

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

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:31 PM.

II. ROLL CALL

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

Administration: City Manager Valentine, City Attorney Currier, Acting Clerk Arft, City Planner Ecker, Deputy Treasurer Klobucar, Building Director Johnson, Police Chief Clemence

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

02-23-17: APPOINTMENTS TO THE BOARD OF REVIEW – ALTERNATE POSITIONS

MOTION: Motion by DeWeese:
To appoint Jason Monahan to the Board of Review as an alternate member to serve a three year term to expire December 31, 2019.

MOTION: Motion by Boutros:
To appoint Jill Stress to the Board of Review as an alternate member to serve a three-year term to expire December 31, 2017.

Commissioner Hoff noted that the Commission sometimes will wait to appoint when applicants are not able to be present for a meeting; however, in this situation, she explained that the Board of Review must meet in March, and training for the Board is this month. She suggested that the Commission move forward with the appointments this evening.

Vote on Jason Monahan:
VOTE: Yeas, 7
Nays, None
Absent, None

Vote on Jill Stress:
VOTE: Yeas, 7
Nays, None

Absent, None

Mr. Monahan and Ms. Stress were appointed to the Board of Review as alternate members.

02-24-17: APPOINTMENT TO THE BOARD OF ZONING APPEALS – ALTERNATE MEMBERS

MOTION: Motion by Bordman:

To appoint Jason Canvasser to the Board of Zoning Appeals as an alternate member to serve a three-year term to expire on February 17, 2020.

MOTION: Motion by Hoff:

To appoint Kristen Baiardi to the Board of Zoning Appeals as an alternate member to serve a three-year term to expire on February 17, 2020.

MOTION: Motion by Harris:

To appoint Cynthia Grove to the Board of Zoning Appeals as an alternate member to serve a three-year term to expire on February 17, 2020.

Vote on Jason Canvasser:

VOTE: Yeas, 7
Nays, 0
Absent, None

Vote on Kristen Baiardi:

Yeas, 4
Nays, 3
Absent, None

Jason Canvasser and Kristen Baiardi were appointed to the Board of Zoning Appeals as alternate members.

The Acting Clerk administered the oath of office to the appointed Board members.

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.

02-25-17: APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Item E (Minutes of January 28, 2017), by Commissioner Bordman
- Item K (Resignation of Phyllis Klinger from the Public Arts Board), by Commissioner Bordman
- Item L (Resignation of Maggie Mettler from the Public Arts Board), by Commissioner Bordman
- Item D (Minutes of January 23, 2017), by Commissioner Hoff
- Item G (Warrant List of January 25, 2017), by Commissioner Hoff

MOTION: Motion by Sherman, seconded by Boutros:

To approve the Consent Agenda containing Items A, B, C, F, H, I, J, M, and N.

- A. Approval of City Commission minutes (amended) of December 5, 2016.
- B. Approval of City Commission minutes (amended) of December 12, 2016.
- C. Approval of City Commission minutes (amended) of January 9, 2017.
- F. Approval of City Commission Special Meeting minutes of February 2, 2017.
- H. Approval of warrant list, including Automated Clearing House payments, of February 1, 2017 in the amount of \$1,705,620.55.
- I. Approval of warrant list, including Automated Clearing House payments, of February 8, 2017 in the amount of \$923,117.63.
- J. Resolution approving a request submitted by the Birmingham Bloomfield Chamber to hold the Village Fair in the Shain Park area, May 31 – June 4, 2017, including the private party, 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.
- M. Resolution approving the application and permit submitted by CenturyLink Communications, LLC, and authorizing the Mayor to sign the Right-of-Way Telecommunications Permit on behalf of the City.
- N. Resolution setting Monday, March 13, 2017 at 7:30 PM for a public hearing to consider amendments to Chapter 126, Zoning, Article 04, Structure Standards, Section 4.75 SS-02, to create limitations on the allowable size of dormers on single family homes; and Article 09, definitions, section 9.02, to add a definition of "Attic" and to amend the definitions of "Habitable attic" and "Story" for consistency with the Michigan Residential Code.

ROLL CALL: Yeas, Commissioner Sherman
 Commissioner Boutros
 Commissioner Hoff
 Mayor Nickita
 Mayor Pro Tem Harris
 Commissioner Bordman
 Commissioner DeWeese

Nays, None
 Absent, None

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

02-26-17: PUBLIC HEARING TO CONSIDER THE PROPOSED REZONING OF 412-420 E. FRANK

Mayor Nickita opened the Public Hearing at 8:50 PM.

City Planner Ecker explained described the current location and zoning classification of each of the three parcels as complicated. The three parcels have been the subject of Commission discussions relative to Transitional Zoning previously, and no action was taken at the time, and the parcels have retained their existing zoning.

She explained that currently a house is located on the corner of Frank and Ann which is being used as an office. The center parcel is Frank Street Bakery, which has been a commercial use for many years. The third property on the east is vacant, and is open area and was parking at

one time. She said the applicant is asking that all three of the parcels be rezoned to TZ1, Transitional Zoning, which would allow residential uses only.

City Planner Ecker said the western portion of the property (corner of Frank and Ann) is currently zoned R3, Single Family Residential. From 1935 – 1960, that portion of the lot was zoned R6. In 1960, the homeowners asked the City to rezone to B1, Neighborhood Business, because they were operating a custom drapery shop out of the home while they were living in the home. The City granted the rezoning. In 1980, the City adopted the Master Plan, and it was determined that most of the area was a sensitive residential neighborhood. Planner Ecker said while it is difficult to see exactly where the line was drawn, it looked like the westernmost parcel was included in the sensitive residential area. The City then down-zoned the parcel from B1 to R3, Single Family Residential. A lawsuit against the City was initiated by the property owner but was later dropped. In 1995, a descendant of the family that owned the property initiated a rezoning process, but did not follow through and nothing changed. In 2013, the current property owner, who is not the applicant on this rezoning request tonight, applied for a rezoning to have all three parcels rezoned to B2B to match the easternmost parcel. B2B is seen along Old Woodward. The neighbors at the time did not want to see commercial uses. There were several postponements, and the applicant eventually dropped the rezoning request.

The Planning Board has discussed transitional zoning, and originally thought TZ1 would be the best use for the parcels; however, the neighbors expressed support for the bakery there. The Planning Board changed their recommendation to TZ2, which would allow some commercial uses. The City Commission took no action on that recommendation.

The center parcel was zoned R6 until 1960. The lot was split and was rezoned to B1, Neighborhood Business. Prior to Frank's Bakery, there was a vintage resale shop, which was not a legal use, and had to go to the Board of Zoning Appeals for a use variance. That use continued until 2007.

In February 2016, the property owner requested a change to B2B again for the whole site. The Planning Board recommended denial of the rezoning because while B2B was consistent for the eastern side of the lot, it did not provide the transitional feel that the Planning Board recommended. Therefore, the commercial building is still on the site and is zoned B1.

City Planner Ecker said the eastern-most parcel was also zoned R6 from 1935 until 1960, so presumably all three lots were all one lot at one time. In 1960, the property owner successfully applied for the B2B, which is zoned that way today.

City Planner Ecker explained what the applicant must prove when submitting a request for a rezoning. The applicant tonight is not the current property owner, but has the consent of the property owner to apply for the rezoning.

City Planner Ecker explained that an applicant for a rezoning must show why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership. She noted that the applicant has indicated that the subject property is surrounded by properties with different uses, some consistent with existing zoning classifications, and many in variance with the existing zoning. The Subject Property is bordered on the east side by an office building and parking lot which fronts on Old Woodward and is in the B2B zoning district. The property adjacent on the north side of Frank Street is a CVS drug store and surface parking lot which fronts on Old Woodward. While the properties to the west

and south are in the R-3 (Single Family Residential) zoning district, the home directly west of the Subject Property at the south west corner of Ann Street and Frank Street currently has a multi-family use with three families occupying it. The three buildings on the west side of Ann Street immediately to the south of this corner home are all multi-family properties with 4 units, 24 units and 4 units respectively. The building on the west side of Ann Street, two houses to the north of the intersection of Ann and Frank, is being used as an office building with an adjacent parking lot containing 22 parking spots. Directly to the north of this property on the west side of Ann Street is an 8 unit multi-family building. One block to the west at the intersection of Frank and Purdy is a building with 3 commercial offices, and directly to the north is a 23 unit multi-family property. Other than this last property, all of the other multi-family and commercial properties west of the Subject Property have a non-conforming use in the R-3 Single Family Residential zoning district.

City Planner Ecker said the applicant must provide an explanation of why the existing zoning classification is no longer appropriate. The applicant has noted that the parcel is made up of three contiguous lots with three different zonings (R-3, B-1, and B-2B). Given the current mix of uses on the three parcels, the subject parcel is a transitional property. The very limited areas of the three individual parcels would make it difficult to develop anything consistent to each of the parcel's current zoning. She said the applicant also noted that the B-2B eastern piece is only 32 feet in width. Further, Frank Street from Woodward to Ann has been widened and on-street metered parking added, with the effect of extending the Woodward business district along Frank Street, which along with the CVS plaza on the north side of Frank, with its large surface parking lot visible from the windows of any structure facing Frank Street from the subject property, makes this an undesirable site for single family homes.

City Planner Ecker said the applicant must explain why the proposed rezoning will not be detrimental to surrounding properties. The applicant requests that the Subject Property be rezoned to the transitional zoning classification of TZ-1. This request is consistent with the intent of the City's transitional zoning. The applicant intends to develop the property as multi-family with no commercial component to the project. Given the very close proximity of a half dozen or more multi-family properties, this rezoning and use would provide a good transition from B-2B General Business and D-2 in the Downtown Birmingham Overlay to the north and east, and would not change the character of the neighborhood.

City Planner Ecker said the applicant has provided all required documentation. The Planning Board held a Public Hearing on the application. The Planning Board found that the entire parcel at 412 – 420 E. Frank Street is clearly a transitional property that separates the commercial areas to the north and east from the residential area to the west. The use of the property for low density multiple family use acts as a transition and buffer, and is entirely consistent with recent rezonings in similar transitional locations around the downtown. The proposed multiple-family residential development will also add to the diversity of housing options available, and is similar to those already found in the surrounding area. The proposed request to rezone the entire property to TZ1 Transition Zone and limit the use to residential use only is very appropriate in such a transition zone. Accordingly, the Planning Division found that the proposed rezoning of the Subject Property from R-3 (Single-Family Residential), B-1 (Neighborhood Business), and B-2B (General Business) to TZ1 (Transition Zone) should be recommended for approval.

City Planner Ecker noted that the applicant provided some development options under current zoning conditions to the Planning Board to demonstrate the feasibility of the options under current zoning conditions.

City Planner Ecker reviewed the uses under the current zoning classifications and the permitted uses under the proposed TZ1 zoning classification. She noted it is a down zoning, since the commercial uses are eliminated on the middle parcel and the one to the east. It does allow multi-family residential up to 5 units for the parcel as a whole.

Mayor Nickita said transitional zoning has been discussed for some time. This site has been of some concern because of the three zoning classifications on the small site. The Planning Board has recommended TZ1. Mayor Nickita would like to keep the discussion on the actual zoning and not the proposed project.

Commissioner Hoff agreed and noted that apparently there have been presentations to the Planning Board. City Planner Ecker said there have been discussions with the Planning Board about what the applicant is planning with the rezoning, and emphasized that tonight the Commission is considering the rezoning, and not the site plan. She added that some Planning Board members wanted to see what the options are for the site. Any development proposed hereafter if the rezoning is approved, would have to go through site plan review.

City Planner Ecker confirmed for Commissioner Hoff that previously, the Commission did not create TZ2 or rezone these parcels to TZ2. She explained that TZ1 allows residential uses only. She added that TZ2 allows some small scale commercial uses, but they are limited in size. She said the Planning Board originally felt TZ1 was the correct zoning, but the neighbors were in favor of retaining the bakery there. The Planning Board then changed its recommendation to TZ2, which went to the City Commission. The Commission was concerned about the commercial uses, and ultimately, TZ2 was not created.

Mayor Nickita noted that currently, the parcels are being used as TZ2, because there is a commercial component. This is really about going forward.

Commissioner Boutros asked City Planner Ecker about the parking lot there now and the proposed rezoning. She responded that if the TZ1 rezoning was approved tonight, the site plan review would determine where the parking would be located. She added that parking would be reduced in TZ1, because only five residential units would be allowed, and only ten parking spaces would be needed on site.

Commissioner DeWeese said the complaints received about transitional zoning classifications had to do with uses. This rezoning would be the most minimal use.

D'Angelo Espree commented on the current zoning condition, population density in this area, and residential uses as TZ1.

City Planner Ecker said that the Planning Board considered the maximum number of units that would be permitted, and felt the maximum of five units would be suitable there from the overlay to the single family neighborhood there.

Eric Morganroth commented that he supports the proposed plan especially as it relates to parking. He added that he prefers keeping the R3 designation, and down-zoning the other two commercial parcels to TZ1.

Ron Fry owns a single family home directly to the west on Ann. He commented he is not against good development. He asked for the setbacks of TZ1 as opposed to R3. City Planner Ecker said the minimum front yard setback (on Frank) would be 0-5 feet, the rear yard minimum when it abuts single family would be 20 feet, side setback would be 0 feet from an interior side lot line, and 10 feet from a side street. Mr. Fry commented on two front yard setbacks on a corner lot. He said he had to conform to very strict zoning rules on his property in order to build a single family home.

Eric Wolfe commented he is in favor of the proposed project. He hoped the Commission would take into consideration the project.

Commissioner Hoff said the Commission is not considering the proposed development, only the proposed rezoning to TZ1.

Mayor Nickita commented that the proposed project is an example of what can be done with the subject properties, and the Commission is not approving the project, and it is not on the table this evening.

Commissioner DeWeese asked what classification would be needed in order for the project to be built in the way the residents favor. Mayor Nickita said the project would be possible in the TZ1 classification. Commissioner DeWeese clarified that the project would require that all three parcels would have to be rezoned to TZ1.

Commissioner Sherman said the City does not use contract zoning. The City has used conditional zoning where the City takes an offer from a developer and the City approves it or does not approve it, and the property stays as it is.

City Attorney Currier said the developer must submit a written, non-negotiable offer as to the zoning; it is voted on up or down by the Commission, has a specified time to build, and if it is not built, the property goes back to the former zoning. He said there is no contract zoning provision in the zoning enabling statute.

Commissioner Boutros asked to see the example.

Commissioner Bordman said she agrees with Mr. Wolfe that the Commission would not be discussing this if the request to rezone was not accompanied by the project. She added it seems illogical not to look at the project. In view of the City's use of conditional zoning recently, she thinks that since there is substantial support of community, it should be considered by the Commission. She is supportive of letting the petitioner address the Commission and considering his proposal.

Mayor Pro Tem Harris said for the purposes of our decision tonight, he would like to see the project tonight. He said although conditional zoning has not been sent to us, if we want to entertain that idea, he asked if we are able to do that tonight, or would that come back to us later after the zoning decision has been made.

City Manager Valentine said that process would be initiated as a separate process. Commissioner Sherman said if a developer is interested in conditional zoning, he would have to propose it. If that is the case, it should be proposed before we review any plans.

Mayor Nickita said it is important to distinguish what is before the Commission today, which is a zoning clarification of a complex site. To tie it to an approval of a project is not on the table tonight.

Commissioner Hoff commented that we should rezone a property because it is the right thing to do, not because there is a project to be accommodated.

Mayor Nickita said the idea of creating transitional zoning was to clarify and clean up areas along the perimeter of the downtown area. He added that we do not zone to accommodate a project, and if a project falls in line with the zoning that the Commission has determined is appropriate, it can move forward in the process of approval. He said the question is whether TZ1 is appropriate zoning for this site. The project is an example of what could be done under transitional zoning, and nothing the Commission might approve today, ties that project to this zoning condition.

Commissioner Bordman said we know there is a petitioner with a specific project. She asked the City Attorney that if we know that is true, and we also know from reading the Planning Board minutes that the petitioner has already suggested that he would be amenable to conditional zoning, could we table the zoning request today, and have the petitioner proceed with the conditional zoning process, and then bring this back at that time.

City Attorney Currier said that is up to the developer to propose it in writing to the City Commission. He added that Section 125.3405 of the Zoning Enabling Act has specific requirements. City Planner Ecker commented that the developer submitted a statement to the Planning Board, and added she does not know what the specific format must be. City Attorney Currier responded that the developer is required to put in writing the conditions he wants, and added that the developer may have stated them at the Planning Board meeting, but a separate letter to the Commission is needed including a time frame for completion.

Mayor Nickita clarified that a formal request to the Commission must be submitted. City Attorney Currier responded that the formal request would then be referred to the Planning Board. Mayor Nickita added that we do not have such a request from the developer tonight.

Commissioner Sherman commented that the petitioner could ask for a continuance of the hearing.

Mayor Nickita said this is the hearing on the rezoning to TZ1.

Commissioner Sherman said the petitioner could ask for this hearing to be postponed to a date certain, or he could withdraw his petition, or continue with the hearing right now.

Commissioner Boutros asked if the petitioner could go back after this hearing, and then ask for conditional zoning. City Attorney Currier said he needs to do research on that question, and added that there is a time limitation. The same request by the same petitioner cannot be submitted for a year, if the Commission has acted on the request. It can be a different request for a rezoning or a different petitioner for a rezoning.

Commissioner Sherman clarified that if the Commission makes a decision tonight and if it is not what the petitioner wants, he might have to wait a year before submitting again.

Mayor Nickita commented that if the Commission rezones this to TZ1 tonight, then the petitioner can submit for site plan approval, which is the process we typically follow.

Commissioner Hoff asked if City Planner Ecker knows why the home on the corner is facing Frank and not Ann, when all the others are facing Ann. City Planner Ecker said the records do not reflect that information.

Commissioner Hoff asked about the property owner. City Planner Ecker explained that the applicant for this rezoning is not the owner, but has provided paperwork to the Planning Department that indicates the property owner is aware of the request. The property owner has submitted rezoning requests for the three parcels previously.

Mayor Nickita commented that there are two considerations tonight. One is that we look at the zoning specifically for a rezoning to TZ1, allowing the applicant to then go through the typical process of getting a project approved and built. On the other hand, if the applicant has an interest in conditional zoning, we could consider that.

John Sherkerjian, representing the applicant, asked the City Attorney if proceeding with a written request to the City Commission would constitute a substantive change so the applicant would not be forced to wait a year before resubmitting the application. City Attorney Currier said it is a procedural change as to how the same issue is being approached. Mr. Sherkerjian said he would be getting to the same result, but with voluntarily offering a condition. City Attorney Currier said it would take a year.

Mayor Pro Tem Harris suggested that the scenario Mr. Sherkerjian discussed assumes that the Commission makes a substantive decision tonight. Mayor Nickita said, to be clear, if the Commission votes on what is on the table tonight, that is definitive, and Mr. Sherkerjian can submit his project under that zoning. Mr. Sherkerjian added that the residents may not be as comfortable with that because they want to see his plan versus the unknown.

Mayor Nickita suggested another option would be to consider a conditional zoning application. It would require a formal request, a public hearing at the Planning Board and thereafter, the City Commission.

Commissioner Bordman asked to make clear the Commission is not asking the applicant to do that. Mr. Sherkerjian said they met with the neighbors and came to the conclusion to voluntarily offer conditional zoning. He understands that the offer does not meet the requirements of the City.

City Attorney Currier said the conditional zoning request would begin at the Planning Board and make its way to the City Commission, which would likely take until May or possibly June.

Mr. Sherkerjian said he would be unable to keep his contract with the seller with that long a delay. He has no issue with conditional zoning, but the timing is an issue for him.

Commissioner DeWeese confirmed that Mr. Sherkerjian's plan will meet the requirements of a TZ1 classification with no variances needed.

Mr. Sherkerjian said the R3 parcel which seems to be the issue with everyone, is inconsistently zoned, is an anomaly, and totally unusual with respect to the other R3 properties. He added that this lot is the only lot not facing Ann, the only lot facing the parking lot, and is the only lot that is not 123 feet deep like the others, so a garage cannot be built.

Mr. Sherkerjian described the proposed plan.

Mayor Nickita said an applicant is interested in developing this property, and is ready to proceed subsequent to the rezoning tonight. He added that the Commission is not approving the project shown tonight, but rather a zoning change because of inconsistencies and which will align with transitional zoning.

Commissioner Hoff said she is unclear about neighbors' opinions. She thought she heard they want to keep an R3 zoning on the single parcel, but also want this development. Mayor Nickita stated if the R3 zoning remains, the proposed development the applicant discussed could not happen. It also would be inconsistent with creating a transitional zoning. It would create an R3 parcel next to a transitional zoning. The resident clarified his objection.

Mayor Pro Tem Harris said he detected some equivocation in the applicant's interest in applying for conditional zoning if the Commission does not make a decision this evening, and asked for clarification by the applicant.

Mr. Sherkerjian said his concern was with the timing of the request for conditional zoning, and felt that it would not work.

Eric Wolfe commented that the Planning Board was in favor of the project subject to conditional zoning, and was told by the Planning Board Chairman the Board did not have the authority to do that. He added he does not understand why this has to go back to the Planning Board to come back to the Commission.

City Attorney Currier said the ordinance requires that at least one public hearing be conducted before the Planning Board specifically addresses the request for conditional zoning of the parcels.

The Public Hearing was closed at 9:37 PM.

MOTION: Motion by Hoff, seconded by Bordman:

To approve the proposed rezoning of 412 - 420 E. Frank Street from R3 (Single-Family Residential), B1 (Neighborhood Business), and B2B (General Commercial) to TZ1 (Transitional Zoning) for all three parcels.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

**02-27-17: PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 126,
 ZONING – RAIL DISTRICT BISTROS**

City Planner Ecker explained that the owner of the Whole Foods property at 2100 E. Maple is looking for zoning ordinance amendments that would create boundaries of the Rail District and include the Whole Foods site at 2100 E. Maple into the district, and also allow a Bistro to be applied for at that location. Alternatively, the owner is requesting that the Economic Development map be amended in the zoning ordinance to include the 2100 E. Maple site as one of the properties in the Economic Development district, enabling Whole Foods to apply for an Economic Development license.

Mayor Nickita opened the Public Hearing at 9:39 PM.

City Planner Ecker explained that if the Commission chooses to allow a Bistro license to be used at 2100 E. Maple, the Commission should codify the Rail District boundaries. The Commission would also need to amend the ordinance to change the development standards in Article II, Section 2.29 and 2.31 to allow Bistro licenses to be used in the defined Rail District.

City Planner Ecker said the second option of an Economic Development license would require the Commission to amend the Economic Development map in the Zoning Ordinance to include the 2100 E. Maple property, and also to amend the B2 zoning district to allow the use of an Economic Development license with a Special Land Use permit.

City Planner Ecker noted that both the Rail District option and the Economic Development option would require a Special Land Use Permit.

Commissioner Bordman asked City Attorney Currier if the Bistro license application submitted by Whole Foods to the City in October 2016 is sufficient or will they have to re-apply. City Attorney Currier said the prior application is sufficient.

City Planner Ecker noted that all three bistro license applicants have submitted Special Land Use permit applications to the Planning Board and will be considered at the February 22, 2017 Planning Board meeting. What happens tonight with the Whole Foods request for a zoning amendment will be considered at that meeting.

Mayor Nickita said the Commission has two things to consider, which are to create the Rail District boundaries, or expand the Economic Development map to include 2100 E. Maple.

Commissioner Hoff said we have approved liquor licenses in the Rail District. There is an application currently for a bistro license in the district.

City Manager Valentine noted that we have bistros in MX district. The Rail District has yet to be defined formally. That is part of what the Commission is being asked to do this evening.

Commissioner Hoff suggested that it is easiest to draw the Rail District boundaries and include the Whole Foods site.

Commissioner DeWeese said having the boundary defined makes sense. He said Whole Foods is right next to the railroad and is part of the Rail District. He added that he thinks the Economic Development area should be focused along Woodward.

Ms. Kelly Allen, representing Whole Foods, suggested that the Rail District boundary be defined by the Commission. She added that she believes that Whole Foods should have an Economic

Development license. She said the Bistro license was designed more for small, eclectic restaurants in certain areas of the City. Whole Foods meets the Economic Development criteria on every element. She thinks the City may be inclined to give the Bistro licenses to the more traditional type of restaurant, whereas there are only two or three Economic Development licenses with specific requirements as to investment, which Whole Foods meets.

In response to Commissioner Hoff's question, Ms. Allen responded that since the City does not have any quota licenses available, Whole Foods must obtain an escrowed license from the State to transfer in to the City. Ms. Allen added that there is no cost for a Bistro or Economic Development license. It qualifies the user/applicant to be licensed in the City. The user/applicant then has to purchase a license to transfer into the City.

Commissioner Hoff noted that a Bistro license has many more restrictions than an Economic Development license. Ms. Allen said that just because Whole Foods qualifies for an Economic Development license, the plans call for a small restaurant doing business in conjunction with the grocery store.

Mayor Pro Tem Harris asked if the City adjusts its Economic Development map to include Whole Foods, would Whole Foods then withdraw its application for a Bistro license. Ms. Allen confirmed it would.

Mayor Nickita closed the Public Hearing at 9:55 PM.

Mayor Nickita suggested that the Commission has to be careful of the reality of what is being presented vs. what the Commission created these for. They were intended to be generators of opportunity, not necessarily accommodating for something that has already happened. We have a development that has already happened. The intention of the Economic Development was to create incentive for things to happen. He said that is not congruent with the intent of the Economic Development license, and he is more in favor of clarifying the Rail District to include Whole Foods.

Commissioner Sherman expressed concern that expanding the Economic Development corridor will create a hodge-podge effect and that was never the idea. He agreed that we were looking to develop a certain area and use the license as an incentive. He prefers to correct the map and ordinances.

MOTION: Motion by Sherman, seconded by Hoff:

To amend Chapter 126, Zoning, as follows to establish the boundaries of the Rail District and to allow bistros in B2 and B2B zone districts located within the Rail District with an approved Special Land Use Permit:

- (a) Article 02, section 2.29 (General Business), to allow bistros in the Rail District as a use requiring a Special Land Use Permit;
- (b) Article 02, section 2.31 (General Business), to allow bistros in the Rail District as a use requiring a Special Land Use Permit; and
- (c) Article 09, section 9.02 (Definitions), to add a definition for Rail District.

VOTE: Yeas, 7
Nays, 0
Absent, None

Commissioner Hoff said the Commission has received communications from residents in the area about their traffic concerns. She commented that the Commissioners are definitely looking at those issues. She does not think this action creates any greater hardship.

City Manager Valentine added that there are initiatives to improve pedestrian flow as well as vehicular movements throughout the corridor as part of the Ad Hoc Rail District study recently accepted by the Commission. After reviews and studies are conducted by the Multi-Modal Transportation Board and the Planning Board, their recommendations will be returned to the Commission for possible action.

Commissioner Hoff wanted to assure the people in that area that the City is listening to them. As a result of the meeting the City Manager had with residents recently, the City is going to do some things in the interim until those formal, permanent solutions can be reviewed and acted upon, to try to address the residents' concerns with more intermediary measures.

Mayor Nickita said the City is making plans on how to achieve some gains in that area.

02-28-17: PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 126, ZONING – LIQUOR LICENSES IN THEATERS AND CHAPTER 10, ALCOHOLIC LIQUORS, LICENSES FOR THEATERS

The Mayor opened the public hearing at 10:01 PM.

City Planner Ecker explained that the owner of the Birmingham Theater submitted an application to allow a new category of liquor licenses for theaters. This request impacts Chapter 126 of the Zoning Ordinance, and also Chapter 10, Alcoholic Liquors in the City Code. The Planning Board recommended the Commission consider adding a new division in Chapter 10 of the City Code. A Public Hearing at the Planning Board for the addition to Chapter 10 of the City Code was not required, but it was decided to take it through the public hearing process as well. Additionally, the Board recommended the Commission consider an amendment to the Zoning Ordinance to allow a new category of liquor license to be used in a theater with a Special Land Use Permit in the B4 District only.

City Planner Ecker described the definition of a theater as a building, or a part of a building for housing dramatic presentations, stage entertainments, or motion picture shows. She described the extensive amount of information that must accompany the application.

City Planner Ecker said the ordinance amendment would give the Commission up to two theater licenses per year. She added that this license cannot be transferred without Commission approval, and the theater would have to enter into a contract with the City.

City Planner Ecker noted that an owner of a theater license could apply for an Entertainment, Dance or Additional bar permit, but not seek any permit endorsements from the Liquor Control Commission, or seek any change in license status or class without City permission.

Commissioner Bordman said liquor licenses are a trend in the theater business, and in general, is in support of this, so we keep the theater in town and viable. She expressed concern about our definition of theaters. For example, we do not say what type of movies fall into the motion picture shows. She is also concerned what dramatic presentations could qualify, and what kind of presentation. She believes the definition should be tightened up for the future as well.

City Planner Ecker said adult entertainment movies would fall under the regulated use category. Mayor Nickita said given the City's history with entertainment and the strong interest in liquor licenses, will there be an opportunity for someone to misrepresent what they are doing. He concurs with Commissioner Bordman that our definition of theater is not clear enough and defined enough where we cannot see the potential for misuse.

Commissioner Hoff expressed concerns about the entertainment aspect of the definition, and the type of crowds that might be attracted. She added that the Birmingham Theater is an important landmark in downtown and the City wants it to be successful. She agrees we have to have some restrictions for the future when ownership may change.

Commissioner Sherman noted that everything comes to the Commission. The Special Land Use Permit will define what can and cannot occur at the property. He suggested the ordinance be drafted with some flexibility, because we do not know the type of situation in the future.

Mayor Pro Tem Harris agreed with Commissioner Sherman, and is comfortable with the ordinance. He noted that the City conducts an annual review for every liquor license, and believes there is adequate protection built into the proposed ordinance.

Commissioner Boutros commented on the importance of keeping this landmark, and agrees that the Commission is the decision maker.

Commissioner DeWeese supports this, and sees the value in some flexibility.

Bruce Thal commented about intention to include Village Players. City Manager Valentine said it was contemplated, but the group has not come forward expressing interest, but the flexibility is there to incorporate them at the time they wish to pursue this.

Kelly Allen, representing the theater, said the Birmingham Theater complies with the ordinance. She said significant improvements have been made already, and that this ordinance will be the first step in solidifying the theater's existence.

The Mayor closed the Public Hearing at 10:20 PM.

MOTION: Motion by Boutros, seconded by DeWeese:

To amend Chapter 126, Zoning, Article 2, Section 2.37, B-4 Business Residential, to allow the use of liquor license in theaters in the B-4 zoning district, and to consider the associated amendments to Chapter 10, Alcoholic Liquors, Article II, to add a Division 5, Licenses for Theaters.

Commissioner Bordman said she is reassured and will support the motion.

Mayor Nickita said he was concerned as well and it was important to have the discussion. He is comfortable moving forward.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

Mayor Nickita opened the Public Hearing at 10:22 PM.

City Planner Ecker explained the history of this zoning ordinance amendment request by the owners of the 555 Building. The amendment would allow buildings to be considered either legal and conforming, or legal non-conforming, but have the ability to add on in some way. The amendments have to do with height, number of stories, and setbacks. The Planning Board looked at several options. The Board came up with a fairly simple method, by changing Section 6.02 to allow all buildings to be improved in some way if they are non-conforming, or to consider the creation of a D5 zone, defined as over five stories. The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay.

City Planner Ecker explained for Commissioner Boutros that the 555 site has room where a new building could be constructed.

City Planner Ecker explained that none of the three buildings can be any higher or add any extra stories under the ordinance amendment.

Mayor Pro Tem Harris asked about maintenance and repair under the current ordinance. City Planner Ecker said an interpretation is required in every case currently. Under the ordinance amendment, maintenance and repair would be permitted.

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said they could not, because the properties next door would not have the D5 zoning classification.

Commissioner Hoff asked how the determination is made as to an enlargement and an addition. City Planner Ecker said the enlargements or extensions are an absolute right if the regular overlay standards are met. If it is an addition or new construction which would exceed the D4 requirements, it can be done with a Special Land Use Permit.

Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.

Mayor Nickita closed the Public Hearing at 10:40 PM.

MOTION: Motion by DeWeese, seconded by Boutros:

To amend Chapter 126, Zoning, Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district, and Article 6, nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To approve the rezoning of the following properties:

- (a) 555 S. Old Woodward (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;
- (b) 411 S. Old Woodward (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
- (c) 225 E. Merrill (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.

City Planner Ecker confirmed for Commissioner Hoff that the ordinance amendment would allow the 555 Building to build an addition as tall as it is only with a Special Land Use Permit approved by the Commission. She added that a new building to the south could be built that meets the D4 standards as of right. The setbacks will basically be the same.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

VII. REMOVED FROM CONSENT AGENDA

02-30-17: ITEM D - APPROVAL OF CITY COMMISSION MINUTES OF JANUARY 23, 2017.

Commissioner Hoff asked that a correction in the minutes be made in reference to Poppleton Park on page 3, and correct Police Chief Clemence's name also on page 3.

MOTION: Motion by Hoff, seconded by Sherman:
To approve the City Commission Minutes of January 23, 2017, with corrections.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

02-31-17: ITEM G. WARRANT LIST OF 1/25/17

Commissioner Hoff noted that the Warrant List of 1/25/17 appears to be the same Warrant List dated 1/18/17 which was approved at the last meeting, and she suggested it be pulled so the Finance Department can review and determine the status.

02-32-17: ITEM E - APPROVAL OF CITY COMMISSION LONG RANGE PLANNING MINUTES OF JANUARY 28, 2017.

Commissioner Bordman requested to clarify the question she asked on page 5 during the discussion regarding the Fairway sidewalk funding.

On page 9 during the discussion of the parking enhancement efforts, she asked that her statement be clarified "that a person with a handicap placard can park in any parking space".

On page 10, during the discussion about the Request for Qualifications and the Request for Proposals, she asked to clarify her suggestion that it is not just a sale or lease option, but could also be a plan without that option. At the bottom of page 10 during the discussion of the court decision, she clarified that the "court found the city liable."

MOTION: Motion by Bordman, seconded by DeWeese:

To approve the City Commission Long Range Planning Minutes of January 28, 2017, with corrections.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

02-33-17: ITEM K - PUBLIC ARTS BOARD VACANCY – PHYLLIS KLINGER

Commissioner Bordman wanted to note that Ms. Klinger passed away and would like to City to send the City's condolences to her family.

MOTION: Motion by Bordman, seconded by Hoff:
To approve Item K, and send condolences from the City to the family of Phyllis Klinger, and direct the Acting Clerk to begin the process of filling the vacancy.

VOTE: Yeas, 7
 Nays, 0
 Absent, None

02-34-17: ITEM L - PUBLIC ARTS BOARD VACANCY – MAGGIE METTLER

Commissioner Bordman wanted to thank Ms. Mettler for her long and distinguished service to the City on the Public Arts Board.

MOTION: Motion by Bordman, seconded by DeWeese:
To approve Item L, and accept the resignation of Maggie Mettler from the Public Arts Board, thank her for her service, and direct the Acting Clerk to begin the process of filling the vacancy.

VIII. COMMUNICATIONS

02-35-17: COMMUNICATIONS

The City Commission received and filed the communications from Peggy Dufault and City Manager Valentine, Darin McBride and Renee Suchara regarding sidewalks on Fairway.

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

X. REPORTS

02-36-17: COMMISSIONER REPORTS

The City Commission intends to appoint members to the Parks & Recreation Board, Multi-Modal Transportation Board, Planning Board, and Cablecasting Board on Monday, March 13, 2017.

02-37-17: COMMISSIONER COMMENTS

Commissioner Bordman requested the Planning Board to weigh in on additional areas in the Rail District, including the commercial properties on the west side of S. Eton, south of Maple and the commercial properties on Eton, north of Maple, in the Jet's Pizza area. She said they have similar circumstances to the areas that have been designated now as in the Rail District, and would like the Planning Board's input.

City Manager Valentine suggested he could add this discussion to the joint meeting with the Planning Board in June. The commissioners agreed.

Mayor Pro Tem Harris expressed appreciation for the historical information provided to the Commission. He suggested that it would be more efficient if it was arranged in chronological order and wondered if there was a preference by the Commission.

Commissioner Bordman agreed that it is challenging at times to get through the additional documentation.

Mayor Pro Tem suggested a table of contents if it is not overly burdensome.

02-38-17: CITY STAFF REPORTS

The City Commission received the Maple Road & Southfield Road Intersection report, Easterly Crosswalk, submitted by City Engineer O'Meara.

XI. ADJOURN

The meeting was adjourned at 10:55 PM.

Cheryl Arft
Acting City Clerk