City of Birmingham
A Walkable Community

MEMORANDUM

Community Development

DATE: **December 29, 2014**

TO: **Joe Valentine, City Manager**

FROM: **Jana L. Ecker, Planning Director**

Re: **Set Public Hearing to consider a Special Land Use Permit and Final Site Plan for All Seasons Senior Living at 820 E. Maple**

The Planning Division requests that the City Commission set a public hearing date for **February 9, 2015** to consider an application for a Special Land Use Permit ("SLUP") and Final Site Plan Review for All Seasons Senior Living at 820 E. Maple. The property is currently zoned O-2, Office-Commercial, and MU-5 and MU-3 in the Triangle Overlay District. All of these zoning districts permit food and drink establishments serving alcoholic liquors as a commercial permitted use requiring a Special Land Use Permit.

On May 10, 2010, the City Commission adopted ordinance amendments to Chapter 10, Alcoholic Liquors, and Chapter 126, Zoning, to permit the use of Economic Development Licenses in certain areas within the City. Two applications for Economic Development Licenses were previously approved for The Stand (formerly Zazios) and Triple Nickel (formerly Crush). The parcel known as 820 E. Maple is located in the areas identified allowing the use of Economic Development Licenses.

On December 10, 2014, the applicant obtained a recommendation of approval from the Planning Board on the Final Site Plan and Special Land Use Permit, with the condition that the applicant obtain a variance from the Board of Zoning Appeals to operate with a liquor license on the south portion of the property. The City Attorney has since ruled that no variance is necessary as the operation of an Economic Development liquor license is permitted anywhere on the parcel upon approval of a SLUP. Thus, the applicant now seeks to obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit.

Please find attached a draft SLUP Resolution, as well as the staff report and relevant meeting minutes for your review.

SUGGESTED ACTION:

To set a public hearing date for **February 9, 2015** to consider an application for a Special Land Use Permit and Final Site Plan for All Seasons Senior Living at 820 E. Maple.

ALL SEASONS SENIOR LIVING
820 E. MAPLE
SPECIAL LAND USE PERMIT
2015

WHEREAS, Hospitality of Birmingham LLC filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment in the O-2 zone district in accordance Article 2, Section 2.37 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the south side of E. Maple;

WHEREAS, The land is zoned O-2, and is located within the Triangle Overlay District, which permits the operation of food and drink establishments serving alcoholic beverages with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit and Final Site Plan for 820 E. Maple;

WHEREAS, The Planning Board on December 10, 2014 reviewed the application for a Special Land Use Permit and Final Site Plan and then recommended approval of the application with the condition that the applicant obtain a variance from the Board of Zoning Appeals to operate with a liquor license on the south portion of the property;

WHEREAS, The City Attorney has since ruled that no variance is necessary as the operation of an Economic Development liquor license is permitted anywhere on the parcel upon approval of a SLUP;

WHEREAS, The Birmingham City Commission has reviewed Hospitality of Birmingham LLC's Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that Hospitality of Birmingham LLC's application for a Special Land Use Permit and Final Site Plan at 820 E. Maple is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. Hospitality of Birmingham LLC shall abide by all provisions of the Birmingham City Code; and

2. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Hospitality of Birmingham LLC and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Hospitality of Birmingham LLC to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that Hospitality of Birmingham LLC is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, subject to final inspection.

I, Laura M. Pierce, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on February 9, 2015.

_____

Laura M. Pierce, City Clerk

MEMORANDUM

Community Development

DATE: **December 3, 2014**

TO: **Planning Board members**

FROM: **Matthew Baka, Senior Planner**

SUBJECT: **Report for Final Site Plan Review & Special Land Use Permit**
820 E. Maple – All Seasons of Birmingham

Executive Summary

The subject site is located at 820 E. Maple, on the south side of Maple, on the southeast corner of Maple and Elm. The parcel is located in the Triangle District and zoned MU-5 in the front along Maple, and MU-3 in the rear adjacent to single family residential. The applicant, All Seasons of Birmingham, is seeking approval of an Economic Development Liquor License under Chapter 10, Alcoholic Liquors, of the City Code. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with an Economic Development License within the City of Birmingham. Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the use of an Economic Development License.

1.0 Land Use and Zoning

1.1 Existing Land Use – Construction of a four story, mixed use building is in progress on the existing site. Previously the site contained an abandoned funeral home and a large surface parking area. Land uses surrounding the site are retail, commercial and single family residential to the rear.

1.2 Existing Zoning – The property is currently zoned MU-5 in the front along Maple, and MU-3 in the rear adjacent to single family residential in the Downtown Triangle District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.

1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Office/ Commercial	Office/ Single Family Residential	Office/ Commercial	Office
Existing Zoning District	O-2, Office Commercial	MU-3 and ASF-3	MU-3 & MU-5	MU-5
Downtown Overlay Zoning	D-2	N/A	N/A	N/A
Triangle Overlay District	N/A	MU-3 and ASF-3	MU-3 & MU-5	MU-5

1.4 Proposed Use – The proposed independent senior living units and live/work units within the building currently under construction are permitted in the Triangle Overlay District. The applicant was previously approved for a full service building, including the accessory uses such as a banking center, salon, cleaners, restaurant, bar, and gathering spaces.

At this time, the applicant is requesting approval of a SLUP to allow the use of an Economic Development Liquor License for the first floor food service uses, including the restaurant dining room, café and bar area, club dining, and a formal dining area and game room which will be in use only occasionally for specific events. Chapter 126, Article 3, section 3.04(C)(11) Building Use, states that:

> Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development, are permitted with a valid Special Land Use Permit only on those parcels on Woodward Avenue identified in Map 3.1.

The proposed location for the use of the Economic Development Liquor License at 820 E. Maple Avenue is on one of the parcels identified in Map 3.1 (see attached). However, only the northern portion of the property is located within the designated area identified in Map 3.1. The location of the food service areas where alcohol service is proposed is located on the southern portion of the property, which is not included in the area identified in Map 3.1. **Thus, the applicant will be required to move the areas dedicated to the service of alcohol to the northern portion of the property or obtain a variance from the Board of Zoning Appeals.**

2.0 Screening and Landscaping

3.1 Screening – No changes are proposed at this time.

3.2 Landscaping – No changes are proposed at this time.

3.0 Parking, Loading, Access, and Circulation

4.1 Parking – No changes are proposed at this time.

4.2 Loading – No changes are proposed at this time.

4.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.

4.4 Pedestrian Access & Circulation – No changes are proposed at this time.

4.5 Streetscape – No changes are proposed at this time.

4.0 Lighting

No changes are proposed at this time.

5.0 Departmental Reports

6.1 Engineering Division – No concerns were reported by the Engineering Division.

6.2 Department of Public Services – No concerns were reported from DPS.

6.3 Fire Department – The only comments provided by the Fire Dept. related to the request for a liquor license is that the proposed seating layout in the dining areas is acceptable.

6.4 Police Department - No concerns were reported from the Police Dept.

6.5 Building Division – No concerns were reported from the Building Division.

6.0 Design Review

No changes are proposed at this time to the exterior of the building. The Final Site Plan and Design for the All Seasons building was approved by the Planning Board on October 10, 2012 (see attached minutes).

7.0 Downtown Birmingham 2016 Overlay District

The site is not located within the Downtown Birmingham Overlay District.

8.0 Selection Criteria for Economic Development Licenses

As noted above, Article 3, section 3.04(C)(11) Building Use, of the Zoning Ordinance permits the use of Economic Development Licenses in the Overlay District on certain parcels, if approved as a SLUP by the City Commission. In determining whether to grant approval of a SLUP for an Economic Development License, Chapter 10, section 10-62 establishes the following criteria:

> **Selection criteria.** In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-42, the commission shall consider the following non-exclusive list of criteria to assist in the determination of whether any economic development licenses should be approved:
>
> a) **Whether the amount of investment by the applicant in the proposed development involves a substantial investment in the City. The City deems mixed use, multi-story projects resulting in a 500% increase in assessed value post-development over the pre-development assessed value of the parcel, or a minimum investment of $10,000,000, whichever is less, to be a substantial investment in the City**. However, special circumstances may warrant flexibility on the minimum investment at the sole discretion of the City Commission.
> b) The applicant's **demonstrated ability to finance** the proposed project.
> c) The applicant's **track record with the city** including responding to city and/or citizen concerns.
> d) Whether the applicant has an **adequate site plan** to handle the proposed liquor license activities.
> e) Whether the applicant has **adequate health and sanitary facilities**.
> f) The **establishment's location in relation to the determined interest in development**.
> g) The **extent that the cuisine offered by applicant is represented in the city**.
> h) The **percentage of proceeds from the sale of food products as compared to the sale of alcoholic beverages**.
> i) Whether the applicant has **outstanding obligations to the city** (i.e. property taxes paid, utilities paid, etc.).

The selection criteria provided above must be considered to provide a recommendation to the City Commission as to whether or not to approve the operation of an Economic Development License at All Seasons of Birmingham.

As the chart below indicates, the mixed use, four-story building that is currently under construction has resulted in a 2468% increase in assessed value post-development over the pre-development assessed value of the parcel, and an investment of over $18,000,000 in the City.

The development of the All Seasons qualifies as a substantial investment in the City. In addition, the applicant has thus clearly met the requirement to clearly demonstrate an ability to finance the project, as the four story building is nearing completion and numerous leases have already been signed by future tenants.

The applicant has worked with the City to ensure that construction and staging have provided minimal impact on the surrounding streets and businesses. The applicant has been working with the City to address the issues and complaints that have arisen during construction.

The proposed All Seasons building was designed to accommodate the proposed food and liquor sales from the outset, and is adequate to handle such activities. The applicant has submitted two seating plans demonstrating typical and maximum seating for the various service areas on the first

Project and Property Address	Actual Dollars	State Equalized Value
Pre-Development Value (Land Only)	$759,934	$379,970
Investment in New Building	$18,000,000	$9,000,000
Total Post-Development Value (Building and Land)	$18,759,934	$9,379,970
Increase in Value	2468%	2468%

floor.

Plan A, as described by the applicant, demonstrates the seating layout for normal (non-event) operations. This layout shows seating in six (6) areas of the first floor including the dining room (62 seats), the café (26 seats), club dining and lounge (47) seats, the game room (16 seats), formal dining area (8 seats), and the Library (13 seats) for a total of 159 seats under “normal” operations.

Plan B illustrates the proposed layout for entertainment and grand/major events. In this scenario the living room would be filling arranged with 61 seats with the dining room and café being open with 88 additional seats for a total of 149 seats. The applicant also indicates that additional areas of the first floor would be open for 100-150 guests to stand/stroll.

Plan C illustrates the proposed seating for the roof top terrace of 52 seats.

The maximum occupancy of the food service areas in which alcohol will be served include 90 seats in the open dining area, 68 seats in the café area and bar, 17 seats in the formal dining room, 24 seating in the game room and 82 seats in the club dining area and lounge, for a maximum total of

281 seats on the first floor. **The numbers of seats listed on the plans do not coincide exactly with the number of seats shown on the plans. The applicant must determine the number of seats proposed and ensure all documents provide consistent information.**

Adequate health and sanitary facilities have been approved for the food and beverage area.

The proposed location for the use of the Economic Development Liquor License at 820 E. Maple Avenue is on one of the parcels identified in Map 3.1 (see attached). Thus, All Seasons is proposed within the area targeted for economic development by the City Commission, which includes parcels along Woodward Avenue and within the Triangle District. However, as noted above, only the northern portion of the property is located within the designated area identified in Map 3.1. The location of the food service areas where alcohol service is proposed is located on the southern portion of the property, which is not included in the area identified in Map 3.1. **Thus, the applicant will be required to move the areas dedicated to the service of alcohol to the northern portion of the property or obtain a variance from the Board of Zoning Appeals.**

The applicant has stated that All Seasons is proposing to serve a varied dining and meal service for its **residents and their guests only**. The applicant has advised that dining and bar areas will not be open to the general public. **A menu has been provided at this time regarding the type of food or beverages to be served, the variety of food to be offered and the times of the day it will be offered.**

The applicant has advised that the percentage of proceeds from the sale of food products as compared to the sale of alcoholic beverages is expected to be 90% food to 10% alcoholic beverages. The eating areas are designed to provide a “country club” lifestyle experience for residents.

The applicant does not have any outstanding obligations to the City.

The applicant will be required to provide a signed copy of the required contract with the City that must be fully executed upon approval of the SLUP and Economic Development license, in addition to obtaining a liquor license from the State. The applicant has advised that they have applied for an On Premise Redevelopment License with a Permit to allow Sunday am and pm sales as well as a Living Quarters Permit. The name of the entity that will hold the license, if issued, is proposed to be Hospitality of Birmingham, LLC, which is jointly owned by Samuel Beznos and Douglas Etkin.

9.0 Approval Criteria for Final Site Plan

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

(1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.

(2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.

(3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.

(4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.

(5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.

(6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

10.0 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

> Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the **City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed** for the site described in the application of amendment.
>
> The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

11.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant's request for Final Site Plan and a SLUP to permit the use of an Economic Development License for All Seasons at 820 E. Maple Avenue with the following conditions;

1. The applicant obtains a variance from the Board of Zoning Appeals to operate with a liquor license on the south portion of the property;
2. The applicant submit revised seating plan that accurately display and list seating.

12.0 Sample Motion Language

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant's request for Final Site Plan and a

SLUP to permit a Economic Development License for All Seasons at 820 E. Maple Avenue with the following conditions;

1. The applicant obtains a variance from the Board of Zoning Appeals to operate with a liquor license on the south portion of the property;
2. The applicant submit revised seating plan that accurately display and list seating.

OR

Motion to recommend DENIAL of the Final Site Plan and SLUP to the City Commission for All Seasons at 820 E. Maple.

OR

Motion to recommend POSTPONEMENT of the Final Site Plan and SLUP to the City Commission for All Seasons at 820 E. Maple, with the following conditions:

1. _____

CONTRACT FOR USE OF A LIQUOR LICENSE
(ECONOMIC DEVELOPMENT)

This Contract is entered into this ____ day of _____, 2015, by and between **HOSPITALITY OF BIRMINGHAM, LLC**, whose address is 820 E. Maple Avenue, Birmingham, MI, (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

R E C I T A L S:

WHEREAS, Licensee wishes to purchase a Redevelopment On Premise liquor license from the State of Michigan for use at 820 E. Maple Avenue, Birmingham, Michigan (Property); and

WHEREAS, Licensee represents to the City that in connection with the aforementioned use that it will be making a capital investment in the location where the license is to be used in a mixed use, multi-story building that will result in a 500% increase in assessed value post-development over the pre-development assessed value of the parcel, or a minimum investment of $10,000,000, whichever is less and,

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the use of a Redevelopment On Premise liquor license pursuant to MCLA §436.1501 of the Michigan Liquor Control Code of 1998; and

WHEREAS, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned use of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the use of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

1. Licensee shall be permitted to use its liquor license on the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission in accordance with Section 10-63. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.

2. Licensee further acknowledges that it must secure a special land use permit as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the special land use permit is a violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.

3. Licensee acknowledges that it may apply for entertainment, dance and additional bar permits from the Michigan Liquor Control Commission for use only on the premises described in its special land use permit. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any other permit endorsements to its liquor license whether available in

the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.

4. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

5. Licensee agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

6. Licensee agrees that its failure to follow any of the provisions herein shall be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the special land use permit, either of which would prohibit Licensee from operating its establishment. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the special land use permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and/or revocation of the special land use permit, as well as enforcing such other rights as may be available at law or in equity.

7. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, including all costs and actual attorney fees, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of its establishment at the Property.

8. In the event Licensee fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

9. Any disputes arising under this Contract, not within the jurisdiction of the Michigan Liquor Control Commission, shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of the City. The Licensee shall notify the City of any dispute it has arising out of this Contract and shall demand that the City elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The City shall make its election in writing within thirty (30) days from the receipt of such notice. If the City elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the City fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

10. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

11. If any provision of this contract is declared invalid, illegal or unenforceable, such provision shall be severed from this contract and all other provisions shall remain in full force and effect.

12. This Contract shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements herein contained are hereby declared binding on the CITY OF BIRMINGHAM and Licensee. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

By: _____

Its: _____

Date: _____

CITY OF BIRMINGHAM

By:_____
Stuart Sherman, Mayor

Date: _____

By:_____
Larua Broski, Clerk

Date: _____

Planning Board Minutes
October 10, 2012

FINAL SITE PLAN REVIEW
820 E. Maple Rd.
All Seasons of Birmingham (formerly Hamilton Funeral Home)
To allow construction of a five-story/three-story independent senior living residence, including 123 apartments and 8 live/work units

Mr. Clein announced he will recuse himself from this hearing as he has in the past because his firm, Giffels Webster, has a contractual obligation with the entities involved in this project.

Ms. Ecker advised the subject site, 820 E. Maple Rd., is currently the site of the former Hamilton Funeral Home, and has a total land area of 1.84 acres. It is located on the southeast corner of E. Maple Rd. and Elm St. in the Triangle District. The applicant is proposing to demolish the existing buildings and surface parking lot to construct a 150,449 sq. ft., five-story building along E. Maple Rd., with a three-story section on the southern portion of the property. The building will provide independent senior living units, including 123 multiple family dwelling units, and 8 live/work units along E. Maple Rd.. Parking will be provided at grade behind and/or under the building along the southern property line. The applicant was required to prepare a Community Impact Study in accordance with Article 7, section 7.27(E) of the Zoning Ordinance, as they are proposing a new building containing more than 20,000 sq. ft. of gross floor area.

The applicant appeared at the July 11, 2012 Planning Board meeting and was granted approval of the CIS, but the application for preliminary site plan review was postponed. The applicant revised the proposed plans based on the comments of board members and was granted Preliminary Site Plan Approval with conditions on August 11, 2012.

With respect to the design review, most of the proposed materials and the design have remained consistent since the last time this project was reviewed by the Planning Board. However, since Preliminary Site Plan Review, the awnings over live/work units were changed from fabric to metal to provide a more commercial appearance, and the NW corner entry was recessed 3 ft. In addition, some areas of stone and brick on the previous design have been changed to metal panels, particularly on the top level. Ms. Ecker passed around material samples and colors.

At the July 11, 2012 Planning Board meeting and again at the August 11, 2012 Planning Board meeting, several board members suggested that the applicant consider changing the interior layout of the building to move the common areas to the front of the building to enhance the interaction of residents with street life. However, the applicant has not proposed any significant changes to the interior layout of the building at this time.

The Engineering Dept. has raised the issue that it appears the trash dumpster is about 2 ft. higher with the finished grade than the properties to the south. Therefore, even though a 6 ft. wall is proposed there, from the residential side it will appear to be 8 ft. high because of the change in grade.

In response to a question from Mr. Williams, Ms. Ecker stated the position of the City with respect to a recorded easement between the former property owner of the site and the adjoining property

owner, Mr. Howard Atesian. This is a private legal matter between the two parties and the City is not an involved party. Ms. Ecker went on to respond to another inquiry from Mr. Williams with respect to utilization of the alley. The City's position is that it is a public alley and all adjacent property owners are entitled to use the alley and it cannot be blocked because of the need for emergency access.

Ms. Lazar inquired about deliveries from Elm St. blocking the street, and Ms. Ecker answered that would not be permitted. Deliveries will be internal to the property.

Mr. Alex Bogaerts, architect for the petitioner, was present with Mr. Mark Abernatha from his office; along with Mr. Maurice Jerry Beznos and Mr. Douglas Etkin, developers of the facility. Mr. Bogaerts stated the barber shop and the bank within the building are intended to be only for the tenants.

Mr. Abernatha explained that the dumpster is screened on all sides and is in the best location possible. Pick-ups will be limited in terms of their frequency and time of day. They have tried to address the neighbors as much as possible. They feel that a pedestrian walkway running south through the parking lot under the building is not necessary because of the landscape and the way the parking has been assigned.

Mr. Bogaerts explained the intent is to give the building a light palette. They want the tenants to feel good and uplifted by their surroundings.

Chairman Boyle asked about proposed signage for the individual live/work units. Ms. Ecker advised that projecting signs will be mounted to the piers.

Mr. Beznos explained that live/work units will be occupied only by tenants of the building and not rented to other businesses. Leases will be for one year.

The chairman called for public comments at 8:25 p.m.

Mr. Howard Atesian, owner of the building to the east, said the easement area is 20 ft. and not 16 ft. as depicted on the plan, and it encompasses the area between his property line and where the subject building will be constructed. All of the proposed landscaping puts the taller landscaping up against his building. However, the court record shows a specific landscaping plan that has all of the large trees and shrubs against the applicant's building and the lower vegetation near his building. Chairman Boyle responded that he has been told by the city attorney that the matter of the easement will be dealt with outside of this Planning Board. Ms. Ecker added if the landscaping is altered, the applicants will have to come back to the Planning Board and/or the staff for administrative approval to amend the plan. Mr. Atesian said for the record that this plan is not according to the court order and he will pursue it beyond that.

Mr. Douglas Etkin, 327 N. Old Woodward Ave., went on the record to say they believe they are in compliance with the easement document and will deal with their neighbor in whatever format or forum that is necessary to work out any of their disagreements.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., spoke to represent 219 Elm St. (Kelly Crossing, LLC), southwest of the subject parcel. He requested the board to consider certain issues

that would make life easier for the people in that area and to put the issues on record as a condition of the site plan:

During demolition and earthwork construction phase

1. Construction traffic must enter and exit from Maple Rd. only;
2. Install a "No Construction Traffic" sign at the Elm St. and alley entrances to the site.

During construction of building

1. Eliminate construction traffic in the public alley;
2. Install "No Construction Traffic" at the alley entrance on Elm St. and to the site;
3. Comply with all construction related City ordinances and regulations;
4. Purchase 14 Arborvitaes for installation on Kelly Crossing, LLC property along its easterly property line. Maintenance will be the sole responsibility of Kelly Crossing, LLC.

During the continuing operation of the site

1. Install permanent signs in the All Seasons parking lot giving notice that the alley exit is only for emergency use and directing vehicular traffic to exit via Elm St.;
2. Issue parking permits for staff and residents of the project;
3. Install signs in the All Seasons parking lot assigning parking areas;
4. Limit commercial truck deliveries to the site in the alley to food vendor delivery and garbage pickup only at the frequency of four trips/week each between 8 a.m. and 5 p.m.;
5. Require that residents of the live/work units shall be the only employees of such business and all live/work tenants must be residents of that live/work unit. Specify office uses only with limited hours of operation.

Other Conditions

1. Continue to allow parking in the alley;
2. Install a "No Stacking" sign at the Elm St. exit from the alley and in the alley.

Ms. Sharon Krindler, owner of the building at 200 Elm St., described the numerous parking problems in the area. She wishes the City would build a parking garage. People coming into the subject facility are going to require caregivers, therapists and all sorts of people that need to park. There just aren't enough parking spaces in the Triangle District.

It was concluded that the southern border of the alley is not marked. The City needs to designate the public space with striping, and also post signage that maintains an open alley at all times. Additionally, Chairman Boyle emphasized if the public has a concern about unloading on the street the City should erect a "No Unloading" sign.

Mr. Williams thought, and Chairman Boyle concurred, that more people in the neighborhood will try to park in the All Seasons lot than the reverse.

Mr. Douglas Etkin emphasized they are strongly opposed to anything past the construction period that the neighbors would like to impose on them. As relates to construction, they intend to be a good citizen. A good stepping off point for their responses will be to not regulate what happens on their property.

Chairman Boyle described how this development of housing for the elderly is very much in line with the goals of the community for the Triangle Area. The applicant has even gone so far as picking up the board's idea of incorporating mixed-use and he applauds them.

Motion by Mr. Williams
Seconded by Ms. Whipple-Boyce to approve the Final Site Plan and Design for 820 E. Maple Rd., All Seasons of Birmingham, subject to the following conditions:

1. **Applicant will be required to enter into a Streetscape Agreement with the City prior to construction;**
2. **The Planning Board specifically approves the use of non cut-off fixtures;**
3. **During demolition and earthwork construction the applicant provide that construction traffic enter and exit the site from Maple Rd. only;**
4. **During demolition and earthwork construction phase the applicant install a "No Construction Traffic" sign at the Elm St. and alley entrances to the site;**
5. **During construction of the building the applicant install a "No Construction Traffic" sign at the alley entrance on Elm St. to the site.**

Mr. Williams added for the record but not to be included in the motion that it is the understanding of the Planning Board that the applicant has agreed to purchase 14 Arborvitae trees for installation on Kelly Crossing, LLC's property in the existing planting strip along Kelly Crossing's easterly property line.

Chairman Boyle took discussion on the motion to the public at 9:03 p.m.

Mr. Mark Highlen with Maple-Elm Development Company, LLC brought up the point that during the post demolition and earthwork construction, restricting traffic from the alley would make the site virtually unbuildable. He asked that the motion be amended to minimize construction traffic through the alley.

Amended by Mr. Williams and accepted by Ms. Whipple-Boyce that item 5 should read:
During construction of the building the applicant endeavor to minimize construction traffic in the public alley to the maximum extent reasonably possible.

Motion carried, 4-0.

ROLLCALL VOTE
Yeas: Williams, Whipple-Boyce, Boyle, Lazar
Nays: None
Recused: Clein
Absent: DeWeese, Koseck

The board took a short recess at 9:12 p.m.

Planning Board Minutes
December 10, 2014

SPECIAL LAND USE PERMIT ("SLUP")
FINAL SITE PLAN REVIEW
820 E. Maple Rd.
All Seasons Senior Living
Request for Economic Development License (postponed from October 22, 2014)

Chairman Clein recused himself on this matter because of a business relationship with the applicant.

Mr. Williams took over as chairman for this application.

Ms. Ecker recalled that the application was missing a lot of detail last time. They have submitted a whole new package for this hearing. The city attorney has recommended that the applicant apply for a use variance based on the location of the license portion of the establishment on the southern portion of the property,

Mr. Baka explained the subject site is located on the south side of Maple Rd., on the southeast corner of Maple Rd. and Elm. The parcel is located in the Triangle District and zoned MU-5 in the front along Maple Rd., and MU-3 in the rear adjacent to single-family residential. Ms. Ecker added that at the time the Planning Board and the City Commission decided to draw the Economic Development License at the same location as the MU-5 designation. Mr. DeWeese commented this is a City imposed technicality because in spirit the applicant is fully meeting the requirements for an Economic Development License.

All Seasons of Birmingham is seeking approval of an Economic Development Liquor License under Chapter 10, Alcoholic Liquors, of the City Code. Chapter 10 requires that the applicant obtain a SLUP and approval from the City Commission to operate an establishment with an Economic Development License within the City of Birmingham. Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the use of an Economic Development License.

The proposed location of the food service areas where alcohol service is proposed is almost entirely on the southern portion of the property, which is outside of the Economic Development License map. ***Thus, the applicant will be required to move the areas dedicated to the service of alcohol to the northern portion of the property or obtain a variance from the Board of Zoning Appeals.***

The food service areas in which alcohol will be served include the open dining area, the café area and bar, the formal dining room, the game room and the club dining area and lounge. The eating areas are designed to provide a "country club" lifestyle experience for residents.

Mr. Seth Tompkins, Attorney for the applicant, was present with Mr. Bob Goyette, Executive Vice-President of the All Seasons Facilities. Mr. Tompkins provided the correct number of seats in the dining areas: Dining Room, 62; Cafe, 26; Living Room, 55. If they located the dining area where it

is zoned for an Economic Development License, they wouldn't be able to have storefronts and office space on E. Maple Rd.

There were no comments from the public at 8:55 p.m.

Motion by Mr. DeWeese
Seconded by Ms. Whipple-Boyce to recommend approval of the applicant's request for Final Site Plan and SLUP to permit an Economic License for All Seasons at 820 E. Maple Rd. with the following condition:
The applicant obtains a variance from the Board of Zoning Appeals to operate with a liquor license on the south portion of the property.

There was no discussion from the audience at 8:57 p.m.

Motion carried, 5-0.

ROLLCALL VOTE
Yeas: DeWeese, Whipple-Boyce, Jeffares, Koseck, Williams
Nays: None
Recused: Clein
Absent: Lazar