

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, SEPTEMBER 11, 2019**

City Commission Room  
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 11, 2019. Chairman Scott Clein convened the meeting at 7:33 p.m.

**A. ROLL CALL**

**Present:** Chairman Scott Clein, Board Members Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Jason Emerine; Student Representatives Sophia Trimble, John Utley

**Absent:** Board Member Robin Boyle; Alternate Board Member Nasseem Ramin

**Administration:** Jana Ecker, Planning Director  
Brooks Cowan, City Planner  
Laura Eichenhorn, Transcriptionist

**09-134-19**

**B. Approval Of The Minutes Of The Regular Planning Board Meeting of August 28, 2019**

Ms. Whipple-Boyce asked that the meeting's audio be reviewed to determine whether she may have made the motion regarding 117 Willits.

**Motion by Mr. Share  
Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of August 28, 2019 pending determination of which Board Member moved postponement for 117 Willits.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**09-135-19**

**C. Chairperson's Comments**

Chairman Clein noted this would be a mixed meeting combining action and study items. He stated public comment is permitted on agenda items, and that he would advise the public regarding commenting procedure as the meeting progressed.

**09-136-19**

**D. Approval Of The Agenda**

No changes to the agenda.

**09-137-19**

**E. Old Business**

- 1. Final Site Plan & Design Review - 34745 Woodward, Jax Kar Wash –**  
Request for Final Site Plan and Design Review to add a covered detailing area and reconfigure access and circulation for the site (Postponed from August 14, 2019).

Planning Director Ecker presented the item.

**Motion by Mr. Williams**

**Seconded by Mr. Share to receive and file the memorandum from City Engineer O'Meara dated September 9, 2019.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Chairman Clein noted the plans submitted neither complied with ordinance nor sufficiently integrated the Board's August 14, 2019 feedback. He invited the applicant to comment briefly while stating he would vote against plan approval this evening due to the ordinance issues.

Jason Mylan, co-owner of Jax, said the submitted plans are the closest Jax can get to complying with the ordinance. He said there was not enough width on the Brown Street side of the lot to provide both a screening wall and an exit lane for vehicles. He said the plans represented a more functional, more aesthetically pleasing design to the lot. He also said he was open to providing whatever trees the City recommends for the lot.

Chairman Clein replied that the Board is not empowered to approve plans that do not comply with the ordinance. He said that if a business function does not meet ordinance it is either incumbent on the business to modify that function or to apply for a variance from the Board of Zoning Appeals.

In reply to a question from Chairman Clein, Mr. Mylan stated he had not spoken with MDOT about driving vehicles contraflow on Woodward Avenue in MDOT's right-of-way.

Noting that there was little to be gained from further discussion of these plans this evening, Chairman Clein recommended ending the discussion with advice to the applicant to comply with ordinance.

Mr. Koseck said he was concerned with the increase in on-site activity that these plans would represent. He said he did not anticipate that a screening wall could sufficiently obscure the increased activity, and that it may be appropriate for the applicant to consider expanding the footprint of the building in order to conduct more of the activity within the building and out of view of the street. He said that Mr. Mylan may be trying to do **too** much on the site.

In reply to Ms. Whipple-Boyce, Mr. Mylan said the attendants would never be in the driver's seat of the cars.

Ms. Whipple-Boyce said she was under the impression that attendants would be driving the cars on the lot.

Chairman Clein agreed with Ms. Whipple-Boyce, recalling the Board had been told attendants would primarily be driving the cars on the lot at the August 14, 2019 meeting. He noted other Board members looked to be recalling the same thing. He then emphasized his concerns about the applicant's proposal that the general public drive contraflow on Woodward Avenue in MDOT's right-of-way, and said the plans would not garner his vote until that was changed.

Mr. Mylan noted that the business currently drives vehicles contraflow on Woodward Avenue.

Chairman Clein said he was aware, noting that the proposed plans seek to have the general public driving contraflow on Woodward, as opposed to Jax employees. He then invited public comment.

In reply to Andrew Haigh, Planning Director Ecker indicated where the current curb cuts are allowing vehicles to enter and exit the lot.

Chairman Clein invited any further comments from the Board.

Mr. Williams stated that Jax is an important business in Birmingham, and so the matter should be postponed instead of denied. He recommended postponing the matter until the next regularly scheduled Board meeting that would include site plan reviews.

**Motion by Mr. Williams**

**Seconded by Mr. Koseck to postpone consideration of 34745 Woodward, Jax Kar Wash to October 23, 2019.**

Mr. Jeffares asked if that date would give the applicant enough time to get approval from MDOT for the Woodward right-of-way matter.

Chairman Clein replied that it was a month and a half, and that if it needed to be postponed further then that could be done. He explained it was best to postpone to a date certain to avoid having to re-notice the item while ensuring that the public knows when the item will next be discussed.

Mr. Share said he would support the motion if the Planning Department, Engineering Department, and applicant all agree to meet in order to discuss potential solutions to the issues raised at both this meeting and the August ~~14~~ 11, 2019 meeting.

Planning Director Ecker confirmed both departments would be available to meet with the applicant.

In reply to Mr. Mylan, Mr. Williams stated he would like to see compliance with the ordinance. He also said Mr. Mylan should contact MDOT to discuss the contraflow issue raised.

Chairman Clein said Mr. Mylan should meet with City Staff and make a concerted effort towards integrating their feedback.

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**2. Special Land Use Permit & Final Site Plan and Design Review - 117 Willits, Sidecar, Slice and Shift (Former Mitchells Seafood)** – Request for approval of a Special Land Use Permit to allow the operation of three licensed restaurants (Sidecar, Slice and Shift) sharing one kitchen and under common ownership (Postponed from August 28, 2019)

Planning Director Ecker presented the item.

**The Board was satisfied with the changes made by the applicant since the last meeting with respect to the outdoor dining areas and pedestrian circulation in the right-of-way.**

Neither the Board nor the public had comment on the item.

**Motion by Mr. Share**

**Seconded by Mr. Williams based on a review of the plans submitted, the Planning Board finds that all of the requirements of Article 7, Section 7.27 and Article 7, Section 7.34 have been met, thus the Planning Board recommends approval to the City Commission of the Special Land Use Permit for 117 Willits – Shift / Sidecar / Slice with the following conditions:**

- 1. The applicant must amend the floor plans to show the correct number of interior seats and submit specification sheets on the proposed outdoor railing posts and top bar for Slice prior to appearing before the City Commission for final approval;**
- 2. The applicant must obtain approval from the Historic District Commission for the exterior changes prior to appearing before the City Commission for final approval;**
- 3. The applicant must provide detailed sign plans for review prior to appearing before the City Commission for final approval; and,**

**4. The applicant must comply with the requests of all departments.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**Motion by Mr. Share**

**Seconded by Mr. Williams based on a review of the plans submitted, the Planning Board finds that all of the requirements of Article 7, Section 7.27 and Article 7, Section 7.34 have been met, thus the Planning Board recommends approval to the City Commission of the Final Site Plan & Design Review for 117 Willits – Shift / Sidecar / Slice with the following conditions:**

- 1. The applicant must amend the floor plans to show the correct number of interior seats and submit specification sheets on the proposed outdoor railing posts and top bar for Slice prior to appearing before the City Commission for final approval;**
- 2. The applicant must obtain approval from the Historic District Commission for the exterior changes prior to appearing before the City Commission for final approval;**
- 3. The applicant must provide detailed sign plans for review prior to appearing before the City Commission for final approval; and,**
- 4. The applicant must comply with the requests of all departments.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**09-138-19**

**F. Study Session Items**

**1. D5 Study Report from DPZ**

Chairman Clein indicated that he would be recusing himself from discussion of this item, as his consulting firm was recently retained by a client who owns property within the City block being discussed.

Chairman Clein recused himself and left the room at 8:12 p.m. Vice-Chairman Williams began chairing the meeting at 8:12 p.m.

Planning Director Ecker reviewed the item.

Mr. Share said it would be important to see the massing of the area if it were rezoned to D5. Mr. Jeffares concurred.

Mr. Share also said that potential ordinance language should address how streets and alleys would play into the definition of abutting. He noted that if a public alley abutting a D5 property were to be turned private, then the abutting property owner would be allowed to split the alley in half which could result in zoning creep.

In reply to Mr. Share, Planning Director Ecker stated that the SLUP process is broad enough to effect the design of the buildings in the area, since the report determined that the design of the buildings are largely more important than the height of the buildings.

Vice-Chairman Williams said he did not believe the Board has a sufficient definition of abutting, and that without a definition it would not be appropriate to set a public hearing on the issue. Vice-Chairman Williams said asking Planning Director Ecker to devise some proposed language for abutting would be an appropriate next step, with information on how other cities define 'abutting' to be included for the discussion.

In reply to Ms. Whipple-Boyce, Planning Director Ecker confirmed that the most challenging block in regards to defining 'abutting' would be around Hazel. She said that the language must be clarified to determine whether heights are measured from the shortest part of a building, the tallest part of a building, the part of a building closest to another building, or other possible aspects that could be used to determine what a building's 'height' is considered to be in regards to the D5 language.

In reply to Mr. Emerine, Planning Director Ecker confirmed that the Board could use the SLUP process to affect building heights even if a building were within the D5 zone.

Board consensus was that the item was not ready to set a public hearing, that the definition of 'abutting' needs to be studied and determined, and that a map with massing of the maximum potential D5 height should be included in future materials for the Board's consideration.

Vice-Chairman Williams then invited public comment.

In reply to Alice Lazatt, Planning Director Ecker explained that in order to determine the City's definition of 'abutting', the Board would study and discuss the matter at a study session, come to a consensus, send the definition to the City Attorney for review, and set a public hearing at the Board level. After any revisions resulting from the study session, the Board would recommend the definition to the City Commission, the City Commission would conduct further review and a public hearing, and subsequent to the review, potential revisions, and discussion at the Commission level, the Commission would vote on whether to adopt the definition.

Michele Prentiss said she thought the study's aim was define terms like 'abutting', and asked the Board why the study did not do that.

Vice-Chairman Williams said Ms. Prentiss' understanding of the study's aim was incorrect. He said the report determined which properties to consider for the D5 question, which was point number three. He said the Board would conduct further study on the definition of 'abutting'.

Patrick Howe, lawyer for the Birmingham Place Condo Association, reprised the contents of his August 26, 2019 letter, which was included in the meeting's agenda packet.

Jim Arpin asked that the Board include this study as part of the more general master planning process.

In reply to Karl Sachs, Planning Director Ecker explained that in D2-D5, buildings must be at least two stories. She also confirmed that D5 zoning is actually a bit more restrictive than D4 because a SLUP process is involved in a D5 application.

In reply to Rick Rattner, Vice-Chairman Williams said the earliest the Board would be holding a public hearing would be November, assuming they were able to reach an agreement on the definition of 'abutting' within the next month and then were able to set a public hearing for the month following. He said that would be the fastest the Board could proceed, but that the process could move slower.

Doraid Markus spoke as one of the principals who owns the lot next to Birmingham Place. He noted that when D5 zoning was made, the mechanism to allow adjacent or abutting buildings to request increase in heights was intentionally included at the time subsequent to immense study and discussion. He emphasized that his request to change his lot's zoning is not out of caprice, but rather out of direct respect for the mechanism the City chose to build in to the D5 ordinance.

Mr. Howe said Mr. Markus' assertion was inaccurate, stating that D5 was created to accommodate the three specific buildings that requested it at the time. He said the ordinance change did not involve study of the broader area in terms of zoning.

Vice-Chairman Williams stated that the City's records will best reflect how D5 came to be and that it would not be necessary for members of the public to continue debating what review of the records will show.

Mickey Schwartz said there that while the setbacks are a positive requirement, Mr. Markus' lot does not have sufficient room to accommodate creating a setback. Citing the power the Board has from the SLUP requirement for D5, Dr. Schwartz said that perhaps D4 zoning should require a SLUP as well. He asserted that City ordinance only sufficiently addresses the height of buildings, while disregarding matters of massing, aesthetics, or impact on the community. He noted that the consultant's main conclusion in regards to D5 was to consider expanding the buildings it applied to, but did not actually recommend an expansion. Dr. Schwartz said this conclusion did not provide much new information to the City, and should not supercede the conversation that has been occurring in the City prior to the study's release.

Seeing no further comment from the public, Vice-Chairman Williams advised the public that this matter would next be discussed on October 23, 2019 with additional consideration of the

definition of 'abutting' and massing that shows the maximum height if all the buildings on the block were zoned D5.

Vice-Chairman Williams then called for a recess at 9:00 p.m.

Chairman Clein re-commenced chairing the meeting and resumed the meeting at 9:03 p.m.

**09-139-19**

**G. Public Hearings**

- 1.** An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham:

To amend Appendix C, Exhibit 1 to include the property at **2159 E. Lincoln** as a property qualified for an Economic Development License (EDL);

- 2. An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham:**

To amend **Article 2, Section 2.39, MX (Mixed Use) District**, to consider allowing establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels within the Rail District identified on Exhibit 1; Appendix C) with a valid Special Land Use Permit.

City Planner Cowan presented the item.

Mr. Williams said that consistent with the Commission's practice the Board should discuss an area, per the Planning Department's suggestion, and not a particular property.

Mr. Jeffares said EDLs are beneficial both through the revenue generated for the City by the license and through the development an EDL allows. He said he was in support of expanding where in the City an EDL could be granted for these reasons.

Mr. Share said he would be in support of expanding EDLs to the south portion of the Rail District along Cole, excluding the two parcels on the east side where there has recently been significant development since the goal of the EDLs is to promote new development.

In reply to Mr. Koseck, Planning Director Ecker stated the master planning team has suggested more effort could be put into the development of the lower Rail District. The team suggested that loosening the City's ordinances in the lower Rail District could be one way of spurring that development and encouraging more creative and varied uses of the area.

Chairman Clein noted that the question before the Board was whether to expand EDLs within the context of the City's current planning and ordinances. He said that while the discussion of the



master planning team's potential recommendations were well taken, the master plan itself had not been delivered yet and the Board should be making this decision based on current conditions.

Planning Director Ecker told Mr. Williams that any restaurant developed in the lower Rail District would be required to meet the City's standard parking requirements.

Chairman Clein invited public comment.

Andrew Haigh said he was in support of the Board's inclination to expand the area in which EDLs could be granted, as opposed to adding a single parcel. He said he was concerned that EDLs do not include a limit on the number of seats either inside or outside of an establishment, especially in light of the City's efforts towards traffic calming in the area. He said residents of the area would be enthusiastic about appropriate development in the area, while noting they would also like to maintain the benefits gained from the City's traffic calming scheme.

Chairman Clein told Mr. Haigh that the City could influence the number of seats with a SLUP and that any EDL establishments would still be required to comply with building codes dictating the number of seats allowed in a building.

Katherine Aboud spoke as the owner of a business directly to the west of 2159 E. Lincoln. She said she was strongly in support of expanding the area in which EDLs can be granted, stating that development in the area would highly benefit her business and the area as a whole.

**Motion by Mr. Williams**

**Seconded by Mr. Koseck to receive and file the emails from Alexis Catherine Pollock, Bryan Anderson and Alicia Birach in favor of the development at Lincoln Yard.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**Motion by Mr. Jeffares**

**Seconded by Mr. Koseck based upon a review of the intent for an Economic Development License, the goals of the Eton Road Corridor Plan, and existing conditions of the southern portion of the Rail District, the Planning Board recommends the following to the City Commission:**

**1.) To amend Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Economic Development License Map to allow the potential use of an Economic Development License per suggested action #2 with an approved Special Land Use Permit.**

**2.) To amend Chapter 126, Zoning Ordinance, Article 2, Section 2.39 MX, Uses Requiring a Special Land Use Permit to allow the operation of establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article**

---

**II, Division 3, Licenses for Economic Development identified on Exhibit 1; Appendix C.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Planning Director Ecker confirmed that these suggested ordinance amendments and the SLUP and Final Site Plan Review for 2159 E. Lincoln would proceed to the Commission at the same time.

**09-140-19**

**H. Miscellaneous Business and Communications**

**a. Communications**

**b. Administrative Approval Correspondence**

Mr. Share stated that in reference to the approval for 1971 W. 14 Mile, he would prefer in the future that planted areas remain planted.

Planning Director Ecker agreed, saying she directed members of the Planning Department to not administratively approve paving over planted areas in the future. She noted that the particular area in question was more weeds than actual landscaping.

Mr. Share said he would like to see applicants encouraged to plant in planted areas, even if they are not well landscaped at the time of application.

**c. Draft Agenda for the next Regular Planning Board Meeting (September 25, 2019)**

- Final Site Plan for 344 N. Old Woodward
- First Draft of the Master Plan
- SLUP and Final Site Plan for 2159 E. Lincoln
- SLUP and Final Site Plan for 298 S. Old Woodward

Chairman Clein noted he would be recused for the SLUP and Final Site Plan Review of 298 S. Old Woodward.

**d. Other Business**

Ms. Whipple-Boyce noted that the Mad Hatter was stacking its outdoor chairs while not in operation, essentially creating outdoor storage on Old Woodward. She said the chairs should either be left down for people to sit in or should be brought inside the establishment when not in

operation. She said that the Board should further consider how to approach establishments' storage of outdoor furniture.

Mr. Jeffares said that above Mad Hatter a mortgage company posted a sign that did not likely proceed through the City's approval process. He asked that code enforcement check into the matter.

**09-141-19**

**I. Planning Division Action Items**

**a. Staff Report on Previous Requests**

**b. Additional Items from tonight's meeting**

**09-142-19**

**J. Adjournment**

No further business being evident, the Chairman adjourned the meeting at 9:49 p.m.

Jana L. Ecker

Planning Director