

Birmingham City Commission-Planning Board
June 20, 2022
Baldwin Public Library – Rotary Room, 300 W. Merrill St.
7:30 p.m.
Vimeo Link: <https://vimeo.com/718541536>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Therese Longe called the meeting to order at 7:30 p.m.

II. ROLL CALL

Commission

ROLL CALL:

Present:

Mayor Longe
Mayor Pro Tem Boutros
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Absent:

None

Planning Board

ROLL CALL:

Present:

Chair Scott Clein
Robin Boyle
Stuart Jeffares
Bert Koseck
Daniel Share
J. Bryan Williams
Jason Emerine, alternate
Nasseem Ramin, alternate

Absent:

Janelle Whipple-Boyce
Mackinzie Clein, student
Andrew Fuller, student

Administration:

City Clerk Bingham, Planning Director Dupuis, City Attorney Kucharek,
City Manager Markus

III. DISCUSSION TOPICS

A. Outdoor Dining

PD Dupuis introduced the topic. At the Mayor's request, PD Dupuis then summarized the current outdoor dining review and approval process.

The Mayor then asked to which establishments the proposed outdoor dining ordinance changes would apply.

CA Kucharek explained there were a number of different possible answers to the Mayor's question. She continued that as part of the current discussion, the Commission could consider adding language to:

- The annual permit application for establishments;
- A possible annual permit agreement to go along with the permit application;
- The SLUP language; and/or
- The ordinance itself

in order to create allowances for certain pre-existing non-conforming conditions, which would help clarify how the ordinance changes would be applied.

The City Attorney continued that she would recommend that the language:

- Be added to either the permit agreement or permit application;
- Be considered for aspects that required substantial financial investment by the establishment and not necessarily for matters of policy, like hours of operation; and,
- Limit the permission for pre-existing non-conformities to a certain number of years in order to allow the establishments to recoup their investment and then to come into compliance.

Chair Clein explained the Board had been concerned that their recommended ordinance changes could punish existing operators who have already made investments into their outdoor dining because of the new SLUP language. He said the Board was seeking the Commission's input in general on the draft outdoor dining ordinance changes and on whether outdoor dining pre-existing non-conformities should be accommodated in some way. He also reassured the Commission that the remaining outdoor dining topics under discussion by the Board were minor and would be resolved soon.

Mr. Williams clarified that the language in C8 would adversely affect a number of establishments whose outdoor dining was previously approved. He noted that since there was no mechanism for pre-existing non-conformities in the SLUP language, a number of establishments would have to undo or otherwise change their recently approved updates to their outdoor dining. He cited freestanding awnings within outdoor dining platforms as one such aspect that would have to be changed. He said he did not think such a requirement would be fair to those establishments, and that at a minimum the pre-existing non-conformities should be allowed for a certain number of years so the establishments could recoup their investments.

In reply to the Mayor, Mr. Williams said he saw no issue with requiring that new outdoor dining requests comply with whatever the present standards would be.

PD Dupuis estimated that about 24 or 25 establishments - or about half - would have their outdoor dining affected by the proposed outdoor dining ordinances if the ordinance changes do not accommodate pre-existing non-conformities in some way. He estimated that about a dozen made significant investments that they would have to change with the proposed outdoor dining ordinances, and that more could lose business from the changes to the proposed outdoor dining ordinances.

The City Manager said it would likely be too complex to individually calculate how long each establishment should be allowed to have pre-existing non-conformities. He recommended that pre-existing non-conformities be limited to a standard number of years and that said limit be applied uniformly to all establishments with pre-existing non-conformities. He said doing so would

not be an unusual provision.

Mr. Jeffares stated that this was the first time that the Board received confirmation that pre-existing non-conformities would no longer be allowed under the presently proposed ordinance change. He explained that public input might increase now that it was clear that the proposed outdoor dining ordinances might not allow for pre-existing non-conformities. He noted that might encourage establishments to participate and provide feedback on the remaining points of contention in the proposed outdoor dining ordinances, which would allow the Planning Board to draw its study to a close.

The Mayor asked Staff whether they thought a pre-existing non-conforming allowance should be limited to major investments or applied to any investments.

CM Markus said he would recommend that it be limited to major investments, and that the recommended amount of time could be determined through conversations between Staff and the Board. He said that did not need to be determined during the present conversation.

Chair Clein concurred with Mr. Jeffares that this was the first time that the Board received confirmation that pre-existing non-conformities would no longer be allowed under the proposed ordinance, and said that might change some of the design discussion at the Board level as a result.

Mr. Williams noted that if establishments are no longer allowed to put outdoor dining in the furnishing zone that it may spur them to apply for an outdoor dining deck. He said that tied into the issue of considering where and how many decks should be permitted within the City.

It was noted that while the meetings were appropriately noticed and took place over the course of ten or eleven months, there were a number of meetings where no members of the restaurant community were present or gave input.

The Chair noted that the Birmingham Shopping District did submit feedback from its members early on and that some comments were also received from establishment owners. He stated that the lack of participation arose as a concern at the Board level and asked whether the Commission shared the concern, and if so, how they would like the Board and Staff to try and address the concern.

CM Markus said it was usual to hear the majority of feedback once an issue reaches the Commission. He said he did not believe that there was much more the Board could have done to solicit feedback.

Mr. Jeffares noted that the BSD represents two different groups, and said it would be helpful to hear those groups' distinct opinions.

Commissioner Baller said it would be helpful to have another joint meeting where the Board explains why they made the choices they did for the ordinance.

After Commission, Board, and Staff discussion about whether there should be further noticing, the consensus was that Staff would look at the City's e-notices and e-alerts options to see what option might help inform the broadest cross-section of stakeholders.

In reply to a question from Mr. Share, CM Markus noted that doing more noticing than the ordinance requires could lead to criticism if and when stakeholders are missed, and to assumptions of heightened levels of noticing down the line. He noted there are many options for stakeholders to receive information from the City, and said that stakeholders bear some responsibility in staying informed.

Mr. Jeffares recommended that the Commission have a workshop at some point in the future to improve the City's noticing procedures, suggesting that some of them are now somewhat outdated.

The Mayor said ~~she was glad to see~~ noted¹ that the ordinance changes would not grant dining establishments any additional rights or privileges that would impinge on other businesses in the City.

The topic then switched to whether the number or locations of outdoor dining platforms should be regulated in some way. PD Dupuis and the Chair introduced that topic.

PD Dupuis added a point of data, stating that there are about 1300 on-street parking spaces in the downtown area and about 26 parking spaces occupied by platforms. He noted that some platforms take up more than one parking space.

In reply to the Mayor, the Chair said that while the Board could add the topic to its action list he personally did not want to try and add this topic to the Board's present work on the outdoor dining ordinances. He said he would rather draw that work to a conclusion so establishments know what the expectations are.

The Mayor agreed that there is a difference between the Board's present work on the ordinances and determining which establishments are granted outdoor dining platforms.

Mr. Jeffares and Commissioner Haig concurred with the Chair and the Mayor.

Commissioner Haig and the Mayor noted that aspects of these issues would need input from other boards and committees, like the Advisory Parking Committee or possibly the Multi-Modal Transportation Board.

In reply to Commissioner Baller, CM Markus stated that any use of public property for outdoor dining that requires a lease agreement will be brought before the Commission by Staff.

CM Markus continued that he agreed that the question of outdoor dining platform allotments is not part of the present ordinance conversation but could be considered in the future. He recommended that Staff and the Board consider guidelines, not requirements, that might consider things like demand on parking in the area, proximity to driveways, or proximity to intersections.

In reply to PD Dupuis, the Mayor said she would be supportive of requiring documentation of valet plans as part of site plan approval.

¹ As amended at the July 11, 2022 meeting

Commissioner Baller concurred. He also recommended that the new Parking Manager should look at valet parking in the City to see how it can be improved.

Public Comment

Kelly Allen, attorney for some dining establishments in the City, said she was unfamiliar with any municipal or state statutes that put time limits on legal non-conforming uses. She said the Commission should also consider not just the cost of outdoor dining infrastructure, but the amount of business that could be lost if it were removed. She said there were also concerns among her clients about the fact that if a SLUP is opened for any reason the establishment is now required to come into compliance with any updated ordinances.

B. Food Trucks

PD Dupuis noted the Commission had discussed food trucks at its March 14, 2022 meeting and stated that those minutes would be provided to the Board for their consideration. He asked the Commission whether they had any further comment to add as guidance.

Commissioner comments were that:

- Acceptable distributions, locations, and timeframes should be considered by the Board;
- Ways of streamlining food trucks requests for neighborhood events should be considered more generally;
- The City should poll special events occurring in non-downtown areas about whether they would consider adding food trucks to their events;
- The Board should design a trial, after which there should be a solicitation of feedback from the community, then evaluation;
- That food trucks ideally will help in placemaking and building community outside the downtown;
- That the City should encourage and facilitate food trucks, and other municipalities do so in a variety of ways; and,
- The Poppleton neighborhood hosts a food truck once a week and could share insights with the Board and Planning Department.

Messrs. Boyle and Jeffares recommended that the City consider using an area outside the downtown as a food truck destination and potential incubator for brick and mortar restaurants.

The Chair asked whether the Commission was tasking the Board with the land use aspects of food trucks, or the programming aspects as well.

There was consensus among the Commissioners that they wanted the Board to focus on the land use aspects.

CM Markus said both the Commission and the Board should be aware of possible concerns from brick and mortar restaurants. He said food trucks should not be an issue in moderation. He said that there should be further discussion about how much of a role the City should play in facilitation, noting that neighborhood associations could take the lead on getting food trucks into the neighborhoods more often. He said the City could also make a point of telling each of its event sponsors that the City is interested in seeing special events with food trucks and could see how that goes. He said he was less sure of how the City could ensure that there would be enough

foot traffic in neighborhoods for it to be worth a food truck operator's while.

C. Social Districts

PD Dupuis introduced the item, noting that the Commission had also discussed social districts at its March 14, 2022 meeting that those minutes would be provided to the Board for their consideration. He asked the Commission whether they had any further comment to add as guidance.

After discussion, there was consensus that the the Commission would explore street closures instead of social districts initially, and that this would not be an item for the Board to consider at this time.

The City Attorney clarified that the only difference between a social district and a street closure is that the former allows open containers of alcohol within a defined area.

CM Markus recommended the Commission consider closing some area near Shain Park.

It was noted that a trial of street closures could potentially lead to considerations of social districts later on.

Commissioner Schafer asked if establishments were aware the City was discussing social districts.

Some anecdotes from Ann Arbor's and Northville's experiences with social districts were mentioned.

Commissioner Haig recommended the City consider holding an event in a parking lot instead of in a street in order to avoid disrupting traffic.

It was discussed that the Commission could communicate with the BSD Board to discuss creating an event with street closures.

The Mayor noted that a food truck could be considered as part of the street closures as well.

IV. PUBLIC COMMENT

The City of Birmingham welcomes public comment limited at the Mayor's discretion to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, state your name for the record, and direct all comments or questions to the presiding officer.

Joe Bongiovanni, resident and restaurateur, stated:

- Social districts are an opportunity to activate under-activated areas;
- Vias would be a perfect venue for a social district, given the controlled flow of traffic, the City's desire to activate them, and the contiguous establishments;
- Creating social districts in the vias might also encourage other establishments to open on vias knowing they have that opportunity;

- Could also designate Shain Park, and could allow the City to host the American Express Wine and Food Festival;
- The discussion about outdoor dining began because Birmingham residents were polled and overwhelmingly asked for expanded outdoor dining options, including off-season;
- The currently proposed changes to the outdoor dining ordinance is largely limiting, in opposition to what residents overwhelmingly requested;
- The questions should be how the community can expand outdoor dining and meet the community needs, and what clarifications need to be made about certain outdoor dining elements;
- Taking away the awnings from establishments would make outdoor dining untenable on many days; and,
- The change to the SLUP contracts, combined with the proposed outdoor dining ordinances, will put some of the dining establishments in a very difficult position.

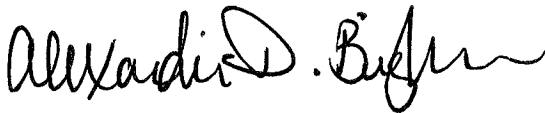
Lorenzo Bongiovanni spoke positively about Birmingham's vibrancy and walkability. He said that supporting the restaurant community and outdoor dining were two ways of doing that. He continued that no ordinance should stand to negatively impact about half of the current establishments with outdoor dining, as estimated by PD Dupuis earlier in the meeting. He encouraged the Commission to continue moving towards vibrancy in its decision making processes.

V. COMMUNICATIONS

Included in the agenda packet.

VI. ADJOURN

Seeing no further comment, Mayor Longe adjourned the meeting at 9:40 p.m.



Alexandria Bingham
City Clerk



Laura Eichenhorn
City Transcriptionist