

**CITY OF BIRMINGHAM  
PLANNING BOARD ACTION ITEMS  
OF WEDNESDAY, JULY 25, 2012**

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<b>Motion carried, 7-0.</b>	5

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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JULY 25, 2012  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Planning Board held July 25, 2012. Chairman Robin Boyle convened the meeting at 7:30 p.m.

**Present:** Chairman Robin Boyle; Board Members Scott Clein, Carroll DeWeese, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Kate Leary

**Absent:** None

**Administration:** Matthew Baka, Planning Specialist  
Robert Bruner, Jr., City Manager  
Timothy Currier, City Attorney  
Jana Ecker, Planning Director  
Paul O'Meara, City Engineer  
Carole Salutes, Recording Secretary

**07-116-12**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING  
HELD JULY 11, 2012**

Ms. Lazar:

Page 3 - Fourth paragraph, first sentence, change "buildings" to "building."

Page 5 - First paragraph, last sentence, substitute "and" for "but."

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. DeWeese to approve the Minutes of the Regular Planning Board Meeting of July 11, 2012 as presented.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: None

**07-117-12**

## **CHAIRPERSON'S COMMENTS**

The chairman noted this will be a blended meeting that includes a variety of activities which include a public hearing, site plan review, and a study session.

**07-118-12**

## **APPROVAL OF THE AGENDA (no changes)**

**07-119-12**

## **PUBLIC HEARING**

### **Required Setbacks for Utilities**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM TO AMEND ARTICLE 04, DEVELOPMENT STANDARDS, SECTION 4.59 SB-02, TO ADD SETBACKS WHERE UNDERGROUND REAR UTILITIES ARE PRESENT.

Chairman Boyle opened the public hearing at 7:33 p.m.

Ms. Ecker advised that this issue has been discussed at the last couple of meetings. The City has been pursuing a plan to decide what to do with the utilities that are getting quite old and need to be either abandoned or repaired. It has become apparent that backyard sewers and water mains should be treated differently because sewers tend to be deeper than water mains. With that in mind, the suggested ordinance language requires a 10 ft. setback from the utility when the utility is a sewer, and only a 6 ft. setback when the utility is a public water main. This is to ensure that structures such as a garage or a swimming pool don't get built too close to the utilities, potentially causing damage to the structures if the water main or sewer has to be repaired.

It was noted that the numbers on charts that were provided do not add up. They need to be corrected before this matter goes before the City Commission.

Discussion brought out that in cases where a structure burns or is destroyed more than 75 percent and due to the lot being maxed out it cannot be placed in another location, it would be a valid request to the Board of Zoning Appeals ("BZA") to waive the ordinance and rebuild it in the same spot.

The chairman called for comments from the public at 7:45 p.m.

Ms. Dorothy Conrad, 2252 Yorkshire, pointed out to the board that the affected property owners have not been notified of the proposed ordinance amendment and they should be. This is a major change of how certain properties can be used. She supports the ordinance in the case of new construction but does not think it is fair to impose it on existing developed properties.

Mr. Williams did not think the neighborhood associations have gotten the word out on this matter and he is concerned about the lack of notice. Ms. Ecker stated for the record that all of the legal noticing has been done. The City is not obligated to notify every single property owner. This was discussed internally and the decision was to send a notice to the homeowners associations so they could inform their members. There will be the opportunity for additional notice when the public hearing goes before the City Commission, if that is what the City decides.

Ms. Whipple-Boyce said she doesn't like ~~leaving it to the discretion of~~ **burdening** another board (the BZA) as to whether a structure can be re-built if it is destroyed over 75 percent. She feels the 13 properties in question have to be protected. Mr. Koseck thought in those cases the BZA would look at the unusual circumstances and his sense is they would support re-building.

In response to a question from Ms. Lazar, Mr. O'Meara indicated if someone wants to add on above a garage, the portion that is within the setback area would be non-conforming.

**Motion by Mr. DeWeese**

**Seconded by Mr. Koseck to recommend approval of the proposed ordinance changes to the City Commission provided the affected property owners are notified prior to the public hearing of the City Commission on this subject.**

**Motion carried, 6-1.**

**VOICE VOTE**

Yeas: DeWeese, Koseck, Boyle, Clein, Lazar, Williams

Nays: Whipple-Boyce

Absent: None

Chairman Boyle closed the public hearing at 8:12 p.m.

**07-120-12**

**REVISED FINAL SITE PLAN REVIEW**

**401-451 S. Eton**

**Iron Gate of Birmingham (current vacant land)**

**To allow construction of a 2.5 story mixed-use building with multi-family and live/work units**

Ms. Ecker outlined the proposal. The Eton Street Station (Crosswinds Development) is located on the east side of S. Eton St. south of Villa. The current applicant has purchased the lot that was to house the original building #6A in the Eton Street Station (Crosswinds Development), which later became building #1 in the Eton Street Station. The current applicant is seeking to make design changes to the previously approved building. While a part of the approved Crosswinds Development, the current owner has

been approved to withdraw from the jurisdiction of the Crosswinds Condominium Association, and thus will be providing maintenance privately for the building and site.

Ms. Ecker advised that the applicant is seeking approval for changes to the Revised Final Site Plan & Design which was approved by the Planning Board on May 25, 2005. Specifically, the applicant is proposing to primarily keep the previously approved footprint for the building with minor changes on the north and south ends of the building; and to make design changes to the building to alter the interior layout of the units; and the exterior design of the building to distinguish the building somewhat from the other Crosswinds building, while continuing to complement the character of the area. Eleven units were previously approved for this building, and eleven are proposed at this time.

#### *Site Plan Review*

The building proposed by the applicant at this time is compatible in scale and height with adjacent residential neighborhoods. The proposed location and footprint of the building is as recommended on the Future Land Use Plan, and parking is provided at the rear of the building only. The applicant is proposing to use stone and brick with metal roofing, awnings, balconies and railings for accent. Front walks are proposed from the sidewalk to each of the eleven entries to each unit. Landscaping is also proposed between the building and the right-of-way, and on either end of the building. Lighting provided will be minimal and compatible with neighborhood ambient light levels.

#### *Design Review*

The applicant is proposing to change the design of the former Crosswinds building #6A/1 from a four-story traditional styled pitched roof structure to a two-and-a-half story pitched roof building that blends traditional materials such as brick and stone with the use of metal detailing on the upper floors and railings.

The proposed building design effectively blends the contemporary metal accents of the District Lofts building on the north side of Villa with the traditional style of the existing Eton Street Lofts (Crosswinds) buildings contained within the entire development to create a building design that is harmonious with both the Mixed-Use District on the east side of Eton and the Single-Family Residential District on the west side of Eton.

Mr. Dominic J. Mocerri, Co-Manager of FMD Land Company, LLC, the applicant, described how they have taken a very careful approach towards fulfilling the vision of the Rail District.

Mr. Robert J. Lipka, RLA Studio, the architect, outlined the floor plans. Mr. Mocerri added that the units will be for lease. The more intensive live/work units are at the end caps where more parking is available. They want to attract a difference in intensity within the building. He noted the streetlights are comprised of double goosenecks; one is for the parallel parking space and one is for the sidewalk.

Mr. Koseck thought they have taken the proposal up a notch in terms of quality. He likes the metal roof and is impressed with the other architectural elements. Mr. Mocerri said many ideas came from talking to the neighbors. Board members were impressed with the complete package that came to them.

Ms. Ecker read one letter into the record that was very much in favor of the new building.

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. DeWeese to approve the Revised Final Site Plan and Design for 401-451 S. Eton subject to the condition that the applicant comply with the requests of all City Departments and subject to administrative approval.**

At 8:57 p.m. no one from the public wished to comment on the motion.

**Motion carried, 7-0.**

**VOICE VOTE**

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

Nays: None

Absent: None

Mr. Mocerri indicated they hope to break ground this fall. He presented rail spikes to board members and staff to remind everyone they all are stakeholders in the future of the Birmingham Rail District.

**07-121-12**

**STUDY SESSION**

**On-Premises Alcohol Sales**

**Consider requiring Special Land Use Permit (“SLUP”) for all on-premises alcohol sales**

Mr. Baka stated that on July 11, 2012, the Planning Board discussed making swift amendments to the Birmingham Zoning Ordinance aimed at addressing new changes in the Michigan Liquor Control Commission (“MLCC”) regulations and processes. As a result, the Planning Board voted unanimously to set a public hearing date for August 8, 2012 to consider such amendments. In keeping with standard practice, the Planning Board directed staff to conduct a study session discussion on this topic at the July 25, 2012 Planning Board meeting.

Effective July 1, 2012 the MLCC changed the procedure for submitting applications to the City Commission, and obtaining approvals for the licenses. Approval from local units of government is required only for the issuance of new licenses under MCL 436.1501. This means that 18 types of “On Premises Transactions” no longer require local legislative body approval, which includes both the transfer of location and ownership of

a variety of “On-Premises” licenses and permits. As a result of these changes, the City no longer has the option of amending Chapter 10 of the City Code to require a contract similar to those required for bistros. A Zoning Ordinance amendment is the only option left that can give the City control over the location and operation of liquor licenses in the City. The most appropriate tool for retaining the level of oversight desired by the City is the SLUP.

Accordingly, the following amendments are proposed to be heard at the August 8th hearing:

1. To amend Chapter 126, Zoning, Article 2, Section 2.27 B1 (Neighborhood Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
2. To amend Chapter 126, Zoning, Article 2, Section 2.29, B2 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
3. To amend Chapter 126, Zoning, Article 2, Section 2.31, B2B (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
4. To amend Chapter 126, Zoning, Article 2, Section 2.33, B2C (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
5. To amend Chapter 126, Zoning, Article 2, Section 2.37, B4 (Business-Residential) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
6. To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
7. To amend Chapter 126, Zoning, Article 6, Section 6.02(A), Continuance of Non-Conformity, to require existing and new establishments with alcoholic beverage sales (on premises consumption) to obtain a Special Land Use Permit upon change in ownership or name of establishment, or upon application for a Sign Permit and/or Site Plan Review.

Chairman Boyle thought it would be valuable for the public hearing to know how other communities are responding to the changes coming out of Lansing.

Mr. Currier explained the governor has appointed new members to the Michigan Liquor Control Commission who have taken the Liquor Control Act and applied a strict interpretation to it which indicates there is no local government approval required for transfers of Liquor Licenses. However, this doesn't absolve the local businesses from the requirement to comply with local ordinances.

Mr. DeWeese asked what ability the City has to open a SLUP. Mr. Currier responded that establishments that are grandfathered will trigger a SLUP when they seek a change of ownership, transfer of location, site plan, or sign review that requires City approval.

Responding to concerns from Mr. DeWeese, Mr. Bruner advised that if an existing establishment that does not trigger a SLUP causes problems, the Planning Board doesn't do anything. The city manager and city attorney handle it through the standards and procedures for revocation and non-renewal of Liquor Licenses contained in Chapter 10. Further, the Planning Board will handle applications from a new licensee, or from an existing licensed establishment that is making a change, in the same way they would any other SLUP review. There is nothing else needed in the Zoning Ordinance to give any more guidance than is already in the SLUP review in Article 7.

Mr. Bruner thought that applicants get a fair hearing from this board as well as from the City Commission and they don't have as much to fear as they may think.

Chairman Boyle opened up discussion from the public at 9:33 p.m.

Ms. Dorothy Conrad noted it is important for the City to get a handle on what is going on or else people might not want to come to Birmingham. Therefore, the additional oversight by the City is good for the existing licensees.

The chairman concluded by saying this matter will go forward to a public hearing at the Planning Board meeting on August 8.

**07-122-12**

## **MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA**

Ms. Dorothy Conrad noted with respect to the proposed senior living facility on 820 E. Maple Rd., United Technologies has a unit that does what a generator would do and makes no sound. To her there would be no reason it could not be utilized at this facility.

**07-123-12**

## **MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

- a. Communications (none)
- b. Administrative Approvals
  - 180 Pierce, Townhouse Kitchen and Bar – To approve new layout of chairs and tables on outdoor plan. Square footage to remain the same. Plan outline to remain the same as approved on SLUP approval on 02-14-11. New benches and planters to be added.



- 835 Haynes, Fred Lavery Porsche – Revised locations for three lamp posts and two trees in r-o-w at request/direction of DTE Public Lighting Dept.

Draft Agenda for the Regular Planning Board Meeting on August 8, 2012

- Public hearing on Liquor Licenses;
  - 820 E. Maple Rd., Hamilton Funeral Home site, continuation of Preliminary Site Plan Review;
  - Alleys and Passages.
- c. Other Business (none)

**07-124-12**

**PLANNING DIVISION ACTION ITEMS**

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

**07-125-12**

**ADJOURNMENT**

No further matters being evident, the Planning Board motioned to adjourn at 9:42 p.m.

Jana Ecker  
Planning Director