
**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, OCTOBER 24 2018**

Item	Page
None	

APPROVED

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, OCTOBER 24, 2018**
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 24, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams

Also Present: Alternate Board Member Jason Emerine

Absent: Alternate Board Member Nasseem Ramin; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Administration: Jana Ecker, Planning Director
Matthew Baka, Sr. Planner
Carole Salutes, Recording Secretary

10-175-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF OCTOBER 10, 2018

Mr. Share corrected the second vote on page 6 to 4-3 with Chairman Clein voting against the motion.

Motion by Mr. Share

Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of October 10, 2018 as corrected.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Abstain: None

Absent: None

10-176-18

CHAIRPERSON'S COMMENTS (none)

10-177-18

APPROVAL OF THE AGENDA (no change)

10-178-18

STUDY SESSIONS

1. Projections in the Right-of-Way

Mr. Baka noted that the City permits projections of certain architectural elements into the right-of-way, including awnings, signage, canopies, marquees, planters and other similar elements. Recent renovations have raised questions as to whether projecting elements should be permitted; and if so, whether there should be restrictions on the materials used. The Zoning Ordinance has regulation standards for the size and placement of awnings, but it does not contain comprehensive standards governing the projection of architectural details such as balconies, canopies or other architectural elements projecting into the right-of-way.

Current City policy for the size of projections into the right-of-way is governed by the Michigan Building Code Regulations and enforced by the Birmingham Building Dept. Chapter 32 of Michigan's Building Code. Section 3202, *Encroachments in the Public Right-of-Way* provides specific requirements based upon the height of encroachments above grade.

On August 9, 2018, the Planning Board discussed these issues and developed a list of concerns that they would like to have addressed.

On October 10, 2018 the Planning Board reviewed draft language and decided they did not want language from the Building Code to be in the Zoning Ordinance because it would be redundant.

Accordingly, draft language incorporating the Planning Board's comments was provided for Chapter 4, Section 4.30 (D) Open Space Standards:

4.30 OS-01 (A-C Unchanged)

D. Projection into the right-of-way: Projections into the right-of-way shall be permitted as follows:

1. Projections such as cornices, canopies, awnings, sunscreens, bay windows, bow windows, and other architectural features are permitted as long as they do not support or contain habitable space.
2. A special permit for encroachments into the right-of-way at or above grade must be obtained after final site plan or design approval has been granted by the Planning Board, Design Review Board, or Historic District Commission.
3. All projections more than 4 ft. into the right-of-way will be subject to a lease agreement with the City for the use of air rights.

Mr. Jeffares received confirmation from Ms. Ecker that a bay window does not contain living space. The language should clearly state what is allowed and then nothing else is allowed. Also, the third item only applies in Mixed-Use and Multi-Family Districts and not in Single-Family.

Mr. Baka affirmed for Ms. Whipple-Boyce there is nothing in the Building Code that restricts the length of a projection into the right-of-way.

Mr. Koseck was inclined to leave the term "habitable space" in the draft language and hopefully catch it in the Definitions Section.

Mr. Share thought that projections should be limited to a maximum number of feet or a percentage of the sidewalk width. Further, his sense was that it would be more efficient to have a special permit for encroachments included as part of the Final Site Plan Approval.

Chairman Clein did not think a lease agreement with the City for encroachments more than 4 ft. into the right-of-way was the intent of the City Commission. Rather, he felt the Commission wanted the Planning Board to figure out a way to control atypical projections. He noted that San Francisco, Denver, Portland, and New York City all have extensive ordinances about encroachments.

Ms. Ecker said the Zoning Ordinance should be very clear which projections are allowed and which ones are not, along with standards for each. Staff agrees there should be some sort of maximum. With regard to a lease, Chairman Clein suggested saying that any approval of encroachment may require the applicant to enter into a lease agreement at the sole discretion of the City Commission.

Ms. Ecker thought for the next meeting the board could consider a list of the types of projections, are they wanted; and if so, what are reasonable standards. Also, Chairman Clein wanted to see the ordinances from other cities so that ideas could be drawn from them.

Mr. Share asked for a ruling from the City Attorney about what implication there is under common law if someone is built to the property line whether they have a right to encroach onto the neighbor's property underneath the ground for a reasonable foundation. Further, do they have the right to encroach up above for an eave and whether this applies to a municipality. Then, if it does apply to a city, whether it can be changed by ordinance.

Mr. Koseck noted he is a little concerned about balconies lurking over the right-of-way and what may occur on them such as wash hanging out to dry.

At 7:56 p.m. no one from the public cared to comment on this matter.

10-179-18

2. Retail RFP Response

Ms. Ecker recalled that on June 18, 2018, the Planning Board and City Commission held a joint meeting where the Board expressed a desire to have a private consultant review Birmingham's Retail Frontage Line and make recommendations. There was a general consensus from the City Commission that a consultant would be beneficial to the process.

On August 13, 2018 after receiving a draft RFP from the Planning Board, the City Commission stated that the RFP should be very clear that the goal of the study is to determine how best to organize the existing Redline Retail District in order to continue developing a pedestrian-oriented experience in Downtown Birmingham.

On August 27, 2018 the City Commission approved the final version of the RFP. The RFP was issued on August 30, 2018 and on September 28, 2018 one proposal was received for consideration from Gibbs Planning Group combined with several other firms for a total of \$50,000.

The City Commission will be reviewing and discussing the proposal from Gibbs Planning Group submitted in response to the Downtown Retail Review RFP at their regular meeting on October 29, 2018.

Mr. Williams noticed that on page 30 of the contract it is stated the price will not exceed \$40,000. However, the bid was \$50,000. He liked this expanded scope of the RFP because it includes a more comprehensive review with the idea of strengthening retail.

Mr. Boyle emphasized that the contractor should find out how other communities are dealing with this issue. Also ask them to find out if the actual physical retail space could be much smaller.

Mr. Williams thought the expanded nature of this RFP should encourage the business community to participate more actively.

Ms. Whipple-Boyce was hopeful that Task 4, Future Trends in Retail and Projections for Retail Demand in Similar Communities, would definitely focus on communities like Birmingham and not others.

Mr. Koseck thought it is a great thing that this team has some local knowledge. Other firms that were brought in come from afar and that seems very comprehensive to him.

Mr. Jeffares hoped they would talk to businesses that have left and find out why. Also talk to the merchants that have establishments in other towns and find out what works for them in those towns that Birmingham doesn't have.

Chairman Clein emphatically thanked the City Commission for improving the RFP. He called for comments from the public at 8:12 p.m.

Mr. Andrew Lippin, 211 E. Nine Mile Rd., Director of Research for Gibbs Planning Group, said he grew up in Birmingham and his folks used to own Adventures in Toys in town. He indicated that he wrote the proposal and that he made an error by putting in the conditions of agreement and would like to strike them. Also, he reduced the fee to \$40,000 because they really want this project.

He then offered a little background. Their president, Robert Gibbs, taught a class at Harvard over the summer on this topic, transient retail development. Also, he wrote a book, *Principles of Urban Retail Planning and Development*. Gibbs Planning Group will have a real advantage with respect to getting members of the Birmingham retail community involved. Because he grew up in Birmingham and his parents owned a store, Mr. Lippin said he knows personally a lot of business owners.

10-180-18

3. Regulated Use / Special Land Use Review Process

Ms. Ecker explained that In the past, regulated uses were reviewed solely by the City Commission and did not come before the Planning Board for review. However, the process for the review of regulated uses was amended several years ago and now all regulated use requests require approval of a Special Land Use Permit ("SLUP"), and thus follow the normal course of review for SLUPs.

At the Planning Board meeting on October 10, 2018, an applicant appeared before the board with a pre-application discussion seeking comments on a proposed regulated use on W. Maple Rd. in Downtown Birmingham. The Planning Board requested additional information on the review process for regulated uses as they had not reviewed such an application in the past.

Accordingly, a letter from the City Attorney has been received outlining the review process for regulated uses in anticipation of such an application in the near future. The regulated use process essentially follows the SLUP process as well as the rules for regulated uses. The City Attorney also verified that special conditions can be attached by the Planning Board. This would be an advisory recommendation that would go on to the City Commission who would have the final say.

Mr. Share said there would have to be some set of specific determinations that would cause the Planning Board to make the inference that a certain business operation would be a problem that is injurious to the community. Mr. Boyle noted the issue is that many regulated uses are regulated on moral grounds. He wondered if that is something this Board should be adjudicating on. Mr. Share observed that if the ordinance charges the Planning Board with doing that, then the Board has to find a way to do it.

Chairman Clein determined that the City Attorney should be asked whether the Planning Board's motions should follow the SLUP findings of fact or the regulated use findings of fact, or both separately or together, and which one goes first.

10-181-18

4. Planning Board Action List - Proposed Addition of Minor Items

Ms. Ecker reported that as the Planning Board's Action List is now formally adopted by the City Commission, the Planning Board has requested approval to consider minor items not anticipated for study on the Action List that may arise during the course of the year.

This matter was discussed at the joint meeting of the City Commission and the Planning Board held on October 15, 2018. After much discussion, the consensus of the City Commission was to have City staff prepare a review process for minor amendments to the Action List, and to bring this back to the City Commission for their review and approval.

At this time, the Planning Board may wish to provide a list of minor amendments the Board wishes to be considered by the City Commission at a future meeting for inclusion on the Action List. Items that the Board has mentioned at past meetings have been;

- Dumpster screening and gate materials; and
- The use of certain materials in the Overlay that would cover glass railings and metal panels.

It was agreed that short list is what the Board should put forward right now.

Mr. Jeffares brought up some residential issues that can be considered at a later date.

10-182-18

5. Rooftop Usage in the MX District

Mr. Baka reported that many new buildings, especially mixed-use and multi-family developments, have rooftop amenities such as recreation spaces, terraces, patios, gardens or pools. Providing rooftop amenities allows building owners to maximize space and is often cited as one of the biggest benefits for patrons of such spaces. Most new buildings built in Downtown Birmingham or in the Triangle District include such rooftop uses and amenities. Rooftop amenities are currently permitted on buildings in all zone districts that are built to the allowable number of stories, except in the MX District.

Thus, if a property owner in the MX District constructs a building to the maximum height of four stories with a roof height of 40 ft. or above, no rooftop amenities can be provided based on Section 4.19 (A) (6) which clearly prohibits any use above 40 ft. The District Lofts at the northwest corner of Villa and Eton and the Sheridan senior living center are two presently built properties that are currently prohibited from having uses or occupancy on the roof based on section 4.19 of the Zoning Ordinance.

This matter was discussed at the joint meeting of the City Commission and the Planning Board held on October 15, 2018. After much discussion, the consensus of the City Commission was to consider ordinance amendments to allow rooftop uses and occupation in the MX District so that such uses are permitted in all zone districts that allow mixed-use buildings. In addition, the City Commission also expressed a desire to allow small lobbies or areas of enclosed space around elevators that extend up to rooftops.

Accordingly draft ordinance language was presented for review to consider the first issue of removing a prohibition on rooftop use and occupation in the MX District to allow rooftop uses and amenities that are currently permitted in other mixed-use zoning districts in the City.

Ms. Ecker advised this is phase 1 of the discussion on rooftop uses. The draft language would allow rooftop uses in the MX District but it wouldn't allow a closed space around an elevator or other additions. That is another discussion.

Chairman Clein was concerned this would open the door for people to do whatever they want on the roof without any regulations. He worried about the proximity to residential. Ms. Ecker noted they haven't heard any concerns about rooftop uses in the other districts.

It was decided to tell the City Commission that the Planning Board is concerned about doing what looks to be a simple easy fix, and the Board wants to know whether to go further into the study first.

10-183-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 34977 Woodward Ave., Hazel, Ravines & Downtown -
 - Reduce the height of the awning fascias to 8 in. along Peabody;
 - Along Woodward Ave. and Maple Rd. add two additional metal trellises and climbing hydrangea with landscaping lights;
 - At the corner of Woodward Ave. and Maple Rd. redesign the corner feature to be 8 ft. tall;
 - Remove the steel fence and replace with landscaping.
- 2222 Atard, Eton St. Station II - Replacing current fence that is up but deteriorating with a new vinyl fence.
- 34750 Woodward Ave., Speedway - Replace the gas price faces in two existing ground signs.

Mr. Baka explained the request for an administrative approval at 191 Chester that Planning staff felt required an informal review of the Planning Board:

- Request to extend the patio 6 ft. closer to the sidewalk and get rid of the ground sign on the northeast corner of the site.
Consensus of the Board was to administratively approve this request;
- Request to place condensing units 24 in. off the back of the building (west property line) and screen with shrubs.
Consensus of the Board was not to approve the change in the location of these units due to the close proximity of single family residential to the west.

c. Draft Agenda for the next Regular Planning Board Meeting of November 14, 2018

- Rehearing for 469-479 S. Old Woodward Ave.;
- Five-story addition to 361 E. Maple Rd., Historic Building.

- d. Other Business (none)

10-184-18

PLANNING DIVISION ACTION ITEMS

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

10-185-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 9:10 p.m.

Jana L. Ecker
Planning Director

APPROVED