

**CITY OF BIRMINGHAM  
PLANNING BOARD ACTION ITEMS  
OF WEDNESDAY, JANUARY 23, 2019**

Item	Page
<p><b>D. APPROVAL OF THE AGENDA</b></p> <p><b>1. 695 W. Brown (formerly 525 Southfield Road) – Request for approval of two new attached single family units facing Watkins (Postponed from November 28, 2018, Request to postpone to February 27, 2019).</b></p> <p><b>Motion by Mr. Share</b>  <b>Seconded by Mr. Williams to advance Item F -- 695 W. Brown (formerly 525 Southfield Road) – Request for approval of two new attached single family units facing Watkins (Postponed from November 28, 2018, Request to postpone to February 27, 2019) to precede Item E.</b></p> <p><b>Motion carried, 7-0.</b></p> <p><b>Motion by Mr. Williams</b>  <b>Seconded by Mr. Share to postpone consideration of 695 W. Brown, formerly 525 W. Southfield Road, to February 27, 2019.</b></p> <p><b>Motion carried, 7-0.</b></p>	<p>3</p> <p>3</p> <p>3</p>
<p><b>E. REZONING REQUEST</b></p> <p><b>1. 469 – 479 S. Old Woodward (former Mountain King &amp; Talmer Bank) – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (Postponed from December 12, 2018).</b></p> <p><b>Motion by Mr. Williams</b>  <b>Seconded by Mr. Jeffares that based on a review of the rezoning request by the applicant and the supporting documentation submitted by the applicant, a review of the City’s current Master Plan and the City’s current 2016 Plan, and development trends in the area, and in compliance with 7.02(B)(5)(a) - 7.02(B)(5)(e), the Planning Board adopts the findings of fact in the staff report dated November 8, 2018, and recommends approval to the City Commission for the rezoning of 469 – 479 S. Old Woodward from D-4 to D-5 in the downtown overlay.</b></p> <p><b>Motion carried, 4-3.</b></p>	<p>4</p> <p>10</p>

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JANUARY 23, 2019**

City Commission Room  
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 23, 2019. Chairman Scott Clein convened the meeting at 7:31 p.m.

**A. ROLL CALL**

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

**Also Present:** Alternate Board Member Jason Emerine

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

**Administration:** Jana Ecker, Planning Director  
Laura Eichenhorn, Transcriptionist

**01-11-19**

**B. APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JANUARY 23, 2019**

Mr. Share asked about the definition of 'bag' when referring to spaces on the north end of Park on page five. Planning Director Ecker explained 'bag' means 'to rent spaces by the day'. In order to clarify the meaning, Mr. Share asked 'bag' be changed to 'rent'. Mr. Jeffares provided spelling corrections for the names of Mr. Gebulka, Mr. Minicilli, and Ms. Bloom.

**Motion by Mr. Williams**

**Seconded by Mr. Share to approve the minutes of the Regular Planning Board Meeting of January 9, 2019 as amended.**

**Motion carried, 6-0.**

VOICE VOTE

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

Nays: None

Absent: Ramin

**01-12-19**

**C. CHAIRPERSON'S COMMENTS** (none)

**01-13-19**

**D. APPROVAL OF THE AGENDA**

Planning Director Jana Ecker explained that the property owners of 695 W. Brown requested a further postponement to February 27, 2019 because they are continuing to work with the neighbors on the development issues.

**Motion by Mr. Share**

**Seconded by Mr. Williams to advance Item F -- 695 W. Brown (formerly 525 Southfield Road) – Request for approval of two new attached single family units facing Watkins (Postponed from November 28, 2018, Request to postpone to February 27, 2019) to precede Item E.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Ramin

Chairperson Clein said that while conversation with neighbors is very important, he would prefer issues not be repeatedly postponed as a courtesy to anyone coming to the Planning Board (Board) meetings intending to speak on the matter.

Mr. Koseck noted that the Board's decisions are based on a plan's adherence to the City's ordinances. He noted that while conversations with neighbors are important, those conversations may ultimately not have a significant impact on the approval or disapproval of a project.

Planning Director Ecker agreed that she would provide a list of current ordinances that apply to the site at 695 W. Brown in the February 27, 2019 agenda materials.

**Motion by Mr. Williams**

**Seconded by Mr. Share to postpone consideration of 695 W. Brown, formerly 525 W. Southfield Road, to February 27, 2019.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Ramin

Colleen McGough asked the Board to clarify whether input from the neighbors is considered.

Chairperson Clein explained that the Board encourages neighboring properties to work together in order to come up with the most agreeable situation possible. Noting that, he explained the Board's decisions are based primarily on adherence to the Zoning Ordinance.

**01-14-19**

**E. REZONING REQUEST**

- 1. 469 – 479 S. Old Woodward (former Mountain King & Talmer Bank)** – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (Postponed from December 12, 2018).

Ms. Ecker identified the subject site and reviewed the history of the rezoning requests over the past year. It was noted that the building immediately to the north of 469-479 S. Old Woodward is approximately 115 feet tall, and that the tower to the south of 469-479 S. Old Woodward, attached to the 555 building, is approximately 80 feet tall. The current zoning would allow for an approximately 80 feet tall building at 469-479 S. Old Woodward.

The 2016 Plan would only allow a five-story building at the 469-479 S. Old Woodward site. D-5 zoning allows a building to go up to, but not exceed, the height of an adjacent building. D-4 zoning allows a building to have five stories if the top floor is residential. Planning Director Ecker did not believe there are any other properties zoned D-4 in the Downtown Overlay which are not also in the Parking Assessment District (PAD).

Planning Director Ecker reviewed the requirements for rezoning contained in the Zoning Ordinance and explained the findings related to these as outlined in the staff report, along with the applicant's responses as submitted. After the review was complete, Ms. Ecker noted that based on the Planning Department's review "of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, [...] the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district."

Mr. Rick Rattner, Attorney, was present to represent the applicant. On behalf of the applicant Mr. Rattner and architect Chris Longe gave a presentation first outlining the applicant's adherence to the Zoning Ordinance requirements of Article 7, section 7.02(B)(5), similar to the Planning Department's findings of positive rezoning qualifications of the property, and secondly showing a massing of the proposed building, zoned as D-5, at the 469-479 S. Old Woodward site.

Mr. Rattner began by saying he could not think of another situation in Birmingham where two buildings are zoned in the same way with a third building, in the middle, zoned differently. Mr. Rattner continued:

- The 469-479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.

- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors' preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.

Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

The Board was then presented with two massing models to demonstrate what the proposed building would look like if the City Commission were to grant the change in zoning to D-5.

Mr. Longe clarified that the proposed building could be stepped back from Birmingham Place to provide more open space between the two buildings if the change in zoning to D-5 is granted. He added that this idea came about as part of the ongoing discussion with the tenants of Birmingham Place.

Mr. Longe confirmed for Mr. Emerine that the top block represented on the proposed building would be a mechanical block, not an additional story to the building.

Chairperson Clein thanked Mr. Longe for the massing diagrams, stating they were helpful.

Mr. Rattner told Mr. Share that the applicant is coming before the Board instead of the Board of Zoning Appeals because the applicant is attempting to do a development under the current zoning ordinances of the City. Mr. Rattner added that it is unusual and unfair to maintain the site at D-4 when both buildings adjacent to the site are zoned at D-5.

Doraid Markus, one of the applicants, opined that a five-story hotel would not be as becoming of Birmingham as a nine-story hotel. He specified that in order to create an uncrowded first floor and mezzanine level and a sufficient number of rooms, the building would need the extra height.

Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Association, explained that the evening's discussion was supposed to be a rehearing since the site had originally been described incorrectly as being in the PAD. Given this, she wondered why the applicant had yet to explain this evening how the PAD was such a significant issue that the Board should consider voting differently than it had in the past. She added:

- The applicant's assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight's presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements

could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.

- According to Planning Director Ecker's report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).
- Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.
- A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City's 2016 and Master Plans.
- The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City's Plans.
- The discussion of changing this site's zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

David Nykanen, Attorney, said he represents some of the residential owners in the Birmingham Place Condominium Association. Noting that a hotel would require the least amount of parking on this site, Mr. Nykanen asserted that the applicant chose not to present the parking implications of that option in the current discussion so as to make the parking requirements seem more onerous than they are. He continued:

- Two other sites in Birmingham are building five story hotels, demonstrating that parking a five story hotel within the City is not excessively burdensome.
- In addition to the potential parking agreement with the 555 building, other options are available to the applicant for parking a five story hotel on this site.
- The applicant's statements this evening demonstrated that this rezoning request is based on the applicant's preference for a certain type of hotel, not the inability to build a hotel on the site more generally.
- The zoning uses for both D-4 and D-5 are the same, so Mr. Rattner's assertion that a change in zoning is necessary to allow the applicant to enjoy the same uses as the adjacent buildings is fallacious. The only difference between the zoning types is the building height.
- A five story hotel on the site would be taller than the 555 building and would adequately fill in the visual gap in the streetscape.
- It is clear that this rezoning request is about economics and not about land use, which is an insufficient reason to rezone a property.

Jason Abel, Attorney, said he represents the Masters' Association of the Birmingham Place Condominium Association. He said he echoed the previous two speakers and drew the Board's attention to 7.02(B)(2)(b)(i) and 7.02(B)(2)(b)(ii). Mr. Abel explained:

- Regarding 7.02(B)(2)(b)(i), the applicant is required to show, and the Board is required to present findings of facts, as to why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described 'necessary' as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged this to be an understandable preference on the part of the applicant, he asserted that it would not be a 'necessary' change. Additionally, the applicant's contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and 'necessary' zoning change.
- Regarding 7.02(B)(2)(b)(ii), the zoning of D-4 is not inappropriate for the current land use. The issue is, rather, that the applicant would like to build a nine story hotel on a parcel zoned for a five story use.
- The applicant presented arguments adjacent to the Zoning Ordinance rather than addressing the Zoning Ordinance.
- Regarding 7.02(B)(2)(b)(iii), Mr. Abel said the applicant did not address the detrimental impact changing the zoning of the site to D-5 would have on the neighbors.

Carole Kozlow stated that her family has always loved Birmingham's smaller town nature. Recalling Mr. Markus making a statement similar to 'if the City does not want large buildings, it never should have allowed the first one to be built' during the June 2018 conversation on the issue, Ms. Kozlow said she agreed. Noting that Birmingham has since changed course on large buildings, she asked that the City continue to preserve its character, rather than having to fix the problem after the fact.

Karl Sachs said he has lived in Birmingham for about 25 years and said he had been asked to convey some of his neighbors' feelings on the potential rezoning. He continued that many of their points had already been covered by others but that he wanted to mention his neighbor Mike Humphrey's written statement that the potential rezoning does not adhere to the Master Plan. Mr. Sachs said that this hotel would make privacy nearly impossible for the residents of Birmingham Place living on the side adjacent to the proposed site.

Michele Prentiss, Property Manager of Birmingham Place, presented the Board with a written reply to the applicant's summary statements as included in the Board's agenda packet for the evening. She then gave a copy to Chairperson Clein.

Chairperson Clein asked if there was a motion to receive and file the letter.

Mr. Williams asked for a copy of the letter. Chairperson Clein said he would pass along his copy for Mr. Williams to read. Mr. Williams said that without a copy for each Board member to read, he would not make a motion to receive and file the letter.

Chairperson Clein said he would acknowledge the letter, and upon receipt of the letter as an email to Planning Director Ecker the letter would be included in agenda material on the matter moving forward.

Seeing no further comments from the public, Chairperson Clein brought the discussion back to the Board. Chairperson Clein said it was time for the Board to make a decision.

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.

Ms. Friedlander told the Board that all the letter's points had been covered in the evening's discussion.

Mr. Share spoke first, saying that this is an unusual zoning request since it only impacts the height of the building allowed. He continued that when D-5 was implemented, the Board did not preclude other sites from seeking to be zoned D-5 in the future. From a streetscape perspective, he saw no significant difference between a five story and nine story building on the site. The proposed change does not seem 'necessary' as defined by 7.02(B)(2)(b)(i). It would behoove the Board to look at the zoning of the entire block from Hazel to Brown. He would not be voting in favor of rezoning unless his colleagues persuade him otherwise.

Mr. Koseck said none of the new information persuasively explained why the City Commission should approve the rezoning. He noted the 2016 Plan conclusively zoned the building at D-4. Cities tend to have buildings of varying heights, and the variety is partially what makes cities interesting, so the streetscape argument was not particularly compelling. Assuming the site was purchased with awareness of the D-4 zoning, Mr. Koseck suggested that this is not so much a zoning issue as a parking issue. He recommended the applicant apply to join the PAD or enter into some other beneficial parking arrangement. Addressing Mr. Markus' assertion that certain hotel designs are not becoming of Birmingham, Mr. Koseck said his firm is currently building a hotel in Ann Arbor with nine-foot floor to ceiling heights, that he is confident that the result will be sufficiently upscale, and that something similar could be done in the applicant's case. Lastly, Mr. Koseck noted the community's consistent concerns that the rezoning would be detrimental to the neighbors. He said no new information could be provided that would change his thinking on the matter.

Mr. Williams pointed out that the City Attorney found the site eligible for D-5 zoning. He said Ms. Friedlander could pursue the matter further with the City Attorney, but that the Board is bound by the City Attorney's opinion. The D-4 zoning for this site does not allow reasonable enjoyment of the property since all other D-4 sites in Birmingham have access to the PAD. Because this currently makes the property non-competitive, Mr. Williams said he would be in favor of rezoning.

Mr. Emerine noted the persuasive impact of the City Attorney's opinion that this site is eligible for D-5 zoning. Adding that the developer would need to acquire a SLUP should the rezoning move forward, Mr. Emerine stated he was comfortable with the rezoning at this time.



Mr. Jeffares recalled the Board had considered rezoning the surrounding area but had decided they wanted to keep D-5 to this smaller area at the time. He expressed an equivocal opinion on the idea of zoning a building according to its neighbor's zoning, but said that a building zoned differently between two buildings of the same zone seemed significant enough to change.

Ms. Whipple-Boyce addressed Ms. Friedlander's contention that D-5 was in any way surreptitiously done, saying that the Board and the City Commission spent many public meetings discussing the issue in depth. Ms. Whipple-Boyce added that she affirmed the City Attorney's findings regarding the application, and that she believed the applicant proved their case.

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board's interpretation. He clarified that the Board's directive was to determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City's Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member's replies.

Mr. Jeffares said the owners of the other D-5 parcels applied for rezoning based on finances but that ironically tonight's applicant was being chastised for doing the same thing.

Chairperson Clein begged to differ and clarified for the record that the owners of the other D-5 parcels were having to get a number of different variances for every change they wanted to make on their properties.

Mr. Jeffares asserted the other D-5 parcel owners had indeed brought up financing in their rezoning application.

Chairperson Clein disagreed, saying that D-5 zoning arose out of a directive from the City Commission asking the Board to find a way to bring the currently D-5 parcels in question into compliance.

**Motion by Mr. Williams**

**Seconded by Mr. Jeffares that based on a review of the rezoning request by the applicant and the supporting documentation submitted by the applicant, a review of the City's current Master Plan and the City's current 2016 Plan, and development trends in the area, and in compliance with 7.02(B)(5)(a) - 7.02(B)(5)(e), the Planning Board adopts the findings of fact in the staff report dated November 8, 2018, and recommends approval to the City Commission for the rezoning of 469 – 479 S. Old Woodward from D-4 to D-5 in the downtown overlay.**

**Motion carried, 4-3.**

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Jeffares, Williams

Nays: Clein, Koseck, Share

Absent: Ramin

Chairperson Clein explained that this is a recommendation to the City Commission. He explained the Commission will then take this recommendation and all attendant information, hold another public hearing of the applicant's request and the community's perspective, and make their determination. Chairperson Clein thanked the audience for voicing their opinions during the discussion.

**01-15-19**

**I. MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

a. Communications

- Planning Director Ecker noted the Long Range Planning meeting would be held on Saturday, January 26, 2019 in the Commission room. She noted that she would be speaking from 10:00 a.m. to 11:30 a.m. on the Citywide Master Plan update, retail regulations, alley regulations, multi-modal initiatives, and an update on some parking issues. She stated that all this information would be available in the City Commission agenda on the website.

b. Administrative Approval Requests

- Kroger asked to replace seven dead spruce trees with 23 Viburnum shrubs to fill all gaps. Board members were okay with the request.

a. Draft Agenda for the next Regular Planning Board Meeting of February 13, 2019

- The commercial renovation process;
- Update on the parking study;
- Projections and the right-of-way;
- Rooftop uses.

Planning Director Ecker briefed the Board on the parking study, explaining it was carried out by Nelson/Nygaard and MKSK to help the City review and improve its parking ordinances. She told the Board they would be receiving an invitation to a roundtable discussion led by the consultants with a summary of best practices from other communities, some recommendations for Birmingham, and a solicitation of feedback from the Birmingham community. She clarified that the Planning Board would be reviewing the recommendations before they go to the Commission as they will likely include some ordinance changes.

**01-16-19**

**J. PLANNING DIVISION ACTION ITEMS**

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting  
Chairperson Clein suggested looking at the ordinance on parking space size, saying that minimum dimensions should be included along with the requirement spaces be 180 sq. ft.

**01-10-19**

**K. ADJOURNMENT**

No further business being evident, the Chairman adjourned the meeting at 9:20 p.m.

Jana L. Ecker  
Planning Director

APPROVED