BIRMINGHAM CITY COMMISSION / PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 15, 2015
DPS FACILITY, 851 SOUTH ETON
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Stuart Lee Sherman, Mayor, called the meeting to order at 7:30 PM

II. ROLL CALL

ROLL CALL OF CITY COMMISSION:

Present,	Mayor Sherman
	Mayor Pro Tem Hoff
	Commissioner McDaniel
	Commissioner Moore
	Commissioner Nickita
	Commissioner Rinschler
Absent,	Commissioner Dilgard

ROLL CALL OF PLANNING BOARD:

Present,	Mr. Clein, Chairperson
	Ms. Boyce
	Mr. DeWeese
	Mr. Jeffares, Alternate Member
	Mr. Share, Alternate Member
Absent,	Mr. Boyle
	Mr. Koseck
	Ms. Lazar
	Mr. Williams

Administration: City Manager Valentine, City Attorney Currier, Deputy Clerk Arft, Planner Ecker, Assistant Planner Baka, Deputy Police Chief Clemence, Building Director Johnson

III. ITEMS FOR DISCUSSION

A. UPDATE ON TRANSITIONAL ZONING

Mr. Share stated that he has a client with an interest in this matter, and so will not participate in the discussion.

Mr. Baka reviewed the history of the Transitional Zone Overlay discussion. The Planning Board has held several study sessions over the past several years in order to develop a Transition Zoning classification that could be applied to areas of the City that abut single family residential zones and are adjacent to commercial zones and/or located on major thoroughfares. The goal of these study sessions was to identify and revise the zoning classifications of these properties to provide a transition/buffer to the single family neighborhoods through the use of screenwall and landscaping. Additionally, the new zones were crafted to incorporate small scale, neighborhood friendly uses that are likely to be patronized by residents of the immediate area. There are several restrictions proposed to control the new uses that would ensure that new

development would maintain the scale and standards that are expected in the City of Birmingham.

The Planning Board selected fourteen (14) locations throughout the City where these zones are proposed to be implemented. On some existing residential parcels this is proposed to be accomplished through attached single-family or multi-family housing. On commercial parcels, this is proposed to be accomplished through a mixed use zone that permits residential and commercial uses.

Commissioner Rinschler asked if there are any barriers to be resolved, and how the City Commission might help to move this forward.

Mr. Clein stated that there is a misperception about density changes and what that means. The intent for the next public hearing is to show each parcel before and after a rezoning. He thinks that will help to educate the public on what the intent is. The Planning Board will have to determine if this is the sort of change, from a use perspective, that the Board believes will help stimulate the viable use of the properties, while protecting single family residences.

Ms. Boyce stated that this process has come a long way, and it became obvious after the last meeting that people did not understand what was being proposed. She believes that the plan to show what the uses are today and what they would be under the proposal will be very helpful. The plan for the public hearing is to develop a presentation to show the structures today with diagrams and lists of uses would be helpful. She suggested that information be available prior to the public hearing in some way and that the information will be very helpful in answering questions prior to the public hearing.

Commissioner McDaniel said the misunderstanding seems to be focused on increases in allowable density. He stated that the allowable density under existing zoning today is almost no different than what is being proposed.

Mr. Baka noted that is true with the exception of two areas which are Woodward and Quarton (near Gasow) and the corner of W. Maple and Chester. Under the proposal, they would be zoned TZ3 which go up an additional floor.

Commissioner McDaniel suggested a need for a process to review possible reasonable uses that have not been anticipated at this time. Presumably there are standards that are underlying the permitted uses they have already named. He understands there have been some staff discussion of that and thinks it is worth further thought. Mr. Valentine said that could be accomplished with some simple clarification of the language.

Mr. DeWeese thinks that there may be a few tweaks that could be made that might make it more amenable due to complaints he has heard. Residents do not want any expansion beyond office-type uses. There is a basic mistrust that the SLUP process. They believe the reason this is being proposed is for development. As he sees it, we are considering this to add some protections in terms of dimensionality, and to clean up of lack of strategic or overall view toward it, but many homeowners do not view it that way.

Commissioner Rinschler said the goal is to get to the point where the Board decides it has something for the best interests of residents and pass it on to the City Commission for deliberation.

Commissioner Nickita remarked that when the Board worked on the Rail District and tried to list uses for the area, the Board erred on the side of less and some level of flexibility. He suggested that the Board look at the Rail District to perhaps use that approach to formulate a use discussion here. Commissioner McDaniel agreed.

Commissioner Hoff asked Mr. Baka what the residents are unhappy about in the Oakland at Park area and on Brown and what would be allowed under the proposed zoning. He responded those areas would see a change in density going from single family to attached or multi-family.

Commissioner Hoff recognized and appreciates that the Board did a tremendous job on this. She explained this is being done to protect residents, not build up the city.

B. UPDATE ON GATEWAY ORDINANCE

Planning Director Ecker said the owners of the 555 building approached the Planning Board proposing a version of an ordinance amendment, drafted by the applicant which would apply to that site. The Board reviewed it and determined that they do want to look at it holistically, keeping in mind what we want in downtown Birmingham. They do think there is some relevance to adding a gateway zone and recognize that the 555 building is important and would like to see it improved.

Commissioner Moore said we do not want to be in the position of having a developer bringing a plan that needs to have the ordinance changed to accommodate the plan. He agrees with looking at it holistically, extending the ordinance to a broader area, and proceeding, while being sensitive to the economics of the situation. The building does need action and it would really benefit the entire city, so we should not take an extraordinarily long time.

Commissioner Nickita agreed that the Board should look at the broader picture, and not support spot zoning. Planner Ecker noted that are many ways in which buildings are non-conforming in the City. This draft ordinance would not cover Merrillwood or Gateway. We would possibly have another issue with each of those and would have to deal with this again. She said this ordinance could possibly include Birmingham Place.

Mr. Jeffares noted the applicant said thirty variances would be required, and he does not think that it is realistic to expect at the conclusion, there will be no variances required, but fundamental things can be resolved.

Mayor Pro Tem Hoff said the building is rather unique. Planner Ecker confirmed that the draft ordinance would allow new buildings over five stories. She added the applicant wishes to modify the existing building and consider an addition at the south end. Mayor Pro Tem Hoff said that residents are concerned about increased density and bigger buildings.

Ms. Boyce reminded everyone that this language came from the developer and is a wish list of theirs. The Board has much work to do on it.

Mayor Sherman said that the discussion tonight is to provide the Board with the Commission's guidance as to whether the focus should be on this particular building or include other buildings in the area that could possibly be better zoned.

Commissioner Rinschler said we still have the fundamental problem with legal, non-conforming buildings, and suggests the Board address the issue.

Mr. Jeffares noted that getting financing on a non-conforming building is difficult at best, if at all.

Commissioner McDaniel said this is the third time we have tried to do something with this building, and he senses frustration setting in. He agrees very much that we cannot stand on principle and let the building deteriorate.

C. MEDICAL MARIJUANA GROW FACILITIES

The Planning Board recommended to allow grow facilities in the MX district in May 2014. In July, the City Commission decided to delay the decision to gather more information. Planner Ecker noted that numerous calls have been received inquiring about locating grow facilities in the City, and the Board has started reviewing this issue again.

The discussion of the location in the MX area centers on the fact that the area is almost isolated, access is limited due to the train tracks, and police are highly visible in the district due to the range and fuel storage at the DPS facility. Criminal activity is a concern. There is multi-family in the area with more residential projects being reviewed, and is a developing area of the City.

In addition, discussion has taken place to locate the facilities in the downtown area within 200-300 feet of the police station. The downside to that area are the fume issues generated by the grow operations as well as the possible criminal activities aspect. Additional discussion will take place regarding regulations for lighting, fumes, and whether to require a SLUP for this use.

Mr. DeWeese identified the problem as that Birmingham is a built-out community now, and the problem is where to put it legally. He referenced drug-free zones that have been established for locations within 1,000 feet of a park or school.

Attorney Currier clarified that the drug-free zones are penalty statutes attached to drug possession offenses. Selling drugs within that area brings an increased penalty. It does not mean that a grow location cannot be located within the drug-free zone.

Mr. Jeffares asked if the recreational proposals possibly on the ballot next affect this issue. Attorney Currier stated that it is a possibility that marijuana will be legalized soon. Under the law in effect now, growing facilities are only permitted to sell the service, but not permitted to sell marijuana.

Ms. Boyce agrees that placing a facility in a drug free zone is not a problem for the City. She supports putting it in the downtown area, even though it would be expensive for a grower to locate there.

Commissioner Rinschler thinks the downtown location proposal is a non-starter. He thinks it has to be created where it is feasible. He agrees it will be unpopular and create some problems, but does not want to see the Board get involved in repetitive public hearings to debate where a grow facility should be placed. He urged the members to focus in on an area, study it thoroughly, and then let the process take over.

Attorney Currier confirmed that the City is not able to prohibit city-wide lawful uses. He agrees that a thorough study is reasonable, for whatever time is necessary to conduct such a study.

Attorney Currier confirmed for Mayor Pro Tem Hoff that the City ordinance explicitly states that if a use is not permitted, the use is prohibited. He clarified that federal law prohibits the sale and use of marijuana. There is no medical recognition of marijuana benefits in federal law. The State of Michigan Substance Control Act prohibits the use and sale of marijuana and possession of marijuana seeds. The recently enacted Medical Marijuana Act limits medical marijuana use requiring a doctor's certification for its use for certain categories. The Supreme Court has declared that Michigan law creates an exemption from prosecution under state law if using it for medical purposes. It does not create immunity if the federal government chooses to enforce the law.

Mr. DeWeese expressed the difficulty the Board is having with how to comply with the state law in a residential community with an urban core and no open spaces.

Commissioner Moore stated that in the event that recreational marijuana becomes law in 2016, this discussion becomes irrelevant, because then marijuana becomes an agri-business with farms and factory type facilities. Birmingham would be out of the economic equation except for retail sales. In the meantime, the question is how Birmingham can comply when the law is so confusing.

IV. PUBLIC COMMENT

David Bloom, 1591 Stanley, expressed his concern that residents are not being heard regarding Transitional Zoning.

Michael Shuck, 247 Oakland and owner of 267 Oakland, urged against rezoning his street.

V. ADJOURN

The Mayor adjourned the meeting at 9:06 PM.

Cheryl Arft
Deputy Clerk