permit. Permanent anemometer towers shall be subject to review and approval in conjunction with wind energy facility.**
- d. No wind energy facility shall be erected, constructed, installed or modified as provided in this section without first obtaining approval from the Planning Board and/or Historic District Commission. The construction of a wind energy facility shall be permitted in non-residential zoning districts as an accessory use subject to the approval of the Planning Board and/or Historic District Commission and provided that the use complies with all requirements set forth in this section.**

**The Planning Board and/or the Historic District Commission have the discretion to deny plans based on aesthetics of the wind energy system.**

**All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No approval of any board or commission shall be granted unless it is found that:**

- i. The specific site is an appropriate location for such use;**
  - ii. The use is not expected to adversely affect the area;**
  - iii. There is not expected to be any serious hazard to people, property or animals from the use;**
  - iv. No nuisance is expected to be created by the use; and**
  - v. Adequate and appropriate facilities will be provided for the proper operation of the use.**
- e. Approvals may also impose reasonable conditions, safeguards and limitations and require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind energy facility, should they occur.**

- f. **Multiple wind energy facilities may be permitted provided they meet all requirements specified in the Zoning Ordinance and their number and placement is appropriate for the site and is architecturally and visually compatible with the surrounding area.**

**3. General Site Standards:**

- a. **Height: No wind energy facility may exceed the maximum permitted or actual legal non-conforming building height by more than 20 ft. in any district**
- b. **Noise: Except during short-term events including utility outages and severe wind storms, wind energy facilities shall be designed, installed and operated so that noise generated by the system shall be the lesser of 60 dB as measured at any closest inhabited dwelling or 55 dB at the boundary of any adjacent property line.**
- c. **Location:**
  - i. **The center of a wind energy facility turbine tower shall be set back no less than 5 feet from all lot lines and rights-of-way or no less than one-half the diameter of the rotor and blades, whichever is greater.**
  - ii. **The swept area of wind energy facilities must be set back at least 3 feet from any lot line.**
  - iii. **Wind energy facilities may not be located between the front lot line and the front wall of the principal use.**
  - iv. **No portion of any wind energy facility's exposed moving parts shall extend to within 20 feet of the ground, or to within 10 feet of any overhead utility lines, or as determined by a utility company.**
- d. **Screening: Screening of ground mounted mechanical equipment is required in accordance with Article 4, Section 4.54 SC-01 Screening of the Zoning Ordinance, in order to mitigate aesthetic impacts upon the neighborhood.**
- e. **Shadow Flicker: Wind energy facilities shall be sited in a manner that minimizes shadowing or flicker on adjacent properties. The applicant has the burden of proving that this effect does not have significant adverse impacts on neighboring or adjacent uses through siting or mitigation.**
- f. **Access and Safety:**

- i. Wind energy facilities shall be designed and installed so as to prevent unauthorized access to electrical and mechanical components and shall be secured or locked at all times when service personnel are not present.
  - ii. Climbing apparatus shall be located in a place that is in accordance with MIOSHA standards as to prevent climbing.
- g. **Removal**: Any wind energy facility that has not been used in 180 days, or has otherwise been determined abandoned, shall be removed by the owner and/or operator of the facility. If a wind energy facility has not been removed within 30 days of a deadline specified by the City, the City of Birmingham may remove or secure the removal of the facility at the owner/operator's sole expense. All equipment associated with the facility shall be removed at the same time.

4. **Design Standards**:

- a. **Color and Finish**: The Planning Board shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged. If the site is located within a historic district, the Historic District Commission will have discretion over the turbine color.
- b. **Lighting**: Wind Energy Facilities may be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind energy facility, or related structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. If lighting is necessary a photometric plan is required.
- c. **Signage**: Signs on the wind energy facility shall comply with the requirements of the City of Birmingham's Sign Ordinance, and shall be limited to:
  - i. Wind energy facilities shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
  - ii. Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger; and
  - iii. Educational signs providing information about the facility and the benefits of renewable energy

- d. **Utility Connections:** All utility connections for and from the wind energy facility shall be located under- ground. Electrical transformers for utility interconnections may be above ground if required by utility provider but must be screened according to the Zoning Ordinance.
- e. **Related Structures:** All related structures to wind energy facilities shall be subject to regulations concerning bulk and height of accessory structures as well as all other development standards. All related structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and adjacent buildings and shall be contained within the turbine tower whenever technically feasible. Structures shall only be used for housing equipment for this particular site.

5. **Submittal Requirements:**

- a. Wind energy facilities are subject to Site Plan Review or Design Review by the Planning Board and/or the Historic District Commission.
- b. All wind energy facilities shall obtain a building permit, along with any other permits required by federal, state and local agencies, prior to erecting a system.
- c. **Proof of Liability Insurance:** The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures should there be a failure of the wind energy facility.
- d. **Site Control:** At the time of application for a Site Plan Review, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the pro- posed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean legal authority to prevent the use or construction of any structure for human habitation within the setback areas.
- e. **Site Plan:**
  - i. A site plan signed and sealed by a licensed engineer, of the subject property and all properties within 200 feet showing existing buildings and structures, utility lines and poles,

landscaping and all other items which may effect the placement of the wind energy facility.

- ii. An elevation drawing of the proposed location of the wind energy facility.
- iii. Color photographs and an elevation drawing with the wind energy facility and all necessary equipment superimposed in the proposed location.
- iv. Specification sheets for all equipment, identifying all parts of the system, including, but not limited to, the manufacturer and model, turbine, tower height and type, rotor diameter, foundation, any accessory equipment, and the manufacturers electrical plans and specifications.
- v. Any other information or evidence required by City Officials.

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 to become effective upon publication.

\_\_\_\_\_  
Pierre Boutros, Mayor

\_\_\_\_\_  
Alexandria Bingham, City Clerk

**Seconded by Mr. Koseck to recommend denial to the City Commission the Special Land Use Permit for 720 N. Old Woodward – Vinewood Bistro – because the proposal fails to satisfy the spirit and intent of the Zoning Ordinance as required in Section 7.26 and 7.27, specifically the outdoor enclosure issue of 3.04(c)(10)(h), and the ‘no permanent structure requirement’ of Section 3.04(c)(10)(i), as well as floodplain, dumpster, pedestrian interaction and storefront issues.**

**Mr. Koseck said the seating limits in the bistro ordinance were a key part of its appeal and efficacy. He noted that the area in the rear of 720 N. Old Woodward would be difficult to police. He also noted that even if the Planning Board did endorse the proposed plans the applicant would still have to appear before the Board of Zoning Appeals for a number of variance requests.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**Motion by Mr. Share**

**Seconded by Mr. Koseck to recommend denial to the City Commission the final site plan and design review for 720 N. Old Woodward – Vinewood Bistro – because the proposal fails to satisfy the spirit and intent of the Zoning Ordinance as required in Section 7.26 and 7.27, specifically the outdoor enclosure issue of 3.04(c)(10)(h), and the ‘no permanent structure requirement’ of Section 3.04(c)(10)(i), as well as floodplain, dumpster, pedestrian interaction and storefront issues.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**04-052-21**

## **F. Study Session Items**

### **1. Solar Panel Regulations**

CP Dupuis summarized the item.

Mr. Jeffares recommended the City enlist an expert in solar panels to review the ordinance proposal in order to avoid potentially having to re-do or update the ordinance earlier than necessary. Mr. Jeffares also recommended that the ordinance language specifically preclude wall- or facade-mounted solar panels, stating that it is aesthetically displeasing and could cause issues with neighboring properties.

Chair Clein concurred with Mr. Jeffares' recommendation regarding wall- or facade-mounted solar panels.

Mr. Boyle asked if there was any near-future technology the ordinance should address.

Chair Clein said that strips of solar panels being used to line bicycle paths was being tried in Europe, but that wide-spread implementation would not be in the near future.

In reply to Mr. Share, CP Dupuis said he did not recommend screening for ancillary equipment because it would increase the difficulty of installation and maintenance. CP Dupuis noted this ordinance review was being conducted with an aim towards reducing the impediments to using solar panels in the City. He added that users of solar panels also needed quick access to disconnect features.

Mr. Share recommended that the ordinance states that users of solar panels are not exempt from screening otherwise required by the Zoning Ordinance.

CP Dupuis said he could update the recommended ordinance language with the Board's comments and have it ready for a public hearing on May 12, 2021.

**Motion by Mr. Boyle**

**Seconded by Mr. Jeffares to set a public hearing on solar panel regulations ordinance language for the regular Planning Board meeting of May 12, 2021.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

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

Nays: None

**2. Glazing Standards**

CP Dupuis summarized the item.

Mr. Share said he had recent occasion to purchase some low-iron glass, and that it added about 15% to the cost. He stated that he found the difference between low-iron and regular glass to be **visually** immaterial. He suggested that the low-iron requirement be removed from the recommended language, saying he thought it inappropriate to burden owners and developers with the extra cost.

Mr. Koseck and Ms. Whipple-Boyce, two other members of the Board familiar with glazing standards from their professions, did not dispute Mr. Share's recommendation when asked.

**Motion by Mr. Share**

**Mr. Share said he was in favor of moving the topic to a public hearing and not in favor of mandating low iron glass.**

**Motion carried, 6-1.**

ROLL CALL VOTE

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

Nays: Share

Mr. Boyle echoed Ms. Whipple-Boyce's previous statement that the Board should have comparative costs for low iron and clear glass to review. He said the Board should be aware how a low iron requirement might be layering on costs to development in the City.

Chairman Clein thanked Mr. Hatfield for sharing his expertise with the Board.

## **2. Solar Panel Review Process**

City Planner Dupuis reviewed the item.

Ms. Whipple-Boyce said she recently encountered a large solar battery in some work she was doing in another community, and cautioned that the Board might not want to allow any and all ancillary equipment for solar panels to be outside the home given the potential range of sizes.

Mr. Williams said he was fine with solar panels but might be less fine with ancillary equipment on the side of a home given that it might be more prominent in a neighbor's view.

City Planner Dupuis asked if Mr. Williams would prefer the ancillary equipment to be mounted only to the rear of the home, or to possibly be screened in some way.

Mr. Williams said he was not sure what the best approach would be. He said he thought it would depend on the house, the location of the neighboring properties, and the type of equipment.

Planning Director Ecker said that moving the equipment to the rear of a home would have the benefit of being further from a neighbor's yard because of the greater required setback. She noted that, in contrast, equipment on the side of a home might be only five feet from the property line.

Ms. Whipple-Boyce agreed that placement would depend on the size of the equipment. She said that a small electric meter or connection into the house to the battery need not be limited to the rear or interior of a home, whereas larger equipment should be. She said that the Board could likely specify appropriate locations with more information on the most commonly used kinds of equipment.

City Planner Dupuis said he could find pictures of the City's most recent solar panel approvals to provide the Board with a better sense of the size of the ancillary equipment.

Mr. Jeffares noted how helpful it was to have Mr. Hatfield consulting the Board during their glazing discussion, and said it would be equally helpful to find someone as well-versed in solar power technologies. He observed that the Board was doing some guesswork in the current discussion and thought it would be better to get more specific answers. He said that consulting with someone knowledgeable in the field would have the additional benefit of informing the Board on how the technology is trending, so they could factor those considerations into the ordinance language as well.

Mr. Williams agreed with Mr. Jeffares. He said that the proposed language regarding ancillary equipment was likely too vague and should be clarified before being advanced to a public hearing.

Ms. Whipple-Boyce said she could email City Planner Dupuis some contact information for someone who might know more about solar power technology.

**07-90-20**

**F. Miscellaneous Business and Communications:**

**a. Communications**

**b. Administrative Approval Correspondence**

City Planner Dupuis explained that the owners of 266 Elm Street wanted to remove the patio in the rear of their building, to replace it with exposed aggregate, to add eight planters, and to replace the rear fence. He noted that the exposed aggregate would go all the way to the rear fence which would result in the removal of some amount of landscaped area.

Consensus of the Board was to grant administrative approval for the plans.

**c. Draft Agenda for the next Regular Planning Board Meeting (August 12, 2020)**

- **Master Plan Draft Review**

**d. Other Business**

**07-91-20**

**H. Planning Division Action Items**

**a. Staff Report on Previous Requests**

**b. Additional Items from tonight's meeting**

**07-92-20**

**I. Adjournment**

## 2. Master Plan Review Process Update

Planning Director Ecker presented the item. She explained that the City Commission approved the proposal as submitted with the exception that the schedule would start in February 2020, and not January 2020. She stated that in December 2019 the City Commission approved the expenditure of up to \$28,600 for additional public engagement activities. That figure included the potential for two different round-table discussions, a drop-in clinic, and two additional short surveys. Should the Board want to pursue any of those options, they would make a recommendation to the City Manager who would disburse the requisite funds should he approve of the recommendation.

Planning Director Ecker said the scheduled Planning Board master plan discussions would be publicized on the City's website, the Master Plan website, and all City social media channels. Sarah Traxler, one of the local members of the Master Plan team, would likely be attending each meeting and giving a presentation of the evening's master planning topic. Those presentations would also be included in the Planning Board's agenda packets the Friday before their Wednesday meetings in order to afford both the public and the Board members time to review the topic. Robert Gibbs, another local member of the Master Plan team, would likely also be present at the meetings.

Planning Director Ecker said that between sessions she would collect any master plan comments submitted to the Planning Department and include them in the agenda packet for the next scheduled master plan meeting so that the Board would have an opportunity to review those as well.

## 3. Solar Panel Review Process

City Planner Dupuis presented the item.

Mr. Emerine noted that on page 620 of the Planning Board's agenda packet, 4.88 B said 'wind' when it should read 'solar'.

City Planner Dupuis agreed and said he would make the change. He further explained:

- Ancillary solar panel equipment is very small and would be mounted to the wall of whatever building is using it. He said it would be visually unobtrusive and that he had not come across any information on undue noise production by the equipment. He said he would bring the spec sheets for the ancillary equipment to a public hearing once scheduled which would provide both the Board and the public with more information on the items.
- He would clarify the suggested language to explain that the 40 square foot limit on a solar panel system counts all connected panels as part of one system. Since the average solar panel is three-and-a-half feet by five feet, he recommended the 40 square foot limit in order to allow two average-sized solar panels. City Planner Dupuis said he provided the 40 square feet to begin the conversation, and also proposed the number because he was unsure whether it would be appropriate in a residential setting to have more than 40 square feet of solar panels. He noted that some other cities restrict solar panels to occupying no more than a certain percentage of a given lot.

- Ground mounted solar panels could enable residents who do not want to mount panels on their roof to still have access to some solar power. Ground mounted solar panels would also allow businesses to use solar-powered trash compactors.

Ms. Whipple-Boyce said that she did not yet know enough about ground-mounted solar panels, but that if the City proceeded toward allowing them she would prefer that their allowable yard coverage be calculated by percentage and not by a set amount. She also told City Planner Dupuis that there had been a conversation regarding wind energy facilities about ten years hence, and that if he could find the minutes from that conversation it might help provide some useful information on the topic.

Mr. Koseck said the Board might want to consider not allowing solar panels at grade because it could encourage residents to do away with any greenery that could get in the way of the panels. He also said that 40 square feet of solar panels on the ground might not be enough to generate a worthwhile amount of energy. Mr. Koseck added that solar panels are impervious which would also raise ordinance issues in terms of ground cover. Since most people would likely rather not install solar panels at grade anyways, Mr. Koseck said he would just as soon prohibit it to avoid these issues since the potential environmental gain would likely not be significant in those cases.

Mr. Jeffares echoed Mr. Koseck's concerns about ground mounted solar panels and said he would prefer to continue studying that possibility and whether it would be worthwhile.

Ms. Ramin noted that on page 625, in section G, the phrase "If a wind energy facility has not been removed within 30 days a deadline specified by the City" would need to be clarified.

Mr. Share noted that on page 621, Item F, the word should be 'complemented', not 'complimented'. He agreed with Mr. Koseck and Mr. Jeffares that ground mounted solar panels were likely not necessary to pursue at this time.

Chairman Clein expressed agreement with Mr. Koseck, Mr. Jeffares, and Mr. Share regarding ground mounted solar panels.

In reply to Chairman Clein, City Planner Dupuis said he would do more research on the benefits and drawbacks of the anti-reflective coating some other cities' ordinances require for solar panels.

#### **4. Glazing Standards**

City Planner Dupuis presented the item.

Mr. Koseck said he had a list of two or three people he would be reaching out to soon who might be able to contribute meaningfully to the glazing standards conversation. He said that once he had done that he would loop City Planner Dupuis in as appropriate.

Chairman Clein explained that in February 2020 and April 2020 there will only be one Planning Board meeting per each month and that both of those meetings are dedicated to master plan discussion. He suggested that Board members look at their calendars to see if a special meeting could be scheduled to wrap up some of these other study session topics. He added that even if

**BIRMINGHAM CITY COMMISSION /  
PLANNING BOARD JOINT WORKSHOP SESSION  
JUNE 17, 2019  
DPS FACILITY, 851 SOUTH ETON  
7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Patty Bordman called the meeting to order at 7:30 PM.

**II. ROLL CALL**

Commission

ROLL CALL:

Present:

Mayor Bordman  
Commissioner DeWeese  
Commissioner Harris  
Commissioner Hoff  
Commissioner Nickita  
Commissioner Sherman

Absent:

Mayor Pro Tem Boutros

Planning Board

ROLL CALL:

Present:

Chairman Scott Clein  
Robin Boyle  
Stuart Jeffares  
Nasseem Ramin, alternate  
Daniel Share  
Janelle Whipple-Boyce  
J. Bryan Williams

Absent:

Jason Emerine, alternate  
Bert Koseck  
Sophia Trimble, student representative  
John Utley, student representative

Administration: City Manager Valentine, Deputy City Clerk Arft, Planning Director Ecker, Building Official Johnson, City Planner Cowan

**III. ITEMS FOR DISCUSSION**

City Manager Valentine said the objective tonight was to provide discussion items in order to clarify how the City should move forward on the following issues.

A. Current Issues:

**1. Discussion on solar panel regulations**

Planning Director Ecker reviewed the item. She emphasized that solar panel can now be integrated, so that aesthetics are not as big an issue. In reply to Commissioner Hoff, Planning Director Ecker stated that in the past six months there have been eight requests for solar panels. Residents have been paying a fee of \$400 for design review plus a sign bond of \$100 if the solar

panels are going to be installed on the front of their homes, and have been paying \$100 for an administrative review if the solar panels are to be installed on the back of their homes.

Planning Director Ecker confirmed for Commissioner DeWeese that comments from the public have been positive.

Commissioner Nickita stated his only concern would be obtrusive-looking solar panels, which he said would be caught by staff during administrative review. He suggested that those examples could be brought to the Planning Board for review, while the more subtle installations could be administratively approved.

Mr. Jeffares said solar panels are part of the future of ecologically-sustainable building, and that Birmingham should be doing whatever it can within reason to encourage their use. He also mentioned that currently the shingle model of solar panels are twice as expensive as the panel models and are one-third less effective. He said he anticipates the shingle model of solar panels will become more efficient over time.

Seeing no public comment, Mayor Bordman acknowledged consensus that the Planning Board should re-study the issue.

Chairman Clein asked whether the Planning Board should be studying the application process for solar panels or the design standards.

City Manager Valentine said the Commission would be formally amending the Planning Board action list in the near future to provide specific direction on any recommended study items from this meeting.

Mayor Bordman expressed appreciation for Chairman Clein's clarifying question, and said she would personally like to see both topics studied though the final study direction would come from the Commission as a whole.

## **2. Discussion on enclosing balconies, patios and terraces**

Planning Director Ecker presented the item. She clarified for Commissioner Hoff that some of these situations are being enclosed as three-season rooms and some are not.

Commissioner Hoff observed that the changes being made to these buildings were reasonably significant as they resulted in a change of the building footprint.

In reply to Commissioner Harris, Planning Director Ecker stated the President of the Crosswinds association has called the Planning Department multiple times to express his displeasure with these enclosures. She noted that despite the President's displeasure the same association did vote to allow these enclosures on their building. She stated this has been the only contact the City has received from the public on the matter.

Commissioner Nickita said while these examples happen to be high-quality, if the City allows enclosures in general the results could also be of lower quality. He said the City must create appropriate design standards for these enclosures, must consider the footprint expansion these

**any proposed signage; 7) Applicant comply with the requests of all City Departments; 8) Applicant obtain approval of a lease agreement by the City Commission for all projections and /or encroachments on City property; 9) Applicant revise plan sheets as necessary to ensure all sheets are consistent and show the required property lines and clearly note all projections / encroachments across property lines; and 10) At Final Site Plan Review, the applicant must provide the Special Event Operations Plan for the said hotel.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**05-077-19**

**F. Request for Design Review**

**1. 1986 Northlawn – Private Residence – Request for design review and approval of the installation of eight solar panels on the front (street) facing portion of the roof of a private single family residence.**

City Planner Dupuis presented the item.

Mr. Williams asked why the ordinance did not allow solar panels on the front of homes without Planning Board approval.

Planning Director Ecker said she was unsure as to the exact reason, but it is likely aesthetics.

Mr. Jeffares said that traditional solar panels can be aesthetically obtrusive, and noted that several manufacturers have recently started producing solar panels which resemble roofing shingles. While he stated that he was unsure if there were other reasons that the smaller solar panels could not be used, for instance cost or output, he said they are generally nicer to look at than traditional solar panels.

Ms. Whipple-Boyce reminded the PB that they granted a similar front-of-roof solar panel installation for a home on Lincoln a few years prior, and that it yielded a fine result.

Mr. Boyle asked how much the City charged for this review.

City Planner Dupuis said it was \$500 total.

Mr. Boyle said granting this resident request would be the easiest thing in the world to do to encourage ecological sustainability. He suggested that residents adding solar panels to their houses should incur no design review fee and a simple approval process.

Planning Director Ecker stated that the Planning Department could allow solar panel installations through administrative approval for \$100 if the Planning Board no longer wants to review the majority of such requests.

Chairman Clein said the Planning Board could ask the City Manager for permission to further consider the benefits of Mr. Boyle's proposal.

Ms. Whipple-Boyce assented to that idea.

**Motion by Mr. Williams**

**Seconded by Ms. Whipple-Boyce to move to approve the design plan for 1986 Northlawn.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**05-078-19**

**G. Miscellaneous Business and Communications:**

**a. Communications**

Planning Director Ecker stated that the City Commission stated a public hearing date in June 2019 for Rojo/Sidecar, trash enclosures, screening, and railings.

The Bates Street development is on the meeting agenda for the second meeting in June 2019. City Manager Valentine will provide the Board with more specific direction on its obligations.

Mr. Williams reiterated his request for an opinion from City Attorney Currier on the Board's obligations vis-a-vis the Bates Street development as well.

Pernoi will be back to the PB on June 12, 2019 for bistro consideration. Brooklyn Pizza has not yet submitted.

The Board decided to continue discussion of aging in place, with staff providing information on what other urban communities have done in order to inform the conversation.

**b. Administrative Approval Correspondence**

City Planner Dupuis explained that the Old Woodward reconstruction removed the outdoor dining space for Mad Hatter Bistro, which is required by ordinance to retain its bistro license. Randy Dickow of Mad Hatter Bistro has negotiated with the next door property owner to use 50% of his frontage, which is permitted by ordinance as long as the next door property is vacant. The remaining issue is that the proposed location of the outdoor dining would cause it to abut a City-



**DATE:** June 9<sup>th</sup>, 2021

**TO:** Jana Ecker, Planning Director

**FROM:** Nicholas Dupuis, City Planner

**SUBJECT:** Window Glazing Standards – Public Hearing

On November 13<sup>th</sup>, 2019, the Planning Board discussed the potential for ordinance amendments encompassing the Window Standards outlined in Article 3, Section 3.04(E) and Article 4, Section 4.90 of the Zoning Ordinance. The Planning Board directed City Staff to (1) research any possible differences in the Visual Light Transmittance (VLT) figures between different manufacturers and (2), research other cities to determine what VLT figures are used.

Upon contacting representatives at Guardian Glass, Midwest Glass Fabricators, Michigan Glass Coating, and Service Glass, it was apparent that there is no noticeable difference in glass between manufacturers. That is, all else being equal, a pane of glass with a low-e coating at 68% Visual Light Transmittance from manufacturer X will look the same as the same pane of glass from manufacturer Y. The results may differ based on what type of glass is used in the construction, whether the glass is single pane, double pane or laminated, whether a film is used or not, etc.

Additionally, the research done into the transparency requirements in other communities was confirmed and/or updated. The table below summarizes the confirmed VLT figure present in other Michigan communities, as well as some new figures:

Grand Rapids, MI	70% VLT minimum
Ferndale, MI	60% VLT minimum, 20% Reflectance
Muskegon, MI	70% VLT minimum
West Bloomfield, MI	75% VLT minimum
Rochester Hills, MI	65% VLT minimum
Pontiac, MI	Non reflective, non-tinted
Detroit, MI	70% VLT minimum
Kalamazoo, MI	Clear, non reflective

On January 8<sup>th</sup>, 2020, the Planning Board discussed the glazing ordinance amendments again, and expressed interest in hearing from more professionals such as a mechanical engineer, a glass vendor or supplier, or a glass contractor or installer. At that time, the Planning Division was unable to find and secure any additional professionals or glass experts to add any new information to the conversation other than the professionals that were already involved up to that point.

On July 22<sup>nd</sup>, 2020, the Planning Board reviewed the proposed ordinance language alongside a glass professional from Guardian Glass, who offered expertise and clarity on the proposed amendments and what is available in the glass world, and what the effect is on energy codes.

The Planning Board entertained ideas for including low iron glass to the definition and discussing other items such as shelving and merchandise in windows. Ultimately, the Planning Board directed City Staff to make a few minor changes including eliminating the bronze requirement from Section 3.04 (E)(4), and adding low iron glass and no tint to the definition of clear glazing for final consideration before the public hearing.

On April 14<sup>th</sup>, 2021, the Planning Board motioned to set a public hearing on May 12<sup>th</sup>, 2021 to amend the glazing standards, which was rescheduled to June 9<sup>th</sup>, 2021 due to Eid al-Fitr.

The following ordinance amendments have been updated to reflect the most recent research.

**ORDINANCE NO. \_\_\_\_\_**

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 3, SECTION 3.04(E), ARCHITECTURAL STANDARDS, TO AMEND ARTICLE 4, SECTION 4.90(A), WINDOW STANDARDS, AND TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS TO REDFINE CLEAR GLAZING, AND TO ELIMINATE LIGHTLY TINTED GLAZING

**Article 3, Section 3.04**

- E. Architectural standards. All buildings shall be subject to the following physical requirements:
1. ...
  2. ...
  3. ...
  4. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground. The wood or metal armature (structural elements to support canopies or signage) of such storefronts shall be painted, ~~bronze~~, or powder-coated.
  5. Storefronts shall have mullion systems, with doorways and signage integrally designed. Mullion systems shall be painted, powder-coated, or stained.
  6. The glazed area of a facade above the first floor shall not exceed 35% of the total area, with each facade being calculated independently.
  7. Clear glazing is required on the first floor. ~~Lightly tinted glazing is permitted on upper floors only~~ **storefront facade**. Windows shall not be blocked with opaque materials or the back of shelving units or signs.

**Article 4, Section 4.90 – Window Standards (WN)**

- A. Storefront Windows: Ground floor facades shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:
1. No less than 70% of a storefront/ground floor façade between 1 and 8 feet above grade shall be clear glazing.
  2. Only Clear glazing is permitted on storefront facades ~~at the first floor. Lightly tinted glazing above the first floor may be permitted~~. Mirrored glass is prohibited.
  3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
  4. Windows shall not be blocked with opaque materials or the back of shelving units or signs.
  5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

## **Article 9, Section 9.02 – Definitions**

**Clear Glazing:** Glass and other transparent elements of building facades with **low iron content, no tint, a minimum visible light transmittance of ~~80%~~ 66% and a reflectivity of 15% or less.**

~~Lightly Tinted Glazing:~~ Glass and other transparent elements of building facades with a minimum visible light transmittance of ~~70%.~~

Chair Clein concurred with Mr. Jeffares' recommendation regarding wall- or facade-mounted solar panels.

Mr. Boyle asked if there was any near-future technology the ordinance should address.

Chair Clein said that strips of solar panels being used to line bicycle paths was being tried in Europe, but that wide-spread implementation would not be in the near future.

In reply to Mr. Share, CP Dupuis said he did not recommend screening for ancillary equipment because it would increase the difficulty of installation and maintenance. CP Dupuis noted this ordinance review was being conducted with an aim towards reducing the impediments to using solar panels in the City. He added that users of solar panels also needed quick access to disconnect features.

Mr. Share recommended that the ordinance states that users of solar panels are not exempt from screening otherwise required by the Zoning Ordinance.

CP Dupuis said he could update the recommended ordinance language with the Board's comments and have it ready for a public hearing on May 12, 2021.

**Motion by Mr. Boyle  
Seconded by Mr. Jeffares to set a public hearing on solar panel regulations ordinance language for the regular Planning Board meeting of May 12, 2021.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

## **2. Glazing Standards**

CP Dupuis summarized the item.

Mr. Share said he had recent occasion to purchase some low-iron glass, and that it added about 15% to the cost. He stated that he found the difference between low-iron and regular glass to be **visually** immaterial. He suggested that the low-iron requirement be removed from the recommended language, saying he thought it inappropriate to burden owners and developers with the extra cost.

Mr. Koseck and Ms. Whipple-Boyce, two other members of the Board familiar with glazing standards from their professions, did not dispute Mr. Share's recommendation when asked.

**Motion by Mr. Share**

---

**Seconded by Ms. Whipple-Boyce to set a public hearing on Article 9, Section 9.02 Definition of Clear Glazing as presented without the reference to low-iron content for the regular Planning Board meeting of May 12, 2021.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**04-053-21**

**G. Miscellaneous Business and Communications:  
a. Communications**

PD Ecker reminded the Board that the Commission would be holding a special meeting regarding the 2040 Master Plan on April 19, 2021 and that the Board had been asked to attend.

**b. Administrative Approval Correspondence**

CP Dupuis explained that the owner of EM Bistro wanted to change their outdoor dining chairs to sculptural, white ones constructed of polypropylene. CP Dupuis noted that while polypropylene would not usually be considered a high-enough quality material for outdoor bistro chairs, these chairs differed significantly from standard plastic seating.

Mr. Koseck said the ordinance's main concern regarding the materials for outdoor bistro seating is longevity. He said that these chairs would withstand the elements and would not likely have longevity issues.

The Board, with the exception of Chair Clein, endorsed allowing an administrative approval for the request. Chair Clein's dissent arose from a dislike of the chairs and concern regarding their recyclability.

CP Dupuis said he would proceed with an administrative approval of the request.

CP Dupuis then asked the Board how the matter of outdoor dining decks should be addressed once the Covid-19 guidelines for outdoor dining decks in the City expire.

Mr. Boyle said the City should decide on a more comprehensive approach to how outdoor dining should interact with the streetscape in Birmingham over the next five to ten years before specific design guidelines for outdoor dining should be created.

Mr. Jeffares noted that the Board would need to come up with an answer quickly in order to have recommendations ready for Fall 2021.

There were no changes to the agenda.

**07-89-20**

## **E. Study Session Items**

### **1. Glazing Requirements**

City Planner Dupuis reviewed the item and Kreg Hatfield, from Guardian Glass, was present to answer questions.

Mr. Hatfield explained that:

- All manufacturers calculate VLT and reflectivity percentages in the same way.
- Most people would be unlikely to notice the difference between 66% and 80% VLT.
- When glass gets into the range of 40-50% VLT it tends to begin to look less clear. Tinting would reduce the VLT even further.
- The glass make-up at the Brookside development and the glass make-up at the Daxton Hotel have identical coatings on the glass. The difference is that the Brookside development used a basic clear glass while the Daxton used a low iron glass. The Brookside glass has a VLT of 68% and the Daxton has a VLT of 70% because removing some iron makes glass a bit more clear.
- Glass can be rated in terms of reflectivity both from the inside-out and from the outside-in. It is important to keep those percentages about the same.
- For basic, first floor applications the ordinance should include language about prohibiting tinted glass. There would be no way for property owners to meet the proposed ordinance requirements if they have both tinted glass and low-e coating.
- There would likely be no need to mention low iron glass because it would meet ordinance requirements should a property owner choose to use it. Low iron glass tends to cost significantly more than regular clear glass. It also tends to be a bit more efficient in terms of retaining the heating and cooling of the building's interior.
- Clear glass tends to have a bit of a green hue versus low iron glass. For protection three coats of silver were added to the library windows' glass, and those layers of silver also add a bit of a greenish hue. If the library had used low iron glass with the same layers of silver the green tint would still be present but not as substantially.
- Low iron glass is widely enough available that no property owners would have a difficult time sourcing it should it be required by ordinance. Cost would be the biggest reason not to require low iron glass via ordinance.
- He has not heard of any municipality requiring low iron glass in their ordinances.
- Any glass sample from an architect submitted to the City should specify whether it is low iron glass.
- The Brookside development is the best example of what kind of glass would be permissible under the proposed ordinance language. Brookside's glass is regular clear glass and not low iron.

Mr. Share said the Board should probably not require low iron glass, especially in a time when the City is trying to help retailers weather the financial impacts of the Covid-19 pandemic.

In reply to Mr. Koseck, Planning Director Ecker stated that the ordinance does not specify how many feet from a window shelving must be placed. She said there could be some value in adding that to the ordinance.

City Planner Dupuis said it might also be worthwhile to consider a vertical height limit for shelving if a horizontal one is added.

Mr. Koseck suggested that some of the language could be clarified in Article 3, Section 3.04 of the ordinance. He said 'bronze' should probably be struck from that section.

Ms. Whipple-Boyce concurred with Mr. Koseck regarding removing the word 'bronze'. She said she agreed that it might be useful to have a horizontal distance requirement for how far shelving must be from a window. She said a typical aisle's width might be the appropriate distance. She said it would also be helpful to know the cost difference between low iron and clear glass.

City Planner Dupuis asked how the Board might want a horizontal distance requirement to deal with retail items displayed in a window.

Ms. Whipple-Boyce said that if retailers displayed their merchandise attractively in their windows she would be supportive of that.

Mr. Williams said the Board should come up with language regarding displaying merchandise in windows and shelving before it goes to a public hearing.

In reply to Chairman Clein, Planning Director Ecker said that the ordinance's current restrictions against shelving in the windows work well and are generally enforceable. She said that any examples that seem to be in egregious violation of that standard tend to have existed before the ordinance went into effect.

Mr. Jeffares recommended the Board conclude its discussion about glazing without trying to presently integrate new topics. He noted the Board had been studying glazing for months and had worked hard to prepare for the review, and thought the other topics being raised deserved a similar amount of thoroughness at a future date.

Mr. Koseck said he would be fine with Mr. Jeffares' recommendation that questions of shelving and merchandising in windows be discussed further at a later date.

The Board asked Planning Director Ecker to add 'no tint' and 'low iron glass' to the definition of clear glazing, with the understanding that 'low iron' could possibly be removed after discussion at the public hearing.

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Koseck to set a public hearing on August 26, 2020 to consider Zoning Ordinance amendments to Article 3, Section 3.04(E), Article 4, Section 4.90(A) and Article 9, Section 9.02 to change the Clear Glazing standards and definition to require low iron glass, no tint, to relax the Visual Light Transmittance requirements and to add reflectivity requirements.**

**Mr. Share said he was in favor of moving the topic to a public hearing and not in favor of mandating low iron glass.**

**Motion carried, 6-1.**

ROLL CALL VOTE

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

Nays: Share

Mr. Boyle echoed Ms. Whipple-Boyce's previous statement that the Board should have comparative costs for low iron and clear glass to review. He said the Board should be aware how a low iron requirement might be layering on costs to development in the City.

Chairman Clein thanked Mr. Hatfield for sharing his expertise with the Board.

## **2. Solar Panel Review Process**

City Planner Dupuis reviewed the item.

Ms. Whipple-Boyce said she recently encountered a large solar battery in some work she was doing in another community, and cautioned that the Board might not want to allow any and all ancillary equipment for solar panels to be outside the home given the potential range of sizes.

Mr. Williams said he was fine with solar panels but might be less fine with ancillary equipment on the side of a home given that it might be more prominent in a neighbor's view.

City Planner Dupuis asked if Mr. Williams would prefer the ancillary equipment to be mounted only to the rear of the home, or to possibly be screened in some way.

Mr. Williams said he was not sure what the best approach would be. He said he thought it would depend on the house, the location of the neighboring properties, and the type of equipment.

Planning Director Ecker said that moving the equipment to the rear of a home would have the benefit of being further from a neighbor's yard because of the greater required setback. She noted that, in contrast, equipment on the side of a home might be only five feet from the property line.

Ms. Whipple-Boyce agreed that placement would depend on the size of the equipment. She said that a small electric meter or connection into the house to the battery need not be limited to the rear or interior of a home, whereas larger equipment should be. She said that the Board could likely specify appropriate locations with more information on the most commonly used kinds of equipment.

City Planner Dupuis said he could find pictures of the City's most recent solar panel approvals to provide the Board with a better sense of the size of the ancillary equipment.

- Ground mounted solar panels could enable residents who do not want to mount panels on their roof to still have access to some solar power. Ground mounted solar panels would also allow businesses to use solar-powered trash compactors.

Ms. Whipple-Boyce said that she did not yet know enough about ground-mounted solar panels, but that if the City proceeded toward allowing them she would prefer that their allowable yard coverage be calculated by percentage and not by a set amount. She also told City Planner Dupuis that there had been a conversation regarding wind energy facilities about ten years hence, and that if he could find the minutes from that conversation it might help provide some useful information on the topic.

Mr. Koseck said the Board might want to consider not allowing solar panels at grade because it could encourage residents to do away with any greenery that could get in the way of the panels. He also said that 40 square feet of solar panels on the ground might not be enough to generate a worthwhile amount of energy. Mr. Koseck added that solar panels are impervious which would also raise ordinance issues in terms of ground cover. Since most people would likely rather not install solar panels at grade anyways, Mr. Koseck said he would just as soon prohibit it to avoid these issues since the potential environmental gain would likely not be significant in those cases.

Mr. Jeffares echoed Mr. Koseck's concerns about ground mounted solar panels and said he would prefer to continue studying that possibility and whether it would be worthwhile.

Ms. Ramin noted that on page 625, in section G, the phrase "If a wind energy facility has not been removed within 30 days a deadline specified by the City" would need to be clarified.

Mr. Share noted that on page 621, Item F, the word should be 'complemented', not 'complimented'. He agreed with Mr. Koseck and Mr. Jeffares that ground mounted solar panels were likely not necessary to pursue at this time.

Chairman Clein expressed agreement with Mr. Koseck, Mr. Jeffares, and Mr. Share regarding ground mounted solar panels.

In reply to Chairman Clein, City Planner Dupuis said he would do more research on the benefits and drawbacks of the anti-reflective coating some other cities' ordinances require for solar panels.

#### **4. Glazing Standards**

City Planner Dupuis presented the item.

Mr. Koseck said he had a list of two or three people he would be reaching out to soon who might be able to contribute meaningfully to the glazing standards conversation. He said that once he had done that he would loop City Planner Dupuis in as appropriate.

Chairman Clein explained that in February 2020 and April 2020 there will only be one Planning Board meeting per each month and that both of those meetings are dedicated to master plan discussion. He suggested that Board members look at their calendars to see if a special meeting could be scheduled to wrap up some of these other study session topics. He added that even if

the Board moved forward with a resolution on this item during the present meeting, due to noticing requirements the public hearing would not occur until the second meeting in March 2020. Chairman Clein recommended the Board take the time to do adequate research, as a result, before moving further forward on this.

Mr. Emerine suggested it might be worthwhile to speak with glass contractors in addition to glass vendors in order to get more insight.

Planning Director Ecker said she would recommend reaching out to a mechanical engineer, a glass vendor or supplier, and a glass contractor or installer.

City Planner Dupuis confirmed he would reach out to people who work with glass regularly in architectural settings and would return to the Board with further information.

**01-06-20**

**G. Miscellaneous Business and Communications:**

**a. Communications**

**b. Administrative Approval Correspondence**

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

- Whistle Stop Design Review
- 35001 Woodward - Amended CIS and Amended Preliminary Site Plan
- Fred Lavery Porsche SLUP
- Two small solar panel items

**d. Other Business – Discuss amending Rules of Procedure for January 22, 2020 meeting**

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Share to amend the Rules of Procedure for the Planning Board's January 22, 2020 meeting to allow for the review of the above items as described by Planning Director Ecker.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Abstain: Emerine, Ramin

Planning Director Ecker told Mr. Arpin that the D5 study is available to the public in previous Planning Board agendas posted on the City's website.

In reply to a request by Mr. Arpin, Chairman Clein asked that the City Manager and City Commission consider whether it might be useful to provide the D5 study on thebirminghamplan.com website as well.

Mr. Arpin shared his gratitude for the Board's thoroughness when discussing a CIS, and expressed concern that, in his opinion, the Board was not proceeding as thoroughly when discussing potential zoning changes that would impact a three or four block area of the City.

Chairman Clein thanked Mr. Arpin for his comments.

Patrick Howe, attorney representing the Birmingham Place Condo Association, spoke. He reviewed the minutes from the February 13, 2017 City Commission meeting minutes in order to highlight the original intent of the D5 ordinance. Mr. Howe argued that the only piece of property that was both abutting and adjacent was the south strip next to the 555 Building. He noted that the entire transcript of the D5 portion of the February 13, 2017 City Commission meeting was 18 minutes long, and echoed Mr. Arpin's assertion that more discussion is merited before an amendment to the D5 ordinance is considered.

**Motion by Mr. Share**

**Seconded by Mr. Williams to set a public hearing for December 11, 2019 for the two proposed ordinance amendments to Article 3, section 3.04 (A) and Article 9, Definitions, Section 9.02 as presented on pages 132 and 133 of the Board's November 13, 2019 agenda.**

Duraid Markus, owner of 469-479 S. Old Woodward, asked whether an adjacent building's height would be calculated from the height of the closest point of a building, which could be five stories, for example, or from the highest part of a building as a whole, which could extend to nine stories on the far side of a building.

Planning Director Ecker confirmed for Mr. Markus and for Michele Prentiss that a building's height is calculated based off of a building's overall height, and not just the height of the closest part of the building.

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**2. Glazing Standards**

City Planner Dupuis presented the item.

Ms. Whipple-Boyce confirmed based on her research that the 80% VLT glass required in the City's ordinance causes much more heat loss and gain depending on the seasons, increases the cost of heating and cooling the building, could change the capacity of the HVAC to make up for that gain and loss, and that those facts will remain true as long as 80% VLT is required. She said that people in the industry she spoke with advised that if the VLT requirement is lowered to 68% those issues could be mitigated. She said determining how to accommodate low-e glass will have environmental benefits in addition to the benefits it would bring developers and builders.

Mr. Share and Ms. Whipple-Boyce both wondered about possible differences between one manufacturer's 68% VLT glass and another's.

City Planner Dupuis and Planning Director Ecker said they would return with more information on the topic for the Board's next meeting.

In reply to Mr. Boyle, City Planner Dupuis explained glass professionals advised staff that only the VLT and the reflectivity affect the transparency of glass, which is why the recommended wording only mentions those two criteria.

In reply to Chairman Clein, City Planner Dupuis said he could do further research on what other Michigan cities require for VLT since the table with VLT figures included in this item was produced sometime in 2017.

In reply to Chairman Clein, Planning Director Ecker said she would try to find someone who could provide the City with more insight into the various considerations at play in this discussion.

Ms. Whipple-Boyce stressed the environmental impact of this decision and said the decision should move towards the highest VLT glass that does not lead to negative environmental results.

### **3. Master Plan Review**

Planning Director Ecker presented the item.

Chairman Clein thanked Planning Director for putting together the proposed schedule.

Subsequent to discussion, Board consensus was that they would schedule the master plan discussions for regular study session meetings beginning in January 2020 and running through May 2020. Notes would be provided to DPZ after each study session. The Board agreed to start those study session meetings at 7 p.m. instead of 7:30 p.m.

Planning Director Ecker noted that a member of the public could always provide their feedback on a previous meeting's topic as well.

Ms. Whipple-Boyce recommended creating an insert with the schedule of these meetings to mail out to all Birmingham residents in the City's 2020 calendar. She advocated for allowing staff to determine the most appropriate division of the master plan topics over the four or five study sessions.

Dear Ms. Ecker and Mr. Markus,

We are writing to provide an update on the Peabody parcel located at 34965 Woodward Avenue. As Alden Development Group, the City of Birmingham, and the State of Michigan continue to navigate through the current pandemic and its economic fallout, we wanted to ensure you that it is still our intent to develop the property as previously planned.

While it is wonderful that the vaccine has finally arrived and is being distributed across the country, we recognize a 'return to normal' will take time. As you can likely appreciate and understand, the uncertainty of the last 18 months has resulted in an almost complete pause in vertical development across the country, particularly in the Office and Commercial asset classes. Unfortunately, the timing of this could not have been worse for our Peabody project. After we had worked through some of the issues with the neighboring properties in 2019 we were finally starting to see an increase in leasing interest in the 4<sup>th</sup> quarter of that year when everything came to a halt when the pandemic hit in early 2020.

Fast forward to today and corporate leasing has still yet to get out of the pandemic stalemate that has existed across the SE Michigan market for the 14 months. The pandemic related challenges have caused us to slow down our development process as it is not economically feasible to build a 200,000 square foot building purely on market speculation given the current environment. Leases of more than a few thousand square feet are few and far between in the current marketplace, especially in the world of new construction which commands a higher price per foot creating yet another barrier-of-entry.

In addition to the leasing challenges, construction and materials pricing has skyrocketed in the past year. Prices for new construction are over 40% higher than they were in mid-2019. The pandemic has also resulted in a shortage of qualified trades and skilled workers. These increases to material and labor costs further necessitate the need to have tenants lined up prior to breaking ground on a project of this scope.

In summary, the leasing market is still flat, lead times for materials have increased significantly and costs for materials and labor are at all-time highs. Given these challenges one cannot in good conscious begin a project of this size in the current environment. Fortunately, our analysis of the overall environment shows encouraging trends that should create more stabilization within the general construction industry and will hopefully allow us to begin this beautiful project in the near future. As the world continues to make strides towards normalcy, we will adjust our strategies to best fit the situation. We humbly ask that the City take all of this into consideration and work with our team to overcome the hurdles that we are faced with including preserving our permit approval so that we may be in a position to attract prospective tenants with the certainty that we can start construction and provide swift occupancy as the economy stabilizes post Pandemic fallout. Our entire team looks forward to creating another new project in the City that will enhance the "Woodward Gateway" streetscape and will stand in Birmingham to be admired by all for many years to come.

With gratitude.

A handwritten signature in blue ink, appearing to read 'Matthew Shiffman', with a long, sweeping underline.

Matthew Shiffman  
Chief Executive Officer  
Alden Development Group