

City of Birmingham
Regular Meeting of the Planning Board
Wednesday, October 27, 2021
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 27, 2021. Chair Clein convened the meeting at 7:30 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 Jane Wineman

Absent: Student Representative Daniel Murphy

Administration:

Nick Dupuis, Planning Director
Brooks Cowan, Senior Planner
Laura Eichenhorn, City Transcriptionist
Paul Wells, Fire Chief

10-163-21

B. Approval Of The Minutes Of The Regular Planning Board Meeting of October 13, 2021

On page two, Mr. Jeffares stated 'should also should' should be changed to 'should also show'.

Mr. Jeffares noted that when the Board referred to the 'north side' in the discussion of Jax they were referring to the one along Woodward, ie, the northeast side. He recommended that be clarified in the minutes. He said that it should also be clarified that Mr. Share was referring to the north wall along Brown when referring to the break in the wall in the motion on page three.

Ms. Whipple-Boyce asked that her preference that the frontage be on Woodward be added to her comments about removing 'Kar Wash' on page two.

Motion by Mr. Jeffares

Seconded by Ms. Whipple-Boyce to approve the minutes of the Regular Planning Board Meeting of October 13, 2021 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

10-164-21

C. Chair's Comments

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

10-165-21

D. Review Of The Agenda

10-166-21

E. Unfinished Business

None.

10-167-21

F. Rezoning Applications

None.

10-168-21

G. Community Impact Studies

None.

10-169-21

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.

SP Cowan presented the item.

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the email from Sean Kammer of the Birmingham Shopping District dated October 26, 2021.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

SP Cowan summarized the concept of a social district for the Board.

Kelly Allen, attorney, and Regan Bloom, owner, spoke on behalf of request.

Ms. Allen said she could not think of any other SLUPs that specify required hours. She specified that Toast would be opening at 8 a.m.

Ms. Bloom stated that the model of Toast has always been breakfast and brunch. She said she was opening at 8 a.m. instead of 7 a.m. since many people are working from home and no longer trying to get breakfast before getting into the office. She confirmed that if there was more demand for a 7 a.m. opening she would be willing to open then.

Mr. Jeffares noted that the Board and the Commission had differing opinions on Toast's request to shorten their hours in the past and said he wanted his reasoning for supporting the request minuted. He noted The Whistle Stop Cafe was permitted by the Commission to only stay open until 3 p.m. He also noted that Bella Piatti is only open half the hours of Toast. He said that activation of the streets before 11 a.m. should be a consideration for the City, and stated he had bought a good amount at neighboring retailers while waiting to be seated at Toast. Mr. Jeffares stated that Toast activates the streets earlier whereas other dining establishments activate the streets later. He said that Toast wakes Birmingham up while other establishments put Birmingham to bed. He said the City should not be in the business of forcing businesses out of business, and that if the requested hours work for Toast their SLUP should be amended.

Mr. Boyle noted that Toast's outdoor deck makes Pierce seem dark in the afternoon and evening.

PD Dupuis stated that the outdoor dining deck would be taken down for the outdoor dining off-season.

Chair Clein directed Ms. Bloom to maintain the required five-foot pedestrian clearance. He stated that if it required the removal of the circular high-top in front of the restaurant then that should be done.

Chair Clein then said he concurred with Mr. Jeffares. He stated he saw no land planning reason to require Toast to stay open for dinner.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend approval to the City Commission of the Special Land Use Permit Amendment for 203 Pierce – Toast with the minimum operating hours of 8 a.m. to 3 p.m. on weekdays and 8 a.m. to 4 p.m. on Saturday and Sunday.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

10-170-21

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.

Discussed as part of previous item.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend approval to the City Commission of the Final Site Plan Review for 203 Pierce – Toast with the minimum operating hours of 8 a.m. to 3 p.m. on weekdays and 8 a.m. to 4 p.m. on Saturday and Sunday.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

10-171-21

J. Study Session

1. Wall Art

SP Cowan presented the item.

PD Dupuis confirmed for Chair Clein that small edits could be made without needing to hold an additional public hearing.

Under 'TO AMEND ARTICLE 9 – DEFINITIONS TO DEFINE WALL ART AND DETERMINE PERMITTED LOCATIONS FOR WALL ART', Mr. Share recommended that 'Wall art is not permitted in an alley' be changed to 'Wall art is not permitted facing an alley'.

From the same section, Messrs. Boyle and Share recommended that the last line be changed from 'an alley, passage or via that abuts' to 'an alley, passage, or via, any of which abuts'.

Motion by Mr. Share

Seconded by Mr. Williams to recommend Zoning Ordinance amendments to Article 7, Section 7.41-7.44 and Article 9, Section 9.02, as contained on pages 71 through 74 of the Planning Board's October 27, 2021 agenda packet and as revised during the present meeting, 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.

VOICE VOTE

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

2. Outdoor Dining

PD Dupuis presented the item.

FC Wells described aspects of the Fire Code relevant to outdoor dining.

Chair Clein summarized that there seemed to be Board, Commission and public consensus that the on-/off-season distinction for outdoor dining should be eliminated, thus allowing those permitted for outdoor dining to maintain it year-round.

Ms. Whipple-Boyce and Messrs. Jeffares, Boyle, and Share were in favor of prohibiting dining decks for some period during January, February, and March, and allowing them all other times.

Mr. Jeffares said restaurants that only had an option for dining decks for outdoor dining could potentially pursue a variance in that case.

Mr. Koseck said he would also be concerned about the damage that could potentially be done to the decks by snow plows in winter.

PD Dupuis noted that decks could be required to be slimmer in order to be less effected by snow plows. He also noted the Board would have to clarify whether the Board was discussing all decks or only decks in the street.

Chair Clein and Mr. Williams were initially not in favor of restricting the use of decks during the winter. Chair Clein noted that decks were popular with both the Commission and the public, and cautioned that restricting their use might not be what the Commission wanted.

There was discussion that the decks would likely be underused in the coldest parts of winter and would lead to deactivation of the streets.

Chair Clein and Mr. Williams said they would be willing to consider a deck prohibition that starts on January 1, with an end date in February or March to be determined.

Mr. Williams said the requirements of fire suppression might affect where establishments are able to locate their outdoor dining.

Mr. Koseck said fire suppression would not likely overly affect establishments, saying that the requirements may be relatively simple in many cases.

Mr. Jeffares concurred, citing a conversation with a restaurant owner who retrofitted their outdoor dining area for fire suppression and said that it was simpler and less costly than anticipated.

Mr. Share noted the Board need not create an ordinance that allows every establishment to have outdoor dining year round. He suggested that the Board could recommend a trial without decks and then could add them the following year if they remained in demand.

Mr. Jeffares agreed with Mr. Share's recommendation of a trial.

It was confirmed that all decks would be evaluated according to building, plumbing, and other codes, including restroom-to-diner ratios.

Ms. Whipple-Boyce recommended that dining establishments be able to leave their furniture out overnight in winter. She also recommended that dining establishments be required to clear the snow from their frontage if they do leave their furniture out.

As for outdoor weather protection, Mr. Boyle said he most preferred large, relatively immovable umbrellas.

Mr. Jeffares and Ms. Whipple-Boyce said they liked the covering of the outdoor dining deck at Toast.

Mr. Jeffares said he also liked retractable awnings, with the caveat that it not encroach into the five-foot pedestrian clearance.

Ms. Whipple-Boyce said she liked immovable umbrellas, shade sails, and butterfly awnings. She said she wanted more information on the housing sizes for retractable awnings.

While there was Board unanimity that outdoor dining coverings should not encroach into the five-foot pedestrian clearance, there was also some discussion that on larger sidewalks the outdoor dining coverings could be larger than the projection ordinance currently allows.

Mr. Share recommended a minimum height be considered for outdoor dining coverings.

Chair Clein said he did not like retractable awnings and said he did like umbrellas and some other coverage options. He noted that if most outdoor dining ends up adjacent to the building for part of the winter then the current projection ordinance would not afford the dining area much protection from the elements.

PD Dupuis said he would return with photos of fire suppression at Bistro Joe's and Market North.

Chair Clein requested verification that the City Manager, Building Official and DPS want outdoor dining railings drilled into sidewalks. He also noted the importance of maintaining the five-foot pedestrian clear path for the benefit of pedestrians and those with disabilities. He noted that the Department of Justice had sent a letter to Birmingham and other communities about violations of the ADA stemming from outdoor dining platforms and encroachment into the five-foot pedestrian clear path by outdoor dining.

Board consensus remained on windbreaks, noting that they would have to maintain the five-foot pedestrian clear path, have a prescribed height, not attach to buildings, and be clear above 42 inches.

Ms. Whipple-Boyce said she had grown more accepting of windbreaks, saying she would be willing to evaluate proposals on a case-by-case basis.

Chair Clein said he would be willing to consider wind break proposals of up to four sides and 60 inches in height.

Ms. Whipple-Boyce concurred.

It was noted the Board still had to determine recommendations for wind break material.

The Board agreed to further discuss whether an establishment should be permitted outdoor dining in the street and adjacent to the restaurant at the same time.

PD Dupuis said he anticipated that the Birmingham Shopping District would be submitting their feedback to the Board in November.

Chair Clein said he thought the Board could have outdoor dining ordinance recommendations to the Commission in Quarter One of 2022.

In reply to the Commission request that the Board recommend options for outdoor dining during Winter 2021-2022, the Board suggested that outdoor dining be allowed to continue as-is beyond the November 15, 2021 date for this winter and that outdoor furniture be allowed to remain outside in the evenings. It was noted that this recommendation would be replaced by the finalized outdoor dining recommendations once they are completed.

The Board said they would hold a public hearing on the recommendation on November 10, 2021.

10-172-21

K. Miscellaneous Business and Communications

a. Communications

b. Administrative Approval Correspondence

PD Dupuis presented a request from Hearthside Condos on Southfield Road.

After discussion, the Board said they needed more information about potential drainage issues in the rear of the building to know whether the request could be administratively approved or should be submitted to the Board.

c. Draft Agenda for next meeting

d. Other Business

Mr. Williams suggested the Board consider a special meeting on December 16, 2021 if there was a need to review site plans.

Chair Clein said the Board could evaluate that option at the Board's November meeting.

Ms. Whipple-Boyce reminded PD Dupuis of her previous request from the October 13, 2021 meeting to review the ordinance regarding average setbacks of homes.

PD Dupuis said he would follow up with BO Johnson and report back.

Mr. Boyle recommended an article from May 31, 2021 on MLive entitled "[2021 summer guide to outdoor social districts in Michigan](#)" that described how various municipalities across Michigan used social districts over the summer.

10-173-21

L. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

10-174-21

M. Adjournment

No further business being evident, the Chair adjourned the meeting at 9:53 p.m.



Nick Dupuis
Planning Director