

BIRMINGHAM CITY COMMISSION MINUTES
NOVEMBER 13, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Nickita called the meeting to order at 7:30 p.m.

II. ROLL CALL

ROLL CALL: Present,	Mayor Nickita Mayor Pro Tem Harris Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Sherman
Absent,	None

Administration: City Manager Valentine, Senior Planner Baka, IT Director Brunk, Police Chief Clemence, City Attorney Currier, City Planner Ecker, Finance Director Gerber, Assistant to the City Manager Haines, Building Official Johnson, Assistant Building Official Morad, City Clerk Mynsberge, City Engineer O'Meara, BSD Director Tighe, DPS Director Wood

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

Mayor Nickita announced:

- City offices will be closed for Thanksgiving on Thursday, November 23rd and Friday, November 24th.

Mayor Nickita acknowledged and congratulated the graduating members of the Citizen's Academy:

Kellie Awdey	Jake Herbert	Lester Richey
Christine Bookmyer	Kathryn Lampi	Kristin Roy
Dan Cook	Elissa Laskey	Donovan Shand
Peggy Cook	Xinxin Liu	Suzanne Stone
Pam Graham	Chris Pray	Jennifer Wheeler
Dan Haugen	Martin Reisig	

11-286-17 OATH OF OFFICE – CITY COMMISSION

The City Clerk administered the oath of office to City Commissioners Rackeline Hoff, Mark Nickita, and Stuart Lee Sherman.

11-287-17 OATH OF OFFICE – LIBRARY BOARD

The City Clerk administered the oath of office to Library Board Members Ashley Aidenbaum, Melissa S. Mark, and Frank Pisano.

11-288-17 ORGANIZATION OF THE CITY COMMISSION

MOTION: Motion by Sherman, seconded by DeWeese:
To nominate Mayor Nickita as the temporary chair of City Commission for purposes of conducting the Mayor and Mayor Pro Tem election.

VOTE: Yeas, 7
Nays, 0
Absent, 0

MOTION: Motion by Commissioner Hoff:
To nominate Mayor Pro Tem Harris as Mayor.

VOTE: Yeas, 7
Nays, 0
Absent, 0

MOTION: Motion by Commissioner DeWeese:
To nominate Commissioner Bordman as Mayor Pro Tem.

VOTE: Yeas, 7
Nays, 0
Absent, 0

The Clerk administered the oath of office to Mayor Harris and Mayor Pro Tem Bordman.

Mayor Harris laid out his vision for guiding the City through the upcoming Master Planning process, and expressed appreciation for the community's support and confidence in him.

Mayor Pro Tem Bordman expressed gratitude for the camaraderie with her fellow Commissioners, and explained that collaboration between the Commissioners allows them to do their best work, which she looks forward to continuing.

Mayor Harris presented a gift on behalf of the City to outgoing Mayor Nickita.

Commissioner Nickita thanked the citizens of Birmingham, the City staff, and his family for their confidence in him. He reflected on the health of the City and the accomplishments of the Commission, and is glad for the continued opportunity to perform this work.

The meeting was recessed at 8:02 p.m.

INTERMISSION

Mayor Harris reconvened the meeting at 8:21 p.m.

11-289-17 APPOINTMENTS TO THE RETIREMENT BOARD, RETIREES HEALTH CARE FUND COMMITTEE, TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY, AND FOUNDATION FOR BIRMINGHAM SENIOR RESIDENTS.

MOTION: Motion by Nickita:
To appoint Andrew Harris, Mayor, to the Retirement Board.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

MOTION: Motion by Nickita:
To appoint Patty Bordman, Mayor Pro Tem, to the Retirement Board.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

MOTION: Motion by Boutros:
To appoint Andrew Harris, Mayor, to the Retirees Health Care Fund Committee.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

MOTION: Motion by DeWeese:
To concur in the Mayor's appointment of Commissioner Sherman to the Triangle District Corridor Improvement Authority.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

MOTION: Motion by Boutros:
To concur in the Mayor's appointment of Commissioner Hoff to the Foundation for Birmingham Senior Residents.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

IV. CONSENT AGENDA

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

11-290-17 APPROVAL OF CONSENT AGENDA

Commissioner Sherman recused himself from the vote on Item H based on a conversation with City Attorney Currier.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To approve the Consent Agenda, with the recusal of Commissioner Sherman from the vote on Item H.

ROLL CALL VOTE: Yeas, Mayor Pro Tem Bordman
 Commissioner Boutros

Commissioner DeWeese
Mayor Harris
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Nays, None
Absent, None

- A. Approval of City Commission minutes of October 30, 2017.
- B. Approval of warrant list, including Automated Clearing House payments dated 11/1/17, in the amount of \$665,659.89.
- C. Approval of warrant list, including Automated Clearing House payments dated 11/8/17, in the amount of \$1,446,526.12.
- D. Resolution accepting the resignation of Lisa Prasad from the Planning Board, thanking her for her service, and directing the City Clerk to begin the process of filling the vacancy.
- E. Resolution authorizing the mayor to sign the 2017 Program Year Community Development Block Grant (CDBG) Subrecipient Agreement on behalf of the City.
- F. Resolution setting Monday, December 4, 2017 at 7:30 PM for the Public Hearing date for the 2018 Community Development Block Grant Program.
- G. Resolution setting Monday, December 4, 2017 at 7:30 PM for a Public Hearing to consider the Final Site Plan and Special Land Use Permit to allow service to patrons in their vehicles at 33353 Woodward Avenue – Tide Dry Cleaners.
- H. Resolution setting Monday, December 4, 2017 at 7:30 PM for a Public Hearing to consider the approval of the Final Site Plan and Special Land Use Permit Amendment to allow the sale of Rojo and Sidecar restaurants at 250 & 280 E. Merrill from Rojo Five, LLC to Sidecar Birmingham, LLC., subject to execution of a Special Land Use Permit contract between Sidecar Birmingham, LLC and the City of Birmingham.
- I. Resolution approving a request from the Birmingham Shopping District to hold Birmingham Farmers' Market on Sundays, May through October, 2018 from 9:00 AM to 2:00 PM, in Municipal Parking Lot No. 6 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- J. Resolution approving a request from the Birmingham Shopping District to hold the Family Movie Night on June 22, July 20, and August 24 in Booth Park, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- K. Resolution approving the Settlement Agreement and Mutual Release and authorizing the Mayor and Clerk to sign the same on behalf of the city.

V. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

11-291-17

PUBLIC HEARING OF APPROVAL OF THE FINAL SITE PLAN AND SPECIAL LAND USE PERMIT AMENDMENT – 505 N. OLD WOODWARD

Mayor Harris opened the public hearing at 8:25 p.m.

From Senior Planner Baka's report to City Manager Valentine dated November 7, 2017:

The subject site, Salvatore Scallopini, is located at 505 N. Old Woodward, on the northwest corner of N. Old Woodward and Harmon Street. The parcel is zoned O2, Office Commercial and D-2 in the Downtown Birmingham Overlay District. The applicant is applying for a Special Land Use Permit Amendment ("SLUP") to allow interior and exterior changes to the existing bistro.

Article 2, section 2.23, O2 (Office/Commercial) District allows a bistro as a permitted use with a valid Special Land Use Permit. Salvatore Scallopini currently operates a bistro under a SLUP. The changes proposed require a SLUP Amendment, and thus the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit Amendment, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit Amendment.

On September 27, 2017, the Planning Board conducted a public hearing to discuss the applicant's request for the proposed changes to the existing bistro. The Planning Board voted to recommend approval to the City Commission of the SLUP Amendment and Final Site Plan for 505 N. Old Woodward, Salvatore Scallopini, with the following conditions:

1. The non-operating door be filled in and turned into a window; and
2. The sill of the window is to match all other windows across the facade of the building.

On October 16, 2017 the City Commission set a public hearing date for November 13, 2017 to consider approval of the Final Site Plan and Special Land Use Permit Amendment to allow interior and exterior changes to the existing bistro at 505 N. Old Woodward. Please find attached the staff report presented to the Planning Board, along with the relevant meeting minutes for your review.

Senior Planner Baka confirmed for Commissioner Hoff that:

- The concern over the exterior mosaic tiles was the possibility of deterioration due to weather, but the restaurant owners have stated that they are committed to the tiles' upkeep.
- There will be 5' for pedestrian clearance around the outdoor dining, and two parking spaces will be regained by the removal of the platform.
- The tree on Harmon St. would have an ADA-approved grate surrounding it, and the opposite seating would only be a two-top, which would allow for the required 5' of pedestrian clearance between the tree and the outdoor seating.

Senior Planner Baka confirmed for:

- Commissioner DeWeese that ~~*Mr. Guy Simmons'~~ street furniture and newspaper box will be relocated at the discretion of the Department of Public Services (DPS).
- Commissioner Nickita that if a platform is required for outdoor seating on Harmon Street, due to the slope of the sidewalk, the platform would be reviewed and approved prior to installation.

- Mayor Harris that the SLUP amendment paragraph 5, page 2, refers to:
 - An annually-renewed outdoor dining permit; and,
 - A sign which will stretch into the right-of-way, which is allowed if the sign is 8' above grade.

Larry Bongiovanni, manager of Salvatore Scallopini, was available for questions.

Nicole Adler, architect from Ron and Roman, Inc., explained to Commissioner Hoff that the darker stained wood would be around both the fixed and sliding windows and the lighter stained wood would be around the door. She added that the exterior tile being proposed is porcelain, which:

- Has color all the way through, meaning if it is scratched the color is not removed;
- Is frost-proof; and,
- Is much more durable than indoor, ceramic tile.

There being no further comment, Mayor Harris closed the public hearing at 8:39 p.m.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Bordman: To approve the Final Site Plan and Special Land Use Permit Amendment for 505 N. Old Woodward to allow interior and exterior changes to the existing Salvatore Scallopini bistro at 505 N. Old Woodward. *(Appended to these minutes as Attachment A)*

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

11-292-17 PUBLIC HEARING OF APPROVAL OF THE PROPOSED LOT COMBINATION – 607 & 635 S. BATES

Mayor Harris opened the public hearing at 8:40 p.m.

Senior Planner Baka explained that the owners of 607 and 635 S. Bates are looking to combine the two parcels into one lot, and confirmed that the lot combination meets all the requirements of the Subdivision Regulation Ordinance, Chapter 102, Section 102-83.

Bill Finnicum, from Finnicum Brownlie Architects, and Mr. Angileri, the owner of lots 607 & 635 S. Bates, were available for questions.

Mr. Finnicum confirmed for:

- Commissioner Boutros that the existing house is 1900 sq. ft., and the proposed will be 4300 sq. ft.
- Commissioner Hoff that:
 - This is a historically-designated house, and that the plan is to take down the part of the house that is not historically significant, and create an addition that is consonant with the historically significant part of the house.
 - The addition will be both to the east and the south.

Senior Planner Baka confirmed for Commissioner Hoff that the house still falls under the guidelines of a historically designated structure, and that the house received a variance for the building of the cupola.

There being no further comment, Mayor Harris closed the public hearing at 8:58 p.m.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner DeWeese:
To approve the proposed lot combination of 607 and 635 S. Bates.

Commissioner Hoff stated that the Commission should be watchful for circumstances in which a Commission-granted lot split may subsequently appear before the Commission for a lot recombination.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**11-293-17 PUBLIC HEARING OF AMENDMENT TO ARTICLE 9 OF THE
 ZONING ORDINANCE TO ADD A DEFINITION OF PERSONAL
 SERVICES**

Mayor Harris explained that the purpose of this hearing was to clarify language. He urged all speakers to be concise and specific to the point, and for comments not to be repetitive. Mayor Harris declared a two-minute time limit for speakers.

Mayor Harris opened the public hearing at 9:02 p.m.

City Planner Ecker laid out the history of the issue. Most recently, the Planning Board:

- Created a draft chart of potential personal service uses;
- Made modifications to the pros and cons of each use;
- Requested that the last two columns be removed and a comments column be added to note where there was not a unanimous opinion of the entire Planning Board.

In addition, City Planner Ecker explained that:

- A column was added to provide examples of existing businesses in the City that would fall under each category.
- The Planning Board re-reviewed the 5 sample definitions that were previously provided as options in previous agenda packets; and,
- Added 12 more definitions from other communities to supplement the ones originally selected as possible options.

City Planner Ecker confirmed for:

- Commissioner Nickita that none of the supplied example definitions of personal services included offices as one of the possible business types.
- Commissioner Hoff that the Planning Board's chart designated their agreement or disagreement on whether a type of business could be a personal service.
 - White comments reflected general agreement that the business-type in question was a personal service;
 - Green comments reflected general agreement that the business-type in question was not a personal service; and,
 - Red comments reflected a split on whether the business-type in question could be considered a personal service.

Attorney Currier told Mayor Pro Tem Bordman that the chart cannot be appended to the ordinance language as guidance to staff, since ordinance language reflects City law.

City Planner Ecker explained that the definition proposed in 9.02 could be changed to include the chart, but that it would be a substantive change to the proposed definition.

Commissioner Sherman stated the Commission may be better off looking at the proposed ordinance amendment, passing it, and then sending it to be reviewed, as has been done in the past.

Commissioner DeWeese expressed concern that the proposed personal services definition does not sufficiently exclude office or quasi-office use, and desired that the definition stand-alone without a chart since the chart may be subject to shifts over time.

City Planner Ecker confirmed for Commissioner Hoff that Article 9, Section 9.02 of the City Ordinances specifies personal services, but that office use has never been permitted under this definition of retail use in the redline retail district. She reiterated that issue before the Commission now is to clarify the grey area between office and personal service use.

Commissioner Boutros outlined four options he sees for the definition of personal services: it could be enforced, it could be left flexible, the City could hire consultants for the process, or it could be included in the master plan. Commissioner Boutros then listed his considerations regarding the approaches:

- Enforcing a personal services definition excluding offices could cause vacancies in the redline retail district should the retail market crash.
- A flexible personal services definition could allow for a wider range of businesses to fill vacancies in the event of a retail crash.
- Hiring consultants, as the City has done in the past, would allow the City to have dedicated advice on the matter.

He stated that he does not feel there has been sufficient economic information or study to move forward on this.

Mayor Pro Tem Bordman stated that:

- The Commission currently has several documents recommending against first-floor office space under personal services, including the 2016 Plan.
- The Commission also has dozens of community definitions of personal services which exclude office use as a type of personal service.
- The local communities of Ferndale, Royal Oak, Plymouth and Holland do not have first-floor offices in their retail districts.
- Birmingham is not sufficiently different from the other communities to require a different approach to this matter.
- The issue needs to be resolved quickly. She would like to see a yes or no vote, with the possibility of adjustments at a later date.

Commissioner Hoff commented that while the ordinance officially does not permit office space, offices have been allowed under this ordinance. She added that perhaps the best option is to try an approach for six months, and to see how it affects the City.

City Planner Ecker confirmed for Mayor Harris that the definitions of personal services before the Commission were selected for specificity in their language, but no other criteria. She also clarified that Birmingham City staff only looked for definitions of personal services within other cities' ordinances. As a result, cities' considerations of retail definitions, office spaces, and types

of zoning may not have been included in the report, or may be very different from Birmingham's considerations.

Commissioner Nickita reminded the Commission that:

- This is not a process that has been done haphazardly, as 3,000 members of the public and a professional team worked on the downtown plan as recently as two years ago.
- The author of the plan described it as the most advanced plan he had ever worked on.
- The Commission's responsibility is to now fill in a gap they have been made aware of.

Commissioner Sherman explained that there are no offices allowed under the current ordinance. Any offices currently occupying first-floor retail spaces are there because of an interpretation of personal services by tenants and landlords. That is the potential loophole the Commission is looking to clarify.

Scott Aikens (owns 350 N. Old Woodward) stated that:

- Birmingham's redline retail district is extraordinarily overbroad.
- The buildings on the hill between Willits and Harmon were designed as office buildings, and office space is at a premium there.
- Landlords can charge more for office space within the redline retail district.
- If 350 N. Old Woodward were to lose an office tenant and not replace it within six months, Mr. Aikens is afraid they would have to rent to a retail store.
- If that were to happen, Mr. Aikens explained he might be forced to sue.
- He is profoundly disheartened that the City would treat its landlords like this.

Marlin Wroubel, developer of "Google" building, stated that no one was interested in renting retail on the first floor of the building. Mr. Wroubel was in the process of selling the building when the Commission first started talking about disallowing office use, and he said that every offer he had has been pulled off the table since as a result.

Ted Eisholz (401. S. Old Woodward - President of Condominiums at Birmingham Place Association) appeared before the Commission to state the Birmingham Place Association's opposition to limiting the uses of the redline district. Mr. Eisholz continued that there were significant retail vacancies in 2010, and since then the value of the Association's properties has more than doubled. The Association does not wish to move forward with anything that would impede this positive trend.

James Eshhaki, owner of Essco Development Company:

- Reminded the Commission that the Planning Board unanimously recommended not changing the definition of personal services.
- Emphasized City Planner Ecker's point that studying other communities' personal services definitions does not necessarily tell the Commission how those communities handle office rentals within retail districts.
- Requested that the Commission differentiate between grade level and first floor level.

Richard Huddleston (representing owner of Unit 1 of Birmingham Place) stated:

- That his company owns about 110,000 sq. ft. of office and retail space.
- That they brought Birmingham Place out of foreclosure in 2010.
- That he most recently counted 21 vacant store fronts in Birmingham, including four in a row on Old Woodward.

- That having Google in Birmingham, along with attorneys, medical offices, and architects is preferable to vacancies.
- The Commission should adopt as broad a definition of personal services as possible as retail declines.

Jeanette Smith (Core Partners) explained that the real estate community would like the Commission to hold off on a definition until there has been more collaboration and study as part of the master planning process, especially since available data suggests a 10% retail vacancy over the next few years for the City of Birmingham.

Richard Astrein, jeweler in downtown Birmingham, stated:

- That retail density is important in the redline retail district;
- That offices add strain to Birmingham's limited parking resources, whereas retail enables a faster parking turnover; and,
- That if Birmingham continues adding offices to its retail district, it will no longer have the uniqueness that interests potential homebuyers in the community.

Karen Daskas (co-owner of Tender) stated that:

- Business of Fashion, a digital fashion publication, recently released a study that said independent retailers are gaining traction.
- Birmingham needs a strong group of independent retailers that are here to stay.
- Offices in the middle of a retail walking area limit walkability.

Debbie Astrein spoke as a lifetime resident of Oakland County and explained that:

- Birmingham has always been a unique place to visit.
- Adding first-floor offices will significantly alter the feel of the City negatively.

Lane Caruso (Caruso + Caruso, 166 W. Maple Road) asked the Commission to name businesses in order to clarify what they will and will not allow in downtown, and then to leave some room for future determinations.

Paul Ferrace Taros (resident) reminded the Commission that parks and recreation upkeep requires a large tax-base, and allowing these landlords to rent to offices will allow Birmingham to have that. He added that the landlords are the experts, and what is good for them will be good for Birmingham.

Brian Najor (Najor Companies) said:

- There is a wide variety of expert opinions, and a lot of remaining confusion on the issue.
- He would not be comfortable seeing something passed tonight, especially since the Planning Board itself was so against the definition's adoption.
- That it might behoove the City to reduce the size of the redline retail district, possibly by focusing on a few key areas.
- While retail is desirable for everyone, there are enough vacant spaces to accommodate Birmingham's retail demand.
- Maintaining the grey area afforded by the current understanding of personal services may provide the flexibility the City needs in order to make discretionary decisions about businesses within the redline retail district.
- He believes medical and dental practices should be allowed.

Mayor Harris confirmed for Mr. Najor that the ~~*downtown~~ citywide master plan is currently undergoing requests for proposals (RFP).

Commissioner Nickita clarified for Mr. Najor that:

- The Master Plan and the downtown plan are different.
- The Master Plan is a citywide plan, which is out for RFP.
- The citywide plan deals with Birmingham on a macro level, and not necessarily the details of the downtown.
- The citywide, Master Plan will be different than the Rail District Plan or the Triangle District Plan, which were more detailed regarding those areas.
- The 2016 Plan was created 20 years ago, but was updated in 2014 during a full review of the Plan and its progress.

Richard Astrein stated that, as a landlord in Birmingham, he has seen very high offers for his property, and does not believe that the City is in danger of plunging real estate values.

There being no further comment, Mayor Harris closed the public hearing at 10:25 p.m.

Mayor Pro Tem Bordman clarified that any businesses currently in operation in the redline district would be grandfathered in.

Commissioner Boutros stated that:

- He is a huge supporter of retail.
- As a retailer his three most important considerations are visibility, convenience, and parking.
- He wants to see a study before decisions are made for the definition.
- Birmingham is vibrant because of offices in the downtown, but not the first floor, which has been ruled out.
- The issue does not seem to be the personal services definition.
- Birmingham now has a retail consultant who he would like to see work with the retailers and landlords to better secure the position of retail in Birmingham.

Commissioner Nickita agreed with Mr. Najor. He reiterated that offices are not allowed on the first floor. The Commissioner continued that:

- The definition of personal services needs clarification so City staff knows how to implement it.
- The loophole in the definition of personal services needs to be closed because the ordinance currently permits businesses that are not allowed per ordinance in downtown.
- Within the definition business-to-business services should be prohibited, and a focus on individual services should be encouraged, which would be progress for the definition.
- Many types of further study would be useful, but for now the Commission needs to clarify the definition.

Commissioner Sherman pointed out that this conversation has been on-going since June 2016. He moved the ordinance as-is in order to close the loophole, while acknowledging it is not perfect. He stated that more clarification in the future would likely be necessary.

Mr. Aikens explained to Commissioner Hoff where 350 N. Old Woodward is, and described some of the offices within the building.

City Attorney Currier confirmed for Mayor Pro Tem Bordman that:

- If a landlord has an ongoing office tenant on the first floor, or replaces an office tenant on the first floor with another office tenant within six months, then the first floor could remain designated for office use under this ordinance.
- If a vacancy occurs on the first floor of any building within the retail district, however, and the vacancy lasts more than six months, it would be required to become retail under the proposed ordinance.

Commissioner DeWeese expressed:

- Discomfort with the definition, especially due to the Planning Board's lack of endorsement;
- A belief that the definition does not fulfill its intentions;
- A concern with potential consequences of the definition;
- That the Commission has not done due diligence before passing this; and
- His support for retail.

The Commissioner finished by stating that, due to these reasons, he is not in support of the motion.

Mayor Harris explained he is inclined to support the motion because:

- Of the 17 communities surveyed, not one includes office use in their definition of personal services.
- The ordinance does not allow for offices, which means an update of the definition of personal services would encourage an interpretation more in line with the ordinance's original intent.
- The definition can be modified in the future if there are damaging unforeseen consequences.

City Manager Valentine confirmed for Commissioner Hoff that this definition does clarify the ordinance for staff implementation because, in addition to the other language included, it specifies "services primarily provided directly to individuals" being the primary focus of first floor businesses.

Commissioner Boutros expressed his hesitancy once more to make a change without having sufficient information on the potential impact on the Birmingham Shopping District.

Mr. Eshaki thanked Commissioner DeWeese and asked what Birmingham would propose to do with the office buildings north of Maple that were built as office buildings. He added that the Commission stands reduce the value of these buildings significantly, and that this motion should not be passed without considering the ramifications.

Mr. *Ballard Baller (resident) stated that there are some sections of the City being included in this ordinance that are not suitable for retail, like Brown Street, N. Old Woodward, and S. Old Woodward. He believes those areas should be excluded from this definition, and is surprised to hear they were originally included.

Jeannette Smith (Core Partners) stated that she is still seeing inconsistencies in the application of this definition, but that the compromise might be to focus on the geography of its application like other speakers have suggested.

Derek Dickow (lives at Merrillwood Building) expressed opposition to this motion, and he thinks parking is a much bigger issue.

Mr. Caruso:

- Agreed with other speakers that the loophole needs to be closed, but that this solution may be too adversarial.
- Expressed concern that the City is setting itself up for a lawsuit, and that if the loophole is closed this way the redline retail district must immediately be studied and redefined.
- Said that his feeling is that the retail district should be Maple Road from Southfield to Woodward, and the Old Woodward corridor to some degree.
- Finished by saying that there are certain parts of the City currently defined as redline retail that would actually prevent a retailer from succeeding there without an online presence or an already-loyal local clientele.

City Planner Ecker confirmed for Mr. Najor that:

- Every tenant within the redline retail district has to follow the overlay standards which include first floor retail.
- Internally it has been decided that the first 20' beyond the windows or doors on the first floor cannot include desks or cubicles.

City Planner Ecker confirmed for Mr. Caruso that any businesses that are open to the public, display their merchandise, and display their services for the first 20' beyond the door are operating within the City's requirements.

Commissioner Hoff stated that she supports this but does not support it for the whole geographic area being considered.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Bordman: To amend Article 9, Section 9.02, Definitions, to add a definition for personal services to the Zoning Ordinance. (*Appended to these minutes as Attachment B*)

VOTE: Yeas, 4
 Nays, 3 (DeWeese, Hoff, Boutros)
 Absent, 0

Commissioner Nickita stated he believes it would be beneficial to move forward with a review of the redline retail district.

Commissioner Sherman stated that:

- The Planning Board has a review of the redline retail district on their agenda.
- The list of business types provided by the Planning Board may be used to provide further guidance for ordinance implementation.
- He would like the Planning Board to revisit the issues broached in this public hearing.

Mayor Harris said he would like to see geographic study of the redline retail district moved to the top of the Planning Board's agenda, given the concern expressed by members of the public at tonight's hearing. Mayor Pro Tem Bordman, Commissioner Hoff and Commissioner DeWeese agreed.

Commissioner Nickita agreed with Mayor Harris and added that perhaps different standards could be applied depending on location and how far out the business in question is from the core of Birmingham's shopping district.

Commissioner DeWeese added he would also like to see buildings discussed that currently fall within the redline retail district, but were originally built and have remained office buildings.

VII. REMOVED FROM CONSENT AGENDA

None

VIII. COMMUNICATIONS

11-294-17 COMMON GROUND

Letter of appreciation.

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

None.

X. REPORTS

11-295-17 COMMISSIONER REPORTS

The Commission will appoint two regular members and one alternate member to the Board of Review on December 4, 2017 at 7:30 p.m.

The Commission will appoint one member to the Birmingham Triangle District Corridor Improvement Authority on December 4, 2017 at 7:30 p.m.

11-296-17 COMMISSIONER COMMENTS

Commissioner Hoff congratulated the Library on a successful fundraising event.

Commissioner DeWeese said he has heard complaints from longtime shoppers in Birmingham regarding parking. The complaints regarded:

- General availability of parking;
- The fact that often short-term shoppers need to park on top floors due to long-term parkers claiming lower floor spaces;
- Difficulty using the credit card machines to enter and exit the parking garages; and,
- A perceived lack of availability of street parking.

Commissioner DeWeese would like to see more effort towards:

- Long-term parkers perhaps using higher floors of the garages;
- A way of fixing the credit card machine issue;
- Ways the City can keep more street spaces available.

11-297-17 CITY STAFF REPORTS

The Commission received the Parking Utilization report, submitted by City Engineer O'Meara.

The Commission received the 1st Quarter Financial Reports, submitted by Finance Director Gerber.

IX. ADJOURN

Mayor Harris adjourned the meeting at 11:22 p.m.

J. Cherilynn Mynsberge, City Clerk

*As corrected on November 20, 2017.

**SALVATORE SCALLOPINI BISTRO
505 N. OLD WOODWARD
SPECIAL LAND USE PERMIT AMENDMENT
2017**

WHEREAS, Salvatore Scallopini filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate their existing restaurant as a bistro as defined in Article 9, section 9.02 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located at the northwest corner of Harmon and N. Old Woodward;

WHEREAS, The land is zoned O-2, Office Commercial, and is located within the Downtown Birmingham Overlay District, which permits bistros with a Special Land Use Permit;

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

WHEREAS, The Planning Board on September 27, 2017 reviewed the application for a Special Land Use Permit Amendment and Final Site Plan to allow interior and exterior changes to the existing bistro, and recommended approval with the following conditions:

1. The non-operating door be filled in and turned into a window; and
2. The sill of the window to match all other windows across the facade of the building.

WHEREAS, The applicant is required to obtain an amended Outdoor Dining License from the City Clerk's office for the proposed outdoor dining;

WHEREAS, The applicant has complied with all conditions for approval as recommended by the Planning Board on September 27, 2017;

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

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and the Salvatore Scallopini application for a Special Land Use Permit Amendment authorizing the proposed interior and exterior changes to the existing bistro at 505 N. Old Woodward in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

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

1. Salvatore Scallopini shall abide by all provisions of the Birmingham City Code;
2. The Special Land Use Permit Amendment may be canceled by the City Commission upon finding that the continued use is not in the public interest;
3. The hours of operation for outdoor dining shall cease at 12:00 a.m.;
4. Salvatore Scallopini shall provide for the removal of disposable materials resulting from the operation and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area;
5. Salvatore Scallopini shall maintain a license agreement for use of the public right- of-way with the appropriate insurance certificates; and
6. Salvatore Scallopini enter into a contract with the City outlining the details of the proposed bistro option.

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

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

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on November 13, 2017.

J. Cherilynn Mynsberge, City Clerk

ORDINANCE NO. 2252

The City of Birmingham ordains:

An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham:

To amend Article 9, Section 9.02, Definitions, to add a definition for personal services.

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for the care of apparel and other personal items, but not including business to business services, medical, dental and/or mental health services.

ORDAINED this 13th day of November, 2017 to become effective 7 days after publication.

Andrew Harris, Mayor

J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held November 13, 2017, and that a summary was published in the Observer & Eccentric newspaper on November 19, 2017.

J. Cherilynn Mynsberge, City Clerk