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APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MARCH 13, 2013
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held March 13, 2013. Vice-Chairperson Gillian Lazar convened the meeting at 7:30 p.m.

Present: Board Members Scott Clein, Carroll DeWeese, Bert Koseck, Gillian Lazar, Bryan Williams; Student Representative Arshon Afrakhteh

Absent: Chairman Robin Boyle; Board Member Janelle Whipple-Boyce

Administration: Matthew Baka, Sr. Planner
Timothy Currier, City Attorney
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

03-33-13

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
HELD FEBRUARY 27, 2013**

Mr. Clein:

Page 7 - Last line, substitute "authority to set such policy" for "job to set policy."

Mr. Afrakhteh:

Page 1 - Correct the spelling of his name.

Motion by Mr. DeWeese

Seconded by Ms. Lazar to accept the Minutes of the Regular Planning Board Meeting of February 27, 2013 as revised.

Motion carried, 5-0.

VOICE VOTE

Yeas: DeWeese, Lazar, Clein, Koseck, Williams

Nays: None

Absent: Boyle, Whipple-Boyce

03-34-13

CHAIRPERSON'S COMMENTS

The vice-chairperson brought everyone's attention to some interesting articles in the Detroit Free Press about the City of **Detroit** that Chairman Boyle has written.

03-35-13

APPROVAL OF THE AGENDA (no changes)

03-36-13

UNFINISHED BUSINESS

Bistro discussion with city attorney

Ms. Ecker recalled at the Planning Board meeting on January 23, 2013, the board considered an informal request for administrative approval on several design changes pertaining to Market Bistro at 474 N. Old Woodward. Most were recommended for approval. The one sticking point was the decision as to whether to allow clear vinyl panels to be installed around the outdoor dining area (which is mostly on private property, but not entirely) in inclement weather.

It was Mr. Williams' feeling a legal opinion is needed regarding the permitted adaptation of the Bistro Ordinance and what precedent would be set here for other bistros to follow. Also, about whether it makes a difference if the outdoor café is in a public right-of-way or not. Therefore, he recommended that the city attorney be consulted and that the City Commission should weigh in on this issue. That request was acceptable to the board as a whole.

The City Commission did weigh in on this issue by specifically permitting the vinyl enclosures around both Social (public property) and Cafe Via's (private property) outdoor dining areas. In order to fully understand the concerns of the Planning Board, Mr. Currier was present to discuss this issue and provide his legal opinion.

Mr. Williams recalled the issue came up with respect to the vinyl that is being utilized at Social. The concern is that when originally proposed the bistros were supposed to have outdoor dining but not in the winter. Now the vinyl basically allows enclosed outdoor dining all year around in direct competition with some of the more traditional Liquor License restaurants in town. He asked the City Attorney to address how the Planning Board should look at these, as he views them, outdoor all-season restaurants.

Mr. Currier considered the question of precedent. Everything this board does sets some degree of precedent. However, he and Ms. Ecker believe it is within the purview of the Planning Board to make a recommendation to the City Commission to change the

Bistro Ordinance if they wish to limit the use of vinyl. Year-around use does, in fact, defeat the intent of the Bistro Ordinance which was to have smaller establishments.

Mr. Williams inquired to what extent on an annual review basis under the Special Land Use Permit ("SLUP") this board is permitted to go back and request modifications to year-around usage of this material. It is not just a question of new bistros going forward. This concerns existing bistros that may not have the vinyl and suddenly might want to, as well as those that have already been approved.

Mr. Currier replied that what happened in the past is not going to be a precedent if a new Ordinance is enacted.

It was discussed that this may be an agenda item for the next Planning Board/City Commission joint meeting on June 17. Mr. Clein asked that the intent for the bistros size-wise be included on that agenda as part of the overall deliberation.

Mr. DeWeese asked about the domain of authority of a SLUP and if the City can learn from what it has done. Mr. Currier replied the purpose of the Planning Board is to take those outcomes (positive or negative) and bring recommendations back to the City Commission that will advise them as to the appropriate policy to make the ordinances work. Outlining the reasons why something did not work and therefore it should not be continued provides the rationale about why the precedent is not being continued. It also shows that the City is not being arbitrary and capricious going forward.

Vice-Chairperson Lazar stated her concern is that the City seems to be making an enormous departure from the original intent of the Bistro Ordinance. She received confirmation that in the case of Social, the Liquor License comes up for annual review but not the SLUP. Opportunities may present themselves for a review of the SLUP if the establishment doesn't follow the rules, or if something creates a greater burden than anticipated. Mr. Currier indicated that is something they intend to take a look at.

Vice-Chairperson Lazar took discussion to the public at 7:57 p.m. but no one wished to speak on this topic. She thanked Mr. Currier for appearing this evening.

03-37-13

FINAL SITE PLAN AND DESIGN REVIEW

33757-33779 Woodward Ave.

Woodward Retail (former Hi-way Collision and Woodward Gardens/Bordines site)

Final Site Plan Review

Mr. Baka recalled the applicant was approved for Final Site Plan at the October 24, 2012 Planning Board meeting for a similar proposal that included a single unit, one-story retail building and renovations to the existing Hi-way Collision Building. At this time, the applicant is requesting a revised final site plan approval to make changes to the proposed building design and site layout.

The subject site is located on the west side of Woodward Ave. between Humphrey and Bennaville. The proposal includes the parcel that currently contains the greenhouse structure, the existing brick structure on the corner of Humphrey and Woodward Ave., and the parking lot in the rear of the parcels. The property is zoned B2-B General Business. The applicant proposes to demolish the existing greenhouse and construct a one-story, single-tenant retail building and retain the brick structure on the corner. The tenant of the northern parcel is proposed to be a barber shop. The proposed building on the southern parcel has one tenant identified as "Jersey Mike's Sub Shop" with the balance of the building not yet occupied.

The parking facility is screened with a 6 ft. masonry wall abutting the residential properties to the east and south as required. As a result of the Planning Board's suggestion last time, the applicant is proposing to reconstruct the 32 in. screenwall along Humphrey 2 ft. from the side property line thereby gaining three new parking spaces so that the parking doesn't get pushed into the neighborhood. ***The applicant will be required to obtain a variance from the Board of Zoning Appeals ("BZA") in order to construct the screenwall in the front yard setback.***

The applicant is proposing to add two planting beds, one at the rear of the proposed new building and a second in the MDOT right-of-way at the corner of Humphrey and Woodward Ave. ***A permit from MDOT will be required for any changes in the right-of-way along Woodward Ave.***

Design Review

The applicant must appear before the Design Review Board for approval of changes to the existing building and signage.

Front façade: The front façade of the three unit, one-story commercial building is proposed to be constructed primarily of E.F.I.S. with butt glazed clear glass window systems in aluminum frames and awnings. The building is now proposed to be divided into three units with separate entrances.

Rear façade: The rear façade is proposed to be similarly treated with E.F.I.S. accented with pre-cast concrete panel base and wall panels as well as polished stainless steel coping. Above each of the three panel and door sections is a Sunbrella fabric awning with two hanging pendants underneath. Above, ten wall-mounted down lights will span the width of the rear elevation.

Side elevations: The plans indicate that the side elevations will be constructed exclusively of E.F.I.S.

Mr. DeWeese said that parking has expanded with the new design and may become a problem. Mr. Clein had concerns about the number of conditions that are attached to staff's recommendation. Others echoed those concerns. Mr. Williams expressed the desire to go back to the Planning Board's original schedule of hearing planning matters

one week and site plan reviews the next, so that the Planning Dept. has time to address issues prior to when the board sees them.

Mr. Koseck was concerned the applicant would have a real challenge at the BZA when they request a variance to construct a screenwall in the front yard setback to allow for more parking. Mr. Clein recalled from the last meeting that a parking variance was needed and the Planning Board had suggested the applicant might want to be creative about minimizing what that variance might be.

Mr. Williams said the question about parking along Woodward Ave. is whether to go curb to curb or east and west. His view is he would rather go curb to curb. Ms. Ecker said the S. Woodward Ave. Gateway Project is currently studying parking in that area but is not done yet. In the meantime, some parcels will come through that need to be addressed before the plan is complete.

Mr. Williams noted that as he walked the street with residents, they were concerned with the area between the parking lot and the homes and couldn't care less about a little strip of vegetation between the road and the parking lot which doesn't abut a house. He said the ordinance is remarkably deficient in insisting on high quality treatment of those borders. In his view, if the City is going to make ordinance changes it must look at how these properties border on the residential area and not on the streets.

Mr. Roman Bonislowski, Ron & Roman Architects, noted that right now the developer has two potentially signed tenant spaces. If they have difficulties getting the variance he has the option of eliminating the food user which requires one space per 75 sq. ft. of floor area or 15 parking spaces. The remainder of the new building contains 2,955 sq. ft. of retail space which, if used for retail, only requires one space per 300 sq. ft. of floor area or 10 additional spaces. However, they still want to pursue a variance for getting the additional parking in place. He went on to explain they have enhanced the detail with regard to the rear elevation and the colors haven't changed.

Mr. Williams said until a more comprehensive plan is developed the applicant is better off adding three or four more parking spots toward the street as opposed to putting them in a situation where they have less parking. That creates a bigger problem for the neighborhood and for the development. He feels this board pushed them in the direction they are pursuing.

Mr. Duane Barbat, B-3 Investments, talked about the tenants and proposed use of his building. Right now they have a Floyd's Barbershop where the average customers are in and out in 30 minutes. With Jersey Mike's Subs, most items are take-out. They have targeted tenants that operate in the off-peak hours of the Pancake House. He asked to skip a further meeting with the Planning Board that would consider the list of conditions because time-wise it may hurt their chances of being able to keep a tenant.

Ms. Ecker said she doesn't see any conditions that are problematic for what the applicant is proposing.

At Mr. Koseck's request, Mr. Bonislowski quickly addressed the 12 recommended conditions of approval which he was confident could be completed.

There were no comments from members of the public at 8:49 p.m.

Motion by Mr. DeWeese

Seconded by Mr. Koseck to approve the Revised Final Site Plan for 33779 and 33757 Woodward Ave. pending receipt of the following;

- 1. Obtain a variance from the BZA in order to construct the screenwall in the front yard setback, with the support of the Planning Board;**
- 2. The height of the screenwall along the side lot line of the abutting residential district must be lowered from 6 ft. to 3 ft. in the front open space;**
- 3. The applicant must submit information detailing how they meet all parking requirements or obtain any variances from the BZA;**
- 4. The applicant must provide details of the proposed plantings in front of the parking lot screenwall;**
- 5. Submit a revised photometric plan that accurately corresponds with the site plan and elevations;**
- 6. Provide spec sheets on all proposed fixtures;**
- 7. Install two additional trees along the frontage of the subject parcels or obtain a waiver from the staff arborist;**
- 8. Obtain a permit from MDOT for changes in the right-of-way along Woodward Ave.;**
- 9. The bike rack used in the right-of-way must be the new city standard inverted "U" shaped rack;**
- 10. Provide color information and samples for all proposed materials;**
- 11. Insure all rooftop units are screened or obtain a variance from the BZA; and**
- 12. Obtain Design Review approval for the existing building and all signage from the Design Review Board.**

There was no discussion from the audience at 8:55 p.m.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: DeWeese, Koseck, Lazar, Clein, Williams

Nays: None

Absent: Boyle, Whipple-Boyce

Ms. Ecker reminded the applicants their Application for the BZA must be in by March 15.

STUDY SESSION
Regulated Uses

Ms. Ecker provided background. At the City Commission meeting May 7, 2012, the Commission considered a request for permanent makeup services to be offered at a salon after it was determined that permanent makeup was deemed a tattoo parlor under the existing language in Article 9, Section 9.02, Definitions. After much discussion, the City Commission directed the Planning Division to review the regulated use provisions in the Zoning Ordinance and make recommendations for updates. Specifically, the Commission directed that a definition be added for pawnshop, and to consider amending the definition of tattoo parlor to allow permanent makeup as an accessory use to a beauty salon.

Ms. Ecker advised that on July 9, 2012, the City Commission also considered ordinance language to address several inconsistencies in the Zoning Ordinance, one of which related to regulated uses. Specifically, the City Commission voted to adopt an amendment that added the 1,000 ft. separation requirement to regulated uses and limited the number of regulated uses in a single building to one in the B-4 Zone District.

Over the last year, there have been issues with a local nightclub (which has since closed its doors) that have raised public concern over the control of such establishments. Accordingly, the Planning Division has reviewed the existing ordinance language pertaining to regulated uses. Some of the recommendations for updating this language include creating a graduated system of control for regulated uses, dependent on the level of impact on the community. This process would allow the City to exercise greater control over such uses, as the SLUP process includes a full site plan and design review, and adds further conditions that must be met for approval to protect the community.

Other recommendations include adding definitions for nightclubs and pawnshops, clarifying existing definitions, and updating the use specific standards for regulated uses in the MX District.

On August 22, 2013, the Planning Board discussed making all regulated uses into SLUPs to achieve more control over the use and the impacts on the surrounding area. The board referred a question to the City Attorney as to whether it was legal for the City to make one of the regulated uses a SLUP. The City Attorney has indicated that it is certainly legal to do so, and that is a policy decision for the City to make.

Accordingly, the board reviewed amended draft ordinance language based on the limited comments given at the Planning Board meeting on August 22, 2012.

Mr. Clein made a correction to Articles 7.20 and 7.23. Remove "If" in both cases.

Mr. DeWeese and Mr. Clein provided corrections for some typos.

Motion by Mr. Clein

Seconded by Mr. DeWeese to set Regulated Uses for a public hearing on April 10, 2013.

Motion carried, 5-0.

VOICE VOTE

Yeas: Clein, DeWeese, Lazar, Koseck, Williams

Nays: None

Absent: Boyle, Whipple-Boyce

03-39-13

STUDY SESSION

Update on S. Woodward Ave. Gateway Master Plan

Ms. Ecker advised The Southern Woodward Gateway Master Plan for the Woodward Corridor between 14 Mile Rd. and Lincoln was identified as the top priority on the Planning Board's current Action List. As a result, a budget request was approved for the preparation of a corridor plan and both the City Commission and the Planning Board approved a draft Request for Proposals.

On October 24, 2012, the Planning Board voted to recommend that the City Commission hire LSL Planning to prepare the South Woodward Gateway Corridor Plan.

On November 26, 2013, the City Commission approved the selection of LSL Planning to conduct the Master Plan.

This project commenced earlier this year when staff met with LSL to review the scope and schedule, and to provide all relevant information to allow LSL to start reviewing the history of the corridor. A Steering Committee was put together with guidance from the City Commission.

Mr. Baka advised the kick-off meeting of the Steering Committee was held on March 4, 2013. After presentations and discussion, the Steering Committee conducted a walking tour of the entire corridor to evaluate existing conditions and to note areas of concern or interest. Topics of discussion along the walking tour included streetscape conditions, signage, building design, building form, parking lot design and landscaping, ROW parking design, pedestrian access from the rear of buildings, alley conditions and many other related topics. A debriefing meeting was held after the walking tour to summarize the observations and recommendations of the Steering Committee.

The next Steering Committee meeting will be held in April, and a two day charrette will

be conducted in early May. They are looking at having five Steering Committee meetings and two public visioning sessions. At that point LSL Planning Consultants will put together a draft, bring it to the Planning Board for review, and take it back to the Steering Committee for a final draft. This should be about a five-month process.

Mr. Williams, who is the Planning Board representative to the Steering Committee, was encouraged by the group because he thinks it is very creative. His take-away from the walking tour is that there is no consistency behind the commercial properties. Almost every site is different. In some cases there are choices as to whether to go to the street for parking or to the east or west. There are fifteen or twenty locations along the strip that have the same issue that the board was faced with tonight. Another thing he noted is how remarkably poor the City standards are for the borders between the parking and the residential areas. There are no appropriate buffer zones with rear walls and vegetation to protect the neighborhoods from intrusion. A further issue is that a lot of the businesses have absentee owners who may or may not care. The changes that will be made to Woodward Ave. will directly impact the businesses that are totally dependent upon the parking in front of their store.

Ms. Ecker commented there was quite a sense with the Committee that they should focus on enhancing the alley sides as well because that is where people walk in that corridor.

Mr. Baka invited everyone to the public visioning session.

03-40-13

STUDY SESSION
Community Development Annual Report

Ms. Ecker presented the Planning Division's annual report for 2012/2013, including the Planning Board's Action List for 2013/2014, the Historic District Commission's Action List, and the Design Review Board's Action List. This is an annual requirement that is submitted to the Planning Board every March and then it goes to the City Commission.

03-41-13

MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA (no one spoke)

03-42-13

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications

Ms. Ecker noted the Multi-Modal Project is starting to come together and will be coming to the Planning board next month. Mr. Williams thought it would be important for members of the Steering Committee on the Woodward Ave. Gateway Project to be invited to a briefing on the plans as they develop. Ms. Ecker agreed.

- b. Administrative Approvals (none)
- c. Draft Agenda for the Regular Planning Board Meeting on March 27, 2013
 - Study session on use of conditional rezoning;
 - Review examples of conditional rezoning in other communities, what process they follow, and what changes they have made to be proactive so they don't have to use it;
 - Examine two or three transitional areas.
- d. Other Business (none)

03-43-13

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

03-44-13

ADJOURNMENT

No further business being evident, board members motioned to adjourn at 9:40 p.m.

Jana Ecker
Planning Director