

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, MAY 14, 2014**

Item	Page
<p>PUBLIC HEARING An ordinance to amend Chapter 126 Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow Medical Marijuana in an enclosed, locked facility, as a permitted use in the MX District with a valid Special Land Use Permit ("SLUP")</p>	2
<p style="padding-left: 40px;">Motion by Mr. DeWeese Seconded by Mr. Koseck to recommend approval to the City Commission for the following ordinance amendment:</p> <p>To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow Medical Marijuana, enclosed, locked facility, as a use permitted with a SLUP in the MX District.</p>	2
<p>Motion carried, 6-0.</p>	3
<p>SPECIAL LAND USE PERMIT FINAL SITE PLAN REVIEW 203 Pierce St. Toast Bistro Request for outdoor dining platform</p>	3
<p style="padding-left: 40px;">Motion by Ms. Whipple-Boyce Seconded by Mr. DeWeese that the Planning Board approve the applicant's request for Final Site Plan and a SLUP to permit a Bistro License for Toast Birmingham restaurant at 203 Pierce St. with the following conditions:</p> <p>(1) The applicant provide the required 5 ft. walk by adding an ADA compliant city standard tree grate to the tree well; (2) The applicant add trash receptacles to both outdoor dining areas subject to administrative approval; (3) The applicant provide appropriate details on the platform guardrail and handrails on the ramp to the platform to ensure compliance with the requirements of the Building Division; (4) The applicant pay for the removal and re-installment of the parking meter where the outdoor dining platform is located;</p>	4

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<p>(5) The applicant execute a revised contract with the City and obtain an outdoor dining permit; and (6) The applicant is allowed to change the north table seating arrangement to a one table setup with administrative approval.</p> <p>Motion carried, 6-0.</p>	<p>5</p>

APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MAY 14, 2014
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held May 14, 2014. Chairman Robin Boyle convened the meeting at 7:32 p.m.

Present: Chairman Robin Boyle; Board Members Scott Clein; Carroll DeWeese, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams

Absent: Board Member Gillian Lazar; Student Representatives Jack Moore, Shelby Wilson

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

05-67-14

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
HELD APRIL 23, 2014**

Mr. DeWeese:

Page 6 - Ninth line from the bottom, insert "senior living" in front of "residential."

Motion by Mr. DeWeese

Seconded by Ms. Whipple-Boyce to approve the Minutes of the regular Planning Board meeting on April 23, 2014 as amended.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Lazar

05-68-14

CHAIRPERSON'S COMMENTS (none)

05-69-14

APPROVAL OF THE AGENDA

Ms. Ecker noted a change to the agenda:

- Property at 122 E. Brown and 511 Pierce St. has been postponed to the meeting of May 28, 2014.

05-70-14

PUBLIC HEARING

An ordinance to amend Chapter 126 Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow Medical Marijuana in an enclosed, locked facility, as a permitted use in the MX District with a valid Special Land Use Permit ("SLUP")

Chairman Boyle opened the public hearing at 7:35 p.m.

Ms. Ecker advised that In light of recent case law, the city attorney has requested that the Planning Board consider amending the Zoning Ordinance to allow and control Medical Marijuana establishments in the City. Previously, the City prohibited medical marijuana establishments as they were prohibited by Federal law. As a result of recent court rulings, the City can no longer prohibit such establishments as they are expressly permitted in the State of Michigan. Thus, the Planning Board has been asked to consider allowing medical marijuana establishments in certain zone districts, and to consider any controls that may be needed to control their operation. Tonight the Planning Board will consider allowing medical marijuana establishments in the MX District with a valid SLUP.

The terminology used in the draft ordinance for such establishments of medical marijuana, enclosed, locked facility, is taken from the State statute that regulates such establishments. Allowing these facilities as SLUPs would permit the City to control the size of the establishment and hours of operation.

Ms. Ecker went on to define the boundary of the MX District.

Motion by Mr. DeWeese

Seconded by Mr. Koseck to recommend approval to the City Commission for the following ordinance amendment:

To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow Medical Marijuana, enclosed, locked facility, as a use permitted with a SLUP in the MX District.

There were no comments on the motion from the public at 7:39 p.m.

It was noted State law requires that the City make a provision to allow a permitted use somewhere within its zoning. If this is not done, the court will assign a location. Ms. Ecker advised such a facility could go into any building and parking requirements would fall under general commercial. The facility would come under a SLUP.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Lazar

The chairman closed the public hearing at 7:43 p.m.

05-71-14

**SPECIAL LAND USE PERMIT
FINAL SITE PLAN REVIEW
203 Pierce St.
Toast Bistro
Request for outdoor dining platform**

Bistro Requirements

Ms. Ecker offered background. The subject site is located at 203 Pierce St., on the east side of Pierce between Maple Rd. and Martin St. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Toast Birmingham, obtained approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code in 2008.

At this time, the applicant is proposing to make minor design changes to the exterior of the building, and is seeking approval to add an outdoor dining platform in the two on-street parking spaces immediately adjacent to their storefront.

As design changes are also proposed to the exterior of the building, the applicant is required to obtain approval from the Historic District Commission ("HDC"). In addition, the applicant will be required to appear before the Advisory Parking Committee ("APC") to review the use of the two on-street parking spaces along Pierce St. As Toast operates under an existing SLUP, final approval of the City Commission will also be required.

Toast Birmingham bistro is now proposing a total of 52 seats for outdoor dining, with 28 on an elevated platform along Pierce St., and the remaining 24 on the sidewalk directly adjacent to the south side of the front elevation of the building. The 24 seats on the sidewalk along the storefront are to remain in their existing configuration.

The applicant is proposing to construct a temporary 11.16 ft. by 32 ft. platform of composite non-slip decking to provide a level outdoor dining surface on the sidewalk and into the street. The platform is proposed to extend into two parking spaces along Pierce St. The applicant is also proposing a 3 ft. high custom-made metal fencing system to enclose the outdoor dining space.

The required 5 ft. pedestrian path has been provided along the sidewalk except in the area of the existing tree well. The applicant will be required to provide the required 5 ft. walk by removing tables or adding an ADA compliant tree grate to the tree well.

Design Review

No changes are proposed to the front elevation of the building and no work is proposed on the rear (alley) elevation of the building at this time.

The Planning Board may wish to improve the rear elevation of the restaurant as it fronts on the alley in accordance with the Activating Urban Spaces Plan. Vertical landscaping on the rear elevation or paint and awning details could be added to enhance the via façade.

Discussion disclosed that the number of outdoor dining patrons does not apply to the calculation for restroom facilities.

Mr. Thomas Bloom, the proprietor of Toast, was present with his partner, Mr. Scott Myrick and Mr. Chris Enright, the architect. Mr. Bloom believed they had 5 ft. existing to the tree well. However, they are willing to make adjustments if needed. They plan just one high-top table on the right side of the sidewalk in place of the existing. They have never had complaints about their restroom facilities. They have removed their dumpster from the alley and now use City owned trash compactors. They don't own the building, but they can encourage the landlord to paint.

At 8 p.m. the chairman asked for comments from members of the audience.

Mr. Stuart Jeffries, 1381 Birmingham, said that Toast always goes above and beyond for the community. There seem to be enough bathrooms whenever he is there.

Ms. Whipple-Boyce thought maybe Code Enforcement should take a look at the extent of the peeling paint. Also, she would like to see the tree grate even if they have a continuous 5 ft. of clear right-of-way.

Motion by Ms. Whipple-Boyce

Seconded by Mr. DeWeese that the Planning Board approve the applicant's request for Final Site Plan and a SLUP to permit a Bistro License for Toast Birmingham restaurant at 203 Pierce St. with the following conditions:

- (1) The applicant provide the required 5 ft. walk by adding an ADA compliant city standard tree grate to the tree well;**
- (2) The applicant add trash receptacles to both outdoor dining areas subject to administrative approval;**
- (3) The applicant provide appropriate details on the platform guardrail and handrails on the ramp to the platform to ensure compliance with the requirements of the Building Division;**
- (4) The applicant pay for the removal and re-installment of the parking meter where the outdoor dining platform is located;**
- (5) The applicant execute a revised contract with the City and obtain an outdoor dining permit; and**
- (6) The applicant is allowed to change the north table seating arrangement to a one table setup with administrative approval.**

There were no comments on the motion from the audience at 8:10 p.m.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Lazar.

05-72-14

**PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY
122 E. Brown and 511 Pierce St.
New construction of mixed-use building containing two-story medical office
building and four stories of residential units**

Postponed to the meeting of May 28, 2014.

05-73-14

**PRE-APPLICATION DISCUSSION
Parcel 1, 2400 E. Lincoln lot split**

Ms. Ecker reported that the applicants came in to discuss three options. If they keep the lot as it is now, they cannot have parking as a permitted use; it has to be an accessory use. Therefore they will have to put it together with one of the other parcels. They were advised to come in with a master plan showing exactly how the whole section would work with the new road going through.

Before discussing this item, Chairman Boyle wanted to see a map of the entire area. Context is important in terms of what the board is trying to deliver with respect to long-term growth through the development of a grid. Planning staff provided a master plan that was submitted to the City a couple of years ago when another development was done.

Mr. Koseck recused himself from the discussion because of a personal relationship with the applicant, and Mr. Williams recused himself because of a business conflict.

Lauren from Carnovale & Associates said their option is to potentially combine the parcel with 2400 Lincoln to the south or combine it with the existing property to the north which is 2388 Cole. Option 1, combining with the property to the north, is the best layout to work in phasing later down the road with the street to come.

Option 2 shows where the road would be put through and what happens to the parking lots. This potential layout does not help with their parking lot plan because it only nets out about four extra spaces. Option 1 adds 26 spaces.

Option 3 combines with the property to the south along Lincoln. The client would have a shared parking agreement with the lot at 2400 Lincoln, also netting four extra spaces.

Mr. Clein noted this is clearly an issue of a parcel that needs to be attached to something else so that a thriving business can get a little more parking. He doesn't see a difference between Options 2 and 3 in the way it functions. He advised that the road will come when the City is ready to put it there, so tie the parcel in with one of the existing lots and go forward. If for the new parcel they continue a bit more of the layout that is on the parcel to the north, they might pick up a few more spaces and get a little better traffic flow.

Mr. DeWeese announced he could only support a plan that is compatible with the City's long-term plan to put in roads.

Chairman Boyle invited members of the audience to join the conversation at 8:45 p.m.

Mr. Dumas, the orthodontist who owns the building to the north, asked if they could get a temporary permit to park on the gravel while this process is underway. The businesses there need to have parking. Ms. Ecker responded there isn't any provision in the Ordinance that allows for temporary parking on gravel. In the past the City has only allowed temporary parking on a site when the applicant paved, striped, and screened it with vegetation.

Mr. Dumas indicated they are ready to move forward and submit for the combination of the two lots. The engineering drawings are already underway and contractors can start with the pavers right after Planning Board approval in a month.

05-74-14

STUDY SESSION

Update on Duany Visit

Ms. Ecker identified the events where she thought the board members might be most usefully engaged during Mr. Duany's visit May 19-21. The final recommendation for Birmingham moving forward will be Wednesday evening.

05-75-14

MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA (no discussion from the public)

05-76-14

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Ms. Ecker read into the record a letter objecting to the Toast outdoor dining platform which she had forgotten earlier. The writer was totally against the platform because of traffic and parking problems, odors emitted, noise issues,

pedestrian problems, etc. The letter did not change any board member's opinion on the deck.

b. Administrative Approvals

- 142 S. Old Woodward Ave. - Install a four-ton rooftop Rheem unit with a screened wood enclosure. Paint to match the building.
- 1800 W. Maple Rd., Lutheran Church of the Redeemer - Add parking lot lighting to existing parking on east side of facility.

c. Draft Agenda for the Regular Planning Board Meeting on May 28, 2014

- Brown Street
- Palladium Bldg.
- Duany debriefing

d. Other Business

- Ms. Whipple-Boyce requested that the board take a look at the alley behind 220 Merrill St.

05-77-14

PLANNING DIVISION ACTION ITEMS

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

05-78-14

ADJOURNMENT

No further business being evident, board members motioned to adjourn at 9:14 p.m.

Jana Ecker
Planning Director