

AGENDA
REGULAR MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY OCTOBER 27th, 2021
151 MARTIN ST., CITY COMMISSION ROOM 205, BIRMINGHAM MI *
*******7:30 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.

- A. Roll Call**
- B. Review and Approval of the Minutes of the Regular Meeting of **October 13th, 2021****
- C. Chairpersons' Comments**
- D. Review of the Agenda**
- E. Unfinished Business**
- F. Rezoning Applications**
- G. Community Impact Studies**
- H. Special Land Use Permits**
 - 1. **203 Pierce St. – Toast – Request to amend hours of operation from previous Special Land Use Permit approval and contract.**
- I. Site Plan & Design Reviews**
 - 1. **203 Pierce St. – Toast – Request to amend hours of operation from previous Special Land Use Permit approval and contract.**
- J. Study Session**
 - 1. **Wall Art**
 - 2. **Outdoor Dining**
- K. Miscellaneous Business and Communications:**
 - 1. Communications
 - 2. Administrative Approval Correspondence
 - 3. Draft Agenda – **November 10th, 2021**
 - 4. Other Business
- L. Planning Division Action Items**
 - 1. Staff Report on Previous Requests
 - 2. Additional Items from Tonight's Meeting
- M. 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 OR may attend virtually at:

Link to Access Virtual Meeting: <https://zoom.us/j/111656967>
Telephone Meeting Access: 877-853-5247 US Toll-Free
Meeting ID Code: 111656967

NOTICE: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only. Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, October 13, 2021
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 13, 2021. Chair Clein convened the meeting at 7:30 p.m.

A. Roll Call

Present: Chair Scott Clein (left at 8:52 p.m.); Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Nasseem Ramin; Student Representative Daniel Murphy

Absent: Alternate Board Member Jason Emerine; Student Representative Jane Wineman

Administration:

Nick Dupuis, Planning Director (PD)
Jana Ecker, Assistant City Manager (ACM)
Laura Eichenhorn, City Transcriptionist
Melissa Fairbairn, Assistant to the City Manager

Master Planning Team:

Matt Lambert, DPZ

10-151-21

B. Approval Of The Minutes Of The Regular Planning Board Meeting of September 23, 2021

Mr. Share noted that on page four the second motion was in regards to the Special Land Use Permit. He said that should be corrected, and recommended that conditions one through four from the Final Site Plan and Design Review motion be re-listed for the Special Land Use Permit Motion.

Motion by Mr. Share

Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of September 23, 2021 as amended.

Motion carried, 5-0.

VOICE VOTE

Yeas: Share, Williams, Whipple-Boyce, Jeffares, Boyle

Nays: None

Abstain: Clein, Koseck

10-152-21

C. Chair's Comments

Chair Clein welcomed everyone to the meeting and reviewed the meeting's procedures.

10-153-21

D. Review Of The Agenda

10-154-21

E. Unfinished Business

1. 34745 Woodward – Jax Kar Wash – Request for Final Site Plan and Design Review for circulation, layout and minor building changes to the existing site.

PD Dupuis presented the item.

Jason Milen, owner, and Bradley Scobel, attorney, spoke on behalf of the application.

Mr. Scobel stated that the north side of the site should be considered a drive lane, which would not necessitate a screening wall. He said having a wall there would make the site inefficient and would make it too difficult to clear the site of snow.

Mr. Milen said he would be willing to change the colors of the stanchions if requested.

In reply to Mr. Koseck, Mr. Milen said he would also clean up the conduits once the awning is removed and would clean up the conduits on the north elevation. He said he would also be removing a conduit on the north side.

Messrs. Koseck and Jeffares said choosing a subtler color for the stanchions would be appropriate.

Noting that there are three Jax signs visible on the north elevation, Mr. Jeffares opined that the on-site signage would be more appropriately calculated based on Woodward being the frontage. Consequently, he said extra signage afforded by using Brown as the frontage was probably not necessary.

Ms. Whipple-Boyce concurred.

Mr. Share noted the applicant's contention that the extra signage afforded by using Brown would be used for directional signage only that would not be visible from Brown or Woodward. He said he was comfortable using Brown to calculate the signage for that reason. He noted the applicant would also be getting rid of the pylon sign which he counted as positive.

Chair Clein concurred.

Chair Clein said the mechanical equipment need not be screened but that it should be painted to blend in with the building. He said the applicant should also Auto Turn on the site plans and be required to receive an administrative approval for it.

Ms. Whipple-Boyce said 'Kar Wash' could be removed from both sides of the frontage without impact the success of the business. She said it would be more aesthetically pleasing.

Messrs. Share, Williams, Jeffares, Koseck, Ms. Whipple-Boyce and Chair Clein said there was no flexibility in regards to screening wall requirement on the north side of the building along Woodward. A number of Board members also noted that the screening wall would also increase pedestrian safety.

Chair Clein said he would not vote to approve the project without the screening wall. While he noted the applicant would be legally within their rights to pursue a variance, the Chair emphatically stated it would be counter to the successful interaction of pedestrians and vehicles and to the preservation of health, safety and welfare on-site.

Mr. Boyle noted this project would be unlikely to move forward without a screening wall along Woodward and recommended the Board and the applicant reach a compromise.

Mr. Koseck reiterated his strong support for a 32-inch masonry screening wall on the north side of the site. He said he could think of no legitimate reason to not have a screening wall there.

Mr. Boyle recalled the applicant claimed that vehicles would have problems making a necessary turn if the screening wall was there. He stated that requiring a masonry wall on the north side of the site would require the applicants to change their building.

Mr. Koseck said that if that was the case then a change to the building was necessary.

Mr. Share suggested the Board require a 32-inch masonry screening wall, or some other permanent visual barrier that meets the requirements of the ordinance and would be approved by the Planning Board.

Chair Clein concurred. He said the screening wall should be required and the applicant should be allowed to make minor modifications to the materials that could be approved by the Board at the end of a future meeting should the applicant take that route.

PD Dupuis noted that masonry or evergreens are the two most commonly used options for a screening wall.

Mr. Milen said he was unable to do a screening wall on the north side of the site and would abandon the project if required to install one.

Motion by Mr. Share

Seconded by Mr. Williams to approve the Final Site Plan & Design Review for 34745 Woodward – Jax Kar Wash – with the following conditions: 1. The applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of

the Zoning Ordinance; 2. The Board designates Brown Street as the frontage for the purposes of signage; 3. That the applicant change the stanchions to a neutral color subject to administrative approval; 4. The applicant must comply with the requests of all City Departments including the City's traffic engineer; and, 5. That there not be a curb cut at the required break in the screening wall on the north side.

Mr. Jeffares said he was worried about an unapproved drive lane on the north side of the site. He suggested that it be specified that the break in the wall on the north side of the site not be used for routine operation.

Mr. Share said the minutes should reflect the Board's understanding that it is a break in the wall and not a drive lane.

Mr. Jeffares noted there was a curb cut.

ACM Ecker noted the break in the wall should be for pedestrians and should also be screened with a two-foot offset wall so vehicles cannot get through.

PD Dupuis noted Mr. Milen had said he was willing to remove the curb cut.

Messrs. Share and Williams agreed to add the fifth condition in response to the discussion.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Share, Williams, Boyle, Clein

Nays: Whipple-Boyce, Jeffares, Koseck

10-155-21

F. Rezoning Applications

None.

10-156-21

G. Community Impact Studies

None.

10-157-21

H. Special Land Use Permits

None.

10-158-21

I. Site Plan & Design Reviews

None.

10-159-21

J. Study Session

1. The Birmingham Plan 2040 – 2nd Draft Receipt and Review Process

PD Dupuis introduced the item.

Chair Clein clarified that the Board would be reviewing and revising the second draft, and that no body in the City has offered finalized approval of the current draft.

Mr. Williams echoed a comment from the October 11, 2021 joint Commission-Planning Board meeting that the maps need to have street names added. He listed pages eight, nine, 12, 43, 46, 61, and 76 as having maps that require street names. He said there may be other maps not included in his list that also require street names. He said by November 10, 2021 he wanted those pages replaced with maps that are bigger and decipherable by street names.

In reply to Mr. Williams, PD Dupuis said those pages would be replaced and made available to the public before November 10, 2021.

Mr. Share said the color-coding for low-, medium-, and high-intensity seams was difficult to decipher as well. He asked that the colors be replaced with higher-contrast options. He also noted that the October 11, 2021 joint Commission-Planning Board meeting was a public meeting that remains available to the public for viewing.

PD Dupuis noted Mr. Share's comment. PD Dupuis continued that the upcoming Master Plan draft review meetings would be November 10, 2021; December 8, 2021; January 12, 2022; and, February 9, 2022.

In reply to Mr. Share, Chair Clein concurred that page four of the Master Plan draft should be referenced at the beginning of each chapter discussion instead of at the first review meeting in order to keep a broad view of the intentions of each chapter.

Mr. Jeffares noted that three new Commissioners would be joining the Commission in November. He asked if their feedback on the Master Plan draft was going to be specifically solicited.

PD Dupuis said there was no plan to do so at this time.

Mr. Williams noted that the Board would be meeting with the Commission at the end of the review process. He observed that the Commission could always choose to schedule an additional meeting for further discussion if they saw fit.

Chair Clein concurred.

In reply to Mr. Jeffares' inquiry about using Engage Birmingham to solicit feedback on the Master Plan draft, ACM Ecker stated that the use of Engage Birmingham was considered but it was ultimately decided that maintaining the present communication options would be best. She noted that web surveys were used to solicit feedback during the process and that direct feedback could still be provided to the Master Plan team either via thebirminghamplan.com or via submitting feedback to City Staff.

Chair Clein encouraged members of the public to attend the upcoming review meetings. He thanked PD Dupuis for his work on the item.

10-160-21

K. Miscellaneous Business and Communications

a. Communications

b. Administrative Approval Correspondence

Chair Clein recused himself at 8:52 p.m. from a conversation regarding RH citing a potential conflict-of-interest stemming from his business. Chair Clein departed the meeting at 8:52 p.m.

Vice-Chair Williams assumed facilitation of the meeting at 8:52 p.m.

Victor Saroki, architect, was present on behalf of RH. He described a requested change to the location of the interior stairwells and to make the center entry windows more vertical than horizontal in appearance.

The Board concurred that the requested changes could proceed subject to administrative approval.

c. Draft Agenda for next meeting

d. Other Business

Ms. Whipple-Boyce stated that there was a new home being built on Clark Street that was sitting five feet closer to the street than the other homes on the block. She said she believed that because the new home was closer to a corner property that also sits closer to Clark Street, it caused the average of setbacks of homes within 200 feet to be calculated incorrectly. She said she wanted the Board to review the issue.

Chair Clein asked PD Dupuis to speak with BO Johnson, CM Markus and ACM Ecker to see whether it would be appropriate for the Board to review the matter.

10-161-21

L. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

10-162-21

M. Adjournment

No further business being evident, the Vice-Chair adjourned the meeting at 9:07 p.m.

Nick Dupuis

Planning Director



MEMORANDUM

Planning Department

DATE: October 22th, 2021

TO: Planning Board

FROM: Brooks Cowan, Senior Planner

APPROVED: Nicholas Dupuis, Planner Director

SUBJECT: 203 Pierce St. – Toast – Special Land Use Permit Amendment and Final Site Plan Review

Toast has operated as a Bistro at 203 Pierce Street since 2008. A condition of Toast's original approval is that it be open for dinner hours in order to bring activity to the space and provide dining opportunities during evening hours. Toast's original approval from 2008 indicated they would be open until 5 pm on Sunday, 9pm Monday-Wednesday, and 12am Thursday-Saturday.

In 2018, City staff was made aware that Toast was closing prior to the hours documented in their 2008 SLUP agreement. Article 7, Section 7.34 of the Zoning Ordinance states that once a permit for a Special Land Use has been granted as to any parcel of land, no change in that use may be made nor may any addition to or change in the building or improvements on the parcel of land take place until a new request for approval has been filed with the City Commission and the City Commission has approved the request for change.

On January 9th, 2019, the applicant went before the Planning Board for a pre-application discussion regarding a proposal to change their hours of operation to eliminate dinner hours and host special events in the evenings instead, such as cooking classes and private parties. Toast wished to close at 3 p.m. Monday through Friday and 4 p.m. on Saturday and Sunday. During the meeting, Board members expressed positive responses to the proposals, as Toast Bistro is the only restaurant on Pierce open for breakfast, serves two meals (breakfast and lunch), and activates the street during the morning and afternoon hours.

On February 25th, 2019, the restaurant went before the City Commission for a hearing regarding the 2018-2019 renewal of their Liquor License. During the meeting, the change in hours was discussed as a violation of their SLUP. Toast had proposed to close between 3 pm to 4 pm every day, however City Commission had indicated during Liquor License review that they were not in support of the proposal.

On April 24th, 2019, the applicant appeared before the Planning Board to request a Special Land Use Permit Amendment to change the hours of operation from those approved in the Special Land Use Permit obtained in 2008. As a compromise to City Commission's comments on hours of operation during liquor license review, Toast proposed to stay open into evening hours closer to the weekend on Wednesday through Saturday with proposed hours of operation as follows:

Sunday.....	8 am – 4 pm
Monday-Tuesday.....	7 am – 3 pm
Wednesday.....	7 am – 8 pm
Thursday-Friday.....	7 am – 8 pm
Saturday.....	8 am – 9 pm

The Planning Board was amenable to the proposed changes and felt that the applicant satisfied the intent of the Bistro Ordinance. The Board then moved to recommend the proposed changes, citing that the applicant satisfies the Bistro Ordinance requirements, and that multiple restaurants had opened on or near Pierce Street and do not have as strict of hours of operation requirements as Toast.

On June 3rd, 2019, the applicant appeared before City Commission to amend their hours of operation for an earlier closing time. Commission discussed how the goal of the Bistro Ordinance was to enliven the streets and encourage traffic downtown. Being closed for dinner is not what was envisioned. Commission encouraged the applicant to stay open later for dinner, however the applicant indicated difficulties attracting such business when Toast's brand is identified as a breakfast and lunch restaurant. The Commission approved the proposed changes in hours with the condition that the agreement include "minimum" hours of operation, meaning the applicant may stay open later than indicated, but not close earlier.

On August 4th, 2021, The applicant "Toast" was issued a violation notice for not being in compliance with their SLUP agreement in regards to hours of operation. The subject Bistro has been closing at 3pm Monday-Friday and 4pm Saturdays and Sundays, which is 5 hours earlier than the hours indicated in the 2019 SLUP agreement.

At this time, the applicant is proposing to eliminate the dinner hours and proposes the following hours of operation:

Monday-Friday.....7 AM – 3 PM
Saturday-Sunday.....8 AM – 4 PM

1.0 Land Use and Zoning

- 1.1 Existing Land Use – The existing land use is commercial.
 - 1.2 Existing Zoning – The property is currently zoned B-4, Business-Residential, and D-4 in the Downtown Overlay District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.
 - 1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.
-

	North	South	East	West
Existing Land Use	Commercial / Retail	Commercial / Retail	Commercial / Retail	Commercial / Retail / Residential
Existing Zoning District	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential
Downtown Overlay Zoning District	D-4	D-4	D-4	D-4

2.0 Bistro Requirements

Article 9, Section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining for no more than 65 people.

Article 3, Section 3.04(C)(10) of the Zoning Ordinance permits bistros in the Downtown Overlay District as long as the following conditions are met:

- No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - No dance area is provided;
 - Only low key entertainment is permitted;
 - Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;
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- g. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - h. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - i. Enclosures facilitating year round dining outdoors are not permitted.
 - j. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
 - k. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.

The only proposed change to the Bistro requirements is for (g) – operations of the bistro regarding an earlier closing time. **At this time, the applicant appears to meet the Bistro requirements listed above.**

3.0 Screening and Landscaping

- 2.1 Screening – No changes proposed.
- 2.2 Landscaping – No changes proposed.

4.0 Parking, Loading, Access, and Circulation

- 3.1 Parking – As the subject site is located within the Parking Assessment District, the applicant is not required to provide on-site parking.
- 3.2 Loading – No changes are proposed.
- 3.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.
- 3.4 Pedestrian Access & Circulation – No changes proposed.
- 3.5 Streetscape – No changes proposed.

4.0 Lighting

The applicant is not proposing any new lighting for the property.

5.0 Departmental Reports

- 5.1 Engineering Division – Engineering has no concerns at this time.
- 5.2 Department of Public Services – DPS has no concerns at this time.
- 5.3 Fire Department – The Fire Department has no concerns at this time.
- 5.4 Police Department – The Police Department has no concerns at this time.
- 5.5 Building Department – The Building Department has no concerns at this time.

6.0 Design Review

The applicant is not proposing any exterior changes as a part of the Special Land Use Permit Amendment. The applicant has 65 indoor seats and 52 outdoor seats. The applicant is approved for 20 seats located on the sidewalk and 32 seats located on the dining deck which occupies two parking spaces. The applicant is current with all outdoor dining licenses and there are no pending violations.

7.0 Downtown Birmingham 2016 Plan

The site is located within the D-4 zone of the Downtown Birmingham Overlay District. The Downtown 2016 Plan encourages a mix of uses in the downtown to encourage visitors and social activation during the morning, afternoon, and night. Toast is within the Downtown 2016 Plan's Central Business District retail loop consisting of Pierce, Merrill, Woodward and Maple. This loop allows pedestrians to window shop without encountering gaps in store frontage or interruptions by vehicular traffic. Restaurants along this loop includes Toast, Elie's, Streetside, La Strada, Sushi Japan, Leo's Coney Island, Kaku Sushi, Churchills Cigar Bar, Eli Tea Bar, and Planthropie. When considering restaurants across the street from the subject loop, there is Townhouse, 220 Merrill, Hyde Park Steakhouse, Pernoi (alley), Starbucks, and Clean Juice (opening to be determined). A number of the surrounding restaurants are open for dinner, helping to balance out dining offerings at all times of the day.

The Planning Division finds the proposed SLUP amendment adequately enhances street life along this loop during breakfast and lunch hours within the downtown, thus helping to promoting a pedestrian friendly environment and assisting in activating the downtown during the morning and afternoon hours.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
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- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
 - (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.
 - (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
 - (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
 - (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

In addition, Article 7, Section 7.36 requires applications for a Special Land Use Permit to meet the following criteria:

- (1) The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.
- (2) The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of public services and facilities affected by the land use.
- (3) The use is consistent with the public health, safety and welfare of the city.
- (4) The use is in compliance with all other requirements of this Zoning Ordinance.
- (5) The use will not be injurious to the surrounding neighborhood.
- (6) The use is in compliance with state and federal statutes.

The applicant appears to satisfy approval criteria of 7.27 and 7.36 of the Zoning Ordinance. Closing before dinner hours does not appear to be contrary to the spirit and intent of the Zoning Ordinance as the approved use activates the space and supports economic vitality of Pierce Street between W. Maple and Merrill Street during morning and afternoon hours seven days a week.

10.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend **APPROVAL** to the City Commission of the applicant's request for Special Land Use Permit Amendment and Final Site Plan Review for 203 Pierce – Toast. It is also recommended that the terminology "minimum hours of operation" be included into the SLUP agreement to permit the applicant to stay open later into the evening if economically feasible.

The Planning Division's recommendation is based on the consideration that the applicant is open and providing dining services to patrons of Birmingham at times when other restaurants and Bistros are not. Toast is open for breakfast and lunch and enhances the economic vitality of Pierce Street during those times. The Planning Division's

recommendation is also based on the precedent that other Bistros have not been required to be open during the morning and provide service during typical breakfast, lunch and dinner hours.

If the City wishes to deny the applicant's request and require Toast to maintain current dinner hours Wednesday-Saturday, the Planning Division recommends that the City consider a temporary social district trial on Pierce Street from Merrill to the alley intersection, similar to what Royal Oak, Ferndale, and Northville have in order to activate the space. Doing so could assist the surrounding businesses in activating the space and attracting more business at all times of the day.

11.0 Sample Motion Language

The Planning Board recommends **APPROVAL** to the City Commission of the Special Land Use Permit Amendment Final Site Plan Review for 203 Pierce – Toast.

OR

Motion to recommend **POSTPONEMENT** of the Special Land Use Permit Amendment and Final Site Plan Review for 203 Pierce – Toast, for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **DENIAL** of the Special Land Use Permit Amendment and Final Site Plan Review for 203 Pierce – Toast, for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **DENIAL** of the Special Land Use Permit Amendment and Final Site Plan Review for 203 Pierce – Toast, for the following reasons:

1. _____
 2. _____
 3. _____
-

AND

To consider a temporary social district trial on Pierce Street from Merrill to the alley intersection as an effort to activate the space and encourage social gathering at all times of the day for the benefit of residents, visitors, and surrounding businesses.



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

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OF COUNSEL:

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KEVIN M. CHUDLER
KATHERINE A. TOMASIK

September 10, 2021

Via Electronic Mail

Jana Ecker, Planning Director
Nicholas Dupuis, City Planner
Brooks Cowan, City Planner
City of Birmingham
151 Martin Street
Birmingham, MI 48012

**Re: Toast Birmingham, LLC
Special Land Use Amendment**

Dear Ms. Ecker, Mr. Dupuis, and Mr. Cowan:

As you know, Toast was issued a Violation Notice for changing its hours of operation from the approved Special Land Use Permit ("SLUP"). The approved SLUP is dated June 3, 2019. The purpose of this letter is to explain the circumstances regarding the change of hours and to request that the SLUP be amended to change the hours of operation. Specifically, Toast is requesting that the SLUP be amended to NOT require Toast to be open for or serve dinner.

Attached to this letter is a SLUP application form stating the reason for the current SLUP amendment and various documents as described below. The application fee in the amount of \$2,800 is being hand delivered to the Planning Department today.

VIOLATION NOTICE

Toast was issued a violation notice for not being open during the dinner hours as set forth in the approved SLUP from June 3, 2019.

Toast operated in compliance with the approved SLUP until the Covid-19 shutdown. Upon reopening for indoor dining in the summer of 2020, Toast no longer served dinner. During this time period, restaurants were allowed to open at a reduced capacity. During this time, there was constant uncertainty as to the ability to reopen at 100% capacity, by virtue of the ever-changing orders from the Governor and MDHHS.

Most of Toast's employees were receiving unemployment benefits from the State of Michigan for an extended period during this time frame and did not come back to work because the benefits they were receiving often outweighed their ability to earn in a post-shutdown time.

The State-ordered shutdowns created a hardship on all restaurants. Toast understood that when they reopened, they were not required to operate during the hours required under the approved SLUP.

If this is incorrect, it was not an intentional violation of the approved SLUP. It was a misunderstanding. However, it was virtually impossible for Toast to operate during the dinner hours. There was then and is now a national labor shortage. The statistics in Michigan are staggering when related to the restaurant industry. Upon reopening, Toast, struggled to be open for breakfast and lunch. Their current employees, who remained faithful to the owners, were and are working many hours and overtime.

Having been issued the Violation Notice, Toast considered trying to come into compliance with the approved SLUP, but has been unable to do so. Therefore, Toast is submitting this request for a further amendment to its SLUP.

REQUEST FOR SLUP AMENDMENT

Toast requests an amendment to its approved SLUP for the sole purpose of changing the approved hours to eliminate dinner hours.

Toast first opened in Birmingham in 2008. In 2008, the City Commission approved a SLUP with specific hours which required Toast to maintain "nighttime hours", as follows:

*"The applicant must maintain nighttime hours, Monday-Wednesday 7am-9pm;
Thursday-Saturday & Sunday 7am-midnight; Sunday 7am-5pm."*

When Toast opened, the City Commission had concerns about activating Pierce Street, which is one of the purposes of granting a Bistro License. Since that time there are now four Bistros on Pierce Street, including, Elie's, Streetside, and Townhouse. All of these Bistros are open for dinner but do not open for breakfast.

Subsequently, the SLUP was amended in June of 2019, requiring the hours set forth below as "Approved Hours." The Proposed Hours are on the right, below, and are the basis for this amended SLUP request.

Approved Hours.....	Proposed Hours
Sunday: 8 a.m. – 4 p.m.	8 a.m. – 4 p.m. (No change)
Monday-Tuesday: 7 a.m. – 3p.m.	8 a.m. – 3 p.m.
Wednesday: 7 a.m. – 8 p.m.	8 a.m. – 3 p.m.

Thursday-Friday: 7 a.m. – 8p.m.....8 a.m. – 3 p.m.
Saturday: 8 a.m. –9p.m.8 a.m. – 4 p.m.

DOCUMENTS REQUIRED FOR SLUP AMENDMENT

The SLUP amendment application submitted in February of 2019 is attached with the documents which have not changed since that time, including:

I(i). A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines.

I(ii). A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair.

I(iii). A Certified Land Survey.

I(iv). Interior floor plans.

I(v). A Landscape Plan.

I(vii). Colored elevation drawings for each building elevation.

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 the applicant is not the owner.

NOTE: The landlord entity is Maple Pierce, LLC. The manager of the Landlord entity is Kevin Denha. Please note that the warranty deed is in the name of 50935 Van Dyke, LLC. After the closing on the building this entity' name was changed to Maple Pierce, LLC. A copy of the warranty deed and the name change are attached.

ADDITIONAL DOCUMENTS

In addition to the above, the following should be noted:

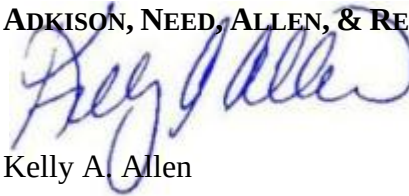
Toast added an awning to the cover the patio. The awning was approved by the Building Department.

Current photos of the patio are attached which show the umbrellas and the planters.

Please let us know if you require anything further. Thank you for your professional assistance in this matter.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

KAA/kjp
Enclosures



Special Land Use Permit Application – Bistro Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Toast Birmingham, LLC
 Address: 203 Pierce

 Phone Number: _____
 Fax Number: _____
 Email address: _____

3. Applicant's Attorney/Contact Person

Name: Kelly A. Allen, Esq.
 Address: 39572 Woodward, Suite 222, Bloomfield Hills, MI 48304

 Phone Number: 248-540-7400
 Fax Number: 248-540-7401
 Email address: kallen@anafirm.com

2. Property Owner

Name: Maple Pierce Properties, LLC
 Address: 40700 Woodward, Suite 125, Bloomfield Hills, MI

 Phone Number: _____
 Fax Number: _____
 Email address: _____

4. Project Designer/Developer

Name: _____
 Address: _____

 Phone Number: _____
 Fax Number: _____
 Email address: _____

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A Certified Land Survey;
 - iv. Interior floor plans;
 - v. A Landscape Plan;
 - vi. A Photometric Plan;
 - vii. Colored elevation drawings for each building elevation;
- 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 the 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: 203 Pierce

 Name of development: _____
 Sidwell #: _____
 Current Use: _____
 Proposed Use: _____
 Area of Site in Acres: _____
 Current zoning: _____
 Is the property located in the floodplain? _____
 Name of Historic District Site is Located in: _____
 Date of Historic District Commission Approval: _____

Date of Application for Preliminary Site Plan: _____
 Date of Preliminary Site Plan Approval: _____
 Date of Application for Final Site Plan: _____
 Date of Final Site Plan Approval: _____
 Date of Application for Revised Final Site Plan: _____
 Date of Revised Final Site Plan Approval: _____
 Date of Design Review Board Approval: _____
 Is there a current SLUP in effect for this site? _____
 Date of Application for SLUP: _____
 Date of SLUP Approval: _____
 Date of Last SLUP Amendment: _____

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

Toast requests an amended Special Land Use Permit such that specific hours are not required. There are no changes to the layout, number of seats, or ownership. Toast's SLUP was last amended in 2019. All of the documents pertaining to the property and interior of the restaurant are the same. See the attached letter for further explanation.

8. Buildings and Structures

Number of Buildings on Site: _____
Height of Buildings & # of Stories: _____

Use of Buildings: _____
Height of Rooftop Mechanical Equipment: _____

9. Floor Use and Area (in Square Feet)

Structures:
Restaurant Space: _____
Office Space: _____
Retail Space: _____

Number of Residential Units: _____
Rental or Condominium? _____
Total Floor Area: _____

10. Proposed Bistro Operation

Number of Indoor Seats: _____
Number of Outdoor Seats: _____
Entertainment Proposed: _____
Previous LCC Complaints? _____
Number of Tables along Street Façade: _____
Type of Cuisine: _____

Bar Area? _____
Number of Seats at Bar: _____
Full Service Kitchen? _____
Percentage of Glazing Proposed: _____
Years of Experience in Birmingham: _____
Years of Experience Outside Birmingham: _____

11. Required and Proposed Setbacks

Required Front Setback: _____
Required Rear Setback: _____
Required Total Side Setback: _____

Proposed Front Setback: _____
Proposed Rear Setback: _____
Proposed Total Side Setback: _____

12. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space): _____
Hours of Operation: _____
Width of unobstructed sidewalk between door and café? (5 ft. required): _____
Platform Proposed: _____
Trash Receptacles: _____

Number of Tables/Chairs: _____
Material of Tables/Chairs: _____
Tables Umbrellas Height & Material: _____
Number and Location of Parking Spaces Utilized: _____
Screenwall Material: _____
Enclosure Material: _____

13. Required and Proposed Parking

Required number of parking spaces: _____
Location of parking on site: _____
Screenwall material: _____

Shared Parking Agreement? _____
Location of parking off site: _____
Height of screenwall: _____

14. Landscaping

Location of landscape areas: _____

Proposed landscape material: _____

15. Streetscape

Sidewalk width: _____
Number of benches: _____
Number of planters: _____
Number of existing street trees: _____
Number of proposed street trees: _____
Streetscape plan submitted? _____

Description of benches or planters: _____
Species of existing trees: _____
Species of proposed trees: _____

16. Loading

Required number of loading spaces: _____
Typical angle of loading spaces: _____
Screenwall material: _____
Location of loading spaces on site: _____

Proposed number of loading spaces: _____
Typical size of loading spaces: _____
Height of screenwall: _____
Typical time loading spaces are used: _____

17. Exterior Waste Receptacles

Required number of waste receptacles: _____
Location of waste receptacles: _____
Screenwall material: _____

Proposed number of waste receptacles: _____
Size of waste receptacles: _____
Height of screenwall: _____

18. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: _____
Size of transformers (L•W•H): _____
Number of utility easements: _____
Screenwall material: _____

Location of all utilities & easements: _____
Height of screenwall: _____

Ground Mounted Mechanical Equipment:

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

Location of all ground mounted units: _____
Height of screenwall: _____

Rooftop Mechanical Equipment:

Number of rooftop units: _____
Type of rooftop units: _____
Screenwall material: _____
Location of screenwall: _____

Location of all rooftop units: _____
Size of rooftop units (L•W•H): _____
Percentage of rooftop covered by mechanical units: _____
Height of screenwall: _____
Distance from rooftop units to all screenwalls: _____

19. Accessory Buildings

Number of accessory buildings: _____
Location of accessory buildings: _____

Size of accessory buildings: _____
Height of accessory buildings: _____

20. Building Lighting

Number of light standards on building: _____
Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

Type of light standards on building: _____
Height from grade: _____
Proposed wattage per fixture: _____

21. Site Lighting

Number of light fixtures: _____
Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

Type of light fixtures: _____
Height from grade: _____
Proposed wattage per fixture: _____
Holiday tree lighting receptacles: _____

22. Adjacent Properties

Number of properties within 200 ft.: _____

Property #1

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #6

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

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 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: 9/10/2021
DocuSigned by:
B9B4BCB9DAD24BA...
 Print Name: Regan K. Bloom

Signature of Applicant:  Date: 9/10/2021
DocuSigned by:
B9B4BCB9DAD24BA...
 Print Name: Regan K. Bloom

Signature of Architect: _____ Date: _____
 Print Name: _____

Office Use Only

Application #: _____ Date Received: _____ Fee: _____
 Date of Approval: _____ Date of Denial: _____ Accepted by: _____



Special Land Use Permit Application – Bistro Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Toast Birmingham, LLC
Address: 203 Pierce Street
Birmingham, MI 48009
Phone Number: 248-258-6278
Fax Number: 248-479-1800
Email address: finance@eatattoast.com

3. Applicant's Attorney/Contact Person

Name: Anthony Minicilli (Contact Person)
Address: 23150 Woodward Ave
Ferdale, MI 48220
Phone Number: 734-716-4405
Fax Number: 248-479-1800
Email address: finance@eatattoast.com

2. Property Owner

Name: Maple-Pierce Properties
Address: 700 N. Old Woodward Ave., Suite 300
Birmingham, MI 48009
Phone Number: 248-865-1515
Fax Number: _____
Email address: msarafa@visiongrowthpartners.com

4. Project Designer/Developer

Name: Krieger Associates
Address: 2120 E. Eleven Mile Rd.
Royal Oak, MI 48067
Phone Number: 248-414-9270
Fax Number: _____
Email address: _____

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A certified Land Survey;

- iv. Interior floor plans;
 - v. A Landscape Plan;
 - vi. A Photometric Plan;
 - vii. Colored elevation drawings for each building elevation;
- 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. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 203 Pierce Street
Birmingham, MI 48220
Name of development: Toast: A Neighborhood Joint
Sidwell #: _____
Current Use: Restaurant/Bar A-2
Proposed Use: Same
Area of Site in Acres: .08
Current zoning: D-4
Is the property located in the floodplain? No
Name of Historic District Site is Located in: Shane Park
Date of Historic District Commission Approval: 3/28/2008

Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: _____
Date of Final Site Plan Approval: _____
Date of Application for Revised Final Site Plan: _____
Date of Revised Final Site Plan Approval: _____
Date of Design Review Board Approval: _____
Is there a current SLUP in effect for this site? _____
Date of Application for SLUP: _____
Date of SLUP Approval: _____
Date of Last SLUP Amendment: _____

CITY OF BIRMINGHAM
Date 02/26/2019 12:53:39 PM
Ref 00156850
Receipt 471036
Amount \$2,700.00
And 100.00
Sisva Goud

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

No new development. We are changing ours to Monday through Friday: 7am - 3pm and Saturday and Sunday: 8am - 4pm

8. Buildings and Structures

Number of Buildings on Site: 1
Height of Buildings & # of Stories: 2 Stories

Use of Buildings: 1 Floor: Restaurant 2nd Floor: offices
Height of Rooftop Mechanical Equipment: _____

9. Floor Use and Area (in Square Feet)

Structures:

Restaurant Space: 3,298 sq ft
Office Space: 2nd level approximately the same
Retail Space: None

Number of Residential Units: None
Rental or Condominium? None
Total Floor Area: 3,298 sq ft

10. Proposed Bistro Operation

Number of Indoor Seats: 65
Number of Outdoor Seats: 52
Entertainment Proposed: None
Previous LCC Complaints? None
Number of Tables along Street Façade: 6 on sidewalk; 16 on platform
Type of Cuisine: America

Bar Area? Yes; 168 sq feet
Number of Seats at Bar: 9 seats
Full Service Kitchen? Yes
Percentage of Glazing Proposed: Existing
Years of Experience in Birmingham: 11
Years of Experience Outside Birmingham: 18 years

11. Required and Proposed Setbacks

Required Front Setback: _____
Required Rear Setback: _____
Required Total Side Setback: _____

Proposed Front Setback: _____
Proposed Rear Setback: _____
Proposed Total Side Setback: _____

12. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space): Both
Hours of Operation: M-F: 7am - 3pm S & S: 8am-4pm
Width of unobstructed sidewalk between door and café? (5 ft. required): 5ft
Platform Proposed: Yes
Trash Receptacles: Existing Public

Number of Tables/Chairs: 22 Tables; 52 seats
Material of Tables/Chairs: Metal
Tables Umbrellas Height & Material: 7' canvas
Number and Location of Parking Spaces Utilized: Two
Screenwall Material: N/A
Enclosure Material: N/A

13. Required and Proposed Parking

Required number of parking spaces: _____
Location of parking on site: _____
Screenwall material: _____

Shared Parking Agreement? _____
Location of parking off site: _____
Height of screenwall: _____

14. Landscaping

Location of landscape areas: _____

Proposed landscape material: _____

15. Streetscape

Sidewalk width: 12' 8"
Number of benches: None
Number of planters: None
Number of existing street trees: One
Number of proposed street trees: None
Streetscape plan submitted? On File

Description of benches or planters: N/A

Species of existing trees: Unknown

Species of proposed trees: N/A

16. Loading

Required number of loading spaces: 1
Typical angle of loading spaces: Ally
Screenwall material: N/A
Location of loading spaces on site: Rear Ally

Proposed number of loading spaces: None

Typical size of loading spaces: N/A

Height of screenwall: N/A

Typical time loading spaces are used: Ally: 7am - 3pm

17. Exterior Waste Receptacles

Required number of waste receptacles: 0
Location of waste receptacles: N/A
Screenwall material: N/A

Proposed number of waste receptacles: 0

Size of waste receptacles: N/A

Height of screenwall: N/A

18. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: 0
Size of transformers (L•W•H): N/A
Number of utility easements: 0
Screenwall material: N/A

Location of all utilities & easements: N/A

Height of screenwall: N/A

Ground Mounted Mechanical Equipment:

Number of ground mounted units: None (Basement)
Size of ground mounted units (L•W•H): N/A
Screenwall material: N/A

Location of all ground mounted units: None

Height of screenwall: N/A

Rooftop Mechanical Equipment:

Number of rooftop units: Existing
Type of rooftop units: Existing

Location of all rooftop units: On roof

Size of rooftop units (L•W•H): Existing

Percentage of rooftop covered by mechanical units: Existing

Height of screenwall: N/A

Distance from rooftop units to all screenwalls: N/A

Screenwall material: N/A

Location of screenwall: Units no visible from street

19. Accessory Buildings

Number of accessory buildings: 0
Location of accessory buildings: N/A

Size of accessory buildings: N/A

Height of accessory buildings: N/A

20. Building Lighting

Number of light standards on building: 4
Size of light fixtures (L•W•H): Existing
Maximum wattage per fixture: 50w
Light level at each property line: Low

Type of light standards on building: Existing

Height from grade: 7' 0"

Proposed wattage per fixture: _____

21. Site Lighting

Number of light fixtures: N/A
Size of light fixtures (L•W•H): N/A
Maximum wattage per fixture: N/A
Light level at each property line: N/A

Type of light fixtures: N/A

Height from grade: N/A

Proposed wattage per fixture: N/A

Holiday tree lighting receptacles: N/A

22. Adjacent Properties

Number of properties within 200 ft.: 2

Property #1

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

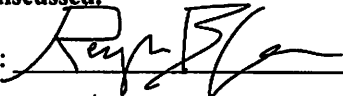
Property #6

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

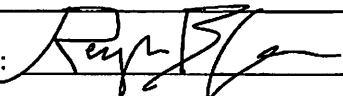
Property Description: _____

North, south, east or west of property? _____

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 same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner:  Date: 02/21/19

Print Name: Regan K Bloom

Signature of Applicant:  Date: 02/21/19

Print Name: Regan K Bloom

Signature of Architect: _____ Date: _____

Print Name: _____

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____

e-recorded

LIBER 51496 PAGE 602

0011796

OAKLAND COUNTY TREASURERS CERTIFICATE

I HEREBY CERTIFY that there are no TAX LIENS or TITLES held by the state or any individual against the within description and all TAXES on same are paid for five years previous to the date of this instrument as appears by the records in the office except as stated.

Reviewed By: RC

Jan 23, 2018

5.00 E-FILE

Sec. 135, Act 206, 1893 as amended
ANDREW E. MEISNER, County Treasurer

Not Examined

LIBER 51496 PAGE 602

\$21.00 DEED - COMBINED

\$4.00 REMONUMENTATION

\$5.00 AUTOMATION

\$30,960.00 TRANSFER TX COMBINED

01/23/2018 05:09:49 PM RECEIPT# 8712

PAID RECORDED - Oakland County, MI

Lisa Brown, Clerk/Register of Deeds



WARRANTY DEED

Corporate(Platted/Condominium)

Drafted By:

Diana Sharer, Sole Member
Cedarcliff LLC
8855 Warwick Street
Beverly Hills, MI 48025

Return To:

50935 Van Dyke, LLC
40700 Woodward Avenue, Suite 125
Bloomfield Hills, MI 48304

Send Tax Bills To:

50935 Van Dyke, LLC
40700 Woodward Avenue, Suite 125
Bloomfield Hills, MI 48304

Recording Fee: \$30.00

File Number: 774840 - BH

State Transfer Tax:

\$27,000.00

County Transfer Tax:

\$3,960.00

Tax Parcel No.: 19-36-201-020

Know All Persons by These Presents: That **Cedarcliff LLC, a Michigan Limited Liability Company** whose address is 8855 Warwick Street, Beverly Hills, MI 48025

Convey(s) and Warrant(s) to **50935 Van Dyke, LLC, a Michigan limited liability company** whose address is 40700 Woodward Avenue, Suite 125, Bloomfield Hills, MI 48304

the following described premises situated in the City of **Birmingham**, County of **Oakland**, State of Michigan, to wit:

(SEE ATTACHED EXHIBIT A)

More commonly known as: **165 through 217 Pierce Street, Birmingham, MI 48009**

For the full consideration of: **three million six hundred thousand Dollars (\$3,600,000.00)**

Subject To:

See Attached Exhibit B - Permitted Exceptions



First American Title Insurance Company

First American Title

4

(Attached to and becoming a part of Warranty Deed dated: January 09, 2018 between Cedarcliff LLC, a Michigan Limited Liability Company, as Seller(s) and 50935 Van Dyke, LLC, a Michigan limited liability company, as Purchaser(s).)

Dated this January 09, 2018.

Seller(s):

Cedarcliff LLC, a Michigan limited liability company

By: Diana J. Sharer
Name: Diana Sharer
Title: Sole Member AKA Diana J. Sharer (C6)

State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me this January 09, 2018 by Diana Sharer, Sole Member of Cedarcliff LLC, a Michigan Limited Liability Company. AKA Diana J. Sharer (C6)



Notary Public:
Notary County/State: /
County Acting In:
Commission Expires:

(Attached to and becoming a part of Warranty Deed dated: January 09, 2018 between Cedarcliff LLC, a Michigan Limited Liability Company, as Seller(s) and 50935 Van Dyke, LLC, a Michigan limited liability company, as Purchaser(s).)

EXHIBIT A

Land situated in the City of Birmingham, County of Oakland, State of Michigan, described as follows:

Part of Lots 15 and 16, ASSESSOR'S PLAT NO. 24, according to the recorded plat thereof, as recorded in Liber 54 of Plats, page 72, Oakland County Records, described as: Beginning at a point distant North 01 degree 52 minutes 25 seconds West 22 feet from the Southwest corner of Lot 16; thence North 87 degrees 60 minutes 00 seconds East 100.56 feet; thence North 05 degrees 21 minutes 50 seconds East 20.34 feet; thence North 35 degrees 22 minutes 05 seconds West 57.55 feet; thence North 11 degrees 52 minutes 30 seconds West 17.15 feet; thence South 54 degrees 26 minutes 10 seconds West 82.08 feet; thence South 01 degree 52 minutes 25 seconds East 41.48 feet to beginning; ALSO including the Southerly part of Lot 17, ASSESSOR'S PLAT NO. 24, according to the recorded plat thereof, as recorded in Liber 54 of Plats, page 72, Oakland County Records, measuring 3 feet on the Easterly lot line and 48.53 feet on the Westerly lot line.

Tax Parcel Number: 19-36-201-020

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

FILING ENDORSEMENT

This is to Certify that the CERTIFICATE OF AMENDMENT TO THE ARTICLES OF
ORGANIZATION

for

MAPLE PIERCE PROPERTIES, LLC

ID Number: 801712582

received by electronic transmission on January 10, 2018 ***, is hereby endorsed.***

Filed on January 10, 2018 ***, by the Administrator.***

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.



In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 10th day of January, 2018.

Julia Dale, Director

Corporations, Securities & Commercial Licensing Bureau

LARA Corporations
Online Filing System
Department of Licensing and Regulatory Affairs

Form Revision Date 07/2016

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF ORGANIZATION

For use by DOMESTIC LIMITED LIABILITY COMPANY

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned executes the following Certificate of Amendment:

The identification number assigned by the Bureau is:	801712582
The name of the limited liability company is:	50935 VAN DYKE, LLC
The date of filing the original Articles of Organization was:	12/3/2013

Complete only those articles being amended.

Article I

The name of the limited liability company as amended, is:

MAPLE PIERCE PROPERTIES, LLC

Article III

The duration of the limited liability company if other than perpetual is:

PERPETUAL

The amendment was approved by unanimous vote of all the members entitled to vote.

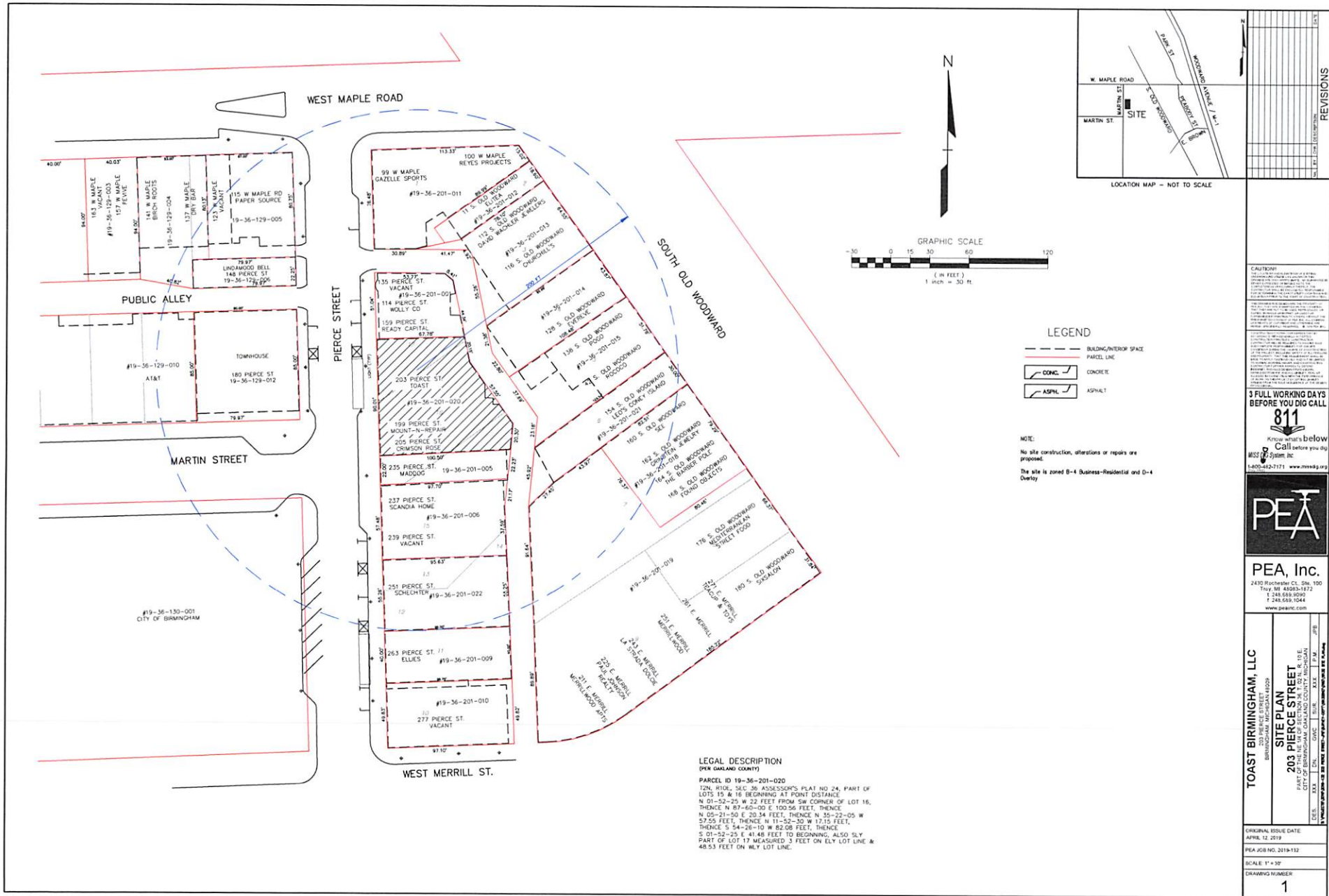
This document must be signed by a member, manager, or an authorized agent:

Signed this 10th Day of January, 2018 by:

Signature	Title	Title if "Other" was selected
KEVIN DENHA	Member	

By selecting ACCEPT, I hereby acknowledge that this electronic document is being signed in accordance with the Act. I further certify that to the best of my knowledge the information provided is true, accurate, and in compliance with the Act.

☐ Decline ☒ Accept



LEGAL DESCRIPTION

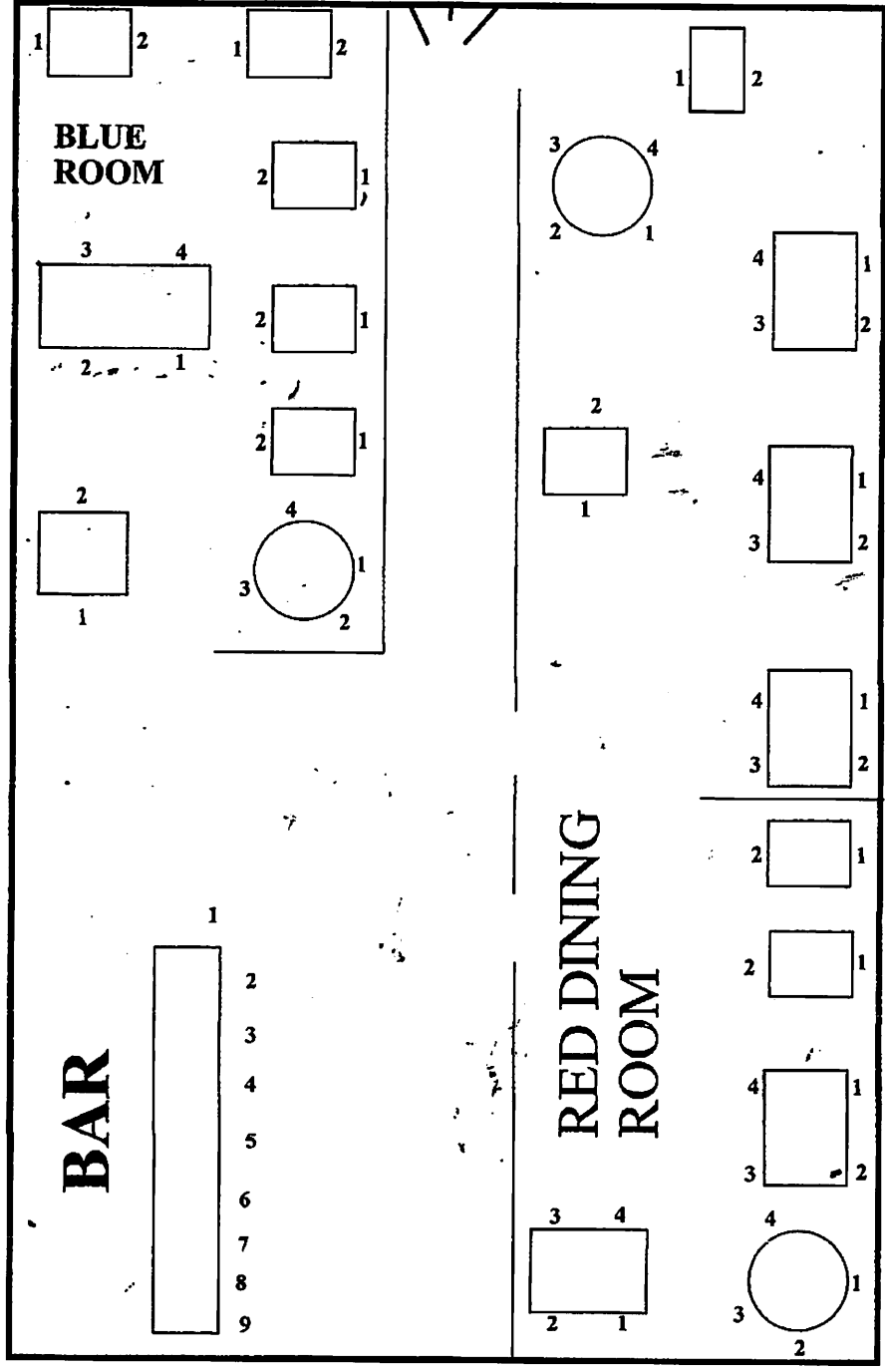
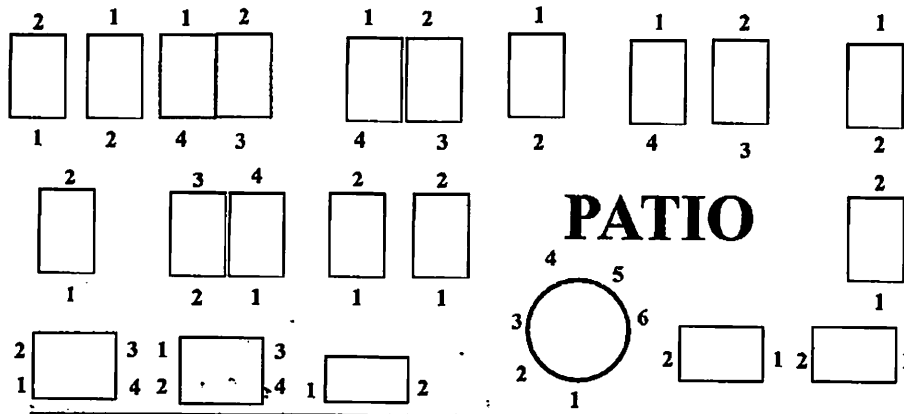
(PER OAKLAND COUNTY)

PARCEL ID 19-36-201-020

T2N, R10E, SEC. 36, ASSESSOR'S PLAT NO. 24, PART OF LOTS 15 & 16 BEGINNING AT POINT DISTANCE N 01°52'25" W 22 FEET FROM SW CORNER OF LOT 16, THENCE N 87°40'00" E 100.56 FEET, THENCE N 05°21'00" E 33.34 FEET, THENCE N 35°22'05" W 57.55 FEET, THENCE N 11°52'30" W 17.15 FEET, THENCE S 54°26'10" W 82.08 FEET, THENCE S 01°52'25" E 41.48 FEET TO BEGINNING, ALSO SLY PART OF LOT 17 MEASURED 3 FEET ON ELY LOT LINE & 48.53 FEET ON WLY LOT LINE.

[illegible]

A.1















TOAST OUTLINED IN YELLOW



Google

42°32'40"N 83°12'53"W 416 m

Park
IN
BIRMINGHAM
The Shopping District
2 hours
free
parking
IN
all decks





ANIMAL FRIENDLY
OUTDOOR AREA
ANIMAL ACCESS ONLY
THROUGH OUTDOOR DINING
AREA



NO PARKING
ANYTIME

Pierce & Co.

TOAS

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, MARCH 26, 2008**

<u>Item</u>	<u>Page</u>
SPECIAL LAND USE PERMIT (“SLUP”) 203 Pierce St. Toast Birmingham bistro, request for Bistro License, New Establishment	2
FINAL SITE PLAN REVIEW 203 Pierce St. Toast Birmingham bistro, request for Bistro License, New Establishment	2
Motion by Mr. Nickita Seconded by Ms. Whipple-Boyce to approve the applicant’s request for final site plan and a SLUP to permit a Bistro License for Toast Birmingham restaurant at 203 Pierce with the following conditions:	4
1) The applicant maintain nighttime hours as presented this evening, Monday–Wednesday 7 a.m. – 9 p.m.; Thursday– Saturday 7 a.m. – midnight; Sunday 7 a.m. – 5 p.m.;	
2) The applicant pay for the removal and re-installment of the parking meter where the outdoor dining platform is located;	
3) The applicant appear before the Historic District Commission for all building changes and signage;	
4) The applicant execute a contract with the City of Birmingham for use of the right-of-way;	
5) The applicant obtain an outdoor dining permit from the City of Birmingham for use of the right-of-way;	
6) The applicant comply with all requests of City departments;	
7) The applicant shall provide low-key entertainment as desired;	
8) The color of the railing is black as presented;	
9) The tables measure 24 in. x 28 in. as opposed to 28 in. x 28 in.;	
10) The entry to the east outdoor seating area is at the north side of the enclosure and the west patio access is at the north side of the enclosure, flipped from what is shown;	
11) The seating be 65 seats, with no more than ten at the bar in accordance to the ordinance.	
Motion carried, 4-1.	5

**CITY OF BIRMINGHAM
JOINT MEETING OF THE PLANNING BOARD AND
HISTORIC DISTRICT COMMISSION
WEDNESDAY, MARCH 26, 2008**

Minutes of the Joint meeting of the City of Birmingham Planning Board held March 26, 2008. Chairman Robin Boyle convened the meeting at 7:32 p.m.

Present: Chairman Robin Boyle; Board Members Brian Blaesing (arrived at 7:47 p.m.), Gillian Lazar, Mark Nickita, Janelle Whipple-Boyce

Absent: Board Members Sam Haberman, Bryan Williams; Student Representative Cole Fredrick

03-58-08

Approval of the Minutes of the Planning Board Meeting held March 12, 2008

Motion by Mr. Nickita

Seconded by Ms. Whipple-Boyce to approve the Minutes of March 12 as prepared.

Motion carried, 4-0.

VOICE VOTE

Yeas: Nickita, Whipple-Boyce, Boyle, Lazar

Nays: None

Absent: Blaesing, Haberman, Williams

03-59-08

Approval of the Minutes of the Planning Board Meeting held December 12, 2007

Motion by Ms. Whipple-Boyce

Seconded by Ms. Lazar to approve the Minutes of December 12 as revised.

Motion carried, 4-0.

VOICE VOTE

Yeas: Whipple-Boyce, Lazar, Nickita, Boyle

Nays: None

Absent: Blaesing, Haberman, Williams

03-60-08

Chairperson's Comments (none)

03-61-08

Approval of the Agenda (two reviews withdrawn)

03-62-08

SPECIAL LAND USE PERMIT ("SLUP")

203 Pierce St.

Toast Birmingham bistro, request for Bistro License, New Establishment

FINAL SITE PLAN REVIEW

203 Pierce St.

Toast Birmingham bistro, request for Bistro License, New Establishment

Ms. Robinson advised that the subject site is located on the east side of Pierce St. between Maple Rd. and Martin St. The parcel is zoned B-4 Business-Residential and D-4 in the Downtown Overlay District. The applicant, a new restaurant, is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code. Chapter 10 requires that the applicant obtain a SLUP and approval from the City Commission to operate an establishment with a Bistro License within the City. Bistro requirements allow two new bistros in the calendar year 2008. Accordingly, the applicant will be required to receive a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the final site plan, SLUP, and for the operation of a Bistro License.

As the applicant is also proposing signage and changes to the exterior of the building, and because the building is located within the CBD Historic District, approval from the Historic District Commission ("HDC") is also required.

In accordance with the Commission resolution passed December 10, 2007, since parking spaces are being taken out of service for this proposal, the applicant must also submit plans of the dining deck for review by the Advisory Parking Committee ("APC").

Toast Birmingham is proposing to have 9 seats in the 174 sq. ft. bar area. Toast Birmingham bistro does not propose any dancing area, but they wish to have low key musical entertainment. They also propose to have tables located in the storefront space lining Pierce St., and to provide the existing 70 percent glazing along the front façade. They propose to install a new canvas black awning over the café, directly against the building.

Toast Birmingham is also proposing 26 seats for outdoor dining, with 18 on an elevated platform along Pierce St., and 8 seats on the sidewalk directly adjacent to the south side

of the front elevation of the building. A 5 ft. clear passage will be maintained along the public sidewalk. They propose to construct a temporary 12 ft. 5 ½ in. by 20 ft. platform of composite non-slip decking fastened with clips to provide a level outdoor dining surface on the sidewalk and into the street. The platform is proposed to extend 7 ft. into one parking space along Pierce St. The applicant is also proposing a 3.5 ft. high custom-made metal fencing system to enclose the outdoor dining space.

At the recommendation of the Planning Division, the restaurant will maintain hours that extend into the evening. Mr. Thom Bloom said Birmingham Toast hours will be Monday–Wednesday 7 a.m. – 9 p.m.; Thursday–Saturday 7 a.m. – midnight; Sunday 7 a.m. – 5 p.m.

Mr. Drew Norton was present to represent Toast Birmingham. With him were Thom and Regan Bloom, the business owners; Mr. Jason Kregar, the architect; along with the head chef, Rubin Griffin. Mr. Norton indicated the applicant has satisfied or is prepared to satisfy all of the conditions raised by the Planning Division.

Mr. Bloom discussed some of the special events they may want to have in the evening, such as wine tastings for charitable events, guest chef cooking classes, and art gallery showing/openings with local artists. On the weekends there could be a Bloody Mary and Belini/Mimosa bar. The front section can be closed off as a private dining area for larger parties while they are operating the restaurant. Lastly, they manage quite a robust catering business out of their establishment for upscale corporate events. They request that on occasion there be some light entertainment such as a violin or a harp in the background, but nothing loud. If they are given the opportunity to have a bistro license Mr. Bloom feels it will be a benefit to the City, the patrons, and the community, as well as something they would very much enjoy.

He distributed a final draft of the dinner menu and a summary on the history of Toast. They have been in business in Ferndale for seven years. Due to the success of their Ferndale, location they are very confident that they will provide a very unique and lively establishment in Birmingham with some additional offerings.

Mr. Kregar clarified that the bistro tables measure 28 in. x 24 in. The restaurant seating will be adjusted to accommodate 65 people.

Mr. Nickita noted the board has not done this sort of dual outdoor enclosure in the past. His issue was congestion on the sidewalk. He suggested moving the entrance to the small dining area along the building to the north side, and flipping the outer platform 180 degrees in order to have the ramp access near the door.

Mr. Blaesing indicated he is extremely pleased after looking at the presentation. This is the kind of establishment that the board was hoping to get, right in the middle of town, and run by proprietors who have been successful with another establishment. The more synergy that occurs with the restaurants, the art community, shopping, and the office crowd, the better the whole downtown will work. He is concerned about having the dual

outdoor dining areas because he feels that when a pedestrian walks up and sees tables on both sides of the sidewalk the pedestrian may be intimidated and shy away. Mr. Blaesing is reluctant to approve with dining on both sides of the sidewalk, because he thinks it takes up too much of the public space and sets a precedent for other applicants to come in with seating on both sides and further constrict sidewalk width and functionality. His view is that the board should approve outside dining on one side or the other, see how it goes for a year, and if they think it is going to work, the applicant can come back next year and get seating on the other side. Once the seating is in, however, it is not easy to take it out.

Mr. Nickita noted that to the north there is an existing stone planter that protrudes from the building frontage almost the exact same distance as this dining area. So, the planter has already established the pedestrian path away from the building. Therefore, in this condition he is absolutely comfortable with the two dining areas. Walking between tables makes for a very interesting urban experience and he doesn't think people would be intimidated. Ms. Lazar noted the dining areas are enclosed by a railing.

Chairman Boyle said that if it is determined that outdoor dining on both sides of the sidewalk is not working out, it is not beyond the realm of common sense to remove the seating next to the building. There is the opportunity to be flexible.

Mr. Nickita observed the board has set a bit of a precedent as to the construction of platforms. Mr. Bloom said they have looked at designs that have been approved and designed their platform to those exact specs. The railings will be painted black.

No members of the public came forward to comment at 8:20 p.m.

Motion by Mr. Nickita

Seconded by Ms. Whipple-Boyce to approve the applicant's request for Final Site Plan and a SLUP to permit a Bistro License for Toast Birmingham restaurant at 203 Pierce with the following conditions:

- 1) The applicant maintain nighttime hours as presented this evening, Monday–Wednesday 7 a.m. – 9 p.m.; Thursday–Saturday 7 a.m. – midnight; Sunday 7 a.m. – 5 p.m.;**
- 2) The applicant pay for the removal and re-installment of the parking meter where the outdoor dining platform is located;**
- 3) The applicant appear before the Historic District Commission for all building changes and signage;**
- 4) The applicant execute a contract with the City of Birmingham for use of the right-of-way;**
- 5) The applicant obtain an outdoor dining permit from the City of Birmingham for use of the right-of-way;**
- 6) The applicant comply with all requests of City departments;**
- 7) The applicant shall provide low-key entertainment as desired;**
- 8) The color of the railing is black as presented;**

- 9) The tables measure 24 in. x 28 in. as opposed to 28 in. x 28 in.;
- 10) The entry to the east outdoor seating area is at the north side of the enclosure and the west patio access is at the north side of the enclosure, flipped from what is shown;
- 11) The seating be 65 seats, with no more than ten at the bar in accordance to the Ordinance.

There was no discussion from the audience at 8:30 p.m.

Motion carried, 4-1.

VOICE VOTE

Yeas: Nickita, Whipple-Boyce, Boyle, Lazar

Nays: Blaesing

Absent: Haberman, Williams

APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 9, 2019
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 9, 2019. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams

Also Present: Alternate Board Member Jason Emerine

Absent: Alternate Board Member Nasseen Ramin; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

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

Fleis & Vanderbrink ("F&V")
Julie Kroll

01-07-19

H. PRE-APPLICATION DISCUSSION

1. 203 Pierce St., Toast Birmingham

Mr. Tony ~~Manicilli~~ **Minicilli**, Director of Operations for Toast, was present with Mr. Chris ~~Gadelka~~ **Gadulka**, Executive Chef, and Ms. Reagan **Regan** Bloom with Toast. Mr. Manicilli said they are looking to change the required hours of their Special Land Use Permit ("SLUP") to 7 a.m. to 3 p.m. Monday through Friday and 8 a.m. to 4 p.m. on week-ends. They want to eliminate dinner and do special events in the evenings such as cooking classes and private parties.

Ms. Ecker advised they are required under their SLUP to serve breakfast, lunch, and dinner. To change that condition they would have to amend their SLUP. They can do one of two things to correct the violation:

- Start serving dinner again; or
- Go before the Planning Board and City Commission to get approval to strike the condition that they must serve dinner.

Ms. Ecker explained if they just wanted to have a restaurant with regular dining and no alcohol they would not need a SLUP. At the time this SLUP was approved the Planning Board and City Commission didn't feel a bistro license should be issued if the street would not be activated in the evenings. Mr. ~~Manicilli~~ **Minicilli** said on week-ends their customers generally have about an hour wait. During that wait, most people are in the City and walking around. Even if it is during the day and not at night they are adding to activity on the street.

Board members requested that in Toast's application for a change in their SLUP they include details on their special events and average customer count after 3 p.m. over the last six months or so.

Mr. Williams pointed out there are three other restaurants on Pierce and that are open at night and none are open for breakfast. So he would be inclined to go forward with this request.

Mr. ~~Manicilli~~ **Minicilli** responded for Ms. Whipple-Boyce that they have had 15 special events in the evening through December. He anticipates seeing an increase in pop-ups, cooking classes, or other events. He described a pop-up as an invitation for another chef to come in and set up a temporary restaurant with a different menu other than theirs for a one night event. The purpose is to receive an indication of whether to invest in opening a new restaurant.

Ms. ~~Reagan~~ **Regan Bloom** opined that increasing competition has had something to do with their declining dinner crowd.

Mr. Jeffares said these people have tried everything to get people in for dinner and it has been a valiant effort. They do quite a few events in the evening and he didn't think the board should try to force anybody to lose money.

**BIRMINGHAM CITY COMMISSION MINUTES
FEBRUARY 25, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Patty Bordman called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present:	Mayor Bordman Mayor Pro Tem Boutros Commissioner DeWeese Commissioner Harris Commissioner Hoff Commissioner Nickita
	Absent:	Commissioner Sherman

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Police Chief Clemence, Planning Director Ecker, Finance Director Gerber, Building Official Johnson, Library Director Koschik, City Engineer O'Meara, City Clerk Mynsberge, Birmingham Shopping District Executive Director Tighe

02-047-19**LIQUOR LICENSE REVIEW AND RENEWAL**

Commissioner Nickita recused himself from discussing and voting on 220 Merrill and Toast due to business relationships with the owners of both establishments.

City Clerk Mynsberge presented the item.

Commissioner Hoff thanked staff for the clarity of the submitted reports.

Comments/Clarification

Planning Director Ecker explained:

- Elie's Mediterranean filled out their liquor license application incorrectly in regards to numbers, but upon the Planning Department on-site review it was clear that Elie's was actually in compliance

City Clerk Mynsberge confirmed:

- Rojo and Sidecar share an owner and together owe the City \$16,325 in taxes and water bills. The owner entered into a payment plan with the City for the water bills on February 25, 2019 by paying a portion and agreeing to continue making regular payments on the debt. The outstanding taxes for both establishments remain unpaid.

Mayor Bordman invited Stephen Simon, owner of Rojo and Sidecar, to speak to the Commission.

Mr. Simon explained both Rojo and Sidecar were purchased in bankruptcy court in June 2018. There are current talks with the City and Oakland County as to whether the July 2018 taxes are due from the current or previous owner. In addition, the company's accountant has indicated that the assets purchased were only about \$20,000, which would free the business from owing taxes.

City Attorney Currier said with respect to the delinquent taxes he was unsure because he was not familiar with the bankruptcy filing. He could not say whether that was a matter the bankruptcy court was taking into consideration, but that it would have some priority with respect to payment in the bankruptcy court. If the priority stays as-is, eventually the property will go to tax sale.

Commissioner Harris suggested setting a March 25, 2019 public hearing date to encourage a speedy resolution of the matter on the part of the previous owner and Mr. Simon.

Mayor Bordman concurred and advised Mr. Simon that the tax liability may fall to him if he intends to keep the restaurants. She said this was not legal advice, but that it seemed to her that if the previous owner were mandated to pay by the court that Mr. Simon would be reimbursed.

Commissioner DeWeese said Toast has been slow in addressing issues with the City, including the fact that Toast is in violation of its Special Land Use Permit (SLUP) because it is not currently operating in the evenings.

Planning Director Ecker explained:

- Toast had been subject to code enforcement for not providing dinner hours as per their SLUP. The owners then came to a pre-application meeting with the Planning Department to discuss either providing dinner hours or applying for a SLUP amendment.
- Toast ultimately submitted an application and attendant fee for a SLUP amendment earlier in the day on February 25, 2019, hoping not to provide regular dinner hours but to provide evening space for cooking classes and other activities instead.
- Toast would not likely receive a public hearing regarding their application with the Planning Board before the end of April 2019.

Toast representative Tony Minicilli came forward to address the Commission. He explained:

- Toast's hours were changed in October 2018, and they were unaware their SLUP was contingent on having dinner hours. He said that he believed Toast was the only restaurant that had a SLUP requiring evening hours.
- When Toast was made aware that they were in violation of their SLUP, Toast was advised to re-apply.
- He is the Director of Operations, and neither he nor the current owner were part of the SLUP process when it was originally granted to Toast by Birmingham. Toast was originally owned by married couple Thom and Regan Bloom, and they since divorced with Regan retaining ownership of the restaurant along with investors.

Mayor Bordman stated:

- SLUPs require any change in ownership be reviewed by the City Commission.
- Since Toast did not submit their change in ownership for review to the City Commission, the restaurant has now made the City aware of an additional violation of their SLUP.
- Given the major problems with the operation of the restaurant, she recommended setting a public hearing for Toast on March 25, 2019.

Commissioner Hoff noted there were several restaurants with discrepancies between the number of seats allowed and the number of seats the Planning Department found upon inspection. She added that as of the submission of the information to the City Commission, many of those discrepancies had not been resolved. She asked Mayor Bordman if the Commission could speak with representatives from the establishments in violation present this evening to see whether the discrepancies have since been resolved.

Mayor Bordman concurred, suggested reviewing the discrepancies one establishment at a time, and asked whether a representative from Bella Piatti was present.

Nino Cutraro introduced himself as the owner of Bella Piatti.

Mayor Bordman asked Mr. Cutraro why he had not responded to contact from the City regarding the issue with the number of seats in Bella Piatti.

Mr. Cutraro said he never saw any communication from the City regarding the matter.

Mayor Bordman invited Planning Director Ecker to confirm that attempts to contact Bella Piatti had occurred.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, APRIL 24, 2019**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 24, 2019. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Jason Emerine; Student Representative Sophia Trimble

Absent: Board Member Bert Koseck; Student Representative John Utley

Administration: Jana Ecker, Planning Director
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

Present in Audience: Alternate Board Member Nasseen Ramin

04-059-19

F. Request for Special Land Use Permit Review and Request for Final Site Plan and Design Review

1. 203 Pierce – Toast – Request for approval of a SLUP Amendment and Final Site Plan Review to permit a change of hours of operation and a change of ownership.

City Planner Dupuis presented the item.

Kelly Allen, Attorney for Toast, noted that the correct proposed hours were listed in her letter dated April 18, 2019 and included on page 83 of the agenda packet. She continued:

- Toast was one of the first two restaurants issued a bistro license in Birmingham in 2008. Ms. Allen had served as attorney for Toast at the time, and she had mostly worked with former co-owner Thomas Bloom.
- The goal of bistro licenses was to activate the street, especially with nighttime hours. Toast agreed to attempt nighttime hours, even though the focus was more of a breakfast and brunch experience. Toast tried to attract dinner patrons for ten years, and the efforts were largely unsuccessful.
- When Reagan Bloom assumed full ownership of Toast following her divorce from Mr. Bloom, she was unaware that Toast was obligated to stay open into the evening hours as part of the establishment's contract with the City.

- The City has many more bistros now, and the necessity of Toast having evening hours is no longer extant. City streets are now well-utilized in the evenings.
- Since the originally proposed change in hours was explicitly discouraged by the Commission, Toast is proposing a compromise in hours to try and meet the Commission's directive.
- Toast will attempt the proposed compromise hours in earnest, but they still may not be successful. If that is the case, Toast may be back before the Planning Board and the Commission in the future.
- During the change in ownership Toast acquired new investors and went through the required changes with the Michigan Liquor Control Commission. The attorneys handling that process did not come before the City to update the information as required by ordinance, so Ms. Allen is facilitating that process now. She expects all involved parties will be cleared by the City's Police Department.
- Toast's seating is now in compliance with the original SLUP. Toast will be open during all of the hours proposed in Ms. Allen's April 18, 2019 letter, and may host special events during some of its evening hours on occasion.

Mr. Jeffares noted other bistro license holders that seem to have less onerous hour requirements. He stated that Bella Piatti is not open for business two days out of the week, that La Strada is not open for business on Mondays, and that both Tallulah Wine Bar & Bistro and Bistro Joe's have days they are not open for business. Meanwhile, Toast is required to be open for all meals seven days a week.

Ms. Allen agreed with Mr. Jeffares, and suggested that a slight hardship is being imposed on Toast in terms of the evening hours.

Mr. Boyle noted that the City was imposing the requirement that Toast revise its schedule to stay open during evenings. He suggested that since the City is requiring this, the City could help publicize Toast's new hours and correct the perception that Toast will continue to remain closed in the evenings.

Chairman Clein said he understood the Commission's concerns, acknowledged it was a policy issue for the Commission to decide, and would not try to persuade them differently. He also opined that a reduction or elimination of evening hours would not negatively impact evening activity on Pierce Street.

Motion by Mr. Share

Seconded by Mr. Williams to recommend approval of the amended SLUP for 203 Pierce - Toast, incorporating the hours in the letter of April 18, 2019, based on the fact that of the six items in Article 7, Section 7.2.7 Items One, Two, Three, Four, and Six remain unchanged and Item Five, which relates to compatibility and the spirit and purpose are well-satisfied by changing circumstances over time including the evening activation of Pierce Street.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Williams, Clein, Boyle, Emerine, Jeffares, Whipple-Boyce
Nays: None

Motion by Mr. Share

Seconded by Mr. Williams to recommend approval of the Final Site Plan for 203 Pierce - Toast, which includes the original seating plan contained in the applicant's submittal materials and the letter of April 18, 2019. With reference to Article 7, Section 7.2.7, all of the site plan issues are satisfied.

Motion carried, 7-0.

APPROVED

**BIRMINGHAM CITY COMMISSION MINUTES
JUNE 3, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Patty Bordman called the meeting to order at 7:30 PM.

II. ROLL CALL

Present: Mayor Bordman
Mayor Pro Tem Boutros
Commissioner DeWeese
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Absent: Commissioner Harris

Administration: City Manager Valentine, City Attorney Currier, Communications Director Byrnes, Police Chief Clemence, Planning Director Ecker, DPS Manager Filipski, Finance Director Gerber, Building Official Johnson, City Clerk Mynsberge, DPS Director Wood

VI. NEW BUSINESS

06-149-19

PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE AMENDMENT AND LIQUOR LICENSE OWNERSHIP CHANGE FOR TOAST – 203 PIERCE

Mayor Bordman opened the public hearing at 7:58.

Commissioner Nickita recused himself due to a current business relationship with one of the owners of the building as well as the applicant.

Planning Director Ecker presented the item.

Commissioner Hoff pointed out that on the special land use permit application, the hours of operation under outdoor dining facility differ from what was just presented. If the restaurant remains open for dinner, wouldn't the outdoor dining area stay open when weather permits?

Planning Director Ecker expressed that it was probably a mistake on the application and advised Commissioner Hoff to refer those questions to the applicant.

Attorney Kelly Allen, representing Toast, introduced Rita Bloom and Tony Micelli of Toast. Attorney Allen stated, in regard to Commissioner Hoff's question, a letter was submitted on April 18th and it reflected the hours that you see in the packet. The outdoor dining area will be open the same hours as the operation of the restaurant.

Mayor Bordman expressed that she was very pleased to see the willingness to make changes to the hours so that evening dining is available and said she will be supportive of the application.

Commissioner Sherman expressed that he was also very pleased and has no issue with the restaurant being closed some evenings at dinner time, but, he is a little concerned with closing at 8:00 or 9:00 p.m. on Thursday, Friday, and Saturday when there are a lot of people walking around and many restaurants are having their first seating. He asked the owners to consider staying open until 10:00 p.m. Thursday through Saturday.

Attorney Allen, owner representative, responded with a respectful no. In the past, there has not been a demand for dinner at Toast and that is why the hours were cut back. Ms. Bloom, partner, explained that they have tried many combinations of lunch and dinner without success. She added that they are going to continue to try and find a sweet spot for evening hours by putting a fun twist on breakfast at night.

Commissioner Sherman went on to advise the restaurant to stay open until "at least 8:00 p.m." He encouraged late hours on the weekend because the restaurant is a big space to have closed during the dinner hour. Commissioner Sherman also reminded the commission that the goal of the Bistro Ordinance was to enliven the streets and to bring traffic downtown. To have one bistro on Pierce Street with the lights off is not what the commission envisioned.

Mayor Bordman agreed with Commissioner Sherman's suggestion on the change of wording to allow the applicant to eventually grow the business and extend hours of operation.

Commissioner DeWeese expressed that by changing the agreement to read "minimum" hours of operation, the applicant has the flexibility to best serve the customer.

Mayor Pro Tem Boutros was supportive but struggled with the applicant limiting their hours. He wondered if it is a staffing issue and said he believes that they can be successful if marketing and advertising strategies are used to increase the dinner crowd.

Ms. Bloom explained that it is not a staffing issue, it is a brand issue. She explained that the brand is a breakfast and lunch bistro. Incorporating dinner into a strong breakfast brand suggests that people will double down on a restaurant for three meals. People generally go to the applicant for breakfast and lunch; it is going to be a struggle to push the hours that the Commission is requiring.

Commissioner Hoff supported approval of the proposal with the suggestions of other Commissioners. She also expressed confidence in what the restaurant owner says is best for her establishment.

Attorney Allen called attention to an error in the letter of April 18th, listing hours of operation on Sunday from 7am – 4 pm. The hours are 8:00a.m. – 4 p.m. on Sunday. She requested that the letter be amended to reflect the correction.

Commissioner Hoff asked if the applicant would consider staying in business without the bistro license. The answer was an emphatic no.

Maureen Sarle, 1585 Henrietta and 12 year Birmingham resident, stated that she likes Toast and asked Ms. Bloom if the applicant ever marketed breakfast for dinner. Ms. Bloom's response was yes.

Aljosa Krajisnik, a millennial, asked if dinner prices are similar to Leo's Coney Island (under \$10.00) which can attract people 24 hours per day.

Ms. Bloom explained her prices are more than \$10.00 for dinner but admitted to being on the lower end of Birmingham dinner prices.

Mayor Bordman closed the public hearing at 8:16 p.m.

MOTION: Motion by Commissioner DeWeese, and seconded by Mayor Pro Tem Boutros: To approve a Special Land Use Permit Amendment for 203 Pierce, aka Toast, to reflect an ownership change and change in the hours of operation, with the correction of Sunday hours to 8:00 a.m. until 4:00 p.m. and the amendment of language to read "the applicant shall maintain minimum hours of operation."

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Toast Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009. Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Toast Birmingham, LLC approving the liquor license transfer request of Toast Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009. *Formal resolution appended to these minutes as Attachment A.*

VOTE:	Yeas,	5
	Nays,	0

DATE: October 22nd, 2021

TO: Planning Board

FROM: Brooks Cowan, City Planner

SUBJECT: Public Hearing: Wall Art

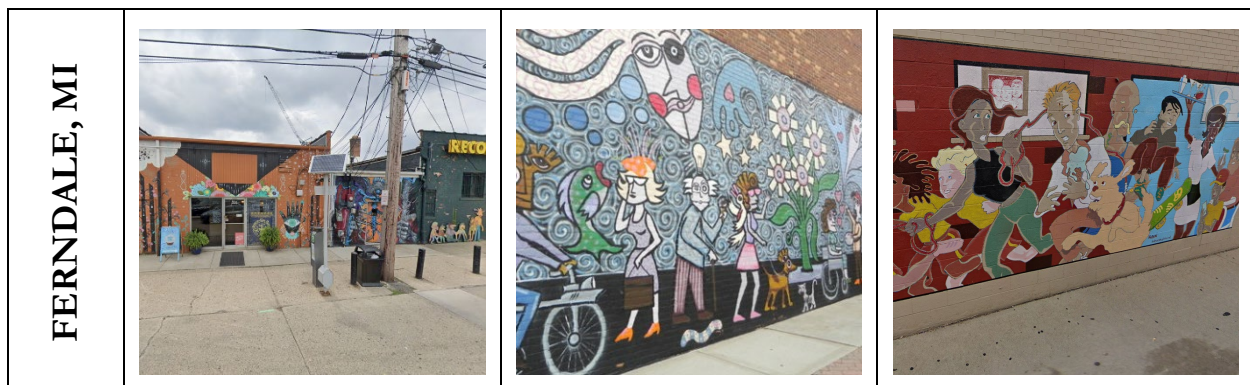
Conversations regarding wall art in Birmingham with the Public Arts Board occurred throughout 2019 and 2020. On August 24th, 2020, the Public Arts Board submitted a report on ways to enhance Terminating Vistas to the City Commission with a number of recommendations, one being to allow murals and wall art in the City.

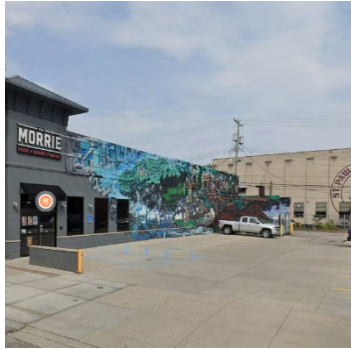
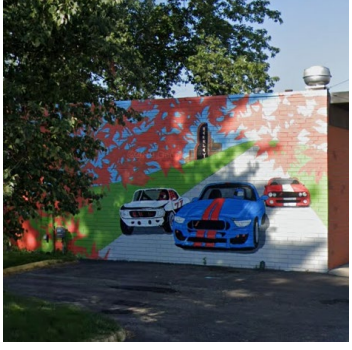
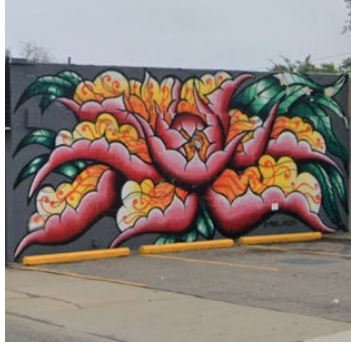
On August 19th, 2020, the Design Review Board conducted a study session related to murals and art on the exterior of buildings. The issue was brought up by staff when Griffin Claw Brewery requested to have an artist paint a mural on the side of their building. Issues related to the Sign Ordinance preventing murals from being painted on the side of a building were discussed, as well as issues regarding the lack of clarity in the Sign Ordinance and Zoning Ordinance for the application of wall art versus signage and building design features. Discussion regarding the location of wall art and how the board may consider limiting such art to certain locations occurred. There was also discussion related to defining art in the Ordinance in order to separate wall art from signage and architectural design features.

The issue with signage not allowed to be painted onto buildings refers to the Sign Ordinance Section 1.03(D) Painted Signs which states, "*No sign may be painted directly onto any building surface.*" By creating a definition and review process for wall art in the Ordinance, there would be a policy and procedure in place to separate wall art from signage.

In regards to supporting ordinance language, Section 3.16(A)(3) of the Via Activation Overlay District lists "*art display*" as a permitted use to encourage the activation of vias. Staff recommends a review process for art display to ensure quality control and public comment.

Examples of wall art from local cities have been provided as follows:



ROYAL OAK, MI			
BERKLEY, MI			

More examples of wall art may be found in in the Terminating Vista Report attached to the memo.

On November 4th, 2020, staff presented the Terminating Vista Report and wall art recommendations to the Design Review Board where staff recommended that the Design Board consider three items related to wall art for discussion:

- 1.) Permitting murals to be painted on the exterior of buildings;
- 2.) Permitting wall art to be applied to the exterior of buildings, including but not limited to:
 - Temporary Canvasses
 - Ceramic Tiling
 - Wall sculptures
- 3.) Creating a review process for wall art that incorporates a review and recommendation from the Public Arts Board first.

In regards to discussion item one, the Design Review Board was amenable to murals being painted directly onto buildings in areas such as alleys, however they expressed concern about this being applied to the front of a building. A member of the DRB was also involved in the Alleys and Passages Plan committee and noted that murals in alleys could be a positive addition to the plan.

In regards to discussion item two, the Design Review Board was also amenable to temporary art, though they had issues related to how the city regulates content. It was discussed that trying to regulate specific content could create legal issues with freedom of speech.

In regards to discussion item three, the Design Review Board was also amenable to a wall art review process that involves an application for wall art, and is reviewed with a recommendation by the Public Arts Board before going to the Design Review Board for final review.

On November 18th, 2020 the Public Arts Board discussed the following items brought up at the Design Review Board and recommended topics from staff:

1. Allowing murals directly on buildings along the alley and passages as indicated in the Alleys and Passages Plan (see map below). The 2040 Draft Master Plan recommends the Rail District as a potential location for this as well. The Board may wish to discuss limiting this to certain areas.
2. Creating a content review process for temporary wall art such as canvasses. For example, will the applicant be required to provide renderings beforehand, or can an artist be commissioned to paint what they wish after review of a portfolio?
3. Creating a review process for wall art that involves comment and recommendation from the Public Arts Board before the DRB/ HDC makes the final approval or denial.

There was general consensus from the Public Arts Board that the locations suggested by the DRB were reasonable. The Public Arts Board also felt that drawings, renderings, or photos of the proposal should be required before approval. The Arts Board was also amenable to a process involving making recommendations to the DRB/HDC prior to going through the final review process.

On January 21st, 2021, the Public Arts Board reviewed ordinance language that defined wall art and created a review process for approval. In regards to wall art being limited to the Rail District and alleys within the Downtown Overlay and Triangle District, the Public Arts Board is currently content with the recommended areas. If the City likes the program and wanted to expand the boundaries in the future, the Public Arts Board mentioned that they would be amenable to doing so.

Concerns about subject matter were discussed at both the Design Review Board and the Public Arts Board throughout the study session process. Given the broad concept of what is considered art, staff recommended to the Public Arts Board that the definition of wall art be kept broad. Attempting to regulate art with a specific list of what is and is not allowed to be considered art would be cumbersome to put into ordinance language. The Public Arts Board felt that the best way to distinguish between art and signage is to require renderings of the proposed artwork prior to approval and allow the content to be vetted by staff, the Public Arts Board, and the Design Review Board.

On March 3rd, 2021, the Design Review Board considered the proposed wall art ordinance. The DRB had concerns about wall art in alleys that faced residential zones, particularly in the alley between Ann Street and S. Old Woodward. The DRB also wanted to verify boundaries of the Via Activation Overlay.

Upon review, Section 3.14 of the Zoning Ordinance specifies the boundary for the Via Activation Overlay District and outlines the areas in pink on the map which is attached. Verbage has been added to the wall art definition that prohibits wall art in an alley facing a single-family residential zone, and the Via Activation Overlay District has been specified as the boundary.

On April 7th, 2021, The Design Review Board verified the boundaries of the Via Activation Overlay District. The Board was amenable to the suggested Ordinance language allowing wall art to abut alleys in the Via Activation Overlay District, as well as the side and rear walls in the Rail District. The Board was also amenable to a review process that begins with a recommendation from the Public Arts Board and is then finalized by the Design Review Board.

On August 11th, 2021, The Planning Board reviewed the proposed amendments and recommended minor changes such as using the word "abutting" instead of facing, to elaborate more on the purpose for wall art review, and to replace the word "content" with something else. Upon review of the word "elevation", "facing", and the definition of "abutting" in the Zoning Ordinance, the Planning Division recommends using the term "facing" to accommodate for any setback. Facing is term used throughout the Ordinance in various sections regarding the wall of a building and its orientation towards the street.

On September 23rd, 2021, staff asked the Planning Board if they are amenable to permitting wall art on side or rear walls in the triangle district and/or downtown that do not abut an alley, via, or passage. In particular, side walls with 0 foot setback that do not have windows. Permanent or temporary art installations could be a way to activate the space until another building is constructed beside it.

Commerical and residential uses in the Triangle District are not permitted to have windows on side elevations with a 0 foot setback that do not face a street, alley, or passage. Buildings in the Downtown Overlay also do not permit windows on 0 foot setback sidewalls for commercial uses, however it does permit residential uses to do so with fire rated glass. Windows on a 0 foot side setback are either banned or considered risky because of the potential for a neighboring property to construct a building with 0 foot side setback, block the window view, and create a fire hazard. This has resulted in large blank sidewalls on multi-story properties beside single-story or vacant properties. The Planning Board felt that permitting wall art on sidewalls with 0 foot setback in the Downtown Overlay and Triangle District could be a way to enhance the space on blank walls until a building is constructed alongside it.

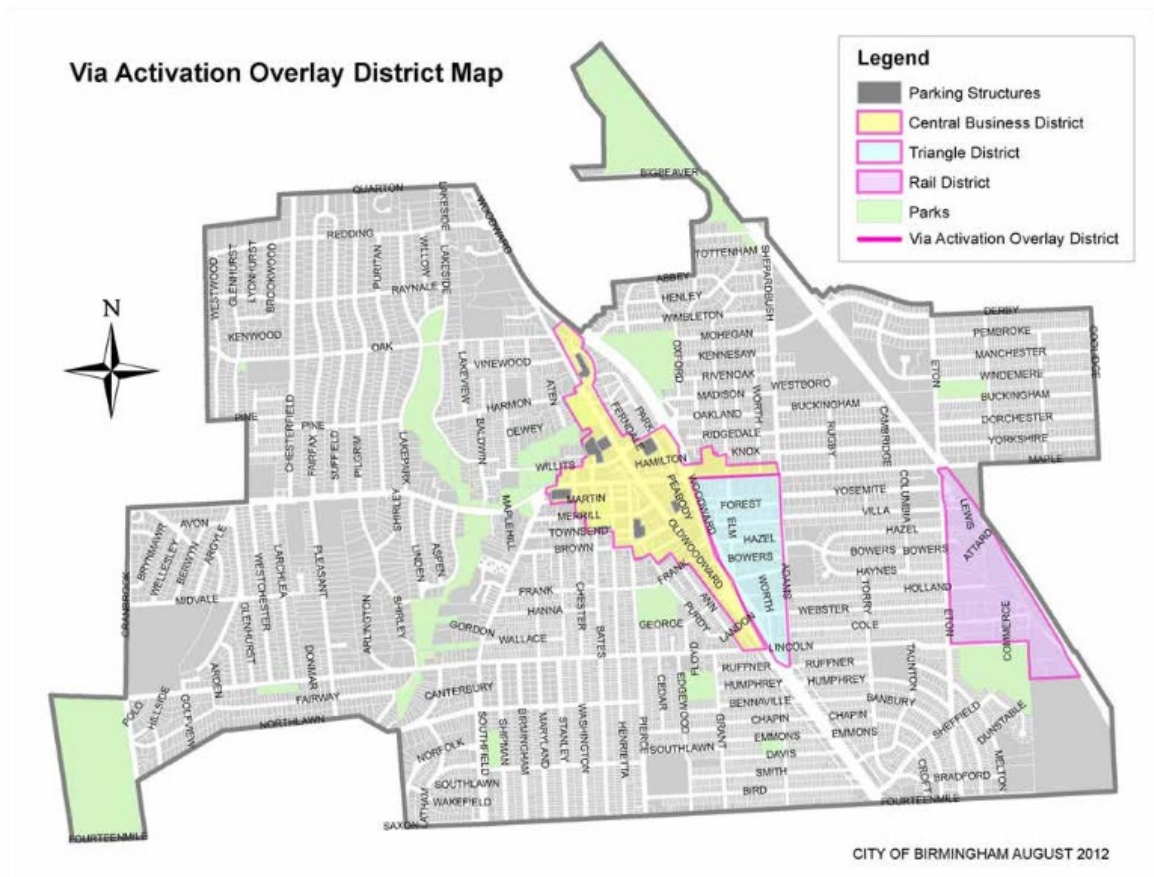
Suggested Action:

To recommend Zoning Ordinance amendments to Aticle 7, Section 7.41-7.44 and Article 9, Section 9.02 to define wall art and require a review process involving the Public Arts Board for recomendation and Design Review Board for final approval.

(Section 3.14 Via Activation Overlay Map)

3.14 Applicability

A. The Via Activation Overlay District shall be an overlay district that applies to all existing and future vias in all zoning districts within the areas identified below:



DOWNTOWN ALLEYS & PASSAGES CLASSIFICATIONS MAP



LEGEND

- Active
- Connecting
- Destination
- Parking Structures
- Parks
- Crosswalks
- Vistas

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9 – DEFINITIONS TO DEFINE WALL ART AND DETERMINE PERMITTED LOCATIONS FOR WALL ART

Wall Art – An artistic design applied to the exterior surface of a structure in a permanent or temporary manner. The location of wall art is limited to elevations of structures facing the side or rear lot line within the defined Rail District boundary, **side elevations with a 0 foot setback in the Triangle District and Downtown Overlay District**, and elevations facing a public or private alley, passage, or via in the Downtown Overlay and the Triangle District as specified in the Via Activation Overlay District. Wall art is not permitted in an alley, passage or via that abuts a single-family residential zoned property.

ORDAINED this _____ day of _____, 2021 to become effective 7 days after publication.

Pierre Boutros, Mayor

Alex Bingham, City Clerk

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 7, SECTION 7.41-7.46 – PROCESSES, PERMITS, AND FEES
TO CREATE A REVIEW PROCESS FOR WALL ART**

~~7.41 Zoning Ordinance Compliance Permit: Purpose~~

~~It shall be unlawful to change the type of use of land, or to change the type of use or type of occupancy of any building, or to extend any use on any lot until the Building Official has issued for such intended use a Zoning Ordinance Compliance Permit or Certificate of Occupancy and use as provided for in Chapter 22 of the Birmingham City Code.~~

~~7.42 Zoning Ordinance Compliance Permit: Application~~

~~A. In all cases where a certificate of occupancy and use is not required, application for a Zoning Ordinance Compliance Permit shall be made, except for signs which are regulated by Chapter 86 of the Birmingham City Code. This application shall be made in writing to the Building Official on forms provided for that purpose. A record of all such applications shall be kept on file by the Building Official.~~

~~B. The Building Official shall require every application for a Zoning Ordinance Compliance Permit shall be accompanied by a written statement and plans or plats showing the following in sufficient detail to enable the Building Official to ascertain whether the proposed work or use is in conformance with the Zoning Ordinance:~~

- ~~1. The actual shape, location and dimensions of the lot.~~
- ~~2. The existing and intended use of the lot and of all buildings or structures upon the lot.~~
- ~~3. Such other information which may be essential for determining whether the provisions of the Zoning Ordinance are being observed.~~

~~C. The Building Official may accept a preliminary application and a lesser number of submitted documents than those listed above in situations where a basic clarification is desired ahead of proceeding with further technical work. If such preliminary application is denied in writing by the Building Official, the applicant may appeal such action to the Board of Zoning Appeals. However, the Building Official shall not refuse to issue a permit when the conditions imposed are complied to by the applicant despite violations of contracts, such as covenants or private agreements, which may be obtained upon the granting of such permit.~~

7.41 Wall Art Review: Purpose

The purpose of this section is to enable creative artistic designs on the exterior of buildings, to activate space and create an inviting experience through the use of art, to allow for public input regarding wall art design, and to ensure the location, size and design of wall art is aesthetically appropriate and compatible with the area of the proposed location.

7.42 Wall Art Review: Application Requirements

- A. An application for wall art shall include the following;
 - a. An application form from the Planning Department, indicating property owner's name, mailing address, location of the property, name of the artist, artist contact information, and such other information as deemed necessary by the appropriate reviewing body.
 - b. Two hard copies and one digital copy of the proposed design which includes, but is not limited to, a drawing, rendering or photo of the proposed artwork to be placed on the building, as well as the proposed dimensions of the art work.
 - c. A photo of existing conditions of the wall where the artwork is proposed, along with the dimensions of the wall or walls.
 - d. A timeframe for the art work to be exhibited and whether it is intended to be temporary or permanent.
 - e. Specifications of materials that will be used for the art work.
 - f. A resume of the artist(s) including names, location, and photos of previous work.

7.43 Wall Art Review: Review

All applications for wall art begin with review and recommendation by the Public Arts Board. The application will then be reviewed by the Design Review Board for final consideration. Final approval of wall art is subject to the review requirements for the Design Review Board as stated in Section 7.09 *Design Review: Review*.

7.44 Wall Art Review: Application Fee

An application fee as established by the City Commission and set forth in Appendix A of the City Code shall be payable upon submitting an application for Wall Art Review pursuant to this division.

7.45 Zoning Ordinance Compliance Permit: Purpose

It shall be unlawful to change the type of use of land, or to change the type of use or type of occupancy of any building, or to extend any use on any lot until the Building Official has issued for such intended use a Zoning Ordinance Compliance Permit or Certificate of Occupancy and use as provided for in Chapter 22 of the Birmingham City Code.

7.46 Zoning Ordinance Compliance Permit: Application

A. In all cases where a certificate of occupancy and use is not required, application for a Zoning Ordinance Compliance Permit shall be made, except for signs which are regulated by Chapter 86 of the Birmingham City Code. This application shall be made in writing to the Building

Official on forms provided for that purpose. A record of all such applications shall be kept on file by the Building Official.

B. The Building Official shall require every application for a Zoning Ordinance Compliance Permit shall be accompanied by a written statement and plans or plats showing the following in sufficient detail to enable the Building Official to ascertain whether the proposed work or use is in conformance with the Zoning Ordinance:

- 1. The actual shape, location and dimensions of the lot.**
- 2. The existing and intended use of the lot and of all buildings or structures upon the lot.**
- 3. Such other information which may be essential for determining whether the provisions of the Zoning Ordinance are being observed.**

C. The Building Official may accept a preliminary application and a lesser number of submitted documents than those listed above in situations where a basic clarification is desired ahead of proceeding with further technical work. If such preliminary application is denied in writing by the Building Official, the applicant may appeal such action to the Board of Zoning Appeals. However, the Building Official shall not refuse to issue a permit when the conditions imposed are complied to by the applicant despite violations of contracts, such as covenants or private agreements, which may be obtained upon the granting of such permit.

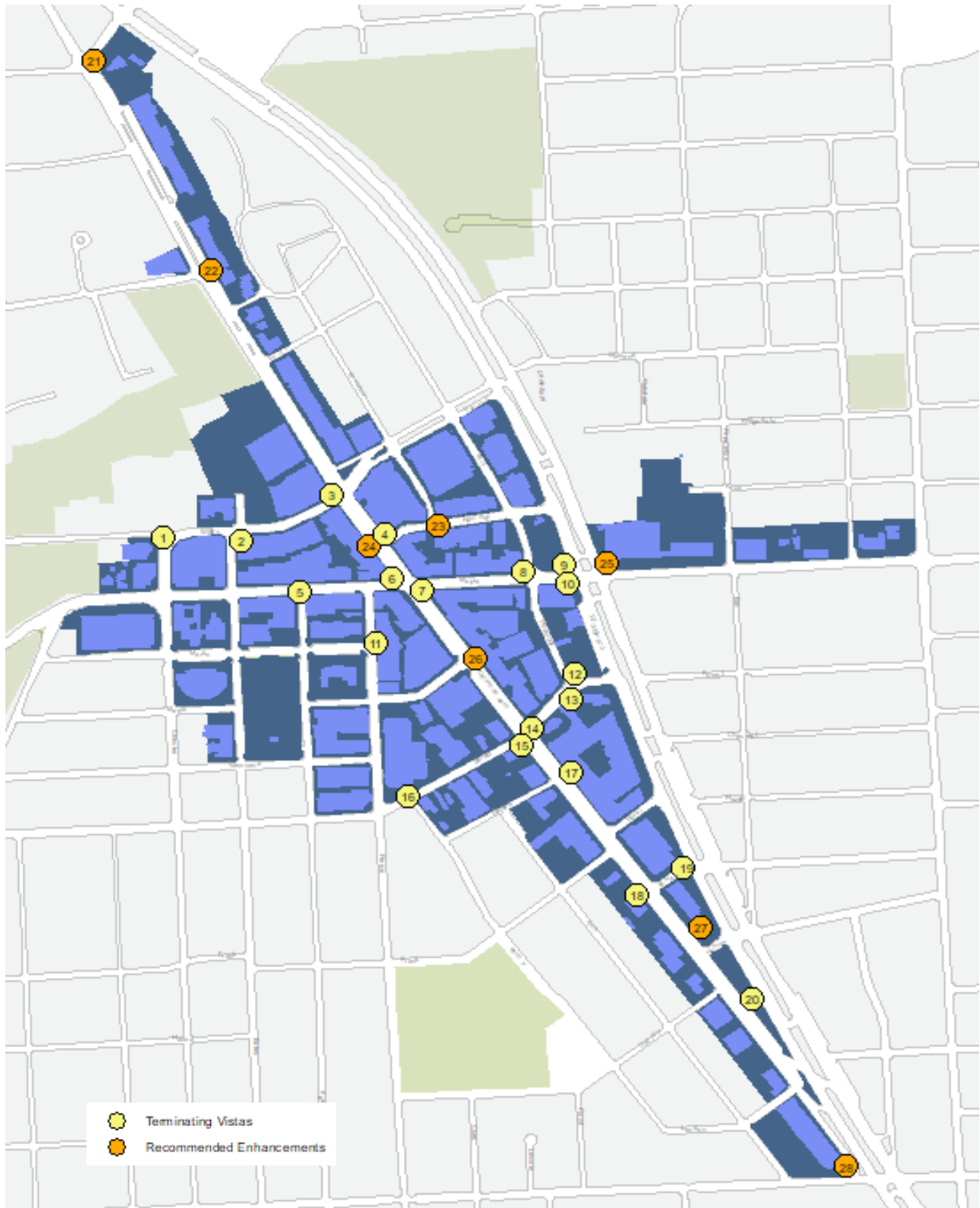
ORDAINED this _____ day of _____, 2021 to become effective 7 days after publication.

Pierre Boutros, Mayor

Alex Bingham, City Clerk

Terminating Vistas in Downtown Birmingham

A Report by the Birmingham Public Arts Board



August 24th, 2020

Report Summary

On May 20th, 2019 The Birmingham Public Arts Board was asked by City Commission to evaluate ways to enhance Terminating Vistas in Birmingham's downtown through the use of Public Art.

The concept of Terminating Vistas having enhanced design features was first introduced to the City in the Downtown Birmingham 2016 Plan and the designated locations were approved as a part of the Downtown Overlay District in 1997.

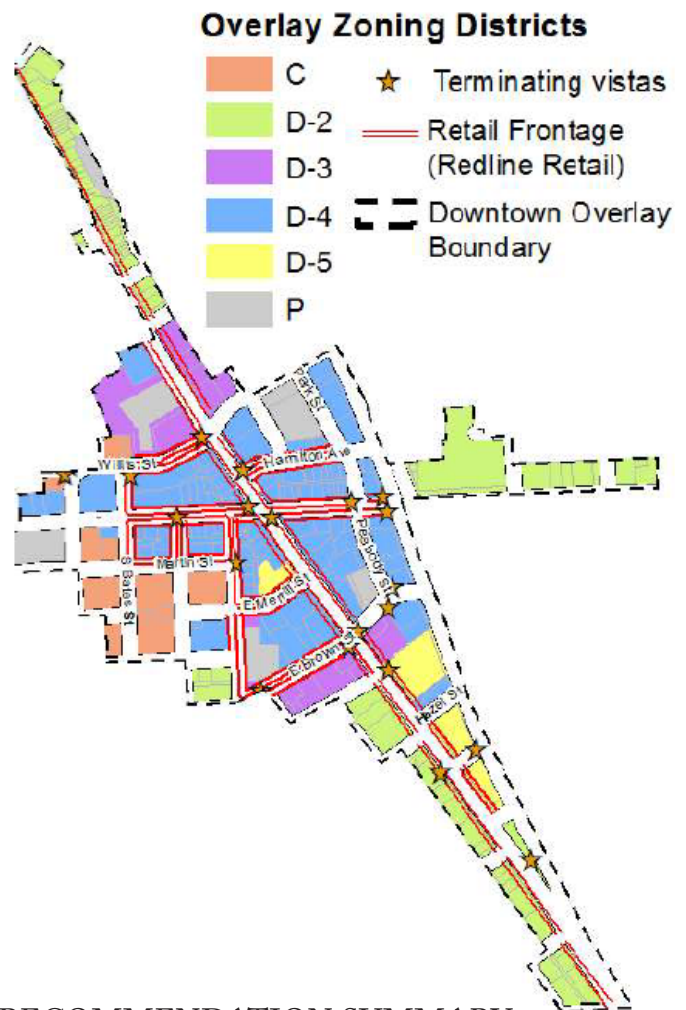
Terminated Vistas are defined in the Zoning Ordinance as “*a building or structure, or a portion thereof, as designated on the Regulating Plan, that terminates a view with architectural features of enhanced character and visibility*” (Section 9.02 Definitions).

Section 3.04(E)(15) of the Downtown Overlay Standards states that “*any building that terminates a view, as designated on the Regulating Plan, shall provide distinct and prominent architectural features of enhanced character and visibility, which reflect the importance of the building’s location and create a positive visual landmark.*”

The Downtown Overlay Zoning Districts Map has designated 20 locations as Terminating Vistas. The Birmingham Public Arts Board used these locations as a guide to evaluate Terminating Vistas and make recommendations relative to ways in which public art may help enhance the City's Terminating Vistas. Recommendations for prominent intersections that could benefit from enhanced design features were also made.

The Public Arts Board evaluated various types of public art that could be placed in Terminating Vistas such as sculptures, furniture, artistic utilities, landscaping and murals. Current City policy affecting the review process and installation process was also considered and recommendations were made regarding City standard furniture, landscaping, utilities and signage policy.

Lastly, the Public Arts Board evaluated City policy impacting the installation process of public art and has provided policy recommendations to assist in the implementation of the public art recommendations.



RECOMMENDATION SUMMARY

- 1.) Use public art such as sculptures, artistic furniture, artistic utilities, landscaping and wall art to enhance the City's Terminating Vistas.
- 2.) Revise the sculpture installation process to incentivize sculptures on loan and to make the installation process more efficient for artists and City staff.
- 3.) Revise City policy towards City-standard benches, light poles, landscaping and utility boxes to permit an occasional artistic variation.
- 4.) Amend the sign ordinance and create a new design review policy to allow murals to be placed on the exterior of buildings.
- 5.) Create a public notification process for art in public spaces.

Terminating Vista Locations in Birmingham



Terminating Vista Locations in Birmingham



Terminating Vista Locations in Birmingham



Terminating Vista Locations in Birmingham

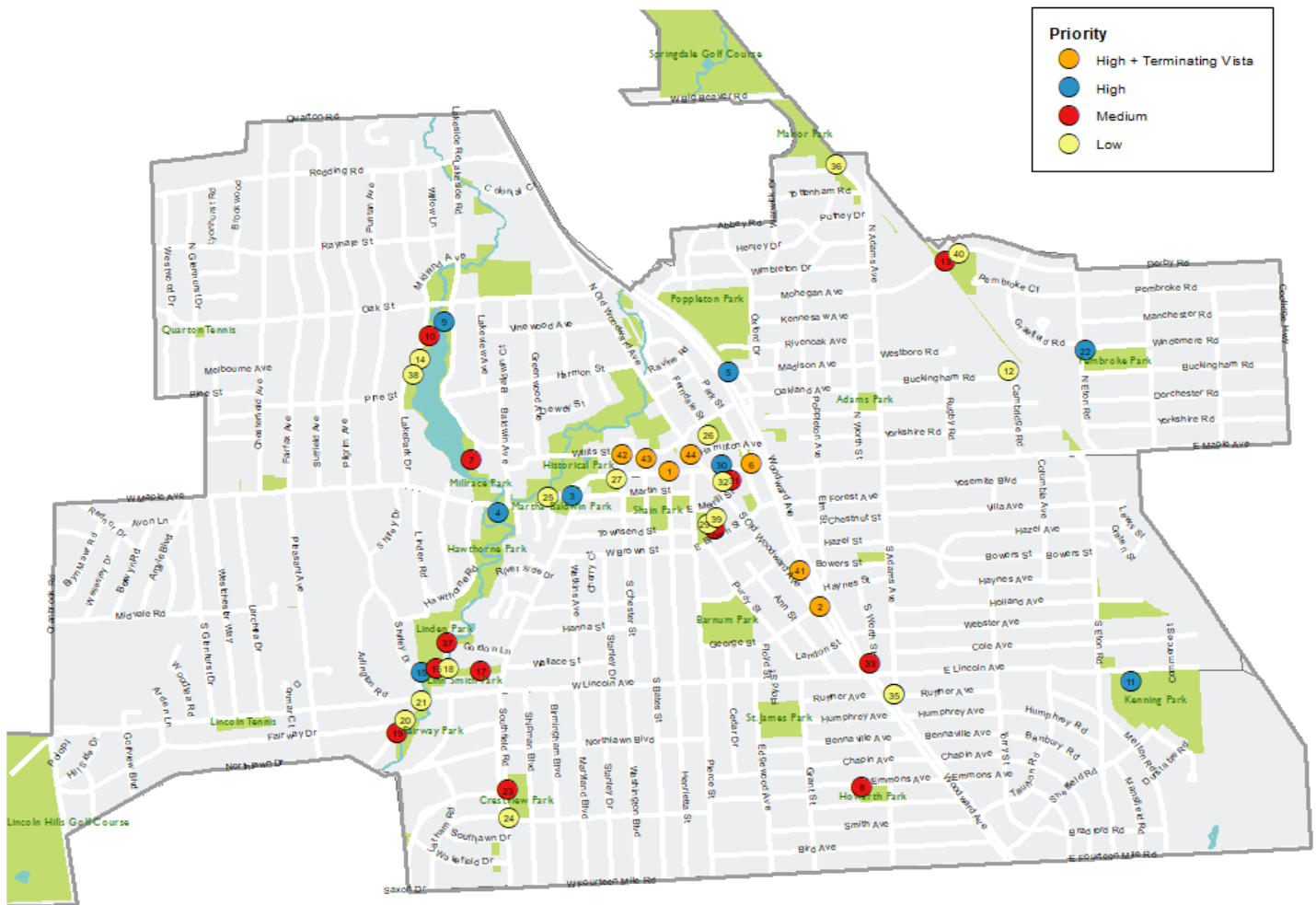


Prioritized Locations for Public Art

The Public Arts Board maintains a map of prioritized locations for public art. It is used as a reference whenever a sculpture for loan or donation is made to the City. Each point is numbered for reference, and the colors indicate areas with higher priority. The priorities are meant to serve as a guideline, though the Public Arts Board has indicated that each sculpture will be evaluated on a case-by-case basis so that it can be contextual with its surroundings.

The Public Arts Board reviewed the various Terminating Vistas and selected seven of the locations to add to their priority map for sculptures. These locations include N. Old Woodward and Hamilton Row, Chester & Willits, Bates & Willits, Maple & Henrietta, Park & Maple, S. Old Woodward & Bowers, and S. Old Woodward & Woodward. The updated Prequalified Public Art Locations Map is pictured below where downtown Terminating Vistas were placed as a high priority.

City of Birmingham Prequalified Public Art Locations



Recommended Locations for Public Space Enhancements

Terminating Vista locations are defined by the Downtown Overlay zoning map, as specified in Section 3.04(E)(15) of the Zoning Ordinance. Upon evaluation, the Public Arts Board finds that there are other intersections throughout downtown Birmingham that merit enhanced architectural and streetscape design features to create a positive visual landmark for that intersection which are included in the orange locations in the adjacent map. If the City wishes to officially deem these locations as Terminating Vistas, the Zoning Ordinance would have to be reviewed by the Planning Board and amended by the City Commission.



Recommended Locations for Public Space Enhancements

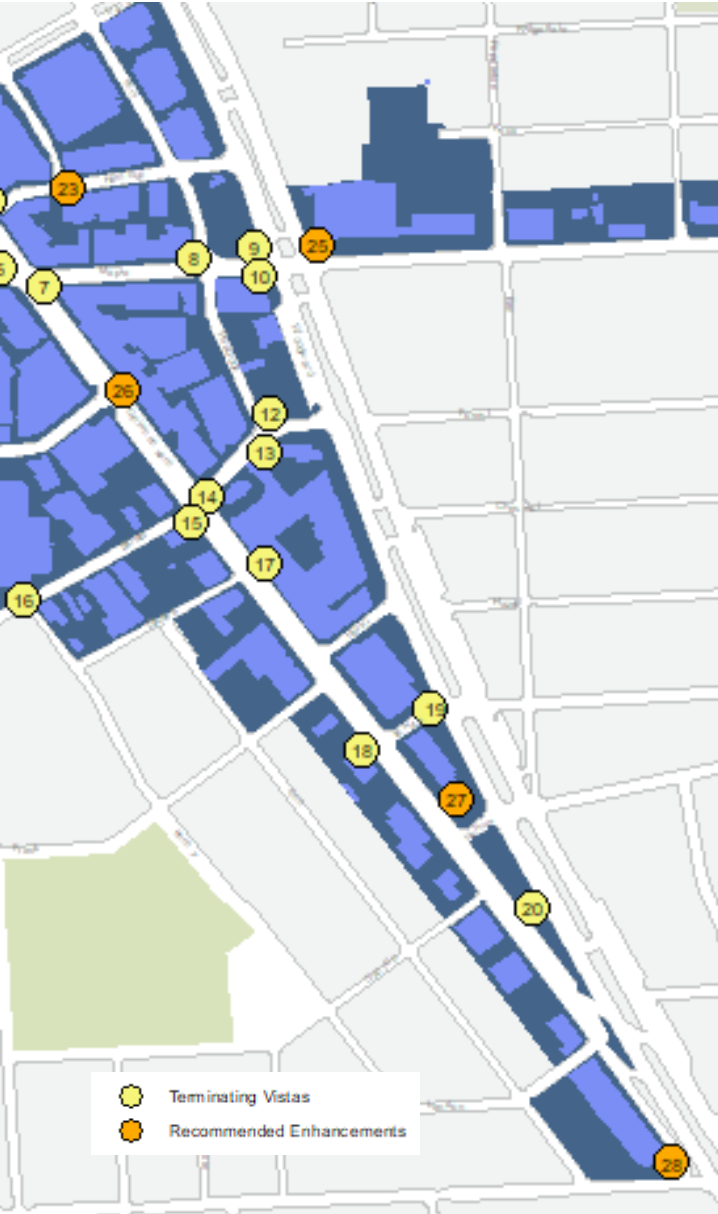
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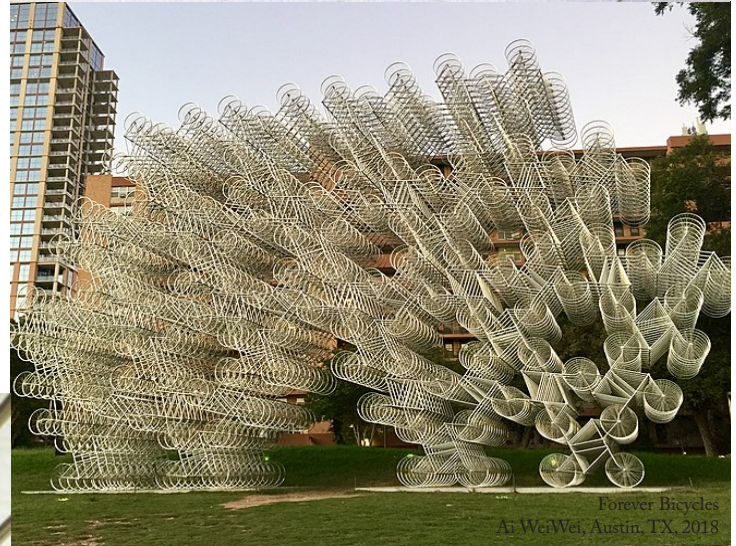
Best Practices in Public Art for Terminating Vistas: Sculptures

Sculptures are one way in which public art can be used to enhance the architectural features of a Terminating Vista. Doing so may effectively draw more attention and bring more prominence to the surrounding buildings. Birmingham currently has fifteen sculptures throughout the City that have either been purchased, donated or placed on loan, though only one is currently in a designated Terminating Vista which is located at the corner of Pierce and Brown Street.

Public sculptures have the ability to compliment the surrounding buildings and invigorate public spaces. The various colors and shapes of sculptures provide the ability for art to interact with the surrounding building and public right-of-way, potentially enhancing the connection between the two. Unique public art may create a stronger sense of place and identity for the building and intersection where it is placed in a Terminating Vista. Such sculptures may capture the eye of a passer-by, bring more attention to the civic environment and contribute to a greater sense of civic vitality.



Tembo, Mother of Elephants
Derrick Hudson, Toronto, ON, 2002



Forever Bicycles
Ai Weiwei, Austin, TX, 2018



I See What You Mean
Lawrence Argent, Denver, 2005



Flamingo
Alexander Calder, Chicago, IL, 1974

Best Practices in Public Art for Terminating Vistas: Artistic Furniture

Artistic furniture is another way public art can be used to enhance the character of a Terminating Vista. Doing so may accent the surrounding buildings while providing a unique public space for socializing or respite.

The City of Birmingham is a walkable city with pedestrian oriented design throughout its downtown and neighborhoods. Unique public furniture may invite a variety of uses that activate a Terminating Vista and promote social interaction. The shape and color of artistic furniture may also have an aesthetic contribution to the right-of-way and surrounding buildings. An artistic bench can be more inviting for a pedestrian to relax and enjoy a section of the City they may have otherwise walked past, and may provide an enhanced civic experience for leisure and appreciation of the surrounding cityscape. Artistic furniture can provide the opportunity to activate Terminating Vistas with people-oriented architectural streetscape design.



The Wave
dSPACE Studio, Chicago, IL, 2014



Circular Bench
Lucile Soufflet, Bruxelles, France 2003



Swirling Bench



Custom Curve Seats
University of Sydney, Australia



Bench of Expectations
Jeppe Hein, Springfield, MA 2018

Best Practices in Public Art for Terminating Vistas: Artistic Utilities

Artistic utilities may also enhance a space and bring more prominence to the surrounding buildings. Many cities, including Birmingham, Michigan have painted electrical boxes with an interesting design to add more character to a utility box placed in the right-of-way. Cities such as Milwaukee, Wisconsin have commissioned artists to paint numerous utility boxes throughout their downtown with a theme to be determined by the artist. There are other examples of cities having sculptors create artistic coverings for electrical boxes that are equipped with hinges and gates for access to interior controls. These coverings provide opportunities for other types of art to be placed on and around them to compliment the surrounding space and improve the aesthetics of public utilities.

Artistic lighting could also be used to enhance the pedestrian experience and illuminate architectural features in a Terminating Vista. Cities such as Portland, Oregon and Seattle, Washington have explored various solar powered lights and sculptures with an artistic design and ambient glow to create unique public spaces. A well placed artistic light can enhance the character of the area and create an interesting talking point while highlighting the surrounding buildings.



Best Practices in Public Art for Terminating Vistas: Wall Art

Outdoor wall art such as murals, mosaics, and ceramic tiling are another example of public art that can enhance a public space and the surrounding architectural features.

Wall art can be temporary or permanent. For local examples, The Park Shelton mural in Detroit, MI has been up since 1978, meanwhile Detroit's Eastern Market cycles through numerous murals every year.

Temporary murals can be done on materials such as plywood or canvas and be applied to the exterior of a building for a length of time and then be removed, thus maintaining the original design and color and the building. Mosaics and ceramic tiles can also be used to provide an interesting texture to the artistic experience.

The various forms of wall art can be especially effective in activating Terminating Vista spaces that have large sections of blank walls.



Tiger
Arlin Graff, Detroit, MI



Park Shelton
John Egner, Detroit, MI, 1974



Aretha
Desiree Kelly, Detroit, MI

Best Practices in Public Art for Terminating Vistas: Landscaping

Integrating artistic landscaping with art and design can be another way to enhance Terminating Vistas. Birmingham has a number of green spaces and planters surrounding buildings at prominent intersections. An example is at Park and Maple where a community garden welcomes people into the downtown. This garden blends well with the Pazzi Building immediate behind it, and provided a natural landscaping to screen the electrical box located within it. Landscaping could be an effective medium to connect buildings, utilities, furniture and sculptures together into one cohesive artistic experience.

As another example, the City of Seattle allows property owners and tenants to garden in the planting strip in front of their property as long as a proper street use permit is obtained. Once obtained, the plantings may include low growing perennials, ornamental grasses, shrubs, herbs, or edible plants. Doing so could encourage more interesting variety in landscape design and create a unique space at prevalent intersections.



Pazzi Community Garden
Park & Maple, Birmingham, MI



Gramercy Park Co-Op
New York City, NY



Personalized Planting Strip
Seattle, WA



18th and F Streets, N.W.,
Washington D.C.

City Policy Related to Public Art in Terminating Vistas

SCULPTURES

Birmingham currently has sculptures on display that were either donated to the City, purchased by the City, or placed on loan to the City for a certain period of time. If the sculpture is donated and placed on public property, the City is responsible for installation and maintenance of the sculpture. If a sculpture is on loan, the loan agreement specifies that the artist is responsible for installation, maintenance and removal.

An issue with the current policy for sculpture installation is that each piece is unique and may require special care for installation. This includes but is not limited to how the sculpture is transported to the installation site, how to safely secure the sculpture to the location, how to create the necessary base and fabricate proper mounts. City staff may not have adequate experience to handle the installation process of various unique sculpture shapes and sizes. Requiring the artist to be responsible for all installation and removal processes may also create issues related to the artist operating machinery on City property.



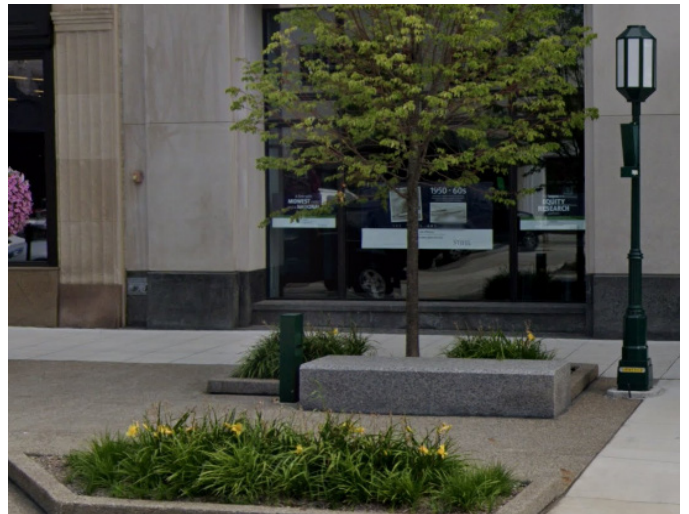
Local art museums such as the Detroit Institute of Arts and Cranbrook Museum have employees who specialize in the installation of sculptures. **The Public Arts Board recommends that the City of Birmingham consult with such specialists for installing sculptures that have been either donated or loaned to the City.** Doing so would enable a more efficient installation process in areas such as Terminating Vistas.



ARTISTIC FURNITURE

Downtown Birmingham has City-standard green metal benches installed along the sidewalks as well as granite benches that were a part of the downtown Old Woodward and Maple Reconstruction projects. This classic design for public furniture fits in with the surrounding streetscape and does not detract from the architectural style of downtown Birmingham.

The Public Arts Board recommends that Birmingham consider allowing more creative and artistic furniture that will contribute a positive design aesthetic to the character of the area. Doing so could enhance the pedestrian space in Terminating Vistas and be used to activate the public space and compliment the surrounding architecture. The City's current approach to streetscape furniture with City-standard benches should remain relatively consistent, but the Public Arts Board recommends that an occasional deviation from City-standard furniture in Terminating Vistas could create a unique pedestrian experience and enhance the character of the area.



City Policy Related to Public Art in Terminating Vistas

PUBLIC UTILITIES

Birmingham's streetscape contains electrical utility boxes and a number of light-poles in the right-of-way in Terminating Vistas. The City-standard light poles and electrical boxes are all painted Birmingham green, with the exception being the recent popcorn box art project at the intersection of Merrill and Old Woodward.

The Public Arts Board has considered a number of different ways to paint and decorate electrical boxes throughout downtown. Various themes were discussed, as well as whether or not the design should be contextual with the surrounding. It was determined that each box should be considered on a case-by-case basis and should not be directly tied to any theme or be required to be related to the surrounding use. **The Public Arts Board recommends the City be open to all types of artistic designs for electrical boxes.**

Sculptural enclosures for such utility boxes have also been considered by the Public Arts Board. **The Public Arts Board recommends that these be considered on a case-by-case situation as well, and not be tied to any theme or surrounding context.** Given the intended function of electrical boxes, any sculpture placed on or around the electrical box should provide easy access to the interior controls and should only be mounted on the ground. **The Public Arts Board does not recommend drilling holes or attaching public art directly to the electrical boxes in order to maintain the integrity of the box.**

The Public Arts Board also recommends that the City consider allowing unique designs in lighting that are in Terminating Vistas. Lighting can be used for either function or form to create a unique aesthetic from the shape of the lantern and the ambient glow of the light. An occasional artistic light pole to replace a city standard lamp in front of a Terminating Vista could enhance the interaction between the streetscape and surrounding buildings. City standard lights should remain relatively consistent, but the Public Arts Board recommends an occasional deviation in this pattern to allow for unique designs.



City Policy Related to Public Art in Terminating Vistas

WALL ART

Artistic paintings such as murals on the front, side or rear of buildings are not currently permitted in Birmingham. Such paintings are considered a sign and section 1.03(D) of the Sign Ordinance states that *“No sign may be painted directly onto any building or surface.”*

The Public Arts Board recommends that the City re-evaluate its policy towards wall art and create a design review process for such art work. There are several Terminating Vistas with large blank walls that the Public Arts Board believes would be ideal for murals, but current policy restricts the building owner from pursuing such design enhancements.

The 2020 Birmingham Plan Draft recommends implementing a mural policy in the Lower Rail District to extend and improve upon the area's current character, though the Public Arts Board recommends that such a policy be implemented throughout the entire City. A temporary mural program is also recommended where the painting could be placed on some type of material which is then attached to the building.

Murals could be another form of public art used to enhance Terminating Vistas throughout downtown. There are some Terminating Vistas that are more suitable than others and the Public Arts Board recommends that the review process engage the public for input so there is support on a community level.

In order to permit murals and various types of wall art, the Public Arts Board recommends that the City amend the Zoning Ordinance and Sign Ordinance to allow wall art and to define a proper review process by the necessary boards. This would also include creating a public notification process for public art in the municipal code.



City Policy Related to Public Art in Terminating Vistas

LANDSCAPING

The City of Birmingham is an excellent example for maintaining high quality landscaping throughout its streetscape in downtown. Well-maintained flower pots can be found hanging from the lamp posts while an array of plants can be found within the gardens along the sidewalks. The landscaping blends well with the surroundings and provides a complimentary aesthetic to the area.

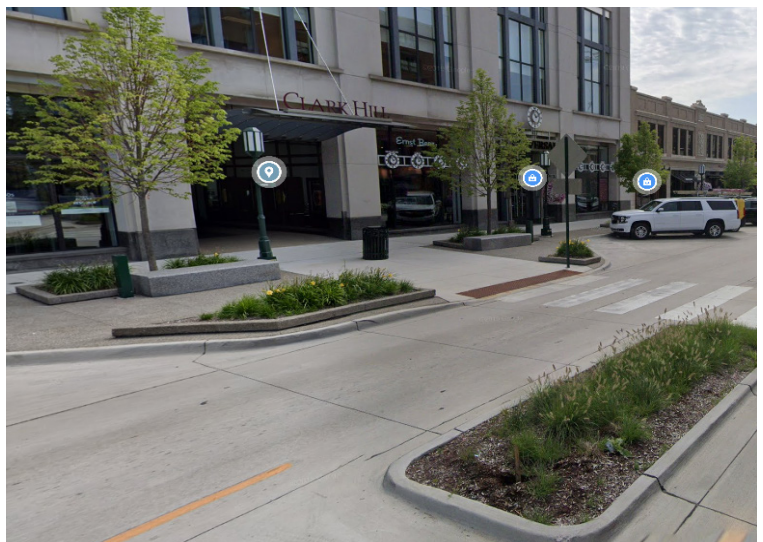
For instances when a public utility is placed within a planter box in a prominent intersection, the Public Arts Board recommends that special consideration for landscaping is made to help screen the utilities from view, especially in cases where no artistic design has been applied to the utility.

When a piece of art is placed within a planter box, the Public Arts Board recommends that special consideration also be made regarding the size and types of plantings surrounding the artwork in order to allow the aesthetics of the art, landscaping and surrounding buildings to work together in a complimentary manner.

The Public Arts Board also recommends the City consider allowing adjacent businesses in downtown design their own planter garden in front of their store. Proper permitting and design process would have to be created and implemented. Doing so could allow some unique designs regarding landscaping and how the plantings interact with the surroundings.

PUBLIC NOTIFICATION

At the moment, there are no formal requirements for public notification regarding proposals for sculptures, artistic furniture and artistic utilities. The item is posted on the Public Arts Board Agenda and City Commission Agenda, but notifications are not required to be sent to surrounding businesses and residents for public art projects. **In order to promote public input at the Public Arts Board and City Commission, the Public Arts Board recommends establishing a public notification policy for public art projects on City property.**



Recommendation and Implementation Priorities

Recommendation 1: Use public art such as sculptures, artistic furniture, artistic utilities, landscaping and wall art to enhance the City's Terminating Vistas

Implementation: Actively seek artists to provide various forms of artwork. Advertise in the art community for the type of art the City is seeking.

Recommendation 2: Revise the sculpture installation process to incentivize sculptures on loan and to make the installation process more efficient for artists and City staff.

Implementation: Establish an agreement with a professional sculpture installation specialist to consult and assist with sculpture installations in Birmingham. Amend the City's art on loan agreement to require approval of sculpture installation from installation consultant.

Recommendation 3: Revise City policy towards city-standard furniture and utilities to allow for an occasional artistic variation.

Implementation: Amend the Zoning Ordinance to allow an occasional deviation from city-standard benches and light poles where such items may be replaced by an artistically designed light or bench.

Recommendation 4: Create a new policy and review process to allow murals and other various forms of wall art to be placed on the exterior of a building.

Implementation: Amend Zoning Ordinance and Sign Ordinance to allow for placement of temporary and permanent murals and other various forms of wall art. The amendment should include review process by all relevant boards.

Recommendation 5: Establish a public notification policy for art projects on public property.

Implementation: Create a provision in the Public Art Section of the Municipal Code to require public notifications to be sent to residents for public art projects proposed within their area.



Terminating Vista Recommendation and Implementation Framework

Priority	Recommendation	Background	Implementation	Costs	Approval Process
1	Use public art such as sculptures, artistic furniture, artistic utilities, landscaping and wall art to enhance the City's Terminating Vistas.	Public Arts Board is responsible for recruiting and recommending public art in various locations throughout the City.	- Public Arts Board creates call for entry to recruit art donations and loans. This includes a request for an artist stipend fund to assist with installation before sending out. - Public Arts Board reviews art pieces submitted and selects artwork for recommendation.	\$2,000 per piece if approved, no more than \$10,000 total per year.	- Public Arts Board - Parks and Recreation Board (if on greenspace) - City Commission
2	Revise the sculpture installation process to incentivize sculptures on loan and to make the installation process more efficient for artists and City staff.	Issues have arisen regarding responsibility for installation and removal. City Employees may not have expertise to install unique pieces of art. Sculpture installation requirements have varied over the years, particularly related to concrete pads.	- Public Arts Board recommends revisions to art on loan agreement to allow City to assist with installation and removal to ensure quality control and manage liability. - Public Arts Board creates RFQ for sculpture installation specialist to assist with mount fabrication and consult on installation process if necessary. - Public Arts Board coordinates with Engineering Department's annual sidewalk program to install concrete base pads.	Up to \$5,000 for art installation specialist per year. Costs associated with concrete base pad installation (Much more cost efficient to incorporate with Engineering sidewalk program).	- Public Arts Board - City Commission * Input from Engineering and DPS strongly recommended
3	Revise City policy towards city-standard furniture and utilities to allow for an occasional artistic variation in Terminating Vistas.	City-standard benches and lightpoles are required in the downtown.	Planning Board reviews Terminating Vista report to consider additional Terminating Vista locations as well as possible ordinance changes to permit artistic furniture and utilities.	No Cost (In house)	- Planning Board - City Commission
4	Create a new policy and review process to allow murals and other various forms of wall art.	The Sign Ordinance currently prevents wall art.	- Design Review Board considers definition for wall art in Sign Ordinance and Zoning Ordinance to help clarify difference between art and commercial signage. - Design Review Board considers review process for wall art that possibly includes Public Arts Board.	No Cost (In house)	- Design Review Board - Public Arts Board - City Commission
5	Establish a public notification policy for art projects on public property.	There is no formal public notification process for art proposals on public property.	Public Arts Board reviews public notification options for public art and makes recommendations for notifications process.	No Cost (In house)	- Public Arts Board - City Commission

Terminating Vista Recommendation and Implementation Framework Suggested Timeline Goals

Recommendation Priorities

- 1 Recruit public art
- 2 Revise installation process
- 3 Allow artistic City furniture and utilities
- 4 Permit wall art such as murals
- 5 Establish public notification policy for artwork proposals

Priority	Implementation	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21
1	1 - Create Call for Entry to recruit new artwork	Public Arts Board		Parks and Rec	City Commission						
	2 - Application for artwork review and recommendation								Public Arts Board	Parks and Rec	City Commission
2	1 - Consider revisions to Art on Loan Agreement			Public Arts Board			City Commission				
	2 - RFQ for sculpture installation specialist			Public Arts Board		City Commission					
	3 - Coordinate basepads with Engineering's Sidewalk Program								Public Arts Board		
3	1 - Planning Board review Terminating Vista report										TBD - Joint Meeting
4	1 - Design Review Board consider permitting wall art		Design Review Board				Public Arts Board	City Commission			
	2 - Design Review Board consider wall art review process		Design Review Board				Public Arts Board	City Commission			
5	1 - Establish Public Notification Process for Public Art					Public Arts Board			City Commission		

	City Commission
	Public Arts Board
	Planning Board
	Design Review Board
	Parks and Recreation Board

DESIGN REVIEW BOARD
MINUTES OF AUGUST 19, 2020
Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the Design Review Board ("DRB") held Wednesday, August 19, 2020. Chairman John Henke called the meeting to order at 7:39 p.m.

1) ROLL CALL

Present: Chairman John Henke; Vice-Chairman Keith Deyer; Board Members Gigi Debbrecht, Natalia Dukas, Joseph Mercurio, Michael Willoughby

Absent: Board Member Patricia Lang; Alternate Board Member Alexander Jerome

Administration: Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

Chairman Henke thanked everyone for joining the virtual meeting and reviewed protocol for virtual meetings.

6) Study Session

A. Murals & Art (Private)

City Planner Dupuis reviewed the item.

Mr. Deyer said he would want to create parameters regarding permissible locations, sizes, verbiage, types of paint, primers, and ongoing maintenance responsibilities.

Chairman Henke said the Public Works Board has already defined some of those parameters. He also cautioned the DRB against trying to legislate what can be defined as 'art'. He said the DRB could subjectively determine which proposals are appropriate. Chairman Henke ventured that it would be preferred by the City Commission if the DRB incorporates fewer details into the ordinance itself.

Ms. Dukas said she would not be in favor of the proposal as it stood.

Mr. Deyer said he would not be in favor of the proposal without relatively detailed guidelines.

Mr. Willoughby said he was in favor of the proposal with some guidelines provided. He concurred with Chairman Henke that the DRB should not attempt to legislate the definition of 'art'.

**DESIGN REVIEW BOARD
MINUTES OF NOVEMBER 4, 2020**

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the Design Review Board ("DRB") held Wednesday, November 4, 2020. Chairman John Henke called the meeting to order at 7:09 p.m.

1) ROLL CALL

Present: Chairman John Henke; Vice-Chairman Keith Deyer; Board Members Gigi Debbrecht, Natalia Dukas, Michael Willoughby

Absent: Board Member Patricia Lang

Administration: Nicholas Dupuis, City Planner
Brooks Cowan, City Planner
Laura Eichenhorn, City Transcriptionist

11-91-20

6) Study Session

A. Wall Art

Chairman Henke resumed facilitation of the meeting.

CP Cowan reviewed the item.

Both Chairman Henke and Mr. Deyer expressed a preference for temporary installations of wall art over permanent ones.

Mr. Deyer said a review process for public art in the City should at least include criteria regarding permissible size, political messages, commercial messages, and permitted number of murals in a given location.

Chairman Henke said that murals considered in a historic area should be reviewed by the HDC.

There was consensus on the part of the DRB that they would be amenable to being part of the review process for public art installations in the City.

Mr. Willoughby said the primary function of the DRB in such a review process should be to evaluate how wall art would affect the building on which it would be installed and how it would affect the environmental context around said building. He said that while he thought the DRB could opine on the content of the wall art, he did not imagine that would be their primary charge. Mr. Willoughby added he would likely be against art on the fronts of buildings, and amenable to wall art installed in alleyways.

CP Cowan said the Public Arts Board may want to pursue installing art on the front of the bridge of the 555 Building, but agreed that the installation of wall art on the fronts of buildings would likely be limited.

Mr. Willoughby said he would like to see a map of alleyways that could offer opportunities for wall art installations.

There was DRB consensus that the rear and side walls of historic buildings in alleyways could be places to install public art. There was also consensus among the DRB, CP Dupuis, and CP Cowan that the process would need to tread very carefully in regards to proposed installations on historic buildings. It was agreed that no wall art should be proposed for historic facades.

The Board members thanked CP Cowan and said they looked forward to further discussions on the topic.

Public Arts Board Minutes

Public Meeting on Zoom – November 18th, 2020

A. Roll Call:

Members Present:	Barbara Heller, Monica Neville, Annie VanGelderren, Jason Eddleston, Linda Wells, Anne Ritchie
Members Absent:	Natalie Bishae
Administration:	Brooks Cowan, City Planner
Members of the Public:	Vahe Tazian, Charlie Neff

D. New Business

A third study session item related to wall art was discussed. Staff presented thoughts and concerns related to wall art that were discussed by the Design Review Board. The DRB had indicated an interest in murals directly on buildings along the Alleys and Passages Plan. The Draft Master Plan suggests murals in the Rail District, therefore staff suggested the first proposal contain language that limits murals to certain areas of the City which could possibly be expanded in the future. The Board was receptive to this idea.

Staff also presented an idea that the DRB discussed and was open to, which is having a wall art application and review process that is first reviewed and recommended by the Public Arts Board and then finalized by the Design Review Board. The Board was amenable to this idea and would review a suggested application process at the next meeting.

Public Arts Board Minutes

Public Meeting on Zoom – January 21st, 2021

B. Roll Call:

Members Present: Barbara Heller, Monica Neville, Annie VanGeldereren, Jason Eddleston, Linda Wells, Anne Ritchie, Natalie Bishae, Peggy Daitch

Members Absent:

Administration: Brooks Cowan, City Planner

C. Unfinished Business

The first item of unfinished business was the discussion for proposed ordinance updates to allow wall art and require a wall art review process. The Board agreed that having the application requirements include renderings and size was appropriate, and that making recommendations to the Design Review Board for them to finalize the application was an acceptable process. The Board was read approval requirements for any items that go to the DRB and the Public Arts Board felt those were acceptable standards of final approval.

Motion to approve suggested ordinance updates to allow wall art and a wall art review process was made by Monica Neville, seconded by Annie VanGeldereren.

Yeas: 7 Nays: 0

The motion carried.

Design Review Board
Minutes Of March 3, 2021
Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the Design Review Board ("DRB") held Wednesday, March 3, 2021. Chair John Henke called the meeting to order at 7:48 p.m.

1) ROLL CALL

Present: Chair John Henke; Board Members Keith Deyer, Natalia Dukas, Gigi Debbrecht, Dustin Kolo, Patricia Lang, Michael Willoughby; Alternate Board Member Samantha Cappello; Student Representatives Charles Cusimano, Elizabeth Wiegand (all located in Birmingham, MI except Dustin Kolo, who was in Gaylord, MI.)

Absent: Alternate Board Member Kathleen Kriel

Administration: Nicholas Dupuis, City Planner
Laura Eichenhorn, City Transcriptionist
Brooks Cowan, City Planner

03-026-21

6) Study Session

A. Wall Art

CP Cowan reviewed the item.

The Board recommended the allowable locations for public art be limited to the activation areas of the overlays. They also recommended there be some consideration of limiting residential-facing public art where it directly abuts residential buildings. They were fine with allowing public art in the other non-overlay locations recommended by the Public Arts Board.

Mr. Willoughby and Chair Henke were in favor of leaving the ordinance language as unrestricted as possible since all public art projects would go through review by two Boards.

CP Cowan advised the Board that if a person or group installed or put up a public art piece contrary to the ordinance, the City could require them take it down. He advised the DRB that the Public Arts Board recommended to the City Commission a public arts notification process be created in order to encourage public review and involvement.

The DRB requested the item be brought back once more for their review once updated.

**Design Review Board
Minutes Of April 7, 2021**

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the Design Review Board ("DRB") held Wednesday, April 7, 2021. Vice-Chair Keith Deyer called the meeting to order at 7:45 p.m.

1) ROLL CALL

Present: Vice-Chair Keith Deyer; Board Members Gigi Debbrecht, Natalia Dukas, Dustin Kolo, Michael Willoughby; Alternate Board Members Samantha Cappello, Kathleen Kriel; Student Representatives Charles Cusimano, Elizabeth Wiegand (all located in Birmingham, MI except Dustin Kolo, who was in Waterford, MI, Keith Deyer who was in Harbor Springs, MI, and Elizabeth Wiegand who was en route to Grosse Pointe, MI.)

Absent: Chair John Henke; Board Member Patricia Lang

Administration: Nicholas Dupuis, City Planner
Brooks Cowan, City Planner
Laura Eichenhorn, City Transcriptionist

04-040-21

6) Study Session

A. Wall Art

CP Cowan reviewed the item.

Mr. Willoughby commended CP Cowan for his work on the item.

Motion by Mr. Willoughby

Seconded by Ms. Debbrecht to recommend Zoning Ordinance amendments to Article 7, Section 7.41-7.44 and Article 9, Section 9.02 to define wall art and require a review process involving the Public Arts Board for recommendation and Design Review Board for final approval.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Willoughby, Debbrecht, Kolo, Kriel, Cappello, Deyer, Dukas

Nays: None

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, August 11, 2021
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 11, 2021. Chair Clein convened the meeting at 7:33 p.m.

A. Roll Call

Present: Chair Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative Daniel Murphy

Absent: Student Representative Jane Wineman

Administration: Jana Ecker, Assistant City Manager ("ACM")
Brooks Cowan, City Planner ("CP")
Laura Eichenhorn, City Transcriptionist

2. Wall Art

CP Cowan presented the item.

It was clarified that:

- Maintenance issues with wall art would be a code issue;
- 'Content' is not something that can be regulated, but 'non-commercial', 'aesthetically appropriate' or 'compatible with the area' could work;
- It would be useful to have a brief statement in Article 7, Section 7.41 about the benefit and value of wall art;
- The intent of the word 'facing' should be made more clear in the proposed amendment to Article 9 - Definitions To Define Wall Art And Determine Permitted Locations For Wall Art;
- Wall art approval would be a standalone process and not subject to site plan approval, though site plan approval would be granted at the Planning Board contingent on the wall art's approval by the appropriate boards; and,
- This ordinance amendment does not intend to allow a new building to create a blank wall in excess of 20 feet with the intent of installing wall art; it intends to allow already-existing blank walls that qualify according to the ordinance amendments to consider installing wall art.

Mr. Share noted that often wall art in other cities is not painted directly on buildings, but on canvas-type features.

Staff said they would make the recommended revisions and return with the item.

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, September 23, 2021
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 23, 2021. Vice-Chair Williams convened the meeting at 7:30 p.m.

A. Roll Call

Present: Vice-Chair Bryan Williams; Board Members Robin Boyle Stuart Jeffares, Daniel Share, Janelle Whipple-Boyce; Alternate Board Member Jason Emerine

Absent: Chair Scott Clein; Board Member Bert Koseck; Alternate Board Member Nasseem Ramin; Student Representatives Daniel Murphy, Jane Wineman

Administration: Jana Ecker, Assistant City Manager ("ACM")
Nick Dupuis, Planning Director ("PD")
Brooks Cowan, Senior Planner ("SP")
Laura Eichenhorn, City Transcriptionist

F&V: Julie Kroll

09-147-21

I. Study sessions

1. Wall Art

SP Cowan presented the item.

Ms. Whipple-Boyce and ACM Ecker recommended that 'of the proposed location' be struck from the last line of 7.41 Wall Art Review: Purpose.

SP Cowan and ACM Ecker confirmed for Mr. Share that wall art would not be permitted on rear walls facing single family residential areas.

SP Cowan reviewed the different proposed review processes for a development with wall art, just wall art with a proposed location, and just wall art without a proposed location.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to set a public hearing to consider amendments to Article 7, Section 7.41 to 7.46 and companion sections of Article 9 of the Zoning Ordinance on October 27, 2021.

Motion carried, 6-0.

VOICE VOTE

Yeas: Share, Whipple-Boyce, Emerine, Williams, Jeffares, Boyle

Nays: None



MEMORANDUM

Planning Division

DATE: October 27th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #5

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

Study Session #2 Summary

On August 11th, 2021, the Planning Board reviewed another high-level report in which the Planning Division presented various departmental comments on outdoor dining, a national outdoor dining ordinance review, conversations with local cities, and a study of national organization input and trends. The Planning Division also provided some public feedback from Engage Birmingham, which surveyed the public for their opinion of the COVID-19 temporary outdoor dining expansions, which were overwhelmingly positive. Moving forward, the Planning Board expressed interest in getting into more detail on seasonal/year round dining and its effect on street activation, public versus public space, the potential for regulating different restaurants/licenses differently, and defining and establishing a purpose of outdoor dining in the City.

Study Session #3 Summary

On September 9th, the Planning Board discussed the report which contained comments from the Advisory Parking Committee, common issues with outdoor dining patios, information on the temporary COVID-19 patios, and also discussed the purpose of outdoor dining. In addition, the Planning Board was able to review an example of how the outdoor dining ordinance could look based on comments up to that point. Ultimately, the conversation started to get more granular with specific ordinance-related ideas ranging from an official stance on enclosures to material guidelines to patio placement. There were several other requests for information including a review of Michigan Liquor Control Commission guidelines for outdoor dining, a review of the concept of windbreak versus wall, and the possibility of regulating outdoor dining by zones.

Study Session #4 Summary

On September 23rd, the Planning Board discussed the MLCC rules for outdoor dining patios, the concept of a windbreak and whether or not they should be permitted, and also explored the different zoning districts in which outdoor dining is permitted. These topics led to more conversation about how overhead weather protection will interact with said overhead coverings, and what typed of overhead protection the Planning Board should permit. The Planning Board expressed an interest in taking a deeper dive into overhead weather protection and reviewing different options.

Study Session #5

Overhead Weather Protection

Coming out of the COVID-19 pandemic and the temporary outdoor dining expansion opportunities that were afforded to restaurants across the city, perhaps the most innovative aspect of the temporary expansions where the diverse types of overhead protection that were erected over platforms and patios alike. Umbrellas, pergolas, freestanding awnings, tents, and canopies were all utilized to protect the patios from the elements. From the Planning Divisions perspective, this was one of the major contributors to the directive to study outdoor dining from the City Commission. Recognizing this, as well as noting the many approaches to overhead protection seen locally and nationally, the Planning Board has requested to explore the different options and consider the appropriateness of some or all of them for the purposes of inclusion or preclusion from the outdoor dining ordinance.

Umbrellas

The most commonly observed method for overhead weather protection (OWP) is umbrellas. As could be inferred, this is also one of the most cost-effective methods for providing OWP at its most basic, but can become expensive with different sizes and design. Decent sized and quality umbrellas, as seen in the first photograph below, can range from \$100 to \$700 and up. Larger, cantilever styled umbrellas as seen in the second photograph can cost upwards of \$2,000.





There are a few umbrella-specific problems that the Planning Board may be able to address through ordinance language. First, umbrellas sometimes contain text or graphics, both of which would be considered signage in Birmingham. New ordinance language ought to address the use of such in the design. Second, and as corroborated in the Building Official's comments that were reviewed in Study Session #2, umbrellas can also encroach into the airspace beyond the limits of the outdoor dining patio. These encroachments can cause issues with the safe passage of pedestrians, as well as vehicular traffic depending on the location of such. Additionally, overhead elements such as awning, canopies and signs are required to be located at a minimum of 8 ft. above grade, which umbrellas often exist lower.

Fixed Awnings/Canopies

Another OWP type that was discussed at the Planning Board were fixed awnings/canopies. Awnings in the public realm are currently permitted by the Zoning Ordinance as a projection into the right-of-way and are subject to the following standards:

“Removable architectural elements such as awnings, canopies, marquees may be approved by the Planning Board, Design Review Board and/or Historic District Commission or through administrative approval, as determined by the Planning Director, to project into the right of way provided that they are constructed to support applicable loads without any ground mounted supports on public property. Encroachments with less than 15' of clearance above the sidewalk shall not extend into or occupy more than two-thirds of the width of the sidewalk or 5 feet, whichever is less, and must not interfere with any existing or planned streetscape elements or infrastructure.”

In areas where sidewalks are wider, such as most of Downtown, a 5 ft. awning depth may sufficiently cover a small outdoor dining patio. However, in areas with slimmer sidewalks, the condition might be awkward and the benefits of the awning in terms of OWP might be slim.



Awnings on private property are not subject to the same requirements, and may be built further out with supports.



Freestanding Awnings, Canopies, Tents & Pergolas

The Planning Board has also had recent discussions regarding awning structures that are not fixed to a building, and rely on support posts for structure. There is one instance of such a structure over an existing outdoor dining platform on Pierce St. It appears as though there is no specific ordinance that precludes a restaurant owner from applying to erect an OWP feature such as a freestanding awning, canopy, tent or pergola on dining platforms, or over dining patios that are located on private property.



Retractable Awnings

The final awning-type that was indicated to be of interest to the Planning Board were retractable awnings. There are two main types of retractable awnings that are commonly used in outdoor dining patios. The first is a standard manual or motorized awning that rolls out from a cassette that is mounted onto the building. These awnings generally can extend 8-10 ft. maximum, and require no ground-mounted supports. The other type of retractable awning is a butterfly type awning that extends from two sides from a centrally located cassette that is fixed to some sort of ground-mounted support. The total OWP cover for these types max out at around 16-20 ft. There is at least one example of such an awning at a restaurant located on Townsend St. Similar to umbrellas, the cost of retractable awnings appears to vary with quality and size. The lower end of the scale is around \$500, while the higher end is upwards of \$3,000.

Much of the same restrictions noted above for fixed awnings/canopies still apply to this style of awning. In discussing the potential for retractable awnings, the Planning Board should make sure to consider the conflicts that may arise with the added depth to the projection into the right-of-way for retractable awnings, as they have the ability to be extended as much as 10 ft. into the right-of-way. This could also become an enforcement problem if not addressed at this early stage.





Shade Sails & Fabric

Finally, shade sails and other draped fabric installations have become a popular way to offer OWP for patrons in an outdoor dining patio. These types of installations would still require some level of rigid support, and may also be affected by the current projections into the right-of-way ordinance noted above. Shade sails are very customizable, and range between \$50 to \$100 for roughly 100 square feet of sail.





Joint Planning Board/City Commission Meeting Summary

In addition to the discussion on OWP, the joint meeting of the Planning Board and City Commission on October 11th, 2021 seemed to produce a few more items to consider in regards to outdoor dining. In general, there was support for outdoor dining into the colder months without enclosures. There was also some agreement amongst the group that outdoor dining should not be regulated separately by restaurant type. Finally, the concept of a trial period for a new outdoor dining ordinance was discussed and met with some support, however it was unclear as to whether the City Commission would support such a trial period. In addition, the City Manager expressed some doubts with the trial period, and explained that the management and enforcement of the trial period would be burdensome on City Staff.

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to support public health, activate public space, foster economic development, safeguard the use of public property, and provide flexibility for current trends and future demands for outdoor dining.
- B. Outdoor Dining – General: Outdoor dining is permitted immediately adjacent to the principal use, subject to review by the Planning Board, or by the Planning Division at the discretion of the Planning Director, and the following conditions
 - 1. All outdoor activity must cease at the close of business or as noted in subsection 2 below.
 - 2. When an outdoor dining patio is immediately adjacent to any single-family or multiple-family zoned residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 - 3. The review of outdoor dining patios shall include, but are not limited to, the following elements: tables, chairs, umbrellas, portable heating elements, barriers, service stations, landscaping/plantings, awnings, canopies, lighting, host/hostess stands, and entertainment.
 - 4. Outdoor dining may be permitted on public property throughout the year with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining patios shall be responsible for snow and ice removal, and shall remove of such in a manner consistent with that of the Department of Public Services.
 - iii. Portable patio elements such as tables, chairs, heaters and umbrellas must be stored indoors each night between December 1 and March 1 to allow for complete snow and ice removal.
 - iv. An ADA compliant platform may be erected in the on-street parking space(s) in front of an eating establishment to create an outdoor dining patio from April 1 through November 1, subject to a review by the Advisory Parking Committee.
 - 5. All outdoor patios shall be designed to meet the requirements of this section, as well as all applicable building and fire codes.
- C. Outdoor Dining – Design: All outdoor dining patios are subject to the following design standards:

1. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
2. Outdoor dining patios shall provide and service refuse containers within the outdoor dining patio and maintain the area in good order.
3. Outdoor dining patios shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance.
4. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 6 ft.
5. No such facility shall erect or install permanent fixtures in the public right-of-way.
6. Table umbrellas or other overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
7. Barriers defining outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers shall be secured to the ground and/or building to maintain an immovable, clearly defined patio space. Barriers may not exceed 42 inches in height with the exception of planting material.
8. Windbreaks are permitted within outdoor dining patios and shall be affixed to a barrier. The total combined height of a barrier and windbreak shall not exceed 60 inches. Windbreaks must be constructed of a clear and durable material.
9. Portable heating elements must be maintained and kept in an orderly fashion. Propane or other fuels may not be stored on public property, and are subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
10. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained, and kept in a neat and orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): An area that may or may not contain a roof and as few as one wall, panel, or material that provides relief from weather and impedes physical and/or visual access to the space. For the purposes of this definition, enclosure does not include exterior building walls, windbreaks or landscaping.

Outdoor Dining Patio: A defined outdoor area accessory to an existing food and drink establishment designated for consumption of food and/or drink prepared within the establishment and subject to the provisions of this ordinance.

Permanent Fixture (outdoor dining): Any element within an outdoor dining patio containing a foundation or other rigid attachment that prevents removal or that which requires extensive modifications to the public right-of-way.



MEMORANDUM

Planning Division

DATE: September 23rd, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #4

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

Study Session #2 Summary

On August 11th, 2021, the Planning Board reviewed another high-level report in which the Planning Division presented various departmental comments on outdoor dining, a national outdoor dining ordinance review, conversations with local cities, and a study of national organization input and trends. The Planning Division also provided some public feedback from Engage Birmingham, which surveyed the public for their opinion of the COVID-19 temporary outdoor dining expansions, which were overwhelmingly positive. Moving forward, the Planning Board expressed interest in getting into more detail on seasonal/year round dining and its effect on street activation, public versus public space, the potential for regulating different restaurants/licenses differently, and defining and establishing a purpose of outdoor dining in the City.

Study Session #3 Summary

On September 9th, the Planning Board discussed the report which contained comments from the Advisory Parking Committee, common issues with outdoor dining patios, information on the temporary COVID-19 patios, and also discussed the purpose of outdoor dining. In addition, the Planning Board was able to review an example of how the outdoor dining ordinance could look based on comments up to that point. Ultimately, the conversation started to get more granular with specific ordinance-related ideas ranging from an official stance on enclosures to material guidelines to patio placement. There were several other requests for information including a review of Michigan Liquor Control Commission guidelines for outdoor dining, a review of the concept of windbreak versus wall, and the possibility of regulating outdoor dining by zones.

Study Session #4

Michigan Liquor Control Commission (MLCC)

In conversations regarding enclosures, it was suggested that the Planning Board review the MLCC rules for enclosures so that the ordinance language amendments do not conflict or confuse outdoor dining patio operators who would have to then juggle two separate rules. At this time, it appears as though the MLCC rules regarding outdoor patios are simple:

R 436.1419 - Outdoor service without approval prohibited; requirements for outdoor service if approval is granted.

- (1) An on-premises licensee shall not have outdoor service without the prior written approval of the commission.
- (2) If approval for outdoor service is granted, then the on-premises licensee shall ensure that the outdoor service area is well-defined and clearly marked and the on-premises licensee shall not sell, or allow the consumption of, alcoholic liquor outdoors, except in the defined area.
- (3) The commission may issue up to 12 daily temporary outdoor service permits to a licensee each calendar year upon written request of the licensee and approval of the chief law enforcement officer who has jurisdiction.

It is clear that the Planning Board would do well to include that language in new ordinance language, but also be safe to define enclosures as they see fit.

Windbreak versus Wall

As the Planning Board has decided their approach to outdoor dining will *not* include allowing enclosures, the board did express interest in exploring some options for relief from wind. Windbreak is generally defined as “a thing, such as a row of trees or a fence, wall, or screen, that provides shelter or protection from the wind.” At this point, it is also helpful to review definitions for a couple of other concepts:

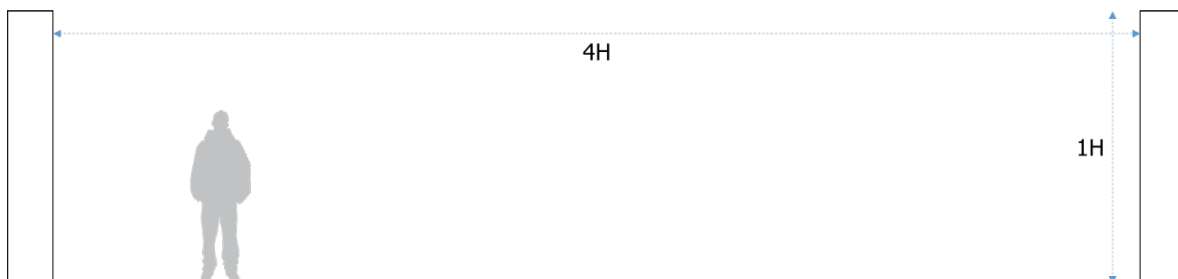
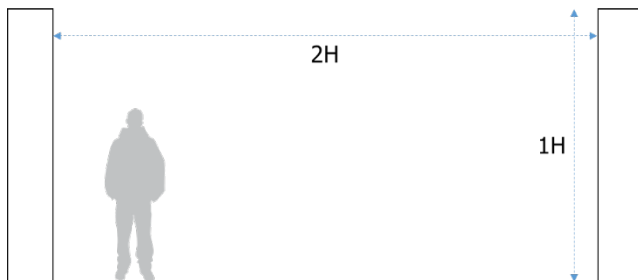
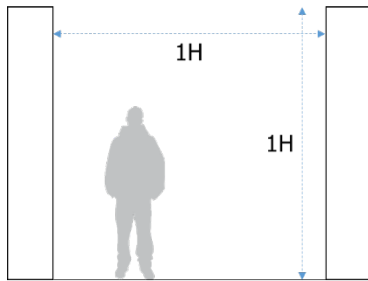
- **Wall:** Structural element used to divide or enclose, and, in building construction, to form the periphery of a room or a building. ([Britannica](#))
- **Room:** A part of the inside of a building that is separated from other parts by walls, floor, and ceiling. ([Cambridge](#))
- **Building:** Any structure having a roof, including but not limited to tents, awning, carports, and such devices as house trailers, which have a primary function other than being a means of conveyance. ([Article 9, Section 9.02](#))

As the Planning Division understood the conversation at the Planning Board, there seems to be a line where a windbreak could become something closer to a wall, and the Planning Board is interested in discussing what that point may be. To help guide that conversation, the Planning Division considered the following:

Degree of Enclosure

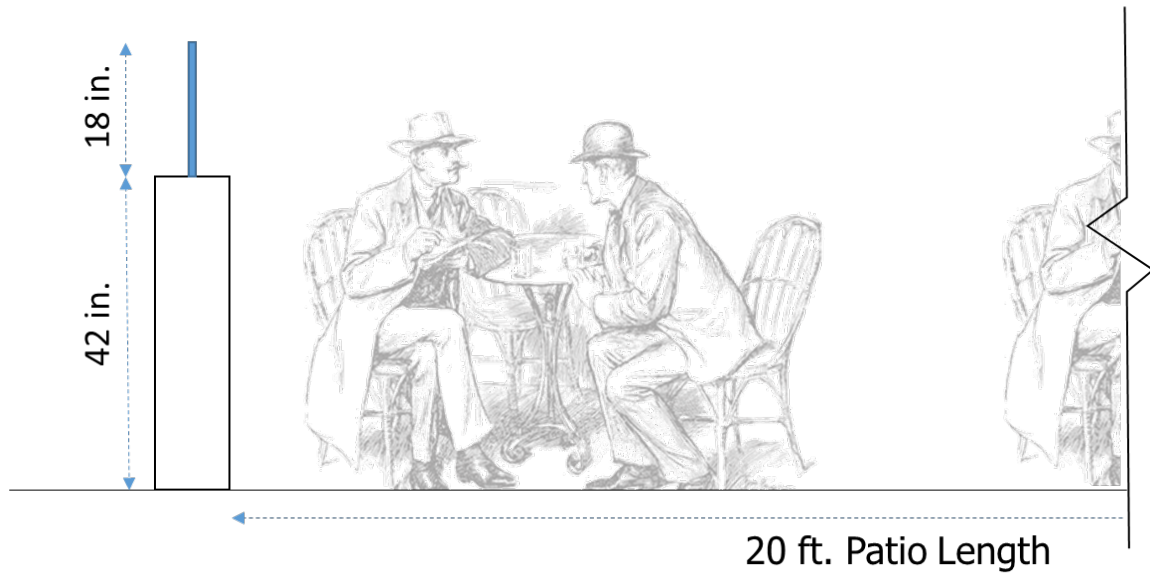
The concept of [degree of enclosure](#) is an urban design principle that revolves around a person's perception of enclosure within a space, which is based on a horizontal to vertical ratio. In general, the principle suggests that a person begins to perceive a sense of enclosure at a 3:1 ratio, and

more of a sense of enclosure as that ratio decreases. Ratios of 4:1 or greater generate no sense of enclosure.

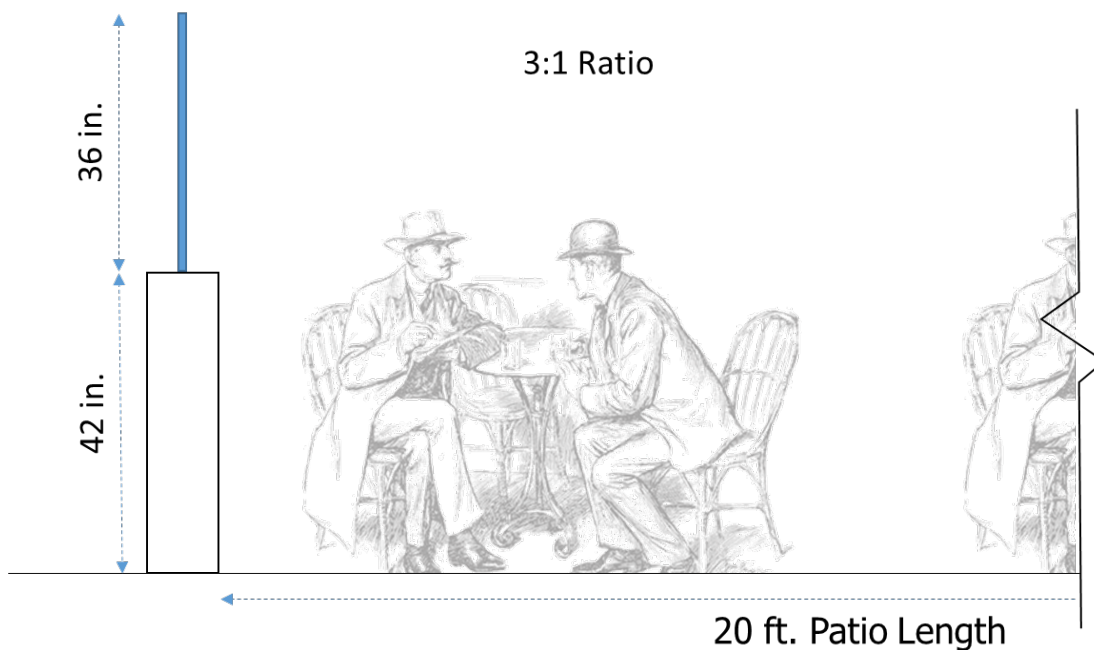


Could this concept be transposed and used to determine the appropriate height for a windbreak in an outdoor dining patio? For example, using the 4:1 ratio in an outdoor dining patio that measures 20 ft. in length (the typical length of a platform in the right-of-way), a barrier with a wind break would be permitted at no greater than 5 ft. (60 in.). A barrier with windbreak for the same 20 ft. patio at a 3:1 ratio would permit a roughly 6 ft. 6 in. (78 in.) barrier and windbreak. The following drawings were created under the assumption that the patio barrier would be 42 in. tall as currently permitted under the Zoning Ordinance:

4:1 Ratio

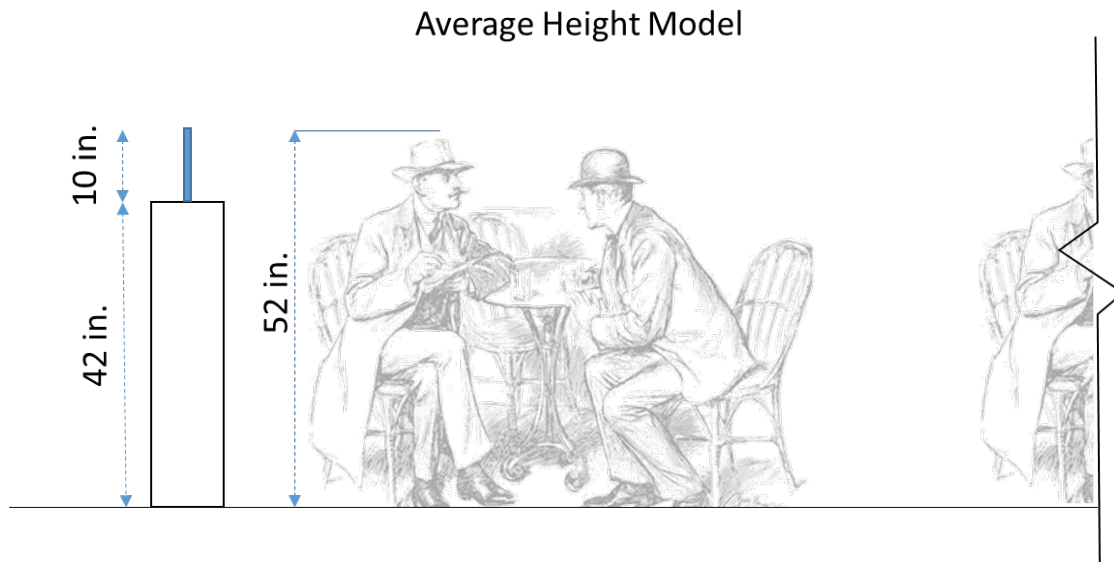


3:1 Ratio



Average Height

Alternatively, if a more standard height is preferred based on the ease and consistency of review and enforcement, the Planning Board could consider the average height of Americans. According to the [Center for Disease Control](#), the average height of a male is 5 ft. 9 in. (69 in.), while the average height for a female is 5 ft. 4 in. (64 in.) An analysis of the seat height of 10 different outdoor patio chairs yielded an average seat height of 17.5 in. Using a simple proportion of 50/50 for the average human, we can assume that we should consider 50% of a person's height in determining the overall height of a person sitting in a chair. Using these figures, the average male should measure around 52 in. tall while sitting, and the average female would measure 49.5 in. tall while sitting.



Interestingly enough, if the Planning Board were to account for different seat and person height, the windbreak could be close in height to the 4:1 ratio model presented above.

In addition to height, the Planning Board was also interested in what typed of materials to consider for windbreaks. Based on research, different materials for windbreaks could include glass/plastic, landscaping, screens, wood, metal or canvas/cloth. However, the most common windbreaks observed in outdoor dining patios appear to be glass/plastic:







Outdoor Dining Regulations by Zoning District

At this time, outdoor dining is permitted in all business and office zones within the city (B1, B2, B2B, B2C, B3, B4, O1, O2, MX) as well as the TZ3 transitional zone. Out of the 43 establishments with outdoor dining, 64% are located within the B4 zoning district, while the next highest share is located in O2 at 14%.

Please see attached maps for reference.

Draft Ordinance Language

(See next page)

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to support public health, activate public space, foster economic development, safeguard the use of public property, and provide flexibility for current trends and future demands for outdoor dining.
- B. Outdoor Dining – General: Outdoor dining is permitted immediately adjacent to the principal use, subject to review by the Planning Board, or by the Planning Division at the discretion of the Planning Director, and the following conditions
 - 1. All outdoor activity must cease at the close of business or as noted in subsection 3 below.
 - 2. When an outdoor dining patio is immediately adjacent to any single-family or multiple-family zoned residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 - 3. The review of outdoor dining patios shall include, but are not limited to, the following elements: tables, chairs, umbrellas, portable heating elements, barriers, service stations, landscaping/plantings, awnings, canopies, lighting, host/hostess stands, and entertainment.
 - 4. Outdoor dining may be permitted on public property throughout the year with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining patios shall be responsible for snow and ice removal, and shall remove of such in a manner consistent with that of the Department of Public Services.
 - iii. Portable patio elements such as tables, chairs, heaters and umbrellas must be stored indoors each night between December 1 and March 1 to allow for complete snow and ice removal.
 - iv. An ADA compliant platform may be erected in the on-street parking space(s) in front of an eating establishment to create an outdoor dining patio from April 1 through November 1, subject to a review by the Advisory Parking Committee.
 - 5. All outdoor patios shall be designed to meet the requirements of this section, as well as all applicable building and fire codes.
- C. Outdoor Dining – Design: All outdoor dining patios are subject to the following design standards:

1. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
2. Outdoor dining patios shall provide and service refuse containers within the outdoor dining patio and maintain the area in good order.
3. Outdoor dining patios shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance.
4. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 6 ft.
5. No such facility shall erect or install permanent fixtures in the public right-of-way.
6. Table umbrellas or other freestanding overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
7. Barriers defining outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers shall be secured to the ground and/or building to maintain an immovable, clearly defined patio space. Barriers may not exceed 42 inches in height with the exception of planting material.
8. Windbreaks are permitted within outdoor dining patios and shall not exceed 60 inches in height and must be constructed of a clear material. Windbreaks placed atop a barrier shall not exceed 18 in. in height.
9. Portable heating elements must be maintained and kept in an orderly fashion. Propane or other fuels may not be stored on public property, and are subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
10. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained, and kept in a neat and orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): An area that may or may not contain a roof and as few as one wall, panel, or material that provides relief from weather and impedes physical and/or visual access to the space. For the purposes of this definition, enclosure does not include exterior building walls, windbreaks or landscaping.

Outdoor Dining Patio: A defined outdoor area accessory to an existing food and drink establishment designated for consumption of food and/or drink prepared within the establishment and subject to the provisions of this ordinance.

Permanent Fixture (outdoor dining): Any element within an outdoor dining patio containing a foundation or other rigid attachment that prevents removal or that which requires extensive modifications to the public right-of-way.



MEMORANDUM

Planning Division

DATE: September 9th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #3

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

Study Session #2 Summary

On August 11th, 2021, the Planning Board reviewed another high-level report in which the Planning Division presented various departmental comments on outdoor dining, a national outdoor dining ordinance review, conversations with local cities, and a study of national organization input and trends. The Planning Division also provided some public feedback from Engage Birmingham, which surveyed the public for their opinion of the COVID-19 temporary outdoor dining expansions, which were overwhelmingly positive. Moving forward, the Planning Board expressed interest in getting into more detail on seasonal/year round dining and its effect on street activation, public versus public space, the potential for regulating different restaurants/licenses differently, and defining and establishing a purpose of outdoor dining in the City.

Study Session #3

Advisory Parking Committee Comments

During the August 4th, 2021 meeting of the Advisory Parking Committee, the committee expressed an interest in being involved in the process for the current outdoor dining study. The Planning Division brought the issue to the September 1st, 2021 meeting to solicit some comments for the Planning Board to consider. Their comments arose from their role in reviewing outdoor dining platforms, and their effect on parking specifically. Their comments may be summarized in the following bullet points:

- Regulating the number of platforms per block.
- Begin the platform review at the APC instead of Planning Board.
- Finding a balance between two desired commodities: outdoor dining and parking.
- Annual review of outdoor dining decks.
- Different uses, different rules.

- Platforms open at all hours of the day to foster activation, avoid empty decks/wasted space.
- The possibility of different outdoor dining districts.

Common Ordinance Issues

During Study Session #2, Planning Board members expressed an interest in reviewing some of the issues that arose during the temporary COVID-19 outdoor dining expansions, and which of the expansions received enforcement for violations of the temporary ordinance. Before reviewing these issues, the Planning Division felt it important to outline some of the more regular and/or routine issues with approved outdoor dining patios that are observed on a day-to-day basis:

- Maintenance of the required 5 ft. minimum clear path.
- Maintaining a valid outdoor dining license.
- Adherence to the approved outdoor dining/site plans.
- Exceeding approved/permitted outdoor dining seat counts.

These four issues come up on a regular basis during the outdoor dining season, but also a typically become a focal point during the annual liquor license review process for those establishments serving alcoholic beverages, which occurs in January/February every year. When it comes to the required 5 ft. minimum clear path, there are a number of variables to consider. For outdoor dining patios with more modular barriers separating the dining patio from the sidewalk, these barrier elements tend to migrate outward more easily, causing issues with pedestrian passage (or in the case of alleys, vehicular passage). Those dining patios that are enclosed with a more rigid barrier such as a fixed metal railing are better suited to maintain the required clear path, but may not offer as many opportunities for beautification/plantings.

In the absence of barriers, tables and chairs also have a tendency to migrate. In some recent reviews for outdoor dining proposals, it was observed that outdoor dining plans often show tables and chairs neat and tucked in without considerations for the space a person takes up after sitting at the table. While a 5 ft. clear path is often shown on the plans as required, reality is often observed to be different. To combat this, the Planning Division is considering either widening the required clear path to 6 ft. or more, or requiring outdoor dining plans to show a buffer around each table to reduce the likelihood of encroachments into the clear path. Finally, it has been noted by the Engineering Division that the exposed aggregate concrete in the streetscape amenity zones throughout Birmingham may not be considered ADA compliant and thus, may not be considered as clear path for the purposes of this ordinance.

The issue of maintaining a valid outdoor dining license also contains many layers. The outdoor dining license is an annual license required for all outdoor dining patios located on public property. The applicant is required to submit the application, as well as complete and sign an Outdoor Café License Agreement outlining their responsibilities in using public property. The Planning Division is currently reviewing the Outdoor Café License Agreement for any potential areas of improvement, but it has been observed over the years that there are often inconsistencies with the information entered by applicants in terms of their tables and chairs, and whether or not any changes have occurred from previous years.

The inconsistencies described above, along with other factors, often result in outdoor dining patios that do not adhere to the approved outdoor dining plans on file within the Planning Division.

Table and chair numbers, umbrellas, heaters, planters, and service stations are often added or changed without any approval from the Planning Division or Planning Board. These types of changes and the requirements for changes to the outdoor patio space is expected to be clarified in new ordinance language.

The deviations from the approved number of tables and chairs can become an issue not only for certain uses who are permitted to have a maximum seat count, but we now know that outdoor seating matters when it comes to the plumbing code and required restroom facilities.

Temporary COVID-19 Enforcements

The temporary COVID-19 outdoor dining expansions offered some new complications on top of what is typically observed in outdoor dining patios. During the pandemic, and through various emergency orders by state and local governments, the Police Department performed regular checks on restaurants to monitor all of the COVID-19 regulations associated with the emergency orders, as well as compliance with the temporary resolution adopted by the City Commission. A full log of checks is attached for your review containing comments from the Police and Fire Departments, as well as the Building Division. When the end date for the temporary resolution came up in June 2021, the Police Department also created a summary presentation for the City Commission with general information on some of the challenges that the City was facing in regards to the temporary patio expansions. Some of the main issues were as follows:

- ADA standards and requirements were compromised.
- Expansions encroached further into sidewalks, yellow curb zones, and streets.
- Expansions impaired access to neighboring retailers.
- Propane heaters and storage of propane tanks posed safety concerns.

These issues, in conjunction with the state of the overall COVID-19 pandemic, were the main drivers in ending the temporary resolution and bringing the City's outdoor dining patios back into compliance with pre-COVID outdoor dining plans. The Police Department presentation is also attached for your review.

In addition, the Fire Department performed an inspection of the temporary outdoor dining expansion and provided some photographs to the Planning Division which are attached to this report. Finally, the Planning Division kept a spreadsheet of which restaurants applied for expansions and recorded data on the outdoor dining conditions on site, which is also attached to this report. In most cases, due to the social distancing requirements, the number of outdoor dining seats pre-COVID and expansion related were comparable. However, the square footage of total outdoor dining space was not.

Purpose of Outdoor Dining

Also discussed at length during Study Session #2 was the need for the Planning Board to consider the purpose of the outdoor dining ordinance, and the potential to codify this purpose within the ordinance language. From an urban planning/urban design perspective, outdoor dining is beneficial in many ways:

- Outdoor dining is trendy, but also a permanent fixture;
- Spending time outdoors is beneficial to overall public health;
- Increased seating options frees up indoor space for the rapid growth in carry-out business;

- Added business fosters economic development;
- Well-designed patios activate public space;
- Outdoor dining offers more options for diners, including pet owners;

A purpose statement for outdoor dining could include any or all of these benefits, as well as general statements regarding the health, safety and welfare of the public. Other areas of our current Zoning Ordinance contain purpose statements, including the following:

- Screening Standards: The purpose of this section is to require a barrier, capable of containing noise, vehicular lights, visual disarray, debris and other factors detrimental to the health, safety and welfare of the community, between an open parking station, outdoor storage, dumpsters and adjacent properties. Flexibility in the materials, size, height and placement of walls is permitted in order to allow architectural harmony and usable open space and to accomplish a unified design.
- Landscaping Standards: Landscaping is an essential part of the design and development of a site. Landscape plantings are a benefit to the environment, public health, air quality, safety, comfort, convenience and general welfare of the community. These standards will result in the reduction of storm water runoff, heat buildup and will filter and reduce glare from car headlights. They may reduce energy costs in structures and will improve the aesthetics of the community.
- Alternative Energy: The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large.

Below is an example of how the outdoor dining purpose statement could look:

- Outdoor Dining: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to improve public health, activate public space, foster economic development, and provide flexibility for current trends and future demands for outdoor dining.

Draft Ordinance Language

(See next page)

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to improve public health, activate public space, foster economic development, and provide flexibility for current trends and future demands for outdoor dining.
- B. Outdoor Dining – General: Outdoor dining is permitted immediately adjacent to the principal use, subject to review by the Planning Board, or by the Planning Division at the discretion of the Planning Director, and the following conditions
 1. Outdoor dining patios shall provide and service refuse containers within the outdoor dining patio and maintain the area in good order.
 2. All outdoor activity must cease at the close of business or as noted in subsection 3 below.
 3. When an outdoor dining patio is immediately adjacent to any single-family or multiple-family zoned residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 4. The review of outdoor dining patios shall include, but are not limited to, the following elements: tables, chairs, umbrellas, portable heating elements, barriers, service stations, landscaping/plantings, awnings, canopies, lighting, host/hostess stands, and entertainment.
 5. Outdoor dining patios shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance.
 6. All outdoor patios shall be designed to meet the requirements of this section, as well as all applicable building and fire codes.
- C. Outdoor Dining – Public Property: Outdoor dining located on public property such as sidewalks, alleys and passages, and streets, shall be subject to the following requirements:
 1. Outdoor dining may be permitted on public property throughout the year with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining patios shall be responsible for snow and ice removal, and shall remove of such in a manner consistent with that of the Department of Public Services.
 - iii. Portable patio elements such as tables, chairs, heaters and umbrellas must be stored indoors each night between December 1 and March 1 to allow for complete snow and ice removal.

- iv. An ADA compliant platform may be erected in the on-street parking space(s) in front of an eating establishment to create an outdoor dining patio from April 1 through November 1, subject to a review by the Advisory Parking Committee.

2. Design: Outdoor dining patios located on public property are subject to the following design standards:

- i. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
- ii. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 6 ft.
- iii. No such facility shall erect or install permanent fixtures in the public right-of-way.
- iv. Table umbrellas or other freestanding overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
- v. Barriers delineating outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers may not exceed 42 inches in height, with the exception of planting material.
- vi. Portable heating elements must be maintained and kept in an orderly fashion. Propane or other fuels may not be stored on public property, and are subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
- vii. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained, and kept in a neat and orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

D. Outdoor Dining – Private Property: Outdoor dining located on private property such as general private property, porches, recesses, courtyards decks and rooftops, shall be subject to the following conditions:

1. Design: Outdoor dining patios located on private property are subject to the following design standards:

- i. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
- ii. Table umbrellas or other freestanding overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or

- vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
- iii. Barriers delineating outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers may not exceed 42 inches in height, with the exception of planting material.
 - iv. Portable heating elements must be maintained and kept in an orderly fashion. The storage of propane or other fuels shall be subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
 - v. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained and kept in an orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): An area that may or may not contain a roof and as few as one wall, panel, or material that provides relief from weather and impedes physical and/or visual access to the space. For the purposes of this definition, enclosure does not include exterior building walls or landscaping.

Outdoor Dining Patio: A defined outdoor area accessory to an existing food and drink establishment designated for consumption of food and/or drink prepared within the restaurant and subject to the provisions of this ordinance.

Permanent Fixture (outdoor dining): Any element within an outdoor dining patio containing a foundation or other rigid attachment that prevents removal or that which requires extensive modifications to the public right-of-way.



MEMORANDUM

Planning Division

DATE: August 11th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #2

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

Study Session #2

Departmental Comments

Initially, the Planning Board requested that staff solicit comments from the Department of Public Services (DPS) and Birmingham Shopping District (BSD) regarding outdoor dining and its different aspects from their point of view. From the Department of Public Services, any issues surrounding snow removal, streetscape maintenance, or other relevant issues observed from DPS were topics of interest. As for the BSD, the Planning Board wanted to determine if expanded outdoor dining had any impact on neighboring, non-restaurant retail uses...positive or negative. During the discussion at the first study session, the Planning Board requested to include the Building Division, Fire Department, Police Department and Engineering Division for comments pertaining to their professions and expertise. Full comments from each department are attached.

- **Department of Public Services**

In general, the Department of Public Services has some issues with snow removal and streetscape maintenance. They noted that although the plows have managed to get by without major incident thus far, snow and ice accumulates in the hard-to-reach areas, which necessitates more salt and more maintenance to mitigate the hazard. In addition, although private businesses are responsible for clearing their own platforms or dining areas, the snow is often placed right back into the street or sidewalk, which creates more of the same conditions noted above. As far as streetscape maintenance, DPS notes that tree pruning/trimming becomes challenging while working around platforms and patios, and these dining areas often get in the way of other streetscape programs such as hanging baskets, tree lighting, and possibly even landscaping beds in the future.

- **Birmingham Shopping District**

The Birmingham Shopping District will make this a discussion item at their Board meeting in September. Comments will be provided to the Planning Board thereafter.

- **Engineering Division**

The Engineering Division provided important comments relating to stormwater, infrastructure elements such as fire hydrants, manhole covers, drains, and catch basins, and patio placement. For dining platforms specifically, Engineering requires a channel between the curb and the deck structure for the passage of stormwater during rain events. Large rain events like those we have experienced recently (and will continue to experience) may exacerbate any issues with drainage and the placement of storm sewers and other infrastructure. Furthermore, they indicate that these patios should have provisions in place for emergency events such as water/sewer main repairs. As far as patio placement, Engineering noted that a 5 ft. clear path should be maintained, but also explained that traffic lanes should not be impeded for larger vehicles such as emergency vehicles and busses, and that sign lines may be impacted by dining patios.

- **Building Division**

As far as Building Division comments go, they note that much of the outdoor dining elements, from patios to enclosures/coverings, must be built to the standards of the Michigan Building Code. In addition, the Building Division outlined some issues with encroachment into the pedestrian path of umbrellas, tents, awnings etc. as well as important points about the Michigan Plumbing Code and employee use of the pedestrian clear path.

- **Police Department**

The Police Department has indicated that they do not have many issues with outdoor dining, nor concerns about any changes at this time. There has been no loss of revenue from the parking meters for outdoor dining platforms, as the owners of the platforms pay a fee to cover the costs. Additionally, they have not considered the loss of parking spaces as an issue at this time.

- **Fire Department**

The Fire Department comments revolved heavily around heating elements, structures/coverings, and access for emergencies. When it came to portable outdoor heating elements, there are a laundry list of requirements that must be followed to meet the Fire Codes. These regulations include the size and storage of fuel tanks, clearance, and safety devices such as fire extinguishers and carbon monoxide detectors. In terms of structures/coverings, the Fire Department requires flame retardant certificates regardless of the presence of heating elements. For those structures attached to buildings, the Fire Department may require the facility to contain fire suppression.

National Ordinance Review

The Planning Board expressed interest in finding out what other areas of the country may have ordinance wise. These areas include the Midwest and east coast, but also other areas with weather conditions that may necessitate unique outdoor dining solutions such as Colorado, Seattle, and warm weather cities. Several cities and the relevant facets of their Zoning Ordinances are provided below. In general it appears that most all cities require review of outdoor dining

proposals on both private and public space. Full enclosures of outdoor dining do not appear to be permitted on public space in any city reviewed.

- [Elmwood Park, IL](#) (Chicago Area)
 - o Parking requirements for outdoor dining which requires the greater of one parking space for every two seats or 3.5 parking spaces per 100 square feet of indoor and outdoor dining area.
- [Highland Park, IL](#) (Chicago Area)
 - o Table and chair limits determined by City Manager.
 - o Temporary barrier required to keep tables and chairs from migrating into the requires 5 ft. clear path.
 - o Tables and chairs removed every night.
- [Oak Brook, IL](#) (Chicago Area)
 - o No live entertainment.
 - o 5 ft. pedestrian path.
- [Columbus, OH](#)
 - o "Outdoor patio" means an outdoor area, open to the air at all times, that is either: enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or has no roof or other overhead covering at all regardless of the number of walls or other side coverings.
 - o Parking is required for dining patios at a rate of 50% of ratio required for primary structure.
- [Edina, MN](#) (Minneapolis Area)
 - o The patio shall not be enclosed in such a manner that the space becomes an indoor area.
 - o Patio screening may be required if the premises is adjacent to a residential district.
- [Fishers, IN](#) (Indianapolis Area)
 - o Outdoor dining areas shall be adjacent to their tenant space.
- [Columbia, MO](#) (St. Louis Area)
 - o Outdoor patio plan with requirements to include any existing light poles, sidewalk grates, parking meters, or other facilities located in the right-of-way.
 - o Any tables, chairs, posts, cordons or other furniture be portable and not fastened or affixed to or over the public sidewalk unless the owner has obtained right-of-use approval from the city council.
- [Arvada, CO](#) (Denver Area)
 - o Outdoor dining areas shall not be located within 100 feet of a residential zoning district.
 - o Outdoor dining areas are allowed and shall be set back as required for the principal building. Outdoor dining on public property permitted within specific district.
- [Golden, CO](#) (Denver Area)

- o Portable seating, movable chairs, tables for cafes and other furniture should be of substantial materials; preferably metal or wood rather than plastic.
- o Permanent outdoor seating is recommended in and along all publicly-accessible pathways and spaces.

Local Strategies

Staff reviewed Ordinance requirements for local cities including Royal Oak, Rochester, Ferndale, Berkley, Northville, and Plymouth for the way outdoor dining was handled prior to the Covid-19 pandemic. The Planning Division was also able to speak with staff or an elected official from each of the localities. All cities mentioned above require board review and approval for restaurants proposing outdoor dining on private and/or public space. The only City that allows restaurants to rent an on-street parking space for outdoor dining is Northville. Full enclosures for outdoor dining on public property are not allowed in any of the cities mentioned. Rochester and Ferndale said they would allow a restaurant to have an enclosure such as a tent, igloo, or greenhouse on private property. Examples of private outdoor enclosures in Ferndale include igloos at Detroit Fleet and a tent on Rosie O'Grady's patio. Enclosure material on private space is not tightly regulated. The Planning Director of Berkley indicated full enclosures were not permitted on private property. In regards to placement, the outdoor dining on public property for all cities mentioned is required to stay within the frontage lines of the business, it may not extend in front of neighboring properties.

As in Birmingham, a number of Ordinance regulations mentioned above for outdoor dining were relaxed in a temporary resolution during the Covid-19 pandemic. All of the cities experimented with outdoor dining for on-street parking spaces and some allowed enclosures for outdoor dining on public sidewalks and/or streets. A number of the resolutions were extended into winter time 2021-2022 for the sampled cities and will be reviewed for what to extend, what to get rid of, and what to keep indefinitely.

Downtown/Restaurant Organizations

The Planning Division looked to various national and local associations or organizations that could potentially provide some information on trends and happenings within national or local communities that may help guide discussions regarding outdoor dining in Birmingham. It is worth noting that in recent news, blogs or publications from these groups, it was difficult to separate outdoor dining and the COVID-19 pandemic. However, the Planning Board did indicate that they wish to discuss the temporary COVID-19 outdoor dining expansions that were built in Birmingham. Additionally, Engage Birmingham survey results (attached) appeared to indicate that many residents and business owners in Birmingham were supportive of the various expansions and/or enclosures that were erected in the City.

- **[Michigan Downtown Association](#)**

The Michigan Downtown Association has also provided some opinions on outdoor dining as an attraction for a downtown. In a 2021 article about [creative ways to bring residents downtown this summer and boost economic growth](#), it was noted that the Michigan Economic Development Corporation has supported outdoor dining expansion efforts across the state through Match on Main funding. Restaurants have seen the value of a quality outdoor dining space and have been investing in such to use into the future, and potentially year-round.

- **Main Street America**

Main Street America is an organization “committed to strengthening communities through preservation-based economic development in older and historic downtowns and neighborhood commercial districts.” Digging into their website, the Planning Division found an interesting article based on a 2021 Main Street Forward Award Winner in the Argenta District in North Little Rock, Arkansas. The award was given based on the efforts to create the Argenta Outdoor Dining District, a designated outdoor seating area that has helped local restaurants stay in business despite the pandemic. Although created for the pandemic, the district has plans underway to reopen in the spring. “Given its success, city leaders want to keep the district going even after the pandemic recedes, and Argenta’s restaurants are inspired to continue regular meetings to ensure the neighborhood’s future as a culinary destination.”

- **National Restaurant Association**

In general, the National Restaurant Association is an important resource in understanding trends and data regarding the restaurant industry. In reading through two documents, “2021 Restaurant Trends” and “Restaurant Industry 2030” (both attached), it was apparent that this particular group do not appear to be overly concerned about outdoor dining. Interestingly enough, this group found that restaurants would need to dedicate more space and capitol to *off-premise consumption* (i.e. takeout) as opposed to on premise indoor or outdoor dining. Additionally, when it comes to weather volatility, the group is finding that the concern lies in supply chains and food costs as opposed to protecting diners with coverings or enclosures.

- **Independent Restaurant Coalition**

The Independent Restaurant Coalition was created to “provide a strong, unified voice on legislative, regulatory, and policy issues that affect the restaurant industry; and provide advocacy, advice, networking and information to members.” In obtaining data from this group (attached), it is clear that the restaurant industry is an important industry that has unique struggles when it comes to situations like the pandemic. Restaurants and bars have large economic impacts in business and job creation, which could benefit from new outdoor dining regulations that could possibly expand outdoor dining, or add more comfort to outdoor dining patios.



MEMORANDUM

Planning Division

DATE: July 14th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #1

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

At this early stage, the Planning Division would like to begin with a high-level general review of outdoor dining beginning with research into what “good” outdoor dining may look like. By beginning with an example driven discussion, the Planning Division hopes to work towards several of the goals listed above and guide more pointed discussions in future study sessions.

Discussing personal experiences with outdoor dining across the world was a large part of the Planning Board and City Commission discussions prior to embarking on this study session. Considering this approach, the Planning Division reviewed [OpenTable's annual list 100 Best Al Fresco Restaurants in America for 2019](#). Naturally, California, Florida and Hawaii make up 67% of the list. However, the Midwest and Northeast (similar weather conditions to Birmingham) have strong representation on the list, making it an interesting place to start. Please see the following page for images of several outdoor dining spaces from restaurants present on the list.

Upon researching many of the outdoor dining patios on the list, the Planning Division made several observations:

1. Overhead coverings are common in the form of umbrellas, awnings, and pergola-type structures. Other covering methods such as canvas shade sails, retractable fabric shade canopies, and even trees/vegetation were observed as well.
2. Several rooftop patios made the list.
3. Heaters, lights, and fire tables/pits were very common.
4. Dining chairs appeared to be constructed of a myriad of materials, including plastic, wicker, and fabric.
5. Full enclosures (roof/covering plus walls or partial walls) were rare. Most cases of perceived enclosures included variables such as below-grade placement, placement next to building facades or screening from nuisances such as parking areas.
6. The majority of outdoor dining patios contained greenery and plantings.
7. Patio placement was observed in public and private property, and patio design elements were consistent between those that were on both.



Cecconi's – Brooklyn, NY



Farmers Fishers Bakers – Washington D.C.



El Five – Denver, CO



The Mooring Restaurant – Newport, RI



Campfire – Carlsbad, CA



The Pink Door – Seattle, WA

Similar observations were made while researching opinions of the “best” outdoor dining in Michigan. [Pure Michigan's Top Outdoor Patios for Dining in Michigan](#) and [M-Live's list of Michigan's Best Outdoor Dining](#) highlight several dining establishments that contain many of the same features.



On a more local level, Southeast Michigan contains several comparable cities with outdoor dining. The Planning Division was able to locate several cities that created specific regulations for outdoor dining within their Zoning Ordinances:

- [Berkley](#)
- [Royal Oak](#)
- [Plymouth](#)
- [Rochester Hills](#) (pg. 77)
- [Lake Orion](#) (pg. 60)

Other cities and Zoning Ordinances such as Northville, Detroit, Ferndale and Ann Arbor were also researched. However, the Zoning Ordinances of these cities either did not contain any specific ordinance language regarding outdoor dining, or proved too difficult to locate at this time. Of the above cities that yielded results, only one or two had detailed regulations regarding outdoor dining within their Zoning Ordinance. If requested, further research into the Zoning Ordinance regulations of other cities, local or national, will be provided for review. As a consequence, no

examples of different outdoor dining regulations for private versus public property, enclosures, maintenance, or other items from the list of goals above were discovered.



So how does the feedback from the City Commission, the Planning Board's current list of goals for the outdoor dining discussion, and the above high-level research relate to the current Outdoor Dining ordinance? At this time, there are outdoor dining standards spread across several areas of the Zoning Ordinance:

- [Article 4, Section 4.44 – Outdoor Dining Standards](#)
- [Article 3, Section 3.04 \(C\)\(10\) – Bistros](#)
- [Article 3, Section 3.14, 3.16 – Via Activation Overlay](#)
- [Article 9, Section 9.02 – Definitions \(Bistro, Outdoor Café\)](#)

This outdoor dining study affords an opportunity to ensure that ordinance language is consistent throughout, and addresses the issues of potentially regulating different restaurant and/or liquor license types (Bistro, Class C, Economic Development, Theaters & Hotels) separately, or affording them all the same outdoor dining standards, at least in terms of design. For example, rooftop dining is permitted for bistro license holders, but is not mentioned in the overall outdoor dining standards. Similarly, the bistro ordinance language prohibits enclosures facilitating year-round dining outdoors, but the Outdoor Dining Standards do not regulate enclosures.

Considering the information above, and before attempts are made at amending any zoning ordinance language, the Planning Division suggests a discussion based on the following questions and requests that the Planning Board provide some direction as to which items to move forward with for the next study session, including any that are not listed:

- Does the Planning Board want to see enclosures? If so, during what season(s)? Additionally, the City should define “enclosure” as a part of this study. This has also been advised by the City Attorney.
- Should restaurants be permitted to extend in front of neighboring properties on the sidewalk? In the street?
- Should a survey be created and sent to property owners to solicit feedback on several key discussion points before the Planning Board begins to draft ordinance amendments?
- Should the Planning Division do a broader ordinance search for other areas of the Midwest and/or Northeast? What should we be looking for?

appropriate on Mondays when brick-and-mortar restaurants are often closed. He also said he would not view them as encroaching into the neighborhoods.

A Birmingham resident stated he and his wife were food truck operators and could provide insight into what would be required to make Birmingham attractive for food truck operators.

Mayor Boutros recommended the aforementioned member of the public reach out to PD Dupuis to further discuss his experiences operating a food truck.

B. Outdoor Dining

PD Dupuis introduced the item.

There was general consensus that full enclosures should not be permitted as part of an expansion of the outdoor dining standards.

Commissioner Nickita said he was in favor of finding ways to activate the streets in winter. He noted that there are occasionally warmer days in winter where dining outside would be pleasant.

Mr. Koseck said architectural standards and codes' impact on outdoor dining would require further study.

Commissioner Nickita recommended exploring how other local municipalities have interpreted and enforced building, plumbing, fire or other codes for winter outdoor dining. He stated that guardrails much shorter than 42 inches might suffice and asked the Planning Board to look into it further.

Mayor Pro Tem Longe, Commissioner Nickita and Mr. Jeffares concurred that snow clearing or similar needs could be figured out and should not be treated as an impediment to winter outdoor dining.

The Mayor Pro Tem said that restaurant staff might be willing to help clear the street in front of their restaurants.

Commissioner Baller stated that it was not the City's responsibility to legislate to protect certain kinds of dining establishments. He noted outdoor dining's overwhelming popularity per the Engage Birmingham survey and said it likely did not matter to residents whether a particular establishment was a bistro or Class C license holder. He said it was worth considering relaxing the bistro outdoor dining standards for the winter months since people are in favor of being able to dine outside.

Mr. Jeffares said he was not overly concerned with maintaining the distinction between Class C and bistro outdoor dining since colder temperatures would cause outdoor dining to be self-limiting regardless. He said if outdoor dining decks were not being used by an establishment during the winter they should be taken inside.

Mayor Pro Tem Longe and Mr. Boyle also both noted the overwhelming popularity of outdoor dining according to the Engage Birmingham survey and said it was the City's responsibility to

figure out how to deliver that option to residents. They both noted the importance of being responsive to feedback received.

Mr. Jeffares and Mayor Pro Tem Longe said the City needed to determine what it would do on November 15, 2021 while the study of outdoor dining standards was still on-going.

Mayor Boutros said it would be important to determine whether there is demand for winter outdoor dining from restaurateurs, especially in light of current staffing difficulties in the service industry.

Chair Clein noted that the Planning Board would not make changes to the distinction between bistro and Class C licenses since that falls under the Commission's purview. Consequently, he said the Planning Board was focusing on keeping them distinct while trying to determine what outdoor dining allowances would be appropriate. He stated that the decision about what to do for Winter 2021-2022 was a Commission one since the Planning Board would not have its ordinance recommendations ready by then.

Commissioner Baller said the Commission should discuss the matter of outdoor dining during Winter 2021-2022 during its next two meetings.

Commissioner Sherman said there could be temporary regulations for Winter 2021-2022.

Allowing decks to remain and allowing wind breaks were mentioned as possibilities for Winter 2021-2022.

Commissioner Hoff observed that dining establishments already had an option in the City for offseason outdoor dining and suggested that no changes be made for Winter 2021-2022. She said that perhaps the City could not charge for offseason licenses during this season only as a compromise.

CM Markus stated that the Birmingham Shopping District was in the process of collecting feedback from its members regarding the potential expansion of the outdoor dining standards.

Commissioner Baller said he did not want to see the outdoor dining standards stem the creativity of the restaurateurs too much.

Mr. Williams, Chair Clein, Mr. Jeffares spoke in favor of having some sort of trial period once the ordinance recommendations are determined. Mr. Jeffares specified that they would have to make clear to the restaurateurs that it would be a trial period.

CM Markus expressed concerns about the management and enforcement that will be required of Staff for trial periods.

Commissioner Baller said the City would have to ensure that the costs to the City are outweighed by the benefits.

Mr. Share said the Planning Board was not looking to guarantee all-weather dining.

Mr. Share, CM Markus and Commissioner Hoff all commented on the importance of preventing outdoor dining from encroaching beyond its permitted areas.

Public Comment

Anthony Long said residents would need to know what outdoor dining might look like to provide relevant feedback. He recommended posting another survey to Engage Birmingham with descriptions. He also concurred with prior comments that the restaurateurs' interest in having outdoor dining needs to be ascertained. Mr. Long also recommended extending outdoor dining through the winter since Covid-19 remains an issue, and then soliciting further feedback from the public and restaurateurs then.

Mr. Bloom said it would be positive if the Planning Board could recommend temporary standards for Winter 2021-2022. He said the City should also consider two sets of outdoor dining standards: one for normal circumstances and one for ongoing Covid-19 issues.

C. 2040 Master Plan Update

PD Dupuis introduced the item.

Chair Clein, Mr. Williams and Commissioner Baller all noted that the Planning Board was presently working with the second draft of the master plan, and not with a finalized document.

Commissioner Nickita said the Planning Board should pay specific attention to what changed between the first and second drafts.

PD Dupuis confirmed that would be the case.

Commissioner Baller said more attention should be paid to the presentation of the Master Plan, including keeping maps on one page and with legible street names. He said the presentation should make it easy for residents to review.

In reply to Mr. Share, PD Dupuis said that in addition to speaking at Planning Board meetings members of the public could submit feedback on the Master Plan directly to staff or at thebirminghamplan.com.

Mr. Williams encouraged the public to attend Planning Board meetings and submit feedback. He said there were likely to be a number more changes before review of the second draft is completed.

Mr. Boyle noted Commissioners Nickita, Sherman and Hoff were stepping down in November and acknowledged them for their contributions to the City.

Public Comment

Mr. Bloom said he would like to see redline maps to see what how the maps changed from draft one to draft two. He expressed concern about some of the draft's recommendations and said he wanted to make sure they would all be thoroughly vetted. He said he also wanted to ensure that residents' concerns about the draft would be taken into account.



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

Fire Department Outdoor Dining Requirements

Dining platforms in the street

- These structures and the footprint shall be clear of the right of way for traffic and emergency vehicles.
- Proper clearance from fire department connections FDC: 36 inches wide, 36 inches in depth and 78 inches in height.
- Proper clearance around fire hydrants, 3 feet in circumference and no obstructions from the street.
- Clear path of egress from buildings (do not setup dining in path of egress).

Enclosures/coverings

- Temporary tents, air-supported, air-inflated or tensioned membrane structures shall not be erected for a period of more than 180 days within a 12-month period on a single premises. **sec. 3103.5., International Fire Code 2015 ed.**

Heating elements

- Heating devices shall meet the proper clearance from combustible material at all times. **Sec. 603.4.2.1.2 Clearance to buildings, International Fire Code 2015 ed.**
- Portable outdoor gas-fired heating appliances shall be located not less than **5 feet** from buildings. **International Fire Code 2015 ed.**
- Portable outdoor gas-fired heating appliances shall not be located beneath, or closer than **5 feet** to combustible decorations and combustible overhangs, awnings, sunshades or similar combustible attachments to buildings or structures (regardless of a flame retardant rating certificate). Electric heating devices are allowed following manufacturers specifications. **603.4.2.1.3 Clearance to combustible materials International Fire Code 2015 ed.**
- Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within **15 feet** of a structure or combustible material. (ie. fire pits, fire tables on wood, vinyl, composite platforms). **307.4.3 Portable Outdoor fireplaces International Fire Code 2015 ed.**
- Portable outdoor gas -fired heating appliances shall not be located within **5 feet** of exits or exit discharge. **603.4.2.1.4 Proximity to exits. International Fire Code 2015 edition.**
- **Weather protection (umbrellas, tents, awnings):** Must provide a flame retardant certificate to the AHJ regardless of using outdoor heating or not. These items must meet the clearance of heating devices and provide fire extinguisher protection.



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

Carbon monoxide detection

- Shall be installed for enclosed or semi-enclosed structures regardless of heating device used. Enclosures near vehicle traffic shall have carbon monoxide detectors in the event that vehicle emissions enter the enclosure accidentally.

Fire extinguisher mounting

- Shall be installed in enclosed or semi-enclosed structures. Authority Having Jurisdiction (AHJ) to determine size, type and location(s) of devices. **Sec. 906.2, International Fire Code 2015 ed.**

Storage of LP gas

- Storage of fuel cannot be inside of a building. LP gas must be stored in a cage outdoors. Storage cage must be a **minimum of 10 feet** from any type of building opening. Storage locations shall be approved by the Planning Department and the Fire Marshal. **6104.3 Container location, International Fire Code 2015 ed.**
- Only 20-pound propane or smaller tanks would be approved.

Structures attached to buildings:

- Full fire suppression for structures attached to buildings with **existing** fire suppression is required on additions such as awnings, retractable awnings, tents, sun rooms, projections etc. that are more than 4 feet wide and of combustible material. If a structure is free standing and is a minimum of 3 feet away from a building, it would not require suppression. **8.15.7.1 National Fire Protection Agency 13, Standard for the Installation of Sprinkler Systems 2013 ed.**
- **A-2** assembly occupancy that currently **does not** have fire suppression required could be required to suppress the whole building with the addition of an attached outdoor structure depending on occupant load and square footage increases (ie. A building with the new outdoor addition is now over 5,000sq. ft. or over 100 occupants), layout and other aspects of design. **Sec. 903.2.1.2, Michigan Building Code 2015 ed.**

AGENDA
REGULAR MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY, NOVEMBER 10th, 2021
151 MARTIN ST., CITY COMMISSION ROOM 205, BIRMINGHAM MI *
*******7:30 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.

- A. Roll Call
- B. Review and Approval of the Minutes of the Regular Meeting of **October 27th, 2021**
- C. Chairpersons' Comments
- D. Review of the Agenda
- E. Unfinished Business
- F. Rezoning Applications
- G. Community Impact Studies
- H. Special Land Use Permits
- I. Site Plan & Design Reviews
- J. Study Session
 - 1. **The Birmingham Plan 2040 – Review of the Introduction, Future Land Use & Chapter 1 (Connect the City)**
- K. Miscellaneous Business and Communications:
 - 1. Communications
 - 2. Administrative Approval Correspondence
 - 3. Draft Agenda – **December 8th, 2021**
 - 4. Other Business
- L. Planning Division Action Items
 - 1. Staff Report on Previous Requests
 - 2. Additional Items from Tonight's Meeting
- M. 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 OR may attend virtually at:

Link to Access Virtual Meeting: <https://zoom.us/j/111656967>
Telephone Meeting Access: 877-853-5247 US Toll-Free
Meeting ID Code: 111656967

NOTICE: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only. Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).