

REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 12, 2017
7:30 PM
CITY COMMISSION ROOM
151 MARTIN STREET, BIRMINGHAM

- A. Roll Call
- B. Review and Approval of the Minutes of the regular meeting of **June 28, 2017**
- C. Chairpersons' Comments
- D. Review of the Agenda
- E. Old Business
 - 1. **211 S. Old Woodward (Birmingham Theater)** – Request for approval of a Special Land Use Permit and Final Site Plan Review to serve alcoholic liquors in the existing theater operating under a Class C liquor license. **(Postponed from June 28th)**
- F. Public Hearings
 - 1. An ordinance to amend Chapter 126, Zoning, as follows:

Article 3, Section 3.04, Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted uses in the redline retail district; and

Article 9, Section 9.02, Definitions, to add a definition for personal services, to amend the definition of commercial use to exclude personal services and to amend the definition of retail use to include retail bank branches and personal services.
- G. Study Sessions
 - 1. **Definition of Personal Services.**
 - 2. **Shared Parking**
 - 3. **Parking issues to be included in the Master Plan**
 - 4. **Bistro Regulations**
- H. Miscellaneous Business and Communications:
 - a. Communications
 - b. **Administrative Approval** Correspondence
 - c. Draft Agenda for the next Regular Planning Board Meeting **(July 12, 2017)**
 - d. Other Business
- I. Planning Division Action Items
 - a. Staff Report on Previous Requests

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b. Additional Items from tonight's meeting

K. Adjournment

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 28, 2017**

Item	Page

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 28, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 28, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Daniel Share; Student Representatives Ariana Afrakhteh, Isabella Niskar

Absent: Board Member Robin Boyle; Alternate Board Member Lisa Prasad

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

06-115-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
OF JUNE 14, 2017**

Ms. Lazar:

Page 2 - Last paragraph, first line, replace "allow" with "require."

Page 2 - Last paragraph, fifth line, replace "permitted" with "required."

Mr. Share:

Page 6 - Last paragraph - first line, replace "Ferrill" with "Farrell."

Mr. Jeffares:

Page 3 - Replace Motion carried "6-0" with "6-1"

Motion by Ms. Lazar

**Seconded by Mr. Share to approve the Planning Board Minutes of June 14, 2017
as amended.**

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Abstain: Williams

Absent: Boyle

06-116-17

CHAIRPERSON'S COMMENTS (none)

06-117-17

APPROVAL OF THE AGENDA (no change)

06-118-17

OLD BUSINESS

1. 2010 Cole St.

New mixed use building (partially demolished building)

Request for Community Impact Study ("CIS") and Preliminary Site Plan review to allow the construction of a new three-story mixed-use building (postponed from the meeting of May 24, 2017)

Ms. Lazar recused herself because of a familial relationship with the applicant.
Chairman Clein recused himself because his firm is doing work with a member of the development team..

Motion by Ms. Whipple-Boyce

Seconded by Mr. Share to ask Mr. Williams to take the gavel.

Motion carried, 4-0.

VOICE VOTE

Yeas: Whipple-Boyce, Share, Jeffares, Koseck

Nays: None

Recused: Clein, Lazar, Williams

Absent: Boyle:

Ms. Ecker recalled the subject site is a 0.77 acre parcel. The applicant has demolished a portion of an existing commercial building and is proposing to expand the first story and construct two additional stories above. The proposed first story of the building will have 10,230 sq. ft. of gross floor area and consist of retail, fitness, and enclosed private residential parking spaces; the second story will have 8,498 sq. ft. of gross floor area and consist of office space; and the third story will have 6,875 sq. ft. of gross floor area for residential.

C/S

On April 26th, 2017, the applicant appeared before the Planning Board for a CIS and Preliminary Site Plan review. A motion to accept the CIS for 2010 Cole St. was made

and passed with several conditions. The Preliminary Site Plan Review was postponed based on concerns about vehicle circulation in the parking lots (dead end lots causing cars to reverse back onto Cole St.) and a request from the Planning Board that the longer side of the building could be rotated to run along Cole St., instead of facing the parking lot on the east portion of the property. Since the last meeting the applicant has revised their plans to deal with the circulation issue by losing two parking spaces. They will still meet the parking requirement. Also they have indicated there will not be a restaurant on the first floor, because that would increase their parking requirements.

In August 2016 an update to a 2015 Environmental Site Assessment ("ESA") was performed by PM Environmental. The Phase I ESA update revealed several recognized environmental conditions ("RECs") at the property. The applicant utilized Testing Engineers and Consultants, Inc. to conduct a review of the existing environmental assessment information for this property. Two subsurface investigations discovered contamination over much of the site. The review of environmental factors lead to a recommendation by the environmental consultants not to rotate the building 90 degrees to provide greater building frontage along Cole St., as this would create a far greater disturbance of contaminated soil. Extensive new footings/foundations would require additional excavation and land filling of impacted soil, and possible dewatering of impacted groundwater.

Summary of the CIS items needed:

- (1) Verification that contamination from neighboring property, 2006 Cole, has not migrated to the subject site;
- (2) Storm water detention plans;
- (3) Information on all life safety issues and Fire Dept. approval;
- (4) Information on the proposed security system for approval by the Police Department;
- (5) Elevator plans; and
- (6) Plans demonstrating on-site bike racks.

Preliminary Site Plan

The applicant will be required to provide at Final Site Plan Review a floor plan of the residential units to determine the number of rooms within the two residential units. This will ensure all density requirements have been met and determine the number of parking spaces required.

During the Planning Board meeting on April 26th, 2017, board members expressed displeasure with the circulation design of the parking lot. Both of the parking lots were designed to dead end, forcing cars who could not find a parking spot to back out all the way back onto Cole St. The applicant has resolved this by adding end-of-lane turn arounds at the rear of both parking lots where cars can reverse direction and proceed back to Cole St. driving forward.

Mr. Jeffares suggested that by moving the dumpsters there could be room to drive around the building to get in and out of the parking lots.

Mr. Jason Kriger with Kriger Klatt Architects was present with Ms. Jennifer Higgins from Lorian Capital; Mr. Jason Arnold from Creative Site Solutions; and Mr. Donald Kaler from Testing Engineers & Consultants ("TEC"). Mr. Kriger stated the impact and cost to rotate the building 90 degrees and remediate the soil would incur a financial burden that the owner was not willing to absorb. Therefore their proposal is to try and encapsulate and maintain what is there as best they can in order to make the project financially doable. They believe the turn-around issue has been handled. However, larger vehicles such as garbage trucks would need to back out. They intend to comply with the nine points listed at the end of the staff report and are hoping to move forward to the next level with their proposal.

Mr. Jeffares inquired why it would not be better to move the dumpster so that vehicles can drive around the building. Mr. Kriger thought that it might be a tight turn going around the building. The other thing is that placement of the dumpsters facing Cole St. makes it convenient for a truck to come in straight.

Ms. Whipple-Boyce did not know why they couldn't take 2 ft. of the back of the building in order to be able to drive around. Mr. Kriger said it seems better to him to leave the dumpsters where they are situated and let the parking lot on the west be the main lot that people would use.

Mr. Koseck thought a Suburban would be hard pressed to make the turn to get out. He views this as a new project and he doesn't believe it complies with the ERC Master Plan which says buildings should be pushed to the street and parking to the back. He questioned at what point the financial burden becomes a breaking point to create what he views as an unsafe walking and vehicular environment.

Mr. Donald Kaler offered an idea of what the challenges are. The levels of volatile organic compounds on the site can lead to a condition called hazardous waste. Non-hazardous waste is solid and goes to a Class 2 Landfill. If soil is determined to contain hazardous waste, the cost to dispose in a different landfill usually goes up ten to twenty times/unit. That is an important reason to minimize subsurface soil disturbance and use as much of the existing foundation as the engineers and architects feel is appropriate.

Mr. Koseck thought that with the building rotated the tenants would have a front view to the street. Extra street frontage is worth more than facing the alley and parking lots.

Mr. Share announced that before he can deviate from the ERC Master Plan he needs to have a lot more information specific to what the cost is. If the applicant wants to use cost as a justification for the board doing something that it might not otherwise do, then they need to provide facts to justify it.

Ms. Whipple-Boyce did not understand how the decision could have already been made not to be able to move the building the way the board is asking if the research hasn't been done to even determine if there is non-hazardous or hazardous waste; if it can be left, or if it needs to be removed. Besides that, she does not think this project meets the requirements of the ERC Plan well enough. One of the most important things about the

Plan is that buildings are oriented to the street and parking is behind. She was sorry to see the applicant did not come forward with a plan that accomplishes that. Further, she doesn't think the parking will work. The hatched spots will be parked in when there are no parking spaces left and people will not be able to turn around and will be forced to back out.

Mr. Koseck said he knows there are alternatives available that would make this a safer parking lot and make the plan more in compliance the vision for the ERC Master Plan

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to postpone consideration of the CIS and Preliminary Site Plan for 2010 Cole St. to July 26, 2017.

There were no comments from the public on the motion to postpone.

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Recused: Clein, Lazar

Absent: Boyle:

06-119-17

**SPECIAL LAND USE PERMIT ("SLUP") REVIEW
FINAL SITE PLAN AND DESIGN REVIEW**

1. 211 S. Old Woodward Ave.

Birmingham Theater

Request for approval to serve alcoholic liquors in the existing theater operating under a Class C Liquor License

Chairman Cline took back the gavel at this time.

Ms. Ecker advised the subject site is located on the east side of S. Old Woodward Ave. just south of Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Birmingham Teatro, LLC, is applying for a SLUP to operate with a Class C Liquor License under the new ordinance allowing a movie theater to operate with a liquor license. Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.

Article 2, section 2.37 (B4) of the Zoning Ordinance requires that a theater seeking to provide alcoholic beverage sales (on-premise consumption) shall obtain a SLUP and site plan review. Accordingly, the applicant is required to obtain a recommendation from

the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan and SLUP.

The applicant has advised that the service of alcohol is required for the continued operation of the Birmingham 8 Theater, given market trends and the need to compete with the Emagine Palladium Theater, which also provides the service of alcohol to theater patrons. Emagine and the Birmingham Theater are the only two movie theaters in the City. Granting the SLUP to the Birmingham Theater will enable it to serve alcohol, the theaters will be similarly situated, and both should be able to sustain their businesses into the future.

The sale of alcohol will be a relatively small amount of the Birmingham Theater's business, but they believe it will help them to provide a full service experience.

Design Review

The applicant is proposing no interior or exterior design changes to the building at this time other than the service of alcohol primarily from the second-floor concession stand.

As the applicant was not present, the following motion was made:

Motion by Mr. Williams

Seconded by Mr. Share to postpone the SLUP and Final Site Plan And Design Review for 211 S. Old Woodward Ave., Birmingham Theater, to July 12, 2017.

No one from the public wished to comment on the motion.

Motion carried, 6-1.

VOICE VOTE

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

Nays: Jeffares

Absent: Boyle

06-120-17

FINAL SITE PLAN AND DESIGN REVIEW

2. 412 - 420 E. Frank St. (vacant office/restaurant)

Request for Final Site Plan to allow construction of a new three-story residential building

Mr. Baka explained the subject site is composed of three parcels, 412 & 420 E. Frank St. as well as the small strip of parking that abuts on the east. 412 E. Frank St. was most recently occupied by Frank Street Bakery, while 420 E. Frank has been used as an interior design office space for the past several years. The combined parcels are 15,200 sq. ft. and are located on the southeast corner of E. Frank and Ann Sts. The applicant is proposing to demolish the existing buildings to construct a three-story five-

unit multi-family structure. On February 13, 2017 the City Commission approved a rezoning to TZ-1 Transition Zoning. The proposed residential units are permitted principal uses in the TZ-1 Zone.

On March 22, 2017, the Planning Board approved the Preliminary Site Plan with conditions. The applicant has complied with all of the conditions requested by the Planning Board for the acceptance of the Preliminary Site Plan.

Design Review

The plans meet the requirements of Article 04 section 4.82 SS-09 Development Standards for TZ-1. However, the applicant will need to provide glazing calculations for the front facade of residential units to show they are at least 25% windows or doors.

The applicant is proposing to construct the building façade from “Olde Windsor Sand Coated” brick with sections of tan limestone veneer. These are high quality building materials permitted in the Ordinance. The development will mesh nicely with the surrounding neighborhood as many of its neighbors are constructed with identical materials (631, 647, 659, and 650 Ann St.; 393 E. Frank St.; 500 S. Old Woodward Ave).

Mr. Alex Bogaerts, the architect, was present along with Mr. John Serkesian who represented the applicant. Mr. Bogaerts passed around the materials. The building is predominantly masonry with limestone accent. They intend to add the exact percentage of glass to the plans.

Mr. Jeffares thought this a beautiful building but one thing that bothers him is the massive brick wall along the east elevation that can be seen from Woodward Ave. Mr. Bogaerts indicated they can't put in windows because the building is right on the property line. If someone else were to build they could potentially come right up against their building. However, they would be happy to introduce limestone and masonry detailing in the wall.

Motion by Mr. Jeffares

Seconded by Ms. Whipple-Boyce to approve the Final Site Plan Review for 412-420 E. Frank St. with the following conditions:

- 1. The applicant provide calculations that confirm at least 25% of the proposed building's front facade is comprised of windows or doors;**
- 2. The east elevation first floor is broken up with some masonry detail to be administratively approved.**

No one from the public wished to comment on the motion at 8:47 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Boyle

06-121-17

**3. 300 Hamilton Row (Commonwealth Cafe)
Request for Final Site Plan Review to allow installation of a larger outdoor
dining platform in the street**

Mr. Baka explained the building is located on the south side of Hamilton Row between Ferndale Ave. and Park St. The applicant proposes to construct an outdoor terrace area utilizing two existing parallel parking spaces. The applicant was previously approved for a dining deck of approximately 23 ft. that spanned the existing storefront. The café has now expanded into the storefront to the east, doubling their linear frontage to 46 ft. Accordingly, they are now requesting permission to extend the dining deck across the new portion of the café as well.

As this requested change approximately doubles the size of the dining deck the Planning Dept. determined that it required a revised design review by the Planning Board. The previously approved deck also required two parking spaces as the expanded deck does. However, when Hamilton Row was reconstructed in 2016 the spaces were realigned which resulted in the spaces shifting slightly to the east. As a result, the new expanded deck does not require any additional parking spaces and thus does not need approval from the Advisory Parking Board for the new configuration.

Design

The applicant intends to construct the deck of the platform with 1/8 in. metal diamond plate interlocking panels. The deck is proposed to be enclosed on three sides with matching 1/8 in. diamond plating that will enclose 10 in. w x 18 in. deep plastic planter liners. Attached to the top of the planter boxes the applicant is proposing a decorative railing constructed from a combination of flat stock steel, square steel tube and steel rod. The transition between the planter boxes and the railing is proposed to be clad with a 1 in. x 4 in. oak collar. The planter boxes are proposed to be planted with live bamboo planting. The rendering on the plans indicate that the plantings will extend above 6 ft. which will obscure the view the street from those dining on the deck and vice versa.

The Planning Board may wish to consider if this condition would be consistent with the intent of the goals of outdoor dining.

Signage

The applicant proposes to install four logo signs. The total linear building frontage is 46 ft., permitting 46 sq. ft. of sign area. The existing projecting wall sign measures 6 sq. ft. and the existing name letter sign measures 2 sq. ft. Each of the four proposed signs reading "COMMONWEALTH CAFE" will measure 5 in. h x 35.5 in. w or 177.5 sq. in. each for a total of 4.93 sq. ft. The combined area of the existing and new signage will be 12.93 sq. ft. In accordance with Article 1.0, section 1.04 (B) of the Birmingham Sign Ordinance, Combined Sign Area - For all buildings, including multi-tenant office or retail buildings, the combined area of all types of signs shall not exceed 1 sq. ft. (1.5 sq. ft. for

addresses on Woodward Ave.) for each linear foot of principal building frontage. The proposal meets this requirement.

Illumination

No new lighting or changes to existing lighting are proposed.

Mr. Kevin Hart, Architect for the project, was present along with Mr. Jim Haisch, the business owner and Mr. George Joseph, the builder. Mr. Hart passed along a sample of the diamond plate metal and renderings of the planter boxes as they would look planted with bamboo. He explained the dining deck will be 43 ft. x 12 ft. rather than 46 ft. The planter boxes will be 36 in. high with oak trim at the top. One of the benefits of the metal diamond plate deck is that it can be locked into the curb to get a smooth transition. The deck will have 13 tables. They expect the height of the bamboo to be about 60 in. which will make it eight to nine ft. high including the planter boxes. He feels this application has merit and will look very attractive for the City.

Board members expressed concerns about the bamboo's transparency and how fast it grows. Mr. Hart indicated the plants are fairly transparent and will be maintained by Planterra each week. At the end of the season the deck will be put into a storage facility.

Chairman Clein said likes the deck a lot but he is afraid the bamboo goes against the intent of the Ordinance to activate the street.

Mr. Jim Haisch thought this greenery would complement the interior of the cafe where it is very green. It will look attractive and be something that will draw people in.

The Chairman took comments from members of the public at 9:15 p.m.

Mr. Michael Poris indicated his support for the dining deck. He likes the idea of creating greenery on the street because right now the street is kind of dead. Also, he welcomes more seating for the cafe.

Ms. Whipple-Boyce indicated her willingness to give this a try. She did not think the applicant would want to do something that would block them off from the rest of the community. Ms. Niskar agreed. She likes the consistency with the cafe's interior and the fact the bamboo plants will be maintained every week. Mr. Williams also agreed. If this doesn't work for the applicant they will change it. Ms. Afrakhteh was in favor as well. She did not think the greenery will take away from the street. Adding the bamboo would improve the look of the street because there isn't much green there now. You can't go wrong by adding something green.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Final Site Plan and Design Review for 300 Hamilton Row (Commonwealth Cafe).

No comments were heard from the audience at 9:23 p.m.

Motion carried, 6-1.

VOICE VOTE

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

Nays: Clein

Absent: Boyle

06-122-17

PRE-APPLICATION DISCUSSION

1. 191 N. Chester

The First Church of Christ, Scientist

Proposal to adapt and reuse the existing church building for office use

Mr. Rick Rattner, Attorney, 381 S. Old Woodward Ave., was present with Mr. Sam Surnow representing The Surnow Co., the developer; and Mr. Victor Saroki, the architect. Mr. Rattner explained they intend to repurpose the church into an office building. The church is an iconic structure and they don't intend to change it. Surrounding neighbors have voiced their support. The site is zoned TZ-1 Residential but it would not be feasible to change the church into residential as it is a very complicated building. Office seems the most realistic use for the structure that is there.

Mr. Saroki presented a PowerPoint and noted the church has historical significance in the way it is sited and the way it looks. Their goal is to preserve the building and he went on to explain why it would not work for residential. The original structure was built in 1927 and additions were put on in 1960 and 1972. The building is extremely well maintained. They tried to market it as a church but couldn't find anyone that was interested.

It is proposed to take out three parking spaces and add landscape. Forty percent of the lower level will contain enclosed parking for twelve cars. Their plan is to build a new wall at the property line to keep the grade high. Then the sidewalk can be lowered so that it runs with the street elevation. An ADA compliant location for an elevator has been identified that will hit all of the levels of the building. The mechanicals can be effectively screened.

In response to a question from Mr. Williams, Ms. Ecker explained the applicant would have to submit a petition for an ordinance amendment that would allow this type of thing as opposed to a rezoning. The site is in the Parking Assessment District. Mr. Koseck spoke in favor of seeing this beautiful building preserved. Mr. Williams suggested that Mr. Currier sign off on the zoning issues in advance before the Planning Board starts to look at plans.

06-123-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approval Correspondence
 - 1964 Southfield Rd., Market Square - North wall windows to be revised per sheet A210 dated 02-28-17.
 - Mr. Paul Robertson, Robertson Bros. Builders, 779 S. Bates, brought forward an administrative approval request to change some of the materials on his building located at 750 Forest. With him were Messrs. Michael Poris and Ross Hoekstra from Poris & Associates, Architects. Sales are not going quite as well as he had anticipated. Their biggest problem is that parking is needed in the Triangle District. He discussed the siding material on floors four and five and two and three on the east side. It was specified out as Hardiplank but they have come to find out that both the material and the way it is put together are very significantly more costly than anticipated. Therefore they would like to substitute an exterior insulation finish system in place of the Hardiplank.

Mr. Hoekstra passed around samples of the proposed efface material and explained where it would be placed on 23% of the building. Mr. Robertson noted their general contractor is not enamored at all with the Hardiplank fiber cement, and how it is going to attach, Screws would have to put through the sheathing on the outside into the building to hold the panels in place and he was worried about the waterproofing detail behind that. With the efface installation the insulation is glued on the outside and the material is troweled on top of it, for almost a one coat situation all the way around.

Ms. Ecker read from the Ordinance with regards to building materials for mixed use or commercial buildings in the Triangle District. Exterior insulation finish systems (efface) may be used for architectural detailing above the first floor. Mr. Robertson felt efface was spelled out in the Ordinance because it got a bad name 20 years ago as not being a good product. However, it is very acceptable now and used all over. The difference in cost for him is \$90 thousand net on a budget of \$8 million.

Chairman Clein noted that nevertheless the Ordinance does not allow efface under that interpretation. The Building Official would have to provide a formal interpretation of architectural detailing. Ms. Whipple-Boyce said this is not an architectural detail; it is full walls and she didn't know how the board could say yes.

Mr. Robertson said with lap siding like this there are no waterproofing issues. This needs looking at. Even if the board cannot do it for him they need to do it for someone else in the Triangle District that comes after him. The other thing

the board really needs to look at is the glass requirement of no more than 50% of glass. That is really out of date. Glass is cheaper than cement siding.

c. Draft Agenda for the Regular Planning Board Meeting on July 12, 2017

- Redline Retail Proposed Changes, public hearing;
- 211 S. Old Woodward Ave., SLUP and Final Site Plan for the Theater;
- Bistro Regulations for outdoor dining parameters;
- Shared Parking.

d. Other Business

- Mr. Williams wanted to see data that analyzes uses in the Redline Retail District. That would be useful to him to know where he is going. Chairman Clein advised they are waiting on the memo from the City Manager to help clarify the joint meeting discussion with the City Commission. His understanding is they asked the Planning Board to continue the public hearing on matters they had already set and to focus on the definition of Personal Services. Ms. Lazar said that knowing the actual number of vacant spaces rather than the square footage of vacancies helps people to visualize,

06-124-17

PLANNING DIVISION ACTION ITEMS

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

06-125-17

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:28 p.m.

Jana Ecker
Planning Director



MEMORANDUM

Planning Department

DATE: June 14th, 2017

TO: Planning Board

FROM: Nicholas Dupuis, Planning Intern

APPROVED BY: Jana Ecker, Planning Director

SUBJECT: 211 S. Old Woodward SLUP and Final Site Plan Review

Executive Summary

The subject site, Birmingham Theater, is located at 211 S. Old Woodward, on the east side of the street just south of Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Birmingham Teatro, LLC, is applying for a Special Land Use Permit (SLUP) to operate with a Class C liquor license under the new ordinance allowing a movie theater to operate with a liquor license. Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.

Article 2, section 2.37 (B4) of the Zoning Ordinance requires that a theater seeking to provide alcoholic beverage sales (on-premise consumption) shall obtain a Special Land Use Permit and site plan review. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit.

1.0 Land Use and Zoning

- 1.1 Existing Land Use - The existing site is used as a theater. Land uses surrounding the site are retail and commercial.
- 1.2 Existing Zoning – The property is currently zoned B-4, Business-Residential, and D-4 in the Downtown Overlay District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.
- 1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Commercial / Retail	Commercial / Retail	Commercial / Retail	Commercial / Retail
Existing Zoning District	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential
Downtown Overlay Zoning District	D-4	D-4	D-4	D-4

2.0 Screening and Landscaping

2.1 Screening – No changes are proposed.

2.2 Landscaping – No changes are proposed.

3.0 Parking, Loading, Access, and Circulation

3.1 Parking – As the subject site is located within the Parking Assessment District, the applicant is not required to provide on-site parking.

3.2 Loading – No changes are proposed.

3.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.

3.4 Pedestrian Access & Circulation – No changes are proposed.

3.5 Streetscape – The applicant is not proposing to alter the existing sidewalk, street trees, or light poles.

4.0 Lighting

No new lighting is proposed at this time.

5.0 Departmental Reports

- 5.1 Engineering Division – The Engineering Division has no concerns.
- 5.2 Department of Public Services – No concerns were reported from the DPS.
- 5.3 Fire Department – No comments were received from the Fire Department.
- 5.4 Police Department - The Police Department has no concerns.
- 5.5 Building Division – No comments were received from the Building Division.

6.0 Theater Liquor License Requirements

Earlier this year, the City Commission approved amendments to the Zoning Ordinance and Chapter 10, Alcoholic Liquors, to allow the service of liquor at existing theaters in the D4 zone district. The purpose of the amendments were to create a policy and conditions to allow the City Commission the ability to approve a request to transfer a liquor license into the city in excess of the city's quota licenses if the request is deemed to constitute a substantial benefit to the city for the continuation and development of theaters, to establish criteria for selecting applicants, and to evaluate the impact of increased liquor licenses on the city. Theaters are defined as a building, part of a building for housing dramatic presentations, stage entertainments or motion picture shows.

The applicant, Birmingham Teatro, LLC operates the Birmingham 8 Theater at 211 S. Old Woodward, which houses motion picture shows to the public. The trend in the nation is to provide this service at entertainment/movie venues. The applicant has advised that it is necessary to the experience and the viability of the Theater to serve alcoholic liquors in order to compete in this market. The entire Theater will be licensed by the MLCC. The applicant has advised that alcohol will be primarily served at the existing concession stand on the second floor, with the occasional sale at the first floor concession stand when business is slow.

Chapter 10, Alcoholic Liquors, section 101 outlines the following requirements when applying for a liquor license for a theater:

Persons desiring to transfer a liquor license from outside the city limits into the city limits in excess of the city's quota licenses shall make an application to the city commission and pay the applicable theater liquor license transfer review fee as set forth in appendix A of this Code. In addition to those items and conditions set forth in section 10-42, the application shall set forth in detail its proposed project, including, but not limited to:

- (1) Utilization of said liquor licenses and details on the number of quota liquor licenses in escrow at the time of application.
 - (2) Proposed and/or existing site plan of the property, building floor plan and an operations floor plan.
 - (3) An economic impact analysis.
-

-
- (4) A copy of the special land use permit application and supporting documentation submitted by the applicant.
 - (5) All documentation submitted to the LCC requesting the transfer.
 - (6) Full identification and history of the license holder(s) as it pertains to the license proposed to be transferred, including all complaints filed with the state liquor control commission (LCC) or actions taken by any municipality or the LCC to suspend, revoke or deny the non-renewal of said license and all other documentation setting forth the detail of the existing theater or proposed theater by the applicant, including the approximate dollar amount of the investment to be made, number of jobs to be created, minimum of 150 seats and other benefits to the city.
 - (7) Information detailing how the proposed operation will create or sustain the theaters in the city.
 - (8) Such other items deemed necessary by city administration.

The applicant has advised that all quota liquor licenses are currently in use, with the exception of the following, which are currently in escrow:

1. BELLAR BIRMINGHAM VENTURES LLC (Attached to the building)
2. MONDIAL PROPERTIES III, L.L.C. (Transfer pending with the MLCC)
3. PEABODY'S OF BIRMINGHAM, INCORPORATED (Asking price is \$750K)

The applicant has provided a floor plan of the existing theater at 211 S. Old Woodward. No site plan has been provided, however no exterior changes are proposed.

The applicant has submitted an economic impact analysis that states that the economic impact of the Birmingham Theater having a liquor license will be positive for the City. Specifically, the full service aspect of the oldest and most iconic theater in town will allow the Birmingham Theater to thrive and to bring customers to the middle of the downtown area to enjoy other retail and dining establishments.

The applicant has submitted the required SLUP application and supporting documentation, as well as all documentation submitted to the LCC requesting the transfer of a liquor license to 211. S. Old Woodward. Please see attached.

The applicant has provided information on the proposed license holder, Birmingham Teatro, which is owned equally by Daniel Shaw and Nicholas Lekas. Identification and information has been provided on each of these co-owners. In addition, the following information regarding LCC complaints at other establishments owned or partially owned by the applicant(s) have been submitted:

-
1. E.A Fuller Oak Management Corporation, which does business as the Baypointe Golf Club, located at 4001 Haggerty Rd, West Bloomfield. This license does not have any violation history with the MLCC.
 2. Fuller Oak Management, LLC and Oakland County Parks & Recreation Commission, doing business as, Glen Oaks Golf & Country Club, located at 30500 w. 13 Mile Rd, Farmington Hills. This license has a warning ticket issued by the MLCC for allowing the sale of two drinks for the price of one.

The applicant has indicating that the amount of investment proposed to be made at the existing theater is \$70,000. The applicant has stated that the Birmingham Theater provides a total of 625 seats, and there are currently 35 – 40 employees. The applicant has advised that the service of alcohol is required for the continued operation of the Birmingham 8 Theater, given market trends and the need to compete with the Emagine Palladium Theater, which also provides the service of alcohol to theater patrons. Emagine and the Birmingham Theater are the only two movie theaters in the City. Granting the SLUP to the Birmingham Theater will enable it to serve alcohol, the theaters will be similarly situated, and both should be able to sustain their businesses into the future.

Chapter 10, Alcoholic Liquors, Section 102 also establishes the following criteria for reviewing applications for theater liquor licenses:

- (a) Selection criteria. In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-42, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the existing establishment applicants, if any, should be approved:
 - (1) The applicant's demonstrated ability to finance the proposed project.
 - (2) The applicant's track record with the city including responding to city and/or citizen concerns.
 - (3) Whether the applicant has an adequate site plan to handle the proposed liquor license activities.
 - (4) Whether the applicant has adequate health and sanitary facilities.
 - (5) The percentage of proceeds from the sale of tickets and food products as compared to the sale of alcoholic beverages.
 - (6) Whether the applicant has outstanding obligations to the city (i.e. property taxes paid, utilities paid, etc.).
 - (b) Maximum number of theater licenses. The city commission may approve a maximum of two theater licenses each calendar year in addition to the existing quota licenses otherwise permitted by state law.
 - (d) If any new transfers of licenses for theaters are to be considered, the city commission shall set a schedule setting forth when all applicants must submit their application and supporting documentation, when interviews may be conducted and a timeframe within which a decision will be anticipated.
-

The applicant has advised that the applicant and its Landlord have been operating the Birmingham Theater since 1976. The only additional financial commitment from the Theater is the cost of the Class C liquor license and alcohol inventory in the approximate amount of \$70,000. The source of these funds is from the operating income of the Theater.

The applicant has an outstanding track record of responding to both City and citizen concerns both with regard to the Birmingham Theater and numerous other properties owned throughout the City.

The applicant has demonstrated an adequate site plan and floor plan that will accommodate the proposed service of liquor. The existing theater has adequate health and sanitary facilities for the proposed use.

The applicant has indicated that approximately 5% of total sales will be from the sale of alcoholic beverages, and approximately 95% of total sales will be from the sale of tickets and food products.

The applicant does not currently have any outstanding obligations to the City.

In accordance with Chapter 10, section 102, the City Commission may approve a maximum of two theater licenses each calendar year in addition to the existing quota licenses. The City Commission must set a schedule for the review and consideration of applications for theater licenses. The Birmingham Theater is the only existing theater in the City that is qualified to apply for a theater liquor license under Chapter 10, Alcoholic Liquors due to its location in the B4 zone district.

6.0 Design Review

The applicant is proposing no interior or exterior design changes to the building at this time.

Hours of operation for liquor sales will be seven days a week from 11:00 AM to 1:00 AM. The enforcement of liquor sales and handling will be done by all of the employees. Every employee of the Theater who deals with alcohol sales will be formally trained by "TIPS". This a program approved by the MLCC. Also, every person, regardless of their age, will be carded when purchasing alcohol. The bar will be full service with beer, wine and mixed drinks.

7.0 Downtown Birmingham 2016 Overlay District

The 2016 Birmingham Master Plan recommended a mix of retail, food services and entertainment in Downtown Birmingham. The first floor theater use is consistent with the recommendations contained in the 2016 Plan.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

-
- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
 - (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
 - (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.
 - (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
 - (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
 - (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the **City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed** for the site described in the application of amendment.

The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

10.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend APPROVAL to the City Commission of the applicant's request for Final Site Plan and a SLUP for 211 S. Old Woodward, Birmingham Theater.

11.0 Sample Motion Language

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend APPROVAL to the City Commission of the applicant's request for Final Site Plan and a SLUP for 211 S. Old Woodward, Birmingham Theater.

OR

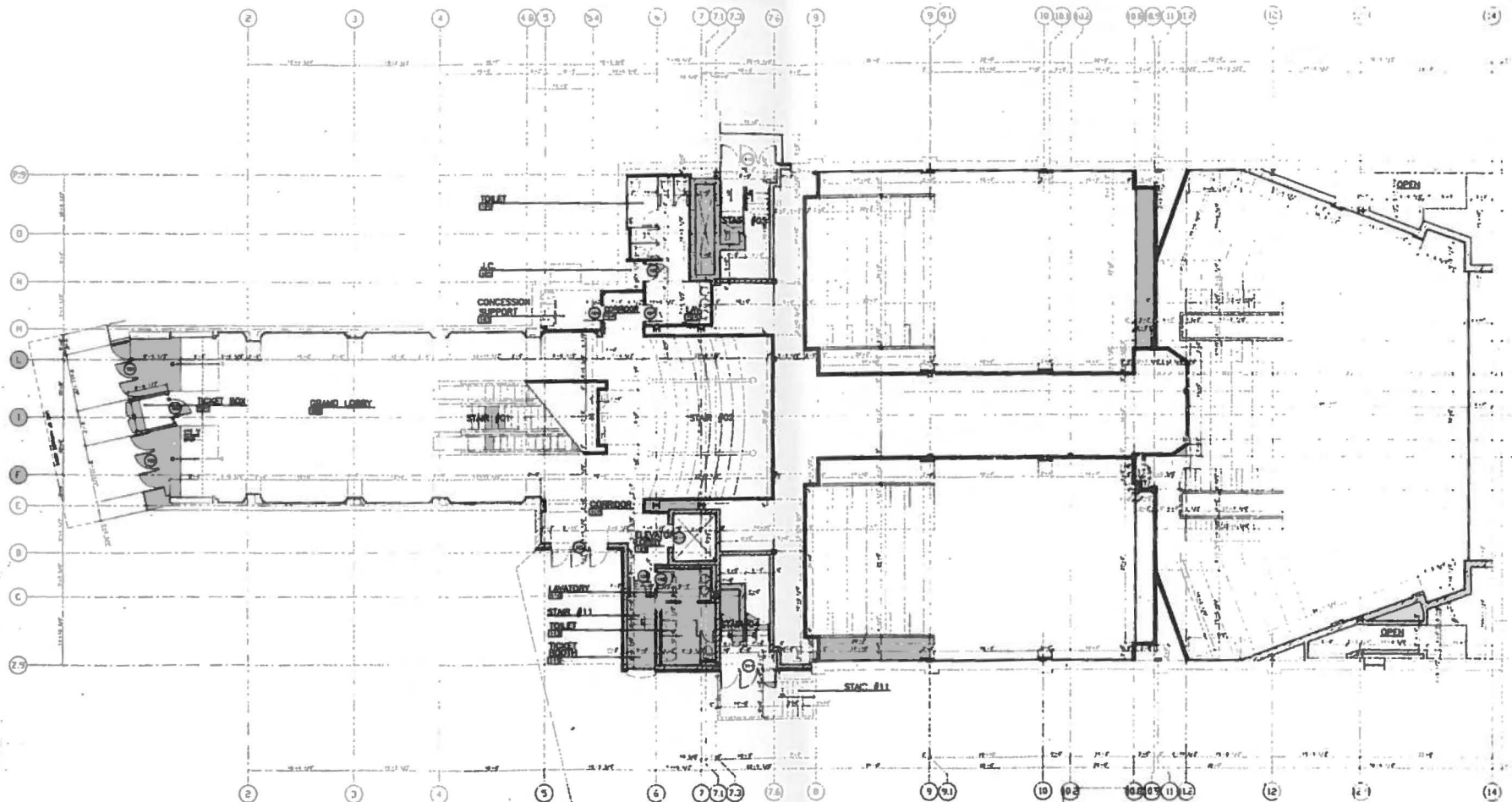
Motion to recommend DENIAL of the Final Site Plan and SLUP to the City Commission for 211 S. Old Woodward, Birmingham Theater for the following reasons:

1. _____
2. _____

OR

Motion to POSTPONE the Final Site Plan and SLUP for 211 S. Old Woodward, Birmingham Theater, pending receipt of the following:

1. _____
2. _____



PROPOSED LOBBY LEVEL FLOOR PLAN

SCALE: 1/8"=1'-0"

- WALL LEGEND**
- EXISTING WALL TO REMAIN
 - NEW WALL TO REMAIN
 - NEW WALL TO BE DEMOLISHED
 - NEW WALL TO BE CONSTRUCTED
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PROJECT ARCHITECT:
VICTOR SOROKI & ASSOCIATES
ARCHITECTS, P.C.
525 North Woodward Ave.
Birmingham, MI 48009
810.254.5707
fax 810.258.5515

ASSOCIATE ARCHITECT:
KELVIN TRUCTION DOCUMENTS
PRIME DESIGN SYSTEMS, INC.
877 South Adams Rd.
Suite 202
Birmingham, MI 48009
810.540.1711
fax 810.510.3856

STRUCTURAL ENGINEER:
L & B, INC.
29580 Northwestern Hwy.
Suite 100
Juchfield, MI 48034
810.356.7750
fax 810.356.1210

MECHANICAL/ELECTRICAL ENGINEER:
JAMES PORTERIDGE ASSOCIATES, INC.
925 South Adams Rd.
Birmingham, MI 48009
810.645.1465
fax 810.645.1590

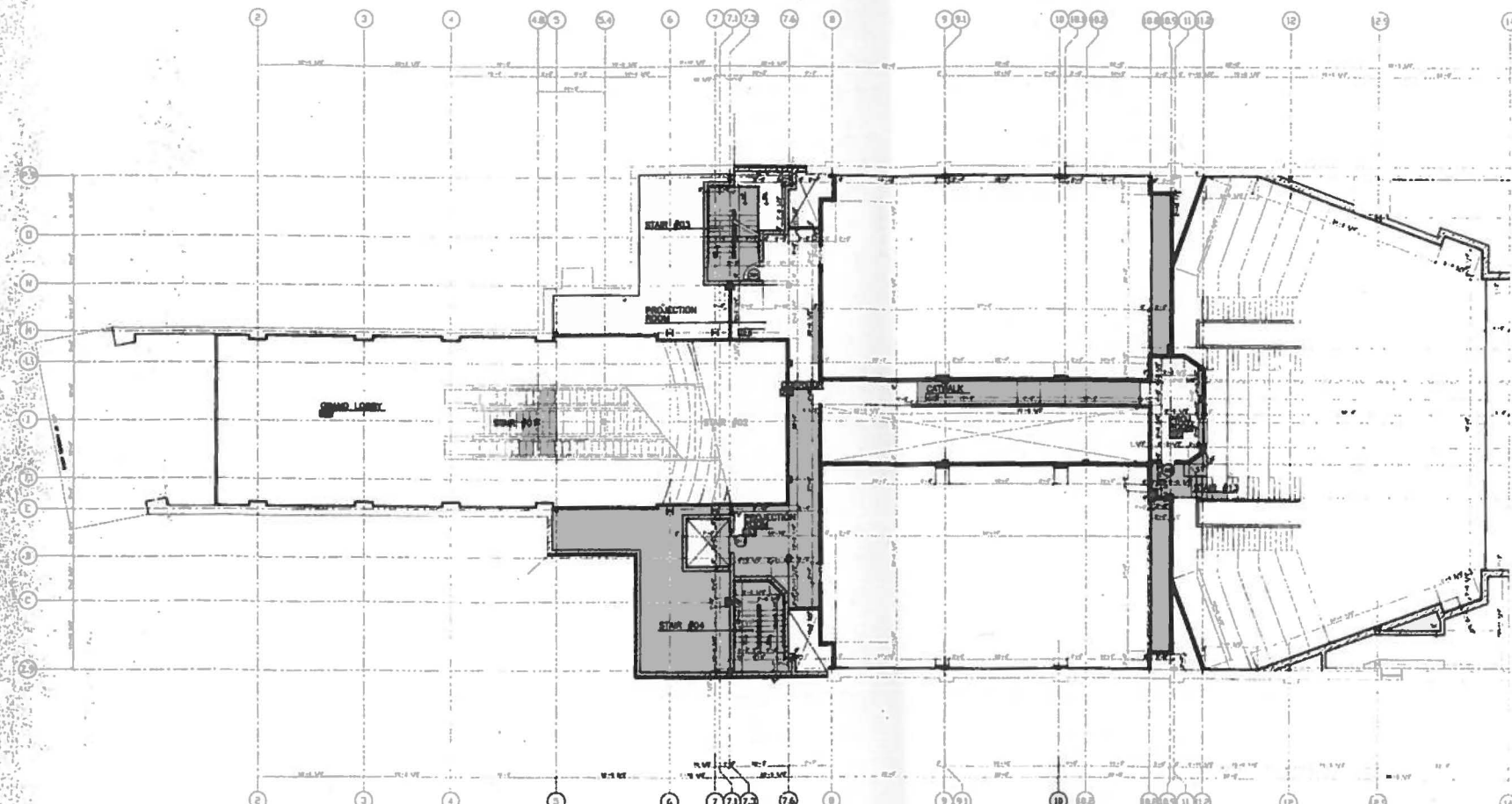
CONSTRUCTION MANAGER:
INTEGRATED CONSTRUCTION
SERVICES, INC.
155 South Woodward Ave.
Suite 200
Birmingham, MI 48009
810.642.9800
fax 810.642.9870

BIRMINGHAM THEATRE
Uptown Theatres
211 South Woodward Ave.
Birmingham, MI 48009

Date: Issued For:
10/01/05 REVISION PLANS
10/01/05 DESIGN THREE SET
11/05/05 REVISION SET

Project Number:
10-011
Sheet Title:
PROPOSED
LOBBY LEVEL FLOOR PLAN

Sheet Number:
A1.03



PROPOSED LOWER LEVEL PROJECTION MEZZANINE PLAN
 SCALE: 1/8"=1'-0"

- WALL LEGEND**
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 - STAIR 300

PROJECT ARCHITECT:
 DESIGN
VICTOR TORRES & ASSOCIATES
 ARCHITECTS, P.C.
 525 North Woodward Ave.
 Birmingham, MI 48009
 810.258.5702
 fax 810.258.5515

ASSOCIATE ARCHITECT:
 ASSOCIATION DOCUMENTS
PRIMA DESIGN SYSTEMS, INC.
 877 South Adams Rd.
 Suite 202
 Birmingham, MI 48009
 810.540.1711
 fax 810.540.3856

STRUCTURAL ENGINEER:
L & B, INC.
 29580 Northwestern Hwy.
 Suite 100
 Southfield, MI 48034
 810.356.7750
 fax 810.356.1210

MECHANICAL/ELECTRICAL ENGINEER:
JAMES PORTER & ASSOCIATES, INC.
 925 South Adams Rd.
 Birmingham, MI 48009
 810.645.1465
 fax 810.645.1590

CONSTRUCTION MANAGER:
INTEGRATED CONSTRUCTION
SCOTT, INC.
 355 South Woodward Ave.
 Suite 200
 Birmingham, MI 48009
 810.642.9800
 fax 810.642.9870

BIRMINGHAM THEATRE
 Uptown Theatres
 211 South Woodward Ave.
 Birmingham, MI 48009

Date: Issued For:
 10/19/03 PRODUCTION PERMIT
 10/19/03 DESIGN PERMIT
 10/19/03 PERMIT SET

Project Number:
 20-011
 Sheet Title:
 PROPOSED
 LOWER LEVEL PROJECTION
 MEZZANINE PLAN
 Sheet Number:
A1.04

**ASSOCIATE ARCHITECT;
RECONSTRUCTION DOCUMENTS
PRIME DESIGN SYSTEMS, INC.**
877 South Adams Rd.
Suite 202
Birmingham, AL 35209
810.540.1711
fax 810.540.3856

STRUCTURAL MONITORING & B. INC.
29580 Northwestern Hwy.
Suite 100
Southfield, MI 48034
810.355.7750
Fax 810.356.1210

MECHANICAL/ELECTRICAL ENGINEER;
JAMES PARTNIDGE ASSOCIATES, INC.
925 South Adams Rd.
Birmingham, AL 38009
810.645.1465
fax 810.645.1590

**CONSTRUCTION MANAGER:
INTEGRATED CONSTRUCTION
SERVICES, INC.**
355 South Woodward Ave.
Suite 200
Birmingham, AL 35209
810.642.9800
fax 810.642.9870

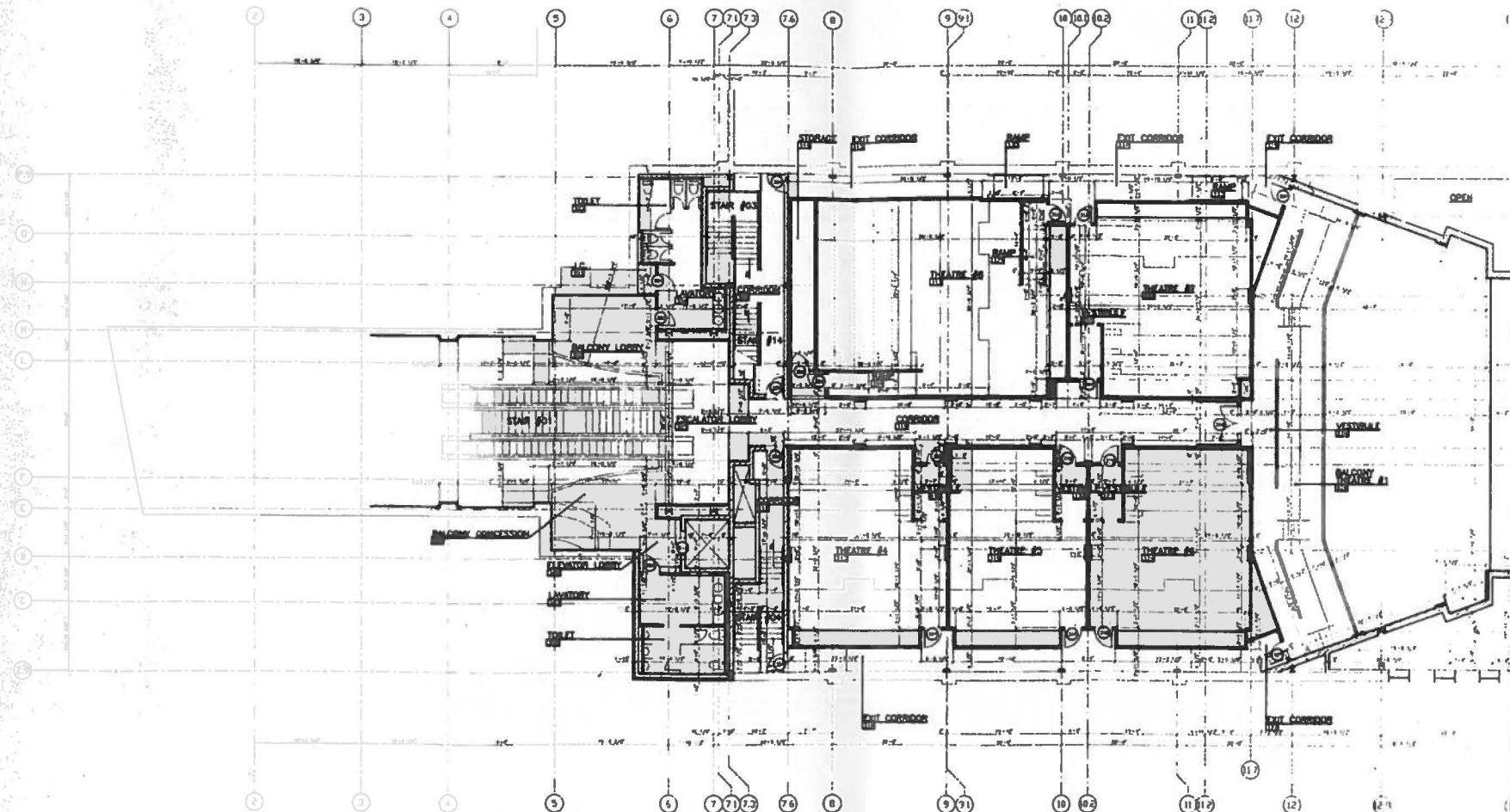
BIRMINGHAM THEATRE
Uplown Theatres
211 South Woodward Ave.
Birmingham, MI 48009

Date: 10/01/95
Issued For: 10/01/95

Project Number:
J-1067

Sheet Title:
PROPOSED
UPPER LEVEL
FLOOR PLAN

Sheet Number:
A1.05



PROPOSED UPPER LEVEL FLOOR PLAN

SCALE: 1/8" = 1'-0"

BULL LEOPARD

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Abstract

TABLE 10.11 *Key points, related to adaptive learning*

THE JOURNAL OF THE



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
JESSICA A. HALLMARK
GREGORY K. NEED
G. HANS RENTROP

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

KEVIN M. CHUDLER
SARAH J. GABIS
LINDA S. MAYER

May 1, 2017

Via Hand Delivery

Commander Chris Busen
Birmingham Police Department
151 Martin
Birmingham, MI 48012

**Re: Birmingham Teatro, LLC
211 Old S. Woodward, Birmingham**

Dear Commander Busen:

We represent Birmingham Teatro, LLC ("Birmingham Teatro"), which will do business as Birmingham Theater at 211 S. Old Woodward in Birmingham. Birmingham Teatro is requesting to transfer ownership and location of the Class C license from Thumper's Splatter, LLC, formerly located in Rochester Hills. Birmingham Teatro is requesting a Sunday Sales (AM and PM) permit, an additional bar permit, and an entertainment permit. We have submitted the required requests to the City Manager and the City Planner for the SLUP application for Birmingham Teatro.

Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas. Birmingham Teatro has a sublease for the real estate and furniture, fixtures and equipment with landlord Fuller Central Park Properties, LLC, which is effective April 17, 2017, and expires December 31, 2024. The monthly payments are \$30,256.73. The only cost to Birmingham Teatro is for the liquor license and alcoholic beverage inventory. This amount will be financed by a loan from Birmingham Theatre, LLC, which is the sub-landlord. Mr. Lekas and Mr. Shaw are part owners of Birmingham Theatre, LLC.

The liquor license will allow customers to purchase alcohol while enjoying the movie experience. In recent years there has been a national trend with prominent movie theatres to offer this service. The service of alcohol at movie theatres is now popular in Michigan as well. The service of the alcohol will be primarily out of the concession area on the second floor, except during the slower hours; then the alcohol will be served from the first floor concession area.

Birmingham Teatro's hours of operation are 7 days a week from 11:00 am to 1:00 am. The total capacity is 597.

Enclosed for your review are the following:

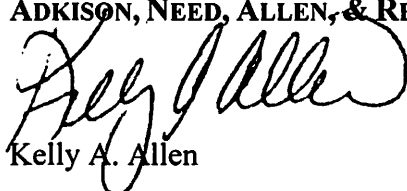
- Check payable to the City of Birmingham for \$1,500;
- City of Birmingham Application and Release, driver's license, birth certificate, and 2014, 2015, and 2016 tax returns for Daniel Shaw;
- City of Birmingham Application and Release, driver's license, passport, and 2014, 2015, and 2016 tax returns for Nicholas Lekas;
- Liquor License Purchase Agreement (contained in the binder);
- Filed Articles of Organization and Operating Agreement for Birmingham Teatro, LLC (contained in the binder);
- Sublease Agreement and Lease Agreement (contained in the binder);
- Statement of Money Lender for the loan from Birmingham Theatre, LLC to Birmingham Teatro, LLC;
- Bank letters and 2015 and 2016 tax returns for Birmingham Theatre, LLC; and
- Floor plan.

We have also enclosed the applications submitted to the MLCC requesting the transfer of ownership and location of the Class C Liquor License and permits.

If you have any questions whatsoever, please do not hesitate to call me or my legal assistant, Laura Peters. I appreciate your assistance in this matter.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

/lbp
Enclosures



Department of Licensing and Regulatory Affairs

MICHIGAN.GOV

Michigan's
Official
Web Site[Michigan.gov Home](#)[LLIST Home](#) | [MLCC Home](#) | [Contact MLCC](#) | [LARA Home](#)

Michigan Liquor Control Commission

BAYPOINTE GOLF CLUB

County Name OAKLAND
LGU Name WEST BLOOMFIELD TWP
Insurance Company ILLINOIS UNION INSURANCE COMPANY (12/31/2015-Present)
Business Id 224110
Business Tax Id 382036734
Business Address 4001 Haggerty Rd, West Bloomfield, 48323
Business Phone 248.360.0600
Number of Bars 2

*No Violation
history*

Licensees

E. A. FULLER OAK MANAGEMENT CORPORATION

Stockholders/Members

FULLER, EDWARD A

LEKAS, JANET J

LEKAS, NICHOLAS

SHAW, DANIEL J

Contacts

Name	Purpose/Function	Phone Nbr	Fax Nbr	Address
NONE				

Liquor License Specifics

License (Type-NBR-YR)	Permits	Transfer Status	MCL Act
CLASS C-204009-2017	1.CATERING 2.SS 3.DANC-ENT 4.OD-SERV 5.SPECIFIC PURPOSE(FOOD,GOLF) 6.ADDBAR	TRANSFERABLE	NONE
SPECIALLY DESIGNATED MERCHANT-204010-2017	NONE	TRANSFERABLE	NONE

ReQuery

Return

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[Michigan Liquor Control Commission](#)

Lansing, MI 48909-7505

Ph: 866-813-0011

Fx: 517-763-0059

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[Accessibility Policy](#) | [Link Policy](#) | [Security Policy](#)

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Michigan Liquor Control Commission

GLEN OAKS GOLF & COUNTRY CLUB

County Name	OAKLAND
LGU Name	FARMINGTON HILLS CITY
Insurance Company	ILLINOIS UNION INSURANCE COMPANY (12/31/2015-Present)
Business Id	339
Business Tax Id	NONE
Business Address	30500 W 13 Mile Rd, Farmington Hills, 48334
Business Phone	248.858.4944
Number of Bars	1

Licensees

FULLER OAK MANAGEMENT, L.L.C.

OAKLAND COUNTY PARKS & RECREATION COMMISSION

Stockholders/Members

FULLER, EDWARD A

LEKAS, JANET J

LEKAS, NICHOLAS

SHAW, DANIEL J

Contacts

Name	Purpose/Function	Phone Nbr	Fax Nbr	Address
NONE				

Liquor License Specifics

License (Type-NBR-YR)	Permits	Transfer Status	MCL Act
CLASS C-523-2017	1.DANC-ENT 2.OD-SERV 3.SS 4.ADDBAR 5.SPECIFIC PURPOSE(FOOD) 6.SS(AM) 7.SPECIFIC PURPOSE(GOLF) 8.BANQUET-DANC-ENT,OD-SERV,SPECIFIC PURPOSE(FOOD),SS,SS(AM) 9.CATERING	TRANSFERABLE	NONE

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[Michigan Liquor Control Commission](#)

Lansing, MI 48909-7505

Ph: 866-813-0011

Fx: 517-763-0059

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[Accessibility Policy](#) | [Link Policy](#) | [Security Policy](#)

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Department of Licensing and Regulatory Affairs

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Michigan Liquor Control Commission

Violation History of Business: 339 FULLER OAK MANAGEMENT, L.L.C.

Violation Date	MLCC Complaint Number	Violation Description	Decision or Event
7/13/16	177888		7/13/2016 6/23/16 WARNING TICKET ISSUED R 436.1438(1)

[ReQuery](#)[Return](#)[Print Window](#)[Close Print Window](#)[Michigan Liquor Control Commission](#)

Lansing, MI 48909-7505

Ph: 866-813-0011

Fx: 517-763-0059

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[Accessibility Policy](#) | [Link Policy](#) | [Security Policy](#)

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PROFESSIONAL LIMITED LIABILITY COMPANY

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KELLY A. ALLEN
JESSICA A. HALLMARK
GREGORY K. NEED
G. HANS RENTROP

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:
KEVIN M. CHUDLER
SARAH J. GABIS
LINDA S. MAYER

June 22, 2017

Via Electronic Mail

Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48012

Re: SLUP Application for the Birmingham Theater

Dear Ms. Ecker:

In addition to the information we have provided to the Planning Department, we are providing responses to the relevant ordinances set forth below.

Chapter 10 Sec. 10-102. - *Application for transfer of liquor license into the city for theater purposes.*

In addition to those items and conditions set forth in section 10-42, the application shall set forth in detail its proposed project, including, but not limited to:

(1) Utilization of said liquor licenses and details on the number of quota liquor licenses in escrow at the time of application.

RESPONSE: There are currently three Class C licenses in escrow in the City. The licenses are listed below. None of these licenses are available to the Birmingham Theater.

1. BELLAR BIRMINGHAM VENTURES LLC (Attached to the building)
2. MONDIAL PROPERTIES III, L.L.C. (Transfer pending with the MLCC)
3. PEABODY'S OF BIRMINGHAM, INCORPORATED (Asking price is \$750K)

(2) Proposed and/or existing site plan of the property, building floor plan and an operations floor plan.

RESPONSE: Provided.

(3) *An economic impact analysis.*

RESPONSE: The economic impact of the Birmingham Theater having a liquor license will be positive for the City. Specifically, the full service aspect of the oldest and most iconic theater in town will allow the Birmingham Theater to thrive and to bring customers to the middle of the downtown area to enjoy other retail and dining establishments.

(4) *A copy of the special land use permit application and supporting documentation submitted by the applicant.*

RESPONSE: Provided.

(5) *All documentation submitted to the LCC requesting the transfer.*

RESPONSE: Attached.

(6) *Full identification and history of the license holder(s) as it pertains to the license proposed to be transferred, including all complaints filed with the state liquor control commission (LCC) or actions taken by any municipality or the LCC to suspend, revoke or deny the non-renewal of said license and all other documentation setting forth the detail of the existing theater or proposed theater by the applicant, including the approximate dollar amount of the investment to be made, number of jobs to be created, minimum of 150 seats and other benefits to the city.*

RESPONSE: Provided.

(7) *Information detailing how the proposed operation will create or sustain the theaters in the city.*

RESPONSE: There are only two movie theaters in the City, Emagine and the Birmingham Theater. By granting the SLUP to the Birmingham Theater, which would enable it to serve alcohol, the theaters will be similarly situated, and should both be able to sustain their businesses into the future.

(8) *Such other items deemed necessary by city administration.*

RESPONSE: No further information.

The Applicant is also providing responses to Chapter 10, Alcoholic Liquors, Section 102 which establishes the following criteria for reviewing applications for theater liquor licenses:

(a) *Selection criteria. In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-42, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the existing establishment applicants, if any, should be approved:*

(1) The applicant's demonstrated ability to finance the proposed project.

RESPONSE: The Applicant and its Landlord have been operating the Birmingham Theater since 1976. The only additional financial commitment from the Theater is the cost of the Class C liquor license and alcohol inventory in the approximate amount of \$70,000. The source of these funds is from the operating income of the Theater.

(2) The applicant's track record with the city including responding to city and/or citizen concerns.

RESPONSE: Provided.

(3) Whether the applicant has an adequate site plan to handle the proposed liquor license activities.

RESPONSE: Provided.

(4) Whether the applicant has adequate health and sanitary facilities.

RESPONSE: Provided.

(5) The percentage of proceeds from the sale of tickets and food products as compared to the sale of alcoholic beverages.

RESPONSE: The ticket and food sales percentage vs. the alcohol sales percentage is estimated to be 95% to 5%.

(6) Whether the applicant has outstanding obligations to the city (i.e. property taxes paid, utilities paid, etc.).

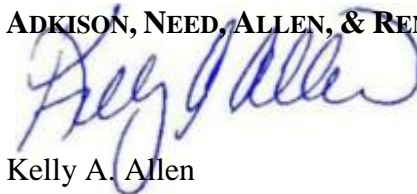
RESPONSE: The City is obtaining this information from the Treasurer.

Please let us know if you require any further information.

Thank you for your great work on this.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

/kjf

m:\fuller, ted\birmingham theater\corres\2017-06-22 ltr to jecker re responses to ordinance for slup application.docx



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
SALAM F. ELIA
GREGORY K. NEED
G. HANS RENTROP

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Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

KEVIN M. CHUDLER
SARAH J. GABIS
LINDA S. MAYER

April 17, 2017

VIA HAND DELIVERY

Unit 1 – Licensing Division
Michigan Liquor Control Commission
525 W. Allegan Street
P.O. Box 30005
Lansing, Michigan 48909

Re: Request to Transfer Ownership and Location of the Class C Liquor License with Sunday Sales (AM and PM) Permit and Entertainment Permit from Thumper's Splatter, LLC, Business ID No. 235577 (In Escrow at 230 E Auburn Rd., Rochester Hills, Oakland County, Michigan) to Birmingham Teatro, LLC, to be Located at 211 S. Old Woodward, Birmingham, Oakland County, Michigan; Request for a New Additional Bar Permit; and Request to Cancel the Existing Sunday Sales (AM) Permit.

To Whom It May Concern:

This is Birmingham Teatro, LLC's application to transfer ownership and location of the Class C Liquor License with Sunday Sales (AM and PM) Permit and Entertainment Permit from Thumper's Splatter, LLC, Business Id. No. 235577 (currently in escrow at 230 E Auburn, Rochester Hills, Oakland County, Michigan), to be located at 211 S Old Woodward, Birmingham, Oakland County, Michigan; request for a new Additional Bar Permit; and request to cancel the existing Sunday Sales (AM) Permit.

Enclosed, to begin the investigation, are the following:

1. LCC-100 for Birmingham Teatro, LLC (including Page 3 for members: Daniel Shaw and Nicholas Lekas);
2. LCC-301 for Birmingham Teatro, LLC;
3. Proposed Articles of Organization and Operating Agreement for Birmingham Teatro, LLC;

4. Liquor License Purchase Agreement with deposit check; and
5. Sublease Agreement and Lease Agreement.

Additionally, enclosed is a credit card authorization form for payment of fees totaling \$1,162.50 (\$70.00 for the inspection fees, \$600.00 for the Class C License, \$350.00 for the Additional Bar Permit, and \$142.50 for the Sunday Sales PM Permit).

If you have any questions or need any further information, please do not hesitate to contact my office.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

/lbp
Enclosures

cc: Nicholas Lekas (*with enclosures, via electronic mail*)



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll-Free: 866-813-0011 - www.michigan.gov/lcc

Business ID: _____

Request ID: _____

(For MLCC Use Only)

Retail License & Permit Application

For information on retail licenses and permits, including a checklist of required documents for a completed application, please visit the Liquor Control Commission's frequently asked questions website [by clicking this link](#).

Part 1 - Applicant Information

Individuals, please state your legal name. Corporations or Limited Liability Companies, please state your name as it is filed with the State of Michigan Corporation Division.

Applicant name(s): Birmingham Teatro, LLC		
Address to be licensed: 211 S Old Woodward Ave		
City: Birmingham	Zip Code: 48009	
City/township/village where license will be issued: City of Birmingham		County: Oakland
Federal Employer Identification Number (FEIN):		

1. Are you requesting a new license? ☐ Yes ☒ No
2. Are you applying ONLY for a new permit or permission? ☐ Yes ☒ No
3. Are you buying an existing license? ☒ Yes ☐ No
4. Are you modifying the size of the licensed premises? ☐ Yes ☒ No
If Yes, specify: ☐ Adding Space ☐ Dropping Space ☐ Redefining Licensed Premises
5. Are you transferring the location of an existing license? ☒ Yes ☐ No
6. Is this license being transferred as the result of a default or court action? ☐ Yes ☒ No
7. Do you intend to use this license actively? ☒ Yes ☐ No

Leave Blank - MLCC Use Only

Part 2 - License Transfer Information (If Applicable)

If transferring ownership of a license ONLY and not transferring the location of a license, fill out only the name of the current licensee(s)

Current licensee(s): Thumper's Splatter, LLC		
Current licensed address: 230 E Auburn		
City: Rochester Hills	Zip Code: 48307	
City/township/village where license is issued: City of Rochester Hills		County: Oakland

Part 3 - Licenses, Permits, and Permissions

Off Premises Licenses - Applicants for off premises licenses, permits, and permissions (e.g. convenience, grocery, specialty food stores, etc.) must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

On Premises Licenses - Applicants for on premises licenses, permits, and permissions (e.g. restaurants, hotels, bars, etc.) must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

Part 4 - Inspection, License, and Permit Fees - Make checks payable to State of Michigan

Inspection Fees - Pursuant to MCL 436.1529(4) a nonrefundable inspection fee of \$70.00 shall be paid to the Commission by an applicant or licensee at the time of filing of a request for a new license or permit, a request to transfer ownership or location of a license, a request to increase or decrease the size of the licensed premises, or a request to add a bar. Requests for a new permit in conjunction with a request for a new license or transfer of an existing license do not require an additional inspection fee.

License and Permit Fees - Pursuant to MCL 436.1525(1), license and permit fees shall be paid to the Commission for a request for a new license or permit or to transfer ownership or location of an existing license.

Inspection Fees:	\$70.00	License & Permit Fees:	\$1,092.50	TOTAL FEES:	\$1,162.50
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Schedule A - Licenses, Permits, & Permissions

Applicant name: Birmingham *Teatro, LLC*

Off Premises License Type:	Base Fee:	Fee Code MLCC Use Only
New Transfer		
<input type="checkbox"/> <input type="checkbox"/> SDM License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> SDD License	\$150.00	
<input type="checkbox"/> <input type="checkbox"/> Resort SDD License	Upon Licensure/\$150.00	

Off Premises Permits:	Base Fee:
<input type="checkbox"/> Sunday Sales Permit (AM)*	\$160.00
<input type="checkbox"/> Sunday Sales Permit (PM)** (Held with SDD License)	\$22.50
<input type="checkbox"/> Catering Permit	\$100.00
<input type="checkbox"/> Secondary Location Permit - Complete Form LCC-201	
<input type="checkbox"/> Beer and Wine Tasting Permit	No charge
<input type="checkbox"/> Living Quarters Permit	No charge

On/Off Premises Permission Type:	Base Fee:
<input type="checkbox"/> Off-Premises Storage	No charge
<input type="checkbox"/> Direct Connection(s)	No charge
<input type="checkbox"/> Motor Vehicle Fuel Pumps	No charge

*Sunday Sales Permit (AM) allows the sale of liquor, beer, and wine on Sunday mornings between 7:00am and 12:00 noon, if allowed by the local unit of government.

**Sunday Sales Permit (PM) allows the sale of liquor on Sunday afternoons and evenings between 12:00 noon and 2:00am (Monday morning), if allowed by the local unit of government. No Sunday Sales Permit (PM) is required for the sale of beer and wine on Sunday after 12:00 noon. The Sunday Sales Permit (PM) fee is 15% of the fee for the license that allows the sale of liquor. Additional bar fees and B-Hotel room fees are also calculated as part of the permit fee.

Licenses, permits, and permissions selected on this form will be investigated as part of your request. Please verify your information prior to submitting your application, as some licenses, permits, or permissions cannot be added to your request once the application has been sent out for investigation by the Enforcement Division.

Inspection, License, Permit, & Permission Fee Calculation

Number of Licenses: 1 x \$70.00 Inspection Fee

Total Inspection Fee(s): Fee Code: 4036 \$70.00

Total License Fee(s): \$600.00

Total Permit Fee(s): \$492.50

TOTAL FEES DUE: \$1,162.50

Please note that requests to transfer SDD licenses will require the payment of additional fees based on the seller's previous calendar year's sales. These fees will be determined prior to issuance of the license to the applicant.

Make checks payable to **State of Michigan**

On Premises License Type:	Base Fee:	Fee Code MLCC Use Only
New Transfer		
<input type="checkbox"/> <input type="checkbox"/> B-Hotel License	\$600.00	
Number of guest rooms: _____		
<input type="checkbox"/> <input type="checkbox"/> A-Hotel License	\$250.00	
Number of guest rooms: _____		
<input type="checkbox"/> <input checked="" type="checkbox"/> Class C License	\$600.00	4034
<input type="checkbox"/> <input type="checkbox"/> Tavern License	\$250.00	
<input type="checkbox"/> <input type="checkbox"/> Resort License	Upon Licensure	
<input type="checkbox"/> <input type="checkbox"/> Redevelopment License	Upon Licensure	
<input type="checkbox"/> <input type="checkbox"/> Brewpub License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> G-1 License	\$1,000.00	
<input type="checkbox"/> <input type="checkbox"/> G-2 License	\$500.00	
<input type="checkbox"/> <input type="checkbox"/> Aircraft License	\$600.00	
<input type="checkbox"/> <input type="checkbox"/> Watercraft License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> Train License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> Continuing Care Retirement Center License	\$600.00	
<input type="checkbox"/> MCL 436.1545(1)(b)(i) <input type="checkbox"/> MCL 436.1545(1)(b)(ii)		

B-Hotel or Class C Licenses Only:

<input checked="" type="checkbox"/> <input type="checkbox"/> Additional Bar(s)	\$350.00	4012
Number of Additional Bars: <u>1</u>		

B-Hotel or Class C licenses allow licensees to have one (1) bar within the licensed premises. A \$350.00 licensing fee is required for each additional bar over the one (1) bar initially issued with the license.

On Premises Permits:	Base Fee:	
<input type="checkbox"/> Sunday Sales Permit (AM)*	\$160.00	
<input checked="" type="checkbox"/> Sunday Sales Permit (PM)**	\$142.50	4032
<input type="checkbox"/> Catering Permit	\$100.00	
<input type="checkbox"/> Banquet Facility Permit - Complete Form LCC-200		

A Banquet Facility Permit is an extension of the license at a different location. It may have its own permits and permissions. It is not a banquet room on the licensed premises.

<input type="checkbox"/> Outdoor Service	No charge
<input type="checkbox"/> Dance Permit	No charge
<input checked="" type="checkbox"/> Entertainment Permit	No charge
<input type="checkbox"/> Extended Hours Permit:	No charge

☐ Dance ☐ Entertainment Days/Hours: _____

<input type="checkbox"/> Specific Purpose Permit:	No charge
---	-----------

Activity requested: _____

Days/Hours requested: _____

<input type="checkbox"/> Living Quarters Permit	No charge
<input type="checkbox"/> Topless Activity Permit	No charge

Schedule B - New Specially Designated Merchant License Supplemental Application - New SDM License Applications ONLY

Applicant name: Birmingham Teatro, LLC

Effective January 4, 2017 pursuant to MCL 436.1533(5), Specially Designated Merchant (SDM) licenses are quota licenses based on one (1) SDM license for every 1,000 of population in a local governmental unit. MCL 436.1533 provides for several exemptions from the quota for qualified applicants. Please carefully read the requirements in the boxes below, selecting the applicable approved type of business option(s) from Section 1 and an applicable new SDM license quota option from Section 2.

Section 1 - Requirements to Qualify as Approved Type of Business for New SDM License Applicants

Applicant must meet one (1) or more of the following conditions (check those that apply to your business):

- ☐ a. Applicant holds and maintains retail food establishment license or extended retail food establishment license under the Food Law of 2000, MCL 289.1101 to MCL 289.8111.
- ☐ b. Applicant holds or has been approved for Specially Designated Distributor license (Applicant must also hold and maintain food establishment license as described above).
- ☐ c. Applicant holds or has been approved for an on-premises license, such as a Class C, A-Hotel, B-Hotel, Tavern, Club, G-1, or G-2 license.

Section 2 - Quota Requirements for New SDM License Applicants

Applicant must qualify under one of the following sections of the Liquor Control Code regarding the SDM quota:

- ☐ a. Applicant is an applicant for or holds a Class C, A-Hotel, B-Hotel, Tavern, Club, G-1, or G-2 license.
MCL 436.1533(5)(a) - SDM license is exempt from SDM quota and license cannot be transferred to another location.
- ☐ b. Applicant's establishment is at least 20,000 square feet and at least 20% of gross receipts are derived from the sale of food.
MCL 436.1533(5)(b)(i) - SDM license is exempt from SDM quota and license cannot be transferred to another location.
- ☐ c. Applicant's establishment is a pharmacy as defined in the Public Health Code, MCL 333.17707.
MCL 436.1533(5)(b)(ii) - SDM license is exempt from SDM quota and license cannot be transferred to another location.
- ☐ d. Applicant's establishment qualifies as a marina under MCL 436.1539.
MCL 436.1533(5)(e) - SDM license is exempt from SDM quota and license may be transferred to another location if the applicant complies with MCL 436.1539 at the new location.
- ☐ e. Applicant does not qualify under any of the quota exemptions or waiver listed above.
MCL 436.1533(5) - Commission shall issue one (1) SDM for every 1,000 population in a local governmental unit and an unissued SDM must be available in the local governmental unit for the applicant to qualify. SDM license may be transferred to another location.

Documents Required To Be Submitted with New SDM License Application

In addition to the documents listed on the application checklist, the new SDM license applicant must submit the documents listed below, as applicable, with its application to comply with the requirements described above. Select one or more of the following:

- ☐ Copy of retail food establishment license or extended retail food establishment license for a SDM license or a SDM license to be issued in conjunction with a Specially Designated Distributor license. The name on the food establishment license must match the applicant name in Part 1 of this application form. *A food establishment license is not required for a SDM license to be issued in conjunction with an on-premises license.*
- ☐ If applying under Section 2b above, documentary proof that applicant's establishment is at least 20,000 square feet and at least 20% of gross receipts are derived from the sale of food.
- ☐ If applying under Section 2c above, a copy of the pharmacy license issued under the Public Health Code.

**REMOVED
DUE TO CLIENT
CONFIDENTIALITY**

**REMOVED
DUE TO CLIENT
CONFIDENTIALITY**

Part 6 - Contact Information

Provide information on the contact person for this application. Please note that corporations and limited liability companies must provide documentation (e.g. meeting minutes, corporate resolution) authorizing anyone other than the applicant or an attorney of record to be the contact person. If an authorization is not provided, your contact person will not be acknowledged if they are anyone other than the applicant or attorney.

What is your preferred method of contact?		<input type="radio"/> Phone	<input type="radio"/> Mail	<input checked="" type="radio"/> Email	<input type="radio"/> Fax
What is your preferred method for receiving a Commission Order?		<input type="radio"/> Mail	<input checked="" type="radio"/> Email	<input type="radio"/> Fax	
Contact name: Laura Peters	Relationship: legal assistant				
Mailing address: 39572 Woodward Ave Ste 222, Bloomfield Hills, MI 48304					
Phone: 248-540-7400	Fax number:	Email: lpeters@anafirm.com			

Part 7 - Attorney Information (If You Have An Attorney Representing You For This Application)

Attorney name: Kelly Allen		Member Number: P-
Attorney address: 39572 Woodward Ave Ste 222, Bloomfield Hills, MI 48304		
Phone: 248-540-7400	Fax number:	Email: kallen@anafirm.com
Would you prefer that we contact your attorney for all licensing matters related to this application?		<input checked="" type="radio"/> Yes <input type="radio"/> No
Would you prefer any notices or closing packages be sent directly to your attorney?		<input checked="" type="radio"/> Yes <input type="radio"/> No

Part 8 - Signature of Applicant


Be advised that the information contained in this application will only be used for this request. This section will need to be completed for each subsequent request you make with this office.

Notice: When purchasing a license, a buyer can be held liable for tax debts incurred by the previous owner. Prior to committing to the purchase of any license or establishment, the buyer should request a tax clearance certificate from the seller that indicates that all taxes have been paid up to the date of issuance. Obtaining sound professional assistance from an attorney or accountant can be helpful to identify and avoid any pitfalls and hidden liabilities when buying even a portion of a business. Sellers can make a request for the tax clearance certificate through the Michigan Department of Treasury.

Under administrative rule R 436.1003, the licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by the state and local law enforcements officials who have jurisdiction over the licensee. Approval of this application by the Michigan Liquor Control Commission does not waive any of these requirements. The licensee must obtain all other required state and local licenses, permits, and approvals for this business before using this license for the sale of alcoholic liquor on the licensed premises.

I certify that the information contained in this form is true and accurate to the best of my knowledge and belief. I agree to comply with all requirements of the Michigan Liquor Control Code and Administrative Rules. I also understand that providing **false** or **fraudulent** information is a violation of the Liquor Control Code pursuant to MCL 436.2003.

The person signing this form has demonstrated that they have authorization to do so and have attached appropriate documentation as proof.

<u>Nicholas Lekas</u>	<u></u>	<u>4/4/17</u>
Print Name of Applicant & Title	Signature of Applicant	Date
<u>Managing Member</u>		

Please return this completed form along with corresponding documents and fees to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-373-4202



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll-Free: 1-866-813-0011 - www.michigan.gov/lcc

Business ID: _____

Request ID: _____

(For MLCC Use Only)

Report of Stockholders, Members, or Partners

(Authorized by MCL 436.1529(1), R 436.1051, and R 436.1110)

Part 1 - Licensee Information

Please state your name as it is filed with the State of Michigan Corporation Division.

Licensee name(s): Birmingham Teatro, LLC		
Address: 211 S Old Woodward Ave		
City: Rochester Hills		Zip Code: 48009
Contact name: Janet Lekas	Phone:	Email: janet@oakmanagement.com

Part 2a - Corporations - Please complete this section and attach more copies of this page if more room is needed.

Name and address of all stockholders:	No. of Shares Issued:	Date Issued/Acquired:

Name and address of Corporate Officers and Directors, pursuant to administrative rule R 436.1109:

Part 2b - Limited Liability Companies - Please complete this section and attach more copies of this page if more room is needed.

Name and address of all members:	Percent % Issued:	Date Issued/Acquired:
Daniel Shaw 4880 Lakeview Blvd Clarkston MI 48348	50%	4-17-2017
Nicholas Lekas, 4553 Racewood Commerce MI 48382	50%	4-17-2017

Name and address of Managers and Assignees, pursuant to administrative rule R 436.1110:

Nicholas Lekas, 4553 Racewood Commerce MI 48382-manager



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll-Free: 1-866-813-0011 - www.michigan.gov/lcc

Business ID: _____
Request ID: _____

Report of Stockholders, Members, or Partners

(For MLCC Use Only)

(Authorized by MCL 436.1529(1), R 436.1051, and R 436.1110)

Part 2c - Limited Partnerships - Please complete this section and attach more copies of this page if more room is needed.

Name and address of all partners:	Percent % Issued:	Date Issued/Acquired:
Name and address of Managers, pursuant to administrative rule R 436.1111:		

Part 3 - Authorized Signers (Authorized in compliance with R 436.1109(1)(c) for a corporation or R 436.1110(1)(g) for a limited liability company)

Name & Title: Daniel Shaw, Nicholas Lekas, -members

Name & Title: Kelly Allen-attorney

Name & Title: Laura Peters-legal assistant

Name & Title: _____

Name & Title: _____

Part 4 - Signature of Applicant or Licensee

I certify that the authorized signers under Part 3 of this form have been authorized in compliance with R 436.1109(1)(c) for a corporation or R 436.1110(1)(g) for a limited liability company.

I certify that the information contained in this form is true and accurate to the best of my knowledge and belief. I agree to comply with all requirements of the Michigan Liquor Control Code and Administrative Rules. I also understand that providing false or fraudulent information is a violation of the Liquor Control Code pursuant to MCL 436.2003.

The person signing this form has demonstrated that they have authorization to do so and have attached appropriate documentation as proof.

Nicholas Lekas

Print Name of Applicant or Licensee & Title

Kelly Allen

Signature of Applicant or Licensee

4/4/17

Date

Managing Member

Please return this completed form to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-763-0059

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

Date Received

(FOR BUREAU USE ONLY)

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Name

Anthony G. Mammina

Address

370 E. Maple Road, Suite 230

City

Birmingham

State

MI

ZIP Code

48009

EFFECTIVE DATE:

Document will be returned to the name and address you enter above.
If left blank, document will be returned to the registered office.

ARTICLES OF ORGANIZATION

For use by Domestic Limited Liability Companies

(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned executes the following Articles:

ARTICLE I

The name of the limited liability company is: Birmingham Teatro, L.L.C.

ARTICLE II

The purpose or purposes for which the limited liability company is formed is to engage in any activity within the purposes for which a limited liability company may be formed under the Limited Liability Company Act of Michigan.

ARTICLE III

The duration of the limited liability company if other than perpetual is: _____

ARTICLE IV

1. The name of the resident agent at the registered office is: Nicholas Lekas

2. The street address of the location of the registered office is:

211 South Old WoodwardBirmingham48009

(Street Address)

(City)

(Zip Code)

3. The mailing address of the registered office if different than above:

(P.O. Box or Street Address)

(City)

, Michigan

(Zip Code)

ARTICLE V (Insert any desired additional provision authorized by the Act; attach additional pages if needed.)

Signed this 17th day of April, 2017

By Nicholas Lekas

(Signature(s) of Organizer(s))

Nicholas Lekas

(Type or Print Name(s) of Organizer(s))

Preparer's Name Anthony G. MamminaMammina & Ajlouny, P.C.Business telephone number (248) 642-1330**INFORMATION AND INSTRUCTIONS**

1. This form may be used to draft your Articles of Organization. A document required or permitted to be filed under the act cannot be filed unless it contains the minimum information required by the Act. The format provided contains only the minimal information required to make the document fileable and may not meet your needs. This is a legal document and agency staff cannot provide legal advice.
2. Submit one original of this document. Upon filing, the document will be added to the records of the Corporations, Securities & Commercial Licensing Bureau. The original will be returned to your registered office address unless you enter a different address in the box on the front of this document.

Since this document will be maintained on electronic format, it is important that the filing be legible. Documents with poor black and white contrast, or otherwise illegible, will be rejected.

3. This document is to be used pursuant to the provisions of Act 23, P.A. of 1993, by one or more persons for the purpose of forming a domestic limited liability company. **Use form BCS/CD 701 if the limited liability company will be providing services rendered by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law.**
4. Article I - The name of a domestic limited liability company is required to contain the words Limited Liability Company or the abbreviation L.L.C. or L.C., with or without periods.
5. Article II- Under section 203(b) of the Act, it is sufficient to state substantially, alone or with specifically enumerated purposes, that the limited liability company is formed to engage in any activity within the purposes for which a limited liability company may be formed under the Act.
6. Article V - Section 401 of the Act specifically states the business shall be managed by members unless the Articles of Organization state the business will be managed by managers. If the limited liability company is to be managed by managers instead of by members, insert a statement to that effect in Article V.
7. This document is effective on the date endorsed "Filed" by the Bureau. A later effective date, no more than 90 days after the date of delivery, may be stated as an additional article.
8. The Articles must be signed by one or more persons organizing the Limited Liability Company. Type or print the name of the organizers signing beneath their signature.
9. If more space is needed, attach additional pages. All pages should be numbered.
10. **NONREFUNDABLE FEE:** Make remittance payable to the State of Michigan. Include limited liability company name on check or money order.....\$50.00

Submit with check or money order by mail:

Michigan Department of Licensing and Regulatory Affairs
Corporations, Securities & Commercial Licensing Bureau
Corporations Division
P.O. Box 30054
Lansing, MI 48909

To submit in person:

2501 Woodlake Circle
Okemos, MI
Telephone: (517) 241-6470

Fees may be paid by check, money order, VISA or Mastercard when delivered in person to our office.

MICH-ELF (Michigan Electronic Filing System):

First Time Users: Call (517) 241-6470, or visit our website at <http://www.michigan.gov/corporations>
Customer with MICH-ELF Filer Account: Send document to (517) 636-6437

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OPERATING AGREEMENT FOR
Birmingham Teatro, L.L.C.
A Michigan Limited Liability Company

THIS OPERATING AGREEMENT ("Agreement"), is made and entered into as of this 17th day of April 2017, with respect to Birmingham Teatro, L.L.C., a Michigan limited liability company ("Company"), by and among Nicholas Lekas and Daniel Shaw and all of those persons who shall hereafter be admitted as members (individually, a "Member" and collectively, the "Members") who agree as follows:

ARTICLE I

ORGANIZATION

1.1 **Formation.** The parties have formed the Company pursuant to the Michigan Limited Liability Company Act, being Act No.23, Public Acts of 1993, ("Act") by the filing of Articles of Organization ("Articles") with the Michigan Department of Commerce.

1.2 **Name.** The name of the Company is Birmingham Teatro, L.L.C. The Company may also conduct its business under one or more assumed names.

1.3 **Purposes.** The purposes of the Company are to engage in any activity within the purposes for which a limited liability company may be formed under the Act and any and all activities and transactions as may be necessary or desirable in connection with the achievement of any or all of the foregoing purposes.

1.4 **Duration.** The Company's existence shall be perpetual and shall continue unless and until the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

1.5 **Registered Office and Resident Agent.** The Registered Office and Resident Agent of the Company shall be as designated in the initial Articles or any amendment thereof. The Registered Office and/or Resident Agent may be changed from time to time, in accordance with the Act. If the Resident Agent shall resign, the Company shall promptly appoint a successor.

1.6 **Intention for Company.** The Members have formed Birmingham Teatro, L.L.C. as a limited liability company under and pursuant to the Act. The Members specifically intend and agree that the Company not be a partnership and the Company shall elect, and shall be treated for tax and accounting purposes as an s-corporation pursuant to the Act and other applicable law. No Member shall be construed to be a partner in the Company or a partner of any other Member or person.

ARTICLE II

DEFINITIONS

2.1 **"Capital Contribution"** shall mean the initial amount of cash contributed to the capital of the Company by a Member, increased by any additional cash contributions made to the capital of the Company by such Member and decreased by the amount of any cash distributions made by the Company to such Member which constitutes a return of capital in

accordance with the terms of this Agreement. Any reference to the Capital Contribution of a Member shall include the Capital Contribution made by a predecessor in interest of such Member.

2.2 "Consent of the Members" shall mean the consent of the Members holding a majority in interest of the Membership Interests of all Members, unless specifically provided otherwise in this Agreement.

2.3 "Member" shall mean those persons and/or entities who execute this Agreement as Members and who are admitted to the Company as Members pursuant to the terms of this Agreement.

2.4 "Manager" shall mean any Manager hereinafter appointed by a unanimous consent of the Members, or his or her successors or assigns, in accordance with the terms of this Agreement.

2.5 "Membership Interest" as to each Member shall mean such Member's percentage share in the Company, and such Member's share of profits, losses and distributions of the Company.

2.6 "Net Cash Flow" shall mean all cash receipts from whatever source, less cash expenditures by the Company to persons other than Members in their capacity as Members, and less cash reserves established by the Manager.

ARTICLE III

CAPITAL, PARTICIPATION IN PROPERTY AND LIABILITY

3.1 Members' Initial Capital Contributions and Loans. Each Member agrees to contribute to the capital of the Company the amount identified in Exhibit A, which is attached hereto and made a part hereof, in exchange for that Member's Membership Interest in the Company.

3.2 Company Capital. The capital of the Company shall be the aggregate amount of the Capital Contributions made by the Members and the capital accounts as stated on the Company books and records. A separate capital account shall be determined and maintained for each Member in accordance with applicable law.

3.3 Percentage Interest In Company. The Members shall have and own the Membership Interests which are identified on Exhibit A, which is attached hereto and made a part hereof.

3.4 Additional Capital Contributions. The Members shall not be required under this Agreement to make any additional Capital Contributions to the Company.

3.5 Voluntary Member Loans. If any Member agrees, with the consent of the Manager, to loan funds to the Company, such loans, together with interest thereon at the rate established by mutual agreement of the Member making the loan to the Company and the Manager, shall be repaid prior to any distributions of Net Cash Flow or other distributions of Company proceeds to the Members.

3.6 Third Party Loans to the Company. If the Company obtains a commitment

for financing which requires the personal guaranties of the Members, such financing shall require the unanimous consent of the Members. If the Members unanimously approve such financing, each individual Member shall furnish the required guaranty. If the lender requires such guaranties to be on a joint and several basis for each of the Members, and if any one or more of the Members shall become liable and in fact pay any obligation under such guaranties, each of the Members shall, upon demand, be liable for their share of the total obligations incurred by any one or more of the Members, on a pro rata basis, in accordance with their respective Membership Interests. The foregoing obligations shall survive the dissolution of the Company or the termination of this Agreement.

3.7 Restrictions Relating to Capital. Except as otherwise specifically provided in this Agreement, no Member shall have the right to withdraw or reduce his or her Capital Contribution and no Member shall have the right to receive property other than cash, if any, in return for his or her Capital Contribution.

3.8 No Third Party Rights. Nothing contained in this Article III is intended for the benefit of any creditor or other person (other than a Member in his or her capacity as such) to whom the Company owes any debts, liabilities or obligations or who otherwise has any claim against the Company, and no third party shall have any rights by virtue of the provisions of this Article III.

ARTICLE IV

DISTRIBUTION OF CASH AND ALLOCATIONS OF PROFIT AND LOSS

4.1 Tax Liability, Profits and Losses. For accounting and federal, state and local income tax purposes, the net profits and losses, and other items of income, gain, loss, deduction and credit of the Company shall be allocated and treated as an s-corporation.

4.2 Distributions of Net Cash Flow. In the event that a majority of the Members determine that all or part of the Company's Net Cash Flow should be distributed to the Members, such distribution shall be made to the Members, on a pro rata basis, in accordance with their respective Membership Interests.

4.3 Tax Provision. Notwithstanding the discretionary nature of cash distributions set forth in Section 4.2 above, to the extent the Company has available Net Cash Flow (computed for this purpose without any reserve for replacements or contingent liabilities), the Company shall distribute sufficient cash to its Members to enable the Members to pay any additional state and/or federal income tax which they incur as a direct result of any income to the Members.

4.4 Sale of Assets. The proceeds resulting from any sale of all or substantially all of the Company's assets, whether as a result of dissolution or otherwise, shall be distributed and applied in the following priority:

- (a) To the payment of any debts and liabilities of the Company;
- (b) To the establishment of any reserves which the Manager deems necessary to provide for the payment of any debts or liabilities of the Company. At the expiration of a reasonable period of time as the Manager deems advisable, the balance of such

reserve funds remaining after payment of any such debts, liabilities or contingencies, shall be distributed in the manner provided in subparagraph (c) below;

- (c) To the Members, on a pro rata basis, in accordance with their respective Membership Interests.

ARTICLE V

MANAGEMENT

5.1 **Management of Business.** The Company shall be managed by one or more persons ("Manager"). The Manager shall be Nicholas Lekas. The Manager shall serve in his capacity as Manager for the term and subject to removal as specified in Section 5.4 below.

5.2 **General Powers of Manager.** The Manager shall have the exclusive right to manage the business of the Company, except as expressly limited in Section 5.3. No Member other than a Manager, shall have any control over Company business, or shall have the power to bind the Company. The Manager is authorized and empowered to carry out and implement any and all of the purposes of the Company and to manage, control and make all decisions affecting the business and assets of the Company in the Manager's full and exclusive discretion, and the foregoing decisions and actions by the Manager shall not require the consent of the Members, except as limited by Section 5.3 below. The Manager is authorized to execute and deliver, for and on behalf of the Company, all agreements, documents and instruments to take any actions on behalf of the Company, except as limited by Section 5.3 below. Without limiting the generality of the foregoing, the Manager has the power to:

- (a) purchase, lease or otherwise acquire real or personal property;
- (b) sell, convey, mortgage, grant a security interest in, pledge, lease, exchange or otherwise dispose or encumber any real or personal property;
- (c) open one or more depository accounts and make withdrawals against and/or from such accounts which shall exceed \$25,000.00;
- (d) borrow money and incur liabilities or other obligations;
- (e) engage employees and agents, define their respective duties, and establish their compensation or remuneration;
- (f) establish pension plans, trusts, profit sharing plans and other benefit and incentive plans for Members, employees and agents of the Company;
- (g) obtain insurance covering the business of the Company, its property and the lives and well-being of its Member employees and agents;
- (h) commence prosecution or defend any proceeding in the Company's name; and
- (i) participate with others in enterprises, joint ventures and other associations and strategic alliances.

5.3 **Limitation on Powers.** Notwithstanding anything to the contrary contained

in this Article V, the Members shall have the right to vote on the following matters:

- (a) the dissolution of the Company pursuant to Section 8.1(d) of this Agreement;
- (b) the merger of the Company with one or more other limited liability companies or other entities;
- (c) a transaction involving an actual or potential conflict of interest between a Manager and the Company; and
- (d) an amendment to this Agreement altering, amending and/or limiting Manager's power.

5.4 Term; Removal of Manager

(a) A Manager shall serve in his or her capacity as Manager until his or her resignation, death, disability, bankruptcy or legal incapacity to serve as a Manager or until such Manager is removed for cause in accordance with the provisions of Section 5.4(b) below. In the event of the resignation, death, disability, legal incapacity or removal of a Manager, the Members holding a majority interest of the total Membership Interests of all Members shall select a successor Manager, who agrees to serve in such capacity.

(b) A Manager may be removed for cause by the Members holding a majority interest of the total Membership Interests of all Members. In the event any Member requests that the Manager be removed for cause, such Member shall request a meeting for such purpose and the Manager who is subject to being removed for cause shall have reasonable advance notice of the allegations against him or her and an opportunity to be heard at the meeting. The Manager who is subject to being removed for cause shall also have the right to vote his or her Membership Interest with respect to such issue. Members shall not have the right to remove a Manager without cause.

5.5 Standard of Care; Liability. The Manager shall discharge his or her duties as a Manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the Company. The Manager shall not be liable for any monetary damages to the Company for any breach of such duties which arise out of any act or omission performed or omitted by the Manager in good faith on behalf of the Company except for:

- (a) receipt of a financial benefit to which the Manager is not entitled; or
- (b) a knowing violation of the law.

5.6 Indemnification of Manager. The Company shall, to the fullest extent permitted by law, indemnify and hold harmless the Manager, his or her successors, heirs and assigns, from and against any and all losses, liabilities, obligations, claims, causes of action, demands, costs, and expenses (including reasonable attorney fees) incurred by the Manager with respect to any act or omission performed by such Manager within the scope of the authority conferred upon him by this Agreement, provided that the Manager acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Company and the Members; provided, however, the Manager shall not be indemnified for any acts described in Section 5.5(a) or (b).

5.7 Compensation of Manager. The Members and the Manager shall not receive any compensation for rendering services to the Company in their capacity as a Member or Manager. Manager and/or the Members may, however, be employed in other capacities within the Company. All reasonable expenses incurred by a Member or Manager in connection with the operation of the Company's business shall be reimbursed in full by the Company upon presentation of evidence of the payment of such expense.

5.8 Nature of Member's Interest. Membership Interests in the Company shall be personal property for all purposes. All property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity. No Member, individually, shall have ownership of such property. The Members hereby agree that no Member, nor any successor in interest to any Member, shall have the right while this Agreement remains in effect, to have any Company assets partitioned, or to file a complaint or institute any proceedings at law or in equity to have such asset partitioned. Each Member, on behalf of himself or herself, his or her successors, successors-in-title, and assigns, hereby waives any such right.

5.9 Bank Accounts. The bank account or accounts of the Company shall be maintained in the banking institution or institutions selected by the Manager. All funds of the Company shall be deposited into account(s) of the Company and any and all checks or other instruments used to draw funds of the Company in excess of \$25,000.00 shall require the signature of the Manager or an authorized representative of the Manager.

5.10 Activity of the Manager and Members. The Manager shall devote such time and effort as may be reasonably required to conduct the Company's business and perform his or her responsibilities under Section 5.2 above. The Members and the Manager shall not in any way be prohibited from or restricted in engaging or owning an interest in any other business venture of any kind, nature, character or description whatsoever, whether independently or with others, directly or indirectly, excepting only those businesses which may be directly competitive with the primary line of business of the Company within a two (2) mile radius of the current or future location of the Company.

ARTICLE VI

DISPOSITION OF MEMBERSHIP INTERESTS; WITHDRAWAL

6.1 Restrictions on Transfer and Assignment.

- (a) Except as expressly provided in Section 6.1(b) and (c) and Section 8.3 of this Agreement, no Member shall sell, assign, transfer, convey, pledge or otherwise encumber all or any portion of his or her Membership Interest, without obtaining the unanimous consent of the other Members. Any attempted disposition of a Membership Interest in violation of this Section 6.1(a) shall be void and of no effect.
- (b) A Member may, without obtaining the consent of the other Members, assign his or her Membership Interest to any of the following assignees: (i) to another Member; (ii) to an inter vivos or testamentary trust primarily for the benefit of that Member's immediate family so long as that Member is the sole trustee of such trust.
- (c) Other than an assignment based upon 6.1(b)(i) and (ii) above, the permitted assignment of a Membership Interest does not entitle the assignee to participate in the management and affairs of the Company or to become or exercise any rights of a

Member, including the right to vote on any matter requiring a vote of the Members, unless and until such assignee is admitted as a substitute Member in accordance with Section 6.2 below. Unless a permitted assignee is admitted as a substitute Member in accordance with the provisions of Section 6.2 below, such assignee shall only be entitled to receive, to the extent assigned, the distributions to which the assignor would be entitled.

- (d) In the event of a permitted assignment that does not result in the admission of the assignee as a substitute Member, the assignor/Member shall not be entitled to continue to exercise the rights of a Member under this Agreement, however, such assignor Member and his or her assignee shall continue to be jointly and severally liable to the Company for such Member's obligations to the Company under Article III or under the Act, and in the event of default, such Membership Interest shall be subject to all of the remedies and options otherwise available to the Company.

6.2 Admission of Substitute Members. An assignee of a Membership Interest shall not be admitted as a substitute Member, unless all of the following conditions are satisfied:

- (a) a majority of the other Members unanimously consent to the admission of such assignee as a substitute Member;
- (b) the assignor and assignee execute and deliver to the Members a copy of the written assignment which gives the assignee the right to become a substitute Member;
- (c) if requested by the other Members, the assignor provides to the Company an opinion of counsel, in form and substance satisfactory to the Members, that neither the offering nor assignment of the Membership Interest violates any provisions of federal or state securities laws; and
- (d) the assignee executes and delivers to the Company a written agreement to be bound by all of the terms and provisions of this Agreement and to assume all of the obligations of the assignor Member.

An assignee who is admitted as a substitute Member in accordance with the foregoing provisions shall have all of the rights and powers, and shall be subject to all of the restrictions, obligations and liabilities of a Member under this Agreement and the Act.

6.3 Sale / Transfer of Membership Interest. If any Member: (a) desires to voluntarily transfer and/or sell all or part of his or her Membership Interest, or (b) is required by law for any reason to involuntarily transfer and/or sell all or part of his or her Membership Interest (collectively, an "Offer"), that Member (the "Selling Member") must immediately provide the Company and each of the other Members with a written notice detailing the specific terms and conditions of the Offer, the basis upon which the Offer is being proposed and provide each with a copy of all agreements and documents relating to the Offer (collectively, the "Notice"). For thirty (30) days following the receipt of the Notice of the Offer, the Company shall have the exclusive right and option to elect to purchase and liquidate the Membership Interest subject to the Offer (the "First Option"), for the same price and terms as the Offer or for the "book value" of the Membership Interest as of the last day of the month preceding the Offer as calculated by the Company's primary accountancy firm (the "Book Value"), whichever the Company shall choose in its sole discretion.

If the Company fails to exercise the First Option, then, for an additional thirty (30) days, the remaining Members of the Company shall have the exclusive right and option to elect to purchase the Membership Interest subject to the Offer (the "Second Option"), for the same price and terms as the Offer or for the Book Value, whichever the remaining Members shall choose in their sole discretion. The Members shall purchase the Membership Interest on a pro rata basis. "Pro rata basis" with reference to the transfer and/or purchase of any Membership Interest by the Members (the "Purchasing Members"), shall mean in proportion to the percentage of Membership Interest owned by each Purchasing Members as compared to the total percentage of Membership Interest owned by all the Purchasing Members (the "Purchasing Percentage"), provided, however, that if one or more of the Purchasing Members decline to purchase the maximum percentage of Membership Interest available for purchase by that Member (the "Declining Member"), then such remaining Membership Interest shall again be offered to those Purchasing Members who are not Declining Members, in accordance with each of their respective Purchasing Percentages (as revised to exclude the Membership Interest of the Declining Members), and this process shall be repeated until there is no remaining Membership Interest or none of the Purchasing Members wish to purchase any of the remaining Membership Interest.

If the remaining Members fail to exercise the Second Option, for an additional thirty (30) days, the remaining Members shall have the exclusive right and option to secure a third-party purchaser of their choosing to purchase the Membership Interest subject to the Offer (the "Third Option"), for the same price and terms as the Offer.

If the remaining Members fail to exercise the Third Option, then the Selling Member may sell the Membership Interest subject to the Offer to the purchaser named therein. If the sale pursuant to the Offer is not consummated within sixty (60) days following the expiration of the Third Offer, the offer process set forth in this Section 6.3 shall reset and the Selling Member must again comply will all the terms and conditions of this Section 6.3, including the First Option, Second Option and Third Option.

The purchaser of a Selling Member's Membership Interest pursuant to this Section, that is not an existing Member, shall not be admitted as a substitute Member unless and until all requirements contained in Section 6.2 above have been satisfied.

6.4 Mandatory Offer on Death or Disability. On the death or disability of any Member, such Member shall be deemed to have made an Offer to sell all of his or her Membership Interest pursuant to Section 6.3, with the purchase price being the fair market value of the Membership Interest as of the last day of the month proceeding the date of the deemed offer to sell (the "Fair Market Value"), and the Company and the remaining Members shall have the options as set forth in Section 6.3. If the Membership Interest of a deceased or disabled Member are not purchased by exercise of the options described in Section 6.3, such Membership Interest shall be transferred, without payment, to the deceased or disabled Member's heirs and remain subject to the terms and conditions of this Agreement. However, the successor or assignee shall not have the rights of a Member unless the successor or assignee is admitted as a Substitute Member in accordance with Section 6.2 above. For purposes of this Agreement, "disabled" or "disability" shall mean a Member who has a physical or mental impairment that substantially limits one or more life activities that exists for sixty (60) consecutive days and the impairment is reasonably expected to continue for more than an additional six month period.

6.5 Withdrawal. Unless a Member has assigned and transferred his or her entire Membership Interest to another Member or other assignee who has been admitted as a substitute Member, a Member may not withdraw from the Company except with the unanimous

written consent of the other Members. Any Member who withdraws in violation of the provisions of this Section 6.5 shall not be entitled to any distributions under this Agreement and shall be liable to the Company and the remaining Members for any damages incurred by the Company or such remaining Members as a result of the withdrawing Member's breach of the provisions of this Section 6.5.

6.6 Amount and Payment of Purchase Price. The purchase price to be paid upon any transfer or sale of any Membership Interest shall be that as set forth in Section 6.3 and Section 6.4 above. Unless the terms of a Bona Fide Offer are accepted by the purchaser under Section 6.3, the purchase price shall be paid, within sixty (60) days of the determination of the purchase price as follows: (i) in full by a certified or bank cashier's check; or (ii) at the sole election of the purchaser, by the delivery of a certified or bank cashier's check in an amount equal to 20 percent of the purchase price, the balance to be paid pursuant to a nonnegotiable promissory note of each purchaser providing for equal annual payments of principal, together with accrued interest at the prime rate, over the following five years.

ARTICLE VII

MEETINGS OF MEMBERS

7.1 Voting. All Members shall be entitled to vote on any matter submitted to a vote of the Members.

7.2 Required Vote. Unless a greater vote is required by the Act, the Articles or this Agreement, any action requiring the vote, determination or consent of the Members shall require the affirmative vote or consent of the Members holding a majority in interest of the Membership Interests of all the Members entitled to vote.

7.3 Meetings. Meetings of Members for any proper purpose or purposes may be called at any time by any Member upon reasonable advance notice to the Members. Members may attend meetings in person, by proxy given to another Member or via telephonic communication device. The Company shall deliver or mail written notice stating the date, time, place and purposes of any meeting to each Member entitled to vote at the meeting. Such notice shall be given not less than ten (10), and no more than sixty (60) days, before the date of the meeting. The Manager shall preside at all meetings of Members.

7.4 Consent. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Membership Interests entitled to vote on the action were present and voted. Every written consent shall bear the date and signature of each Member who signs the consent. Prompt notice of the taking of action without a meeting by less than unanimous written consent shall be given to all Members who have not consented in writing to such action.

ARTICLE VIII

DISSOLUTION AND WINDING UP

8.1 Dissolution. The Company shall dissolve and its affairs shall be wound up on the first to occur of the following events:

- (a) at any time specified in the Articles or this Agreement;
- (b) upon any Member voting deadlock in a matter wherein a majority vote of membership interest is required, and such deadlock is not resolved between the Members within 60 days of any Member's written notice to the other Member(s) that dissolution will occur under Section VIII unless the deadlock is resolved within that 60 day period.
- (c) the sale or other disposition by the Company of all or substantially all of its property and assets not in the ordinary course of business, unless all of the Members agree to continue the Company;
- (d) by the unanimous consent of all of the Members;
- (e) upon the death, dissolution, bankruptcy or legal incapacity of any of the Members or the trustee of any Member that is a trust, or the occurrence of any other event that terminates the continued membership of a Member in the Company (the "Retiring Member"), unless within ninety (90) days from the occurrence of one of the foregoing events, the remaining Members holding a majority in interest of the aggregate Membership Interests of all remaining Members consent to continue the business of the Company and the Membership Interest of the Retiring Member is transferred in accordance with Article VI of this Agreement;
- (f) upon the entry of a final judgment, order or decree of judicial dissolution, and the expiration of any applicable appeal period in which to appeal therefrom.

8.2 Distribution on Liquidation. Upon the dissolution of the Company, the Manager shall proceed to liquidate the assets of the Company and wind up its affairs. A reasonable time shall be allowed for the orderly liquidation of the Company's assets and the payment of its liabilities so as to enable the Manager to minimize the normal losses attendant upon liquidation. The provisions of Article IV relating to the allocation of profits and losses of the Company shall be applicable during the period of liquidation. Proceeds of liquidation shall be applied and distributed in the following order of priority:

- (a) To the payment of any debts and liabilities of the Company;
- (b) To the establishment of any reserves which the Manager deems necessary to provide for the payment of any debts or liabilities of the Company. At the expiration of a reasonable period of time as the Manager deems advisable, the balance of such reserve funds remaining after payment of any such debts, liabilities or contingencies, shall be distributed in accordance with subparagraph (c) below;
- (c) To the Members, on a pro rata basis, in accordance with their respective Membership Interests.

ARTICLE IX

BOOKS, RECORDS AND ACCOUNTING

9.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act and such books

and records shall be kept at the Company's Registered Office.

9.2 Accounting. The Company shall maintain proper books and records in accordance with generally accepted accounting principles. The fiscal and taxable year of the Company shall be the calendar year. All Members and their representatives shall have the right to inspect the Company's books and records at any time upon reasonable notice.

9.3 Member's Accounts. Separate capital accounts shall be maintained by the Company for each Member. Each Member's capital account shall reflect the Member's Capital Contributions and increases for the Member's share of any net income or gain of the Company. Each Member's capital account shall also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Company.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Binding Effect. Subject to the provisions of this Agreement relating to assignment and transferability, this Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

10.2 Certificates. The Members shall promptly execute and file Articles of Organization and all other legally required fictitious names or other applications, registrations, publications, certificates and affidavits required to be filed with governmental authorities.

10.3 Amendment. This Agreement may be amended or revoked at any time by a written agreement executed by all of the Members. No change or modification to this Agreement shall be valid unless in writing and signed by all of the Members.

10.4 Notices. Any notice permitted or required under this Agreement shall be conveyed to the party at the address reflected in this Agreement and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by courier or by facsimile transmission.

10.5 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

10.6 Choice of Law and Forum Selection. This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan. All actions arising directly or indirectly out of this Agreement shall be litigated only in the United States District Court for the Eastern District of Michigan, Southern Division, or in the Oakland County, Sixth Judicial Circuit Court, and the parties hereby irrevocably consent to the personal jurisdiction and venue of those courts over the parties to this Agreement.

10.7 Terms. Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

10.8 Headings. The titles of the sections have been inserted as a matter of convenience for reference only and shall not control or affect the meaning or construction of any

of the terms or provisions of this Agreement.

10.9 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

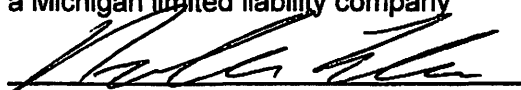
10.10 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof.

The Members have executed this Agreement on the date set forth above.

"COMPANY"

BIRMINGHAM TEATRO, L.L.C.,
a Michigan limited liability company

By:



Nicholas Lekas, Manager
Address: 211 South Old Woodward
Birmingham, MI 48009

"MEMBERS"



Nicholas Lekas
Address: 1480 W. Romeo Rd.
Leonard, MI 48367

Daniel Shaw
Address: 4980 Lakeview Blvd.
Clarkston, MI 48348

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BIRMINGHAM TEATRO, L.L.C.,
a Michigan limited liability company

By: _____

Nicholas Lekas, Manager
Address: 211 South Old Woodward
Birmingham, MI 48009

"MEMBERS"

Nicholas Lekas
Address: 1480 W. Romeo Rd.
Leonard, MI 48367

Daniel Shaw
Address: 4980 Lakeview Blvd.
Clarkston, MI 48348

EXHIBIT A

BIRMINGHAM TEATRO, L.L.C.

<u>Member</u>	<u>Initial Capital Contribution</u>	<u>Membership Interest In Company</u>
Nicholas Lekas	\$50,000.00	50%
Daniel Shaw	\$50,000.00	50%
TOTAL	\$100,000.00	100%

"COMPANY"

BIRMINGHAM TEATRO, L.L.C.,
a Michigan limited liability company

By:



Nicholas Lekas, Manager

"MEMBERS"



Nicholas Lekas

Daniel Shaw

EXHIBIT A

BIRMINGHAM TEATRO, L.L.C.

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Nicholas Lekas	\$50,000.00	50%
Daniel Shaw	\$50,000.00	50%
TOTAL	\$100,000.00	100%

"COMPANY"

**BIRMINGHAM TEATRO, L.L.C.,
a Michigan limited liability company**

By:

Nicholas Lekas, Manager

"MEMBERS"

Nicholas Lekas

Daniel Shaw

LIQUOR LICENSE PURCHASE AGREEMENT

THIS LIQUOR LICENSE PURCHASE AGREEMENT is entered into on this ____ day of April, 2017 ("Effective Date") by and between Thumper's Splatter, LLC, a Michigan Limited Liability Company whose address is 230 E. Auburn Road, Rochester Hills MI 48307 ("Seller") and Birmingham Teatro, LLC, a Michigan Limited Liability Company whose address is 211 S. Old Woodward Avenue, Birmingham, MI 48009 ("Buyer") (collectively, the "Parties").

WHEREAS, the Seller owns certain Class C liquor licenses issued by the Michigan Liquor Control Commission ("MLCC") (License No. 238118, Business Id. No. 235577), which licenses and attendant permits, if any (collectively, the "Liquor License"), are currently in escrow in Seller's name, at 230 E. Auburn Road, Rochester Hills MI 48307, Oakland County, Michigan; and

WHEREAS, the Seller desires to sell said Liquor License and Buyer desires to purchase same;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the Parties agree as follows:

1. **Sale of Liquor License.** Seller agrees to sell to Buyer and Buyer agrees to purchase the Liquor License, free and clear of any liens, encumbrances, restrictions, obligations, and claims of any nature whatsoever, subject only to the conditions and contingencies set forth herein. The Parties shall execute and deliver, each to the other, any legal instrument, application or document of whatsoever nature or kind may be necessary to effect and consummate this transaction, including the right to an MLCC appeal.
2. **Payment of Purchase Price.** It is agreed that Buyer shall pay to Seller, in consideration hereof, the sum of Sixty Five Thousand and No/100ths Dollars (\$65,000.00) (the "Purchase Price"), as follows:
 - A. **Deposit.** At the time of the execution of this Agreement, Buyer shall deposit the sum of Five Thousand and No/100ths Dollars (\$5,000.00) ("Deposit") with Adkison, Need, Allen, & Rentrop, PLLC ("Escrow Agent") The same is to be kept and held in the trust account by the Escrow Agent, who is specifically authorized by both Seller and Buyer to act as their Escrow Agent, until such time as the MLCC authorizes the transfer of the Liquor License from the Seller to Buyer or the Deposit is otherwise returned or distributed pursuant to the terms of this Agreement. Upon approval by the MLCC, and execution of a Bill of Sale and Assignment and any other instruments necessary to consummate this transaction, in form and content reasonably satisfactory to Buyer, said Deposit is to be paid by Escrow Agent to the Seller.
 - B. **Balance.** At the time of the closing of this transaction, an additional Sixty Thousand and No/100ths Dollars (\$60,000.00) shall be paid to the Seller by cashier's check, wire transfer or other immediately available funds.
3. **Inventory.** There is no inventory included in this Agreement.

4. **Closing Contingency.** The Parties' performance on this Agreement is contingent upon the occurrence of each of the following conditions precedent. Should any one of the following fail to occur, then the same shall constitute an automatic termination of this Agreement, Buyer shall be entitled to an immediate refund, in full, of the Deposit made hereunder, and neither party shall have any further obligation hereunder:
 - A. Buyer's receipt of written approval from the City of Birmingham and the MLCC for transfer of ownership of the Liquor License to the Buyer for use at 211 S. Old Woodward Avenue, Birmingham, MI 48009 (the "Premises"), after appeal of any denial, at Buyer's sole and absolute discretion (the "Governmental Approvals"). The Buyer shall apply to the MLCC and the City of Birmingham, if required, for the transfer of Seller's interest in the Liquor License to Buyer within twenty (20) days after full execution of this Agreement, and both parties shall diligently and expeditiously proceed with whatever steps shall be necessary to obtain the approval for the transfer. Both Seller and Buyer agree to immediately fulfill any directives or requirements from the MLCC and the City of Birmingham to expedite the transfer. Buyer shall pay all fees required in connection with the transfer of the Liquor License, including but not limited to inspection fees, fees for other permits (such as, by way of example and not by way of limitation, outdoor service permits) any other fees for any permits included in the Liquor License. Seller shall pay all fees that may have accrued prior to the date of closing, including without limitation, all renewal and/or escrow fees and any licensing fees not associated with the transfer that accrued prior to the date of closing. However, the renewal fee for 2017-2018 shall be prorated, on a per diem basis, to the date of Closing. The Buyer shall reimburse the Seller for its portion of the renewal fee at Closing.
5. **Closing.** The sale and transfer shall be consummated within twenty (20) days after the satisfaction or waiver of the contingency set forth in paragraph 4 hereof, at a time and place determined by the Parties ("Closing Date"). The Parties agree that, except as specifically set forth herein, the consummation of the transfer shall take place no later than one hundred eighty (180) days after the date of this Agreement ("Outside Closing Date"). If, through no fault of the Buyer, the Governmental Approvals have not been obtained because of delays by the MLCC processing normal paperwork, and not because of Buyer's non-performance or failure to timely respond to requests from the MLCC, the local police or the local unit of government, then the Parties hereby agree that the Outside Closing Date shall be extended an additional thirty (30) days to facilitate completion of the application processing and consideration of the transfer by the MLCC ("Extended Closing Date").

If the application is approved for transfer by the MLCC, but subject to a final inspection or other conditions outside the control of the Seller, then the closing shall be consummated as set forth above, and the Liquor License shall remain in escrow until such time as the conditions may be satisfied ("Escrowed Closing"). In the event of an

Escrowed Closing, and in the event that the Liquor License has not finally transferred prior to the next succeeding MLCC renewal deadline, the Seller shall cooperate with Buyer to facilitate renewal of the Liquor License by timely forwarding the executed MLCC renewal form to Buyer's counsel for processing before the April 30 renewal deadline.

If, through no fault of either party, the contingencies have not been satisfied or waived by the Buyer, or the sale is not consummated on or before the Outside Closing Date or Extended Closing Date, either party may terminate this Agreement by written notice delivered to the other party on or before the Outside Closing Date or Extended Closing Date, as applicable, in which event the Buyer shall receive a refund of the Deposit in full termination of this Agreement, and neither party shall have any further obligation hereunder.

In the event that the contingencies contained herein have not been satisfied by the Outside Closing Date, and the delay or failure is a result of misrepresentation, concealment, fraud, non-performance or untrue/unstated representations made by either party or its agents, the party committing such misrepresentation, concealment, fraud or non-performance shall be deemed to be in default and the non-defaulting party shall have the remedies set forth in paragraph 11, below.

6. **Termination Upon Failure of Contingencies.** In the event that the Closing Contingency set forth in paragraph 4, above, is not satisfied, for any reason other than the breach by Buyer or Seller of the express terms of this Agreement, after the Parties have complied with all of the terms and provisions provided herein, then this Agreement shall become null and void and the Escrow Agent shall immediately return to the Buyer the entire Deposit and Buyer shall have no further liability or obligation to Seller. The Escrow Agent is specifically required to make such return.
7. **Conveyance of Clear Title.** All taxes and assessments of every nature and kind, and all obligations, debts or claims which have been or may become a lien upon the Liquor License or which arise during or by virtue of Seller's ownership thereof, shall be paid by Seller prior to the Closing Date. Any liens or assessments not paid by the Seller on or before the Closing Date may be paid by the Buyer and credited against the Purchase Price due to the Seller at closing.
8. **Representations, Warranties, and Covenants of Seller.** Seller represents and warrants to and covenants with Buyer as follows:
 - A. **Marketable Title.** That Seller is the sole owner of, and has good and marketable title to, and authority to sell and transfer the Liquor License, which Liquor License shall be free and clear of all liens and encumbrances as of the Closing Date, and that there are no transfer applications or other transactions pending with anyone concerning the transfer of, or ownership of, the Liquor License; and

- B. **Liens.** That no judgments, liens, or security interests will be outstanding at the time of the closing against Seller which would affect Seller's title to, or Seller's ability to transfer, such Liquor License to Buyer.
- C. **Taxes.** All taxes and assessments of every nature and kind, which have been or may become a lien upon the Liquor License or which arise during, or by virtue of, Seller's ownership thereof, shall be paid by Seller prior to the Closing Date. There shall be no outstanding taxes due at the Closing Date that could result in successor liability under MCL 205.27a.
- i. Immediately after execution of this Agreement, Seller shall complete and file Michigan Department of Treasury form 5156, Request for Tax Clearance Application (Parts 1 and 4) which shall include authorization of Purchaser's Counsel to receive information relative to Seller's tax status. Immediately after Closing, Seller shall make application for issuance of a conditional tax clearance to the Michigan Department of Treasury, and shall prepare and file all necessary and appropriate returns and reports for issuance of conditional tax clearance.
 - ii. As security for the payment of the tax liabilities and issuance of the tax clearance, Seller agrees to deposit with Adkison, Need, Allen, & Rentrop, PLLC ("Tax Escrow Agent") an amount equal to 1 ½ times the total outstanding tax obligation as reported by Treasury in response to Seller's initial Request for Tax Clearance Application, to be held and distributed pursuant to the terms of an escrow agreement executed by the parties at the Closing. Escrow Agent shall hold the fund until the Certificate of Conditional Tax Clearance has been received from the state of Michigan showing that Seller has filed all tax returns and reports required to be filed before closing and that Seller has paid all taxes due pursuant to Section 27a of the Michigan Revenue Act, MCL 205.27a, and until evidence of any other information is furnished to assure transfer of unencumbered title to the Assets, subject to the provisions of this Agreement.
 - iii. In the event that the parties establish the Escrow Fund and it is not sufficient to pay the taxes, Seller and Seller's Member, individually, jointly and severally, shall hold, defend, and indemnify Buyer harmless for any and all liability for taxes in excess of the amount of the Escrow Fund created above.
- D. **No Violations.** There are no violations of the Michigan Liquor Control Code, or the rules promulgated thereunder, currently pending regarding the Liquor License. In the event that such a violation does exist, and Seller fails to remedy such violation, the Buyer shall have the right, but not the obligation, to itself remedy the violation in order to facilitate the transfer of the Liquor License to Buyer, in which event Seller shall indemnify and hold Buyer harmless from any and all

liability, including without limitation, fines, penalties and actual attorney fees associated with Buyer remedying Seller's or Seller's predecessor's outstanding violations of the Michigan Liquor Control Code or Rules. In the alternative, Buyer may deduct the amount Buyer pays in fines, penalties, and actual attorneys' fees associated with Buyer remedying Seller's or Seller's predecessor's outstanding violations of the Michigan Liquor Control Code or Rules from the Purchase Price paid at closing.

- E. **Authorization.** This Agreement has been duly and validly authorized by any and all necessary corporate action of Seller and, upon due execution and delivery, will constitute a valid and binding agreement of Seller.

9. **Representations, Warranties, and Covenants of Buyer.** Buyer represents and warrants with Seller as follows:

- A. **Qualification.** Buyer acknowledges that there are requirements of the City of Birmingham and the MLCC associated with the transfer of the Liquor License from Seller to Buyer. With respect to this transfer, Buyer knows of no reason why Buyer, or any of Buyer's members or shareholders, would not be approved by the City of Birmingham or the MLCC for the transfer of the Liquor License.
- B. **Authorization.** This Agreement has been duly and validly authorized by any and all necessary action of Buyer and, upon due execution and delivery, will constitute a valid and binding agreement of Buyer.

10. **Brokerage Commission.** There is no broker involved in this transaction.

11. **Default and Remedy.**

- A. **Seller Default.** In the event that Seller defaults on any of its obligations under this Agreement, and Seller fails to cure such default within ten (10) days of written notice thereof, Buyer shall have the option to either (1) waive such default and proceed to closing, (2) terminate this Agreement, in which event the Deposit shall be returned to Buyer, or (3) seek the remedy of specific performance.
- B. **Buyer Default.** In the event that Buyer defaults on any of its obligations under this Agreement, and Buyer fails to cure such default within ten (10) days of written notice thereof, Seller shall have the option to either (1) waive such default, or (2) terminate this Agreement, in which event the Deposit shall be released to Seller as liquidated damages, and neither party shall have any further obligation to the other.

12. **Miscellaneous.**

- A. **Notice.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given if delivered or mailed first class, postage prepaid to the following addresses, or to the e-mail addresses below, until notification of a different address:
- (1) To the Seller:
Lisa A. Ebert
2850 Riverside Dr.
Waterford, MI 48329
e-mail: Lebert248@comcast.net
 - (2) To the Buyer:
Nicholas Lekas
Birmingham Teatro, LLC
211 S. Old Woodward Avenue
Birmingham, MI 48009
e-mail: _____
 - (3) With a copy to (which shall not constitute notice):
Kelly A. Allen, Esq.
Adkison, Need, Allen, & Rentrop, PLLC
39572 Woodward Ave., Suite 222
Bloomfield Hills, Michigan 48304
- B. **Applicable Law.** This Agreement shall be governed by Michigan law.
- C. **Assignment.** This Agreement shall not be Assigned without the prior written consent of both Parties.
- D. **Survival.** The covenants, representations and warranties of all Parties set forth herein will be effective on the date hereof, on the Closing Date, and shall survive closing.
- E. **Pronouns.** The pronouns and relative words herein used are written in the singular only. If more than one Buyer and/or Seller join in the execution hereof, such pronouns and words shall be read as if written in plural.
- F. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Michigan.
- G. **Merger and Amendment.** This Agreement is and shall be deemed the complete and final expression of the agreement between the Parties as to matters herein contained and relative thereto, and supersedes all previous agreements between

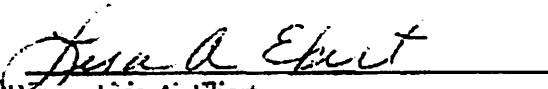
the Parties pertaining to such matters. It is clearly understood that no promise or representation not contained herein was an inducement to either party or was relied on by either party in entering into this Agreement. This Agreement cannot be amended, altered or any of the provisions waived on behalf of either party, except in writing by a duly authorized agent of either party.

- H. **Waiver of Performance.** Any failure of either party to insist upon strict compliance with any provisions of this Agreement shall not constitute a waiver thereof and all provisions herein shall remain in full force and effect.
- I. **Headings.** The paragraph headings used in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.
- J. **Severability.** If any part of this Agreement is held to be invalid or unenforceable under Michigan law, the remaining provisions shall be enforceable to the maximum extent permitted by law; provided that the remaining provisions effectuate fully the intent of the Parties as manifested herein.
- K. **Waiver of Conflict.** The Buyer and Seller acknowledge that the Firm of Adkison, Need, Allen, & Rentrop, PLLC represents both Parties with regard to this Agreement for purposes of handling the procedures required by the MLCC. However, the Seller has been advised to seek separate counsel to review the terms of this Agreement.
- L. **Counterparts and Electronically Transmitted Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. For purposes of this Agreement, an electronically transmitted signature shall be deemed the same as an original.

IN WITNESS WHEREOF, the Parties have entered into this Agreement to be effective as of the date first set forth above.

SELLER:
Thumper's Splatter, LLC,
a Michigan Limited Liability Company

BUYER:
Birmingham Teatro, LLC,
a Michigan Limited Liability Company


By: Lisa A. Ebert
Its: Member

By: Nicholas Lekas
Its: Member

Dated: 4-17-17

Dated: _____

the Parties pertaining to such matters. It is clearly understood that no promise or representation not contained herein was an inducement to either party or was relied on by either party in entering into this Agreement. This Agreement cannot be amended, altered or any of the provisions waived on behalf of either party, except in writing by a duly authorized agent of either party.

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SELLER:
Thumper's Splatter, LLC,
a Michigan Limited Liability Company

BUYER:
Birmingham Teatro, LLC,
a Michigan Limited Liability Company

By: Lisa A. Ebert
Its: Member

Dated: _____

By: 
Its: Member

Dated: 4-17-17

ACKNOWLEDGEMENT OF ESCROW

Adkison, Need, Allen, & Rentrop, PLLC, the Escrow Agent named, does hereby consent to act as Escrow Agent under the terms of this Agreement, and does hereby acknowledge receipt of the sum of Five Thousand and No/100ths Dollars (\$5,000.00) from Buyer, and agrees to hold same in escrow as provided in this Agreement and to deliver same to the persons entitled thereto upon the performance or nonperformance of the terms and conditions of this Agreement.



Kelly A. Allen

VENDOR ID	NAME	PAYMENT NUMBER	CHECK DATE				
ADKISON, NEED	Adkison, Need, Allen, \$ Rentrop,	00000000000038182	3/31/2017	2883			
OUR VOUCHER NUMBER	YOUR VOUCHER NUMBER	DATE	AMOUNT	AMOUNT PAID	DISCOUNT	WRITE-OFF	NET
DEP LIQUOR LIC	3/31/2017		\$5,000.00				
			\$5,000.00	\$5,000.00	\$0.00		\$5,000.00

COMMENT

2883

BIRMINGHAM THEATRE, LLC

211 SOUTH OLD WOODWARD
BIRMINGHAM, MICHIGAN 48009
(248) 723-6230

JPMORGAN CHASE BANK, N.A.
9-32/720

DATE

AMOUNT

3/31/2017

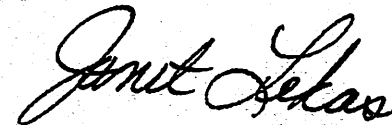
\$5,000.00

PAY

Five Thousand Dollars and 00 Cents

TO THE
ORDER
OF

Adkison, Need, Allen, \$ Rentrop, PLLC
39572 Woodward, Suite 222
Bloomfield Hills MI 48304



AUTHORIZED SIGNATURE

Security features. Details on back.



⑈002883⑈ ⑆072000326⑆

727267192⑈

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "**Sublease**") is dated as of the 17th day of April 2017, by and between **Birmingham Theatre, L.L.C.**, a Michigan limited liability company, located at 211 South Old Woodward, Birmingham, MI 48009 ("**Sublandlord**"), and **Birmingham Teatro, L.L.C.**, a Michigan limited liability company ("**Subtenant**") located at 211 South Old Woodward, Birmingham, MI 48009. Sublandlord and Subtenant are each sometimes referred to herein as a "**Party**" and collectively as the "**Parties**".

R E C I T A L S:

The following is a recital of the facts underlying this Sublease:

A. Sublandlord is a tenant pursuant to a written Lease dated January 3, 2017 with Fuller Central Park Properties, L.L.C., a Michigan limited liability company (the "**Primary Landlord**"), located at 112 Peabody St., Birmingham, MI 48009 (the "**Primary Lease**").

B. The Primary Lease relates to a lease of the building commonly known as 211 S. Old Woodward, Birmingham, Michigan (the "**Building**"). The Primary Lease runs through December 31, 2024 (the "**Term**").

C. This Sublease is subject to the Primary Lease at all times.

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

1. **Sublease.** Sublandlord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord, the Subleased Premises on the terms and conditions set forth herein and subject to the terms of the Primary Lease.

2. **Modified Provisions.** Notwithstanding the provisions of the terms of the Primary Lease, this Sublease is on the following terms:

A. **Rent.** Subtenant shall pay to Sublandlord all Rent as is set forth in the Lease. Monthly rental payments shall be paid to Sublandlord in advance on the first (1st) day of each calendar month during the Term without setoff, deduction or counterclaim. Any period which is less than a full calendar month shall be prorated accordingly.

B. **Occupancy.** Subtenant shall be given occupancy/access of the Subleased Premises on April 17, 2017 (the "**Commencement Date**").

C. **Condition of Subleased Premises.** Subtenant agrees that it will take possession of the Subleased Premises in their "As-Is, Where-Is" condition.

D. **Payment of Rent.** All rent shall be paid by Subtenant to Sublandlord at the following address:

112 Peabody St.
Birmingham, Michigan 48009

E. No Right To Assign Or Sublease. Subtenant acknowledges and agrees that it has no right to sublease the Subleased Premises or to assign its rights under this Sublease in whole or in part, without the prior written consent of Sublandlord and Landlord.

F. Insurance. Subtenant shall procure and maintain at its sole cost and expense policies of insurance of the types required to cover its contents and business interruption. Sub-landlord shall continue its general commercial liability insurance coverage of the entire building (including the Subleased Premises) as required under the Primary Lease. Such policies shall name Landlord and Sublandlord and Subtenant as additional insureds.

G. Subtenant's Improvements. Subtenant shall not have the right to make any structural improvements to the Subleased Premises. Any non-structural improvements, to the Subleased Premises shall be subject to the Sublandlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, as well as the Landlord's prior approval.

H. Counterparts/Electronic Delivery. This Sublease may be signed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. A photocopy, electronic image file or facsimile of this Sublease shall have the same force and effect as an original.

IN WITNESS WHEREOF the Parties have executed this Sublease the day and year above written:

SUBLANDLORD

Birmingham Theatre, L.L.C.,
a Michigan limited liability company

By: Janet Lexas

Its: Member

Additional signatures appear on the following page

SUBTENANT

Birmingham Teatro, L.L.C.,
a Michigan limited liability company

By: 

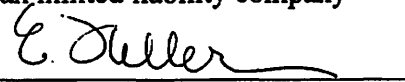
Its: member

LANDLORD'S CONSENT

By signing below, Landlord consents to Sublandlord's entering into the Sublease with Subtenant. Landlord and Subtenant acknowledge and agree that this instrument constitutes a sublease only, and not an assignment of the Primary Lease, whether in whole or in part.

LANDLORD

Fuller Central Park Properties, L.L.C.,
a Michigan limited liability company

By: 

Its: MANGR

LEASE AGREEMENT
RETAIL

FULLER CENTRAL PARK PROPERTIES, L.L.C.
112 Peabody Street
Birmingham, MI 48009-6329
(248) 642-0024

This Lease made this 31st day of January, 2017 ("Effective Date"), by and between, FULLER CENTRAL PARK PROPERTIES, L.L.C., a Michigan limited liability company, of 112 Peabody Street, Birmingham, Michigan 48009-6329, the Lessor, hereinafter designated as the Landlord, and BIRMINGHAM THEATRE, L.L.C., a Michigan limited liability company, 211 S. Old Woodward Avenue, Birmingham, Michigan 48009, the Lessee, hereinafter designated as the Tenant.

WITNESSETH:

For and in consideration of the Leased Premises, the covenants herein, and other valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the parties hereto agree:

1. Leased Premises. Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed by the Tenant, does hereby lease unto the Tenant and Tenant hereby hires and leases from Landlord the following-described Leased Premises ("Leased Premises") situated in Landlord's building (the "Building") located in the City of Birmingham, County of Oakland, State of Michigan, to-wit:

Approximately 32,500 square feet more commonly known as
211 S. Old Woodward Avenue, Birmingham, Michigan.

2. Term. The term of this Lease is eight (8) years from and after the first day of January, 2017, unless terminated earlier by Landlord or Tenant as provided herein.

3. Rent. Tenant shall pay during the continuance of this Lease unto the Landlord for rent of the Leased Premises for said term the sum of Two Million Nine Hundred Four Thousand Six Hundred Forty-six and (\$2,904,646.08) 08/100ths Dollars in lawful money of the United States payable in ninety-six (96) consecutive monthly installments in advance upon the first day of each and every month as follows:

\$30,256.73 per month	01/01/17 – 12/31/24	\$2,904,646.08
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Tenant shall pay as Additional Rent any money and charges required to be paid by Tenant pursuant to the terms of this Lease, whether or not same may be designated "Additional Rent."

All payments of Base Rent shall be made without demand; and all payments of Additional Rent and all other payments to Landlord required hereunder shall be made as and when called for herein and if not herein specified then upon demand by Landlord; all payments

hereunder including Base Rent and Additional Rent shall be made without deduction or off-set, in cash or by check drawn upon a U.S. banking institution payable to Landlord, with collected funds on deposit when such check is written and presented, and shall be delivered to Landlord at its address set forth in this Lease, or to such other party and place as may be designated by notice in writing from Landlord to Tenant from time to time.

No payment by Tenant or receipt and acceptance by Landlord of a lesser amount than the Base Rent, Additional Rent, or other payments to Landlord required hereunder shall be deemed to be other than part payment of the full amount then due and payable, nor shall any endorsement or statement on any check or any document accompanying any check, payment of rent or other payment, be deemed an accord and satisfaction or modification of Tenant's liabilities; and Landlord may accept such part payment without prejudice to Landlord's right to recover the balance due and payable or pursue any other remedy in this Lease provided and without regard to any such endorsement or document, which, between the parties, shall be ineffective as a diminishment of Tenant's obligations.

4. Late Payments. Tenant shall pay to Landlord a late charge equal to five (5%) percent of the amount of each installment of Base Rent or any other sum owing from Tenant to Landlord under the terms hereof which is not received by Landlord within seven (7) days after its due date, in order to defray the legal, management, bookkeeping and other administrative costs resulting from Tenant's failure to timely make such payments, and an additional late charge of two (2%) percent per month on any installment of Base Rent or other payment owing from Tenant to Landlord under the terms hereof which is overdue thirty (30) days or longer. Tenant shall pay to Landlord interest at the rate of twelve (12%) percent per annum on any sums advanced until payment thereof is received by Landlord. To the extent any sums collected above are in excess of the amounts which Landlord may lawfully collect, the excess shall instead be applied to the immediately succeeding installment(s) of Base Rent due hereunder or shall be returned to Tenant, at Landlord's option.

5. Assignment. Tenant shall not, in whole or in part, assign or transfer this Lease or any rights hereunder or hypothecate or mortgage same or sublet or grant a license within the Leased Premises, or any part thereof, without the prior written consent of Landlord in each instance, such consent not to be unreasonably withheld. Any such assignment, transfer, hypothecation, mortgage, license or subletting shall not release Tenant hereunder, and any assignee or subtenant shall expressly assume all of the Tenant's covenants, warranties and obligations hereunder. In the event the rent or any other charge to be paid by a subtenant, licensee or assignee of Tenant exceeds the sum of the rent due under this Lease from Tenant to Landlord (as a whole or on a square foot basis for the space involved), Tenant shall pay to Landlord, as Additional Rent, an amount equal to such excess at the time or times the same is paid by such subtenant, licensee or assignee to Tenant. Any attempted assignment, transfer, hypothecation, mortgage, license or subletting without Landlord's prior written consent shall give Landlord the right to terminate this Lease and re-enter and repossess the Leased Premises and Tenant shall be liable to Landlord for all damages in connection therewith, in addition to and cumulative of any other remedies of Landlord provided herein and by law. The transfer(s), attempt(s) to transfer, grant of an option or encumbrance of or for more than twenty-five (25%) percent of the stock or membership interest of Tenant or a change in the management or control of Tenant shall, for the purposes of this paragraph, be an assignment of this Lease.

6. Bankruptcy and Insolvency. If the estate created hereby shall be taken in execution, or by other process of law, or if the Tenant shall be declared bankrupt or insolvent, according to law, or any receiver be appointed for the business and property of the Tenant, or if any assignment shall be made of the Tenant's property for the benefit of creditors, then and in such event this lease may be canceled at the option of the Landlord.

7. Right to Mortgage. The Landlord reserves the right to subject and subordinate this lease at all times to the lien of any mortgage or mortgages now or hereafter placed upon the Landlord's interest in the Leased Premises and/or on the land and buildings of which the Leased Premises are a part or upon any buildings hereafter placed upon the land of which the Leased Premises form a part. Tenant shall execute and deliver upon demand such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be desired by the Landlord and any mortgagees or proposed mortgagees and hereby irrevocably appoints the Landlord the attorney-in-fact of the Tenant to execute and deliver any such instrument or instruments for and in the name of the Tenant. Any such mortgage and Tenant's subordination thereto shall provide that Landlord's default and/or any foreclosure or other enforcement of any such mortgage shall not terminate this Lease or disturb Tenant's rights, possession and/or use of the Leased Premises, unless Tenant shall be in default, or shall subsequently default.

If, as a condition of making such mortgage, Landlord's mortgagee shall request reasonable modifications of this Lease, Tenant shall not unreasonably withhold or delay its agreement to such modifications, provided that such modifications do not increase the obligations or materially and adversely affect the rights of Tenant under this Lease.

8. Use and Occupancy. It is understood and agreed between the parties hereto that the Leased Premises during the continuance of this Lease shall be used and occupied for the operation of eight (8) movie theatres for the showing of movies (except adult or pornographic films) and for any lawful business appurtenant to the foregoing, including but not limited to the sale of drinks, confections, candy, and similar items; for the sale of personal property incidental or related to films; for the sale of alcoholic beverages if an appropriate license is obtained by Tenant; and for no other purpose or purposes without the written consent of the Landlord, and that the Tenant will not use the Leased Premises for any purpose in violation of any law, municipal ordinance or regulation, and that on any breach of this agreement the Landlord may at its option terminate this Lease forthwith and re-enter and repossess the Leased Premises.

9. Risk of Loss. All property in the Leased Premises, including, but not limited to, all inventory and merchandise, shall be and remain the Tenant's sole risk, and the Landlord shall not be liable for any damage to, or loss of property or other damages arising from any act or negligence of any persons or entities other than those grossly negligent or intentional acts, omissions of Landlord or its employees or agents. Landlord shall not be liable for any damage to or loss of property or other damage or injury arising from the roof leaking, or from the bursting, leaking, or overflowing of water, sewer or sprinkler system pipes, or from heating or plumbing fixtures, or from electric wires or fixtures, or from any other cause whatsoever, nor shall the Landlord be liable for any injury to the person of the Tenant, its officers, agents, employees, representatives, invitees or other persons in the Leased Premises. It is expected that all such

losses will be borne and/or covered by insurance that Tenant is to maintain pursuant to this Lease.

10. Casualty. If the Leased Premises are wholly or partially destroyed by fire or other casualty, Tenant shall give immediate notice thereof in writing to Landlord, and shall fully cooperate with Landlord in filing all necessary proofs of claim with insurance companies. The proceeds of such insurance applicable to the Leased Premises, to the extent permitted by any mortgage then encumbering the Leased Premises, and provided sufficient insurance proceeds, in Landlord's judgment, are available, shall be used by Landlord to promptly commence to rebuild, repair or restore the Leased Premises to their condition at the time immediately preceding the loss or damage. Landlord may, however, elect to retain such insurance proceeds and shall not be required to rebuild, repair or restore the Leased Premises to their condition at the time immediately preceding the loss or damage. Landlord may, however, elect to retain such insurance proceeds and shall not be required to rebuild, repair or restore the Leased Premises by notifying Tenant within fourteen (14) days of such casualty, and either Landlord or Tenant may elect to terminate the Lease if more than one-half of the Leased Premises are so damaged or destroyed. In the event of total destruction of the Leased Premises and the Lease is not terminated as provided above, the rent shall abate during the period of rebuilding, repair or restoration by Landlord or, in the event of partial destruction of the Leased Premises, the rent shall abate pro rata during the period of rebuilding, repair or restoration based upon the portion of the Leased Premises rendered unusable during the period of rebuilding, repair or restoration by Landlord. The estimated time for rebuilding, repair or restoration shall be given to Tenant within thirty (30) days of any such loss or damage and, in the event that the work of restoring the Leased Premises to pre-casualty condition, based upon such estimate cannot, or in fact, such rebuilding, repair or restoration is not substantially completed within one hundred eighty (180) days after said loss or damage, Tenant shall have the one time option to terminate this Lease by sending certified written notice to Landlord at any time prior to Landlord's tender of the substantially repaired Leased Premises to Tenant.

11. Eminent Domain. If the whole or any part of the Leased Premises shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the part so taken from the day the possession of that part shall be required for any public purpose and all rent and other obligations of Tenant shall be paid up to the day and from that day the Tenant shall have the right either to cancel this Lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided except that rent shall be reduced in proportion to the amount of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of the Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises; provided, however, that the Landlord shall not be entitled to any portion of the award made to the Tenant for loss of business.

12. Certain Insurance. Tenant shall procure and keep in effect fire insurance (including special covered causes of loss endorsements) for the full replacement cost of Tenant's equipment, all inventory, merchandise and all other personal property and cause Landlord to be named as an additional insured in connection therewith.

13. Insurance and Indemnification.

(a) Tenant's Insurance. Tenant agrees to and does hereby indemnify and hold Landlord harmless of, from and against all liability for damages to any person or property in, on or about the Leased Premises from any cause whatsoever, including, without limitation, as a result of Tenant's acts or omissions. During the term of this Lease, Tenant at Tenant's expense shall maintain in full force and effect general public liability and property damage insurance against claims for injury, wrongful death and property damage, including, but not limited to, coverage for damage to all plate glass, occurring upon, in or about the Leased Premises and the appurtenances thereto for the benefit of the Landlord, and which shall name Landlord as an additional insured, in the aggregate sum of not less than Three Million (\$3,000,000.00) Dollars.

(b) Waiver of Subrogation. Each casualty, fire and extended coverage or all-perils insurance policy required under this Lease shall contain a clause in which the underlying insurance carrier waives all rights of subrogation with respect to losses payable under such policies. By this Paragraph 14, Landlord and Tenant intend that the risk of loss or damage be borne by the parties' insurance carriers and Landlord and Tenant shall look solely to and seek recover from only their respective insurance carriers in the event of a loss is sustained for which insurance is required under this Lease. For this purpose, applicable deductible amounts shall be treated as though they were recoverable under such policies.

14. Policies of Insurance. All of Tenant's insurance policies shall contain an agreement by the insurers that such policies shall not be canceled or amended to materially affect the Landlord or any coverage which may affect the Landlord, without at least thirty (30) days prior written notice to Landlord. Such insurance shall be obtained and evidence thereof delivered to Landlord prior to any occupancy of the Leased Premises by Tenant or upon the commencement of the Lease Term, whichever shall first occur, and Tenant shall pay the renewal premium on such insurance and deliver evidence thereof to Landlord not less than fourteen (14) days prior to the expiration of such insurance. Upon Tenant's failure to procure or maintain said insurance, Landlord may, but shall have no obligation to, at its option, obtain such insurance and the cost thereof, with interest thereon as provided in Paragraphs 4 and 5 hereof, shall be paid in full by Tenant, as Additional Rent, due and payable on the same date as the next installment of Base Rent. The policy or policies obtained by Tenant pursuant to Tenant's obligations hereunder shall contain a clause or provision pursuant to which the insurance carrier or carriers waive all rights of subrogation against the Landlord with respect to losses payable under such policies. Tenant shall deliver to Landlord upon execution of this Lease, copies of its insurance policies maintained pursuant to this paragraph and shall notify Landlord promptly of any change of the terms of any such policies.

15. Repairs and Alterations. The Tenant will, at its own expense, during the continuance of this Lease, keep the Leased Premises and every part thereof in as good repair and at the expiration of the term yield and deliver up the Leased Premises in like condition as when Tenant first commences business, reasonable use and wear thereof excepted. The Tenant shall not make any alterations, additions or improvements to the Leased Premises without the Landlord's written consent, which shall not be unreasonably withheld, and all alterations, additions or

improvements made by either of the parties hereto upon the Leased Premises, except movable displays, furniture and movable trade fixtures put in at the expense of the Tenant, shall be the property of the Landlord, and shall remain upon and be surrendered with the Leased Premises at the termination of this Lease, without molestation or injury. This paragraph shall be construed to include and refer to anything as part of the Leased Premises that is attached to the floor, walls or ceiling of the Leased Premises by means of glue, screws, nails, tacks, bolts or otherwise.

The Tenant covenants and agrees that if the Leased Premises consists of only a part of a structure owned or controlled by the Landlord, the Landlord may, upon making a reasonable attempt to provide Tenant with advance notice thereof, enter the Leased Premises at reasonable times and install or repair pipes, wires and other appliances or make any repairs deemed by the Landlord necessary to the use and occupancy of other parts of the Landlord's property.

Additionally, it will be Tenant's obligation during any Tenant's construction, remodeling, or making of improvements to utilize Landlord's mechanical contractors and to secure from city, county, and state agencies any and all necessary permits.

16. Roof, Outer Wall, Door and Window Repairs. The Landlord shall be responsible only for the maintenance and repair of the roof, all structural portions of the Leased Premises (not including any structural portions of any improvements made by Tenant to the Leased Premises), and the four outer walls of the Leased Premises (collectively referred to hereinafter as the "Structural Repairs"). Landlord shall not be responsible for such Structural Repairs if the need for such Structural Repairs was/is caused by the acts of Tenant or Tenant's agents. The Tenant shall be solely responsible to maintain and keep in good order and repair the doors, door frames, all window and door glass and plate glass (interior and exterior), window casings, window frames, windows and any of the appliances or appurtenances of said doors or window casings, window frames and windows, any improvements made by Tenant or its agents, and any attachment or attachments to said building or Leased Premises and all systems used in connection therewith. If Tenant fails to perform any repairs that it is required to make hereunder within 15 days after its receipt of written notice from Landlord, Landlord shall have the right but not the obligation to make such repairs and, provided such repairs were made in a good and workmanlike manner, Tenant shall promptly reimburse Landlord for Landlord's reasonable expenses in making such repairs. All repairs made by either party shall comply with all legal requirements applicable to such repairs.

17. Reservation. The Landlord reserves the right of free access at all times to the roof and/or ceiling area of said Leased Premises and reserves the right to rent said roof and outer walls for advertising purposes.

18. Care of Leased Premises. The Tenant shall not perform any acts or carry on any practices which may injure the Building or be a nuisance or menace to other tenants in the Building or adjacent property and shall keep the Leased Premises under its control.

19. Comply with Laws. The Tenant shall at its own expense under penalty of forfeiture and damages promptly comply with all laws, orders, regulations or ordinances of all municipal, county, state and federal authorities affecting the Leased Premises hereby leased and the cleanliness, safety, occupation and use of same.

20. Smoking. These Leased Premises are non-smoking Leased Premises. No smoking of any substance is permitted in, on or around the Leased Premises and/or Leased Premises, including any common areas. Any violation of this clause shall constitute a breach of this Lease upon which Landlord may terminate this Lease. Landlord otherwise reserves all other rights and remedies available under this Lease and/or pursuant to the law. This provision applies to the Tenant, Tenant's invitees, and any other person on and/or in the Leased Premises.

21. Condition of Leased Premises at Time of Lease. The Tenant acknowledges that it has examined the said Leased Premises prior to the making of this Lease and knows and accepts "as is" the condition thereof.

22. Re-renting. The Tenant hereby agrees that for a period commencing one hundred twenty (120) days prior to the termination of this Lease, the Landlord may show the Leased Premises to prospective tenants, and ninety (90) days prior to the termination of this Lease may display in and about the Leased Premises and in the windows thereof signs indicating the Leased Premises are for rent.

23. Holding Over. It is hereby agreed that in the event of the Tenant holding over after the termination of this Lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary at a monthly rental rate in an amount equal to one hundred fifty (150%) percent of the rate called for during the last month of the Lease Term.

24. Utilities. Tenant shall pay all charges made against or in respect to the Leased Premises for all utilities, as the same shall become due.

25. Heating and Cooling System. Tenant agrees, at its own expense to maintain its own air conditioning system and/or any other heating or cooling system presently on or hereinafter installed on the Leased Premises in good operating condition, and at the end of the lease term to return same to Landlord in good operating condition.

26. Signage. No sign shall be displayed excepting such as shall be approved in writing by the Landlord prior to display, and no awning or other outside attachment shall be installed or used on the exterior of said Building unless approved in writing by the Landlord prior to such installation.

27. Access to Leased Premises. The Landlord shall have the right to enter upon the Leased Premises at all reasonable hours upon reasonable notice for the purpose of inspecting the same. Tenant hereby authorizes Landlord to enter into and/or to allow any public safety officials to enter into the Leased Premises at any time in the event that the Landlord has a reasonable basis to believe that an emergency situation that exists which would place people and/or property in imminent jeopardy, however, Landlord will, as soon as reasonably possible thereafter, provide Tenant with notice of such entry and the reasons therefore. If the Landlord deems any repairs necessary, it may demand that the Tenant make the same in writing; and if the Tenant refuses or neglects forthwith to commence such repairs and complete the same with reasonable dispatch, the Landlord may make or cause to be made such repairs and shall not be responsible to the Tenant for any loss or damage that may accrue to its stock or business by reason thereof. If the

Landlord makes or causes to be made such repairs, the Tenant agrees that it will forthwith on demand pay to the Landlord the cost thereof.

28. Quiet Enjoyment. The Landlord covenants that the said Tenant, on payment of all sums called for herein and performing all the covenants set forth herein, shall and may peacefully and quietly have, hold and enjoy the Leased Premises for the Lease Term. However, should Landlord enter into a construction project on any of its properties or Leased Premises, adjacent to the normal construction project or otherwise, disturbance, debris and/or inconvenience shall not be considered a violation of Tenant's quiet enjoyment.

29. Default. If Tenant should fail to pay any sum of the monthly rent or other amounts due under this Lease or shall breach any of the terms and/or conditions of this Lease and same shall not be remedied within seven (7) calendar days after written notice from the Landlord to the Tenant that such payment is past due or such breach has occurred, such non-payment and/or breach after such 7-day period shall constitute a default under this Lease by the Tenant (an "Event of Default"). If an Event of Default shall occur and be continuing for more than the 7-day period, or if Tenant can establish that it timely commenced its efforts to cure any non-monetary default upon notice of same and is diligently pursuing a reasonable cure, Tenant shall have an additional period not to exceed thirty (30) days from the original date of written notice to cure or the Landlord may terminate the Lease, demand Tenant vacate the Leased Premises and/or may demand and/or file suit seeking all of the Landlord's resulting damages.

30. Expenses and Damages - Re-entry. In the event that the Landlord shall obtain possession of the Leased Premises by re-entry, summary proceedings or otherwise, the Tenant hereby agrees to pay the Landlord all reasonable expenses incurred in obtaining possession of the Leased Premises and in pursuing its remedies for breach of the Lease, including recovery of all unamortized funds which Landlord expended and/or contributed toward tenant improvements, all expenses and commissions which may be paid in and about the re-letting of the Leased Premises or any part thereof and all other damages, including actual attorneys' fees and costs. Landlord will use commercially reasonable efforts to mitigate its damages in the event of a Tenant default.

31. Remedies not Exclusive. It is agreed that each and every of the Landlord's rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of said rights, remedies and benefits, or of any other rights, remedies, and benefits otherwise allowed by law.

32. Waiver. Landlord's failure to enforce any of its rights hereunder shall at no time be considered as a waiver of its rights to do so at any later time or times. One or more express waivers of any covenant or condition by the Landlord shall not be construed as a waiver of a further breach of the same covenant or condition.

33. Delay of Possession. It is understood that if the Tenant shall be unable to enter into and occupy the Leased Premises hereby leased at the time above provided, by reason of the Leased Premises not being ready for occupancy, or by reason of the holding over of any previous occupancy of said Leased Premises, or as a result of any cause or reason beyond the direct control of the Landlord, the Landlord shall not be liable in damages to the Tenant therefor, but during the period the Tenant shall be unable to occupy said Leased Premises as hereinbefore

provided, the rental therefor shall be abated and the Landlord is to be the sole judge as to when the Leased Premises are ready for occupancy by Tenant.

34. Non-liability of Landlord. In the event the Landlord hereunder or any successor owner of the Leased Premises shall sell or convey the Leased Premises, all liabilities and obligations on the part of the original Landlord or such successor owner under this Lease accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant shall attorn to such new owner.

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and, if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only against the right, title and interest of Landlord in the Leased Premises and out of rents or other income from the Leased Premises receivable by Landlord, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Leased Premises, and Landlord shall not be liable for any deficiency.

35. Estoppel Certificate. At any time and from time to time but not more than ten (10) days subsequent to request by Landlord, Tenant shall promptly execute, acknowledge and deliver to Landlord, a certificate indicating (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification), (b) the date, if any, to which rental and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in said certificate, and (d) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, mortgagee or beneficiary under any deed of trust of the Leased Premises or any part thereof.

36. Taxes. Tenant will pay all its pro rata share of all real property taxes, assessments and special assessments on the Leased Premises, when billed by Landlord. Additionally, Tenant will pay its own personal property taxes.

37. Option to Renew/Right of First Offer. Provided that Tenant is not in default of this Lease at the time of the notice of exercise and at the time of the commencement of the hereinafter provided Option Terms, Landlord grants to Tenant One (1) successive Five (5)-year option to extend this Lease upon same terms and conditions, except for the annual Base Rent, which shall, at the commencement of the Option Term, be increased by three percent (3%) of the per square foot Lease rate annually. To exercise any such Option, Tenant must tender written notice to Landlord exercising such Option not less than twelve (12) months prior to the expiration date of the Lease Term or immediately preceding Option Term. Failure of Tenant to timely tender written notice of its exercise of an Option shall terminate such Option, time being of the essence.

38. Notices. Whenever under this Lease a provision is made for notice of any kind it shall be deemed sufficient notice and service thereof if such notice to the receiving party is in writing addressed to the receiving party at its last known post office address or at the Leased Premises and deposited in the mail with postage prepaid; and/or hand delivered to the receiving

party to be noticed. Notice need be sent to only one Tenant or Landlord where the Tenant or Landlord is more than one person.

39. Pronouns. It is agreed that in this Lease the word "it" shall be used as synonymous with the words "she," "he," and "they," and the word "its" synonymous with the words "her," "his," and "their."

40. Successors. The covenants, conditions, and agreements made and entered into by the parties hereto and the benefits hereunder are binding on, and the benefits hereunder shall accrue to the parties hereto and their respective heirs, successors, representatives, and assigns.

41. Severability. The unenforceability or invalidity, if any, of any provision of this Lease shall not render any other provision or provisions unenforceable or invalid and the remainder of this Lease shall not be affected thereby and the balance of the terms and provisions of this Lease shall be valid and enforceable. If any provision of this Lease is partially unenforceable or invalid, the remaining portion thereof shall be enforced to the fullest extent permitted by law.

42. Security Provision. The Landlord herewith acknowledges the receipt of no monies.

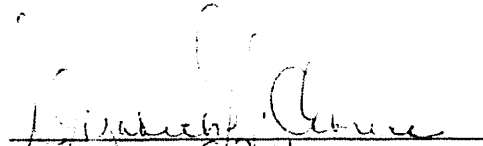
43. Recording. Tenant hereby covenants and agrees not to record this Lease or any memorandum or affidavit thereof or cause same or any memorandum or affidavit thereof to be recorded by any third persons.

44. Headings. The paragraph headings provided herein are for the convenience of the parties, but shall not be deemed to qualify, modify or amend the text of each paragraph of the Lease.

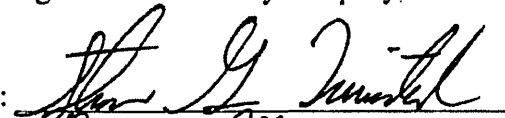
45. Entire Agreement. This Lease constitutes the entire agreement between the parties and may not be modified in any manner except by a writing signed by the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

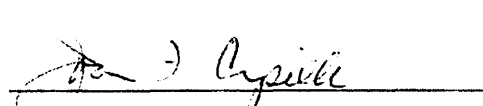
WITNESSED BY:

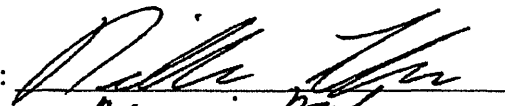

Elizabeth G. McCabe

FULLER CENTRAL PARK PROPERTIES,
a Michigan limited liability company, LANDLORD

By: 
Its: Property Manager

BIRMINGHAM THEATRE, L.L.C., a Michigan
limited liability company, TENANT


Joan F. Cipelle

By: 
Its: Managing Partner



MEMORANDUM

Planning Division

DATE: July 7, 2017

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing to consider changes to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services

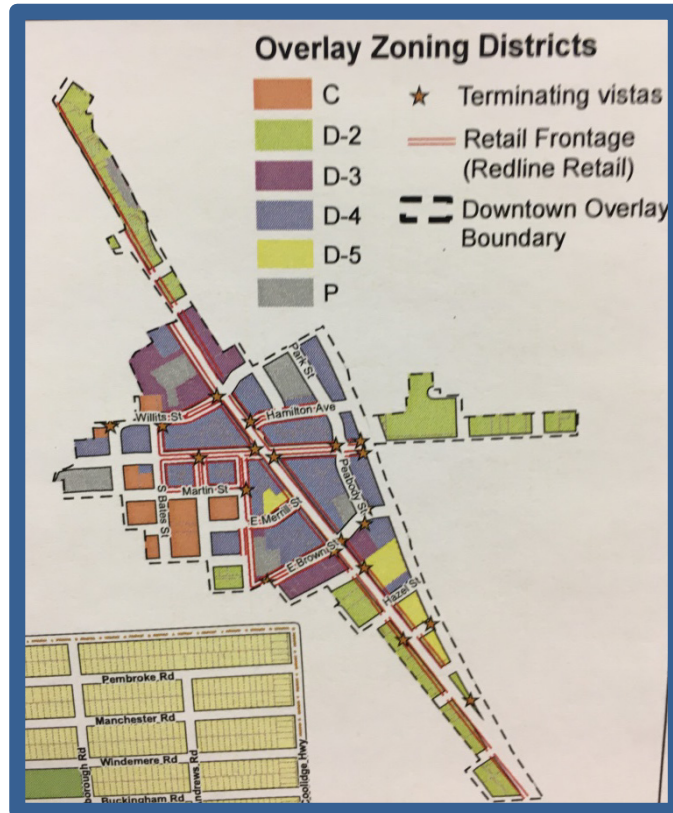
Joint meeting update

Based on the discussion between the City Commission and Planning Board at the June 19th, 2017 meeting regarding the definition of retail, the City Manager has provided a memo outlining the course of action considered at that time. This discussion suggested postponing the public hearing to a date certain and holding study session in lieu of the public hearing to consider the definition of personal services and to review the Redline Retail District as prescribed in the Downtown Birmingham 2016 plan for background and intent in regards to personal services. Please see the attached memo from the City Manager for a detailed description of the proposed course of action. The remainder of this memo provides information and background on the 2016 plan intent and the retail discussion up to this point which is relevant to the proposed study session.

Retail discussion and background

Over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20' of depth for all buildings in the Redline Retail District as illustrated below.

At the joint meeting with the City Commission on June 20, 2016, both the City Commission and the Planning Board members agreed that the existing definition of retail and the related definitions in the Zoning Ordinance should be discussed in further detail. This issue was added to the Planning Board's 2016 – 2017 Action List for future discussion. Accordingly, the Planning staff assembled the following information regarding the existing ordinance requirements which affect permitted commercial uses within the Redline Retail District.



Zoning Ordinance regulations:

Article 3, Section 3.04 (C)(6) states:

Buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, shall consist of retail with a minimum depth of 20 feet from the frontage line within the first story. Lobbies for hotels, offices, and multiple-family dwellings may be considered as part of the required retail frontage, provided that any such lobby occupies no more than 50% of the frontage of said building.

Accordingly, all buildings built under the Downtown Overlay in the areas marked in red on the map inset above, must contain retail uses in the first 20' of depth of the first floor. Article 9, section 9.02 of the Zoning Ordinance provides the following retail related definitions:

Retail Use: Any of the following uses: artisan, community, commercial, entertainment (including all establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development), bistro or restaurant uses.

Artisan Use: Any premises used principally for the repair, manufacture, and sale of domestic furniture, arts, and crafts. The work must take place entirely within an enclosed building using only hand-held and/or table-mounted manual and electric tools.

Community Use: Premises used principally for education, worship, cultural performances, and gatherings administered by nonprofit cultural, educational, and religious organizations; premises used principally for local, state, and federal government, administration, provision of public services, education, cultural performances, and gatherings.

Commercial Use: Premises used generally in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services.

Office: A building or portion of a building wherein services are performed, including professional, financial (including banks), clerical, sales, administrative, or medical services.

As defined in Article 9, retail uses include the direct sale of products from the premises, but also include restaurants, entertainment and the purchase, sale or exchange of personal services (given the inclusion of personal services in the definition of commercial uses, which are included as retail uses). No definition for personal services is provided. Personal financial services, beauty services, banking services, real estate services, advertising services and other similar uses have been permitted within the Redline Retail District under the umbrella of personal services, provided that there is a display area for the sale or exchange of such goods and services in the first 20' of the storefront, and the storefront is open to the public during regular business hours. Concern has been raised that this small display area 20' in depth is not sufficient to create an activated, pedestrian-friendly retail district.

The current definitions for retail and commercial have thus permitted some uses that are not universally considered "true retail" as there are no physical goods for sale. In the past, both the Planning Board and the Birmingham Shopping District Board have expressed concern with the existing retail definition, and have considered alternative definitions to tighten the definition of retail to include only shops which sell products, not financial, real estate or other such personal services. On the other hand, many property owners in the past have expressed concerns about tightening up the definitions as they desire the flexibility to lease space to a wider range of users to avoid vacancies.

Retail Intent in the 2016 Plan

A detailed review of the Downtown Birmingham 2016 Plan (hereinafter "the 2016 Plan") was conducted to determine the intent of the creation of the Redline Retail District, the City's success or failure in meeting this intent, and the need for any changes to the regulations to comply with the recommendations contained in the 2016 Plan. In addition, the Planning Division has been working with the City Manager and the Birmingham Shopping District to obtain all relevant data as to the current mix of uses on the first floor in the Redline Retail District and the changes to this mix that have occurred since the inception of the 2016 Plan in 1996. Please see Appendix A for minutes and staff reports from the adoption of the 2016 Plan in 1996.

The 2016 Plan was written to create a vision for the future of Downtown Birmingham. Detailed recommendations were included on the type and mixture of desired uses in downtown, as well as recommendations regarding building form, scale and character of the streetscape. Specific recommendations regarding the type and mixture of desired uses downtown can be found in both Retail sections 1 – 12 and Building sections 1 – 2, which are summarized below.

With regards to downtown retail uses, the 2016 Plan identifies the key retail loop (or retail epicenter) as the portion of Old Woodward from Oakland to Brown and portions of Maple from Willits/Chester to Park/Peabody. This area encompasses a five minute or 1,200 foot walking radius centered on the intersection of Maple and Old Woodward. The 2016 Plan recommends that the downtown continue to offer its residents and non-residents alike a chance to enjoy a walkable and diverse shopping experience. The 2016 Plan identified five primary commercial areas in Downtown Birmingham (as of 1996): The Central Business District (5 minute walking radius or CBD), North Woodward, South Woodward, Bowers and East Maple. Each of these areas are defined by their different sizes, the character of the roads and streetscapes, the types of businesses offered, the quality of shops, and the continuity of retail frontages.

Recommendation: Creation of Expanded Downtown District

One of the primary recommendations of the 2016 Plan is to enlarge the CBD by merging or connecting the key retail loop with the N. Old Woodward district north of Oakland, the S. Old Woodward district south of Brown, and the Bowers and E. Maple districts. The 2016 Plan states that this should be accomplished by encouraging first floor retail liners between the five districts to connect discontinuous retail frontages and encourage supportive retail, restaurant and services to be carefully grouped to promote cross-shopping and better reflect the variety and quantity of merchandise and services offered.

The 2016 Plan states that “controlling frontage and regulating first floor use are tools to foster pedestrian life”, which is essential for vibrant downtowns. In order to enhance the pedestrian environment, the 2016 Plan recommends the removal of actual or perceived barriers to moving between districts, and the improvement of the quality and maintenance of the streetscape. The Ring Road system is noted as a barrier to cross-shopping between districts, as is the need for improved pedestrian crossings throughout downtown. The need for pedestrian-scaled architecture and controlled building height are also noted.

Recommendation: Maintain Retail Anchors

The 2016 Plan states that the CBD has significant anchors at the periphery (Jacobson’s Mens’ and Womens’ department store and Crowleys were present in 1996) to help provide a connection to the other downtown commercial districts. The Plan states that department stores are primary destinations and important anchors for many businesses in the CBD as they are leading destinations that support apparel, jewelry, shoe, and accessory stores, as well as

restaurants and coffee houses throughout downtown. The 2016 Plan recommends ensuring the maintenance of anchors in the CBD to promote visits to other retail uses through shoppers strolling to and from these anchor sites, as well as attracting new shoppers and visitors to the downtown.

Recommendation: Desired Mix of Uses

The Plan states that the five commercial areas in the study area for the 2016 Master Plan house a mixture of 6 primary retail types: Apparel, Department Stores, Restaurants/Specialty foods, Antiques and Art Galleries, Neighborhood Convenience & Services, and Other Retail and Services. The types of retail and the specific nature of services existing in 1996 at the time the Plan was written are not defined.

The 2016 Plan recommends creating a variety of retail options for shoppers through the maintenance and expansion of the existing range of tenants downtown. The mix of uses listed in the 2016 Plan (as existing in 1996) are as follows:

Antiques and Art Galleries	5%
Restaurants/Specialty Foods	10%
Apparel (men's, women's, children's, shoes)	15%
Neighborhood Convenience & Services	15%
Other Retail and Services	17%
Department Stores	38%

However, the 2016 Plan states that space is not unlimited and should not strive to be similar to a retail mall, as there is a point where Birmingham's character could be jeopardized. The 2016 Plan recommends adding 242,500 ft² of retail space in the City to connect the commercial areas together and support retail just outside of the Maple-Old Woodward epicenter. The specific recommendation of the 2016 Plan is to include artisan, civic, commercial, cultural, entertainment, or restaurant uses. Commercial uses are defined as those premises used generally in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services. Personal services are not defined.

The 2016 Plan also states that Birmingham should maintain a balance of office, financial and employment generators in the downtown area. At the edges of the CBD, residential and office uses are encouraged along with retail, restaurant and service anchors to support retail. As many of Birmingham's residents patronize the downtown more often than any other area, the 2016 Plan states that the downtown commercial areas are intended to be convenient for people from the surrounding neighborhoods and employers to patronize.

Finally, the 2016 Plan explicitly states that while the 1996 existing mix of uses should be maintained. The Plan also clearly states that this mix of uses will evolve over the next 20 years,

and that if market forces distort the mix of uses, then a future City Commission has the right and obligation to readjust the mix to ensure an active and vibrant Downtown Birmingham.

History of quasi-office uses in the downtown 2007-2017

In an effort to quantify the ambiguity of the definition of retail the Planning staff has compiled a spreadsheet charting the number of first floor quasi-office tenants in the Redline Retail District. As the spreadsheet shows, no less than 46 tenants who would qualify as quasi-office have occupied a first floor retail space, 36 of which are still open. These numbers are based off of available data.

Recent Planning Board activity

In April of 2017, the City Manager directed staff to consider measures to provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown Birmingham located within the Redline Retail District, while the Planning Board continues to study this issue.

Accordingly, on May 8, 2017, the City Commission directed the Planning Board to move forward with ordinance amendments to provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown. However, the City Commission appeared to be supportive of allowing beauty salons and similar uses in the Downtown given the foot traffic that they create, and thus requested a definition of personal services be added.

On May 10, 2017, the Planning Board discussed the direction from the City Commission to consider an ordinance amendment that would temporarily stop some of the uses that fall under the current undefined category of personal services and to stop community uses from being permitted in first-floor retail space Downtown while the board studies the full issue. After extensive discussion, the board directed the matter back to staff to provide ordinance language that would define personal services to include beauty salons, retail bank branches and other similar uses, and to allow personal services as defined within the Redline Retail District, but to exclude office, medical and quasi-office uses, as well as community uses until the Planning Board can complete a comprehensive study regarding retail Downtown.

On May 24, 2017, the Planning Board reviewed draft ordinance language that excluded community uses from the Redline Retail District, added a definition of personal services that includes beauty and clothing services, but excluded office, medical and quasi-office uses, and amended the definition of retail to include personal services as newly defined. All of these changes would prohibit the use of first floor space in the Redline Retail District from being occupied by office or quasi-office uses. After much discussion, board members did not vote to set a public hearing on the proposed ordinance amendments, but requested that staff notify property owners in the Redline Retail District and invite them to attend the next Planning Board meeting to provide their input. The Planning Board also requested additional information from prospective retailers, building owners and the state of retail in the City currently. The board felt

they needed more data before they could proceed, and unanimously approved a motion to continue the discussion at the Planning Board meeting on June 14, 2017.

At the June 14 meeting the Planning Board held an additional study session and received input from a large number of commercial property owners on the impact of the proposed ordinance language. At the end of the study session the Planning Board passed a motion to hold a public hearing on July 12, 2017 to consider a recommendation to the City Commission on the draft language.

On June 19th, 2017 the City held a joint workshop session with the Planning Board and City Commission. At that time there it was discussed that the Public Hearing scheduled for July 12, 2017 should be postponed and the Planning Board should have an additional study session to further discuss the proposed definition for personal services.

As stated above, during the joint meeting of the City Commission and the Planning Board it was discussed that the focus of the next Planning Board discussion should be on the definition of personal services. By creating a definition for personal services much of the ambiguity experience by City staff could be eliminated. More clear and concise direction would be readily available as to what is and is not considered a personal service, and therefore what is permitted in the redline retail district.

Suggested Action:

To postpone the public hearing to consider to _____ and hold an additional study session focused on the definition of personal services.



MEMORANDUM

Office of the City Manager

DATE: June 30, 2017

TO: Planning Board

FROM: Joseph A. Valentine, City Manager

CC: City Commission

SUBJECT: Defining Personal Services

There is a desire by the City Commission to provide clarification on the definition of Retail Use under the zoning ordinance. As you know, the current definition of Retail Use includes Commercial Use as a permitted use. Commercial Use, as defined, includes the category of personal services. Personal services, however, is not defined and left to the interpretation of city staff. Over the past 10 years, roughly 46 businesses have occupied first floor spaces in the Redline Retail area under the undefined category of personal services. To assist city staff in the administration of the zoning ordinance and to clarify the intent of the personal services category, a policy directive was given to the Planning Board to promptly address this issue. This directive was intended to establish a temporary relief measure while the Planning Board continues to study the definition of retail as part of its action list that was adopted in July of 2016.

While there may have been some initial confusion with regard to temporary relief measure that was directed, the general intent is to provide an immediate definition for personal services as further study continues on this issue. The collective discussion at the joint workshop between the City Commission and Planning Board on June 19, 2017 offered the following course of action.

1. Postpone the public hearing set for July 12, 2017 to a date certain in the immediate future.
2. Hold a study session on July 12, 2017 to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, then review the current draft definition of personal services as reviewed by the Planning Board on June 14th for appropriate application.
3. Conduct a public hearing on the proposed definition for personal services following this study session and provide a recommendation to the City Commission on a proposed definition at the earliest opportunity.

The latest draft definition for personal services reviewed at the Planning Board's June 14th meeting does provide a definition for further discussion. However, as it is stated below, this draft language should be modified to only include the services that are permitted and not identify excluded services. This will help further clarify the application of the proposed definition by city staff.

Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

Because Community Use is already defined and does not pose this same immediate issue, this can be further reviewed in the second stage of discussion on the definition of retail.

Following the completion of the clarification of the personal service definition, the Planning Board should continue to review the definition of retail in accordance with the previous direction to the Planning Board as follows:

- a. To evaluate the success of the red line retail district in Downtown Birmingham to determine if the intended objectives are being met;
- b. To study the existing definition of retail in the Zoning Ordinance and recommend any needed amendments to the definition; and
- c. To review all retail-related requirements contained in the Zoning Ordinance and recommend any needed amendments.

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 3, SECTION 3.04, SPECIFIC STANDARDS, TO AMEND THE DOWNTOWN BIRMINGHAM OVERLAY STANDARDS TO EXCLUDE COMMUNITY USES AS PERMITTED USES IN THE REDLINE RETAIL DISTRICT.

3.04 Specific Standards

C. Building Use.

Buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, shall consist of retail with a minimum depth of 20 feet from the frontage line within the first story. **For purposes of this Section 3.04(C)(6), community uses are not considered retail.** Lobbies for hotels, offices, and multiple-family dwellings may be considered as part of the required retail frontage, provided that any such lobby occupies no more than 50% of the frontage of said building.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD A DEFINITION FOR PERSONAL SERVICES, TO AMEND THE DEFINITION OF COMMERCIAL USE TO EXCLUDE PERSONAL SERVICES AND TO AMEND THE DEFINITION OF RETAIL USE TO INCLUDE RETAIL BANK BRANCHES AND PERSONAL SERVICES.

Artisan Use: Any premises used principally for the repair, manufacture, and sale of domestic furniture, arts, and crafts. The work must take place entirely within an enclosed building using only hand-held and/or table-mounted manual and electric tools.

Commercial Use: Premises used generally in connection with the purchase, sale, barter, display, or exchange of goods, wares, ~~or merchandise, or personal services.~~

Community Use: Premises used principally for education, worship, cultural performances, and gatherings administered by nonprofit cultural, educational, and religious organizations; premises used principally for local, state, and federal government, administration, provision of public services, education, cultural performances, and gatherings.

Office: A building or portion of a building wherein services are performed, including professional, financial (including banks), clerical, sales, administrative, or medical services.

Personal Services: **An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.**

Retail Use: Any of the following uses: artisan, community, commercial, entertainment (including all establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development), bistro or restaurant uses, **retail bank branches and personal services.**

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

City Commission Minutes
June 20, 2016

E. Definition of retail

Ms. Ecker described the issue as the city's definition of retail in the ordinance, and people who would like the definition to be more specific. She said this comes up at the shopping district level. The retailers downtown want to see more retail. For the most part, the general public wants to see an active retail type use whether it is retail or restaurant. There is some debate on what percentage of each. The building owners have a different view.

Commissioner Nickita thinks this is long overdue for discussion. He feels it needs to be re-examined and cleaned up.

The consensus is to continue discussion on the definition of retail.

There were no public comments.

Planning Board Minutes March 29, 2017

5. Definition of Retail

Ms. Ecker observed that over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20 ft. of depth for all buildings in the Redline Retail District.

As defined in Article 9, retail uses include the direct sale of products from the premises, but also include restaurants, entertainment and the purchase, sale or exchange of personal services. No definition for personal services is provided. Personal financial services, beauty services, banking services, real estate services, advertising services and other similar uses have been permitted within the Redline Retail District under the umbrella of personal services, provided that there is a display area for the sale or exchange of such goods and services in the first 20 ft. of the storefront, and the storefront is open to the public during regular business hours. Concern has been raised that this small display area 20 ft. in depth is not sufficient to create an activated, pedestrian-friendly retail district.

In the past, both the Planning Board and the Birmingham Shopping District Board have expressed concern with the existing retail definition, and have considered alternative definitions to tighten the definition of retail to include only shops which sell products, not financial, real estate or other such personal services. On the other hand, many property owners in the past have expressed concerns about tightening up the definitions as they desire the flexibility to lease space to a wider range of users in order to avoid vacancies.

Reviewing the research on other cities retail policies, one issue maybe that the Red Line Retail District is too big. Perhaps the City should target the Maple/Woodward core area for the strict definition of retail and then allow some of the service uses around that. Another recommendation may be to change the definition of retail use by eliminating "community and commercial uses." It would still keep in uses that would fall under entertainment. Another option is to include language that talks about what percentage of sales comes from the actual sale of products.

Mr. Share said maybe part of the answer is that mandatory true retail needs to be compressed and street activation needs to be the principle. The national market trend is that the retail footprint is shrinking and it is anchored by entertainment and by food. Ms. Whipple-Boyce commented she does not like to see offices on the first floor. They create horrible dead strips of nothing. Maybe the idea is to shrink the retail district if the market trend is shifting.

No one had an issue with removing "community and commercial uses" from the definition of retail use. Mr. Jeffares suggested looking at Walnut Creek, CA and Hinsdale, IL for ideas about encouraging retail activity.

Consensus was that this topic will need further discussion.

**Planning Board Minutes
May 10, 2017**

2. Definition of Retail

Ms. Ecker advised that last week Planning Staff was directed by the City Manager to come up with a temporary ordinance amendment that would halt the conversion of first-floor retail space to quasi office/quasi retail uses. The City Commission talked about that on May 8 and in the end they voted in favor of directing the Planning Board to bring back to them by July 24 an ordinance amendment that would be a temporary measure of relief until the board's overall discussion of retail is completed. Further, they have asked the board to consider an ordinance amendment that would temporarily stop personal services and community uses from being on first-floor retail space Downtown while the board studies the full issue. They want personal services to be defined.

After researching the subject, Ms. Ecker thought the best example of defining Personal Services came from the City of Bremerton, Washington:

Personal Service Business means an establishment engaged primarily in providing services involving the care of a person or apparel, such as: shoe repairs, laundry and dry cleaning, beauty and barber shops, clothing/costume rental, tanning, other personal grooming facilities and domestic assistance services. This does not include massage parlors, health care services, exercise establishments, nor funeral services.

At their meeting on May 8 it seemed the majority of Commission members appeared to value the beauty services as something that drives activity Downtown.

Mr. Boyle noted this is the fundamental problem of a form based code. It is not easy to take that form and assume you will get what you want in it.

Ms. Lazar observed the board needs to remember that offices like McCann Erickson that have moved into town have increased foot traffic, which also helps the retail. Chairman Clein said this board can either craft a measure for the presumed short term that solves a policy issue that the City Commission has already come to a conclusion on, and then come back and try and make it right; or they can continue to spin until the joint meeting.

Board members decided to add personal services to the definition of retail and to add a definition personal service that includes retail bank branches. Then in the Downtown Overlay, community uses should not be considered retail, but personal services should be allowed.

Consensus was to send this matter back to Staff for due consideration and they will bring back appropriate definitions to the next meeting. Also, invite the BSD Director to that meeting. The board can talk about scheduling a public hearing at that time.

DRAFT

Planning Board Minutes May 24, 2017

1. Definition of Retail

Ms. Ecker advised that over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail Downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20 ft. of depth for all buildings in the Redline Retail District. The City Commission talked about that on May 8, 2017 and they directed the Planning Board to move forward with ordinance amendments to provide temporary relief to halt the addition of first-floor non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown.

On May 10, 2017, the Planning Board discussed the direction from the City Commission to consider an ordinance amendment that would temporarily stop some of the uses that fall under the current undefined category of personal services and to stop community uses from being permitted in first-floor retail space Downtown while the board studies the full issue. After extensive discussion, the board directed the matter back to staff to provide ordinance language that would define personal services to include beauty salons and clothing services and other similar uses, and to allow personal services as defined within the Redline Retail District, but to exclude office, medical and quasi-office uses, and amend the definition of retail to include retail bank branches along with personal services as newly defined.

In addition, the Planning Board requested that the Birmingham Shopping District ("BSD") Director attend the Planning Board meeting on May 24, 2017. Ms. Tighe was not available to attend the meeting, but forwarded a copy of the BSD's latest retail study for Downtown Birmingham to assist the Planning Board in their review of this issue. The BSD is also working on a comparison between the market analysis that was done several years ago and the most current analysis to see what the changes have been in the different categories.

In response to the Chairman, Ms. Ecker advised that as proposed there would not be a time limit on the ordinance change. Mr. Jeffares had a concern that this is the right mechanism because the study might go on for years while they would see plywood go up on windows.

Motion by Mr. Williams

Seconded by Ms. Lazar to receive and file letters from Matthew Shiffman of Alden Development Group dated May 24, 2017 and from Faiz Simon of Simon Group Holdings dated May 19, 2017. Both letters oppose the proposed change.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Lazar, Boyle, Jeffares, Koseck, Prasad, Whipple-Boyce

Nays: None

Absent: Clein

Mr. Williams said he is a free market person and he thinks the market should dictate what goes into the stores. Ms. Lazar stated she did a drive-by of the businesses that are no longer there. There are four on W. Maple Rd. and four on N. Old Woodward Ave. She questioned the rationale behind stymieing a landlord from filling his space. At least it would look like there is activity. Mr. Jeffares thought the City should do some things to encourage retail such as solving the parking problem. If people can't find a place to park they won't come to Birmingham to shop. It would be better to solve that issue than to declare a moratorium that might last for a long time.

Ms. Prasad said she has noticed that most retailers close pretty early in the evening when there is a fair number of people going in and out of the first-floor offices. The business she has seen so far haven't really taken away from activation of the streets. Chairman Boyle observed if the City wants to keep the streets activated perhaps the merchants should be asked to make some modest changes in terms of hours, lighting, shades, litter, door openings etc. adjacent to their properties.

The Chairman took discussion from the public at 7:47 p.m.

Mr. Brian Najor, owner of buildings at 100-167, 600-640, and 720-726 N. Old Woodward Ave., noted there is a significant amount of change going on in retail today. He thought it is probably a big mistake to impose the proposed changes at this time when there is so much unknown. He encouraged further discussion prior to making changes. This temporary change to the ordinance could go on for years. He feels owners could be facing some challenges in filling space here. The City should be expanding its uses and keeping things open to bring in new tenants. Also, other building owners, Ted Fuller and James Esshaki, have indicated they are strongly opposed to the ordinance change.

Ms. Lazar felt there should be further discussion and consideration at another meeting so that more property owners can weigh in.

Ms. Whipple-Boyce indicated she is concerned about prime retail spaces being consumed with office use. She would very much like to see the board come up with a plan for this. Small retail stores in downtowns like ours are thriving in other communities and thriving here. Mr. Koseck said it concerns him not to put an end date on the study. Mr. Williams noted there is no factual basis that retailers are waiting and unable to find space to lease. The City Commission hasn't given the Planning Board the facts to be able to develop a proposal.

Chairman Boyle said this discussion should be continued in order to ask for evidence from retailers, building owners, and others. Mr. Jeffaries thought Ms. Tighe should be asked about the state of retail in the City.

Ms. Ecker noted that the City Commission in their meeting on May 8, 2017 was adamant that they wanted this matter moved forward to a public hearing and then back to the Commission in with all due haste.

Motion by Mr. Jeffares

Seconded by Mr. Williams to continue the discussion on the definition of retail to June 14, 2017.

Mr. Brian Najor received clarification that the board is not moving forward to June 14 for a public hearing on the proposed ordinance amendments. This discussion will be continued on June 14 to get more information and to get more people to weigh in.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Williams, Boyle, Koseck. Lazar, Prasad, Whipple-Boyce

Nays: None

Absent: Clein

Consensus was to limit the June 14, 2017 agenda to two items, the public hearing on glazing, and the retail discussion.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 14, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 14, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Alternate Board Members Daniel Share; Lisa Prasad

Absent: Board Members Robin Boyle, Bryan Williams; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner

Jana Ecker, Planning Director

Carole Salutes, Recording Secretary

1. Definition of Retail

Mr. Share recused himself because of a conflict of interest. Ms. Lazar also recused herself based on her part ownership of a commercial building in Birmingham.

Chairman Clein reiterated this is not a public hearing. The only action the board could take tonight would be if they decided to set a public hearing. This board does not approve or deny any ordinance language, they only make a recommendation to the City Commission.

He explained that the City Commission has sent forth instructions to the Planning Board to study and provide a recommendation along with a directive for a particular course of action.

Ms. Ecker advised the Planning Board has been assessing this matter for probably six months or so. Specifically the City Commission directed the Planning Board to hold a public hearing on amendments to Article 3, section 3.04 (C) (6) of the Downtown Overlay District and the Redline Retail District to take away Community Uses and Personal Service Uses as permitted uses on the first floor. They also specifically directed the board to state what would be included in retail and to come up with the definitions of Personal Services and Community Uses.

This proposal clarifies exactly what uses would be allowed on the first floor within the Redline Retail District. This is what the City Commission has asked the Planning Board to consider as a temporary measure while the board further discusses the bigger picture of retail. It would halt some of the changes they have been concerned about in terms of the types of tenants that have been coming in on the first floor and the parking implications of those tenants.

Ms. Ecker advised that the Planning Division has been working with the City Manager and the Birmingham Shopping District ("BSD") to obtain all relevant data as to the current mix of uses on the first floor in the Redline Retail District and the changes to this mix that have occurred since the inception of the 2016 Plan in 1996. Discussion followed regarding information provided by the BSD data base regarding office uses on the first floor in the Redline Retail District.

Mr. Jeffares observed the proposal would be a temporary fix but it would turn into a permanent change if the board's study continues on for a long period of time.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to add the following communications to the record:

Mr. Eric Wolfe in favor of the proposed ordinance changes;

Mr. James Esshaki opposed;

Mr. Rick Huddleston opposed.

Motion carried, 5-0.

VOICE VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Jeffares, Prasad

Nays: None

Recused: Lazar, Share

Absent: Boyle, Williams

At 8:09 p.m. the chairman invited members of the public to speak.

Mr. Richard Huddleston said he represents VS Birmingham Holdings, LLC, the owner of Birmingham Place which contains 108,000 sq. ft. of office and retail. It was noted that the portion of his building that fronts on S. Old Woodward Ave. is in the Redline Retail District. They are opposed to the ordinance proposal because they believe that landlords need more flexibility to deal with 21st Century retail. He wondered if Birmingham can sustain increasing the vacancy rate by 30 or 40% and still retain the viable Downtown that everyone knows and loves.

Mr. Peter Sobelton indicated he is a resident and also a commercial property owner in Birmingham. He highlighted what most recently occurred at Fairlane Towne Center where Lord and Taylor had a 250,000 sq. ft. location. That has been converted to office use for 1,500 Ford Motor Co. employees. There was an immediate increase in traffic and the most significant increase was at the food and beverage courts. He encouraged that people not be put in a position where they are forced into only one area of commerce; i.e., retail.

Ms. Rene Acho, resident and business owner in Birmingham, said to jeopardize the balance that Downtown has had for so many years could be detrimental. Everyone can remember what happened in 2008 and 2009 when all of the retailers went down and no one was there to take those spaces. That could again be an issue for all of us.

Mr. Bedros Avedian said he owns 261-275 E. Maple Rd., the Jos. A Bank Building. Also, he owns 297-323 E. Maple Rd. He went on to name a number of Downtown businesses that have failed. He has had to reduce rents but his taxes haven't gone down. That is a big hit on all of the real estate owners.

Mr. Ken Kajoian who lives on Lakepark and owns two buildings in the Redline Retail District thought the proposed plan does not allow for the diversity that is needed in Birmingham. He noticed that Hamilton is not in the Redline Retail District and that is not equitable. He agreed it is nice to have more retail, but with the dynamics of the economy and what is going on with retail, that is not viable right now.

Ms. Jeanette Smith was present on behalf of James Esshaki. She thought the board ought to take time to really understand the data and understand what could happen as others have said. Blanket rules open the door to some issues. She asked the board to consider Birmingham's realities, the market forces at work, and the retail landscape that is changing rapidly. Keep the landlords empowered to do what they do best.

Mr. Paul Chicorian said he is Executive Manager Director for Colliers International, a commercial real estate firm. Also he is a resident at 1076 Fairfax. He believes if this change were approved it would severely damage the City and its residents. During the slowdown buildings were empty and landlords couldn't get tenants. Now things are better, and it may seem like a good idea to switch everything to retail. But if the economy goes back into a slowdown which it inevitably will, Birmingham will have vacancies and ultimately Gypsy retails will come in and out. The present mix is ideal, so don't try to fix it.

Mr. Mark Alhermizi indicated he lives on Frank and has been a commercial tenant for the last ten years. He rents about 3,000 sq. ft. of office space in a commercially zoned building. He currently is looking for 6,000 sq. ft. and his options are extremely limited. This proposed change would only make it more difficult or impossible to attract more business prospects to this great town.

Mr. Dan Jacob noted he has been a broker in Birmingham for 28 years. He has done the majority of brokerage deals in town. It is the daytime population that co-exists with the residential that gives Birmingham its synergy. Services are needed from the people that work in town. It would be really devastating if the landlords' hands were tied so they didn't have flexibility that is reactive to the times. It is necessary to be cognizant of who wants to be here and who does not. He explained it isn't like retailers are knocking on our door, they don't have that urgency to come here.

Mr. Brian Najor said he owns several buildings Downtown. He wanted to echo everything he has heard tonight. It troubles him the board is trying to make a very important decision but doesn't have all of the facts. He has heard a lot about why this change shouldn't be done but hasn't heard a lot about why it should. Obviously more needs to be done in terms of studies. The proposal that has been discussed seems very counterintuitive. Everyone that has spoken tonight has provided evidence and facts and understands the market. He urged the City Commission to walk down the streets and talk to the owners, retailers, and the real estate brokers in order to educate themselves on where the market is today.

Mr. Dan Jacob spoke again to ask for a foot traffic study. That is very critical when you want to restrict uses to only retail and not allow quasi retail.

Chairman Clein clarified this volunteer board is not attempting to push a particular change up to the City Commission. The board was asked to start studying retail and its definition. That study would need to include all of the details that have been discussed this evening. The reason everyone is here tonight is that the City Commission passed a resolution specifically asking this board to do exactly what is at hand. The Planning Board is grappling with the same questions that the audience asks. What is the data; why are we doing this; all of these questions. The board is trying to work through a process that was specifically requested of them by the elected leaders who set policy.

Ms. Christine Jackson, the owner of Scandia Home, stated that she has lost the other two retail stores that are on her block. Now she doesn't get a lot of foot traffic. She is a destination store so people still tend to come. She proposed there will need to be some type of a compromise. Perhaps the Redline District could be narrowed down some more so all of the retailers are in context to one another. That way they will prosper and won't go out of business. Brick and mortar is different from on-line and there will always be people who want to come and experience what they are buying.

Mr. Richard Sherer stated that he presently owns 175-185 W. Maple Rd. and his sister has several stores on Pierce. His property at 185 W. Maple Rd. has been vacant for a year. That is his reality, and to further constrict restricts free enterprise and he is entirely opposed. He questioned what the ordinance proposes to do for building owners who have long-term skin in the game.

Mr. Matt ~~Ferrill~~ **Farrell**, CEO and founder of Core Partners, a commercial brokerage company, spoke. They property manage, broker, and advise on commercial real estate transactions throughout the State of Michigan. He is opposed to the intended implication. His company tries to educate their clients that flexibility, creativity and an open market are key when it comes to marketing and advertising commercial real estate space. Any limiting factors to that and further hampering will change the result of the market condition. The reason the vacancy factor in Birmingham is in the 6% range when you look at office, retail, and multi-family combined has nothing to do with the rental rates, walkability, or urbanization; but has everything to do with being able to accommodate people coming in and out of town and the parking constraints.

Mr. Kevin Denha, the owner of 700 N. Old Woodward Ave. in the Redline Retail District as well as the building on Lincoln and Adams where Great Harvest Bread is located, added a couple of things. He thought any tweak to the ordinance needs to be analyzed very seriously and also questions why this is happening.

Mr. James Esshaki, Essco Development, said he owns three buildings that are all being affected by the proposed legislation: Park Plaza, Plaza of Birmingham, and the Wabeek Building. He noted the following:

These buildings were purchased and built based on existing ordinances. If the City were to enforce the new ordinances, it would have a devastating effect on real estate. It would reduce the value of his holdings by 20 to 30%.

He does not know of any retailer who wanted to come to this town that has been turned away.

Birmingham is not a retail destination as large cities are. Large national tenants will not come here because it is not conducive to their type of product. So, chasing these people is like chasing moonbeams.

If office tenants close down and people try to replace the spaces with retail, a lot of foot traffic will be lost across the City. The retail may have six or seven employees versus 100 or 150 office workers.

There are spaces that would have to be made retail where retail could not fit, such as Google and Schecter. These will end up as permanent vacancies.

Chairman Clein announced he would not support the proposed amendment to restrict uses. The board has not had spent enough time having the detailed discussions and reviewing relevant data to support restricting uses in this way. However, the City Commission has directed the board to set a public hearing. At the joint Planning Board/City Commission meeting on Monday of next week he will be expressing his concerns about the process.

Mr. Koseck indicated the one comment he thought was brilliant was that maybe the Redline Retail District needs to be changed. He feels uncomfortable with pushing the proposal to a public hearing because he thinks it needs study. This matter can be discussed at the joint meeting.

Mr. Jeffares observed the amount of information that came out tonight was extremely helpful. Hopefully more information can be obtained from the BSD so the best possible choice can be made.

Ms. Ecker stated the direction from the City Commission is clear. The Planning Board should hold a public hearing, review it, and decide on a recommendation. Ultimately it will be up to the City Commission to make the final decision.

Ms. Whipple-Boyce thought the City Commission wants absolute clarity about what office is by today's standards. She feels it is important to get additional data on national trends along with information that will shed some light on this matter. For example, is retail dead? Or do online sales only make up 8%? For now it is clear to her that the City Commission has instructed this board to set a public hearing and she believes that should be done tonight.

Motion by Ms. Whipple-Boyce

Seconded by Ms. Prasad to set a public hearing date of July 12, 2017 at the Planning Board to consider the following ordinance amendments to Chapter 126, Zoning:

1) Article 3, Section 3.04, Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted uses in the Redline Retail District; and

2) Article 9, Section 9.02, Definitions, to add a definition for personal services, to amend the definition of commercial use to exclude personal services and to amend the definition of retail use to include retail bank branches and personal services.

Public comments on the motion were heard at 9:20 p.m.

Mr. Brian Najor came forward again. He questioned if there is any mechanism to hold a town hall meeting. He noted this matter is being pushed down the road to the City Commission

where, if the Commission decides, it could potentially pass very quickly and that is a big change. There needs to be some discussion and the City Commission needs to convince the board that this is the right thing to do and this is what needs to be passed. Ms. Ecker responded that the joint meeting next week is the best time for them to come together and have a discussion. Mr. Koseck added the public is welcome to come to that meeting next Monday.

Mr. James Esshaki said he thinks the public has spoken. Everybody was against the proposed amendment except for one person who was not 100% against or for. He doesn't know why so many additional meetings are needed.

Mr. Ken Kajoian said just as the 2016 Plan was crafted over a period of years, it is necessary to figure out how to craft this plan by implementing positive changes in certain areas. This is happening way too fast. On Monday night perhaps board members could talk about the key elements that need to be put together in terms of what other downtowns similar to Birmingham are doing; what is their makeup. Then, do these studies.

Mr. Richard Sherer added three retailers to the list of upcoming vacancies in town.

Mr. Bedros Avedian received clarification that if the changes are approved by the City Commission they would take effect seven days after publication in the newspaper and would restrict first-floor retail space to retailers, retail bank branches, beauty salons and other personal services, along with restaurant and bistro uses, artisan uses, and entertainment uses. These uses would not include business services, medical, dental, or mental health services. Mr. Avedian asked if he could lease to a live/work tenant in his building at Maple Rd. and Old Woodward Ave. if the ordinance amendment has not gone through yet. Ms. Ecker answered the tenant would have to sell either products or services to the public within the first 20 ft.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Prasad, Clein, Jeffares, Koseck

Nays: None

Recused: Lazar, Share

Absent: Boyle, Williams

Chairman Clein thanked the public for its time and input.

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017
DPS FACILITY, 851 SOUTH ETON
8:00 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 8:00 PM.

II. ROLL CALL

PRESENT: Mayor Nickita
Mayor Pro Tem
Harris
Commissioner
Bordman
Commissioner
Boutros
Commissioner DeWeese
Commissioner
Hoff
Commissioner
Sherman
Scott Clein, Planning Board
Chairman
Stuart Jeffares, Member
Bert Koseck, Member
Janelle Whipple-Boyce, Member
J. Bryan Williams, Member

ABSENT: Robin Boyle, Member
Gillian Lazar, Member
Lisa Prasad, Member
Daniel Share,
Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft, Building
Planning Director, Ecker, Director Johnson

G. RETAIL DEFINITION REVISION

Ms. Ecker explained that the issue is the type of uses permitted on the first floor of the Redline Retail District. These are the streets designated on the zoning map with red lines. Primarily the streets are Old Woodward, Maple, Hamilton, sections of Pierce, Willits. In that area, the current ordinance calls for a retail use in the first 20 feet of depth, which comes from the 2016 plan. The plan recommended that retail be in the first floor for the first 20 feet of depth, and it had a definition for retail. The exact language was taken from the 2016 plan and adopted into our ordinance.

What we have to look at now is, was there enough clarity in the type of definition for retail and the associated definitions. Currently, retail is defined in the ordinance but it includes commercial. Commercial is then defined in the ordinance, and it includes personal services. Personal services is not defined. We did not vary from the 2016 plan because the author of the plan did not recommend we define it so we did not, but things change and over time, we have different uses that have come up that have tried to get into the downtown. They want to be in the downtown and they fall under this definition of personal services because we have not defined it, and they have been able to get in on the first floor spaces. The Commission has directed the Planning Board to come up with the temporary relief mechanism to change the wording of the overlay district, and to add a definition for personal services and to look at specifically taking the quasi-office type use out of being a permitted use in the Redline Retail District downtown. The Board set a public hearing for July 12th to consider the temporary relief measures that the Commission sent to them. The Board has been studying the issue of retail and the use downtown that the Commission sent to them last year; specifically, how do we define it and how has it changed. That was the bigger picture, comprehensive issue. Specifically with regards to the Redline Retail and having a temporary relief valve, that is what they set the public hearing for on July 12th.

In this case, is there interest by the Commission to direct the Board to conduct a study session to review the intent of the Redline Retail District as proposed in the 2016 Plan and evaluate whether the current application of personal services is consistent with what the intent was in the 2016 plan.

The interpretation has been that a personal service is any type of service that a person can walk in and ask and pay for that service and get that service. The business has to be open to the public so a person off the street has to be able to walk in. It is that gray. A firm selling a marketing service or website designs is a quasi-office use. Maybe these types of uses were not envisioned at the time the 2016 plan was written. We are not sure what the intent of the 2016 plan was with regards to those. Businesses have been able to get in under the definition of personal services because they are open to the public and people walk in and buy their services. The argument is that they are offering personal services. Without a definition, it is difficult to clarify and draw the line as to what constitutes personal services and what doesn't.

So the definition of personal services that is up for consideration right now was arrived at by looking at other jurisdictions and what they defined as personal services. The most common use was that personal services dealt with the care of a person or their clothing, such as tailors, salons, facials, tanning places, shoe repair, anything dealing with the person or their clothing. If that definition was adopted that would very clearly specify that only those types of personal services would fall under commercial and therefore, the quasi-office type uses that we are seeing that are almost more business-related services would not fall under permitted uses in the Redline Retail district. So it is clarifying what would be permitted, and do we want to look at the intent of the 2016 plan and some of these uses that may or may not have even been conceived of at that time.

Mayor Nickita said there are two questions. The bigger question is concerning the state of potential uses that may be available now that were not available years ago. The other question is a question that came from the Building Official which is a matter of logistics

on how Mr. Johnson does his job. When he gets a set of plans, he has to determine if it is allowed under our ordinance or not allowed under our ordinance. Ordinances become gray sometimes and projects look for clear identification. We had this issue with the dormer issue being unclear. There were a number of questions whether or not they fit within our ordinance. Mr. Johnson asked for clarity in the ordinance because it was unclear for him to do his work. The Board and Commission quickly took a look at it, and we found a solution to clear up a gray area that was there. The garage house issue was the same. They were done because there was a loophole in the ordinance that created difficulty for the building staff to clarify. Over time, people interpret the ordinances differently or the interpretation gets grayer. The personal use term is too gray to identify for clarity from a legal perspective for approval. It seems like there is a misunderstanding as to what is being asked of the Planning Board. This is a clarification; we are not changing the ordinance.

The larger question brought up is the Redline Retail area accommodating uses of the day, or should it be reviewed. That is a separate issue and can be done at a different time. The issue at hand is can we help the Building Department do its job.

Commissioner Bordman understands that the problem is that we do not have a definition for an essential aspect of the Zoning Ordinance. As to the effect it might have on the Redline district or the other aspects of the Redline district, we should study it, but it can be done over time. Perhaps we make it a top priority over time. But we have an immediate issue that must be examined. Birmingham is a dynamic City and we get proposals all the time, and if our Building Official cannot address those issues right now while they are coming in, that is a problem. This creates a situation for the employees to be put in an awkward position to make a decision. She agreed that both issues should be addressed quickly. They are connected issues, but they are separate.

Mr. Williams said the distinction was not made at the time this came to the Board. One of the issues the Board is grappling with is adopting a proposed solution without a permanent or expiration date. Temporary measures tend to be permanent if they are not replaced. If we are going to have a solution here that is appropriate, we have to put a time frame on it, which would force us to prioritize it. He is quite confident that the landlords are furious because they do not understand the distinction being made tonight, nor did he.

Commissioner Sherman said it is clear that the Board received direction that was unclear, and that is what we are trying to do now. He said the idea of having a study session of what the intention was of the personal service uses under the 2016 plan is a very good next step, even before the Public Hearing. He suggested moving the July 12th Public Hearing to a date certain, have a study session to narrow the definition down a little bit, and then have the Public Hearing. When the Commission prioritizes these items, it is the Commission's job to give the Board priorities with expectations and timelines. He agreed that something should not be temporary and then allowed to become permanent.

Commissioner Hoff favors creating a personal service definition. She agrees we need a definition of personal service and then we will decide what to do with it, but we are not at the point of asking the Board to amend anything.

Commissioner DeWeese was concerned about community service also. In terms of community service, there are certain governmental units that are independent of the City that can come in regardless of our ordinances, and he didn't want it exclusionary. We need clear definition and clear intent of what our Master Plan has been trying to achieve and what works for walkable communities.

Mr. Clein said he has just heard two opinions that we kind of slow the bus, and do not have any real conversation on actual changes to the ordinance, but simply provide definitions. What he heard originally was that the Commission wanted the Board to make changes to the ordinance.

He thinks that is where the confusion came, because the Board was in the middle of its study of retail. He thought he was all clear. He would like clarity on what the Commission's goal is here.

Mayor Nickita said the idea was to make sure the Board has the ability to study this personal service determination and be able to clarify that and put off the Public Hearing until the Board is able to do that.

Commissioner Sherman said the motion was passed 4-2 to have the Public Hearing and make changes, and to define the term. There was some discussion as to what the term actually meant. The comments heard from Commissioners Hoff and DeWeese were minority opinion. The majority opinion was what you understood and articulated.

Commissioner Boutros said the message sent to the Board was different from what the intention was.

Commissioner Bordman expressed concern about the postponement in that it will be mistaken to mean take all the time needed, rather than getting this done as quickly as possible. There needs to be some direction on this idea of postpone and study.

Mayor Nickita thinks the intention driving this to begin with was Building Department staff needing help and that it is needed it sooner than later.

Commissioner Hoff commented that we should move forward on definition before July 24th. She thinks that it is still reasonable.

Mayor Pro Tem Harris said the majority position was for definition of personal use only and not a definition of community use.

Commissioner Sherman said his original comment was to postpone the Board's July 12th Public Hearing to shortly thereafter to give time for a study session.

Mr. Williams clarified that it has been suggested that Board open the July 12th Public Hearing, postpone it to a date certain, then begin study session of the personal service definition.

Mayor Nickita said this is not to be a broad review of the downtown, but recognize that ordinances become unclear and situations change. The idea is to take the Redline Retail district as a next step with current day market conditions and identifying where it

could be strengthened with the intention of making it a pedestrian, walkable place is a valid thing to do, but it is not to be done when we look at personal service.

Ms. Ecker said she understands that they are to postpone the Public Hearing, focus on the personal services definition only. She asked to confirm the Commission does not wish the amendment to Article 3, Section 3.04(C)(6) right now.

Commissioner Sherman said that the ordinance amendment is still going to be the discussion at the Public Hearing, but in order to get to that point, the Board has to first study the personal services definition to incorporate it into the amended ordinance. That is what the Public Hearing is about. Ms. Ecker noted the Public Hearing was noticed for the amendment of Article 3, Section 3.04 and the personal services definition. She asked if the Commission wants the Planning Board to come up with a personal services definition and send that to the Commission first. She noted that the motion as passed directs the Board to consider the definition of personal services and Article 3.04 to exclude personal services from the Redline Retail District. She asked if the Commission still wants both of those together. Commissioner Sherman confirmed, and believes that is what was discussed. Then it will come to the Commission for a Public Hearing.

City Manager Valentine said if the Board provides the definition, the ordinance has to be amended. It has already been noticed that way. The process is being separated somewhat to add the additional review of the 2016 plan on what the intent is, and then discuss the definition.

Ms. Ecker clarified that the Commission wants the Board to postpone the Public Hearing to a later date, and focus on the definition of personal services only. Then hold the Public Hearing for the ordinance amendments and the definition. Commissioner Sherman explained that it is one ordinance. Mr. Valentine said the resolution that was passed included the definition, so it is all one action by resolution of the Commission.

Commissioner Hoff stated she did not think the Board was going to amend the Downtown Birmingham Overlay standards to exclude community and personal services when we do not know what the personal service definition is. Mr. Valentine clarified that the resolution that passed had a subsequent amendment added which stipulated that the definition of personal services be included when it comes back the Commission.

Commissioner Sherman said the Commission recognized that it made no sense to amend it without a definition of personal service. The Commission is asking the Board to come back with a definition of personal services and the change incorporated into the ordinance as a recommendation.

Commissioner Hoff clarified to exclude community and personal service uses. It is very specific to exclude them. Commissioner Sherman clarified that the Board has to define it. We need a definition to know what those are.

Commissioner Boutros asked what would happen if the Board does not have a definition in time for the July 24th Public Hearing. Commissioner Sherman noted the Commission does not

have a hearing on July 24th, and that the Commission asked that the Board report back to the Commission that date.

Mr. Valentine said he will follow up with the Board with written communication outlining what was discussed tonight, so there are no questions going forward.

Mr. Williams requested that Mr. Valentine address if the Board is to include or exclude personal services.

	Business Name	Current Status	Type of Service	Use Type	Address	Previous Use	How do they fit?
2017	Jeff Glover & Associates	Open	Real Estate	Personal Service	330 Hamilton Row	Sydney Blake (Hair Salon)	Sells homes/property
	MA Engineering	Open	Engineering services	Personal Service	400 S. Old Woodward #100	Greens Art Supply (Art Supply Store)	Sells engineering/tech services
	HUGE MI T.I.	Pending	Website Services	Personal Service	213 Hamilton Row	Barrio Restaurant	Sells marketing/technology services
2016	Kirsch Leach + Associates	Open	Law Office	Personal Service	144 W. Maple		Sells legal advice/services
	Seeger Studios	Closed	Photography	Personal Service	239 S. Old Woodward	Ribbons (Gift Baskets)	Sold photography services
	Tri Phase Construction	Open	Construction	Personal Service	359 S. Old Woodward	Right off the Sheep (Yarn Store)	Sells contracting/consulting services
	Detroit Trading Company	Open	Marketing/ Consulting	Personal Service	670 S. Old Woodward	Bo Concept (Furniture store)	Sells website/tech services
	Birmingham Realty, LLC	Open	Real Estate	Personal Service	217 S. Old Woodward	Fleur Detroit (Florist)	Sells homes/property
2015	Resolute Building Intelligence	Open	Data Solutions	Personal Service	139 S. Old Woodward		Sells technology services
	Seeds Marketing & Design	Open	Marketing Agency	Personal Service	170 W. Maple	Complex Boutique (Clothing Store)	Sells marketing services
	MadDog Technology	Open	Business Applications	Personal Service	233 Pierce	The Designate (Limo Service)	Sells technology services
	Lenderful	Open	Mortgage Lender	Personal Service	235 Pierce	Stacey Leuliette (Gift Shop)	Sells mortgages
	Real Ryder Revolution	Open	Fitness	Personal Service	555 S. Old Woodward		Sells fitness classes
	Resolute	Open	Building optimization	Personal Service	139 S Old Woodward	Tactical Allocation Group (Real Estate)	Sells consulting services
	Hit Ultimate Fitness	Open	Personal Training	Personal Service	555 S. Old Woodward		Sells personal training services
	Edward Jones	Open	Financial consulting	Personal Service	1000 S. Old Woodward, #105		Sells financial services
	Luxe Homes Design+Build	Open	Custom home builder	Personal Service	360 Hamilton Row	Illusions by Sherri (Fitness Studio)	Sells contracting/design services
2014	Zoom Artistic Photography	Closed	Photography	Personal Service	217 S. Old Woodward		Sold photography services
	Urban Kids Photography	Closed	Photography	Personal Service	251 E. Merrill		Sold photography services
	HappyDino Playcare	Closed	Daycare	Personal Service	375 Hamilton Row		Sold daycare services
	Huntington Learning Center	Open	Tutoring	Personal Service	375 Hamilton Row	Happy Dino Playcare (Daycare)	Sells tutoring services
	Birmingham Tango	Open	Dance Studio	Personal Service	555 S. Old Woodward		Sells dance lessons
	Shain Park Realtors	Open	Real estate	Personal Service	260 Martin		Sells homes/property
2013	Snap Fitness	Closed	Fitness	Personal Service	101 Willits		Sold fitness classes
	The UPS Store	Closed	Shipping/Receiving	Personal Service	330 E. Maple		Sold shipping services/products
	Yak Academy	Closed	Language Classes	Personal Service	555 S. Old Woodward		Sold language tutoring services
	Incwell	Open	Business management consultant	Personal Service	110 Willits		Sells consulting/startup product sales services
	Vibe Credit Union	Closed	Banking	Personal Service	163 West Maple Road	Zumba Mexican Grille (Restaurant)	Former banking service
	Shift Digital	Open	Digital marketing & technology	Personal Service	348 E. Maple	Sotheby's (Real Estate)	Sells marketing services
2012	Lutz Real Estate Investments	Open	Real Estate	Personal Service	300 S. Old Woodward		Sells homes/property
	Redi Property Management	Open	Property Management	Personal Service	600 N. Old Woodward		Sells management services
	Pandora Media	Open	Radio broadcaster	Personal Service	380 N. Old Woodward, #100		Sells media services
	Centigrade Inc.	Open	Advertising	Personal Service	135 N. Old Woodward		Sells advertising services
	Brogan & Partners	Open	Advertising	Personal Service	800 N Old Woodward #100		Sells advertising services
2011	Q10/ Lutz Real Estate Investments	Open	Financial services/ Real estate	Personal Service	300 S. Old Woodward	Max Brook Realtors (Real Estate)	Sells financial/real estate services
	SAIC USA	Open	Logistics Services	Personal Service	322 N. Old Woodward	Leonard & Co. (Stock Broker)	Sells logistical services
	The Investment Consulting Group	Open	Financial Consulting	Personal Service	500 S. Old Woodward	Coldwell Banker Schweitzer (Real Estate)	Sells financial services

2010	Cactus Media	Open	Marketing Agency	Personal Service	176 N. Old Woodward		Sells marketing services
	Birmingham Geek	Open	Computer Repair	Personal Service	195 W. Maple	1-800 Flowers (Florist)	Sells computer repair services
	Restoration Vein Center	Open	Vein Care	Personal Service	538 N. Old Woodward		Sells health/wellness services
	Cranbrook Realtors	Open	Real Estate	Personal Service	555 S. Old Woodward		Sells homes/property
	Edward Jones	Open	Financial consulting	Personal Service	700 N. Old Woodward, #102		Sells financial services
	GSTV	Closed	Advertising services	Personal Service	255 S. Old Woodward	Ligne Roset (Furniture Store)	Sold advertising services
2009	TD Ameritrade	Open	Financial Consulting	Personal Service	105 Willits		Sells financial services
	Beal Bank	Open	Banking	Personal Service	301 N. Old Woodward		Banking services
2007	Google	Open	Software & Technology	Personal Service	110 Willits		Sells technology services
2015 ### ### 2008	Other Non-Retail Uses on First Floor in Redline Retail District:						
	Womens Excellence, Birmingham	Open	Health Clinic	Medical Office	511 Pierce	George Moser (Gynecology)	Medical and health services (grandfathered)
	Emagine Palladium Theatre	Open	Movie Theater	Theater	209 Hamilton Row		Sells movie tickets/concessions (grandfathered)
	Coldwell Banker	Open	Real Estate	Real Estate Office	294 E. Brown	Century 21 (Real Estate)	Sells homes/property (grandfathered)
	Cranbrook Realtors	Open	Real estate	Real Estate Office	555 S. Old Woodward #22-U		Permitted by Underlying Zone
2008	Nulmage MedSpa	Open	Cosmetic Surgery/Spa	Beauty Salon/Spa	538 N. Old Woodward		Permitted by Underlying Zone
	Wunderlich Securities	Open	Financial planning	Office	260 E. Brown St #150		Permitted by Underlying Zone



Jana Ecker <jecker@bhamgov.org>

Red Line District

1 message

James Esshaki <jesshaki@esscodevelopment.com>
To: James Esshaki <jesshaki@esscodevelopment.com>

Wed, Jun 14, 2017 at 1:15 PM

Dear members of the Planning Board:

I would like to begin this discussion by noting downtown Birmingham's unique structure. It is a bustling and balanced hybrid of business-to-business and business-to-consumer establishments, as well as an enviable residential environment. Birmingham's stakeholders – from residents to business owners to landlords to consumers – are proud to be part of the fabric of the city, largely because of this unique composition. I am here (writing) to express my many concerns about the proposed changes to zoning ordinances that would restrict use in the Redline Retail District.

I am deeply invested, both personally and financially, in Birmingham's overall constitution. I am the sole proprietor of Essco Development Company, which owns and manages three major real estate properties (over 150,000 square feet) in Birmingham: the Plaza of Birmingham, Park Plaza and the Wabeek Building. Decades of experience in property management here afford me a uniquely qualified perspective on your proposed changes.

My concerns are as follows:

- The proposal is based on unsubstantiated assumptions without any feasibility studies;
- Birmingham is not the city of choice for major national retailers, but rather small boutiques and independently owned retail outlets;
- Birmingham is at least as much of a service-oriented community as it is a major shopping district;
- Any retailer that desires to come to Birmingham can be accommodated. I don't know of any retailers to date who have been turned away for lack of available space;
- Several of the spaces that would be affected in the Redline Retail District are not conducive for retail and would become empty should the current tenants vacate if the proposed ordinance was enacted.
 - Some buildings are not situated at the street level and are several steps above grade. Examples include the Birmingham Mansion, Bird and the Bread and Flemings.
 - Secondary locations with hardly any foot traffic (ie. google)
 - Large spaces of 8,000+ square feet having narrow frontage and almost no window space (ie. google, The Bird and the Bread, Schechter Investments)
- Many of the existing large first-floor spaces are not divisible and too deep for retail users;
- Removing existing office tenants seriously would diminish day traffic in the downtown area, which would impact retail stores, restaurants, hotels, etc.
- Retailers are shrinking with the increase in internet sales. Several have gone out of business. The growth of companies such as google, Microsoft, Facebook and the like are the ones requiring more space. The city of Birmingham should do their everything possible to attract those types of businesses;

- Some people have suggested shrinking the Redline Retail District. The same concerns noted above apply, regardless of the size of this area. Furthermore, certain landlords and business owners would be targeted, while others would see no impact.

In conclusion, the proposed ordinance, if enacted, will severely and irreversibly damage this beautiful and thriving city. I will continue to oppose this effort and encourage my colleagues to do the same to prevent unnecessary harm and disservice our community.



Jana Ecker <jecker@bhamgov.org>

Fwd: retail resolution1 message

Joe Valentine <jvalentine@bhamgov.org>

Thu, Jun 15, 2017 at 8:07 AM

To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

fyi

----- Forwarded message -----

From: **Mark Nickita** <mnickita@bhamgov.org>

Date: Wed, Jun 14, 2017 at 4:14 PM

Subject: Fwd: retail resolution

To: Joe Valentine <jvalentine@bhamgov.org>

Mark Nickita, FAIA, CNU, APA*Mayor**City of Birmingham, MI*

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Mark Nickita

Twitter

@MarkNickita

Begin forwarded message:

From: Richard Grinstein <richard@grinsteinjewelry.com>**Date:** June 14, 2017 at 4:04:20 PM EDT**To:** mnickita@bhamGov.org**Subject:** retail resolution

Hi Mark, I won't be able to attend the meeting tonight, but would like to express my support for the idea of limiting storefront space on the ground floor in the central business district to retail, including restaurants as retail. The main goal, as I understand it, is to prevent an increase in the use of storefront properties for office space.

Thanks!

Richard Grinstein

Grinstein Jewelry & Design

162 S. Old Woodward

Birmingham MI

48009

[248-647-4414](tel:248-647-4414)

--

Joseph A. Valentine

City Manager

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Jana Ecker <jecker@bhamgov.org>

Retail Uses Downtown

1 message

Eric Wolfe <elwolfe1@comcast.net>
To: Jana Ecker <jecker@bhamgov.org>
Cc: Joe Valentine <jvalentine@bhamgov.org>

Tue, Jun 13, 2017 at 12:54 PM

Dear Jana,

I would like the following thoughts to be communicated to the Planning Board for their 6/14/17 meeting concerning retail and permitted uses in the redline retail district:

1) We all know what retail is, and it does not include residential real estate brokerage offices, digital marketing companies, advertising agencies, Gas Station TV or the Vibe Credit Union. This credit union, which might sound like it's a retail banking facility, doesn't have an employee. It is simply tying up prime retail space for a well lit lobby and an ATM. I heard some comments at your last meeting concerning the "activation" of the street. It should be obvious, although it seems to escape some of your Board members (who are real estate brokers), that when individuals meet with their residential real estate broker, they have only that destination in mind. They are not "activating" the street by any reasonable definition. They might have lunch, but they certainly are not planning on shopping. These brokerages and other traditional office users tie up valuable retail space, overburden the parking situation, and are clearly detrimental to the perpetuation of a thriving shopping district.

2) The former chairman and current member of the Planning Board suggested that Landlords have an obligation as well. I couldn't agree more. When a Landlord has units of 4000 sf and more, the easy solution is to say that there are no tenants, so please help us by bending the retail definition. It's high time they subdivided their units to more desirable sizes. I have been a real estate developer for 30 years, have spoken to several retail real estate brokers recently, and have learned that the sweet spot is 1500-2000 sf units. It isn't surprising that your proposal is opposed primarily by the most well-financed developers in town, some of whom have new developments under way. They should be well aware that if their units are sized properly, it might cost them a few peanuts more to build, but they will actually find "retail" users! Instead, they complain about the market, the malls, and national retailer and chain store closings. That is not the target market for downtown Birmingham. There are countless examples of successful unique, boutique shopping districts around the country that don't sacrifice their shopping district mix every time the market slows down or new challenges emerge. I would suggest Newbury Street in Boston, or Oak Street in Chicago as good examples. Also, despite widespread commentary to the contrary, e-commerce retail sales currently represent only 8.5% of total retail sales (according to the US Bureau of the Census, see <https://fred.stlouisfed.org>). An interesting, vibrant retail district will draw customers. It's been proven all over the world.

3) Flexibility on rent is a huge factor. The cost of a retail location in downtown Birmingham is astronomical. Lower the rent, to the actual market rate, and the stores will be occupied. It's simple supply and demand. Instead we hear the cries of well-heeled developers who have showed their lenders a pro forma with unattainable retail rates. Other than Starbucks, there are very few traditional retailers that can pay \$40/sf.

4) It would be helpful if the vacant storefronts didn't look like abandoned businesses. Again, Landlords would seemingly rather not spend a dime than to give a future tenant a head start by demolition to the "white box" as successful retail landlords do routinely. A "white box" would give the appearance of a healthy retail district.

5) Parking continues to be a major concern of my customers. Whether there are spaces in the nearest garage or not, the widely held perception is that Birmingham is a terrible parking environment. I suggest severely restricting the use of

Shain Park, Old Woodward, and surrounding streets for events. These events are not unique, can be found in the next town the next week, and are just killing business for everyone (except restaurants perhaps). During the Village Fair, dozens and dozens of spaces were taken out of commission for 6 days in the heart of the nice weather shopping season, when customers enjoy walking through downtown. Add to that the dozens of spaces out of commission for months and months due to new developments on Old Woodward, the reputation of aggressive parking enforcement, and customers will naturally just go elsewhere. Inexplicably, the APC continues to propose raising parking rates, when there is free parking just about everywhere in this region, with fewer and fewer reasons to shop in Birmingham.

6) PSD assessments are an additional burden. My store is charged a pro rata share of what my Landlord pays, which I believe is based on street frontage. I don't know if multi level buildings are charged based on only their street frontage, but if so, this should be reconsidered, along with any other manner of bringing down PSD costs. I recall that the \$30,000 Christmas tree in Shain Park was partially paid for by the PSD, meaning the retailers are paying. I don't think that's fair. What else is being allocated to the PSD? I have no problem paying for sidewalk snow removal and the beautiful flowers, but that's about it.

I know, and I appreciate, that all of you have the best intentions and desire a healthy retail district. I don't believe you need "experts" to see what the problem is. We are all shoppers. Why would *you* visit downtown Birmingham? Are there enough interesting retailers to justify searching and paying for parking, compared to the nearby alternatives?

Thank you for your time and consideration.

Eric Wolfe

Detroit Guitar



Jana Ecker <jecker@bhamgov.org>

Required Storefronts Code

1 message

rgibbs@gibbsplanning.com <rgibbs@gibbsplanning.com>
To: "Jana Ecker (jecker@bhamgov.org)" <jecker@bhamgov.org>

Fri, Jun 16, 2017 at 2:40 PM

Jana: I understand the city is considering requiring retail storefronts along many of the downtown streets. Although the 2016 Master plan recommended some required retail storefronts 20 years ago, this has proven impractical and is no longer included in our downtown master plans.

Instead, we require the first level buildings be constructed to allow for retail: high ceilings, large glass areas, sign bands, operating doors, etc. But we allow all commercial, office and even residential on the first level. Eventually retail will likely occupy the first floor if the buildings are designed properly.

I will be out of town and cannot participate in Monday's public workshop on the issue but would be happy to meet to discuss further.

Best Regards,

Bob

Robert J. Gibbs, AICP, ASLA, CNU-A

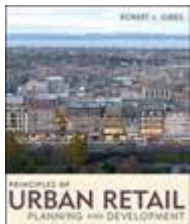
President

Gibbs Planning Group

Celebrating 29 Years!

240 Martin Street Suite 200 Birmingham, Michigan 48009 [248.642.4800](tel:248.642.4800)

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Now available at Amazon: <https://www.amazon.com/Principles-Urban-Retail-Planning-Development/dp/0470488220>



Jana Ecker <jecker@bhamgov.org>

Fwd: Birmingham 1st floor office space

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 28, 2017 at 3:24 PM

fyi

----- Forwarded message -----

From: **Luis Flores** <floresluis071@gmail.com>
Date: Thu, Jun 22, 2017 at 3:15 PM
Subject: Birmingham 1st floor office space
To: jvalentine@bhamgov.org

To whom it may concern:

As a resident of Birmingham and an employee of a retail store in Downtown Birmingham, I oppose the use of office space on the first floor of buildings. They need to be delegated to the second floor or above of buildings, or the perimeter of the central shopping district.

Thank you,
Luis Flores
1734 Henrietta St, Birmingham MI 48009

--

Joseph A. Valentine
City Manager
City of Birmingham
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Jana Ecker <jecker@bhamgov.org>

Fwd: BPSD

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: Jana Ecker <Jecker@bhamgov.org>

Thu, Jun 29, 2017 at 12:53 PM

----- Forwarded message -----

From: **Nikki Keller** <kellerfox@gmail.com>
Date: Thu, Jun 29, 2017 at 10:55 AM
Subject: BPSD
To: jvalentine@bhamgov.org

Dear Mr. Joseph Valenitne and fellow, City Commissioners,

Recently, I was approached by a concerned Birmingham resident who explained to me that the city was considering changes that would greatly impact the feel of beautiful downtown Birmingham. Although, I am a Beverly Hills resident, I consider Birmingham my community as well. Professionally, I avidly advocate for families in the area and compose articles for a local magazine that highlight the uniqueness of the city. Personally, I've spent countless hours with my children at the parks, food establishments and walking along the store fronts. The energy Downtown Birmingham perforates is par none. It affords locals an opportunity to escape from the daily grind for a few hours during the week while walking of the stress and into a few shops. As for the out-of-towner's, it's a true destination location in the Detroit Metropolitan area; accessible retail has a great deal to do with that.

Over the last 20 years of calling Birmingham my home, my biggest regret for the city was losing Jacobson's Department Store. It kept people in the Birmingham Principal Shopping District and out of the malls. It complimented the small boutiques and specialty stores that the city was known for. It'll be a shame if we continue down the path of becoming more general and non-descript, like many other local communities. As Detroit slowly starts to flourish, it's even more important that Birmingham keeps its edge not only with more store fronts, less entry level offices but also with an interesting and eclectic display of retail. It will keep our community vibrant, safe and draw on the population to support it.

Thank you for considering my thoughts, and know that they're said with concern and good intention.

Sincerely,

Nikki Keller

--

Joseph A. Valentine

City Manager

City of Birmingham

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MEMORANDUM

Planning Division

DATE: July 7, 2017
TO: Planning Board
FROM: Jana L. Ecker, Planning Director
SUBJECT: Shared Parking Regulations

On January 8, 2017, the City Commission reviewed and approved the Ad Hoc Rail District Report. The City Commission further directed that the Ad Hoc Rail District Report be forwarded to both the Multi-Modal Transportation Board for review, and also forwarded to the Planning Board for review and discussion regarding Recommendation 4: Encourage Shared Parking. Please find attached an excerpt from the report regarding Recommendation 4 for your review and discussion.

Recommendation 4: Encourage Shared Parking

Specifically, the City Commission has directed the Planning Board to review the Ad Hoc Rail District Report and to consider moving forward with Recommendation 4, which states:

Encourage shared parking in the district by providing the zoning incentives for properties and/or businesses that record a shared parking agreement. Incentives could include parking reductions, setback reductions, height bonuses, landscape credits, or similar offers.

Amend the shared parking provisions to simplify the calculations to determine the required parking based on industry standards and eliminate the need to hire a consultant to prepare shared parking studies.

Accordingly, the Planning Board has been directed by the City Commission to consider amendments to the shared parking calculations and approval process and/or recommend zoning incentives to further encourage shared parking.

Based on the direction of the City Commission, the Planning Division has conducted research on shared parking provisions that are utilized in other cities. No communities were found that mandated shared parking arrangements, but many encouraged shared parking by adopting shared parking calculation standards and by offering zoning incentives to encourage sharing parking. Policies involved with shared parking generally include calculation tables adopted by the city. These tables incorporate parking calculations for categories of building uses. Parking demands are calculated for different times of the day throughout the week. Peak parking demand times of the adjacent places are then compared to help determine the minimum number of parking spaces necessary. Research regarding policy recommendations on shared parking is attached for your review.

Many cities also utilize zoning incentives to promote shared parking arrangements. Examples include increasing the floor-area ratio requirements, reducing parking lot screening and/or reducing landscape requirements to provide greater access, connectivity, and ease of use between the properties sharing parking spaces. Sample ordinance language from other communities has also been attached to this report for your review. The use of calculation tables and zoning incentives ensure consistency in enforcement and reward business owners who enter into a shared parking agreement.

Article 4, Section 4.45(G)(4) of the Birmingham Zoning Ordinance includes the current shared parking policy. This provision includes up to a 50% reduction in parking spaces in a shared parking agreement if all requirements are met. However, our current standards require hiring a parking consultant, the findings are subject to the discretion of the Planning Board, and the final agreement must be recorded on title of the property. All of these requirements increase the time and cost of a project, which may not encourage applicants to utilize shared parking. In addition, Article 4, section 4.50 (A) – (D) of the Birmingham Zoning Ordinance also include some simpler calculations for allowing shared parking on the same lot. However, these provisions only apply in the B3 and MX zoning districts. Finally, no zoning incentives are currently offered to encourage shared parking. In the past, very few applicants have taken advantage of the shared parking provisions, and none in the Rail District have done so despite the recommendation of planning staff and the Planning Board. Most recently, the owners of 2125 and 2159 E. Lincoln have entered into a shared parking agreement, but this was not formalized or approved by the Planning Board as all parking requirements were met without the need for the shared parking agreement.

On February 8, 2017, the Planning Board discussed the recommendations of the Ad Hoc Rail District Committee as a whole and much of the discussion centered on traffic and circulation within the Rail District. While there was little discussion of shared parking, board members appeared to be in favor of ordinance amendments to encourage shared parking.

On March 29, 2017, the Planning discussed the draft ordinance language provided by the Planning Staff. After much discussion, the Board requested that the topic of shared parking be added to the Joint City Commission/Planning Board meeting on June 19th.

On June 19th, the Commission and Planning Board discussion shared parking. At that time, the Planning Board recommendations were outlined and the following recommendations were made.

1. Parking calculations that would not require an applicant to hire a parking consultant. A standardized table has been included which takes into consideration all of the variables of the use, and provides a chart with parking requirements.
2. Not include a requirement to record on title. When changes occur in use of a property, the Building Department forwards the plans to the Planning Department which will look at the use and the parking requirement.
3. Offer zoning incentives, such as extra square footage, reduced landscape requirements, etc., in exchange for recording on title.

Current practices of other communities were discussed and it was stated that mandated shared parking was not found during the research conducted by the staff and that generally

the process was streamlined to make the process as simple as possible to encourage participation. There was general agreement that the use of shared parking agreements should be encouraged and the ordinance amendments that provide simpler mechanisms to do so should be studied.

Please find attached draft ordinance language for your consideration to clarify the shared parking demand calculations and to simplify the approval process for shared parking by eliminating the need for a parking consultant. In addition, draft ordinance language has also been provided to add zoning incentives to encourage property owners to pursue shared parking.

Suggested Action:

To continue discussion of a revised shared parking process and the addition of incentives to encourage the use of shared parking at a future study session;

OR

To set a public hearing date to consider amendments the following amendments:

- (a) Article 4, Section 4.45 (G) Parking Standards, to amend the shared parking standards and streamline the approval process; and
- (b) Article 4, Section 4.50 Parking Standards, to provide the same shared parking standards for all zone districts.

Excerpt from Ad Hoc Rail District Report: Recommendation 4

Recommendations

Recommendation 4: Encourage Shared Parking

Issue: Many properties are dominated by excessively large parking lots that are not being efficiently used. Vast parking lots in the district are vacated after peak business hours and remain empty throughout the evening because of restricted access, while other lots overflow around restaurants in the evenings.



Empty parking lots can be found throughout the study area.

Shared parking is a land use strategy that efficiently uses parking capacity by allowing adjacent and/or compatible land uses to share spaces, instead of providing separate spaces for separate uses. Often, a shared parking agreement is put in place between two or more property owners and the jurisdiction to ensure parking spaces on a site are made available for other uses at different times throughout the day.

Recommendation: Encourage shared parking in the district by providing the zoning incentives for properties and/or businesses that record a shared parking agreement. Incentives could include parking reductions, setback reductions, height bonuses, landscape credits, or similar offers.

Amend the shared parking provisions to simplify the calculations to determine required parking based on industry standards and eliminate the need to hire a consultant to prepare shared parking studies. See table to the right for an example of a shared parking calculation from Victoria Transport Policy Institute.

Sample Shared Parking Occupancy Rates Table

*This table defines the percent of the basic minimum needed during each time period for shared parking.
(M-F = Monday to Friday)*

Uses	M-F	M-F	M-F	Sat. & Sun.	Sat. & Sun.	Sat. & Sun.
	8am-5pm	6pm-12am	12am-6am	8am-5pm	6pm-12am	12am-6am
Residential	60%	100%	100%	80%	100%	100%
Office/ Warehouse /Industrial	100%	20%	5%	5%	5%	5%
Commercial	90%	80%	5%	100%	70%	5%
Hotel	70%	100%	100%	70%	100%	100%
Restaurant	70%	100%	10%	70%	100%	20%
Movie Theater	40%	80%	10%	80%	100%	10%
Entertainment	40%	100%	10%	80%	100%	50%
Conference/Convention	100%	100%	5%	100%	100%	5%
Institutional (non-church)	100%	20%	5%	10%	10%	5%
Institutional (church)	10%	5%	5%	100%	50%	5%

Courtesy of Victoria Transport Policy Institute

Policy Recommendations Research

- [Smart Growth Alternatives to Minimum Parking Requirements](http://www.urbanstreet.info/2nd_sym_proceedings/Volume%202/Forinash_session_7.pdf)
www.urbanstreet.info/2nd_sym_proceedings/Volume%202/Forinash_session_7.pdf

"In setting parking requirements, planners typically use generic standards that apply to general land use categories (e.g., residential, office, retail). Such standards have been developed and published by professional organizations, including the Institute of Transportation Engineers (ITE), based on experience in many locations. Much of the data on which these standards are based comes from low-density, single-use developments with limited transportation choices. Therefore, the generic parking rates cannot take into account the mix of context-sensitive, community specific variables—density, demographics, availability of transportation choices, or the surrounding land-use mix— all of which influence demand for parking and *should* be reflected in parking requirements. Instead, requirements are based on maximum demand for parking, when parking is provided at no charge to users, and walking, biking, and transit are not available choices. This formula yields a surplus of parking area that is costly for developers to provide, and it subsidizes personal automobile use and encourages auto use even in areas where convenient transportation choices exist. Because of the way in which they are typically established, parking requirements are remarkably consistent across different cities, despite varying levels of economic vitality, population size, and development density."

- [Sharing Parking Facilities Among Multiple Users](http://www.vtpi.org/tdm/tdm89.htm), Victoria Policy Transport Institute. December, 2015.

<http://www.vtpi.org/tdm/tdm89.htm>

"Parking can be shared among different buildings and facilities in an area to take advantage of different peak periods (see Table 1). For example, an office complex can efficiently share parking facilities with a restaurant or theaters, since offices require maximum parking during weekdays, while restaurants and theaters require maximum parking during evenings and weekends. As a result, the total amount of parking can be reduced 40-60% compared with standard off-street parking requirements for each destination (Smith, 1983). ITE (1995) provides specific recommendations for shared parking implementation."

Table 1 (Victoria) Parking Occupancy Rates

Uses	M-F	M-F	M-F	Sat. & Sun.	Sat. & Sun.	Sat. & Sun.
	8am-5pm	6pm-12am	12am-6am	8am-5pm	6pm-12am	12am-6am
Residential	60%	100%	100%	80%	100%	100%
Office/ Warehouse /Industrial	100%	20%	5%	5%	5%	5%
Commercial	90%	80%	5%	100%	70%	5%
Hotel	70%	100%	100%	70%	100%	100%
Restaurant	70%	100%	10%	70%	100%	20%
Movie Theater	40%	80%	10%	80%	100%	10%
Entertainment	40%	100%	10%	80%	100%	50%
Conference/Convention	100%	100%	5%	100%	100%	5%
Institutional (non-church)	100%	20%	5%	10%	10%	5%
Institutional (church)	10%	5%	5%	100%	50%	5%

This table defines the percent of the basic minimum needed during each time period for shared parking. (M-F = Monday to Friday)

* Sharing Parking Facilities Among Multiple Users, Victoria Policy Transport Institute, <http://www.vtpi.org/tdm/tdm89.htm>

B. Parking Occupancy Rate Table

When the parking reduction has been shown to be feasible by using the demand calculations as determined by Table 1, Parking Occupancy Rates, the applicant shall submit a parking demand summary sheet showing the process for calculating the reduction as outlined in this section. (Note: The default rates from the Table 1, Parking Occupancy Rates are set to include a small "safety margin" of parking beyond that minimally needed to serve an average peak demand. Therefore a local study of parking demand may yield a greater reduction in parking required.)

(1.) The minimum number of parking spaces that are to be provided and maintained for each use shall be determined based on standard methods for determining minimum parking supply at a particular site.

(2.) The gross minimum number of parking spaces shall be multiplied by the "occupancy rate" as determined by a study of local conditions (or as found in Table 1), for each use for the weekday night, daytime and evening periods, and weekend night, daytime and evening periods respectively.

(3.) The gross minimum numbers of parking spaces for each of the purposes referred to for each time period shall be added to produce the aggregate gross minimum numbers of parking spaces for each time period.

(4.) The greatest of the aggregative gross minimum numbers of parking spaces for each period shall be determined.

- Capital Region Council of Governments Best Practices Manual.

8. Shared Parking Fact Sheet

<https://alexandriava.gov/uploadedFiles/.../info/SharedParkingFactSheet.pdf>

- "Target auto-oriented mixed use commercial uses. Shared parking works best in situations where there are somewhat dissimilar land uses, with different peak hours of use — i.e., a hotel and an office, or a home supply store and a movie theater."
- "Rather than having a series of smaller-sized parking lots divided by arbitrary lots lines with landscaped buffers, lots can be consolidated and circulation systematized, with more creative and effective landscaping, pedestrian circulation, and lighting."
- "Zoning incentives for shared parking can encourage a reduction in the size of the parking lots. Incentives that could be provided for shared parking include an increase in floor area ratio (FAR) and increased flexibility in certain bulk regulations, such as building coverage or height."

- Waltham, MA: Shared Parking Ordinance
The General Ordinances of the City of Waltham, Massachusetts, v.9, updated 8-2006, Part III. Zoning Code, ARTICLE V. Parking Requirements
<http://ecode360.com/26938088>

(c) Notwithstanding any other parking requirements set forth in this chapter for individual land uses, when any land or building is used for two or more distinguishable purposes (i.e., joint or mixed use development), the minimum total number of parking spaces required to serve the combination of all uses shall be determined in the following manner:

Multiply the minimum parking requirement for each individual use (as set forth in the applicable section of this chapter for each use) by the appropriate percentage (as set forth below in the Parking Credit Schedule Chart) for each of the five designated time periods and then add the resulting sums from each vertical column. The column total having the highest total value is the minimum shared parking space requirement for that combination of land uses.

	Weekday	Weekday	Weekday	Weekend	Weekend
	Night Midnight to 7:00 a.m. (percent)	Day 7:00 a.m. to 5:00 p.m. (percent)	Evening 5:00 p.m. to Midnight (percent)	Day 6:00 a.m. to 6:00 p.m. (percent)	Evening 6:00 p.m. to Midnight (percent)
Residential	100	60	90	80	90
Office/Industrial	5	100	10	10	5
Commercial/Retail	5	80	90	100	70
Hotel	70	70	100	70	100
Restaurant	10	50	100	50	100
Restaurant associated with hotel	10	50	60	50	60
Entertainment/recreation (theaters, bowling allies, cocktail lounges and similar)	10	40	100	80	100
Day-care facilities	5	100	10	20	5
All other	100	100	100	100	100

*City of Waltham, MA Shared Parking Calculations Table

Draft Ordinance Language

ORDINANCE NO._____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND SECTION 4.45(G), PARKING STANDARDS, TO AMEND THE SHARED PARKING STANDARDS AND STREAMLINE THE APPROVAL PROCESS.

G. Methods of Providing Parking Facilities: The required off-street parking facilities for buildings used for other than residential purposes may be provided by any one of the following methods:

1. By providing the required off-street parking on the same lot as the building being served, or where practical, and with the permission of the City Commission, the area in the public right-of-way abutting the property in question may be included as a portion of the required parking area if such area is improved in accordance with plans which have been approved by the engineering department.

2. By providing the required off-street parking within 100 feet of the building being served, distances being measured along the most direct line of public pedestrian access.

3. By the collective provisions of the required off-street parking for 2 or more buildings or uses, provided that the total of such off-street parking areas shall not be less than the sum of the requirements of the various buildings or uses computed separately, and the location of such area meets the requirements of subsection (2) of this section, except as provided in Section 4.45(G)(4) below.

4. ~~By the shared provisions of the required off-street parking for 2 or more buildings or uses, which has been approved by the Planning Board.~~ Shared parking between uses **may be permitted** based on the fact that certain neighboring uses may operate at different times over a 24-hour period with their greatest demand for parking occurring during different times. By allowing uses to share a parking facility, the amount of impervious land in the city may be reduced. **Notwithstanding any other parking requirements set forth in this chapter for individual land uses, when any property or building(s) is/are used for two or more distinguishable purposes (mixed use development), the minimum total number of parking spaces required to serve the combination of all uses shall be determined in the following manner:**

(a) Multiply the minimum parking requirement for each individual use proposed in the development as set forth Article 4, Table A, Parking Standards by the percentage of use noted in Chart 1 for each of the five designated time periods;

(b) Add the resulting sums from each vertical column for the five designated time periods. The column total having the highest total

value is the minimum shared parking requirement for the proposed combination of land uses.

Chart 1:

Uses	M-F	M-F	M-F	Sat. & Sun.	Sat. & Sun.	Sat. & Sun.
	8am-5pm	6pm-12am	12am-6am	8am-5pm	6pm-12am	12am-6am
Residential	60%	100%	100%	80%	100%	100%
Office/ /Industrial	100%	20%	5%	5%	5%	5%
Commercial / Retail	90%	80%	5%	100%	70%	5%
Hotel	70%	100%	100%	70%	100%	100%
Restaurant	70%	100%	10%	70%	100%	20%
Movie Theater	40%	80%	10%	80%	100%	10%
Entertainment	40%	100%	10%	80%	100%	50%
Conference/Convention	100%	100%	5%	100%	100%	5%
Institutional (non-church)	100%	20%	5%	10%	10%	5%
Institutional (church)	10%	5%	5%	100%	50%	5%

All shared parking requests must be submitted to the Planning Board during Final Site Plan approval, and must include a parking demand summary chart demonstrating the process for calculating the parking reduction as outlined in this section. If a shared parking arrangement is subsequently terminated, or if the uses involved change, the property owner must notify the City in writing within 30 days, and the shared parking arrangement will be null and void as of the date of termination or change of uses. Each use shall thereafter be required to comply with the individual parking requirements of this Article, unless a revised shared parking arrangement is submitted and approved by the Planning Division using the process for calculating the parking reduction as outlined above with the new mix of uses.

a. ~~The total number of combined spaces required for each use may be reduced by up to 50% upon the Planning Board making the determination that the peak parking demands of the uses being served occur at different times and the parking area meets the anticipated demands of all the uses. The Planning Board will make this determination based upon the following information, to be provided by the petitioner:~~

- ~~i. The peak hours of operation for each use.~~
- ~~ii. The average parking demand and the peak parking demand for each use, based on reliable data. Such data will include actual parking counts for these uses, or at similar uses or actual parking counts are not available, reliable traffic/parking demand models may be used.~~

- ~~iii. The impact of shared parking arrangement on adjacent uses.~~
- ~~iv. Written legal evidence in the form of deeds, leases or contracts that establish the shared parking facility.~~

~~b. Once a shared parking arrangement is approved by the Planning Board, such arrangement must be recorded on the land titles for all affected properties. If a shared parking arrangement is subsequently terminated, or if the uses change, Planning Board approval shall be automatically revoked and each use shall be required to comply with the requirements of this section.~~

~~c. The petitioner(s) shall be responsible for any costs incurred by the city in contracting with consultants to review the proposed site plan as deemed necessary by the Community Development Director.~~

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cheryl Arft, Acting City Clerk

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND SECTION 4.50, PARKING STANDARDS, TO PROVIDE THE SAME SHARED PARKING STANDARDS FOR ALL ZONE DISTRICTS.

~~This Parking Standards section applies to the following districts:~~

~~**B-3 — MX**~~

The following parking standards apply:

- ~~A. **Parking for Residential Uses:** Parking for residential uses shall be provided on the same lot with such building or on adjacent parcels of land having direct access to the principal building, as may be approved by the appropriate reviewing body pursuant to the Site Plan Review and Design Review Sections in Article 7.~~
- ~~B. **Office and Residential Parking:** Where there is combined within a single building an office use and a commercial restaurant, up to 30% of the parking supplied to meet the requirement of the office use may also be used to meet the requirement for the commercial restaurant.~~
- ~~C. **Office and Residential Parking:** Where there is combined within a single building, an office use and a residential use, up to 40% of the parking supplied to meet the requirement for the office use may also be used to meet the requirement for residential use, provided that the number of spaces required for residential parking shall never be less than 1 parking space per dwelling unit.~~
- ~~D. **Office, Residential and Restaurant Parking:** Where there is combined within a single building, an office use, a residential use and a commercial restaurant, up to 40% of the parking supplied to meet the requirement for office use may also be used to meet the requirement for residential use and up to 30% of the remaining parking requirement for office use may be used to meet the requirement for the commercial restaurant.~~

O1 O2 P B1 B2 B2B B2C B3 B4 MX

Credits for Shared Parking: If two or more properties are subject to a shared parking arrangement under the provisions of this Article, all affected properties will qualify for a zoning credit under this section if they provide evidence of an executed shared parking agreement with a minimum term of 5 years, ~~and said agreement is recorded on the land titles for all affected properties.~~ If such evidence is provided to the Planning Division, all property involved in the shared parking agreement shall be entitled to one of the following credits:

- (a) A 50% reduction in parking lot landscaping requirements;
- (b) A 50% reduction in site landscaping requirements;

- (c) A 25% increase in FAR; or
- (d) A 25% reduction in minimum lot area per unit.

Each property owner must state their selected credit request in writing to the Planning Division at the time of Final Site Plan approval, and the credit request must be noted on the parking demand summary chart submitted. If approved, the shared parking agreement must be record on the title in order to be awarded the approved credit.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cheryl Arft, Acting City Clerk

Planning Board Minutes February 8, 2017

2. Review of Ad Hoc Rail District Report

Ms. Ecker reported that on January 11, 2016, the City Commission established the Ad Hoc Rail District Review Committee to study existing and future conditions and to develop a recommended plan to address parking, planning and multi-modal issues in the Rail District and along S. Eton Road ("the Rail Plan").

Over the past year, the Ad Hoc Rail District Review Committee has worked to identify issues in the Rail District and along S. Eton, and to develop a plan with recommendations to address parking, planning and multi-modal issues in the Rail District, as directed by the City Commission. The Ad Hoc Rail District Review Committee requested funds to hire a consultant to review some of the intersection design concepts discussed by the Committee, and to conduct an analysis of parking in the study area.

Based on the Committee's direction, the findings outlined in the consultant's report, and the input of the public, the Ad Hoc Rail District Report requested by the City Commission was prepared. On January 8, 2017, the City Commission reviewed and approved the Report. The City Commission further directed that the Ad Hoc Rail District Report be forwarded to both the Multi-Modal Transportation Board for review, and also forwarded to the Planning Board for review and discussion regarding Recommendation 4: Encourage Shared Parking.

The report states that there is not a shortage of parking in the Rail District. There are 2,480 parking spaces in the District as a whole. Hazel, Bowers and Haynes are residential permit parking only and were not included in the study. The Planning Board has been asked by the City Commission to identify whether to streamline the shared parking calculations and approval process and/or recommend zoning incentives to further encourage shared parking.

Mr. Williams commented that the traffic between Lincoln and Maple Rd. is too fast and there needs to be a stop sign. To him the preferable spot would be on Hazel. There are a lot of young children in the neighborhood and it is dangerous for them.

Ms. Ecker discussed a Shared Parking Occupancy Rates Table provided by the Victoria Transport Policy Institute. The table lists all the types of uses that might be on a site and then it calculates what percentage of the parking is needed for that use at any given time. Therefore, the most parking that would ever be used because of the different peak use times is known, and that is what an applicant would have to provide on their site. Use of the table ensures that parking facilities are not overbuilt. However, the board is not yet seeing a true mixed-use building in the Rail District like in Downtown. Chairman Clein added that right now there is no incentive to share parking with a neighbor. Ms. Whipple-Boyce thought there may be simple things that this board can do to encourage shared parking.

Mr. Williams noted that a bigger problem than parking is traffic. The intersection at S. Eton and Maple Rd. will just get more congested when Whole Foods and the complex next to the Reserve open.

Mr. Boyle stated if there is a particular commercial parking problem in the southern part of the District, then this board needs to address it and come up with some ideas. Ms. Ecker said there will be suburban style development and less mixed-use, but there will not be a parking problem.

Discussion contemplated the possibility of allowing parking on both sides of Lincoln.

Chairman Clein summarized that it seems the board wants to look at parking regulations from the potential to incentivize design by allowing an easier shared-use calculation on a mixed-use site; and also discuss whether they are amenable to incentives between site owners and what mechanisms would make that easier.

Mr. Williams reiterated that he thinks parking is not the problem in this area. Traffic and congestion is the problem and safety is the biggest problem. Mr. Boyle thought this is an opportunity to complete the grid. The Eton Rd. Corridor Plan that was prepared by McKenna Associates recommended that there should be a N/S link between Lincoln and Cole on the east side of the site adjacent to the Swim Club and the new orthodontist.

Chairman Clein thought the Rail District Committee was not asked to deconstruct the Eton Rd. Corridor Plan or the Multi-Modal Plan, but to incorporate them and figure out how to jumpstart and implement them. His disappointment with the document is that the final recommendations did not incorporate all of the recommendations of the existing plans. However, he felt staff did an excellent job in preparing the report. Mr. Koseck added that walking under the viaduct can be very scary and that needs to be addressed somehow.

Ms. Whipple-Boyce, former chairperson of the Ad Hoc Rail District Review Committee, noted the Committee was comprised of a group of people with various backgrounds who all brought something different to the table. There were some great ideas that came out of it, such as ways to get across S. Eton. Additionally, a plaza at the busiest section of S. Eton was a great idea, along with a better crossing at Maple Rd.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MARCH 29, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 29, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle (arrived at 8 p.m.), Stuart Jeffares, Janelle Whipple-Boyce, Alternate Board Member Daniel Share, Bryan Williams; Student Representative Ariana Afrakhteh (left at 9:05 p.m.)

Absent: Board Members Bert Koseck, Vice Chairperson Gillian Lazar; Alternate Board Member Lisa Prasad

Administration: Matthew Baka, Sr. Planner

Jana Ecker, Planning Director

Mario Mendoza, Recording Secretary

03-65-17

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF
MARCH 22, 2017**

Mr. Share made the following correction:

Page 8 - Delete "architect" and replace with "represented the applicant" with respect to Mr. Serkesian for the Design Review for 412 - 420 E. Frank.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to approve the Planning Board Minutes of March 22, 2017

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Absent: Boyle, Koseck, Lazar

03-71-17

4. Shared Parking Standards

Ms. Ecker advised that on January 8, 2017, the City Commission reviewed and approved the Ad Hoc Rail District Report. Further, the City Commission forwarded it to the Planning Board for review and discussion regarding Recommendation 4: Encourage Shared Parking. Accordingly, the Planning Board has been directed by the City Commission to consider amendments to the shared parking calculations and approval process and/or recommend zoning incentives to further encourage shared parking.

Based on the direction of the City Commission, the Planning Division has conducted research on shared parking provisions that are utilized in other cities. No communities could be found that mandated shared parking. Many encouraged it by adopting shared parking calculation standards and by offering zoning incentives to encourage sharing parking. Policies involved with shared parking generally include calculation tables adopted by the city. These tables incorporate parking calculations for categories of building uses. Parking demands are calculated for different times of the day throughout the week. Peak parking demand times of the adjacent places are then compared to help determine the minimum number of parking spaces necessary. The calculation tables simplify the process, and people don't have to hire a consultant. If they can use the chart and show that they meet all of the requirements, perhaps even administrative approval could be offered for a shared parking arrangement. The process should probably be made uniform across all of the Zoning Districts.

Article 4, Section 4.45(G)(4) of the Birmingham Zoning Ordinance includes the current shared parking policy. This provision includes up to a 50% reduction in parking spaces in a shared parking agreement if all requirements are met. However, our current standards require hiring a parking consultant, the findings are subject to the discretion of the Planning Board, and the final agreement must be recorded on title of the property. All of these requirements increase the time and cost of a project, which may not encourage applicants to utilize shared parking. Finally, no zoning incentives are currently offered to encourage shared parking. In the past, very few applicants have taken advantage of the shared parking provisions, and none in the Rail District have done so.

The way the draft ordinance is written the shared parking agreement is not required to be recorded on the title. It is required to be recorded with the City. However if they want to get a credit, then the shared parking agreement must be recorded on the title.

Mr. Williams commented if shared parking is going to work, the incentive has to work for the existing entity providing the shared parking. Chairman Clein was not in favor of reducing required landscaping in order to create more parking. Mr. Share noted if an existing entity is one that the owner is contemplating selling in the future, then the credits have value for a new owner.

Mr. Boyle suggested rather than going to the public first, the Planning Board could introduce the shared parking regulations at the a joint meeting of the Planning Board/City Commission, get their buy-in, take it to a public hearing, and then send it up to the Commission.

Mr. Share asked staff to do a little more research on the types of credits that could be used and how they might apply on a sample site, such as Armstrong White/Lincoln Yard. Ms. Ecker thought they also could run it on a true mixed-use building. Mr. Share suggested a tax credit for entering into a shared parking arrangement. That would incentivize an existing business to

enter into shared parking. Board members wanted to see an expansion of the required parking distance from the building.

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017
DPS FACILITY, 851 SOUTH ETON
8:00 P.M.**

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Mark Nickita called the meeting to order at 8:00 PM.

2. **ROLL CALL**

PRESENT: Mayor Nickita
Mayor Pro Tem
Harris
Commissioner
Bordman
Commissioner
Boutros
Commissioner DeWeese
Commissioner
Hoff
Commissioner
Sherman

Scott Clein, Planning Board Chairman Stuart Jeffares,
Member

Bert Koseck, Member

Janelle Whipple-Boyce, Member

J. Bryan Williams, Member

ABSENT: Robin Boyle, Member
Gillian Lazar, Member
Lisa Prasad, Member
Daniel Share,
Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft, Building
Planning Director, Ecker, Director Johnson

H.

SHARED PARKING CONSIDERATION;

Ms. Ecker explained that the discussion tonight will center on shared parking and parking standards for private developments. Both were previous directions from the Commission last June and also when the Ad Hoc Rail District Committee recommendations were reported. It included a recommendation to encourage shared parking.

The Planning Board conducted a study of shared parking. The ordinance currently includes a provision for shared parking. The Planning Board has encouraged applicants to consider shared parking over the years, and it has not been something that most have been willing to do.

The recommendations from the Planning Board are:

4. Parking calculations that would not require an applicant to hire a parking consultant. A standardized table has been included which takes into consideration all of the variables of the use, and provides a chart with parking requirements.
5. Not include a requirement to record on title. When changes occur in use of a property, the Building Department forwards the plans to the Planning Department which will look at the use and the parking requirement.
6. Offer zoning incentives, such as extra square footage, reduced landscape requirements, etc., in exchange for recording on title.

The Board discovered that no community mandates shared parking, but many were examples where incentives were offered and the process was streamlined.

The Board has refined the draft ordinance language and instead of setting a Public Hearing, it was decided to add it to the discussion tonight to get the Commission's input.

Commissioner Bordman would like to know how successful the communities have been with the parking calculations, and what kind of problems they encountered.

Commissioner DeWeese said it is useful for future consideration, but not a priority at this time. To the extent possible, he suggested we should make it easier for applicants to develop the properties.

Commissioner Hoff asked if shared parking agreements would be required for approval. Ms. Ecker said the proposed amendments would not require that. The property owner would have an obligation to the City to notify of a change in use and the parking reduction would be null and void if the notification was not made. In the case of a sale of a property, Ms. Ecker said if the use did not change, it would not be an issue. If the use did change, a notification would be required. Commissioner Hoff expressed concern when both parties no longer agree to the shared parking agreement. Ms. Ecker noted her concern.

Ms. Boyce noted she was on the Ad Hoc committee and recalls that the committee talked through some of these concerns. Her impression is that this could be accomplished fairly easily, and would like to be able to do it.

Mayor Nickita agreed and said it is quite important where we want to encourage development more. Parking is a concern, so as much as we can use shared parking, the better.

Ms. Ecker explained that the issue has been raised to alleviate parking concerns. The Board has been studying this issue over the last several months, and the question is now, does the Commission wish to see an expedited review by the Board of the parking requirements for private developments.

Commissioner Bordman said it sounds like the Planning Board has a heavy schedule now. While it is a worthwhile area of study, but she does not know about expediting it. She feels the Board has more urgent needs at this time.

Mr. Clein agreed with Commissioner Bordman and said that a review of parking is a large endeavor.

The consensus agreed that this is too large a topic to undertake at this time. It also is part of the upcoming Master Plan.



MEMORANDUM

Planning Division

DATE: July 7, 2017

TO: Planning Board

FROM: Matthew Baka, Senior Planner

SUBJECT: Master Plan Parking Issues

At the Direction of the City Commission the Planning Board has been asked to provide input on potential issues that should be studied as part of the upcoming Master Plan project. The City of Birmingham has been preparing a Request for Proposals that will be issued to initiate the first comprehensive Master Plan since the early 1980's. This process is expected to encompass all of the commercial areas of the City that are currently guided by an overlay district or a subarea plan as well as the residential areas. In addition, these proposals are expected to include a comprehensive review of the parking standards and policies that are currently in effect in the City. This could include, but is not limited to, residential and commercial parking space requirements, shared parking agreements and screening requirements.

Suggested Action:

At this time the Planning Division requests that the Planning Board hold a study session and identify any parking related issues that should be included in the Master Planning process.



MEMORANDUM

Planning Division

DATE: July 7, 2017

TO: Planning Board

FROM: Matthew Baka, Senior Planner

SUBJECT: Bistro Allowances and Restrictions

Background:

In 2007 the City of Birmingham amended the Zoning Ordinance to create the bistro concept that allows small eclectic restaurants to obtain a liquor license if they have no more than 65 seats, including 10 at a bar, and low key entertainment only. The bistro regulations adopted also included requirements for storefront glazing, seating along the storefront windows, and a requirement for outdoor dining. In accordance with the Zoning Ordinance, each bistro applicant is required to go through an initial screening process at the City Commission, demonstrate that all bistro requirements have been met, and then obtain a Special Land Use Permit from the City Commission.

Issue:

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make the establishments distinctive from other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining. The following issues have been raised:

- **Use of Eisenglass** – extends the time period outdoor dining areas are in operation which increases the number of seats for restaurant as a whole for a majority of the year;
- **On-street Dining/Rooftop Dining** – the use of on-street parking spaces and rooftops in addition to the sidewalk area allows the addition of larger outdoor dining areas;
- **Parking Needs** – the expansion of outdoor dining increases the number of people dining at the restaurant, which increases parking demand;
- **Building Code Requirements** – the enclosure of outdoor dining areas triggers Building Code regulations such as Energy Code compliance, fire suppression requirements, fire separation distances and exterior wall fire resistive ratings.

At the joint City Commission/Planning Board meeting of June 19th, 2017 this issue was discussed at length. There seemed to be consensus that a review of the Bistro requirements and how they relate to the various areas in which they are permitted is warranted. Accordingly, the Planning Division is now requesting that the Planning Board begin discussions on how these concerns should be addressed. The minutes from the joint meeting are attached for your review.

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017
DPS FACILITY, 851 SOUTH ETON
8:00 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 8:00 PM.

II. ROLL CALL

PRESENT: Mayor Nickita
Mayor Pro
Tem Harris
Commissioner
Bordman
Commissioner
Boutros
Commissioner DeWeese
Commissioner
Hoff
Commissioner
Sherman

Scott Klein, Planning Board Chairman

Stuart Jeffares, Member

Bert Koseck, Member

Janelle Whipple-Boyce, Member

J. Bryan Williams, Member

ABSENT: Robin Boyle,
Member
Gillian Lazar,
Member Lisa
Prasad,
Member
Daniel Share,
Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft,
Planning Director, Ecker, Building Official Johnson

III. ITEMS FOR DISCUSSION

Mayor Nickita explained that this is a workshop session to discuss and evaluate various planning issues, with the intent to create an Action List for the Planning Board. City Manager Valentine added that more discussion will be needed on each item by the City Commission. The priorities will be determined by the Commission at a future meeting.

E. BISTRO ALLOWANCES AND RESTRICTIONS

Ms. Ecker said there has been concern expressed over the size of Bistros recently. She explained that a Bistro is defined as a restaurant with 65 seats or less, with no more than 10 of them at a bar, with a full service kitchen, low key entertainment, tables that must line the storefront, and outdoor dining. The biggest issue has been how much is too much outdoor dining. The intent when Bistros was started was to encourage outdoor dining, but it was not apparent at the time how far owners would look for creative opportunities to expand the outdoor dining. She suggested clarifications as to maximums, location, enclosures and the building code issues such as energy code, fire suppression might be needed. Parking needs are also a big concern.

Mayor Nickita added that the original concept for Bistros was just in the downtown area and that has changed. Once the area expanded to the Triangle area and Rail District, it changed the circumstance because of parking and available outdoor space.

Commissioner Bordman suggested considering different rules for different areas. The needs are different. Perhaps part of the study should be whether to have the exact same requirements in each of our districts.

Commissioner DeWeese suggested we need an intermediate level that applies in different situations. He considers this a high priority issue.

Mr. Koseck suggested that we should study the materials used and also the intent.

Commissioner Hoff agreed it is time to review the Bistro ordinance. It has developed differently than what was planned.

Mayor Nickita commented that it is time to review the ordinance.



Administrative Approval Application Planning Division

Form will not be processed until it is completely filled out

1. Applicant

Name: BL Investments LLC
Address: 33477 Woodward AVE Ste 800
Birmingham
Phone Number: 248-255-3565
Fax Number: _____
Email: _____

Property Owner

Name: Duane Barbat
Address: 33477 Woodward ave Ste 800
Birmingham
Phone Number: 248-255-3565
Fax Number: _____
Email: duane@barbatorganization.com

2. Applicant's Attorney/Contact Person

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

Project Designer

Name: RON AND ROMAN
Address: 275 FRANK ST. BIRMINGHAM
Phone Number: 248-723-5790
Fax Number: _____
Email: _____

3. Project Information

Address/Location of Property: 33477 Woodward Ave
Name of Development: _____
Parcel ID #: _____
Current Use: _____
Area in Acres: _____
Current Zoning: _____

Name of Historic District site is in, if any: _____
Date of HDC Approval, if any: _____
Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: _____
Date of Final Site Plan Approval: _____
Date of Revised Final Site Plan Approval: _____

4. Attachments

- Warranty Deed with legal description of property
- Authorization from Owner(s) (if applicant is not owner)
- Completed Checklist
- Six (6) folded copies of plans including an itemized list of all changes for which administrative approval is requested, with the changes marked in color on all elevations

5. Details of the Request for Administrative Approval

Resubmit parking lot in accordance with previously approved plan

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes to the approved site plan.

Signature of Applicant: [Signature] Date: 5-5-17

Application #: <u>17-0053</u>	Office Use Only Date Received: <u>6/1/17</u>	Fee: <u>\$100</u>
Date of Approval: <u>6/21/17</u>	Date of Denial: _____	Reviewed by: <u>M. B. [Signature]</u>

Per PB



CITY OF BIRMINGHAM
Date 06/23/2017 10:12:56 AM



Administrative Approval Application Planning Division

Form will not be processed until it is completely filled out

1. Applicant

Name: SAROKI ARCHITECTURE
Address: 430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
Phone Number: (248) 258-5707
Fax Number: _____
Email: VSAROKI@SAROKIARCHITECTURE.COM

Property Owner

Name: AUGUST, LLC (C/O DAVID P. LARSEN)
Address: 1901 ST. ANTOINE STREET
DETROIT MI, 48226
Phone Number: (313) 393-7575
Fax Number: _____
Email: DLARSEN@BODMANLAW.COM

2. Applicant's Attorney/Contact Person

Name: DAVID P. LARSEN, BODMAN PLC
Address: 1901 ST. ANTOINE STREET
DETROIT, MI 48226
Phone Number: (313) 393-7575
Fax Number: _____
Email: DLARSEN@BODMANLAW.COM

Project Designer

Name: SAROKI ARCHITECTURE
Address: 430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
Phone Number: (248) 258-5707
Fax Number: _____
Email: VSAROKI@SAROKIARCHITECTURE.COM

3. Project Information

Address/Location of Property: 35975 WOODWARD AVE
Name of Development: AUGUST, LLC
Parcel ID #: 19-25-179-001
Current Use: VACANT
Area in Acres: 0.538 ACRES
Current Zoning: B-2B & D-2 (OVERLAY)

Name of Historic District site is in, if any: N/A
Date of HDC Approval, if any: N/A
Date of Application for Preliminary Site Plan: 11-30-2016
Date of Preliminary Site Plan Approval: 01-25-2017
Date of Application for Final Site Plan: 02-15-2017
Date of Final Site Plan Approval: 03-22-2017
Date of Revised Final Site Plan Approval: _____

4. Attachments

- Warranty Deed with legal description of property
- Authorization from Owner(s) (if applicant is not owner)
- Completed Checklist
- Material Samples
- Digital Copy of plans
- Two (2) folded copies of plans including an itemized list of all changes for which administrative approval is requested, with the changes marked in color on all elevations

5. Details of the Request for Administrative Approval

SEE ENCLOSED DOCUMENT OUTLINING CHANGES OR EXPLANATIONS IN RESPONSE TO THE BUILDING PERMIT REVIEW COMMENTS FROM THE PLANNING DEPARTMENT.
(SEE PLANNING DEPARTMENT MEMO, DATED 05-04-2017)

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes to the approved site plan.

Signature of Applicant: _____

Date: 6-9-17

Application #: <u>17-0063</u>	Office Use Only Date Received: <u>6/22/17</u>	Fee: <u>\$100</u>
Date of Approval: <u>6/23/17</u>	Date of Denial: _____	Reviewed by: <u>M. BL</u>



CONSENT OF PROPERTY OWNER

I, AUGUST, LLC, OF THE STATE OF MICHIGAN AND COUNTY OF
(Name of property owner)
OAKLAND STATE THE FOLLOWING:

1. That I am the owner of real estate located at 35975 WOODWARD AVE.;
(Address of affected property)
2. That I have read and examined the Application for Administrative Approval made to the City of Birmingham by:
SAROKI ARCHITECTURE;
(Name of applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of Birmingham.

Dated: 6-7-17

AUGUST, LLC

Owner's Name (Please Print)

Owner's Signature MANABEER AUGUST, LLC

June 9, 2017

Responses to Planning Department Memo, dated 05-04-2017

(All Items are part of the Administrative Approval request)

Planting Plan: (See Sheet L3)

1. The three (3) ornamental deciduous tree species were changed from *Pyramidal European Hornbeam* to *Columnar Green European Beech* due to the limited space. Although both species are considered columnar, the *Beech* are much slower growing and will not achieve the width that *Hornbeam* do over time. In our opinion, the *Columnar Beech* is the finest tree specimen locally available.
2. There are only two (2) *Norway Spruce* proposed, there was a typo on sheet L4-Planting Details that has been updated.
3. Six (6) additional *Dark Green Arborvitae* were added to the final plans to insure complete and initial evergreen hedge/screen at time of planting.
4. *Little Lime Hydrangea* were substituted for the original *Little Henry Itea*. Primary reason for this change is the ornamental value of the *Hydrangea* is superior to the *Itea*. Both are contained and dwarf species growing 36-48" high and wide, both respond to trimming well.

Architectural Site Plan: (See Sheet A010)

1. This was a site refinement item that was discussed among the Architect, Civil Engineer, and Landscape Architect. We are providing a small crushed stone buffer (6" wide) between the brick screen wall and concrete curb at the parking spaces along Oak St. The 6" was taken from the adjacent drive width.
2. The drive width was modified due to some site refinement at the entry plaza. The main objective was to get full pieces of stone pavers, and not have small slivers of stone at the ends. By extending the plaza area 6" to the South, we have accomplished that. The 6" was taken from the adjacent drive width.
3. This is a result of item #2, as the drive was reduced by 6".

Roof Level Plan: (See Sheet A130, M230, M400, RTU cut sheets)

1. The RTU sizes for Final Site Plan Review were based on estimates from other building of similar sizes. There was not a Mechanical Engineer on this project at that time, and due to the engineering process, the result is larger RTUs. Very recently, the model was revised per the Mechanical Engineer due to an RFI, so we have updated the roof plans and Mechanical Schedules with that information. The dimensions have changed slightly from what was on the permit set, however, the weight is the same.
2. There was limited detail development at the time of Final Site Plan Review, and

the walking tiles have been added to keep the roof surface protected.

3. Please see the enclosed specifications for the RTUs. We have verified that they do not extend above the rooftop.

Exterior Elevations: (See Sheet A200, A201)

1. There was limited detail development at the time of Final Site Plan Review, and the drawings at that time had less notes. The brick rowlock sills are the same brick as the rest of the building.
2. The first floor ceiling height is an assumed height for the finish ceiling. Due to structural development and ductwork, the finish ceiling height will likely be closer to 11'. There was no change to the floor to floor heights.
3. When the canopy was fully engineered, they support structure was not to our liking and did not best represent the intended design.

Electrical Site Plan: (See Sheet SE100)

1. This ended up being a better location architecturally. We ran it by the lighting designer, who produced the Photometric Plan, and they did not identify any impacts for this change.
2. The additional lights are due to the canopy redesign. They are still underneath the canopy structure, we've just added them to both sides to highlight the canopy columns.

Many of the items addressed above are a result of further development and coordination of the project, which occurs after Final Site Plan Approval, during the Construction Documents phase. Building Consultants (Structural, Mechanical, and Electrical) are typically brought on after Final Site Plan Approval, so we did not have the benefit of their expertise prior to the CD phase of the project. The most noticeable change is the entry canopy; however, the reconfiguration maintains the light, airy effect that was originally intended. We do not believe any of the changes/progression of the project deviate from the intent of the Approved Final Site Plan drawings. We respectfully request an Administrative Approval for the items listed above, for that reason.

*Note: Drawings submitted for Administrative Approval have not been revised (same as Building Permit submittal), except for: A130, M230, M400.

Administrative Approval Application

Planning Division

Form will not be processed until it is completely filled out



1. Applicant

Name: ENGINEERING TECHNOLOGIES
Address: 802 PHOENIX
ANN ARBOR MI
Phone Number: 734.944.2020
Fax Number: _____
Email: MCousino@etcinc.com

Property Owner

Name: 662 Purdy
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

2. Applicant's Attorney/Contact Person

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

Project Designer

Name: Engineering Technologies
Address: 802 Phoenix Dr
Ann Arbor MI 48108
Phone Number: 734.944.2020
Fax Number: 734.868.3824
Email: mcousino@etcinc.com

3. Project Information

Address/Location of Property: 662 Purdy St.
Birmingham
Name of Development: 662 Purdy
Parcel ID #: 1936203031
Current Use: residential condominiums
Area in Acres: _____
Current Zoning: _____

Name of Historic District site is in, if any: _____
Date of HDC Approval, if any: _____
Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: _____
Date of Final Site Plan Approval: _____
Date of Revised Final Site Plan Approval: _____

4. Attachments

- Warranty Deed with legal description of property N/A
- Authorization from Owner(s) (if applicant is not owner)
- Completed Checklist
- Material Samples
- Digital Copy of plans
- Two (2) folded copies of plans including an itemized list of all changes for which administrative approval is requested, with the changes marked in color on all elevations

5. Details of the Request for Administrative Approval

Existing parking lot (asphalt in poor condition) is proposed to be milled off and replaced with concrete pavement. The pavement area doesn't change - just the pavement itself.

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes to the approved site plan.

Signature of Applicant: [Signature]

Date: 5 July 17

Application #: <u>17-0068</u>	Office Use Only Date Received: <u>7/5/17</u>	Fee: <u>\$100</u>
Date of Approval: <u>7/5/17</u>	Date of Denial: _____	Reviewed by: <u>MB</u>



CONSENT OF PROPERTY OWNER

I, 662 Purdy, OF THE STATE OF Mich AND COUNTY OF

(Name of property owner)

Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 662 Purdy, Birmingham, Mi
(Address of affected property)
2. That I have read and examined the Application for Administrative Approval made to the City of Birmingham by:

(Name of applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of Birmingham.

Dated: 5/30/17

Sheri Kay, AS Agent
Owner's Name (Please Print)

[Signature]
Owner's Signature

Kierston Oray

From: etc.maureen@gmail.com on behalf of Maureen Cousino <mcousino@etcinc.com>
Sent: Thursday, May 25, 2017 3:55 PM
To: Lauren; Sheri Kay; FINNEY, JOSHUA
Subject: 662 Purdy - Information needed
Attachments: Authorization.pdf

Hello,

I'm applying for the Administrative Approval required from the Planning Division for the parking repaving. The forms need some information I need from you, as follows:

1. Legal description of the property - *Master Deed*
2. Acreage of parcel - *Exhibit B5*
3. Approval dates of the original Preliminary Site Plan, Final Site Plan, and any revisions to the original site plan.
4. Is there any existing lighting on site (outside)? This application needs that lighting shown on the sketch.

tb I also need the attached form signed and sent back authorizing ETC to apply for this permit on your behalf.

Let me know if you have any questions. Thank you.

--
Maureen Cousino
Project Coordinator

Engineering Technologies Corporation
802 Phoenix Drive, Ann Arbor, MI 48108
Cell: 734.904.7440
Fax: 734.868.3824

Dec 13, 1991
find the
whole
Master Deed
+ see
Amendments



Virus-free. www.avast.com

ARTICLE II

LEGAL DESCRIPTION

The land which is submitted to the Condominium Project established by this Master Deed is described as follows:

Land located in the City of Birmingham, Oakland County, Michigan, described as:

Lots 3, 4, 5 and 6, Block 1 of PURDY AND HANNA SUBDIVISION, according to the plat thereof recorded in Liber 4 of Plats, page 48, Oakland County Records, and Lots 15, 16, 17, 18 and 21 of ASSESSOR'S PLAT NO. 6, according to the plat thereof recorded in Liber 46 of Plats, page 32, Oakland County Records, described as follows: Beginning the Southeasterly corner of Lot 21, of ASSESSOR'S PLAT NO. 6, and proceeding thence South 62 degrees 04 minutes 10 seconds West 74.54 feet; thence South 71 degrees 26 minutes 13 seconds West 55.61 feet; thence North 03 degrees 14 minutes 20 seconds West 71.07 feet; thence South 79 degrees 45 minutes 20 seconds West 100.23 feet; thence North 00 degrees 47 minutes 36 seconds West 52.59 feet; thence North 03 degrees 00 minutes 16 seconds East 135.76 feet; thence North 67 degrees 44 minutes 40 seconds East 123.00 feet; thence South 21 degrees 23 minutes 00 seconds East 215.17 feet; thence South 32 degrees 52 minutes 00 seconds East 41.55 feet to the point of beginning; containing 0.885 acres of land; subject to all easements and restrictions of record and all governmental limitations.

19-36-203-025

ARTICLE III

DEFINITIONS

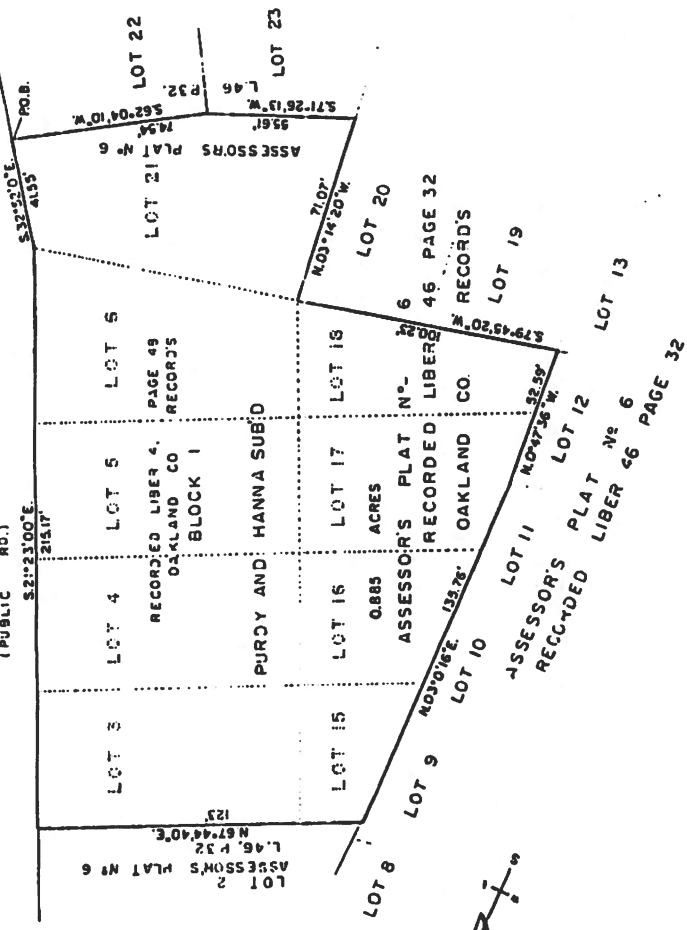
Certain terms are utilized not only in this Master Deed and Exhibits A and B hereto, but are or may be used in various other instruments such as, by way of example and not limitation, the Articles of Incorporation and rules and regulations of the 662 Purdy Association, a Michigan non-profit corporation, and deeds, mortgages, liens, land contracts, easements and other instruments affecting the establishment of, or transfer of, interests in 662 Purdy as a condominium. Wherever used in such documents or any other pertinent instruments, the terms set forth below shall be defined as follows:

Section 1. Act. The "Act" means the Michigan Condominium Act, being Act 59 of the Public Acts of 1978, as amended.

OF PURDY AND HANNA
ELEV. - 767.94 JSDS 3414

SURVEYOR'S CERTIFICATE
I, GEORGE F. DELLY, PROFESSIONAL SURVEYOR
OF THE STATE OF MICHIGAN, HEREBY CERTIFY
THAT THE SUBDIVISION PLAN HEREIN AS
CONTAINED IS A TRUE AND CORRECT
SUBDIVISION OF THE LANDS SHOWN ON THE
PLAN AND AS SHOWN ON THE
ACCOMPANYING DRAWINGS, REPRESENTS A
SURVEY ON THE GROUND MADE UNDER MY
DIRECTION, AND THAT THERE ARE NO EXISTING
ENCROACHMENTS UPON THE LANDS AND
PROPERTY HEREIN DESCRIBED.
THAT THE REQUIRED MONUMENTS AND OR
IRON MARKERS HAVE BEEN LOCATED IN THE
GROUND AS REQUIRED BY RULES
PROMULGATED UNDER SECTION 142 OF ACT
NUMBER 99 OF THE PUBLIC ACTS OF 1978, AS
AMENDED.
THAT THE ACCURACY OF THIS SURVEY IS
WITHIN THE LIMITS REQUIRED BY THE RULES
PROMULGATED UNDER SECTION 142 OF ACT
NUMBER 99 OF THE PUBLIC ACTS OF 1978, AS
AMENDED.
THAT THE BEARINGS AS SHOWN, ARE NOTED
ON THE SURVEY PLAN AS REQUIRED BY RULES
PROMULGATED UNDER SECTION 142 OF ACT
NUMBER 99 OF THE PUBLIC ACTS OF 1978, AS
AMENDED.
DATE 7/16/74

PURDY ST. 50' WD. (PUBLIC RD.)



George F. Delly
REGISTERED SURVEYOR
REGISTRATION NUMBER 323

NOTE: PROPERTY IS NOT WITHIN THE FLOOD HAZARD AREA
AS SHOWN BY 1000 YEAR FLOOD HAZARD MAP
OF THE STATE OF MICHIGAN, COUNTY OF OAKLAND, MICHIGAN,
AS PREPARED BY THE DEPT. OF HOUSING AND
URBAN DEVELOPMENT, FISCAL INSURANCE ADMIN.,
CERTIFICATION DATE APRIL 6, 1975, REVISED DATE 13, 1980.
BEARINGS AS SHOWN WERE DETERMINED FROM LIBER 46
OF PLAT 1, PAGE 32 OF OAKLAND COUNTY RECORDS.

SURVEY PLAN



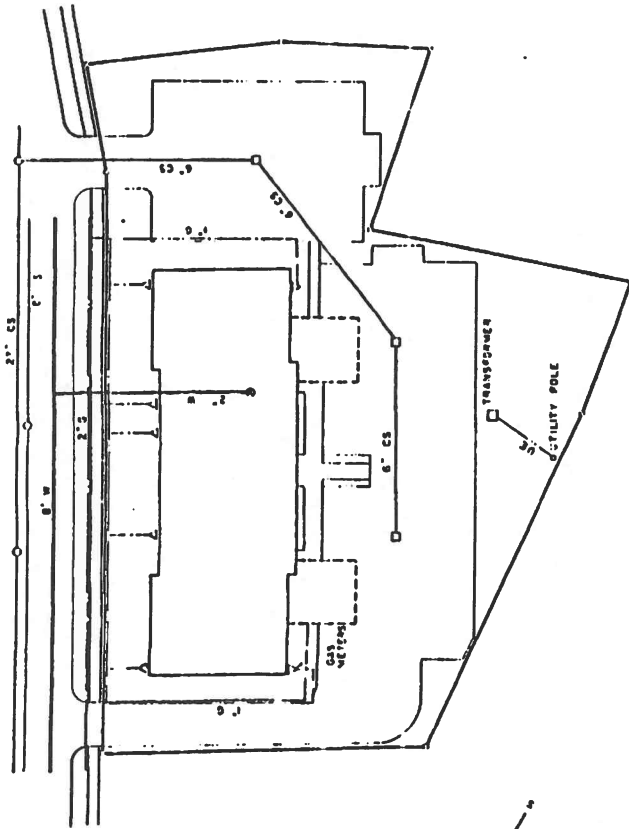
PROPOSED SEPTEMBER 16, 1996
MUST BE BUILT

662 PURDY



GEORGE F. DELLY
REGISTERED SURVEYOR
3204 W. KELLY ROAD
CLINTON TWP., MICHIGAN
PHONE - 482-8113

PURDY STREET



- CS — COMBINED SEWER
- CS — CATCH BASIN
- CS — MANHOLE
- 6 INCH SANITARY SERVICE
- SANITARY SEWER
- MANHOLE
- WATER MAIN
- FIRE HYDRANT
- GATE AND WELL
- 2 INCH WATER SERVICE
- GAS MAIN
- UNDERGROUND ELEC. C.A.E.
- WATER METER

GENERAL NOTATIONS

ALL UNITS SERVED WITH SEWER AND WATER BY CITY OF BIRMINGHAM. SEWER AND WATER INFORMATION AS SHOWN OBTAINED FROM CITY OF BIRMINGHAM RECORDS.

ALL UNITS SERVED WITH GAS BY CONSUMERS POWER COMPANY. ALL UNITS SERVED WITH POWER BY DETROIT EDISON COMPANY. ALL UNITS SERVED WITH TELEPHONE.

GAS INFORMATION OBTAINED FROM CONSUMERS POWER COMPANY. ELECTRIC AND TELEPHONE INFORMATION OBTAINED FROM DETROIT EDISON COMPANY.

UTILITIES AS SHOWN. INDICATE APPROXIMATE LOCATIONS OF FACILITIES ONLY AS DISCLOSED BY THE RECORDS OF THE VARIOUS COMPANIES AND NO GUARANTEE IS GIVEN AS TO ACCURACY OR COMPLETENESS THEREOF.

PROPOSED SEPTEMBER 16, 1956
MUST BE BUILT



GEORGE F. DELLY
PROFESSIONAL SURVEYOR
3704 GELLY ROAD
CLINTON TWP., MICHIGAN
48036
PHONE - 488-8113

UTILITY PLAN

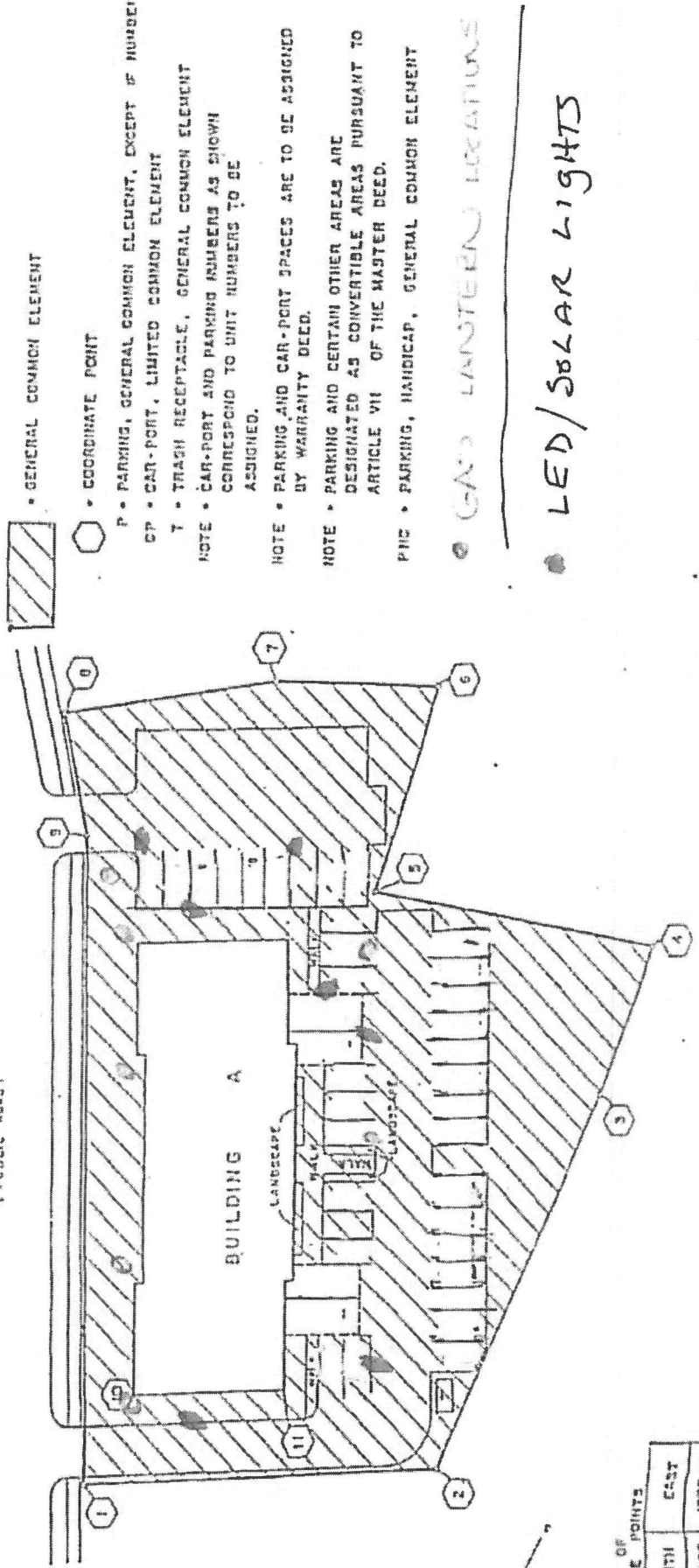
662 PURDY



CARPORT & ASSIGNED PARKING

PURDY STREET

(PUBLIC ROAD)



LED/SOLAR LIGHTS

SCHEDULE OF COORDINATE POINTS

POINT	NORTH	EAST
1	1000.00	1000.00
2	922.42	808.10

CORRECT 10/2/10



Administrative Approval Application

Planning Division

Form will not be processed until it is completely filled out

1. Applicant

Name: AIR-MASTER HVAC & A/C
 Address: 2070 COOLIDGE HWY
BERKLEY, MICH 48072
 Phone Number: 248-399-1800
 Fax Number: 248-399-2913
 Email: MLEVEY@AIRMASTERINC.COM

Property Owner

Name: ROBERT McDONALD
 Address: 180 PIECE
BIRMINGHAM, AL 35209
 Phone Number: 248-258-9960
 Fax Number: _____
 Email: JLEMAN@LEMANCORP.COM

2. Applicant's Attorney/Contact Person

Name: _____
 Address: _____
 Phone Number: _____
 Fax Number: _____
 Email: _____

Project Designer

Name: _____
 Address: _____
 Phone Number: _____
 Fax Number: _____
 Email: _____

3. Project Information

Address/Location of Property: _____
 Name of Development: _____
 Parcel ID #: _____
 Current Use: _____
 Area in Acres: _____
 Current Zoning: _____

Name of Historic District site is in, if any: _____
 Date of HDC Approval, if any: _____
 Date of Application for Preliminary Site Plan: _____
 Date of Preliminary Site Plan Approval: _____
 Date of Application for Final Site Plan: _____
 Date of Final Site Plan Approval: _____
 Date of Revised Final Site Plan Approval: _____

4. Attachments

- Warranty Deed with legal description of property
- Authorization from Owner(s) (if applicant is not owner)
- Completed Checklist
- Six (6) folded copies of plans including an itemized list of all changes for which administrative approval is requested, with the changes marked in color on all elevations

5. Details of the Request for Administrative Approval

LIFTING CONDENSING UNIT ROOF FOR COOLING OF
PENTHOUSE

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes to the approved site plan.

Signature of Applicant: [Signature]

Date: _____

Application #: 17-0070 Office Use Only Date Received: 7/6/17

Fee: \$100

Date of Approval: 7/6/17

Date of Denial: _____

Reviewed by: M. B. L.

APPROVED

CITY OF BIRMINGHAM
 Date 07/06/2017 1:05:54 PM
 Receipt 379798
 Amount \$100.00



CONSENT OF PROPERTY OWNER

I, Bruce McDonald, OF THE STATE OF Michigan AND COUNTY OF
(Name of property owner)

Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 180 Pierce Street;
(Address of affected property)
2. That I have read and examined the Application for Administrative Approval made to the City of Birmingham by:
Airmaster Heating;
(Name of applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of Birmingham.

Dated: 6.28.2017

Bruce McDonald

Owner's Name (Please Print)

Owner's Signature

— Air Master Htg & Clg. 248-399-1800

Location: 180 Pierce St., Birmingham MI.

AC Unit. DEM.

Reason: Outdoor Heat pump Location

W = 48"

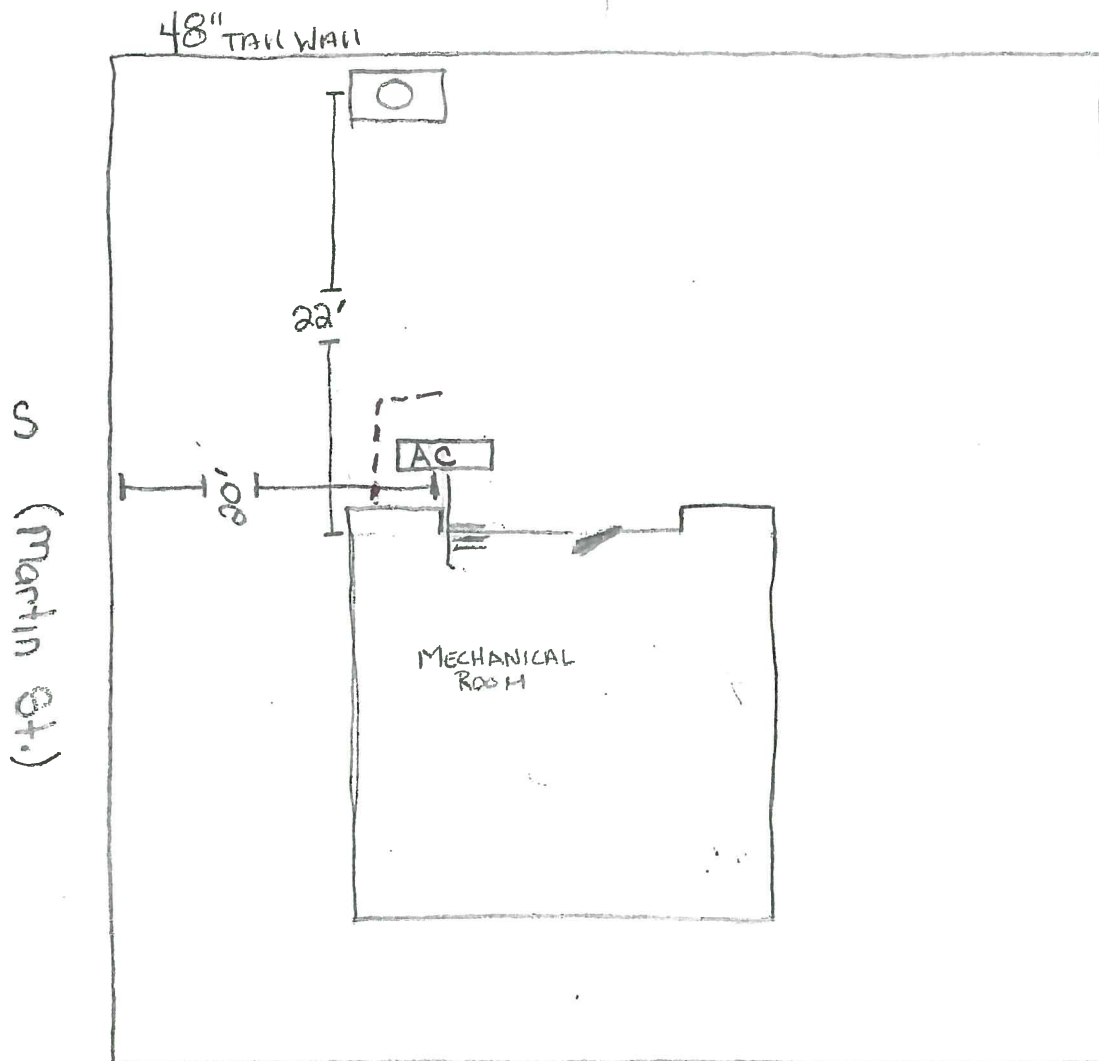
D = 30"

H = 66"

W

12" Rack

Total Height
78"



N

(Alley)

HEIGHT OF
SCREEN WITH EQUAL
AT LEAST HEIGHT OF UNIT
AND MATCH BUILDING EXTERIOR
CEILING LINE

(Pierce Ct.)

APPROVED
M.B. 7/6/17
17-0070 PB