



AMENDED AGENDA
REGULAR MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY AUGUST 10, 2022 – 7:30 PM
151 MARTIN ST., CITY COMMISSION ROOM 205, BIRMINGHAM MI*

The City continues to recommend the public wear masks while attending City meetings per CDC guidelines. The cases of COVID-19 are increasing in the area. All City employees, commissioners, and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.

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- A.** Roll Call
- B.** Review and Approval of the Minutes of the Regular Meeting of **July 27, 2022**
- C.** Chairpersons' Comments
- D.** Review of the Agenda
- E.** Unfinished Business/Courtesy Review
- F.** Rezoning Applications
- G.** Community Impact Studies
- H.** Special Land Use Permits
- I.** Site Plan & Design Reviews
- J.** Study Session
 - 1. **Side Yard A/C – Public Hearing**
 - 2. **Window Standards – Public Hearing**
 - 3. **Outdoor Dining**
 - 4. **The Birmingham Plan 2040 – Draft #3 Process Update**
- A.** Miscellaneous Business and Communications:
 - 1. Pre-Application Discussions
 - 2. Communications
 - 3. Administrative Approval Correspondence
 - 4. Draft Agenda – **August 24, 2022**
 - 5. Action List - 2022
 - 6. Other Business
- B.** Planning Division Action Items
 - 1. Staff Report on Previous Requests
 - 2. Additional Items from Tonight's Meeting
- C.** 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**](https://zoom.us/j/111656967)

Telephone Meeting Access: 877-853-5247 US Toll-Free

Meeting ID Code: 111656967

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City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, July 27, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 27, 2022.
Chair Scott Clein convened the meeting at 7:30 p.m.

A. Roll Call

Present: Chair Scott Clein (left 9:07 p.m.); Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representatives MacKinzie Clein, Andrew Fuller

Absent: Board Member Daniel Share

Administration:

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

B. Approval Of The Minutes Of The Regular Planning Board Meeting of July 13, 2022

Mr. Jeffares recommended that the fifth bullet point on page five be amended to explain that the Board regulates the material and appearance of canopies more than it does umbrellas because canopies are structures that are replaced only occasionally whereas umbrellas are changed more frequently.

07-141-22

Motion by Mr. Williams

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

Motion carried, 7-0

VOICE VOTE

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

Nays: None

C. Chair's Comments

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

D. Review Of The Agenda

E. Rezoning Applications

F. Special Land Use Permits (SLUPs) and Site Plan and Design Reviews

G. Site Plan & Design Reviews

- 1. 35106 Woodward – Whole Dental Wellness (Postponed from June 22, 2022) – Final Site Plan and Design Review request for new addition to rear of building. (REQUEST TO POSTPONE)**

PD Dupuis explained that the applicant wanted additional time to resolve departmental comments.

07-142-22

Motion by Mr. Williams

Seconded by Mr. Koseck to postpone 35106 Woodward – Whole Dental Wellness to August 24, 2022.

Motion carried, 7-0

VOICE VOTE

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

Nays: None

- 2. 320 Martin St. – Birmingham Post Office – Final Site Plan and Design Review request for new 5-story addition to rear of existing building**

PD Dupuis presented the item.

Kevin Biddison, architect, spoke on behalf of the project.

07-143-22

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Final Site Plan and Design Review application for 320 Martin St. with the following conditions:

- 1. The applicant must submit revised glazing calculations and specification standards that comply with Article 3, Section 3.04 (E) of the Zoning Ordinance;**
- 2. The Planning Board approves the canopy projection of 2 ft. into the W. Maple and Bates right-of-ways; and,**
- 3. The applicant comply with the requests of all City Departments.**

Mr. Koseck spoke in support of the project.

Motion carried, 7-0

VOICE VOTE

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

Nays: None

H. Study Session

1. D4 Parking Standards – Ordinance Amendment Request

PD Dupuis clarified that Board members who expressed potential conflicts of interest with the previous 770 S. Adams project did not have to recuse for this item, per the City Attorney, because the team for this request was different than the proposed team for the previous project.

Doraid Markus, owner of 770 S. Adams, confirmed that to be the case.

SP Cowan presented the item. He confirmed that the Staff memorandum was reviewed by the City Attorney. He noted that the Board would have to set a public hearing before the item could proceed to the Commission.

Stephen Estey, attorney, and Mr. Markus, owner, spoke on behalf of the request.

Mr. Jeffares said the property has special circumstances, noting the three sides. He continued that the Board had to consider what it would want to see built at 770 S. Adams and said that what could be built by right was not likely to meet his expectations. He said it would be appropriate to try and find a way to have this property align with the intent of the master plan.

Mr. Koseck said the potential of having three sides of retail lining the sidewalk would be a good thing. He said that this proposal could be better than the by right option, assuming this proposal does not adversely affect the walkability, parking, or other aspects of the area.

Mr. Williams raised some concerns about the potential impact on parking in the area since 60 on street parking spaces were already removed from S. Old Woodward this year. He said that given that fact, even with the control over the project offered by a SLUP, the Commission would have to gain clarity on the potential parking impact of waiving 50 parking spaces for this property. He said he did like Mr. Estey's suggested language.

Mr. Emerine said he also liked Mr. Estey's suggested language, but noted that Staff had not yet provided a review of the proposal. He asked whether the proposal could be moved to a public hearing without a Staff review.

The Chair said he was very skeptical of the request prior to Mr. Estey's presentation. He opined that the language still required some changes but was largely usable. He said he liked the SLUP aspect of the proposal. For 'notwithstanding the foregoing, parking on the site shall not be required if the property owner [...]', the Chair said it was a bit too far. He noted that the Parking Assessment District (PAD) only allows parking for commercial uses to be considered fulfilled, not residential uses. He said the language needs to align with what the PAD allowed and should not exceed those prior allowances out of fairness to members of the PAD. He asked Staff to consider whether or how the Advisory Parking Committee should provide input on this proposal. He said he was also interested in an opinion from the City Attorney regarding mimicking the rights of a

property in the PAD for a property not in the PAD while using the same parking decks. He said he would like to know whether there would be any potential injury to those in the PAD already.

Mr. Williams said he was interested in learning the same, and added he would also like to know the potential impact on properties nearby that are not in the PAD.

The Chair said the requestor should work with Staff to see if the language could be revised to address Board concerns in order to potentially move the revised language to a public hearing.

Mr. Boyle concurred with the Chair in saying he was also initially skeptical of the request, saying it seemed like spot zoning. As he listened to the requestor's presentation, however, he said it seemed like it was worth collecting some information and working on the proposed language. He also noted that the City's parking standards are based on full occupancy of buildings that may not be filled due to pandemic-related changes. Consequently, he said a better understanding of how the City's parking decks are currently being used would help inform the discussion.

Mr. Jeffares opined that the same amount of office space may be leased but the number of employees coming in daily and requiring parking has likely permanently decreased.

The Chair said he would be weighing whether the City should be changing its parking requirements for one specific zone now when the Board also plans on reviewing the City's parking standards as a whole. He explained that he would like input from Staff about why this request may merit that treatment.

PD Dupuis noted that Birmingham Place previously proposed subterranean lifts to provide parking. He said a review by the Engineering Department indicated that doing so may cause the building to tip over. He opined that that fact sounded like a hardship in terms of providing parking.

Mr. Koseck replied that he did not think the Birmingham Place matter was relevant to the present consideration.

Mr. Jeffares opined that this discussion would not be changing the zoning of one area so much as correcting the zoning of the area.

The Board agreed to review this matter again at a August 24, 2022 study session with more information from Staff and updates to the language.

J. Miscellaneous Business and Communications

- 1. Pre-Application Discussions**
- 2. Communications**
- 3. Administrative Approval Correspondence**
 - i. 135 Pierce**

PD Dupuis presented the request.

Board consensus was that the applicant should adhere to the City's sidewalk standards.

ii. 33366 Woodward – House of Reem

PD Dupuis presented the request.

Board consensus approved a VLT of 74%.

iii. 460 N. Old Woodward – Rooftop Use

The Chair recused himself from discussion of this item citing a business relationship with the owner of the property. The Chair departed the meeting at 9:07 p.m.

Vice-Chair Williams assumed facilitation of the meeting at 9:07 p.m.

PD Dupuis presented the request.

The Board agreed to allow an administrative approval for the removal of the rooftop use.

- 4. Draft Agenda**
- 5. Action List - 2022**
- 6. Other Business**

PD Dupuis informed the Board that the changes to the corner lot setbacks were approved by the Commission and that the barrier free standards were approved with slight amendments.

K. Planning Division Action Items

- a. Staff Report on Previous Requests**
- b. Additional Items from tonight's meeting**

Vice-Chair Williams asked PD Dupuis to provide, at the August 10, 2022 meeting, a broad scheduling proposal for the remaining master plan tasks and action list tasks. He also encouraged the Board to be prepared with recommendations for how the action list tasks should be scheduled during the balance of the year.

Mr. Koseck said it would be helpful for Staff to provide brief updates on:

- Items referred to the Board of Zoning Appeals by the Planning Board; and,
- Larger projects that do not come before the Planning Board for review.

L. Adjournment

No further business being evident, the Vice-Chair adjourned the meeting at 9:15 p.m.



Nick Dupuis
Planning Director



Laura Eichenhorn
City Transcriptionist

DRAFT



MEMORANDUM

Planning Division

DATE: August 10, 2022

TO: Planning Board Members

FROM: Leah Blizinski, City Planner

APPROVED BY: Nicholas Dupuis, Planning Director

SUBJECT: Accessory Structures - Air Conditioning Units – Public Hearing

Air conditioning is an important cooling and adaptation strategy for citizens. The most efficient air conditioner operation is achieved through the shortest lines between the furnace and the outdoor condenser unit. Installing air conditioners on the outside wall directly adjacent to the furnace provides for the shortest lines and maximum operational efficiency. Birmingham, like many of its neighboring communities has a number of principal structures built before its modern Zoning Ordinance was adopted. As such, there are a number of homes in the city with nonconforming side-yard condenser units to this day.

The City of Birmingham does not explicitly disallow condensers in side yards, but has established a precedence of regulating ac condenser units as Accessory Structures. Article 4.03 (A) states that “No accessory buildings or structures shall be erected in the required front open space or side open space, except as may otherwise be provided in this section.” Therefore, in practice, air conditioner condensers are allowed only in the rear yard and those seeking to install or replace a condenser in the side yard must seek a variance from the BZA—as many do.

For someone seeking to replace an air conditioner that is located in their side yard, it is a lengthier process than someone who is replacing an air conditioner in the rear yard. They must either apply and wait for a determination from the BZA or move the lines and construct a new pad (or both if denied), which may mean additional contractors, time and cost.

Article 1 of the Zoning Ordinance, section 1.06 states “The interpretation and application of the provisions in this Zoning Ordinance are the minimum requirements necessary to promote public health, morals, safety, comfort, convenience, or general welfare.” Therefore, it is necessary to consider whether a gap exists in the current ordinances as far as protecting the health, safety and welfare of residents and whether zoning practices that hinder the quick replacement of air conditioning in hot summer months may be considered detrimental to health, safety and welfare.

At the request of the City Attorney, Planning Division staff has looked at ways to ensure all residents have access to a swift process for maintaining and replacing air conditioning units on single-family homes, including reviewing ordinances of surrounding communities.

As technology improvements have drastically reduced the amount of noise produced by a running condenser some cities are revising their position on side-yard condensers. Birmingham can look to nearby neighbors, Ferndale, Berkley and Plymouth as examples of communities who have done just that in recent years.

Thanks to improvements in compressor technology and a fan-blade shape, modern models generate only about 1/20th of the noise generated by many older units. According to Energy.gov, "the most efficient air conditioners use 30% to 50% less energy to produce the same amount of cooling as air conditioners made in the mid-1970s. Even if your air conditioner is only 10 years old you may save 20% to 40% of your cooling energy costs by replacing it with a newer, more efficient model...Improper unit location, lack of insulation, and improper duct installation can greatly diminish efficiency." A properly working air conditioner should run for 15 minutes at a time on warm days, no more than a couple of times within an hour.

Additionally, the Energy Star and EnergyGuide labelling programs assist consumers in choosing high efficiency models. From the energy.gov website: "Central air conditioners are rated according to their season energy efficiency ratio (SEER). SEER indicates the relative amount of energy needed to provide a specific cooling output. Many newer systems have SEER ratings as high as 26. This rating system was updated in 2015 and the lowest SEER rated unit manufacturers are now allowed to sell is 13. For comparison, older units average between 8 and 9.

City of Ferndale

Ferndale updated their Zoning Ordinance in June of 2018 to allow certain features to project into required yard setbacks. This update included the following section related to placement of air conditioners:

"Equipment used for central air conditioning, heating or water filtration purposes and installed outside of single-family or two-family dwellings and their attached structures shall be located in the rear yard. The community development department may allow units to be located within the side yard in those instances where such location does not adversely impact an abutting dwelling, conditioned upon screening of the equipment with appropriate landscaping to reasonably conceal the equipment from view."

Ferndale Building staff confirmed that in practice, this means that when a permit to install air conditioning is applied for, the desired location of the unit is collected on the form. Staff then considers several factors in determining the appropriate location for the unit and is able to administratively approve side-yard ac installation when they determine it does not adversely impact an abutting dwelling. Factors they consider when making this determination are:

- 1) All applicable building codes.
- 2) A 5ft. setback from the lot line.
- 3) House foundation (and difficulty of cutting through slab)

- 4) Placement of furnace and length of lines needed to reach the rear yard; a drastic increase in the length of lines to reach the rear yard vs. side yard decreases efficiency of the unit.
- 5) New construction vs. existing; They will absolutely allow replacement of an existing side-yard ac on an existing house (and waive the 5ft setback under 'continuing the nonconformity,' if necessary, to allow replacement).
- 6) Required to screen all side-yard placed ac units from the street and the abutting property at least 4 inches above the unit itself.

Staff felt the ordinance was extremely successful and stated they have not had any issues since its adoption in 2018. It was especially successful at eliminating the requirement for applicants seeking to replace an existing nonconforming side-yard ac units to have to seek a variance from the Board of Zoning appeals. The Board of Zoning Appeals, while sympathetic to applicants, felt that they were not able to grant these variances under the specific criteria they are allowed to consider. Under the administrative process, staff can consider criteria the BZA cannot such as; cost, efficiency and timeliness of replacement. They have not had to send a side-yard ac application to the BZA since adopting the current ordinance.

City of Berkley

In 2017, the ZBA heard a number of appeals related to generators in which they determined they would consider and regulate them as accessory structures. Though the zoning ordinance defined several types of Accessory Structure, neither air conditioning units or generators was included in the definitions. During the discussion, air conditioners were brought into the mix; because air conditioning units had not been defined as accessory structures, they were previously allowed to be placed in the side yard as long as the adjacent property owner signed off on a form.

The City of Berkley adopted a new ordinance to define and regulate exterior appliances in February of 2021. This new ordinance provides definitions for several types of appliance including 'Air Conditioning Unit.' It also includes the following related to location of Residential Air Conditioning Units;

"Air Conditioning Units may be permitted in the side yard under the following conditions:

- a. The unit must be at least 18 inches from side property line;
- b. The unit must be at least 12 feet from adjacent dwelling;
- c. The unit must be screened on at least three (3) sides by opaque fencing or landscaping, measuring at least four (4) feet in height from grade.
 1. The principal structure may be considered one side of screening.
 2. Screening must be provided from street view and facing the closest adjacent property.
 3. Chain link fencing is not permissible as a screening material for exterior appliances."

They also include a section to provide guidance for Non-Conforming Exterior Appliances:

"Non-conforming exterior appliances include appliances that were lawfully installed but are no longer in compliance with the provisions of this chapter. Non-conforming exterior appliances may be continued, maintained and replaced provided there is no increase or enlargement of the area occupied or devoted to such use. If the structure that is served by a non-conforming exterior appliance is damaged or partially destroyed by less than 50 percent of its market value, the exterior

appliance may be restored and its previous use continued. If the structure that is served by a non-conforming exterior appliance is damaged or partially destroyed by 50 percent or more than 50 percent of its market value, then any restoration or new construction must comply with all current building and zoning codes.”

City of Plymouth

Plymouth updated their ordinance in July of 2016. Previously they did not allow air conditioners to be installed in the side yard. Plymouth defines Accessory Use or Accessory and includes air conditioning units in the definition. Plymouth includes a table in their Zoning ordinance that specifies how much projection into each setback is permitted for each particular type of structure or feature. Air conditioning condensers are permitted to encroach 4ft into the side yard setback as well as the rear. As in Berkley and Ferndale, screening of the unit is required.

Study Session #1 Summary

On April 13th, 2022 ([Agenda](#) – [Minutes](#)), the Planning Board discussed amending the Zoning Ordinance to consider allowing Air Conditioning Units within the side yard setback under certain conditions. The Planning Board discussed the variety of heating and cooling systems available and whether they were appropriate to be located within side yard setbacks in single-family residential neighborhoods. The planning board expressed a desire to provide relief for homeowners to replace Air Conditioning Units already located within side yard setbacks.

Study Session #2 Summary

On June 8th, 2022 ([Agenda](#) – [Minutes](#)), the Planning Board discussed proposed ordinance language that was modified to reflect the Planning Board discussion from April 13th, 2022. The language was revised to limit the ordinance update to address only the specific urgent need to allow homeowners to replace air conditioning units in non-conforming locations. The ordinance update will allow these residents equal access to swiftly mitigate high temperatures should an air conditioning unit require replacement during the hot Summer months. Planning board members requested to add to condition #1, the word location, to ensure that nonconforming units were limited to a similar size and location. Planning Board members also requested removal of condition #2 altogether as they felt it could imply that other accessory structures are not subject to all applicable codes and permits. They felt that having this a condition under only one of the structures was not the right place for it, since all structures are subject to applicable codes and ordinances.

Study Session #3 Summary

On July 13th, 2022 ([Agenda](#) – [Minutes](#)), the Planning Division presented modified language to reflect the Planning Board discussion from June 8th, 2022. The language was revised for clarity and conciseness based on the Planning Board members’ comments. The Planning Board moved to set a public hearing date to consider the revised ordinance language and forward a recommendation to the City Commission.

Sample Motion Language

Motion to recommend APPROVAL to the City Commission the amendments to Article 4, Section 4.03, of the Zoning Ordinance to add language to permit air conditioning units in the required side yard setbacks under certain conditions.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.03, ACCESSORY STRUCTURE STANDARDS, TO ADD LANGUAGE TO PERMIT AIR CONDITIONING UNITS IN THE SIDE YARD UNDER CERTAIN CONDITIONS.

Article 4, Section 4.03 – Accessory Structure Standards

This Accessory Structure Standards section applies to the following districts:



The following accessory structure standards apply:

- A. Front and Side Open Space Limitations: No accessory buildings or structures shall be erected in the required front open space or side open space, except as may otherwise be provided in this section.
- B. Rear Open Space Limitations: Accessory buildings or structures may occupy a portion of the rear open space. They shall be at least 3 feet from any lot line, except as otherwise provided in this Article. If a lot has frontage on 2 streets so that the rear lot line abuts the street, accessory buildings or structures shall be set back from the rear lot line the same distance required in each two-page layout in Article 2, as a front setback for lots fronting on the street. An accessory building is not permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks as determined in Section 4.74(C).
- C. Corner Lots: On corner lots where a rear open space abuts a front or side open space, accessory buildings or structures on a corner lot shall have a minimum setback of 5 feet from the rear lot line.
- D. Setback from Principal Building: An accessory building or a swimming pool shall not be closer than 10 feet to the principal building located on the same lot.
- E. Satellite Antennas: Satellite antennas are permitted only in the rear open space. They are prohibited on the roof of any principal building or accessory building. They are limited to a maximum of 15 feet in height above grade and a minimum of 3 feet from the rear and side lot lines.
- F. Basketball Apparatus: A basketball apparatus may be placed within the required front open space and side open space of a single-family residential lot and only in conformance with the following conditions:
 - 1. No more than 1 basketball backboard, either garage or pole-mounted, may be located in the required front or side open space.
 - 2. A single basketball backboard may be mounted directly on the garage.
 - 3. A single, pole-mounted backboard may be located only within the one-third of the required front open space or side open space nearest the dwelling and contiguous to the driveway.

- G. Maximum Building Height: The maximum eave height on all accessory structures shall not exceed 12 feet. The maximum building heights for accessory structures are as follows:
1. Gable, hip, gambrel, barrel or shed roofs:
 - a. R1A, R1: 15.5 feet to midpoint
 - b. R2: 15 feet to midpoint
 - c. R3: 14.5 feet to midpoint
 - d. The roof line on gambrel and barrel roofs may not project more than 2 feet past an imaginary plane drawn from the eave to the highest point on the roof. The highest point on an accessory structure with a shed roof must face the interior of the lot on which it is located.
 2. Flat roofs:
 - a. R1A, R1: 12 feet
 - b. R2: 12 feet
 - c. R3: 12 feet
 3. Mansard roofs:
 - a. R1A, R1: 15.5 feet to deck line
 - b. R2: 15 feet to deck line
 - c. R3 14.5 feet to deck line
- H. Area: The maximum area of the first floor of any accessory structure or accessory structures in combination shall not exceed 10% of the lot area or 600 square feet in R1 and R1A, 550 square feet in R2, or 500 square feet in R3, whichever is less. Outdoor living area is prohibited above the first story on any accessory structure.
- I. Proportionality Between Accessory Structures and Principal Structures: The height of an accessory structure must be lower than the height of the principal structure on the same lot. The total area of habitable space in an accessory structure must not exceed 75% of the total area of habitable space in the principal structure on the same lot.
- J. Dormers: Dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or a 10 foot interior dimension, whichever is greater. Dormers may not exceed the height of the roofline from which they are projecting. Dormers are not permitted on accessory structures with gambrel, barrel, flat or mansard roofs.
- K. Windows: On elevations adjacent to abutting property lines, a maximum of 8 square feet of glazing area is permitted per elevation on the second level of an accessory structure if located less than 6 feet above the floor of the second level of the accessory structure. Unlimited glazing is permitted if located at least 6 feet above the floor of the second level of the accessory structure.
- L. Exterior Staircases: Above grade exterior staircases are prohibited on accessory structures.
- M. **Air Conditioning Units: All new and existing air conditioning units shall not count against lot coverage calculations. Non-conforming air conditioning units located within required side yard setbacks may be continued, maintained and replaced provided:**
1. **The area occupied or devoted to such use is of similar size and location;**
 2. **The nonconforming unit(s) must be screened from street view and the abutting property by privacy fence, landscaping or landscape fence.**

ORDAINED this _____ day of _____, 2022 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk



MEMORANDUM

Planning Division

DATE: August 10, 2022

TO: Planning Board Members

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Window Standards – Public Hearing #2

Over the last several years, the City has been studying possible ordinance amendments to relax the city's window standards to promote energy efficiency while also achieving the goals of storefront activation that have helped make Birmingham a vibrant and walkable community. A chronology of prior reviews is provided below:

On November 13, 2019 ([Agenda](#) – [Minutes](#)), the Planning Board discussed the potential for ordinance amendments encompassing the Window Standards outlined in Article 3, Section 3.04(E) and Article 4, Section 4.90 of the Zoning Ordinance. The Planning Board directed City Staff to (1) research any possible differences in the Visual Light Transmittance (VLT) figures between different manufacturers and (2), research other cities to determine what VLT figures are used.

On January 8, 2020 ([Agenda](#) – [Minutes](#)), the Planning Board discussed the glazing ordinance amendments again, and expressed interest in hearing from more professionals such as a mechanical engineer, a glass vendor or supplier, or a glass contractor or installer. At that time, the Planning Division was unable to find and secure any additional professionals or glass experts to add any new information to the conversation other than the professionals that were already involved up to that point.

On July 22, 2020 ([Agenda](#) – [Minutes](#)), the Planning Board reviewed the proposed ordinance language alongside a glass professional from Guardian Glass, who offered expertise and clarity on the proposed amendments and what is available in the glass world, and what the effect is on energy codes. The Planning Board entertained ideas for including low iron glass to the definition and discussing other items such as shelving and merchandise in windows. Ultimately, the Planning Board directed City Staff to make a few minor changes including eliminating the bronze requirement from Section 3.04 (E)(4), and adding low iron glass and no tint to the definition of clear glazing for final consideration before the public hearing.

On April 14, 2021 ([Agenda](#) – [Minutes](#)), the Planning Board motioned to set a public hearing on May 12, 2021 to amend the glazing standards, which was rescheduled to June 9th, 2021 due to Eid al-Fitr.

On June 9, 2021 ([Agenda](#) – [Minutes](#)), the Planning Board motioned to recommend approval to the City Commission amendments to Sections 3.04, 4.90 and 9.02 of the Zoning Ordinance to update the clarity requirements for storefront windows.

On July 26, 2021 ([Agenda](#) – [Minutes](#)), the City Commission held a public hearing to review the proposed ordinance amendments and ultimately took no action. Rather, the City Commission directed the Planning Board to re-review the proposed language to clarify whether the same or different standards would apply to the ground and upper floors of a building. In addition to the specific direction, there was discussion about window treatments and their effect on clear glazing.

On May 11, 2022 ([Agenda](#) – [Minutes](#)), the Planning Division provided amended language to reflect the comments made by the City Commission. In addition, the Planning Division revisited prior ordinance research into other communities for any precedent regarding window treatments.

On July 13, 2022 ([Agenda](#) – [Minutes](#)), the Planning Board moved to set a public hearing for the proposed ordinance amendments and requested that that Planning Division remove the direct language regarding window treatments and to instead add a purpose and intent statement at the beginning of the Window Standards section.

Sample Motion Language

Motion to recommend APPROVAL to the City Commission the amendments to Article 3, Section 3.04, Article 3, Section 3.09, Article 4, Section 4.90 and Article 9, Section 9.02 of the Zoning Ordinance to revise the window standards to adjust the definition of clear glazing and to eliminate lightly tinted glazing.

CITY OF BIRMINGHAM

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 3, SECTION 3.04, SPECIFIC STANDARDS, TO ADJUST THE ARCHITECTURAL STANDARDS TO REFLECT REVISED CLEAR GLAZING REQUIREMENTS

Article 3, Section 3.04 – Specific Standards

- A. ...
- B. ...
- C. ...
- D. ...
- E. Architectural standards. All buildings shall be subject to the following physical requirements:
 - 1. ...
 - 2. ...
 - 3. ...
 - 4. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground. The wood or metal armature (structural elements to support canopies or signage) of such storefronts shall be painted, ~~bronze~~, or powder-coated.
 - 5. Storefronts shall have mullion systems, with doorways and signage integrally designed. Mullion systems shall be painted, powder-coated, or stained.
 - 6. The glazed area of a facade above the first floor shall not exceed 35% of the total area, with each facade being calculated independently.
 - 7. Clear glazing is required on the ~~first floor~~ storefront/ground floor facade. ~~Lightly tinted glazing is permitted on upper floors only.~~ Windows shall not be blocked with opaque materials or the back of shelving units or signs.
 - 8. ...
 - 9. ...

ORDAINED this _____ day of _____, 2022 to become effective upon publication.

Therese Longe, Mayor

Alexandria Bingham, City Clerk

CITY OF BIRMINGHAM

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 3, SECTION 3.09, COMMERCIAL/MIXED USE ARCHITECTURAL REQUIREMENTS, TO ADJUST THE WINDOW AND DOOR STANDARDS TO REFLECT REVISED CLEAR GLAZING REQUIREMENTS

Article 3, Section 3.09 – Commercial/Mixed Use Architectural Requirements

Mixed-use buildings that contain non-residential uses on the ground floor and residential in upper floors and all non-residential buildings shall meet the following architectural design requirements. It is not the intent of this section to regulate architectural style of buildings or limit creativity, but to ensure the necessary functional and design elements to create and foster a mixed-use, pedestrian-oriented environment are incorporated into all building designs. Buildings should respect the existing architectural style of the area while evolving a more “bold” approach towards contemporary design.

A. ...

B. Windows and Doors:

1. Storefront/Ground Floor. Ground floors shall be designed with storefronts that have windows, doorways and signage, which are integrally designed and painted. No less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. Glass areas on storefronts shall be clear glazing on the first floor. ~~Clear glazing or lightly tinted glazing is permitted on upper floors.~~ Mirrored glass is prohibited. Required window areas shall be either windows that allow views into retail space, working areas or lobbies, pedestrian entrances, or display windows set into the wall. Windows shall not be blocked with opaque materials or the back of shelving units or signs. The bottom of the window must be no more than 3 feet above the adjacent exterior grade.
2. Entranceway. The front entranceway shall be inset 3 feet from the front building wall.
3. Upper Stories. Openings above the first story shall be a maximum of 50% of the total façade area. Windows shall be vertical in proportion.

C. ...

ORDAINED this _____ day of _____, 2022 to become effective upon publication.

Therese Longe, Mayor

Alexandria Bingham, City Clerk

CITY OF BIRMINGHAM

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 4, SECTION 4.90, WINDOW STANDARDS, TO ELIMINATE LIGHTLY TINTED GLAZING

Article 4, Section 4.90 – Window Standards (WN)

A. Purpose and Intent: The purpose of this section is to encourage active and engaging storefronts and overall window design that is compatible with a buildings context and the desired character of the City.

~~A.~~ **B. Storefront Windows:** Ground floor facades shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:

1. No less than 70% of a storefront/ground floor façade between 1 and 8 feet above grade shall be clear glazing. **Mirrored glass is prohibited.**
- ~~2. Only clear glazing is permitted on storefront facades at the first floor. Lightly tinted glazing above the first floor may be permitted. Mirrored glass is prohibited.~~
- 2.** Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
- 3.** Windows shall not be blocked with opaque materials or the back of shelving units or signs.
- 4.** The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

~~B.~~ **C. Ground floor building elevations:** Building elevations on the ground floor that do not face a frontage line but contain a public entrance shall be no less than 30% clear glazing between 1 and 8 feet above grade.

~~C.~~ **D.** Blank walls of longer than 20 feet on the ground floor façade shall not face a plaza, park, parking area or Public Street.

~~D.~~ **E. Upper Story Windows:** Openings above the first story shall be a maximum of 50% of the total façade area. **Upper story windows facing a frontage line shall be clear glazing.** Windows shall be vertical in proportion. **Mirrored glass is prohibited.**

~~E.~~ **F.** To allow flexibility in design, these standards may be modified by a majority vote of those appointed and serving on the appropriate reviewing body including the Planning

Board, Design Review Board, and/or Historic District Commission for architectural design considerations provided that the following conditions are met:

1. The subject property must be in a zoning district that allows mixed uses;
2. The scale, color, design and quality of materials must be consistent with the building and site on which it is located;
3. The proposed development must not adversely affect other uses and buildings in the neighborhood;
4. Glazing above the first story shall not exceed a maximum of 70% of the façade area;
5. Windows shall be vertical in proportion.

ORDAINED this _____ day of _____, 2022 to become effective upon publication.

Therese Longe, Mayor

Alexandria Bingham, City Clerk

CITY OF BIRMINGHAM

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, SECTION 9.02, DEFINITIONS, TO REDFINE CLEAR GLAZING, AND TO ELIMINATE LIGHTLY TINTED GLAZING

Article 9, Section 9.02 – Definitions

Clear Glazing: Glass and other transparent elements of building facades with **no tint**, a minimum visible light transmittance of ~~80%~~ **66% and a reflectivity of 15% or less**.

...

~~Lightly Tinted Glazing: Glass and other transparent elements of building facades with a minimum visible light transmittance of 70%.~~

ORDAINED this _____ day of _____, 2022 to become effective upon publication.

Therese Longe, Mayor

Alexandria Bingham, City Clerk



MEMORANDUM

Planning Division

DATE: August 10, 2022

TO: Planning Board Members

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Outdoor Dining Ordinance – Study Session #11

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 Summary

On October 27th, 2021, the Planning Board focused much their conversation on overhead weather protection and which types may be considered within the new ordinance language, and what different issues might arise with the different styles. In addition, the Birmingham Fire Chief Paul Wells gave a brief overview of the fire code as it relates to overhead weather protection, and offered some guidance to the Planning Board regarding fire suppression and other aspects of outdoor dining. In addition to overhead weather protection, the Planning Board provided some clear direction on the subjects of windbreaks, year-round dining, and the role of outdoor dining decks.

Study Session #6 Summary

On December 8th, 2021, the Planning Board reviewed comments regarding outdoor dining from the Birmingham Shopping District (BSD). In addition to the BSD comments, the Planning Board also reviewed some updated comments from the Fire Department based on their additional research into the Fire Code. To round out the meeting, the Planning Board outlined several items that they feel need further discussion/decision moving forward:

- Whether establishments with liquor licenses and establishments without liquor licenses should be handled differently;
- Whether there should be on-season and off-season dates for outdoor dining, and what should happen to furniture and other equipment on public property if there are different 'seasons';
- Whether establishments should be permitted outdoor dining on both a sidewalk and a deck if requested, and if not, what the City wants to incentivize instead;
- What types of coverings and equipment should be allowed, and how specific the standards should be in terms of material, location, and other considerations;
- Whether outdoor dining should be permitted to extend beyond the storefront of an establishment, and if so, what the limitations should be;
- Whether outdoor dining decks should be limited to a certain number per block; and,

- Whether outdoor dining in public space and outdoor dining in private space should be regulated differently.

Study Session #7 Summary

On January 12, 2022, the Planning Board discussed the several questions posed in the previous study session and come to a conclusion on most of them. In general, the Planning Board decided on a short extension to the regular outdoor dining season, treating all outdoor dining establishments alike, enhanced material and appearance standards, and allowing expansion of patios with neighbor consent. During this study session, the Planning Board also reviewed seating data for the different outdoor dining establishments, and was provided a map of all outdoor dining in the City, which is heavily concentrated downtown. Ultimately, the Planning Board asked Staff to take their comments and work them into a new revised set of ordinance amendments to review on February 9, 2022.

Study Session #8 Summary

On February 9, 2022, the Planning Board worked on fine-tuning a set of ordinance amendments to try to finalize a few of their discussion points, and make sure the intent of the original direction of the City Commission was met. The Planning Board made several revision requests that were aimed at clarifying different aspects of the proposed ordinance, but especially relating to the barriers and enclosure regulations. In addition, the Planning Board made some requests to review various site plans from approved outdoor dining patios in the City to help guide the final discussions on the placement of patios, and other design limitations.

Study Session #9 Summary

On March 9, 2022, the Planning Board took another long look at the proposed ordinance language and offered several minor changes to the text in attempts to offer further clarity and consistency throughout the ordinance. In addition, the Planning Board discussed the remaining issues that were in need of direction. In short, the Planning Board decided that they did not wish to restrict outdoor dining patios to one contiguous patio, but did express interest in restricting platform dining to the street with no impingement on the furniture zone. Additionally, the majority of the Planning Board did not feel as though fixed awnings were appropriate over outdoor dining platforms, and sought additional language to restrict overhead weather protection to umbrellas on platforms. Finally, the Planning Board did not feel as though the numbers of platforms per block should be restricted.

Public Hearing #1 Summary

On March 9, 2022, the Planning Board moved to set a public hearing date of April 13, 2022 for a final review and recommendation to be forwarded to the City Commission. Due to a noticing issue, the Planning Board reset the public hearing to May 11, 2022. At the public hearing, the Planning Division provided finalized ordinance language based on Planning Board comments, but also re-circulated the language to each department, as well as the City Attorney to ensure that the language addressed their concerns, and would provide consistent and enforceable regulation.

Ultimately, a motion to recommend approval to the City Commission failed 3-4. The driving factors behind the failed vote were concerns over the impact of the amended ordinance language on existing establishments, and some lingering design questions

Joint Meeting Summary

On June 20, 2022, the Planning Board and City Commission held a joint meeting to discuss a few remaining policy considerations related to the overall outdoor dining study, as well as give the Commission a progress report. Three main questions were posed to the group:

1. Does the Commission wish to engage in any additional public input on the outdoor dining ordinance?
2. Does the Commission wish to consider a cap on the number of outdoor dining platforms permitted in the public rights-of-way by block, by area, or overall?
3. Should the Planning Board require additional documents and plans regarding the integration of valet operations and outdoor dining?

During the meeting, there was consensus that the City should use its constant contact email service to help inform the public of the upcoming outdoor dining study session. In addition, the group was in agreement that a non-conformity or sunset provision would be appropriate based on the nature of some of the larger changes proposed. Finally, it was unanimously accepted that a valet operations plan be included wherever outdoor dining facilities and valet operations coexist.

Study Session #10 Summary

On July 13, 2022, the Planning Board discussed at length the final major design considerations that were unresolved, which included outdoor dining facilities in the furnishing zone, overhead weather protection, and windbreaks. Due

Study Session #11

Based on the comments and direction given by the Planning Board, several adjustments were made to the proposed ordinance language below to reflect the new direction on outdoor dining facility placement, the allowance of canopies and awnings on platforms, and other minor improvements, all of which are provided in **bold blue text** for your convenience.

Sample Motion Language:

(This space intentionally left blank)

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.44, OUTDOOR DINING STANDARDS, 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.

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:



The following outdoor dining standards apply:

A. ~~Outdoor Dining:~~ Outdoor dining is permitted immediately next to the [principal use](#), subject to Site Plan Review, and the following conditions:

- ~~1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area 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 area is immediately adjacent to any single family or multiple family residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.~~
- ~~4. Outdoor dining may be permitted on the sidewalk throughout the year with a valid Outdoor Dining License.~~
- ~~5. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.~~
- ~~6. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.~~
- ~~7. For outdoor dining located in the public right-of-way:~~

- ~~a. All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.~~
- ~~b. 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 5 feet.~~
- ~~c. Outdoor dining is permitted to extend in the right-of-way in front of neighboring properties, with the written permission of the property owner(s) and with Planning Board approval, if such property is vacant or the first floor storefront(s) is/are vacant. Outdoor dining areas may extend up to 50% of the width of the neighboring lot(s) storefront(s), or up to 50% of the lot(s) frontage, if such lot is vacant.~~
- ~~d. City Commission approval is also required for outdoor dining extensions onto neighboring property if the establishment making such a request holds a bistro license.~~
- ~~e. An elevated, ADA compliant platform may be erected on the street in front of an eating establishment to create an outdoor dining area only if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.~~
- ~~f. No such facility shall erect or install permanent fixtures in the public right-of-way.~~

~~8. Outdoor dining is permitted in a B1 District at a rate of 4 seats for every 12 linear feet of store frontage, with no more than 12 seats total per building; no elevated enclosed platforms on the street are permitted in a B1 District.~~

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide harmonious outdoor dining design in order 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 Board, and the conditions below. For the purposes of this section, outdoor dining facility shall mean patios and/or platforms.
 - 1. All outdoor activity including cleaning, maintenance and closing procedures must cease at the close of business or as noted in subsection 2.

2. When an outdoor dining facility 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. Reviews of outdoor dining facilities 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, entertainment, **valet operations, and adjacent outdoor dining facilities.**
 4. Outdoor dining facilities may be permitted to extend in front of neighboring properties or tenant spaces with the written permission of the property owners(s) affected and with Planning Board approval. Written permission must be renewed annually and submitted with the Outdoor Dining Permit application(s) for each outdoor dining facility affected.
 5. Outdoor dining facilities may be permitted on public property only with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent upon compliance with all city codes, including any conditions required by the City or the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining facilities shall be responsible for snow and ice removal, and shall remove snow and ice in a manner consistent with the regulations of the Department of Public Services.
 - iii. All outdoor dining facility elements such as railings, planters, tables, chairs, heaters, umbrellas, and the like must be stored indoors each night between January 1 and March 31 to allow for complete snow and ice removal.
 - iv. Outdoor dining patios located in an alley or passage that contains vehicular traffic are only permitted April 1 through December 31.
 - v. An ADA compliant platform may be erected in the on-street parking space(s) immediately in front of an eating establishment to create an outdoor dining facility from April 1 through December 31, subject to an additional review by the Advisory Parking Committee.
 6. All outdoor facilities 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 facilities are subject to the following design standards:
1. **All outdoor dining elements, fixtures and furnishings must be constructed of high quality and durable materials that are compatible with the establishment and the environment in which the outdoor dining facility is located.**

2. Outdoor dining facilities shall provide and service refuse containers within the outdoor dining facility and maintain the area in good order. Public trash receptacles are not permitted to be utilized by outdoor dining facilities.
3. Outdoor dining facilities 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 5 ft.
5. **Placement of outdoor dining patios shall be limited to either the area immediately adjacent to the building in which an establishment resides, or in the furnishing zone, but not both. Limited exceptions to the placement of outdoor dining patios may be made by the Planning Board where the streetscape conditions demonstrate sufficient space.**
6. Outdoor dining platforms within the adjacent street or parking space(s) shall be designed to be flush with the curb, and may not extend beyond the curb into the furnishing zone except to accommodate accessibility requirements.
7. No such establishment shall erect or install permanent fixtures in the public right-of-way.
8. **Overhead weather protection such as umbrellas, awnings or canopies shall not:**
 - i. Impede sight lines into a retail establishment;
 - ii. Obstruct pedestrian flow within the outdoor dining facility;
 - iii. Obstruct pedestrian or vehicular traffic flow outside the outdoor dining facility;
 - iv. **Measure less than 8 ft. from grade or the finished floor of an outdoor dining platform;**
 - v. **Exceed 10 ft. in overall height;** or
 - vi. Contain signage or advertising.
9. Barriers defining outdoor dining facilities 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 **measured from grade or the finished floor of an outdoor dining platform** except as permitted in subsection 10.
10. Windbreaks are permitted within outdoor dining facilities and shall be affixed to, or integrally designed within a barrier. The total combined height of a barrier and windbreak shall not exceed 60 inches as measured from grade. Windbreaks must be constructed of a clear, rigid and durable material. Eisenglass and other vinyl-based materials are prohibited.
11. Portable heating elements must be maintained and kept in an orderly fashion and in accordance with all applicable fire codes. 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.

12. All service functions and ancillary elements including, but not limited to, trash receptacles, service stations or host/hostess stands must be located within the approved outdoor dining facility, 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. Grandfathering of Nonconforming Outdoor Dining Facilities: Any outdoor dining facility existing at the time of the enactment of this ordinance, or any amendments thereto, that does not conform to the requirements of the district in which it is located may be continued or maintained subject to the following provisions, provided the facilities remain in compliance with the approved site plan and maintain a valid Outdoor Dining Permit:

1. **If a nonconforming outdoor dining facility is destroyed, it shall be repaired, reconstructed or replaced, in conformity with all the provisions of this ordinance, and the remnants of the former outdoor dining facility shall be removed from the property.**
2. **At the time that a non-conforming outdoor dining facility is replaced, moved, renovated, or otherwise changed, the facility must be brought into compliance with the requirements of this ordinance. Routine maintenance, including changing chairs and tables, umbrellas, waste receptacles, or other non-integral features is permitted for all existing outdoor dining facilities.**
3. **In no case shall an outdoor dining facility that does not conform to the requirements of this ordinance or any amendments thereto be continued beyond December 31, 2027.**

ORDAINED this _____ day of _____, 2022 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 3, SECTION 3.04 (C), SPECIFIC STANDARDS, TO REDUCE REDUNANCY AND PROVIDE CONSISTENT OUTDOOR DINING REGULATIONS.

Article 3, Section 3.04 – Specific Standards (Downtown Overlay District)

C. Building Use: Buildings shall accommodate the following range of uses for the various designations on the Regulating Plan of the Downtown Birmingham Overlay District:

1. ...
2. ...
3. ...
4. ...
5. ...
6. ...
7. ...
8. ...
9. ...

10. Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- a. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- b. Alcohol is served only to seated patrons, except those standing in a defined bar area;
- c. No dance area is provided;
- d. Only low key entertainment is permitted;
- e. Bistros must have tables located in the storefront space lining any street, or pedestrian passage. **If the storefront area is not feasible for outdoor dining, alternative outdoor dining facility placement may be considered by the Planning Board;**
- f. **All outdoor dining facilities are subject to the requirements located in Article 4, Section 4.44 of this Ordinance;**
- g. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height; **and**

- h. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro.; and
- ~~i. 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, defined 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.~~
- ~~j. Enclosures facilitating year round dining outdoors are not permitted.~~
- ~~k. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.~~
- ~~l. 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.~~

ORDAINED this _____ day of _____, 2022 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 3, SECTION 3.16, SPECIFIC STANDARDS, TO REDUCE REDUNANCY AND PROVIDE CONSISTENT OUTDOOR DINING REGULATIONS, AND TO PERMIT OUTDOOR DINING IN ACTIVE VIAS.

Article 3, Section 3.16 – Specific Standards (Via Activation Overlay District

- A. Permitted and Prohibited Uses: To enhance the amenity and character of vias, **and** to enhance visual interest and encourage surveillance of urban spaces, active uses should be provided at the ground floor level along the majority of the edges of buildings located adjacent to vias. While buildings should accommodate these uses, care must be taken to avoid conflict with pedestrian movement in the via. To specifically encourage the activation of vias, the following uses are permitted within Active, Connecting, and Destination Vias:

1. Retail sales and display;
2. Public plazas and informal gathering spaces;
- 3. Outdoor Dining;**
4. Art display; and
5. Community Gardens.

In addition, the following ~~uses are~~ **use is** also permitted within Connecting and Destination Vias:

- ~~1. Outdoor dining; and~~
2. Special Events.

The following are specifically prohibited in all vias:

1. Automatic food and drink vending machines outdoors;
2. Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services;

3. Unscreened trash receptacles; and
 4. Unscreened outdoor storage.
- B. ...
- C. ...

ORDAINED this _____ day of _____, 2022 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD DEFINITIONS FOR ENCLOSURE, OUTDOOR DINING PATIO, AND PERMANENT FIXTURE.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): A vertical wall, panel, or other material that extends above 60 in. in height which provides extended relief from weather and impedes physical and/or visual access to the outdoor dining space. For the purposes of this definition, enclosure does not include exterior building walls.

Furnishing Zone: The area between the sidewalk and the curb where streetscape amenities such as planter boxes, streetlights, and tree wells are typically located.

~~**Outdoor Café:** An outdoor area accessory to an existing restaurant operation designated for consumption of food prepared within the restaurant and subject to the provisions of this ordinance.~~

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.

Outdoor Dining Platform: A defined outdoor area accessory to an existing food and drink establishment designated for consumption of food and/or drink prepared within the establishment that is located in a parking space and/or street 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.

ORDAINED this _____ day of _____, 2022 to become effective 7 days after publication.

Therese Longe, Mayor

Alex Bingham, City Clerk



MEMORANDUM

Planning Division

DATE: August 10, 2022

TO: Planning Board Members

FROM: Nicholas Dupuis, Planning Director

SUBJECT: The Birmingham Plan 2040 – Draft #3 Update and Remaining Process

The City of Birmingham is expecting the third and final draft of the Birmingham Plan 2040 in August of 2022. Upon receipt of Draft #3, the original schedule of review (attached) called for one review at the Planning Board level, the required 63-day public noticing period, and one review at the City Commission level. Depending on the date of delivery of Draft #3, the remaining schedule of review should closely resemble the following:

Date	Meeting Type	Action Needed
September 14, 2022	Planning Board	• Present final draft. • Board recommends to the City Commission that the Plan be distributed for public comment (minimum of a 63-day period).
October 3, 2022	City Commission	• Vote to authorize the 63-day distribution period for the final, draft Master Plan.
<i>Required 63-Day Public Notice Period</i>		
December 14, 2022	Planning Board	• Present the final Plan and hold a public hearing. Present / discuss comments received during the distribution period. • Adopt by resolution; recommend to the City Commission for adoption.
January 2022 (Exact Date TBD)	City Commission	• Present the final Plan and hold a public hearing. • If prepared to do so, the City Commission may adopt the Plan by resolution.

Summarizing key proposals

Approach to reviewing drafts 1 - 3

- Detailed schedule
- City Commission and Planning Board have multiple feedback opportunities

Themes and key objectives

- 11 draft Master Plan themes
- Focus on limited number of key objectives as review plan during public meetings

Engagement through adoption

- Neighborhood proposal packets
- Minimum 11 public meetings (CC + PB)
- *Option:* Additional engagement methods at beginning of 2nd draft review

Proposed drafts review

Draft 1 – current draft Master Plan

Affirm and confirm process for completing this review:

1. **Planning Board meetings.** 2 completed + 3 additional review meetings, focused on receiving input on themes and key objectives + public comment on same.
2. **Neighborhood proposal packets.** Prepare and distribute neighborhood proposal packets, by area, for review and comment.
3. **City Commission meeting.** Receive Commissioners' feedback and direction on proposed revisions to 1st draft, per PB recommendation.

Outcome:

Broad consensus on themes and key objectives for consultant revision of 1st draft

Proposed drafts review



Draft 2

Robust review:

1. **Planning Board meetings.** 4 meetings focused on strategic issues concerning themes and key objectives.
2. **City Commission / Planning Board joint meeting.** 1 meeting to finalize 2nd draft and authorize distribution of plan for review by entities required by state planning law.

***OPTION:** Conduct additional public engagement, as authorized by Commission in December.*

Outcome:

Complete draft with substantial and broad support, consultant team able to make final revisions

Proposed drafts review



Draft 3 (final)

Adoption actions:

1. **Planning Board public hearing.** 1 meeting to conduct public hearing and adopt plan.
2. **City Commission public hearing.** 1 meeting to conduct public hearing and adopt plan.

Outcome:

Adopted,
implementation-ready
Master Plan



AGENDA
REGULAR MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY AUGUST 24, 2022 – 7:30 PM
151 MARTIN ST., CITY COMMISSION ROOM 205, BIRMINGHAM MI*

The City continues to recommend the public wear masks while attending City meetings per CDC guidelines. The cases of COVID-19 are increasing in the area. All City employees, commissioners, and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.

- A.** Roll Call
- B.** Review and Approval of the Minutes of the Regular Meeting of **August 10, 2022**
- 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
 - 1. **35106 Woodward – Whole Dental Wellness (Postponed from July 27, 2022) – Final Site Plan and Design Review request for new addition to rear of building.**
 - 2. **295 Elm St. – Forest Townhomes – Preliminary Site Plan Review request for new attached single family units**
 - 3. **183 N. Old Woodward – Paris Baguette – Design Review request for new outdoor dining facility.**
- J.** Study Session
 - 1. **D4 Parking Standards – Ordinance Amendment Request (Postponed from July 27, 2022)**
- K.** Miscellaneous Business and Communications:
 - 1. Pre-Application Discussions
 - 2. Communications
 - 3. Administrative Approval Correspondence
 - 4. Draft Agenda – **September 14, 2022**
 - 5. Action List - 2022
 - 6. 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**](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).



AGENDA
REGULAR MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY SEPTEMBER 14, 2022 – 7:30 PM
151 MARTIN ST., CITY COMMISSION ROOM 205, BIRMINGHAM MI*

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- A.** Roll Call
- B.** Review and Approval of the Minutes of the Regular Meeting of **August 24, 2022**
- 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 – Final Draft**
 - 2. **Outdoor Dining**
- K.** Miscellaneous Business and Communications:
 - 1. Pre-Application Discussions
 - 2. Communications
 - 3. Administrative Approval Correspondence
 - 4. Draft Agenda – **September 28, 2022**
 - 5. Action List - 2022
 - 6. Other Business
- L.** Planning Division Action Items
 - 1. Staff Report on Previous Requests
 - 2. Additional Items from Tonight's Meeting
- M.** Adjournment

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Planning Board Action List – 2022 (Approved)

Topic	General Goals	City Commission Directive?	Quarter	Status	
				In Progress	Complete
2040 Master Plan	Adopt a new comprehensive master plan.	☒	Ongoing	☒	☐
Outdoor Dining	Study the Outdoor Dining Ordinance re: enclosures, expansions, etc.	☒	1 st (January-March)	☒	☐
Window Standards (Glazing)	Update window standards to help support building renovation and the Energy Code requirements.	☐	1 st (January-March)	☒	☐
Barrier-Free Ramps	Reduce unintentional restrictions on handicap ramps in the front setbacks.	☐	2 nd (April-June)	☒	☐
Side Yard A/C	Update the ordinance to address issues with side yard a/c units.	☐	2 nd (April-June)	☒	☐
Front Setback Rules	Consider revisions to the setback ordinances in R1-R3 to address 200 ft. calculations rule.	☐	3 rd (July-September)	☒	☐
Lighting Standards	Remove conflicting regulations regarding photometric plans.	☐	3 rd (July-September)	☐	☐
Impervious Surface Definition	Clarify definition to promote the infiltration of storm water.	☐	4 th (October-December)	☐	☐
Health Club/Studio Use	Consider allowing health/fitness type activities in more areas of the City.	☐	4 th (October-December)	☐	☐

Next Up...

Topic	General Goals	City Commission Directive?	Quarter	Status	
				In Progress	Complete
Dumpster Enclosures	Expand the materials permitted/not permitted in dumpster enclosures.	☐	-	☐	☐
Balcony/Terrace Enclosures	Clarify and add regulations for the enclosure of outdoor living space.	☐	-	☐	☐
Lot Combination Process	Review the process for lot combinations to add clarity to approval standards.	☐	-	☐	☐
Mixed Use Requirements	Consider changing the requirements for the stacking of mixed uses.	☐	-	☐	☐
Review Processes for Public Projects	Clarify review process for projects on public property.	☐	-	☐	☐
SLUP Application Process	Clarify the SLUP process in terms of the order of board/commission review.	☐	-	☐	☐
Retail Definition	Revisit the retail definition to address any concerns about first floor uses.	☐	-	☐	☐
Medical Marijuana & CBD	Update the Zoning Ordinance to help regulate Medical Marijuana and CBD through ordinance language.	☐	-	☐	☐
Sustainability Initiatives	Prepare a sustainability agenda to increase Birmingham's resilience.	☐	-	☐	☐
Lighting Standards	Review lighting standards for residential districts to reduce light pollution and nuisance.	☐	-	☐	☐
Landscaping Standards	Consider amendments to permit synthetic planting materials.	☐	-	☐	☐
Social Districts	Study the state regulations and the City to help draw district boundaries.	☒	-	☐	☐
Food Trucks	Study the application of food trucks in the City in terms of locations, restrictions, etc.	☒	-	☐	☐
Leaf Blowers	Study the potential to restrict leaf blowers in regards to noise/pollution	☒	-	☐	☐

Mixed-Use Requirements for Bonus-Stories in the Triangle District	Define the mixed-use requirements in the Triangle District to receive bonus-stories.	☐	-	☐	☐
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