

AGENDA
BIRMINGHAM HISTORIC DISTRICT COMMISSION
WEDNESDAY – MAY 4, 2022
BIRMINGHAM CITY HALL, 151 MARTIN ST., COMMISSION ROOM #205 *
******* 7:00 PM*******

The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. Oakland County is currently classified as a substantial transmission area. **The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.**

- 1) Roll Call
- 2) Approval of the HDC Minutes of April 20, 2022
- 3) Courtesy Review
- 4) Historic Design Review
 - A. 148 Pierce – Telephone Exchange Building – Request for Wall Art Installation (POSTPONE)
 - B. 220 Merrill – 220 Restaurant (Detroit Edison Building)
- 5) Sign Review
- 6) Study Session
 - A. CLG Grant – Design Guidelines (UPDATE)
- 7) Miscellaneous Business and Communication
 - A. Pre-Application Discussions
 - B. Draft Agenda
 1. May 4, 2022
 - C. Staff Reports
 1. Administrative Sign Approvals
 2. Administrative Approvals
 3. Demolitions
 4. Action List 2022
 5. Open Meetings Act Memorandum
- 8) Adjournment

*Please note that board meetings will be conducted in person once again. Members of the public can attend in person at Birmingham City Hall, 151 Martin St., OR may attend virtually at:

Link to Access Virtual Meeting: <https://zoom.us/j/91282479817>

Telephone Meeting Access: 877 853 5247 US Toll-free

Meeting ID Code: 912 8247 9817

Notice: Individuals requiring accommodations, such as interpreter services for effective participation in this meeting should contact the City Clerk's Office at [\(248\) 530-1880](tel:2485301880) at least on day in advance of the public meeting.

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A PERSON DESIGNATED WITH THE AUTHORITY TO MAKE DECISIONS MUST BE PRESENT AT THE MEETING.



MEMORANDUM

Planning Division

DATE: May 4, 2022

TO: Historic District Commission

FROM: Nicholas Dupuis, Planning Director

SUBJECT: 220 Merrill – 220 Restaurant – Design Review

Zoning: B-4 (Business-Residential) & D-4 (Downtown Overlay)

Existing Use: Restaurant

Introductions

The applicant operates a restaurant at 220 Merrill St. under an existing Special Land Use Permit (SLUP). The subject site is located, on the south side of Merrill St. between Pierce and S. Old Woodward. The applicant is proposing to expand their outdoor café by adding an additional outdoor dining platform in the Merrill St. right of way. An outdoor café is permitted in the B-4 Zoning District per Article 2.37 (C) (d).

On March 31, 2022, the Planning Board moved to recommend to the City Commission approval of the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 220 Merrill – 220 Restaurant – with the following conditions:

1. The applicant must obtain an Outdoor Dining Permit and enter into a contract with the City for the SLUP Amendment;
2. All outdoor activity must cease at the close of business;
3. The applicant must obtain a favorable recommendation from the Advisory Parking Committee prior to City Commission review;
4. The applicant must submit a Design Review application to the Historic District Commission prior to City Commission review;
5. The applicant must comply with the requirements of all departments;
6. The applicant must submit, for administrative review, a site plan that adheres to the requirements as set by the discussion tonight.

The applicant has submitted a Design Review application pursuant to Article 7, Section 7.08 of the Zoning Ordinance. The proposed outdoor dining platform is located within the Central Business Historic District, and is adjacent to the historic Detroit Edison Building in which 220 Restaurant is housed.

Planning & Zoning

The proposed project and the relevant planning and zoning issues were reviewed in depth at the Planning Board for Final Site Plan and Design Review. For this reason, the Planning Division will not be including a review of planning and zoning issues in this report, and will instead focus on a review of applicable design review standards as discussed below.

Signage

There are no new signs proposed as a part of the Design Review application submitted.

Design Review Standards and Guidelines

As noted above, the proposed outdoor dining platform is being constructed within the Central Business Historic District. However, the construction does not attach to any historic structures, nor does the platform have a detrimental effect on the neighboring Detroit Edison Building or its site. Therefore, the design review standards in Chapter 127, Section 127-11 are not applicable to the proposed outdoor dining platform. Thus, the Design Review standards in Article 7, Section 7.09 were applied to the proposal.

Article 7, Section 7.09 of the Zoning Ordinance states that the Historic District Commission shall review all documents submitted pursuant to this section and shall determine the following:

1. All of the materials required by this section have been submitted for review.
2. All provisions of this Zoning Ordinance have been complied with.
3. The appearance, color, texture and materials being used will preserve property values in the immediate neighborhood and will not adversely affect any property values.
4. The appearance of the building exterior will not detract from the general harmony of and is compatible with other buildings already existing in the immediate neighborhood.
5. The appearance of the building exterior will not be garish or otherwise offensive to the sense of sight.
6. The appearance of the building exterior will tend to minimize or prevent discordant and unsightly properties in the City.
7. The total design, including but not limited to colors and materials of all walls, screens, towers, openings, windows, lighting and signs, as well as treatment to be utilized in concealing any exposed mechanical and electrical equipment, is compatible with the intent of the urban design plan or such future modifications of that plan as may be approved by the City Commission.

Recommendation

Based on the review above, the Planning Division recommends that the Historic District Commission **APPROVE** the Design Review application for 220 Merrill - 220 Restaurant – subject to the following condition:

1. The applicant obtain full approval from the City Commission prior to installation.

Wording for Motions

I move that the Commission **APPROVE** the Design Review application for 220 Merrill – 220 Restaurant – with the following condition:

1. The applicant obtain full approval from the City Commission prior to installation.

OR

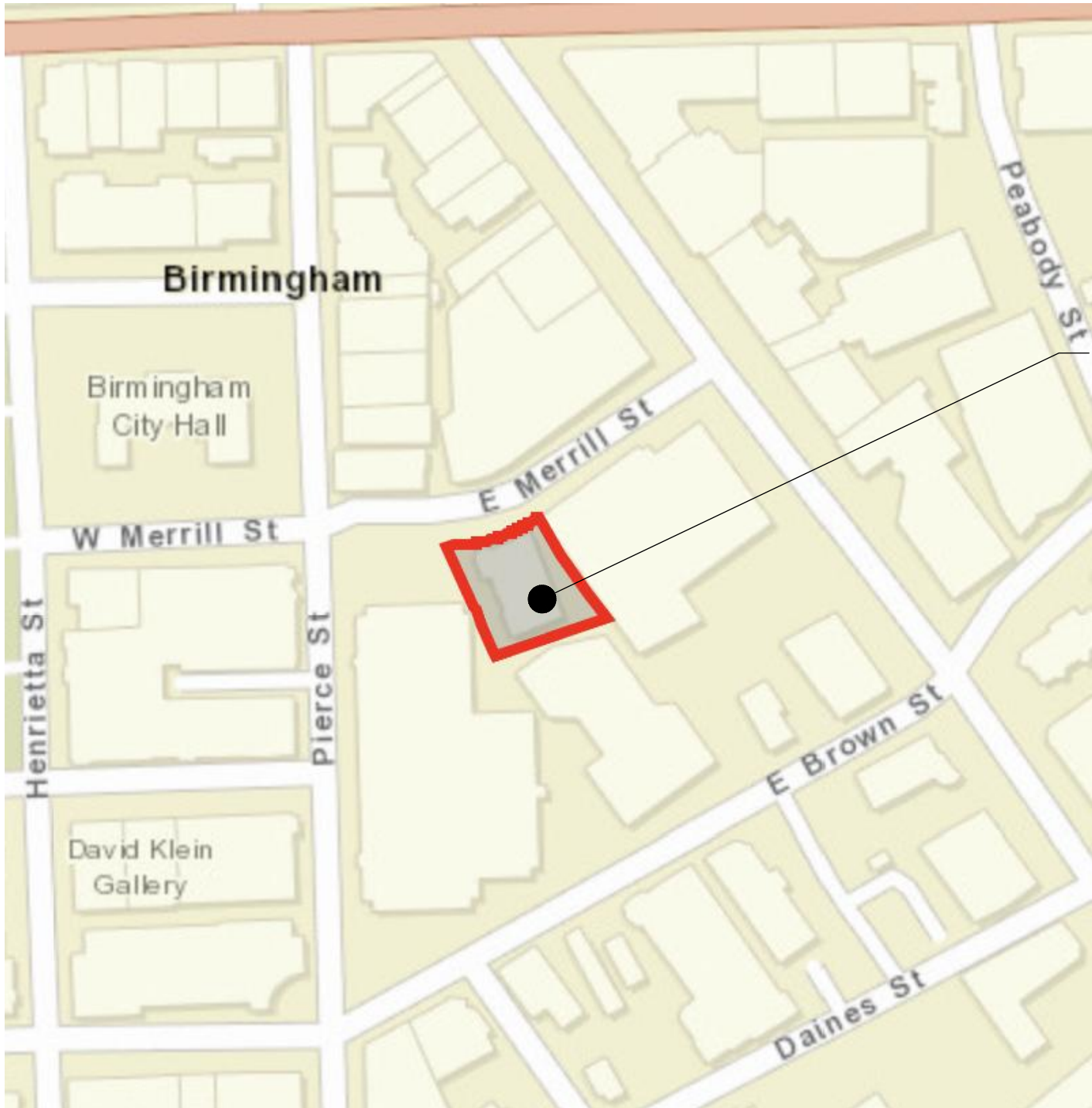
I move that the Commission **POSTPONE** the Design Review application for 220 Merrill - 220 Restaurant – pending receipt of the following:

1. _____
2. _____
3. _____

OR

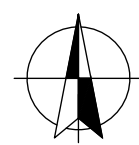
I move that the Commission **DENY** the Design Review application 220 Merrill - 220 Restaurant – for the following reasons:

1. _____
2. _____
3. _____



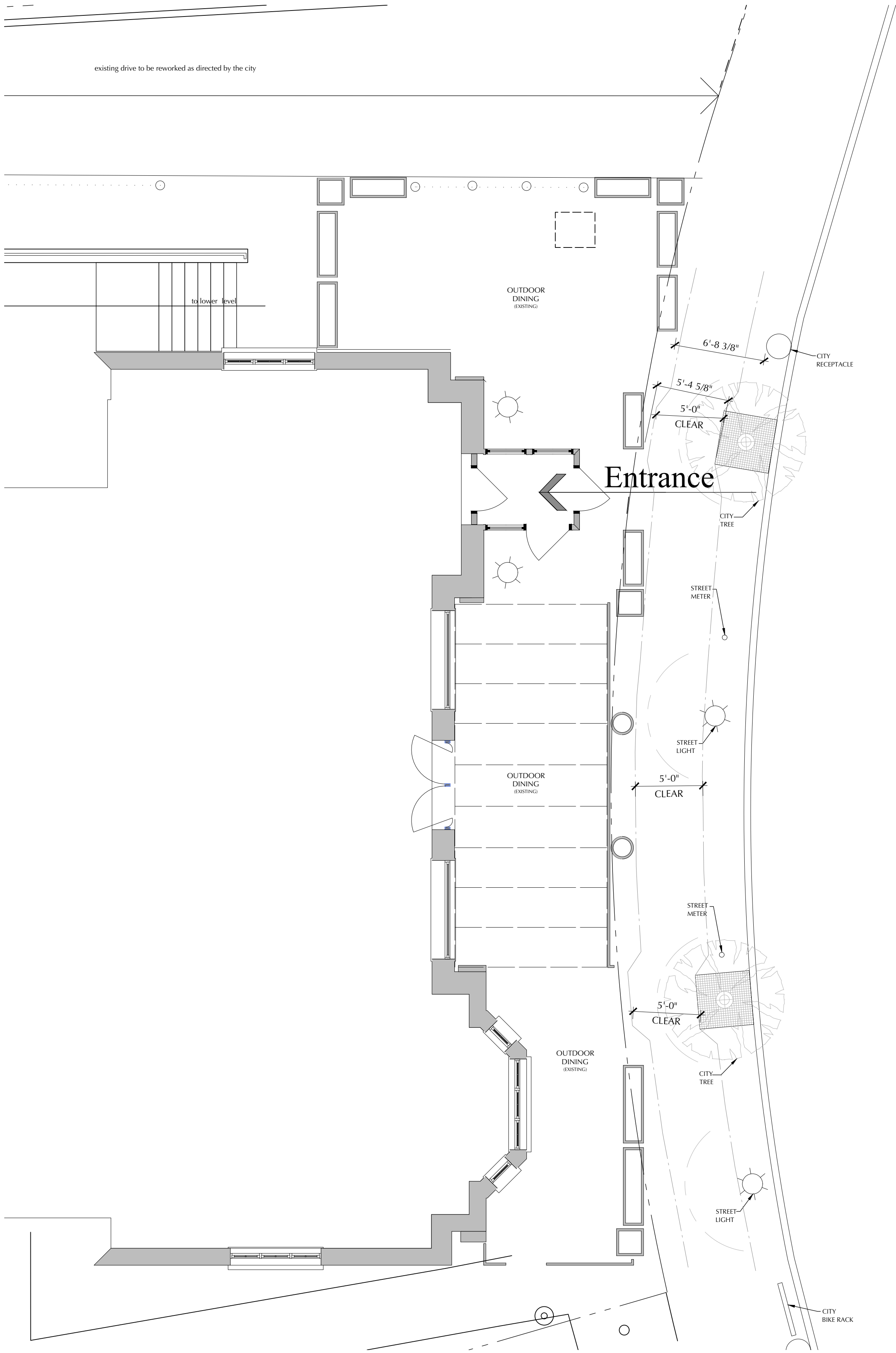
220 EAST MERRILL
220 EAST MERRILL STREET
Zoned: B-4
Overlay: D-4

Location Map

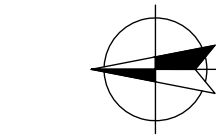


Site Plan

NOT TO SCALE



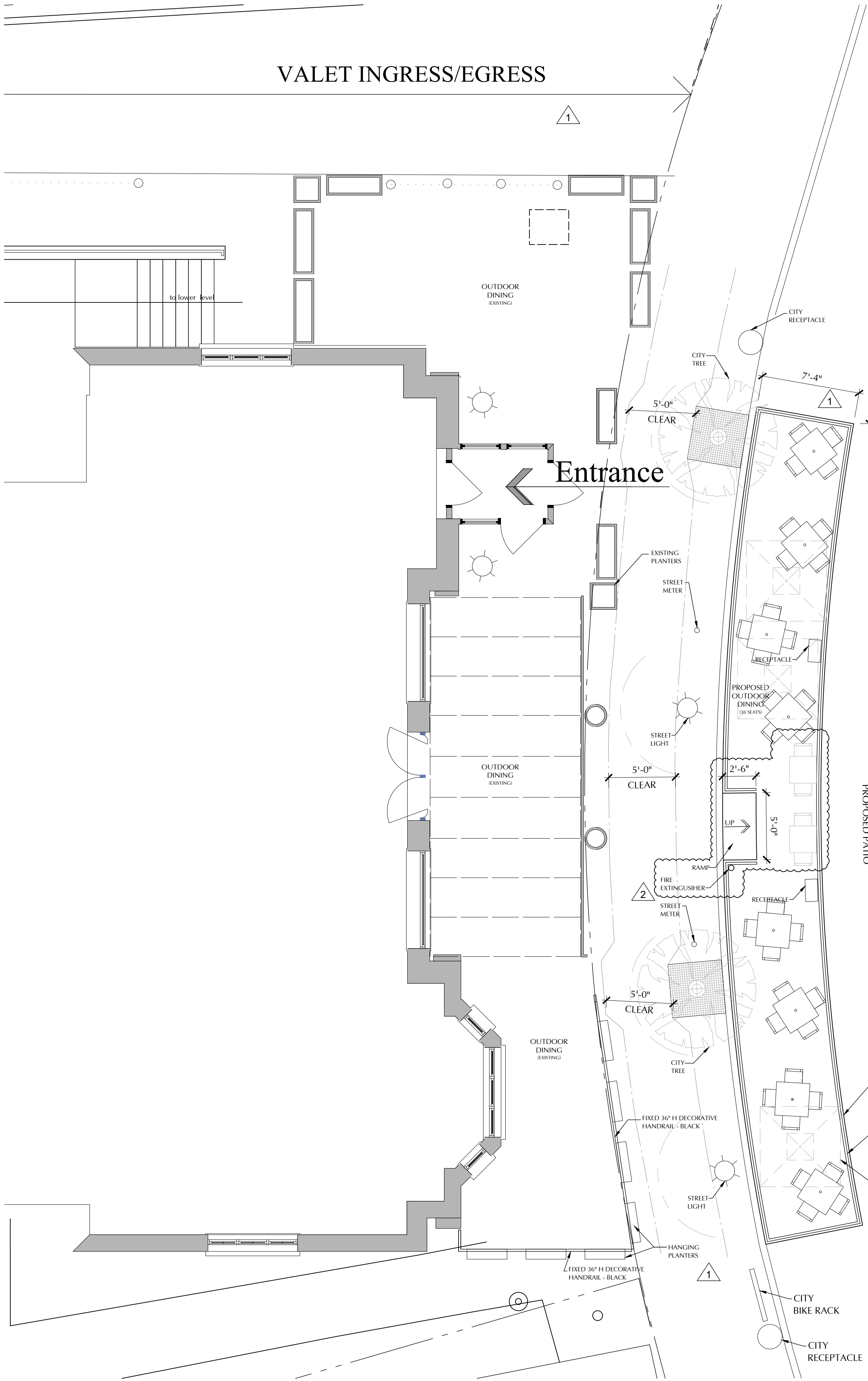
East Merrill Street (60' R.O.W.)



Existing Plan

3/16" = 1'-0"

220 East Merrill Street
220 East Merrill Street
Birmingham, Michigan 48009



East Merrill Street (60' R.O.W.)

OUTDOOR SEAT COUNT:	
TABLE TYPE	No. of SEATS
2-TOP TABLE (2)	4 SEATS
4-TOP TABLE (8)	32 SEATS
TOTAL	36 SEATS

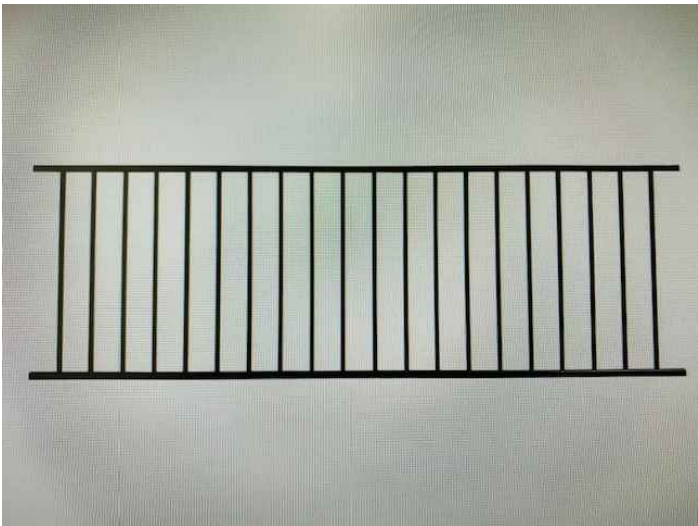
PLUMBING FIXTURE REQUIREMENTS:	
MEN/WOMEN:	5 WC / UR, 2 LAV
PLUMBING FIXTURE PROVIDED:	
MEN/WOMEN:	5 WC / 2 UR, 6 LAV



PREVIOUSLY PERMITTED PATIO

UMBRELLA:
VEUVE CLIQUOT - YELLOW

PATIO:
10"H RAISED - GREEN TURF



HANDRAIL:
36"H DECORATIVE METAL - BLACK



TABLES:
LAINE METAL 4 - PERSON DINING TABLE - WHITE
SIZE: 28.75" H X 35.5" L X 35.5" W



CHAIRS:
BURT STACKING PATIO DINING SIDE CHAIR - PINK
100% POLYPROPYLENE
SIZE: 32" H X 17.3" W X 20" D



WASTE RECEPTACLES
STAINLESS STEEL RECTANGULAR WASTE RECEPTACLE
WITH PLASTIC TOP
SIZE: 11"D X 20"W X 29" H

PROPOSED PLAN

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.255.8940



Design Review Application Planning Division

Form will not be processed until it is completely filled out

1. Applicant

Name: 220 Merrill - Birmingham Park Place, LLC
Address: 220 E Merrill

Phone Number: 248-645-7777
Email address: began@theeliagroup.com

3. Project Contact Person

Name: Bradford Egan
Address: 124 S Old Woodward

Phone Number: 313-530-1456
Email address: began@theeliagroup.com

2. Property Owner

Name: Birmingham Park Place, LLC
Address: 124 S. Old Woodward

Phone Number: 248-645-7777
Email address: zaid@theeliagroup.com

4. Project Designer/Developer

Name: Chris Longe
Address: 124 Peabody
Birmingham MI 48009
Phone Number: 248-258-6940
Email address: cjlonge@cjlongeai.com

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - ii. Colored elevation drawings for each building elevation;
 - iii. A Landscape Plan (if applicable);
 - iv. A Photometric Plan (if applicable);
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;

- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 220 E Merrill

Name of development: 220
Sidwell #: 19-36-202-017
Current Use: Restaurant
Proposed Use: Restaurant w/ street patio
Area of Site in Acres: _____
Current zoning: B-4

	Yes	No
Is the property located in a floodplain? -----	☐	☒
Is the property within a Historic District? -----	☒	☐
→ If so, which? <u>CBD</u>		
Will the project require a variance? -----	☐	☒
→ If so, how many? _____		
Has the project been reviewed by another board? -----	☒	☐
→ If so, which? <u>Planning Commission</u>		

7. Details of the Proposed Development (attach separate sheet if necessary)

Add street patio in parking spaces in front of 220 Merrill per drawing. Street patio does not touch actual building in any way. Located on street in existing parking spaces.

8. Required and Proposed Parking - N/A

Required number of parking spaces: N/A
Proposed number of parking spaces: _____
Location of parking on site: _____
Location of parking off site: _____
Shared parking agreement? _____
Size of surface parking lot: _____

Number of underground parking levels: _____
Typical size of parking spaces: _____
Typical width of maneuvering lanes: _____
Number of handicap spaces: _____
Screenwall material: _____
Height of screenwall: _____

9. Landscaping

Location of landscape areas: Only existing city landscaping

Proposed landscape material: N/A

10. Streetscape

Sidewalk width: as existing
Number of benches: none
Number of planters: _____

Number of existing street trees: 2
Number of proposed street trees: 2 (existing)
Number of waste receptacles: 2 city receptacles existing

11. Loading - N/A

Required number of loading spaces: _____
Proposed number of loading spaces: _____
Location of loading spaces on site: _____

Typical size of loading spaces: _____
Screenwall material: _____
Height of screenwall: _____

12. Exterior Waste Receptacles

Required number of waste receptacles: _____
Proposed number of waste receptacles: 2
Location of waste receptacles: on dining deck (on plan)

Size of waste receptacles: 11" x 20" w x 29" h
Screenwall material: _____
Height of screenwall: _____

13. Mechanical Equipment - N/A

Utilities and Transformers:

Number of ground mounted transformers: _____
Location of all utilities & easements: _____

Size of transformers (L•W•H): _____
Screenwall material: _____
Height of screenwall: _____

Ground Mounted Mechanical Equipment:

Number of ground mounted units: _____
Location of all ground mounted units: _____

Size of ground mounted units (L•W•H): _____
Screenwall material: _____
Height of screenwall: _____

Rooftop Mechanical Equipment:

Number of rooftop units: _____
Type of rooftop units: _____
Location of all rooftop units: _____
Size of rooftop units (L•W•H): _____

Location of screenwall: _____
Screenwall material: _____
Height of screenwall: _____
Distance from rooftop units to all screenwalls: _____

14. Building & Site Lighting - N/A

Number of light fixtures on building: _____
Light level at each property line: _____
Type of light fixtures on building: _____
Location of light fixtures on building: _____

Number of light fixtures on site: 2 existing city light poles
Type of light fixtures on site: _____
Height from grade: _____
Location of light fixtures on site: on city sidewalk (on plan)

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with the same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: _____

Date: 4/4/22

Print name: ZACH ELIA

Signature of Applicant: (SAME AS OWNER)

Date: _____

Print Name: _____

Signature of Architect: [Signature]

Date: 4.5.22

Print Name: CHRISTOPHER J. LANCE

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted By: _____



Notice Sign Rental Application Community Development

1. Applicant

Name: 220 Merrill - Birmingham Park Place, LLC

Address: 220 Merrill

Phone Number: 248-645-7777

Fax Number:

Email address: began@theeliagroup.com

2. Property Owner

Name: Birmingham Park Place, LLC

Address: 124 S Old Woodward

Phone Number: 248-645-7777

Fax Number:

Email address: zaid@theeliagroup.com

3. Project Information

Address/Location of Property: 220 Merrill

Name of Development: 220 Merrill

Area in Acres:

Name of Historic District, if any: CBD

Current Use: Restaurant / Street parking

Current Zoning: B-4

4. Date of Board/Commission Review

City Commission:

Planning Board: 3/31/2022

Historic District Commission:

Design Review Board:

Board of Zoning Appeals:

Board of Building Trades Appeals:

Housing Board of Appeals:

Other:

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant:

Date: 4/4/22

Office Use Only

Application#: _____

Date Received: _____

Fee: _____

Date of Approval: _____

Date of Denial: _____

Reviewed By: _____



FEE SCHEDULE

Application	Fees
Administrative Approval	\$100
Administrative Sign Approval	\$100
Board of Zoning Appeals* - Single Family Residential - All Other Zoning Districts	\$310 \$510
Community Impact Study Review*	\$2,050
Design Review*	\$350
Division/Combination of Platted Lots	\$200
Historic District Review* - Single Family Residential - All Other Zoning Districts	No Charge \$350
Public Notice Sign - Notice Sign Rental - Returnable Sign Bond	\$50 \$100 ➔ \$150 total
Preliminary/Final Site Plan Review - R4 – R8 Zoning District - Nonresidential Districts	\$850, plus \$50 per dwelling unit \$1,050, plus \$50 per acre or portion of acre
Special Land Use Permit* - Plus Site Plan Review - Plus Design Review - Plus Publish of Legal Notice - Plus Sign Rental and Deposit	\$800 \$1,050 \$350 \$450 \$150 ➔ \$2,800 total
Special Land Use Permit Annual Renewal	\$200
Temporary Use Permit	\$100
Zoning Compliance Letter	\$50

***The fees for Board of Zoning Appeals, Community Impact Study Review, Design Review, Site Plan Review, Historic District Review and Special Land Use Permits shall be double the listed amounts in the event the work is commenced prior to the filing of an application for review by the City of Birmingham.**

3804

220 Restaurant Hospitality, LLC124 S. Old Woodward
Birmingham, MI 48009Comerica Bank
Detroit, Michigan 48275

9-9/720

4/5/2022

PAY TO THE
ORDER OF

City of Birmingham

\$ **350.00

Three Hundred Fifty and 00/100*****

DOLLARS

City of Birmingham
151 Martin St
Birmingham, MI 48009

VOID AFTER 60 DAYS



AUTHORIZED SIGNATURE

MEMO

⑈003804⑈ ⑆072000096⑆ 1853395505⑈

220 Restaurant Hospitality, LLC

3804

City of Birmingham

Date	Type	Reference
4/5/2022	Bill	'22 HistoricZoneRvw

Original Amt.
350.00

Balance Due
350.00

4/5/2022

Discount

Payment

350.00

Check Amount

350.00

Operating Account

350.00

AGENDA
BIRMINGHAM HISTORIC DISTRICT COMMISSION
WEDNESDAY – MAY 18, 2022
BIRMINGHAM CITY HALL, 151 MARTIN STREET, COMMISSION ROOM 205, BIRMINGHAM, MI *
******* 7:00 PM*******

- 1) Roll Call
- 2) **Approval of the HDC Minutes of April 20, 2022**
- 3) Courtesy Review
- 4) Historic Design Review
 - A. **243 E. Merrill – La Strada**
- 5) Sign Review
- 6) Study Session
 - A. **CLG Grant – Historic Design Guidelines – Consultant Interviews**
 - B. **Promoting Historical Preservation (Update)**
 - C. **Bates St. Historic District Signage (Update)**
- 7) Miscellaneous Business and Communication
 - A. Pre-Application Discussions
 - B. Draft Agenda
 1. **May 18, 2022**
 - C. Staff Reports
 1. **Administrative Sign Approvals**
 2. **Administrative Approvals**
 3. **Demolitions**
 4. **Action List 2022**
- 8) Adjournment

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A PERSON DESIGNATED WITH THE AUTHORITY TO MAKE DECISIONS MUST BE PRESENT AT THE MEETING.

Historic District Commission Action List – 2022-2023

Historic District Commission	Quarter Goals	In Progress	Complete
Schedule Training Sessions for HDC and Community	1 st (January-March)	☐	☐
Draft Recommendations for Bates St. Historic District Signage	1 st (January-March)	☐	☐
Begin Historic Design Guidelines Project	2 nd (April-June)	☒	☐
Historic Plaque for Community House	2 nd (April-June)	☐	☐
Develop Resources for the Michigan Historic Preservation Tax Credit	3 rd (July-September)	☐	☐
Historic District Ordinance Enforcement	4 th (October-December)	☐	☐
First Draft – Historic Preservation Master Plan	4 th (October-December)	☐	☐

MEMORANDUM

DATE: April 28, 2022
TO: All Boards and Committees
FROM: Mary M. Kucharek
SUBJECT: Update Concerning Open Meetings Act

This memorandum will serve as an update regarding the Open Meetings Act regarding committees and member participation.

The Open Meetings Act is a Michigan statute which basically provides that all meetings of a public body shall be open to the public and shall be held in places available to the general public. According to the Michigan Court, the intent of the Open Meetings Act is to facilitate public access and transparency to governmental decision making. The statute should be broadly interpreted, and its exemptions strictly construed. Discussions have ensued, questioning whether committees and subcommittees, which are advisory in nature, are subject to the Open Meetings Act and its regulations. In order to determine whether a meeting or situation requires regulations of the Open Meetings Act, four questions need to be asked:

1. Whether the committee or subcommittee is a public body.

According to the Open Meetings Act:

“Public body’ means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 40 of the home rule city act.”

To simplify, a public body is a group whose work and purpose is part of the process of government. A committee or a subcommittee which has been created by recommendation, resolution or direction by the legislative body (in our case the City Commission) would be a public body.

2. Whether there is a meeting of the public body.

"Meeting" is defined in the Open Meetings Act as:

"The convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy."

The inquiry is whether or not, when the group of people meet, are they working towards or rendering a decision, in order to make an advisory recommendation to the legislative body? If the group is deliberating and collectively decide a recommendation, then pursuant to the Michigan Court of Appeals, it is, in fact, a meeting.

3. Whether a decision effectuating public policy will be made.

Pursuant to the Open Meetings Act, a decision is "a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates the form of public policy." In *Schmiedicke v Clare School Board*, 1998, the Court of Appeals analyzed whether or not a committee was, in fact, making a "decision" according to the Open Meetings Act. The Court ruled it is important to determine if a recommendation is actually made. The recommendation is a delegation of authority to perform an act. "The focus of inquiry is the authority delegated to the committee not the authority it exercised." The Court of Appeals pointed out "the primary purpose of the Open Meetings Act is to ensure that public entities conduct all their decision making activities in open meetings and not simply hold open meetings

where rubber stamped decisions were previously made behind closed doors.” Therefore, when a subcommittee makes a recommendation, and if that subcommittee was not open to the public, it effectively forecloses any involvement by members of the public, and essentially means that the decision made by the subcommittee at a closed meeting is fait accompli. The definition of fait accompli means “a thing that has already happened or decided before those affected hear about it, leaving them with no option but to accept.”

4. Whether any exceptions are applicable.

Exceptions are listed in the Open Meetings Act with specificity.

The Attorney General of Michigan has created an *Open Meetings Act Handbook*. One paragraph in the handbook states, “Open Meetings Act does not apply to committees and subcommittees composed of less than a quorum of the full public body, if they are merely advisory and capable of making recommendations concerning the exercise of governmental authority.” I contacted the Attorney General’s Office and spoke with James Kelley, who is an expert regarding the Open Meetings Act. I asked him how that paragraph as written by Attorney General Frank Kelley in 1997, be true in light of the *Schmiedicke* case? Mr. Kelley advised the cited paragraph applies when an advisory committee is meeting and their purpose is to collect information, report and then make a recommendation to the governing body. They may do so without being an open meeting only if the recommendations that they give to the governing body, include all of the potential options available before they make a recommendation. As an example, if a committee is collecting information and then come before the governing body, and state, for instance, there were five (5) different choices to an issue, and then state, we believe choice number three (3) is the correct way to go, they may do so as long as they advise about all five (5) choices. In this example, there is not an “open meeting” because they did not make a

decision. However, if the members of the advisory committee discuss, weigh and determine ahead of time at their meeting before presenting to the governing body their choice of one option, and then they make a recommendation to the Commission and do not advise about all possible options, then they were making a "decision," and are, therefore, in violation of the Open Meetings Act.

Mr. Kelley believes the practice of failing to notice all committees, even those that are advisory in nature, is a "slippery slope." His recommendation is to notice each and every meeting that occurs, including every committee, subcommittee, ad hoc committee, etc.

It is my recommendation that the City simply notice every meeting. Notice is easily achieved by a simple posting notice on the City doors. The likelihood is participation is minimal to these meetings, but if they are noticed, there can never be an opportunity for an accusation or violation of the Open Meetings Act.

Furthermore, a question has been posed inquiring if a board member is unable to attend a board or a committee meeting in person, including public deliberating and voting on a particular issue, is there any law or rule of procedure that would allow the member to participate as a private citizen and make comments during public comment via Zoom?

The answer is "no." The Open Meetings Act, specifically MCL § 15.263(2) states absent members of a public body may only attend remotely due to active military duty or a disability that has been recognized by Title II of the ADA requiring a reasonable accommodation in order to actively participate in a public meeting. Therefore, when members of committees or boards are absent due to any other reason, no exception exists permitting them to attend, participate or vote remotely as a public body, board or committee member. While certainly board or committee members can watch remotely, no comment should be made virtually by appointed members, whether the comment is made during public comment or any other time. In fact, one should

only watch anonymously and not have their names advertised on Zoom. Courts have opined that any comment made by fellow board members can be influential and, therefore, part of the deliberative process of the public body which can only be accomplished in person. The purpose of the OMA is to ensure transparency of all decision making and deliberations of the public body.

While some board members may find this challenging, or feel that this impinges their First Amendment rights, the courts have deemed that you are still a member of the public legislative body and, therefore, cannot simply relinquish the duties you are sworn to uphold by simply saying you are only speaking as a private citizen.

In conclusion, I recommend that absent board members simply watch the meeting of their public board or committee, if possible. It is the best practice for all board and committee members to not speak remotely when they are absent so as to avoid a potential OMA violation, keeping in mind that an OMA violation is a criminal misdemeanor under Michigan law.