

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, May 11, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on May 11, 2022.
Chair Scott 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 Member Jason Emerine (arrived 7:35 p.m.); Student Representatives MacKinzie Clein, Andrew Fuller

Absent: Alternate Board Member Nasseem Ramin

Administration:

Nick Dupuis, Planning Director
Leah Blizinski, City Planner
Laura Eichenhorn, City Transcriptionist

B. Approval Of The Minutes Of The Regular Planning Board Meetings of April 13, 2022 and April 27, 2022

Mr. Share said 'uncomfortable' on page two of the April 13, 2022 minutes should be replaced with 'lengthy, causing unnecessary discomfort and in some cases danger for residents.'

05-108-22

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board meeting of April 13, 2022 as amended.

Motion carried, 7-0

VOICE VOTE

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

Nays: None

05-109-22

Motion by Mr. Share

Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board meeting of April 27, 2022 as submitted.

Motion carried, 6-0

VOICE VOTE

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

Nays: None

Abstain: Jeffares

C. Chair's Comments

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

D. Review Of The Agenda

E. Unfinished Business

F. Rezoning Applications

G. Community Impact Study

H. Special Land Use Permit and Final Site Plan and Design Review

I. Study Session

1. Outdoor Dining Standards – Public Hearing

The Chair opened the public hearing at 7:36 p.m.

PD Dupuis presented the item.

Mr. Jeffares said:

- ~~Article 4, Section 4.44(B)(5)(iii) might be overreaching in requiring that outdoor dining facility elements be brought in when they are located on private property;~~ His concern is that establishments could store their outdoor elements on private property if their outdoor dining was on private property, but could not store their outdoor elements on private property if their outdoor dining was on public property;
- He disagreed with not allowing awnings, noting that the concern of some Board members had been that sightlines are obscured by awnings. ~~He found umbrellas to be more obscurant in terms of sightlines than awnings~~ He found umbrellas to obscure sightlines more than awnings; and,
- The Board had ~~designed the guidelines under~~ was concerned that both the Board and the public, including restaurants, had operated the impression that any outdoor dining platforms approved prior to the adoption of these ordinance changes would be legally non-conforming if they did not align with the new ordinances. Within the last few days it had become clear that recently updated language in SLUP agreements would now require establishments to immediately come into compliance with any ordinance changes.

Mr. Jeffares asked PD Dupuis if the City had notified establishments with outdoor dining about the updated SLUP language and its potential impacts.

PD Dupuis stated that the City has not sent direct correspondence to establishments with outdoor dining about the updated SLUP language. He said Staff is in the process of determining which establishments would be affected by the updated SLUP language. He said the Board would be welcome to communicate directly with those establishments to invite them to submit comment on the proposed ordinance changes.

Mr. Jeffares continued that he did not feel it appropriate to pass the ordinance changes without ~~direct communication with~~ the Board having a clear understanding of the impact. It should be noted that many of the establishments, ~~who may~~ have already made significant investments in their outdoor dining, and would have to make alterations again in the near future because of the updated SLUP language.

In reply to Board inquiry, PD Dupuis stated:

- The updated SLUP language requires establishments to come into compliance with ordinance changes as soon as the ordinances change;
- Article 4, Section 4.44(B)(5)(iii) would allow establishments with outdoor dining facility elements on private property to leave them out between January 1 and March 31; and,
- 'Immediately adjacent' in Article 4, Section 4.44(B)(2) means outdoor dining facing a property line with single-family or multiple-family zoned residential. For example, if an establishment with outdoor dining is next to single-family or multiple-family zoned residential, but has their outdoor dining facing a street, that outdoor dining would not be considered 'immediately adjacent' to single-family or multiple-family zoned residential. This is also how the Planning Department has interpreted this extant ordinance language in the past;
- These ordinance changes did not include a definition of 'furnishing zone', and he was unsure if the ordinance already had a definition for the phrase;
- Outdoor storage facility is an accessory permitted use in B2-B, B2, B2C, and MX districts and Article 4, Section 4.44(B)(5)(iii) would be intended to allow an establishment to store their outdoor dining facility elements in their ordinance-compliant outdoor storage facility.

Mr. Koseck suggested that making the second sentence in Article 3, Section 3.04(C)(10)(e) a separate point would make it more clear.

Chair Clein said the Board may be letting perfect become the enemy of the good in this review. He recommended that the Board note any potential fatal flaws in the ordinance language, and that the Board should otherwise approach this discussion as whether this ordinance, on the whole, could be recommended to the Commission for approval.

In reply to Mr. Koseck, Mr. Williams clarified that the Commission would have opportunity to make changes to the proposed ordinance language, and that the proposed ordinance language would then be subject to a public hearing by the Commission as well. Mr. Williams noted Mr. Koseck's recommendation could be conveyed to the Commission, and that the Commission would be free to make that change during its review.

Mr. Jeffares added the ordinance should have a definition of 'immediately adjacent' from Article 4, Section 4.44(B)(2) in order to clarify the term.

Public Comment

Al Vaitas, member of the Advisory Parking Committee (APC), stated that the mission of the APC is to preserve and create parking for the downtown business district. He said the problem the APC faces is that, when asked to evaluate a request for an outdoor dining deck, they have no objective parameters with which to perform that evaluation. He said the Board should consider adding to the ordinance how many dining decks should be allowed per block, how many dining decks should be allowed per the total number of parking spaces in the City, and what the saturation point for dining decks is.

Chair Clein said he understood Mr. Vaitas' concerns, but that they seemed to be policy issues as opposed to land use issues. He said the best approach would be asking the Commission whether they want to consider restricting the number of dining decks, at which point the APC and the Board could likely collaborate on exploring the issue. He noted that there are restrictions for bistros but no restrictions for either Class C license holders or for the number of outdoor dining facilities.

Jim Hayosh, owner of Commonwealth Cafe, was concerned about how the ordinance changes would impact his custom-made deck which required years of work with the City's Engineering Department to create. He said awnings are aesthetically preferable to umbrellas and should not be prohibited. He said the ordinance changes would homogenize outdoor dining in the City. He also said he did not receive any notice from the City regarding updating the outdoor dining standards.

Mr. Jeffares said that while the City has minimum noticing requirements, it could and should exceed those requirements. He said the City owed it to stakeholders to try and ensure that they are aware of the potentially impending changes. He said he would not support a motion to move the ordinance changes forward at this time because he did not feel comfortable doing so.

Mr. Share said:

- The initial conversation around these potential ordinance changes was that the Board could not expect to get the ordinance changes perfect the first time, and that the ordinance should be treated as a work in progress;
- He was in favor of recommending the ordinance changes to the Commission and in favor of notifying establishments that there would be a public hearing on the matter at the Commission; and,
- He and Ms. Whipple-Boyce discussed some possible changes to the umbrella and awning requirements which the Board could look at more closely after the present ordinance changes are advanced to the Commission.

Mr. Williams said:

- He was troubled by the City's notice standards, citing two examples of where he felt insufficient notice was provided regarding construction projects;
- He would vote no on advancing the proposed ordinance changes because he felt the City should have reached out to every dining establishment over the last year and did not.

Ms. Whipple-Boyce said:

- There was no reason to rush these standards at this point, because most interested establishments have operational outdoor dining at this point in time;
- It would be better to take a few months to get these ordinance changes right;
- Delaying would also give the Board the opportunity to hear from stakeholders that could be affected by the changes;
- She would like to know how many platforms would be affected and in what way, since some of the platforms have been constructed for thousands of dollars and were only approved in the last month or two;
- She was uncomfortable with the prohibition in on fixed or freestanding awnings in platforms as described in Article 4, Section 4.44(C)(8), which she said has been her perspective throughout the Board's review of these ordinances; and,
- She would not support advancing these ordinance changes at this time.

Chair Clein said:

- The Board's discussions were noticed per the City's policy, were held publicly, and were held for the last ten months;
- He did not anticipate hearing any comments that would change his opinion that the proposed ordinance changes were appropriate;
- The Board needed to determine what they thought would be an appropriate noticing policy in excess of the City's standard noticing policy so PD Dupuis would have clear direction on what to ask of the City Manager;
- Undertaking excess noticing could establish a precedent detrimental to the City;
- He appreciated the Board's zealotness but did not see what could be further accomplished with these proposed changes;
- Board members could individually submit ideas to PD Dupuis for what should occur in terms of noticing; and,
- These proposed changes took all stakeholders into account, including pedestrians and retail establishments, and he would be in favor of advancing the item to the Commission.

05-110-22

Motion by Mr. Share

Seconded by Mr. Boyle to recommend approval to the City Commission amendments to Article 4, Section 4.44, Article 3, Section 3.03, Article 3, Section 3.16 and Article 9, Section 9.02 of the Zoning Ordinance to revise the outdoor dining standards and provide consistent and enforceable regulations.

Mr. Koseck said that while he understood the Chair's comments, the Board usually advances ordinance changes they were more confident in. He said the Board should continue its work to get these ordinance changes closer to ideal.

Motion failed, 3-4.

ROLL CALL VOTE

Yeas: Share, Clein, Boyle

Nays: Jeffares, Koseck, Whipple-Boyce, Williams

The Chair closed the public hearing at 8:25 p.m.

2. Front Yard Setbacks – Public Hearing

The Chair opened the public hearing at 8:26 p.m.

PD Dupuis presented the item.

Ms. Whipple-Boyce voiced her support for the proposed changes.

Public Comment

There was no public comment on the item.

05-111-22

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to recommend approval to the City Commission amendments to Article 2, Sections 2.04, 2.06, 2.08 and 2.10 of the Zoning Ordinance to modify the minimum front yard setback requirement.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

The Chair closed the public hearing at 8:30 p.m.

3. Accessible Ramps – Public Hearing

The Chair opened the public hearing at 8:30 p.m.

Public Comment

There was no public comment on the item.

05-112-22

Motion by Mr. Williams

Seconded by Ms. Whipple Boyce to receive and file a letter dated May 10, 2022 from Allison Goodwin and an email dated May 11, 2022 from Anne Honhart.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

The Chair said both correspondences were supportive of the proposed changes. He continued that these proposed changes would advance the City's goals of helping residents age in place.

05-113-22

Motion by Mr. Williams

Seconded by Ms. Whipple Boyce to recommend approval to the City Commission amendments to Article 4, Section 4.30 of the Zoning Ordinance to include provisions for accessible ramps that do not unintentionally inhibit persons in need as it relates to open space restrictions.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

The Chair closed the public hearing at 8:33 p.m.

4. Window Standards – Study Session

PD Dupuis reviewed the item.

Chair Clein recommended that Article 3, Section 3.04(E)(7) be eliminated since the same topic is adequately addressed in Article 4, Section 4.90(A).

Mr. Share recommended that the requirements of Article 4, Section 4.90(A) be applied to non-residential uses above the first floor as well.

Chair Clein concurred.

Ms. Whipple-Boyce said the language about window treatments was unenforceable, since the definition of 'direct sunlight' would be subjective and difficult for code enforcement to enforce. She continued that she would like the Board to explore options for artful ways of allowing building owners to obscure windows that look into back-of-house areas.

In reply to Ms. Whipple-Boyce, PD Duouis noted that Article 4, Section 4.90(E) allows the Board to waive aspects of the window standards.

Mr. Koseck concurred with Ms. Whipple-Boyce about the utility of allowing tasteful obscuring of windows in some contexts.

In reply to PD Dupuis, the Chair asked him to make the requested modifications to the proposed language and then said the Board would make a decision about recommending potential changes to the window treatment language at the next review.

J. Site Plan & Design Review

1. 770 S. Adams – Perennial – Final Site Plan & Design Review request for new 4 & 6 story mixed-use building.

Both the Chair and Mr. Emerine recused themselves at 8:48 p.m., citing business relationships with members of the applicant team.

Mr. Koseck also recused himself at 8:48 p.m., noting that one of the architecture firms involved in the application was a previous employer.

Vice-Chair Williams assumed facilitation of the meeting at 8:48 p.m.

Vice-Chair Williams introduced the item.

05-114-22

Motion by Mr. Share

Seconded by Mr. Boyle to receive and file the revised glazing calculations - Sheet SD.23.0 that was submitted after the agenda packet was made available.

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

PD Dupuis presented the item.

Nico Schultz, of FHS Birmingham, and Chris Longe, architect, spoke on behalf of the item.

Mr. Schultz stated:

- The artificial turf would be located in the enclosed courtyard on the first level because natural grass in that area would become too muddy;
- The applicant will comply with the Engineering and Building Departments' comments; and,
- There are no fully enclosed structures as part of the rooftop use.

Mr. Longe stated:

- The materials of the wall facing the former Plant Station will be brick, as will the adjacent wall. A mural is being considered for the area;
- The alley to the south of the building will be veneered with the same brick as the building;
- All the back of house elements will face the south side of the building;
- Artificial turf would also be used in the dog run and on the fifth floor amenity deck;
- The lighting is underneath each of the terraces;
- The balconies will be steel and concrete and will have a pitch and a scupper so the water drains off; and,
- The upper floor will have internal drains.

Mr. Longe described the materials.

Public Comment

Allison Goodwin said she had stepped away from the meeting briefly and offered her support for Item I3. The Vice-Chair notified Ms. Goodwin that the item had been approved by the Board and advanced to the Commission. The Vice-Chair told Ms. Goodwin that PD Dupuis could provide her with information about when Item I3 would appear before the Commission.

Mr. Jeffares described the project as '98%', but said he was bothered that the project takes advantage of a loophole in the City's ordinance. He acknowledged that it was the City's responsibility that the loophole was there. He continued:

- This project would have the only three residential units on Adams, and the rest of Adams is retail or commercial;
- If those three residential units were changed to retail, they would have better parking available than the rest of the retail and commercial ~~on Adams~~ Downtown;
- He attends Birmingham Shopping District meetings often and there are numerous retailers trying to find space in Birmingham; and,
- The City needs to ensure that ordinances are updated to reflect City plans in the future so that the City does not end up in situations like this one.

05-115-22

Motion by Mr. Share

Seconded by Mr. Boyle to to approve the Final Site Plan and Design Review application for 770 S. Adams – Perennial – with the following conditions:

- 1. The applicant will be required to submit revised site plans with RTU screening that adequately obscures the proposed RTUs;**
- 2. The Planning Board approves the use of the artificial turf as shown pursuant to the Article 4, Section 4.20(B)(1);**
- 3. The applicant must submit revised lighting and photometric plans that meet the requirements of Article 4, Section 4.21 of the Zoning Ordinance;**
- 4. The applicant must provide revised site plans with a sign design plan;**
- 5. The applicant must submit revised site plans indicating the encroachment dimensions of the canopies and balconies into the right-of-way;**
- 6. The applicant must enter into agreements with the City pertaining to the \$20,000 and \$100,000 contributions;**
- 7. The applicant comply with the requests of all City Departments;**
- 8. The revised glazing calculations and glass specifications must be reviewed and must meet the requirements of the Triangle Overlay District, or obtain a variance from the Board of Zoning Appeals; and,**
- 9. The Planning Department must receive additional information from the applicant to ensure that the rooftop amenities do not contain enclosures and comply with applicable ordinances.**

Motion carried, 4-1.

ROLL CALL VOTE

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

K. Miscellaneous Business and Communications

The Board took a brief recess at 9:34 p.m.

The Board returned from recess at 9:38 p.m.

Chair Clein, Mr. Koseck, and Mr. Emerine rejoined the meeting at 9:38 p.m.

Chair Clein resumed facilitation of the meeting at 9:38 p.m.

1. Pre-Application Discussions

i. 219 Elm St. – All Seasons 2

PD Dupuis summarized the request.

The Board said it was comfortable with administrative approval, but that the applicant had to proceed with either its first or second plan – it could not receive two approvals.

ii. 2225 14 Mile Rd. – Our Shepherd Lutheran

PD Dupuis summarized the request.

The Board said it was comfortable with PD Dupuis updating the site plans to reflect an arborvitae screening wall where it was required by the Board of Zoning Appeals.

2. Communications

i. Open Meetings Act Memorandum – City Attorney

ii. Kozlowski – 2040 Plan Comments

iii. Ortiz Educare, LLC – Review Meeting Request

PD Dupuis requested that the Board permit Ortiz Educare and Gassow to be reviewed at the June 8, 2022 meeting.

The Chair noted that the Board could also review glazing standards and sideyard a/c units at that meeting. He said reviewing another item to the June 8, 2022 meeting could be considered at May 25, 2022 Board meeting.

05-116-22

Motion by Mr. Williams

Seconded by Mr. Boyle to amend the rules of procedure and allow a hybrid meeting to consider both a study session and a site plan review for Wednesday, June 8, 2022.

Mr. Jeffares asked PD Dupuis to ensure that the applicants come in with complete documentation.

PD Dupuis confirmed he would do so.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

PD Dupuis said he would not add any additional items to the June 8, 2022 meeting.

3. Administrative Approval Correspondence

4. Draft Agenda

5. Other Business

Mr. Boyle commended Staff on their preparation and documentation of Item I1. He recommended Staff save it for future reference given the amount of information that was provided in it.

Chair Clein and Mr. Koseck concurred.

i. Action List – 2022

Mr. Jeffares asked that defining 'mixed use' be added to the action list. He said he also wanted to review the rules that permit buildings to add on extra floors.

Mr. Williams concurred, saying that the Board should review the ordinance to make sure it better implements the goals of the Triangle District Plan.

The Chair said he would discuss how to approach those items with PD Dupuis.

M. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

The Chair asked that copies of the two correspondences added to the record as part of Item I3 be provided to the City Manager as well.

N. Adjournment

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



Nick Dupuis
Planning Director



Laura Eichenhorn
City Transcriptionist