

REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 10, 2018
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 **November 29, 2017**
- C. Chairpersons' Comments
- D. Review of the Agenda

E. Study Session

Rules of Procedure for Study Sessions: Site Plan and Design Review, Special Land Use Permit Review and other review decisions will not be made during study sessions; Each person (member of the public) will be allowed to speak at the end of the study session; Each person will be allowed to speak only once; The length of time for each person to speak will be decided by the Chairman at the beginning of the meeting; Board members may seek information from the public at any time during the meeting.

- 1. **Review of Historic District Study Commission Report on 361 E. Maple**
- 2. **Bistro Regulations**
- 3. **Review Process for Renovation / Reconstruction Projects**
- 4. **Retail Discussion**
- 5. **Site Plan Submittal Requirements for Adjacent Properties**

F. Miscellaneous Business and Communications:

- a. Communications
- b. **Administrative Approval** Correspondence
- c. Draft Agenda for the next Regular Planning Board Meeting (**January 24, 2018**)
- d. Other Business

G. Planning Division Action Items

- a. Staff Report on Previous Requests
- b. Additional Items from tonight's meeting

H. Adjournment

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(Title VI of the Civil Rights Act of 1964).

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, NOVEMBER 29, 2017**

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Motion by Mr. Williams Seconded by Ms. Whipple-Boyce that based on our review of the site plan revisions submitted, the Planning Board approves the Final Site Plan and Design Review for 271-273 Euclid with the following conditions: 1. The applicant submit specifications on the proposed landscaping screenwall to ensure the 39 in. mechanical units will be screened from view, or obtain a variance from the Board of Zoning Appeals; and 2. Compliance with the requests of all City Departments, including but not limited to the required public sidewalk along Park St. frontage.	3
Motion carried, 7-0.	3
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Motion by Mr. Williams Seconded by Mr. Jeffares that the Planning Board approve the Final Site Plan and Design Review for 2010 Cole with the following conditions: 1. The applicant submit plans showing the required screening for the transformer at the rear of the property for administrative approval, or obtain a variance from the BZA; 2. The applicant provide the finish for all lighting fixtures; 3. The applicant submit a revised photometric plan showing maintained foot candles of 1.5 or less along all property lines, as well as maximum to minimum ratios no greater than 20:1 for administrative approval, or seek variances from the BZA; 4. The applicant provide the height of the existing Arborvitae trees to determine if additional evergreen trees are required on-site; 5. The applicant provide calculations showing a VLT of 80% or greater, or obtain a variance from the BZA; and 6. The applicant comply with the requirements of all City Departments.	5
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Motion carried, 7-0.	7
PRELIMINARY SITE PLAN REVIEW	
1. 885 Redding Rd. (duplex) Request for approval of the Preliminary Site Plan Review to allow for construction of a new two-family residence	7
Motion by Ms. Whipple-Boyce Seconded by Mr. Jeffares to approve the Preliminary Site Plan Review for 885 Redding Rd. with the following conditions: 1. Applicant submit a landscaping plan and a photometric plan that complies with all ordinance requirements at Final Site Plan ("FSP"); 2. Applicant must indicate how the ground-mounted mechanical units will be screened at FSP; 3. Applicant provide material samples at FSP; and 4. Applicant addresses the concerns of all City Departments.	8
Motion carried, 7-0.	8

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, NOVEMBER 29, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on November 29, 2017. Chairman Scott Clein convened the meeting at 7:31 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Vice-Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Nasseen Ramin; Student Representative Isabella Niskar

Absent: Board Member Bert Koseck, Alternate Board Member Daniel Share; Student Representative Ariana Afrakhteh

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

11-211-17

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF NOVEMBER 8, 2017

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of November 8, 2017 as presented.

Motion carried,

VOICE VOTE

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

Abstain: Clein, Ramin

Nays: None

Absent: Koseck

11-212-17

CHAIRPERSON'S COMMENTS

Chairman Clein welcomed the new alternate board member, Nasseen Ramin.

11-213-17

APPROVAL OF THE AGENDA (no change)

FINAL SITE PLAN AND DESIGN REVIEW

1. 271/273 Euclid (existing duplex)

Request for approval of the Final Site Plan and Design to allow for construction of a new single-family residential home

Ms. Ecker advised that the applicant appeared before the Planning Board on October 25, 2017 for Preliminary Site Plan Review. The site plan for this two-story house was approved with several conditions. The applicant has added two street trees and a sidewalk along Park St., and submitted mechanical specification sheets, a landscaping plan, a photometric plan, and has complied with departmental requests. However, the applicant has not submitted details on the height of the landscaping screenwall proposed to screen the mechanical units by the garage.

The applicant appeared before the Board of Zoning Appeals ("BZA") on November 14, 2017 seeking five variances. They revised the plans to comply with the Zoning Ordinance, and therefore revoked the variance requests for maximum lot coverage and combined front and rear setback. They were approved for the other three requests: the height of accessory structure, the principal structure, and the open space requirements.

The applicant has indicated that their mechanical units will be 39 in. tall. ***The applicant must submit specifications on the proposed landscaping screenwall to ensure the 39 in. high mechanical units will be screened from view, or obtain a variance from the BZA.***

The applicant is proposing to construct a 4 ft. wide concrete sidewalk along Park St. per the City Engineer's request where one does not currently exist. However, the City requires the sidewalk to be 5 ft. wide. ***The applicant will need to submit revised plans showing a sidewalk along Park St. that is 5 ft. wide, or obtain a variance from the BZA.***

Design Review

The applicant has indicated the use of many high quality building materials in the construction of the proposed single-family home:

- Stucco - walls
- Aluminum exterior clad wood - windows
- Smooth cedar - trim
- Copper - flashing, flat roof, gutters and downspouts
- Machine sawn Western Red Cedar shingle - roofing

Mr. Brian Neefer, Brian Neefer Architecture P.C., 630 N. Old Woodward Ave., presented the material samples board.

No members of the public wished to comment at 7:40 p.m.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that based on our review of the site plan revisions submitted, the Planning Board approves the Final Site Plan and Design Review for 271-273 Euclid with the following conditions:

- 1. The applicant submit specifications on the proposed landscaping screenwall to ensure the 39 in. mechanical units will be screened from view, or obtain a variance from the Board of Zoning Appeals; and**
- 2. Compliance with the requests of all City Departments, including but not limited to the required public sidewalk along Park St. frontage.**

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Clein, Boyle, Jeffares, Lazar, Ramin

Nays: None

Absent: Koseck

2. 2010 Cole (existing building)

Request for approval of the Final Site Plan and Design to allow for an additional two stories to be added to the building for office and residential use

Ms. Lazar recused herself due to a familial relationship with the developer. Chairman Cline also recused himself because of a business relationship with the developer on a different site.

Mr. Boyle took over the gavel.

Ms. Ecker advised that the applicant is proposing to add on to the building and go up three stories: retail and commercial on the first floor, office on the second, and two residential units on the third floor. 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 approved, conditioned on certain information being provided.

The Preliminary Site Plan Review was postponed three times based on concerns about vehicle circulation in the parking lots (dead-end lots causing cars to reverse back onto Cole) and a request from the Planning Board that the longer side of the building be rotated to run along Cole, instead of facing the parking lot on the east portion of the property.

On August 23, 2017 the Planning Board approved the Preliminary Site Plan including setting the front setback to match the front setback of the adjacent pre-existing building to the east and subject to several other conditions. The board did not require the building to be moved in an east-west direction despite much discussion on this topic.

The applicant has now provided updated plans, including floor plans of the proposed residential unit; a building section showing a 12 ft. first floor to ceiling height; a rooftop plan; and a landscape plan and photometric plan, including specification sheets on all proposed lighting and building materials. The applicant has also provided the required specification sheets for the rooftop mechanical units. The required street trees, street lighting and bike parking as requested by the Planning Board on August 23, 2017 have been added.

Should the applicant decide to combine the two office spaces on the second floor, then that one unit would be over 6,000 sq. ft. In the MX District a use over 6,000 sq. ft. requires a Special Land Use Permit and they would have to return to the Planning Board with that request.

The applicant will need to either submit dimensions of the existing Arborvitae evergreens to confirm they meet the 6 ft. minimum height requirements, plant one

6 ft. minimum evergreen tree (2 residential units * 1 evergreen per 2 units = 1 evergreen required), or obtain a waiver from the Staff Arborist.

The applicant must submit a revised photometric plan showing maintained foot candles of 1.5 or less along all property lines, as well as maximum to minimum ratios no greater than 20:1 from parking lot luminaries, or seek a variance from the Board of Zoning Appeals ("BZA").

Design Review

The proposed building consists of three stories arranged in a staggered formation. The flat rooftop above the first story will serve as a patio for the second story office space. The patio wraps around the north and western elevations, terminates at the exterior wall of the stairwell and lobby component, and resumes towards the right end of the west elevation. The third story will also include a patio formed by the flat rooftop of the second story, which also wraps around the north and west elevations of the building. At this time, the applicant has provided detailed elevation drawings.

The plans indicate that the applicant is proposing to utilize the following materials:

- Metal paneling -mechanical screening
- Brick - facade, screenwalls
- Glass - windows

Calculations for visual light transmittance ("VLT") have not been submitted by the applicant. ***Calculations must be provided showing a VLT of 80% or greater, or a variance must be obtained from the BZA.***

Mr. Williams received clarification that the two residential units are 3,700 sq. ft. and 3,200 sq. ft. in size.

Mr. Jason Krieger, Krieger Klatt Architects, 1412 E. Eleven Mile Rd., Royal Oak, addressed the materials and where they will be used. It is hoped this building will start to anchor the west end of Cole. The residential units will be condos. They intend to comply with all of the requirements of City Departments and the Eton Corridor Plan.

Mr. Jeffares recommended that a bench would be nice and it would add continuity to the streetscape. Mr. Krieger agreed.

Mr. Williams commented that adding more residential units to the south end of the MX District will be a plus.

No members of the audience wished to comment at 8:08 p.m.

Ms. Whipple-Boyce thought this is a beautiful building that will be a true asset to the area.

Motion by Mr. Williams

Seconded by Mr. Jeffares that the Planning Board approve the Final Site Plan and Design Review for 2010 Cole with the following conditions:

- 1. The applicant submit plans showing the required screening for the transformer at the rear of the property for administrative approval, or obtain a variance from the BZA;**
- 2. The applicant provide the finish for all lighting fixtures;**

- 3. The applicant submit a revised photometric plan showing maintained foot candles of 1.5 or less along all property lines, as well as maximum to minimum ratios no greater than 20:1 for administrative approval, or seek variances from the BZA;**
- 4. The applicant provide the height of the existing Arborvitae trees to determine if additional evergreen trees are required on-site;**
- 5. The applicant provide calculations showing a VLT of 80% or greater, or obtain a variance from the BZA; and**
- 6. The applicant comply with the requirements of all City Departments.**
- 7. The applicant add both a bench and trash receptacles to the streetscape.**

Motion carried, 5-0.

Acting Chairman Boyle noted this is exactly what the Planning Board hoped for - mixed-use at the core of the Rail District. He applauded the architect and his partners for bringing this forward.

ROLLCALL VOTE

Yeas: Williams, Jeffares, Boyle, Ramin, Whipple-Boyce

Nays: None

Recused: Clein, Lazar

Absent: Koseck

Chairman Clein and Ms. Lazar rejoined the board.

**3. 1669 W. Maple Rd. (First Presbyterian Church of Birmingham)
Special Land Use Permit ("SLUP") and Final Site Plan Review
Request for approval of a SLUP Amendment to add a new illuminated ground
sign**

Mr. Baka advised that First Presbyterian Church is located on the south side of W. Maple Rd. between Pleasant and Larchlea Dr. They are proposing to install a replacement ground sign and two directional signs. As a result of this new signage, the petitioner will require an amendment to their existing SLUP. Prior to the consideration of a SLUP Amendment, the City Commission refers the Site Plan and Design Review to the Planning Board. Should Planning Board approval be granted, a public hearing will be held by the City Commission to consider whether or not to grant the proposed SLUP Amendment.

This parcel of land is zoned R-1A, Single Family Residential. Churches are a permitted use in the R-1A District, subject to Special Land Use regulations. The Church originally received a SLUP on May 13, 1991.

Sign Review

The Birmingham Sign Ordinance allows for one ground sign with 20 sq. ft. of signage per side and a maximum height of 8 ft. The applicant is proposing one 6 ft. tall sign, located in front of the church on W. Maple Rd. The total amount of signage proposed per side is 17.94 sq. ft.

The proposed sign along W. Maple Rd. is proposed to be located 7 ft. from the front property line. The sign will be composed of a brick monument base constructed of red brick that matches the church building and an internally illuminated aluminum sign cabinet with acrylic push-thru letters.

The sign will have three lines of text that read "First Presbyterian Church," "Sunday Services 8:30 a.m. & 10:00 a.m." and "www.everybodyschurch." The text of the monument sign will also include 6 in. high address numbers that are not counted toward the total amount of signage because they do not exceed 8 in. in height. The proposed ground sign meets the requirements of the Sign Ordinance.

In addition to the ground sign, the applicant is also proposing to replace a directional sign along Pleasant near the entrance to their parking lot, and to add a new directional sign along W. Maple Rd. The Sign Ordinance restricts directional signage of this type to 5 sq. ft. per side. The new directional signage is proposed to be 3.75 sq. ft. per side and therefore the proposed directional signs meet this requirement. However, it is unclear based on the photos submitted by the applicant if the directional sign on W. Maple Rd. would be on public or private property. Per the Birmingham Sign Ordinance, no sign shall be erected in the public right-of-way. Accordingly, the applicant must verify that the location of the directional sign along W. Maple Rd. is on private property or move the location to private property.

Ms. Mia Assen with Gardner Signs, 1087 Naughton Dr., Troy said the directional sign on W. Maple Rd. will be moved to the other side of the sidewalk which will put it on the applicant's property. She thinks the updated ground sign will be a very nice addition to that area.

There was no one from the public that wished to comment at 8:16 p.m.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend that the City Commission approve the SLUP Amendment for 1669 W. Maple Rd. to install a sign in front of the church building and a non-illuminated directional sign on Pleasant with the following condition:

- 1. The applicant must verify that the location of the directional sign along W. Maple Rd. is on private property or move the location to private property.**

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Boyle, Clein, Jeffares, Lazar, Ramin, Williams

Nays: None

Absent: Koseck

PRELIMINARY SITE PLAN REVIEW

1. 885 Redding Rd. (duplex)

Request for approval of the Preliminary Site Plan Review to allow for construction of a new two-family residence

Mr. Baka reported that the subject site is a 0.39 acre parcel located on the south side of Redding Rd. between Lakeside Dr. and N. Old Woodward Ave. in the R-4 Zoning District. The applicant was approved on January 13, 2016 to construct a two-family residential development at the above referenced address. However, the applicant decided not to build the project as approved and is now returning to the Planning Board to request approval of a new two-family residential development in a new configuration and design. As the location and footprint of the new plan are completely different from the previous approval, the applicant will now be required to complete the Preliminary and Final Site Plan approval process again.

Design Review

A complete design review will be conducted at Final Site Plan Review. However, the applicant is currently proposing that the two-family structure be constructed as a row house style building with side-by-side gabled ends facing the front property line. The siding on the house is proposed to be James Hardie lap siding with white pine board trim. The roof is proposed to be standing seam and all windows are proposed to be double hung.

In response to Mr. Williams, Mr. Baka explained that each unit will have their own driveway so the residents would have the option of allowing their visitors to park there. This is a significant improvement because it takes parking off of the street.

Ms. Whipple-Boyce received clarification from the architect that each unit will be 2,470 sq. ft.

Mr. Richard Wiand, Architect with Hunter Roberts Homes, said they changed the previous plan because it probably was not appropriate. It was way out in front of the other houses and did not have a traditional back yard. They wrestled a lot with the driveway issue and that has been resolved.

Mr. Jeffares commented this feels like a Birmingham house to him and he thinks it is a vast improvement from the previous design. Mr. Williams thought it is much better now that it is set back off the road.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to approve the Preliminary Site Plan Review for 885 Redding Rd. with the following conditions:

- 1. Applicant submit a landscaping plan and a photometric plan that complies with all ordinance requirements at Final Site Plan ("FSP");**
- 2. Applicant must indicate how the ground-mounted mechanical units will be screened at FSP;**
- 3. Applicant provide material samples at FSP; and**
- 4. Applicant addresses the concerns of all City Departments.**

There was no audience left to comment on the motion.

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Jeffares, Boyle, Clein, Lazar, Ramin, Williams

Nays: None

Absent: Koseck

11-215-17

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- Memo from City Manager Valentine - Downtown Retail Review

Ms. Lazar recused herself because of a familial relationship with a building owner.

Chairman Clein advised that the City Commission has directed the Planning Board to continue its efforts related to their review of Downtown retail.

Ms. Ecker announced the City Commission adopted the definition for Personal Service, 4-3. Also that night they passed the Economic Development Licenses ordinance amendments recommended by the Planning Board.

Mr. Williams noted Commissioner Hoff raised the issue that is brought out in the Valentine memo, which is that perhaps the geographic boundary of the Red Line Retail District is too big. Mr. Valentine has raised several issues about the now defined retail in this District. Looking at some of the areas here, he doesn't like piecemealing an approach to this without putting it in the context of the overall downtown area. Mr. Williams said his own view is that Commissioner Hoff is right and that tells him there has to be some planning involved and this should not be approached as a separate item.

Mr. Boyle said it seems to him that this board is being dictated to again on this particular matter in a way that he doesn't think fits the way the board has worked appropriately over the years. The City of Birmingham is in the midst of undertaking an update to its Comprehensive Master Plan. He asked staff where they are in seeking a conclusion of the RFP for a Comprehensive Plan.

Ms. Ecker replied their plan is to issue the RFP at the start of next year. It requests a comprehensive plan that focuses on the City as a whole, but is not structured to provide an updated Downtown Master Plan segment. Further, the scope of work deals with parking standards city-wide as related to the comprehensive plan and the Zoning Ordinance.

Responding to the Chairman, Ms. Ecker indicated the Parking Assessment District boundaries are not specifically a part of the currently listed scope of parking review.

Chairman Clein agreed with the statements by Mr. Williams and Mr. Boyle. However, the Planning Board has been directed by the City Commission to review the geographic boundaries of the Retail District. That will provide an opportunity for this board to bring up a great deal of good information for any consultant next year.

Mr. Jeffares cautioned there are risks in reviewing this matter by itself.

Ms. Whipple-Boyce thought that by reviewing some other communities that are similar they can start to think about an approach. Additionally it may be a benefit as part of this discovery process to engage with some of the property owners that will be impacted by a change in the boundaries of the Retail District.

Chairman Clein added that perhaps Ms. Ecker could ask Mr. Valentine if the new PSD retail consultant could appear before this board to provide their philosophy and what they are looking to do.

Mr. Boyle thought it might be appropriate for the Planning Board to hold a final review of the wording of the RFP. It was concluded that Ms. Ecker would ask Mr. Valentine if the City Commission would be interested in allowing the Planning Board to pursue that.

Ms. Lazar returned to the board.

b. Administrative Approval Requests

➤ 33633 Woodward Ave., Wesch Cleaners - Requesting permission to place two temporary trailers positioned such that they are combined into one trailer for use as a temporary lobby while construction is undertaken to remodel the existing lobby. Trailers will be placed on an existing portion of the site that is currently an open landscape area. A temporary connection between the trailers and the existing building will be provided for use by staff personnel for access to the back of house area. A temporary sidewalk to be provided to extend access from the existing sidewalk along Woodward Ave. to the temporary trailer entrance. This sidewalk will be roughly 4 ft. 8 in. in width by 8 ft. in length. The public access will be ADA compliant. Once construction is finalized within the building the trailers will be removed and the landscape area will be re-landscaped.

c. Draft Agenda for the Regular Planning Board Meeting on January 10, 2018

- Bistro Regulation requirements
- Renovation versus reconstruction of existing building

d. Other Business

- Ms. Whipple-Boyce expressed a desire to re-do the ordinance that requires wood gates on dumpster enclosures.
- Mr. Boyle sent the board's best wishes to Mr. Koseck who has been ill.

11-216-17

PLANNING DIVISION ACTION ITEMS

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

11-217-17

ADJOURNMENT

No further business being evident, the Chairperson adjourned the meeting at 9 p.m.

Jana L. Ecker
Planning Director



MEMORANDUM

Planning Division

DATE: January 4, 2018

TO: Planning Board

FROM: Matthew Baka, Senior Planner

SUBJECT: 361 E. Maple – Historic designation elimination request

The owner of the property located at 361 E. Maple has requested that the City Commission consider removing the historic designation of their building as a Contributing Historic Resource within the City of Birmingham. The property owner has submitted an application to the Planning Board requesting to demolish the building as part of a redevelopment proposal.

As required by Section 127-5, **Establishing additional, modifying, or eliminating historic districts** the City Commission issued a resolution on July 24, 2017 directing the Historic District Study Committee (HDSC) to prepare a preliminary study committee report on the subject property in accordance with the Code and execute the additional steps outlined in that section in order to make a recommendation to the City Commission.

The preliminary study committee report has now been completed by the HDSC and has been forwarded to the State Historic Preservation Office for comment. The City Code also requires the report be presented to the Planning Board for comment. The report is attached to this memo.

Accordingly, Planning staff requests that the Planning Board take this opportunity to provide their comments on the requested elimination of the historic designation of the Contributing Historic Resource at 361 E. Maple.

361 E. Maple
Birmingham Historic Resource
Report from the Historic District Study
Committee
November 28th, 2017



Committee Members

Gigi Debbrecht, Chair
Patricia Lang
Michael Xenos
Paul Beshouri
Jonathan Dewindt

Staff Liaison

Matthew Baka, Senior Planner



Charge of the Committee

In accordance with Chapter 127 of the Birmingham City Code, the Historic District Study Committee (HDSC) has been directed by the City Commission to consider modifying an existing Historic District by evaluating the Hawthorne Building, which is a contributing resource within the Central Business District Historic District, located at 361 E. Maple for consideration for removal from the list of historically designated properties in the City of Birmingham.

The request for removal of the designation came from the owner of the property in question. They are requesting that the City Commission remove the designation of the property in order to allow the demolition of the building and construction of a new five story building.

Description of the District

The legal description of the property at 361 E. Maple is T2N, R10E, SEC 25 ASSESSOR'S PLAT NO 21 W PART OF LOT 11 MEAS 20 FT ON S LOT LINE & 20.62 FT ON N LOT LINE. The Central Business District boundaries are indicated on the map below.

Count of Historic and Non-Historic Resources in the CBD Historic District

The Central Business District Historic District has 29 historic (contributing) and 44 non-historic resources.



*depiction of the Downtown Historic District and Shain Park Historic District

De-designation evaluation criteria

The HDSC is required to follow the procedures as set forth in Section 127-4, of the City of Birmingham Historic Districts Ordinance, as amended. The procedure requires the issuance of a preliminary report, holding a public hearing, and issuing a final report with the intent of showing one or more of the following in order to justify the de-listing of a designated property:

1. The historic district has lost those physical characteristics that enabled the establishment of the district.
2. The historic district was not significant in the way previously defined.
3. The historic district was established pursuant to defective procedures.

1. The historic district has lost those physical characteristics that enabled the establishment of the district.

The property at 361 E. Maple remains virtually unchanged from the condition it was in when designated in 1983. This is demonstrated by historic and contemporary photographs. It is decorated with a sign band that is defined by patterned brick and limestone. The parapet has a small pediment and limestone urns at the party walls. It is believed that the pressed metal store front is original.

In addition, since the creation of the CBD Historic District, all exterior changes to the contributing and non-contributing resources have been reviewed by the Historic District Commission. Any proposed change to a resource in the district has been measured against the Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings (attached). The Standards for Rehabilitation address the most prevalent treatment. "Rehabilitation" is defined as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property

which are significant to its historic, architectural, and cultural values." Accordingly, the historic character of the district at large has not been altered in such a way that would eliminate the physical characteristics that enable the establishment of the district.

2. The historic district was not significant in the way previously defined.

Several factors were used in determining whether a building has sufficient historic value to merit classification as a "landmark." First, the history of the building, its past occupants and its significance to the development of Birmingham were evaluated. The age, condition and potential for restoration were also considered. Finally, the architecture and uniqueness of each structure was evaluated. At the time, the Historic District Study Committee determined that 29 structures in central Birmingham were worthy of special treatment. Although not every structure met all of the above criteria, each structure given "landmark" designation was determined by the Commission to have one or more of the elements that made it worthy of designation. The property at 361 E. Maple was selected as a contributing resource as it was a good example of a small store design from the 1920's with patterned brick and limestone. The parapet has a slight pediment and limestone urns at the party walls. Although the structure is simple and conservative, it is in excellent condition. The fact that it also maintained its original condition made it a valuable visual anchor in the preservation of the north side of E. Maple. The architectural significance cited in 1983 is as evident today as it was at the time.

3. The historic district was established pursuant to defective procedures.

The procedures followed in the designation of the Central Business District Historic District were established in chapter 127 of the City Code pursuant to Public Act 169 of 1970. In 1980 the City Commission appointed the Historic District Commission to serve as a Historic District Study Committee to research and make a recommendation regarding the historic value of buildings in central Birmingham as required by chapter 127 of the City Code. As documented by the committee members at the time, the research was conducted by interviewing Birmingham "oldtimers" who had first-hand knowledge of the history of many buildings, reviewing materials at the Baldwin Library including reading issues of the Birmingham Eccentric, researching City assessing and building records, examining recorded data from Oakland County and reviewing published material from various other resources. The selection of 361 E. Maple for historical designation in 1983 as a part of the Central Business District Historic District was done after careful review and evaluation in compliance with the required procedures.

On October 22, 1983, the Birmingham City Commission adopted Ordinance No. 1276 amending the City Code adding Chapter 43 of the Birmingham City Code to establish the Central Business District Historic District and the Shain Park Historic District.

Recommendation

In 1970, the Michigan State Legislature declared historic preservation to be a public purpose. By enacting Public Act 169, the legislature officially recognized that historic preservation does all of the following:

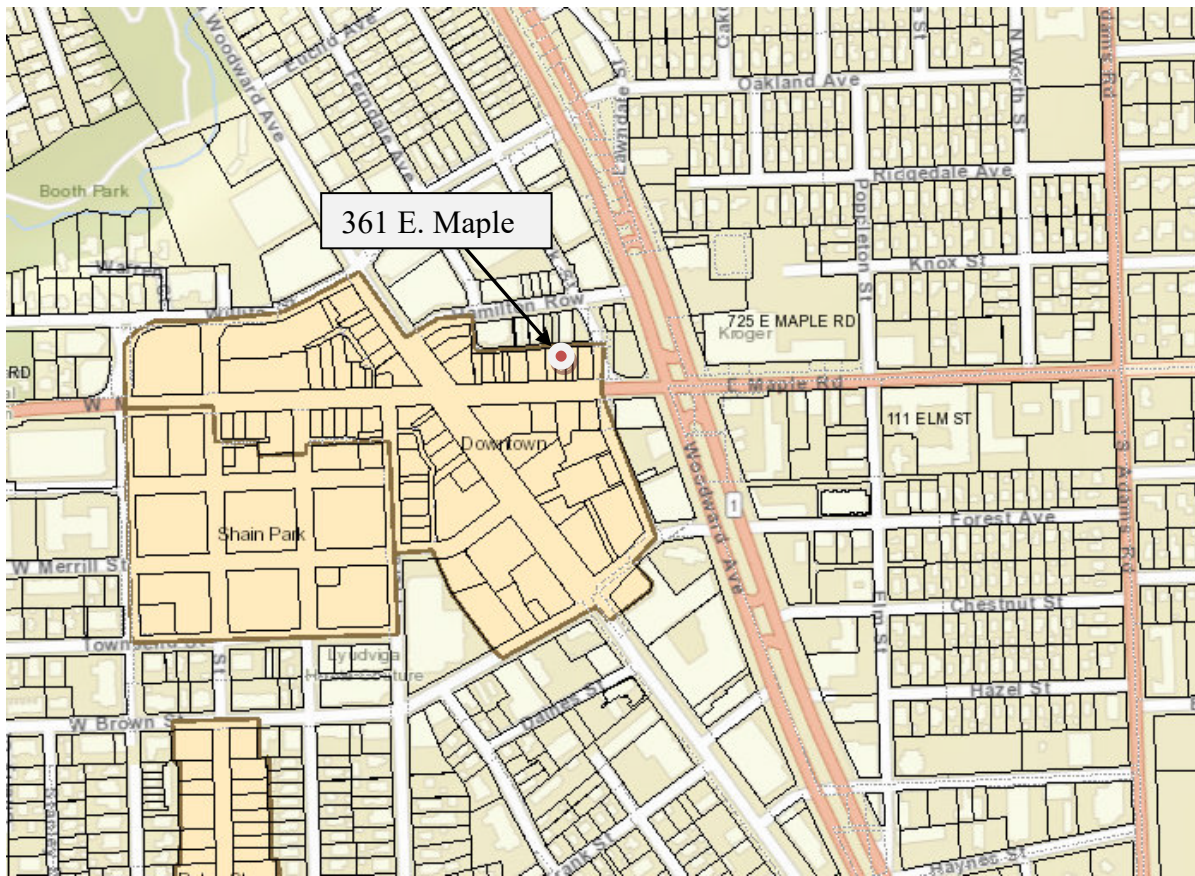
- A. Safeguards the heritage of the community by preserving a district which reflects elements of its cultural, social, economic, political or architectural history;
- B. Stabilizes and improves property values in such districts;
- C. Fosters civic beauty;
- D. Strengthens local economy; and
- E. Promotes the use of historic districts for the education, pleasure and welfare of the citizens of the community and of the State.

The Hawthorne building is a valuable example of a 1920's era commercial storefront that has seen little to no alteration within its lifetime. It provides historic context of the traditional downtown that has personified Birmingham over its history. De-designating this building, as indicated by the developer's plans, would put it at risk for demolition. This has the potential to encourage additional property owners to pursue de-designation and deterioration of the historic character that has defined Birmingham throughout the years. These historic structures have distinguished Birmingham from its surrounding neighbors as a traditional downtown which has undoubtedly contributed to its sustained success over the years. In addition, the methods and procedures followed during the designation process in the 1980's strictly adhered to the guidelines established at the local, state and federal levels. It was the intention of the City Commission of that time to take these steps to ensure that Birmingham would retain its character and history for future generations to appreciate and enjoy. The de-designation of this structure has the potential to set a precedent that would have long lasting effects on the City that cannot be reversed.

- De-listing the building puts it at risk i.e. changes to historic features, demolition, etc;
- The building was originally designated following all Federal, State and Local guidelines;
- There have been no changes to the building since its designation in 1984 and maintains its character as a pristine example of 1920's commercial architecture in downtown Birmingham;
- The building is located on a street with other historic properties and is within the Historic Central Business District and contributes to the history and character of the City;
- The Birmingham community needs to maintain its historic structures for future generations;
- De-listing an asset based on the potential for demolition and redevelopment, does not serve the greater good of the community.

The Historic District Study Committee recommends maintaining the historic designation of this property as it **does not** meet any of the following criteria for de-designation listed in Chapter 127 of the City Code:

1. The historic district has **not** lost those physical characteristics that enabled the establishment of the district.
2. The historic district **is** significant in the way previously defined.
3. The historic district was **not** established pursuant to defective procedures.







HAWTHORNE BUILDING

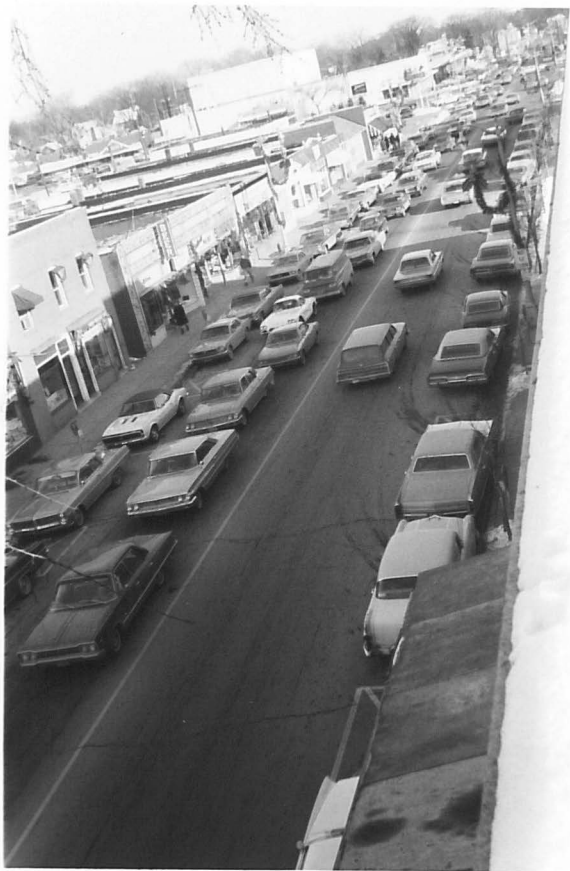
361 East Maple



This neat, and tidy, one story, one bay, reddish face brick store, with attractive limestone trim was built in 1927. In 1929, the shed at the rear of the property was removed. It was the home of the Bell Telephone Company offices for several years during the 1940's. The building has been well kept and is an example of good, small store design from the 1920's. The fascia has a typical signage band defined with patterned brick and limestone. (The existing signage does not conform to the signage band). The parapet has a slight pediment and limestone urns at the party walls. Part or all of the pressed metal storefront may be original. Although the structure is simple and conservative, its good condition and original condition make it a candidate for a valuable visual anchor in the preservation of the north side of East Maple.

6-1-83

JAN • 67







October 18, 1984

City Commission
Birmingham, Michigan

From: Max B. Horton, Chairman Historic District Study Committee
(Historic District Commission)

Subject: Central Business Historic District and Shain Park Historic District

Dear Commissioners:

Approximately three years ago, the City Commission appointed the Historic District Commission to serve as an Historic District Study Committee to research and make a recommendation regarding the historic value of buildings in central Birmingham. The Study Committee spent many hours examining each building in the study area. The research was conducted by interviewing Birmingham "oldtimers" who have first-hand knowledge of the history of many buildings, reviewing material at the Baldwin Library including reading issues of the Birmingham Eccentric from the late 1800's and early 1900's, researching City assessing and building records, examining recorded data from Oakland County and reviewing published material from various other sources.

Several factors were used in determining whether a building has sufficient historic value to merit classification as a "landmark." First, the history of the building, its past occupants and its significance to the development of Birmingham were evaluated. The age, condition and potential for restoration were also considered. Finally, the architecture and uniqueness of each structure was evaluated. As you know, the Historic District Commission has decided that 29 structures in central Birmingham are worthy of special treatment. Although not every structure meets all of the above criteria, each structure suggested for "landmark" designation has been determined by the Commission to have one or more of the elements that make it worthy of designation.

In 1970, the Michigan State Legislature declared historic preservation to be a public purpose. By enacting Public Act 169, the legislature officially recognized that historic preservation does all of the following:

- A. Safeguards the heritage of the community by preserving a district which reflects elements of its cultural, social, economic, political or architectural history;

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- B. Stabilizes and improves property values in such districts;
- C. Fosters civic beauty;
- D. Strengthens local economy; and
- E. Promotes the use of historic districts for the education, pleasure and welfare of the citizens of the community and of the State.

As a Commission, it is our hope that the Birmingham City Commission will recognize, as the legislature did back in 1970, that historic preservation can accomplish all of the above goals. Several other communities throughout the state have designated historic districts in their downtowns. They include small villages such as Linden, Chelsea and Milford; medium sized cities such as Ann Arbor, Traverse City and Ypsilanti, and large cities such as Jackson, Saginaw and Grand Rapids. Some historic districts have almost every single building designated as a "landmark" structure while other historic districts, such as Birmingham, have undergone many changes resulting in the "landmark" structures being in the minority. This is not unusual or undesirable. To the contrary, it is towns such as Birmingham that can most benefit from historic preservation legislation. The legislation provides protection of the character and design qualities that make Birmingham a viable downtown. The Historic District Commission is certain that the City Commission believes that Birmingham has commercial structures worth protecting. We all also know that no ordinance exists to prevent demolition of those structures in central Birmingham which have value to the whole community. It seems, therefore, that the question is not "should we?" but "how should we?"

Currently, we have 47 historic district properties in the City of Birmingham. They are primarily non-contiguous, residential structures on individual lots. Two commercial structures, the Peabody Mansion and the Grand Trunk Western Railroad Depot are exceptions.

Although individual, non-contiguous districts have worked well for the residential properties, we do not believe this is the proper approach for the commercial area. Commercial structures are erected side-by-side and bear a more direct relationship to one another than single family residential structures. To select the individual "landmark" buildings for designation without regard for the other structures in the downtown is contrary to the purposes in creating an historic district. Careful attention must be paid to the

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structures which about "landmark" properties and other buildings in the downtown which have an affect on the "landmarks." The suggestion that only "landmark" properties compose the historic district would be similar to saying that the Planning Board should have Design Review over just a portion of a particular block. This selectiveism in the review process will not work. Therefore, our recommendation is for contiguous historic districts with well defined standards for both "landmark" and "district resource" properties.

The Historic District Commission has already begun working on a set of standards which will establish a clear cut understanding of the goals of the City with respect to design. It is the intent of the Historic District Commission to set standards that are flexible enough to provide for individual creativity yet complete enough to ensure that the historic fabric of Birmingham is not destroyed.

Under the current regulations, any property owner in central Birmingham (public ownership excepted) must obtain Design Approval or Exterior Approval and possibly Site Plan Approval before any change to the exterior of a building can be made. Since central Birmingham is currently subject to a Design Review process, the question that we all face is: "What should the thrust of this Design Review be?" Architecture, no matter what the age or style, should have as a goal to reflect its time and its place. The question of how to achieve that goal, especially when adding a new wing to an old building or filling a gap in an urban streetscape, is a vexing one to architects and preservationists alike. There is no formula answer; each building or addition should be considered individually and in the context of its surroundings. Design relationships in architecture appear to have become a problem since the coming of age of the "modern movement" in the last 35 years or so. When "modern" architecture arrived, thumbing its nose at the past and the surroundings, its problems began. The public has become disaffected with modern design. Existing scale is not respected and there is little ornamentation; the result is monotony. With this sharp change in designs so profoundly affecting the existing streetscape, preservationists and others reacted and the concept of historic districts was born.

While there may not be a clear answer to what constitutes a good relationship between old and new buildings, that should not stop us from trying to find a solution. It is only in a quality built

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environment that we can achieve a quality life. The 29 "landmark" structures represent what is left of quality development from a previous era. The City Commission is now confronted with a decision; to find that these buildings are worthy of preservation for present and future generations to enjoy or determine that these buildings do not have any public value and may be destroyed, altered or redesigned at the will of the owners. It is our sincerest hope that you will go forward in enacting the proposed ordinance to create two new historic districts which will protect the valuable historic resources in central Birmingham.

Very truly yours,

Max B. Horton

Max B. Horton, Chairman
William R. McGregor, Vice-Chairman
Carolyn Johnson
Kay Johnson
Michael Tomasik
Goeffrey Upward
Willem Tazelaar

MBH/jb
10/18/84

CITY OF BIRMINGHAM
MICHIGAN

CITY COMMISSION PROCEEDINGS

OCTOBER 22, 1984

Minutes of a Regular meeting of the Birmingham City Commission held Monday, October 22, 1984, at 8:05 P.M., in the Commission Room in the Municipal Building.

Present: Mayor Appleford, Commissioners Hockman, Jensen, Jeske, Kain, Miller and Sights

Absent: None

Administration:

City Manager - Robert S. Kenning
City Clerk - Phyllis Armour
City Attorney - Jon Kingsepp
City Planner - Bonnie Cook
City Engineer - William Killeen
Director of Public Services - Darrel Middlewood
Chief of Fire - Gary Whitener

8:05

10-1115-84: INTRODUCTION - BASCC COORDINATOR -
LOIS RYAN

Richard Sneed, President of the Birmingham Area Senior Coordinating Council (BASCC), introduced the new BASCC coordinator, Lois Ryan.

Ms. Ryan thanked the City for its support of the BASCC organization.

8:06

10-1116-84: APPROVAL OF MINUTES - CITY COMMISSION
MEETING - OCTOBER 15, 1984 - AS SUBMITTED

MOTION: Motion by Sights, supported by Kain:
To approve the Minutes of the City Commission meeting held October 15, 1984, as submitted.

VOTE: Yeas, 7 Nays, None

8:08

10-1117-84: PUBLIC HEARING RE: CREATION OF CENTRAL
BUSINESS HISTORIC DISTRICT - SHAIN PARK
HISTORIC DISTRICT - ADOPT ORDINANCE NO. 1276

Mayor Appleford announced that this was the date and time, as advertised, for a public hearing to consider the adoption of a new Chapter 43, which new chapter will create a Central Business Historic District and a Shain Park Historic District.

Max Horton, Chairman, reviewed the report of the Historic District Commission recommending creation of the historic districts.

Larry Sherman, Chairman of the Planning Board, reviewed the Board's report recommending against the creation of the historic districts.

The City Attorney reviewed his report regarding authority for design controls.

Commissioner Hockman commented that he is employed by a Birmingham developer and questions have been raised regarding the impropriety of his conduct as a commissioner and an individual pertaining to matters before this Commission regarding property in the community; that he believes there will be no impropriety on his part in discussing and making a judgment decision which he feels is in the best interest of the City on the matters under discussion in this hearing. He added that an impropriety does not exist and that he would like to introduce a Motion so that discussion can begin; that he does not want to give the appearance of encumbering the process or tainting the discussion since properties owned by his employer will be part of that discussion, therefore, questioning his propriety in the discussion.

MOTION: Motion by Hockman, supported by Jeske:
To adopt Ordinance No. 1276 to create a Central Business Historic District and Shain Park Historic District, not including the Wabeek Building, 256 West Maple; Detroit Edison Company Building, 220 East Merrill, and the Brown Street Centre Building.

Commissioner Jeske stated that she supported the Motion since her son is also employed by the same developer and that she also did not want to give the appearance of encumbering the hearing or tainting the discussion.

MOTION: Motion by Kain, supported by Sights:
To amend the previous Motion by including all properties recommended by the Historic District Commission for discussion purposes only.

Discussion was held on whether or not discussion by Commissioners Hockman and Jeske on the properties excluded in Commissioner Hockman's Motion would constitute a conflict of interest.

The City Attorney stated that there is no conflict of interest since there is no pecuniary interest.

VOTE ON AMENDMENT: Yeas, 3 Nays, 2 (Appleford, Jensen)
Abstain, Hockman, Jeske

Commissioners Hockman and Jeske abstained from voting due to a conflict of interest.

AMENDING MOTION FAILED

Discussion was held on the historical value of the buildings proposed for the district.

The following persons spoke in opposition to the creation of the Central Business Historic District: William Wetsman, owner of the Parks Building, 100-116 North Woodward; Bernard Levinson, owner of the Quarton Building, 142 West Maple; Edward Pugh, an attorney acting on behalf of a trust which owns the National Bank Building, 152-176 North Woodward; George Nahas, owner of the O'Neal Building, 106-110 South Woodward; Robert Gwynn, owner of the Johnston-Shaw Building, 112-114 South Woodward; Gay Yankee, owner of the St. Calir Edison Building, 135-159 Pierce; Paul Kurth, owner of Huston Hardware; Lloyd Smith, owner of the Blakeslee Building, 138 West Maple, and Irving Kay, owner of one of the Huston Buildings.

The following persons spoke in support of the creation of the Central Business Historic District: Karen Robinson, 679 Harmon; Christine Barnes, 216 Hawthorne, and Linda Teegarden, President of the Birmingham Historical Society.

Commissioner Kain asked if owners of designated buildings were contacted to assess their feelings regarding the designations.

The City Planner explained that the initial contact was through a report given to the Chamber of Commerce, and that notices of the Historic District Commission and City Commission hearings were sent to owners of buildings and to property owners within 300 feet of the properties.

Commissioner Miller stated that there has been an understanding in the community that this process was taking place, and that property owners should have asked questions when they learned of the proposed historic district.

VOTE: Yeas, 5 Nays, 2 (Kain, Sights)

11:10 P.M. - Meeting recessed

11:20 P.M. - Meeting reconvened

MOTION: Motion by Appleford, supported by Sights:
To add the Wabeek Building, the Detroit Edison Company and the Brown Street Centre Building properties to Ordinance No. 1276, said ordinance to read as follows:

CITY OF BIRMINGHAM

ORDINANCE NO. 1276

AN ORDINANCE TO AMEND TITLE V, CHAPTER 43, OF THE CODE OF THE CITY OF BIRMINGHAM.

THE CITY OF BIRMINGHAM ORDAINS:

Section 1. Title V, Chapter 43, Section 5.701, is hereby amended to read as follows:

5.701 Purposes and Definitions.

(1) Purposes. The purposes of this Chapter are:

- (a) to provide for the establishment of historic districts within the City of Birmingham,
- (b) to safeguard the heritage of the City of Birmingham by preserving districts in the City which reflect elements of its cultural, social, economic, political and architectural history,
- (c) to stabilize or improve property values in and adjacent to such districts,
- (d) to promote civic beautification of historic districts.
- (e) to promote the use of local history for the education, pleasure and welfare of the citizens of the City of Birmingham, State of Michigan, and the Nation.

(2) Definitions.

As used in this Chapter, the phrases set forth below shall have the meanings indicated:

- (a) "Historic District" - An area of land or group of areas of land not necessarily having contiguous boundaries designated as a "historic district" by means of an ordinance adopted by the City Commission and which contains one or more landmarks and which may have within its boundaries district resources that, while not of such historic and/or architectural significance to be designated as landmarks, nevertheless contribute to the overall visual characteristics of the landmark or landmarks located within the historic district.

- (b) "Landmark" - A site, structure or natural feature designated as a "landmark" by means of an ordinance adopted by the City Commission that is worthy of historic preservation because of its historic and/or architectural significance to the City of Birmingham.
- (c) "District Resource" - Any site, structure or natural feature located within an historic district that is not designated as a "landmark".
- (d) "Structure" - Anything constructed or erected which requires location on or in the ground or attachment to something having location on or in the ground including but not limited to buildings, walls, fences, signs and lighting.
- (e) "Historic Preservation" - The protection, rehabilitation, restoration or reconstruction of landmarks.

Section 2. Title V, Chapter 43, Section 5.702, is hereby amended to read as follows:

5.702 Historic Districts

- (1) Mill Pond District - The Mill Pond District shall consist of the following described lands and landmarks in the City of Birmingham.

- (a) Historical Park Landmark

"Willit's Northern", Lot 57

- (b) Baldwin Park Landmark

Part of N.W. 1/4 of Section 36, described as follows:
Bounded on north by Maple Avenue; on east by Southfield Avenue; on the south and west by "Bird's Addition" and "A. P. No. 12."

A parcel of land in the N.W. 1/4 Section 36, described as: Beginning at a point on the east line of Baldwin Avenue located N 87° 51' 25" E, 279.10 ft. along the north line of said Section 36, and S 3° 31' 35" W, 179.00 ft. along the east line of Baldwin Avenue from the northwest corner of said Section 36; thence southeasterly and upstream 50 ft. more or less along the centerline of a branch of the River Rouge to a point which is located south 3° 31' 35" W, 28.00 ft. along the east line of Baldwin Avenue, and S 61° 54' 35" E. 28.00 ft. from the point of beginning; thence S 61°

54' 35" E, 72.00 ft.; thence N 82° 44' 00" E, 120.00 ft.; thence N 3° 54' 15" E, 127.00 ft.; thence N 87° 50' 50" E, 5.33 ft.; thence N 01° 20' 40" E, 120 ft. more or less to a point on said north line of Section 35; thence N 87° 51' 25" E, 651.20 ft. along said north line of Section 36 to a point; thence S 2° 15' 41" E, 45.73 ft. to a point on the north line of West Maple Avenue; thence westerly along said northerly line of West Maple to the easterly line of Baldwin Avenue. Thence northerly along the easterly line of Baldwin Avenue to the point of beginning.

- (c) John W. Hunter House Landmark - 500 West Maple
Allen House Landmark - 556 West Maple

Beginning at a point on the south line of Section 25 which is bearing N 87° 51' 25" E, along said south line a distance of 1116.90 ft. from the southwest corner of Section 25; from said point of beginning thence N 1° 54' 25" W, 267.22 ft.; thence N 87° 51' 25" E, 301.44 ft. plus; thence S 1° 35' 30" E, 234.23 ft. plus or minus to the northerly line of Maple Avenue; thence S 87° 44' 19" W, 20.35 ft.; thence on a curve to the left with a radius of 442.25 ft., a central angle of 31° 42' 37", a long chord of 241.70 ft., which bears S 71° 53' 01" W, and an arc of 244.76 ft. to a point; thence S 56° 01' 42" W, 26.96 ft.; thence N 2° 15' 41" W, 45.73 ft.; thence S 87° 51' 25" W, 24.90 ft. plus or minus to the point of beginning.

- (d) Mill Pond Landmark

Land in N.W. 1/4 of Section 36, being covered by the following description except the N 160 ft. thereof as measured on E and W lines bounded on the E by Baldwin Avenue; on the S by Maple Avenue on the W by Replat of Lots 175 to 178 of Q. L. E.; on the N by Whitehead and Mitchell Add.

Lots 1, 2, 3, 4 and Overbrook Drive of Replat of Lots 175 to 178 inclusive and part of lots 179 to 186 inclusive of Quarton Lake Estates Replat of East Park; except lands now platted in "Millrace Park" subdivision. "Waterfall Lane" subdivision, and that portion of Lot 4 lying westerly of the easterly line, as extended of said "Waterfall Lane" subdivision, and lying southerly of Lot 5 of said "Waterfall Lane" subdivision; also excepting lands being used for Maple Avenue right-of-way.

"Quarton Lake Estates" Replat of East Part of "Q.L.E. subdivision". Outlot A, except that part in Millrace Park Subdivision; also "Quarton Lakeside Subdivision" Lots 1 to 6 incl., also lots 4, 5 and 6 of "Millrace Park."

(e) Village Water Works Landmark

"Assessor's Plat No. 12", Lot 7. Also "Birmingham Park Allotment Sub., "Lots 109 and 111.

(f) Chatfield-Hiram Campbell House Landmark - 460 W. Maple

"Willets Addition", all of Lot 11, also the S 20 ft. of Lot 14, except part taken for street right-of-way.

(g) Edward Baldwin House Landmark - 484 W. Maple

Lot 12 and S 16.5 ft. Lot 13 "Willets Addition" and part SW 1/4 Section 25 described as beginning at SW corner Lot 12 "Willets Addition" W 20 ft., N 133 ft., E 20 ft., S 133 ft., on W line Lot 12 and 13 to P.O.B.

(h) Edgar Lamb House Landmark - 487 Willits

N 100 ft. Lot 13, "Willets Addition" and pt. SW 1/4 Section 25 described as beginning at NW corner Lot 13 "Willets Addition", W 20 ft. on straight line, S 100 ft., E 20 ft., N 100 ft. on W line Lot 13 to P.O.B.

(i) Stickney House Landmark - 412 Willits

"Willits Northern", Lot 48

(j) Ebenezer Raynale House Landmark - 300 Warren Court

"Warrens Replat of Lot 45 and part of Lots 46 and 54 Willits Northern Add., " Lot 5.

(k) Benjamin Daniels House Landmark - 372 Harmon

"Assessor's Plat No. 17, a Replat of part of Lot 61 of Willits Northern", Lot 10.

(l) Greenwood Cemetery Landmark

All that parcel of land in the N.W. 1/4 Section 25, described as follows: Beginning at W 1/4 corner Section 25; thence S 8° 14' E, 694.57 ft.; thence N 0° 31' E 498.45 ft.; thence N 83° 15' 30" W, 203.28 ft.; thence N 78° 34' W 487.74 ft.; thence S 1° 46' 30" W, 580.16 ft. to P.O.B.

- (2) Shain Park District - The Shain Park District shall consist of all of the land within the boundaries of said Shain Park District as hereby established on the Historic District Maps which are attached hereto. The Shain Park District shall consist of the following described landmarks in the City of Birmingham.

Municipal Building Landmark - 151 Martin Street

Shain Park Landmark

Baldwin Library Landmark - 300 Merrill Street

Birmingham Community House Landmark - 380 S. Bates

United States Post Office Landmark - 322 Martin

- (3) Merrill, Townsend, Brown District - The Merrill, Townsend, Brown District shall consist of the following described lands and landmarks in the City of Birmingham.

Abigail Carter House Landmark - 415 Merrill Street

"Castle Addition", Lot No.18, except that part taken for road right-of-way.

Irving House Landmark - 439 Merrill

"Castle Addition:", Lot 19

Daisy Benedict House Landmark - 535 Merrill

"Castle Addition", Lots 24 and 25

Hewitt House Landmark - 211 Townsend

"Merrill's Plat", all of Lot 115 and the easterly 35 ft. of Lot 116.

Langley House Landmark - 404 S. Bates (At Townsend)

"Merrill's Plat", Lots 121 and 122

Townsend House Landmark - 339 Townsend

"Merrill's Plat", Lot 123

Toms-Dickinson House Landmark - 464 Townsend

"Castle Addition", Lot 36

Houston-Logan House Landmark - 504-506 Townsend

"Castle Addition", Lot 34

Stewart House Landmark - 505 Townsend

"Castle Addition", Lot 43

Fall House Landmark - 523 Townsend

"Castle Addition", Lot 44 also E 1/2 vacated alley

Schuyler House Landmark - 544 Townsend

"Castle Addition", Lot 32 and W 1/2 vacated alley,
also E 10 ft. of Lot 31

Cinderella Patch House Landmark - 347 W. Brown

"Assessor's Replat Torrey's, Hood's and Smith Addn.",
W 60 ft. Lot 19 and 20 as measured on side lot lines.

William Bell House Landmark - 384 W. Brown

"Torrey's Addition", Lots 2, 3 and 4 exc. part taken for
street widening.

- (4) Bates Street District - The Bates Street District shall consist of the following described lands and landmarks in the City of Birmingham.

United Presbyterian Parsonage Landmark - 539 S. Bates

"Assessor's Replat Torrey's, Hood's and Smith Addn.",
Lot 49.

Koontz House Landmark - 544 S. Bates

"Assessor's Replat Torrey's, Hood's and Smith Addn."
E 120 ft. of the N 65 ft. of Lot 21.

Peck House Landmark - 571 S. Bates

"Assessor's Replat Torrey's, Hood's and Smith Addn."
N 1/2 of W 1/2 of Lot 52

John Hall House Landmark - 584-588 S. Bates

"Assessor's Replat Torrey's, Hood's and Smith Addn."
E 120 ft. of Lot 23

Major Jones House Landmark - 607 S. Bates

Part of Lot 53 of "Assessor's Replat of part of Torrey's Addition, Hood's Addition and Smith's Addition", commencing at the Southwest corner of said Lot 53, for a point of beginning; thence N 01° 09' 00" E, 86.68 ft. (previously recorded as 86.72 ft.), along the Westerly line of said Lot 53, to the Northwest corner of said Lot 53; thence S 88° 52' 03" E, 121.76 ft., along the Northerly line of said Lot 53; thence S 00° 59' 29" W, 86.70 ft. to the Southerly line of said Lot 53; thence N 88° 51' 30" W, 122.00 ft., along the Southerly line of said 53, to the point of beginning.

John W. Perry House Landmark - 651 S. Bates

"Assessor's Replat Torrey's, Hood's and Smith Add.", Lot 54.

McBride House Landmark - 668 S. Bates

"McBride Subdivision of the N 261.3 ft. of Lot 29 Wm. Torrey Addn.", Lot 8

- (5) Other Non-Contiguous Districts - These districts shall consist of the following described lands and landmarks in the City of Birmingham.

Hood House Landmark - 555 Stanley

"Assessor's Replat Torrey's, Hood's and Smith Add.", Lot 9

Grooms House Landmark - 587 Stanley

"Assessor's Replat Torrey's, Hood's and Smith Add.", Lot 10

Trollop House Landmark - 536 Southfield

"Stanley and Clizbe Sub." The N'ly 13 ft. of Lot 25, said N'ly 13 ft. being 13 ft. as measured on E'ly and W'ly lot lines, also all of Lot 25.

Randall-Latham House Landmark - 1128 Southfield Road

"McCormick Subdivision", Lot 4

Daniels House Landmark - 1128 Pierce

"Place De La Miche'le Subdivision", Lot 1

Eli Wooster House Landmark - 1876 Northlawn

"Assessor's Plat No. 9", S 1/2 of the W 20 ft. of Lot 26,
also S 1/2 of Lot 27

Schlaak House Landmark - 839 Knox

"H. A. Poppleton's Addition", Lot 5, Block 4

King-Argus House Landmark - 743 West Frank

"Argus Addition", Lot 19 and the easterly 25 feet of
Lot 18.

Stewart-Watkins House Landmark - 146 Puritan

"Quarton Lake Estates Sub." Lot 277 exc. S 40 ft. thereof,
all of Lot 278 also pt. of Lot 279 described as beginning
at SE corner, thence N'ly along E line 8.0 ft.; thence
W'ly parallel to S line of said Lot 52., thence SW'ly
8.50 ft. to a pt. on S line of said lot 55 ft. W of SE
corner said lot, thence E'ly along S line 55.0 ft. to
P.O.B.

Quarton Homestead Landmark - 1155 Quarton

A parcel of land in Section 26 described as follows:
beginning at pt. at N line Section 26, said pt. being
88° 43' W, 405.87 ft. from NE corner of said Section
26. thence S 1° 30' 45" W, 229.67 ft., thence S 89°
46' 30" W, 511.36 ft., thence N 1° 51' 30" E, 242.90 ft.
to N line Section 26, thence S 88° 43' E, along N line
Section 26, 509.67 ft. to P.O.B.

Birmingham Grand Trunk Western Railroad Depot Landmark - 245
S. Eton

"A parcel of land located in the N 1/2 Section 31,
Township of Troy (now City of Birmingham) more
particularly described as: Beginning at the point on
the east line of Eton Road (as relocated), said point
being N 88° 16' 37" W 117.95 ft. along the E-W Section
line in Maple Road (66 ft. wide) and S 34° 11' 27" E,
87.17 ft. along the easterly right-of-way line of Eton
Road (50 ft. wide) extended from the N 1/4 corner of
said Section 31: thence continuing S 34° 11' 27" E,
112.57 ft. along said right-of-way line: thence S 1°
59' 10" West 236.98 ft. along the east line of Eton
Road; thence S 88° 20' 47" E, 245.76 ft.; thence
N 33° 44' 54" W., 390.56 ft. parallel and 0.5 ft.
westerly of an existing concrete retaining wall,

thence S 56° 34' 45" W, 16.90 ft., thence N 33° 36' 11" W., 57.77 ft. to the south line of Maple Road as widened for R.R. bridge (43 ft. = 1/2 R.O.W.); thence N 88° 16' 37" W., 22.56 ft. along said right-of-way; thence S 29° 04' W., 31.10 ft. along the easterly right-of-way of Eton Road as relocated to the point of beginning and containing 1.056 AC. or 45,977 sq.ft. of land, together with the Grand Trunk Western Railroad's right-of-way located immediately adjacent to and north-east of said parcel.

- (6) Central Business District - The Central Business District shall consist of all of the lands within the boundaries of said Central Business District as hereby established on the Historic District maps which are attached hereto.

The Central Business District shall consist of landmarks in the City of Birmingham.

Wabeek Building Landmark - 256 W. Maple

Leonard Building Landmark - 166 W. Maple

Quarton Building Landmark - 142 W. Maple

Blakeslee Building Landmark - 138 W. Maple

Billy McBride Building Landmark - 122 W. Maple

Ford Building Landmark - 101 N. Woodward and
120 W. Maple

Erity and Nixon Building Landmark - 163-167 N. Woodward

Bell Building Landmark - 191 N. Woodward

Schlaack Building and Huston Building 1916 Landmark -
205 - 219 N. Woodward

Huston Building 1923 Landmark - 237-243 N. Woodward

National Bank Building Landmark - 152-176 N. Woodward

Wooster Building Landmark - 132-136 N. Woodward

Parks Building Landmark - 100-116 N. Woodward

Madison Building Landmark - 297-323 E. Maple

Hawthorne Building Landmark - 361 E. Maple

Shain Townhouses Landmark - 378, 386, 390 E. Maple &
112, 120, 124 Brownell

Briggs Building Landmark - 111 S. Woodward

Birmingham Theater Building Landmark - 211 S. Woodward

Ford-Peabody Mansion Landmark - 325 S. Woodward

Detroit Edison Building Landmark - 220 E. Merrill

D.U.R. Waiting Room Landmark - 138 S. Woodward

McBride Building Landmark - 124 - 128 S. Woodward

Johnston-Shaw Building Landmark - 112-114 S. Woodward

O'Neal Building Landmark - 106-110 S. Woodward

St. Clair Edison Building Landmark - 135 - 159 Pierce

Telephone Exchange Building Landmark - 148 Pierce

Bigelow-Shain Building Landmark - 115 W. Maple

Field Building Landmark - 135-141 W. Maple

Section 3. Title V, Chapter 43, Section 5.703 is hereby amended to read as follows:

5.703 Boundaries

- (1) The boundaries of the Shain Park Historic District and the Central Business Historic District are hereby established as shown on the maps which are attached hereto. Said maps with all notations, references, and other information shown thereon shall hereby be incorporated herein and shall be a part of this Chapter. Unless otherwise shown, the boundaries of these Districts shall be lot lines, and centerlines of streets or alleys or such lines extended. The boundaries of all other Historic Districts shall be as legally described in Section 5.702.
- (2) The boundaries of the Historic District may be changed from time to time so as to add lands to the District or delete lands therefrom, such changes to be made by means of an Ordinance adopted by the City Commission after giving consideration to a report and recommendation of the Planning and Historic District Commission.

Section 4. Title V, Chapter 43, Section 5.704 is hereby amended to read as follows:

5.704 Landmarks

The City Commission shall from time to time designate by Ordinance landmarks which are within an Historic District and are determined to be landmarks within the definition thereof as set forth in this Chapter, such designation to be made by the City Commission after giving consideration to a report and recommendation of the Planning and Historic District Commission.

Section 5. Title V, Chapter 43, Section 5.705 is hereby amended to read as follows:

5.705 Public Hearings and Notice

- (1) No Ordinance shall be adopted establishing or altering the boundaries of an Historic District until the City Commission has held a public hearing at which the proposed Ordinance is considered, notice of which hearing shall be given to all persons owning land within the proposed District or proposed to be added to or deleted from the District in the manner hereinafter provided as the owners of such land appear upon the tax assessment rolls of the City.
- (2) No Ordinance shall be adopted designating a landmark until the City Commission has held a public hearing at which the proposed Ordinance is considered, notice of which hearing shall be given to the owner(s) of the landmark as the owner(s) of such landmark appear upon the tax assessment rolls of the City.
- (3) The notices required by Subsections (1) and (2) above shall be given by publication at least once in a newspaper having general circulation within the City at least 15 days prior to the date of the hearing and by regular mail addressed to each owner as such address appears on the City tax assessment rolls at least seven (7) days prior to the date of the hearing.

Section 6. Title V, Chapter 43, Section 5.706 is hereby amended to read as follows:

Historic District Review

- (1) Before any construction, alteration, repair, moving or demolition affecting the exterior appearance of a landmark or district resource is made within an Historic District, other than those changes authorized in Section 5.707 below, the person proposing to construct or make such changes shall secure a Certificate of Approval from the Planning and Historic District Commission. Application for such approval may be filed with the Birmingham Planning Department. The application, together with plans pertaining thereto, shall be referred to the Planning and Historic District Commission.

It shall be the duty of the Planning and Historic District Commission to review such plans and applications and no permit shall be granted until the Planning and Historic District Commission has acted thereon as hereinafter provided.

- (2) In reviewing plans for changes to a landmark, the Planning and Historic District Commission shall give consideration to:
 - (a) the historical or architectural value and significance of the landmark and its relationship to the historical value of the surrounding area,
 - (b) the relationship of the exterior architectural or historical features of such landmark to the rest of the subject site and to the surrounding area,
 - (c) the general compatibility of the exterior design, arrangement, texture and materials proposed to be used. and

- (d) any other factor, including aesthetic, which it deems to be pertinent including:
 - (i) the preservation standards which the Planning and Historic District Commission shall adopt and maintain for landmarks in each historic district in the City.
- (3) In reviewing plans for changes to a district resource, the Planning and Historic District Commission shall determine the following:
 - (a) The site layout, orientation and location of all buildings, their relationship to one another and adjacent buildings and to open space is such as to not adversely affect the use, appearance or value of adjacent properties.
 - (b) The location and definition of pedestrian and vehicular areas are such as to not interfere with or be hazardous to pedestrian and vehicular traffic.
 - (c) The total design, including but not limited to colors and materials of all walls, screens, towers, opening windows, signs, as well as treatment to be utilized in concealing any exposed mechanical or electrical equipment, is compatible with the intent of the Urban Design Plan or such future modifications of that Plan as may be approved by the Commission of the City, and
 - (d) The standards which the Planning and Historic District Commission shall adopt and maintain for district resources in each historic district in the City.
- (4) The review of plans for changes affecting the exterior appearance of a landmark shall be based upon the Secretary of the Interior's "Standards for Rehabilitation" as follows:

- (a) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.
- (b) The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- (c) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- (d) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (e) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.
- (f) Deteriorated architectural features shall be repaired rather than replaced. wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (g) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

- (h) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.
 - (i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.
 - (j) Wherever possible, new additions or alterations to structures shall be done in such a manner that that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.
- (5) The Planning and Historic District Commission shall pass only on exterior features of a landmark or district resource and shall not consider interior arrangements, except for public resources specifically authorized to do so by the City Commission. The Planning and Historic District Commission shall disapprove applications only on the basis of the considerations set forth in subsections 5.706(2), (3) and (4) above.
- (6) In case of an application for repair or alteration affecting the exterior appearance of a landmark or district resource or for its moving or demolition which the Planning and Historic District Commission deems so valuable to the City, State or Nation that the loss thereof will adversely affect the public purpose of the City, State or Nation, the Planning and Historic District Commission shall endeavor to work out with the owner an economically feasible plan for preservation of the landmark or district resource.
- (7) An application for repair or alteration affecting the exterior appearance of a landmark or for its moving or demolition shall be approved by the Planning and Historic District Commission if any of the following conditions prevail and if the Planning and Historic District Commission determines that the proposed changes will materially improve or correct these conditions:
- (a) the landmark constitutes a hazard to the safety of the public or the occupants
 - (b) the landmark is a deterrent to a major improvement program which will be of substantial benefit to the community

- (c) retention of the landmark would cause undue financial hardship to the owner
 - (d) retention of the landmark would not be in the interest of the majority of the community.
- (8) The Planning and Historic District Commission shall file with the Building Department its Certificate of Approval or rejection of the application submitted to it for review. The Planning and Historic District Commission shall transmit a record of its action to the applicant and in the event of rejection, the Planning and Historic District Commission shall set forth the reasons for rejection. No work shall begin until the Certificate granting approval is filed with the Building Department. In the event the application is rejected, the Building Official shall not issue any required permits. The failure of the Planning and Historic District Commission to act within sixty (60) days after the date on which the application was filed with the Planning Department shall be deemed to constitute approval unless the applicant and the Planning and Historic District Commission mutually agree to an extension of such period.
- (9) In instances where a landmark or district resource is located in a zone district requiring site plan review, design review or exterior appearance review under Chapter 39 of the City Code, such review shall not be required or undertaken.

Section 7. Title V, Chapter 43, Section 5.707 is hereby amended to read as follows:

5.707 Planning Department Approval

Departmental approval of changes within a district is authorized in those instances where the proposed work will have a minimal impact on the historical significance of the landmarks and district resources therein. The Planning and Historic District Commission shall adopt and maintain a list of those changes which require only Planning Department approval and adopt standards for those changes. Examples of changes requiring only Department approval include painting a previously painted surface to a similar color, changing or adding mechanical equipment that is not readily visible to the public, changes in the public right-of-way, and maintenance or repair of buildings or structures.

Section 8. Title V, Chapter 43, Section 5.708 is hereby amended to read as follows:

5.708 Maintenance of Historic Landmarks and District Resources

- (1) Nothing in this Chapter shall be construed to prevent ordinary maintenance or repair of any landmark or district resource.
- (2) The exterior of every landmark or district resource shall be so maintained by the owner or person in control thereof so as to preserve the character of its District, promote the purposes of this Chapter and so as not to have a detrimental effect upon the District.
- (3) Neglect of a landmark resulting in serious health or safety hazards shall constitute demolition by neglect and shall be a violation of the Birmingham City Code.

Section 9. Title V, Chapter 43. Section 5.709 is hereby amended to read as follows:

5.709 Grants and Gifts.

The City Commission may accept grants from the State of Michigan or from the Federal Government for historical restoration purposes. It may accept public or private gifts for historical purposes. It may make the Planning and Historic District Commission its duly appointed agent to accept and administer grants and gifts for historical preservation purposes.

Section 10. Title V, Chapter 43, Section 5.710 is hereby added to read as follows:

5.710 Acquisition of Property.

If all efforts by the Planning and Historic District Commission to preserve an Historic landmark fail, or if it is determined by the Historic District Commission and the Historical Board that public ownership is most suitable, the City Commission, if deemed to be in the public interest, may acquire such property using public funds, gifts for historical purposes, grants from the State or Federal governments for acquisitions of historic properties or proceeds from revenue bonds issued for historical preservation purposes. Such acquisitions may be made after receiving and considering the recommendations of the Planning and Historic District Commission and the Historical Board. Commencing January 1, 1977, the Planning and Historic District Commission shall have responsibility for the maintenance of publicly owned historic structures using its own funds, if not specifically earmarked for other purposes, or those public funds committed

for this use by the City Commission, unless specifically directed to delegate maintenance of any such structure to the Historical Board by the City Commission. An account of all receipts and expenditures shall be maintained which shall be a public record and property of the City.

Section 11. Title V, Chapter 43, Section 5.711 is hereby added to read as follows:

5.711 Recording Notice of District Designations.

Within thirty (30) days after any land has been designated under this Chapter as part of an Historic District or has been removed from such a designation by the City Commission, the City Manager shall cause a document to be recorded with the Oakland County Register of Deeds describing such land and indicating that it has been included within or deleted from an Historic District pursuant to the provisions of the Birmingham City Code.

Section 12. Title V, Chapter 43, Section 5.712 is hereby added to read as follows:

5.712 Appeals

Any persons jointly or severally aggrieved by a decision of the Planning and Historic District Commission shall have the right of appeal to the Board of Zoning Appeals or to Circuit Court.

ORDAINED this 22nd day of October, 1984, by the Commission of the City of Birmingham.

Mayor

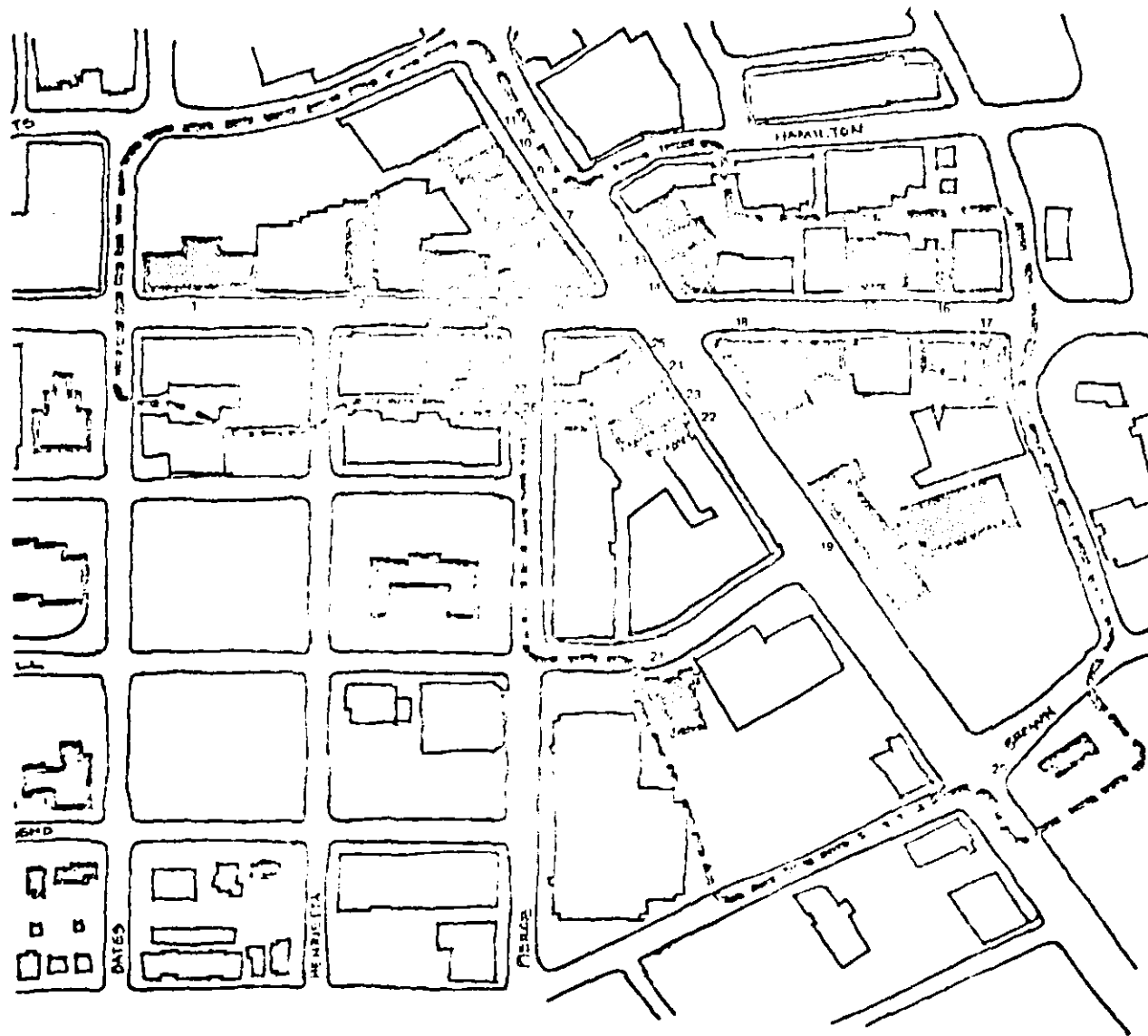
Clerk

BBC/sf
Rev. 10/2/84

VOTE: Yeas, 4 Nays, 1 (Kain) Abstain, Hockman, Jeske

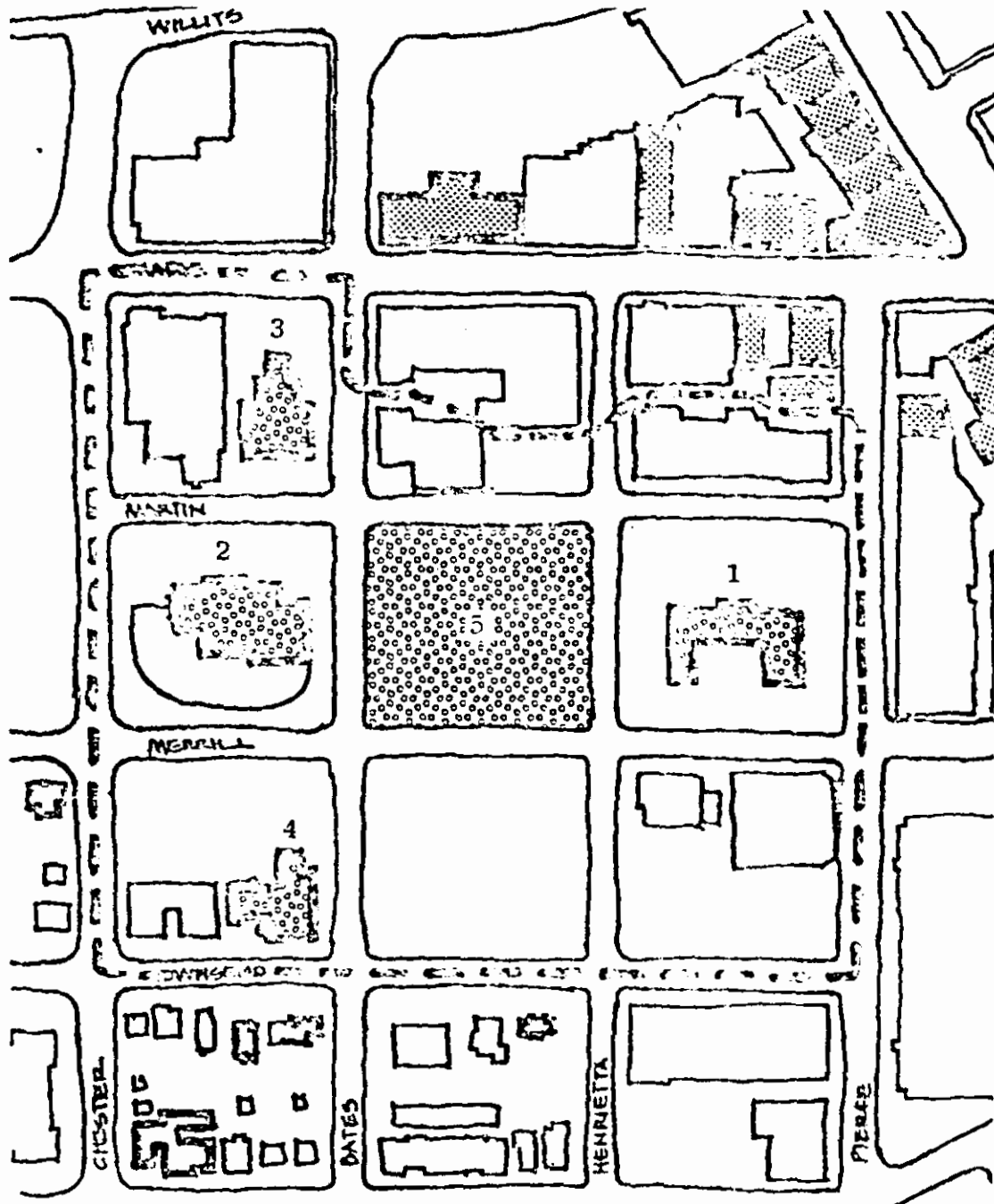
Commissioner Hockman and Jeske abstained from voting because of a conflict of interest.

Central Business Historic District



1. Wabec Building - 255 W. Maple
2. Leonard Building - 165 W. Maple
3. Quanton Building - 142 W. Maple
4. Blakeslee Building - 138 W. Maple
5. Billy McBride Building - 122 W. Maple
6. Ford Building - 101 N. Woodward and 120 W. Maple
7. Erity and Nixon Building - 163-167 N. Woodward
8. Bell Building - 191 N. Woodward
9. Schlaack Building - 205-219 N. Woodward
10. Huston Building 1916 - 205-219 N. Woodward
11. Huston Building 1923 - 237-243 N. Woodward
12. National Bank Building - 152-176 N. Woodward
13. Wooster Building - 132-136 N. Woodward
14. Parks Building - 100-116 N. Woodward
15. Madison Building - 297-323 E. Maple
16. Hawthorne Building - 361 E. Maple
17. Shain Townhouses - 378, 386, 390 E. Maple & 112, 120, 124 Brownell
18. Briggs Building - 111 S. Woodward
19. Birmingham Theatre Building - 211 S. Woodward
20. Ford-Peabody Mansion - 325 S. Woodward
21. Detroit Edison Company - 220 E. Merrill
22. D.U.R. Waiting Room - 138 S. Woodward
23. McBride Building - 124-128 S. Woodward
24. Johnston-Shaw Building - 112-114 S. Woodward
25. O'Neal Building - 106-110 S. Woodward
26. St. Clair Edison Building - 135-159 Pierce
27. Old Telephone Exchange Building - 148 Pierce
28. Bigelow-Shain Building - 115 W. Maple
29. Field Building - 135-141 W. Maple

Shain Park Historic District



1. Municipal Building - 151 Martin
2. Baldwin Public Library - 300 Merrill
3. United States Post Office - 322 Martin
4. Birmingham Community House - 380 South Bates
5. Shain Park - Bounded by Martin, Merrill, Bates and Henrietta

11:26

10-1118-84: PUBLIC HEARING - COMBINE PLANNING BOARD
AND HISTORIC DISTRICT COMMISSION INTO
PLANNING AND HISTORIC DISTRICT COMMISSION -
ADOPT ORDINANCE NUMBERS - 1277, 1278, 1279
AND 1280

Mayor Appleford announced that this was the date and time, as advertised, for a public hearing to consider amendments to the Code of the City of Birmingham to combine the existing Planning Board and Historic District Commission into one combination Planning and Historic District Commission which would have all of the duties and responsibilities of the existing two groups.

The City Planner reviewed her report re: Creation of a New Planning and Historic District Commission.

Larry Sherman, Chairman of the Planning Board, reviewed his report recommending that the Planning Board and Historic District Commission not be combined into one board.

Commissioner Jensen stated that he questioned the advisability of combining the two boards.

Referring to Item No. 3 in Mr. Sherman's report, Commissioner Jeske stated that she felt that the Special Land Use process should be retained by the City Commission. She added that she supported a two-step process for the Certificate of Approval, but that the first step should be informal.

Mr. Tomasik commented that flexibility should be granted to the board as to whether one or two reviews are required.

Commissioner Jeske suggested that the Historical Board might assume the research of historical residences.

Christine Bernhard, 1253 Yosemite, and Mildred Wesch, 1550 Lakeside, spoke in opposition to combining the two boards.

George Nahas, owner of the O'Neal Building and a Birmingham resident, spoke in support of combining the two boards.

MOTION: Motion by Hockman, supported by Jeske:
To adopt Ordinance No. 1277 as follows:

ORDINANCE NO. 1277

AN ORDINANCE TO AMEND TITLE I, CHAPTER 3,
OF THE CODE OF THE CITY OF BIRMINGHAM

THE CITY OF BIRMINGHAM ORDAINS:

Title I, Chapter 3, Section 1.114 is hereby amended to read as follows:

1.114. Planning Department. The Planning Department shall be headed by the Planning Director who shall make the necessary studies and surveys of matters relating to City growth and development, advise the Manager as to the implimentation of the City plan, furnish technical advice and assistance in planning and

zoning matters and furnish such information and data to the City Planning Board AND HISTORIC DISTRICT COMMISSION as it may require in the performance of its duties and functions.

ORDAINED this 22nd day of October, 1984, by the Commission of the City of Birmingham.

ROBERT W. APPLEFORD
MAYOR

PHYLLIS ARMOUR
CITY CLERK

VOTE: Yeas, 4 Nays, 3 (Jensen, Kain, Sights)

MOTION: Motion by Hockman, supported by Jeske:
To adopt Ordinance No. 1278 as follows:

ORDINANCE NO. 1278

AN ORDINANCE TO AMEND SECTIONS 5.32; 5.40; 5.48; 5.57; 5.66; 5.76; 5.81; 5.86; 5.96; 5.105; 5.114; 5.123; 5.132; 5.250 AND SUBSECTIONS 5.16(1); 5.24(1),(2),(3),(5),(9),(11); 5.58(3),(8); 5.67(1); 5.102(6); 5.124(2); 5.188(1); 5.190(6); 5.191(2),(3),(3a),(3b), (3c), (3d),(4b),(5),(6a),(6b); 5.192(2),(3ai),(3aiv),(3b),(3c),(3d),(4),(5); 5.193(2a),(4); 5.194(8b); 5.205(2ci); 5.215(2),(3f), OF TITLE V, CHAPTER 39, OF THE CODE OF THE CITY OF BIRMINGHAM.

THE CITY OF BIRMINGHAM ORDAINS:

Section 1. The names "City Planning Board" "Planning Board" or "the Board" are hereby amended to read "Planning and Historic District Commission" in the following:

Subsections 5.16(1); 5.24(1),(2),(3),(5),(9),(11)
Sections 5.32; 5.40; 5.48; 5.57
Subsections 5.58(3),(8)
Section 5.66
Subsection 5.67(1)
Sections 5.76; 5.81; 5.86; 5.96
Subsection 5.102(6)
Sections 5.105; 5.114; 5.123
Subsection 5.124(2)
Section 5.132
Subsections 5.188(1); 5.190(6); 5.191(3),(3a) (3b),(3c), (3d),(4b),(5),(6a),(6b); 5.192(2),(3ai),(3aiv),(3b),(3c), (3d),(4),(5); 5.193(4); 5.194(8b); 5.205(2ci); 5.215(2), (3f)
Section 5.250

Section 2. Subsection 5.191(2) is hereby amended to read as follows:

- (2) Developments requiring site plan review. EXCEPT FOR PROPERTIES LOCATED WITHIN HISTORIC DISTRICTS DESIGNATED UNDER CHAPTER 43 OF THE CITY CODE, the following PROPERTIES AND types of developments require site plan review:

- (a) Single family cluster developments
- (b) Accessory buildings in all zone districts except single family
- (c) Attached single family residential (R-8)
- (d) Two family residential (R-4)
- (e) Multiple family residential (R-5, R-6, R-7)
- (f) Neighborhood business (B-1)
- (g) General business (B-2)
- (h) Office-residential (B-3)
- (i) Business-residential (B-4)
- (j) Office (O-1)
- (k) Office commercial (O-2)
- (l) Parking (P) and all off-street parking facilities in any zone district except in a district zoned single family residential when the area thereof accomodates three (3) or less vehicles.

Section 3 Subsection 5.193(2)(a) is hereby amended to read as follows:

- (a) In instances where Design Review is required by the provisions of Section 5.192 OR A CERTIFICATE OF APPROVAL IS REQUIRED BY CHAPTER 43, a permit shall not be required, but the Planning Board AND HISTORIC DISTRICT COMMISSION, prior to authorizing the issuance of the building permit pursuant to Section 5.192(5), shall first determine that the information required to be submitted by this section has been received and that provisions of this section have been fulfilled.

ORDAINED this 22nd day of October, 1984, by the Commission of the City of Birmingham.

ROBERT W. APPLEFORD
MAYOR

PHYLLIS ARMOUR
CITY CLERK

VOTE: Yeas, 4 Nays, 3 (Jensen, Kain, Sights)

MOTION: Motion by Hockman, supported by Jeske:
To adopt Ordinance Number 1279 with revisions suggested by the Planning Board to Section 5.405 and Section 5.406.

MOTION AND SUPPORT WITHDRAWN

MOTION: Motion by Hockman, supported by Jeske:
To adopt Ordinance Number 1279 with revision suggested by the Planning Board to Section 5.406 as follows:

ORDINANCE NO. 1279

AN ORDINANCE TO AMEND TITLE V, CHAPTER 40,
OF THE CODE OF THE CITY OF BIRMINGHAM.

THE CITY OF BIRMINGHAM ORDAINS:

Section 1. The title of Chapter 40, is hereby amended to read as follows:

CHAPTER 40 PLANNING AND HISTORIC DISTRICT COMMISSION

Section 2. Section 5.401 is hereby amended to read as follows:

5.401. Planning and Historic District Commission

There is hereby created the Birmingham Planning and Historic District Commission which shall consist of seven (7) members whose residences are located in the City of Birmingham. Members shall be appointed by the City Commission for terms of office of three (3) years except that two (2) members of the first Commission shall be appointed to serve for the term of one (1) year, two (2) for the term of two (2) years and three (3) for a term of three (3) years. All members shall hold office until their successors are appointed. Members of the Planning and Historic District Commission shall be eligible for reappointment. A vacancy occurring in the membership of the Planning and Historic District Commission for any cause shall be filled by a person appointed by the City Commission for the duration of the unexpired term.

At least two (2) members of the Planning and Historic District Commission shall be appointed from a list of citizens submitted by a duly organized and existing preservation society or societies, at least one (1) member shall be an architect duly registered in this state, if such person is available for appointment (at least one (1) member shall be an owner of property in one of the Historic Districts, if such person is available for appointment) and the other members shall represent insofar as possible, (the legal profession, the financial or real estate professions, and planning or design professions).

All members of the Planning and Historic District Commission shall serve without compensation. The City Manager, City Engineer and City Planner or the authorized representatives of any of them, shall be members ex-officio of the Planning and Historic District Commission, and shall have all rights of membership thereon except the right to vote.

Section 3. Section 5.402 is hereby amended to read as follows:

5.402. Removal.

Members of the Planning and Historic District Commission may, after a public hearing, be removed for cause.

Section 4. Section 5.403 is hereby amended to read as follows:

5.403. Organization and Meetings.

The Planning and Historic District Commission shall, from its appointed members, elect a chairman and a vice-chairman whose terms of office shall be fixed by the Planning and Historic District Commission. The chairman shall preside over the Planning and Historic District Commission and shall have the right to vote. The vice-chairman shall, in the case of the absence or disability of the chairman, perform the duties of the chairman. The City Planner, or his or

her authorized representative shall act as secretary of the Planning and Historic District Commission and shall keep a record of all of its proceedings.

At least four (4) members of the Planning and Historic District Commission shall constitute a quorum for the transaction of its business. The Planning and Historic District Commission shall adopt rules for the transaction of its business, which shall provide for the time and place of holding regular meetings. The Planning and Historic District Commission shall provide for the calling of special meetings by the chairman or by at least two (2) members of the Planning and Historic District Commission. The Planning and Historic District Commission shall adopt rules for the transaction of its business, and shall keep a full and complete record of its resolutions, transactions, findings and determinations, which record shall be available to the City Commission and to the public upon request.

All meetings of the Planning and Historic District Commission shall be open to the public and any person or his duly constituted representative shall be entitled to appear and be heard on any matter applicable to the business at hand before the Planning and Historic District Commission makes its decision.

The concurring affirmative vote of four (4) members of the Planning and Historic District Commission shall be required for approval of plans before it for review or for the adoption of any resolution, motion or other action by the Planning and Historic District Commission.

Section 5. Section 5.404 is hereby amended to read as follow:

5.404. Assistance.

The Planning and Historic District Commission may call upon the City Manager for such services and data by the various departments as it may require. The Planning and Historic District Commission may recommend to the City Commission the securing of such professional and consulting services as it may require, provided, however, that no expenditures of funds shall be made, or contracts entered into for providing such professional or consulting services, unless the same shall first be approved and authorized by the City Commission.

Section 6. Section 5.405 is hereby amended to read as follows:

5.405. Duties.

It shall be the function and duty of the Planning and Historic District Commission to advise the City Commission in regard to the proper development of the City of Birmingham. The Planning and Historic District Commission is authorized to advise with and cooperate with the planning, historic district and legislative bodies of other governmental units in any area outside the boundaries of the City of Birmingham. The Planning and Historic District Commission is authorized to prepare a recommendation for the physical development of the municipality, either in its entirety, or in part. Such recommendation, together with accompanying maps, plats,

charts and descriptive matter, shall show the Planning and Historic District Commission suggestions for the development of such territory. Said Planning and Historic District Commission is also authorized to recommend for the guidance of the City Commission, amendments to the City Code relating to the control of the height, area, bulk, location and use of buildings and premises. Said commission is also authorized to recommend for the guidance of the City Commission, amendments to the City Code relating to the control and development of lands within Birmingham's historic districts. The Planning and Historic District Commission may from time to time, amend, extend or add to such recommendations, and the same shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality and its environs. The Planning and Historic District Commission may hold such public meetings and/or hearings from time to time, as it may deem advisable or necessary in connection with the proper performance of its functions hereunder.

Not later than the first day of April in each year, the Planning and Historic District Commission shall prepare and submit to the City Manager, a tentative outline of its program for the ensuing year. Joint meetings of the City Commission and of the Planning and Historic District Commission, shall be held at least quarterly at a time to be designated by the Mayor, and it shall be the duty of the Mayor to call such meeting in accordance with the provisions hereof.

Section 7. Section 5.406 is hereby amended to read as follows:

5.406. Reviews and Recommendations.

The Planning and Historic District Commission shall have the responsibility for Site Plan Review, Design Review and Exterior Appearance Review as outlined in Chapter 39 of the City Code. The Planning and Historic District Commission shall have the responsibility to review and issue Certificates of Approval or rejection for changes within Birmingham's historic districts. It shall be the function of the Planning and Historic District Commission to pass upon all matters referred to it by the City Commission and to give to the City Commission the benefit of its judgement with relation to such matters so referred. Matters so referred may include, but not be restricted to, requests for change of zoning, request for closing, opening or altering a street, or an alley, requests for issuing building permits, and any other matters which bear relation to the physical development or growth of the municipality. When any recommendation has been made by the Planning and Historic District Commission, the same shall be referred to the City Commission or other appropriate City boards.

Section 8. Section 5.407 is hereby deleted.

ORDAINED this 22nd day of October, 1984, by the Commission of the City of Birmingham.

VOTE: Yeas, 4 Nays, 3 (Jensen, Kain, Sights)

MOTION: Motion by Hockman, supported by Jeske:
To adopt Ordinance Number 1280 as follows:

ORDINANCE NO. 1280

AN ORDINANCE TO AMEND TITLE VIII, CHAPTER 79,
SECTION 8.4(113.10) OF THE CODE OF THE CITY
OF BIRMINGHAM.

THE CITY OF BIRMINGHAM ORDAINS:

Title VIII, Chapter 79, Section 8.4(113.10) is hereby
amended to read as follows:

113.10. Planning Board AND HISTORIC DISTRICT
COMMISSION APPROVAL.

Each application for a permit to erect or remodel
a building within the City of Birmingham may,
at the discretion of the Building Official,
be referred to the Planning AND
HISTORIC DISTRICT COMMISSION for review. All
plans for buildings, other than single family
residences shall be submitted to the
Planning AND HISTORIC DISTRICT COMMISSION
by the Building Official prior to issuance of
a permit.

ORDAINED this 22nd day of October, 1984, by the Commission
of the City of Birmingham.

ROBERT W. APPLEFORD
MAYOR

PHYLLIS ARMOUR
CITY CLERK

VOTE: Yeas, 4 Nays, 3 (Jensen, Kain, Sights)

MOTION: Motion by Hockman, supported by Jeske:
To designate December 1, 1984, as the effective date for the
foregoing ordinances.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Hockman, supported by Jeske:
To request the Birmingham Historical Society to provide a
list of nominees for the newly created Planning and Historic
District Commission, with resumes for each nominee, said
list to be submitted within two weeks, and to urge that the
list contain more than two names.

VOTE: Yeas, 7 Nays, None

11:35

10-1119-84: COMMUNICATIONS RE: PROPOSED
HISTORIC DISTRICTS

Communications regarding the proposed historic districts
were received from the following: Michigan History Division
of the Department of State in support of the historic
districts; Robert Gwynn, in opposition to the Central Business
Historic District; Charles Clippert, on behalf of Maplewood
Associates, in opposition to the Central Business Historic
District.

11:35

10-1120-84: LEONARD MAZOR - GRIEVANCE RE: SERGEANT
PROMOTIONS - JOSEPH SEDANO/TRACY MAYES
Communication dated October 18, 1984, received from Leonard
Mazor, Attorney, advising that Joseph Sedano and Tracy
Mayes withdrew their grievance on sergeant promotions
scheduled for hearing on October 22, 1984.

11:35

10-1121-84: MEETING OPEN TO THE PUBLIC
William Brownfield, Managing Director of the Chamber of
Commerce, invited City Commissioners and City Department
Administrators to a dedication of the Chamber Flag Pole
on October 29, 1984, at 10:00 A.M.

11:37

10-1122-84: RESIDENTIAL LEAF COLLECTION
Report received from the Director of the Department of
Public Services and the City Manager re: Residential Leaf
Collection.

11:37

10-1123-84: BID AWARD - PURCHASE OF FERTILIZER
MOTION: Motion by Kain, supported by Sights:
To receive the report of the Director of the Department of
Public Services and the City Manager recommending that the
bid for purchase of fertilizer for application in City
parks and Greenwood Cemetery be awarded to the low bidder,
L and E Distributors, in the amount of \$2,461.20; to concur
in the recommendation as submitted.

VOTE: Yeas, 7 Nays, None

11:37

10-1124-84: BID AWARD - LARGE TREE PURCHASES
MOTION: Motion by Jeske, supported by Hockman:
To receive the report of the Director of the Department of
Public Services and the City Manager recommending that
large street trees requested by residents for fall or
spring planting be purchased from low bidders as follows:

Wade & Gatton Nurseries, Belleville, Ohio:

2 Tulippoplar 2 1/2-3" B & B @	@ \$100.	\$ 200.
2 Tulippoplar 4" B & B	@ \$250.	500.
6 Emerald Queen Norway Maple 4 1/2-5" B&B @	@ \$250.	1500.
3 Emerald Queen Norway Maple 3 1/2-4" B&B @	@ \$150.	450.
1 Marshall's Seedless Green Ash 5" B&B	@ \$300.	300.
4 Bowhall Red Maple 5" B&B	@ \$250.	1000.
1 Shademaster Honeylocust 4 1/2-5" B&B	@ \$250.	250.
Total		\$4200.

George Yount Nursery, Oak Park, Michigan

1 Gerling Red Maple 3-3 1/2" B & B	@ \$150.	\$ 150.
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VOTE: Yeas, 7 Nays, None

11:38

10-1125-84: ACLU VS CITY OF BIRMINGHAM
MOTION: Motion by Kain, supported by Jeske:
To receive the report of the City Attorney re: ACLU vs City
of Birmingham; to grant permission to the American Jewish
Congress to file an amicus curiae in support of the appellees
in the aforementioned matter.

VOTE: Yeas, 7 Nays, None

11-38

10-1126-84: POLICIES RE: ISSUANCE OF MONTHLY
PARKING PERMITS

MOTION: Motion by Hockman, supported by Miller:

To receive the report of the Advisory Parking Committee recommending that a deposit of \$20.00 be required from persons wishing to be on a waiting list for City parking facilities, said deposit to be refunded upon cancellation of the permit or withdrawal from the waiting list, or to be forfeited upon non-payment of the monthly fee, and that the deposit be effective immediately for new permit holders and new waiting list applicants, and effective January 1, 1985, for all current permit holders and those now on waiting lists; that a \$5.00 replacement fee be charged for a lost or damaged magnetic parking card; to concur in the recommendation as submitted.

VOTE: Yeas, 6 Nays, None Abstain, Kain

Commissioner Kain abstained from voting because of a conflict of interest.

MOTION: Motion by Kain, supported by Sights:

To concur in the recommendation of the Advisory Parking Committee that the policy of issuing permits to individuals only be reaffirmed, and that existing permits be converted to an individual basis.

MOTION: Motion by Appleford, supported by Sights:

To table the previous Motion for one week.

VOTE: Yeas, 6 Nays, 1 (Jensen)

12:45

10-1127-84: APPROVAL OF WARRANTS

MOTION: Motion by Miller, supported by Sights:

That the Warrant List dated October 18, 1984, less payment of \$329.90 to Muellers, and less payment of \$625.00 to Thornton and Grooms, for an amended amount of \$358,413.31, having been audited and approved by the Director of Finance, be approved for payment.

VOTE: Yeas, 7 Nays, None

12:46

10-1128-84: GENERAL BUSINESS

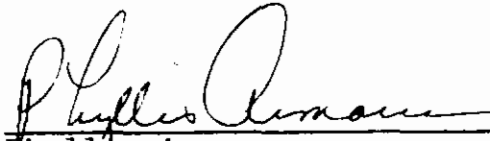
MOTION: Motion by Jeske, supported by Miller:

To schedule a Closed Meeting for November 12, 1984, at 7:00 P.M., in the Conference Room, to discuss labor negotiations.

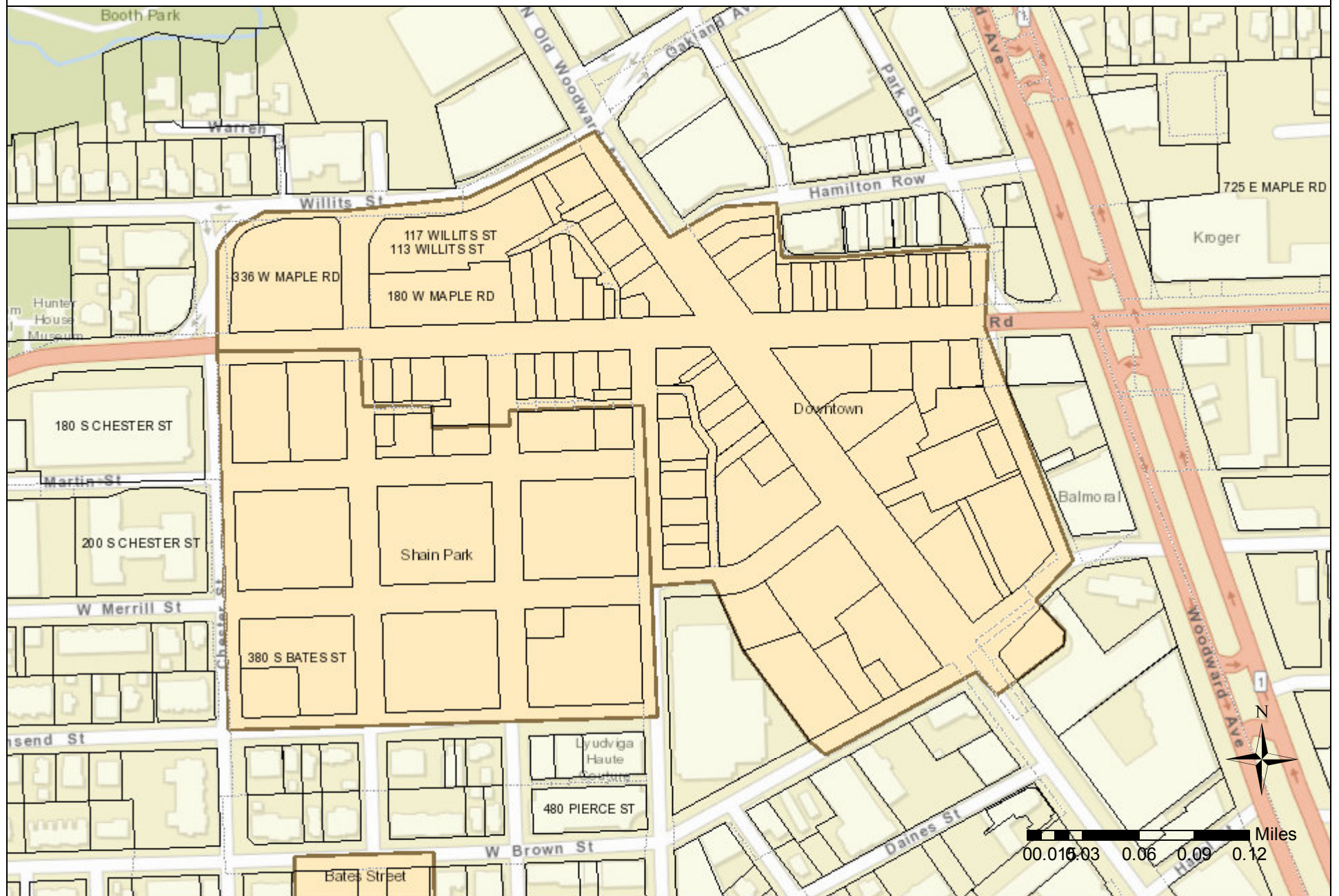
VOTE: Yeas, 7 Nays, None

MOTION: Motion by Commissioner Jeske to adjourn

Meeting adjourned at 12:47 A.M., Tuesday, October 23, 1984.


Phyllis Armour
City Clerk

CBD Historic District





MEMORANDUM

Planning Division

DATE: January 5th, 2018

TO: Planning Board

FROM: Brooks Cowan, Assistant 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 the 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** – Doing so extends the time period outdoor dining areas are in operation which increases the number of seats for the restaurant as a whole for a majority of the year;
- **District Requirements** – The Downtown District, Triangle District, and Rail District have different opportunities which could merit different requirements for bistros locating within them;
- **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.
- **Incentivizing Seating Capacity Tiers** – Allowing an increased amount of indoor seating and/or outdoor dining seating for bistros based upon conditional standards such as shared parking, landscaping, greenspace, etc.

At the joint City Commission/Planning Board meeting of June 19th, 2017 the issue of bistro regulations was discussed at length. There was a consensus that a review of the Bistro

requirements and how they relate to the various areas in which they are permitted is warranted. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

On July 12th, 2017, the Planning Board held further discussion about the topics brought up in the joint City Commission/Planning Board meeting related to bistro requirements. Potential revisions and additions to the bistro standards were discussed, as well as sample draft ordinance language to be proposed for the next Planning Board meeting.

On August 9, 2017 the Planning Board held a study session to address the issues of parking, outdoor dining, and eisenglass enclosures. Based on previous discussion at the joint meeting and the Planning Board, the Planning Division presented sample draft ordinance language to initiate discussion. The draft language provided limits on the number of outdoor dining seats, restricted the use of eisenglass or vinyl enclosures and required additional parking for the outdoor dining areas. The discussion revealed that the Planning Board did not support regulating the number of outdoor dining seats, or requiring additional parking for such outdoor dining areas. There was unanimous support for restricting the use of enclosures on outdoor dining to ensure that outdoor dining is truly seasonal.

On Septemeber 13th, 2017 The Planning Board once again held a study session in regards to bistro regulations and reviewed sample draft ordinances. The draft language was revised to provide options that would eliminate the ability to utilize enclosures year round. The language was also revised so as not to limit the number of outdoor seats and not to require additional parking for those seating areas, as previously discussed.

Additional points raised by the Planning Board were whether or not the 65 seat limit should be revisited, whether rooftop dining should be encouraged, and what an acceptable railing height for platform decks is. It was suggested that The Triangle District and Rail District could establish different standards for maximum seating due to different conditions in those areas. New draft language has been included that expands interior seating for bistros in the Triangle District and Rail District to 85 seats with 15 at the bar, while interior seating for the Downtown District remains at 65. Current rooftop dining standards were deemed acceptable, but the Board wished to see railings on platform decks limited to 42". Sample ordinance language has been provided in relation to this issue.

Shared parking as an incentive to increase interior seating was also discussed. If the Planning Board is interested in further discussing shared parking as a condition of increased interior seating, the Planning Division would request that the Board provide some direction as to the scale at which the maximum seating in each area could be increased, and qualifications for the conditions of an agreement related to types of business uses, permissible distance between businesses, and what rate of parking may be considered sharable.

The minutes from the joint meeting, previous board meetings, and draft ordinance language are attached for your review. Accordingly, the Planning Division is now requesting that the Planning Board continue discussions on how these concerns should be addressed.

CITY OF BIRMINGHAM

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 3.04, SPECIFIC STANDARDS, BUILDING USE, TO
AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.**

3.04 Specific Standards

C. Building Use

- 10. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- A.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - B.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - C.** No dance area is provided;
 - D.** Only low key entertainment is permitted;
 - E.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - F.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - G.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - H.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - I. Permanent enclosures shall not be permitted for outdoor dining areas.**
 - J. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
 - K. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**
 - L. The railing height of outdoor dining platforms may not exceed 42".**

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 5.06, 01 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.06 01 District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
3. No dance area is provided;
4. Only low key entertainment is permitted;
5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
- 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 11. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**
- 12. The railing height of outdoor dining platforms may not exceed 42".**

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Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 5.07, 02 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.07 02 District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
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- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
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- 11. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**
- 12. The railing height of outdoor dining platforms may not exceed 42".**

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Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.08 P District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
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- 12. The railing height of outdoor dining platforms may not exceed 42".**

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Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.10 B2 District, B2B District, B2C District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
3. No dance area is provided;
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5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
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- 12. The railing height of outdoor dining platforms may not exceed 42".**

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Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.11 B3 District

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
3. No dance area is provided;
4. Only low key entertainment is permitted;
5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
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- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
- 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 11. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**
- 12. The railing height of outdoor dining platforms may not exceed 42".**

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Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.12 B4 District

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
3. No dance area is provided;
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6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
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- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
- 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 11. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**
- 12. The railing height of outdoor dining platforms may not exceed 42".**

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Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.13 MX District

- A. Alcoholic Beverage Sales: Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores, drugstores, party stores and delicatessens is permitted.
- B. Automobile Rental Establishment: An automobile rental establishment is permitted provided all vehicles are stored in a public or private parking garage
- C. **Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:**
 - 1. **No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;**
 - 2. **Alcohol is served only to seated patrons, except those standing in a defined bar area;**
 - 3. **No dance area is provided;**
 - 4. **Only low key entertainment is permitted;**
 - 5. **Bistros must have tables located in the storefront space lining any street, or pedestrian passage;**
 - 6. **A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;**
 - 7. **All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and**
 - 8. **Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.**
 - 9. **Permanent enclosures shall not be permitted for outdoor dining areas.**
 - 10. **Weather proof enclosures facilitating year round dining outdoors are not permitted.**

11. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.

12. The railing height of outdoor dining platforms may not exceed 42".

- D. Dwelling - Accessory:** Residential units located in accessory structures are permitted provided that the residential units meet the minimum unit requirements identified in each two-page layout in Article 2. Where there is a conflict between this provision and the requirements of Section 4.02, this section shall take precedent.
- E. Family Day Care Home:** Family day care home shall be state licensed and meet the following family day care home provisions:
- 1.** All family day care homes must be licensed with the city. Application for a family day care home shall be made to the City Clerk on such forms as shall be provided. An application fee as established by the City Commission and set forth in Appendix C shall be payable upon submitting an application for a family day care home. See Chapter 26 of the Birmingham City Code for licensing procedures.
 - 2.** Only the care provider and his/her immediate family shall reside in the home.
 - 3.** The maximum number of children permitted in a family day care home shall not exceed that permitted by the state.
 - 4.** All outdoor play areas shall be enclosed with a fence of no less than 4 feet nor more than 6 feet in height, capable of containing the children within the play area.
 - 5.** Children not related to the care provider shall not be dropped off or picked up between the hours of 8:00 p.m. and 7:00 a.m.
 - 6.** There shall be no signs for the family day care home.
 - 7.** No family day care home shall be located closer than 750 feet from another family day care home or foster care facility except as permitted as follows:
 - a.** The Board of Zoning Appeals may approve the location of a family day care home within 750 feet of another family day care home or foster care facility if the Board of Zoning Appeals finds that the concentration of uses will not generate traffic, noise or other nuisances in a volume greater than would normally be expected in a residential neighborhood. The applicant is required to provide the following information to the Board of Zoning Appeals for all family day care homes within 750 feet of another family day care home or foster care facility:
 - i.** Location of parking for parents/guardians and caregivers.
 - ii.** Hours of operation.
 - b.** If the Board of Zoning Appeals gives approval to an additional family day care home within 750 feet of another family day care home or foster care facility, such approval is valid for 2 years from the date of approval.

- c. Any family day care home licensed by the state at the time this section becomes effective and located within 750 feet of another state-licensed family day care home or foster care facility shall be permitted to continue in operation subject to its compliance with the other provisions of this section and the Zoning Ordinance.

8. Family day care homes shall operate Monday through Saturday only.

- F.** Food or Drink Establishment: A food or drink establishment is permitted excluding drive-in facilities.
- G.** Kennel: A kennel is permitted when completely enclosed within a building.
- H.** Loading Facility: A loading facility is permitted accessory to the principal use.
- I.** Parking Facility: A parking facility is permitted accessory to the principal use.
- J.** Parking Structure: A parking structure is permitted accessory to the principal use.
- K.** Regulated Uses: Regulated uses are permitted if located more than 1,000 feet from any lot for which a certificate of occupancy has been issued for another regulated use, and shall be limited to a maximum floor area of 6,000 square feet. The City Commission shall hear and deny, approve or approve with conditions all requests for permission to carry on a regulated use where a regulated use is permitted, in accordance with Article 7.
- L.** Renting of Rooms: The renting of rooms is permitted to not more than 2 roomers or boarders per dwelling unit.

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

CITY OF BIRMINGHAM

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 9.02, DEFINITIONS:

9.02 Definitions

Bistro: When located in the Downtown Overlay District, a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. When located **in the Triangle District or Rail District, a restaurant with a full service kitchen with interior seating for no more than 85 people and additional seating for outdoor dining.**

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

**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,
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.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JULY 12, 2017
City Commission Room**

151 Martin Street, Birmingham, Michigan

07-134-17

4. Bistro Regulations

Mr. Baka recalled that 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. Mr. Baka observed that as the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their 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 19, 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.

Mr. Williams indicated he never envisioned 10 years ago that some of the sites would be so disproportionately large based on outdoor dining. Ms. Whipple-Boyce said the bistros should be looked at from the standpoint of their locations in different districts throughout the City. Chairman Clein thought there is a need to study the general parking requirement in the MX District based on the number of outdoor dining seats. Mr. Boyle added that bistros might be incentivized there by allowing more seating outside. Further, also consider that the Triangle District is different.

Mr. Williams noted the single biggest thing the board never anticipated was the extent to which Eisenglass would provide for almost four season use.

Ms. Ecker added maybe the board doesn't mind having Eisenglass on a rainy day but they don't want to see it extend the season past November 1st through March 31st. There are two issues: the look of it, and whether it changes the character of use from seasonal to permanent.

There was consensus to look at including the opportunity for rooftop dining for bistros.

Ms. Lazar agreed the larger spaces, particularly in the MX District, might be increased. But, the neighbors may be upset if they feel there will be increased intrusion into the neighborhoods as a result. Maybe some type of parking requirement might have to be imposed. Chairman Clein thought that Residential Permit Parking might be needed in that case.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 9, 2017
City Commission Room**

151 Martin Street, Birmingham, Michigan

08-153-17

STUDY SESSIONS

1. Bistro Regulations

Mr. Baka noted that 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. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") under several conditions. As the bistro concept has evolved over the past ten years, new applicants have sought creative ways to make their establishments distinctive from the other restaurants and bistros in the City, and to increase the number of seats through the use of all season outdoor dining.

At the joint City Commission/Planning Board meeting of June 19, 2017 the issue of clarifying bistro regulations 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. Additionally, Commission members saw good reason to potentially regulate bistros differently depending on the district in which they are located.

The Planning Division would like to begin to consider addressing the issues of **parking, outdoor dining** and **Eisenglass enclosures** via ordinance language changes. The following examples of potential ordinance language changes are based on two methods of regulating bistros. The thinking is that current bistros would not be impacted by what is being proposed.

The first option would be to amend Chapter 126, Zoning, to universally create development standards for bistros that would apply to all zoning districts that permit bistros. Universal regulation would ensure that the dining experience in one bistro (outside of menu, service, theme etc.) is the same as dining in any other bistro. This could mean putting a limit on outdoor seating of 40 seats for all districts, even if there is room (public property or private property) for more. Eisenglass or vinyl enclosures could be prohibited entirely as to not abuse the outdoor dining season limit set forth by the City (April-November). As for parking, requiring all bistros to include their outdoor dining square footage in parking requirements could make sure that there will be enough parking for all of those extra seats. Creating extra parking requirements, though, could also discourage outdoor seating and counteract a key intent of the Bistro Ordinance.

The second approach to clarifying bistro regulations would be to amend Chapter 126, Zoning, to create separate bistro standards depending on the bistro's location in the Downtown, Triangle or Rail Districts. In doing so separately, the City can take into account the different space and parking conditions present in different districts. Adding parking requirements, like including outdoor dining area square footage in the parking calculation, to the conditions of certain bistro location districts could help alleviate parking issues. Outdoor dining maximums are a reasonable consideration Downtown because there is less space for a large outdoor dining area. In the Rail and Triangle Districts where street frontage is typically larger, outdoor dining maximums of 40 or 60 seats could be appropriate. Finally, Eisenglass or vinyl enclosures might be considered in some areas along the Woodward Ave. frontage of the Triangle District to alleviate the noise pollution patrons receive from the major road.

Mr. Williams thought the major focus should be that one size doesn't fit all. Mr. Jeffares commented that it would be interesting to find out how much of the lunch crowd consists of office users who are already parked in town. It was consensus that there should not be an enclosure that allows bistros to extend their outdoor dining season. The bistro concept is being pushed beyond its original boundaries.

Mr. Boyle thought they should be discussing the issue of 65 indoor seats. The board needs to review that and consider the possibility that number could go up. Then bistros could rely less on large outdoor seating and have a stronger business that doesn't tie them to 65 indoor seats.

Ms. Whipple-Boyce thought there could be implications to allowing more indoor seating. They don't want Birmingham to become an all restaurant city. She doesn't think parking is that much of a concern because when the offices clear out the restaurants become busy. Don't forget that there are many local residents who walk from their homes to the Downtown bistros. She does not want to encourage a bistro model behind the building. She likes the outdoor seating in the front of buildings to activate the sidewalk space. Look at each bistro independently and see what makes sense, rather than putting a number to it. Also, consider opportunities for rooftop dining. Maybe the districts need be viewed differently because they are different and because some of the parking situations are different.

Mr. Koseck said in his opinion the bistros are working. The intent was to attract small scale, unique establishments with a variety of different food types. Why treat the districts differently? Forty outdoor seats is fine and he doesn't want to get caught up in parking for outdoor dining. He totally thinks the outdoor dining should not be enclosed. Pick half of the number of interior seating for outdoor dining; 40 seats is fine. He would rather see three small bistros in the Rail District than one that has 150 seats.

Mr. Williams echoed that and added if seating is outdoor, it shouldn't be enclosed. The total seating ought be the combination of both indoor and outdoor. Parking generally works and the

only time it doesn't is the 10 a.m. to 12 p.m. window. Lunch is problematic in the Downtown area.

Chairman Clein observed he doesn't think including parking in the count really matters. To him the issue is not so much the size of the bistros; it is that they are allowed to be wrapped in plastic and located in places the board doesn't like. Perhaps some incentives could be put forth for establishments to meet if they want to increase their outdoor dining.

Mr. Boyle hoped to find a way to make the industrial land use in the Rail District work for bistros.

Mr. Baka summarized that the board is divided on whether or not there should be a limit on the number of outside seats. Board members stated they were definitely not in favor of outdoor dining enclosures, and most of the board is leaning against adding additional parking requirements for outdoor dining seats. Nearly everyone wants to keep the districts separate. Mr. Williams added they need to look at the parking, but not Downtown.

No one from the public wanted to comment at 10:10 p.m.

UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

3.04 Specific Standards

D. Building Use

- 11.** Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
 - M.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - N. Outdoor seating on public property shall not exceed 40 seats.**
 - O.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - P.** No dance area is provided;
 - Q.** Only low key entertainment is permitted;
 - R.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - S.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - T.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - U.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

V. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

W. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 5.06, 01 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.08 01 District

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 13.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 14. Outdoor seating on public property shall not exceed 40 seats.**
- 15.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 16.** No dance area is provided;
- 17.** Only low key entertainment is permitted;
- 18.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 19.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 20.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 21.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining

area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

22. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

23. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 5.07, 02 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.09 02 District

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 13.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 14. Outdoor seating on public property shall not exceed 40 seats.**
- 15.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 16.** No dance area is provided;
- 17.** Only low key entertainment is permitted;
- 18.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 19.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 20.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 21.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining

area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

22. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

23. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.09 P District

C. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 13.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 14. Outdoor seating on public property shall not exceed 40 seats.**
- 15.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 16.** No dance area is provided;
- 17.** Only low key entertainment is permitted;
- 18.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 19.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 20.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 21.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining

area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

22. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

23. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

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UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.11 B2 District, B2B District, B2C District

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 13.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 14. Outdoor seating on public property shall not exceed 40 seats.**
- 15.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 16.** No dance area is provided;
- 17.** Only low key entertainment is permitted;
- 18.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 19.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 20.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 21.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining

area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

22. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

23. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.12 B3 District

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 13.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 14. Outdoor seating on public property shall not exceed 40 seats.**
- 15.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 16.** No dance area is provided;
- 17.** Only low key entertainment is permitted;
- 18.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 19.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 20.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 21.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be

erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

22. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

23. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.13 B4 District

D. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

13.No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;

14.**Outdoor seating on public property shall not exceed 40 seats.**

15.Alcohol is served only to seated patrons, except those standing in a defined bar area;

16.No dance area is provided;

17.Only low key entertainment is permitted;

18.Bistros must have tables located in the storefront space lining any street, or pedestrian passage;

19.A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;

20.All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and

21.Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

22.**Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.**

23. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

UNIVERSAL BISTRO OPTION

CITY OF BIRMINGHAM

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 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

9.02 MX District

M. Alcoholic Beverage Sales: Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores, drugstores, party stores and delicatessens is permitted.

N. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;**
- 2. Outdoor seating on public property shall not exceed 40 seats.**
- 3. Alcohol is served only to seated patrons, except those standing in a defined bar area;**
- 4. No dance area is provided;**
- 5. Only low key entertainment is permitted;**
- 6. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;**
- 7. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;**
- 8. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and**
- 9. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the**

bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

11. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro.

- O. Automobile Rental Establishment:** An automobile rental establishment is permitted provided all vehicles are stored in a public or private parking garage
- P. Dwelling - Accessory:** Residential units located in accessory structures are permitted provided that the residential units meet the minimum unit requirements identified in each two-page layout in Article 2. Where there is a conflict between this provision and the requirements of Section 4.02, this section shall take precedent.
- Q. Family Day Care Home:** Family day care home shall be state licensed and meet the following family day care home provisions:
 - 1.** All family day care homes must be licensed with the city. Application for a family day care home shall be made to the City Clerk on such forms as shall be provided. An application fee as established by the City Commission and set forth in Appendix C shall be payable upon submitting an application for a family day care home. See Chapter 26 of the Birmingham City Code for licensing procedures.
 - 2.** Only the care provider and his/her immediate family shall reside in the home.
 - 3.** The maximum number of children permitted in a family day care home shall not exceed that permitted by the state.
 - 4.** All outdoor play areas shall be enclosed with a fence of no less than 4 feet nor more than 6 feet in height, capable of containing the children within the play area.
 - 5.** Children not related to the care provider shall not be dropped off or picked up between the hours of 8:00 p.m. and 7:00 a.m.
 - 6.** There shall be no signs for the family day care home.
 - 7.** No family day care home shall be located closer than 750 feet from another family day care home or foster care facility except as permitted as follows:
 - d.** The Board of Zoning Appeals may approve the location of a family day care home within 750 feet of another family day care home or foster care facility if the Board of Zoning Appeals finds that the concentration of uses will not generate traffic, noise or other nuisances in a volume greater than would normally be expected in a residential neighborhood. The applicant is required to provide the following information to the Board of Zoning Appeals for all family day care homes within 750 feet of another family day care home or foster care facility:

- i. Location of parking for parents/guardians and caregivers.
 - ii. Hours of operation.
 - e. If the Board of Zoning Appeals gives approval to an additional family day care home within 750 feet of another family day care home or foster care facility, such approval is valid for 2 years from the date of approval.
 - f. Any family day care home licensed by the state at the time this section becomes effective and located within 750 feet of another state-licensed family day care home or foster care facility shall be permitted to continue in operation subject to its compliance with the other provisions of this section and the Zoning Ordinance.
- 8. Family day care homes shall operate Monday through Saturday only.
- R. Food or Drink Establishment: A food or drink establishment is permitted excluding drive-in facilities.
- S. Kennel: A kennel is permitted when completely enclosed within a building.
- T. Loading Facility: A loading facility is permitted accessory to the principal use.
- U. Parking Facility: A parking facility is permitted accessory to the principal use.
- V. Parking Structure: A parking structure is permitted accessory to the principal use.
- W. Regulated Uses: Regulated uses are permitted if located more than 1,000 feet from any lot for which a certificate of occupancy has been issued for another regulated use, and shall be limited to a maximum floor area of 6,000 square feet. The City Commission shall hear and deny, approve or approve with conditions all requests for permission to carry on a regulated use where a regulated use is permitted, in accordance with Article 7.
- X. Renting of Rooms: The renting of rooms is permitted to not more than 2 roomers or boarders per dwelling unit.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 3.04, SPECIFIC STANDARDS, BUILDING USE, TO
AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.**

3.04 Specific Standards

C. Building Use

10. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 2. Outdoor seating on public property shall not exceed 30 seats.**
- 3.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 4.** No dance area is provided;
- 5.** Only low key entertainment is permitted;
- 6.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 7.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 8.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 9.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 5.06, 01 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.10 01 District

- A. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 1.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 2. Outdoor seating on public property shall not exceed 30 seats.**
 - 3.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 4.** No dance area is provided;
 - 5.** Only low key entertainment is permitted;
 - 6.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 7.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 8.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 9.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

11. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 5.07, O2 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.11 O2 District

- A. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 1.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 2. Outdoor seating on public property shall not exceed 30 seats.**
 - 3.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 4.** No dance area is provided;
 - 5.** Only low key entertainment is permitted;
 - 6.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 7.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 8.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 9.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department

determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

11. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro, unless located in the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.10 P District

- A. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 1.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 2. Outdoor seating on public property shall not exceed 40 seats.**
 - 3.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 4.** No dance area is provided;
 - 5.** Only low key entertainment is permitted;
 - 6.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 7.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 8.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 9.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the

bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

11. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.12 B2 District, B2B District, B2C District

- A. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 1.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 2. Outdoor seating on public property shall not exceed 60 seats.**
 - 3.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 4.** No dance area is provided;
 - 5.** Only low key entertainment is permitted;
 - 6.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 7.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 8.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 9.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA

compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas. Bistros located on Woodward Avenue will be permitted to use eisenglass or vinyl where appropriate to mitigate noise pollution

11. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.13 B3 District

- A. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 1.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 2. Outdoor seating on public property shall not exceed 40 seats.**
 - 3.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 4.** No dance area is provided;
 - 5.** Only low key entertainment is permitted;
 - 6.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 7.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 8.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 9.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the

bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

11. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro except those located within the Parking Assessment District.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.14 B4 District

B. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 2. Outdoor seating on public property shall not exceed 30 seats.**
- 3.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 4.** No dance area is provided;
- 5.** Only low key entertainment is permitted;
- 6.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 7.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 8.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 9.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the

bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

SEPARATED BISTRO OPTION

CITY OF BIRMINGHAM

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 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

9.03 MX District

- A. Alcoholic Beverage Sales:** Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores, drugstores, party stores and delicatessens is permitted.
- B. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
 - 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;**
 - 2. Outdoor seating on public property shall not exceed 60 seats.**
 - 3. Alcohol is served only to seated patrons, except those standing in a defined bar area;**
 - 4. No dance area is provided;**
 - 5. Only low key entertainment is permitted;**
 - 6. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;**
 - 7. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;**
 - 8. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and**

9. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

10. Eisenglass or vinyl enclosures shall not be permitted for outdoor dining areas.

11. The square footage of an outdoor dining area shall be included in the parking requirements for the Bistro.

- C. Automobile Rental Establishment:** An automobile rental establishment is permitted provided all vehicles are stored in a public or private parking garage
- D. Dwelling - Accessory:** Residential units located in accessory structures are permitted provided that the residential units meet the minimum unit requirements identified in each two-page layout in Article 2. Where there is a conflict between this provision and the requirements of Section 4.02, this section shall take precedent.
- E. Family Day Care Home:** Family day care home shall be state licensed and meet the following family day care home provisions:
 - 1.** All family day care homes must be licensed with the city. Application for a family day care home shall be made to the City Clerk on such forms as shall be provided. An application fee as established by the City Commission and set forth in Appendix C shall be payable upon submitting an application for a family day care home. See Chapter 26 of the Birmingham City Code for licensing procedures.
 - 2.** Only the care provider and his/her immediate family shall reside in the home.
 - 3.** The maximum number of children permitted in a family day care home shall not exceed that permitted by the state.
 - 4.** All outdoor play areas shall be enclosed with a fence of no less than 4 feet nor more than 6 feet in height, capable of containing the children within the play area.
 - 5.** Children not related to the care provider shall not be dropped off or picked up between the hours of 8:00 p.m. and 7:00 a.m.
 - 6.** There shall be no signs for the family day care home.
 - 7.** No family day care home shall be located closer than 750 feet from another family day care home or foster care facility except as permitted as follows:
 - g.** The Board of Zoning Appeals may approve the location of a family day care home within 750 feet of another family day care home or foster care facility if the Board of Zoning Appeals finds that the

- i. Location of parking for parents/guardians and caregivers.
- ii. Hours of operation.

- 8. Family day care homes shall operate Monday through Saturday only.**

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

Cherilynn Brown, City Clerk

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 13, 2017
City Commission Room**

151 Martin Street, Birmingham, Michigan

09-175-17

2. Bistro Regulations

Mr. Baka noted that 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. Bistros are defined in Article 09 of the Zoning Ordinance as restaurants with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Bistros are permitted in certain zone districts with a valid Special Land Use Permit ("SLUP") along with several conditions.

As the bistro concept has evolved over the past 10 years, new applicants have sought creative ways to make their 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.

There have been several issues 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 19, 2017 the issue of clarifying bistro regulations was discussed at length. On July 24th, 2017 the City Commission moved the review of bistros up on the Planning Board's Action List.

On August 9, 2017 the Planning Board held a study session to begin to consider addressing the issues of parking, outdoor dining and Eisenglass enclosures. Discussion revealed that the Planning Board did not support regulating the number of outdoor dining seats, or requiring additional parking for such outdoor dining areas. There was unanimous support on the board

for restricting the use of enclosures on outdoor dining areas to ensure that outdoor dining is truly seasonal. There was also discussion about setting different standards for the interior number of seats in different areas.

Accordingly the draft language has been revised to provide options that would eliminate the ability to utilize enclosures year round. The language is now silent on the issues of limiting the number of outdoor seats and requiring additional parking for those seating areas.

At this time four proposed options have been added to the ordinance language:

- Permanent enclosures shall not be permitted for outdoor dining areas.
- Weather proof enclosures facilitating year around dining outdoors are not permitted.
- Outdoor dining is not permitted between November 16 and March 31.
- The use of any type of enclosure system (including but not limited to fabric, Eisenglass, vinyl panels, drapes, plant materials shall not be permitted for outdoor dining areas.

Mr. Koseck indicated that in his mind outdoor dining areas should not be framed with walls whether they are temporary or permanent. These areas were never intended to be quasi interior space. Discussion considered eliminating the date restriction and eliminating walls and plastic enclosures. People can sit outdoors on a nice winter day if they choose; however outdoor furniture must be brought inside each night and platforms have to come down in the winter. Board members thought that railings on decks in the street should be limited to 42 in. in height.

To sum up the issues that were previously discussed:

- The use of Eisenglass and the Building Code requirements of such enclosures have been covered in that outdoor dining areas must truly be outdoors, not within enclosed areas;
- The board was not interested in adding extra parking requirements for outdoor dining;
- Setting a maximum number of outdoor dining seats is not a concern as they are all SLUPs and thus subject to individual review;
- Everyone was okay with rooftop dining, but the priority is that there must be outdoor dining in the front first and foremost.
-

Mr. Jeffares was in favor of increasing the capacity of bistros for the Triangle and Rail Districts and Mr. Williams liked that concept. It was discussed that providing shared parking might be an incentive to increase inside seating from 65. However, Mr. Koseck thought that requiring shared parking complicates things. **Mr. Baka agreed to bring draft ordinance language for the next meeting.**

CITY OF BIRMINGHAM

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 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

3.04 Specific Standards

E. Building Use

- 12. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- X.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - Y.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - Z.** No dance area is provided;
 - AA.** Only low key entertainment is permitted;
 - BB.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - CC.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - DD.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - EE.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - FF. Permanent enclosures shall not be permitted for outdoor dining areas.**
 - GG. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
 - HH. Outdoor dining is not permitted between November 16 and March 31.**
 - II. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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 5.06, 01 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.12 01 District

C. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 24.**No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 25.**Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 26.**No dance area is provided;
- 27.**Only low key entertainment is permitted;
- 28.**Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 29.**A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 30.**All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 31.**Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- 32.****Permanent enclosures shall not be permitted for outdoor dining areas.**
- 33.****Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 34.****Outdoor dining is not permitted between November 16 and March 31.**
- 35.****The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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 5.07, 02 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.13 02 District

C. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 24.**No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 25.**Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 26.**No dance area is provided;
- 27.**Only low key entertainment is permitted;
- 28.**Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 29.**A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 30.**All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 31.**Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- 32.****Permanent enclosures shall not be permitted for outdoor dining areas.**
- 33.****Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 34.****Outdoor dining is not permitted between November 16 and March 31.**
- 35.****The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.11 P District

E. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 24.**No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- 25.**Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 26.**No dance area is provided;
- 27.**Only low key entertainment is permitted;
- 28.**Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 29.**A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 30.**All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 31.**Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- 32.****Permanent enclosures shall not be permitted for outdoor dining areas.**
- 33.****Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 34.****Outdoor dining is not permitted between November 16 and March 31.**
- 35.****The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.13 B2 District, B2B District, B2C District

- C. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 24.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 25.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 26.** No dance area is provided;
 - 27.** Only low key entertainment is permitted;
 - 28.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 29.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 30.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 31.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - 32. Permanent enclosures shall not be permitted for outdoor dining areas.**
 - 33. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
 - 34. Outdoor dining is not permitted between November 16 and March 31.**
 - 35. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.14 B3 District

- C. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 24.** No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 25.** Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 26.** No dance area is provided;
 - 27.** Only low key entertainment is permitted;
 - 28.** Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 29.** A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 30.** All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 31.** Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - 32.** Permanent enclosures shall not be permitted for outdoor dining areas.
 - 33.** Weather proof enclosures facilitating year round dining outdoors are not permitted.
 - 34.** Outdoor dining is not permitted between November 16 and March 31.
 - 35.** The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

5.15 B4 District

- F. Bistros:** Bistros are permitted with a valid Special Land Use Permit with the following conditions:
- 24.**No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - 25.**Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 26.**No dance area is provided;
 - 27.**Only low key entertainment is permitted;
 - 28.**Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 29.**A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 30.**All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 31.**Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - 32.****Permanent enclosures shall not be permitted for outdoor dining areas.**
 - 33.****Weather proof enclosures facilitating year round dining outdoors are not permitted.**
 - 34.****Outdoor dining is not permitted between November 16 and March 31.**
 - 35.****The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

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 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

9.04 MX District

Y. Alcoholic Beverage Sales: Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores, drugstores, party stores and delicatessens is permitted.

Z. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;**
- 2. Alcohol is served only to seated patrons, except those standing in a defined bar area;**
- 3. No dance area is provided;**
- 4. Only low key entertainment is permitted;**
- 5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;**
- 6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;**
- 7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and**
- 8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.**
- 9. Permanent enclosures shall not be permitted for outdoor dining areas.**
- 10. Weather proof enclosures facilitating year round dining outdoors are not permitted.**
- 11. Outdoor dining is not permitted between November 16 and March 31.**
- 12. The use of any type of enclosure system (including but not limited to fabric, eisenglass, vinyl panels, drapes, plant material) shall not be permitted for Outdoor Dining areas.**

AA. Automobile Rental Establishment: An automobile rental establishment is permitted provided all vehicles are stored in a public or private parking garage

BB. Dwelling - Accessory: Residential units located in accessory structures are permitted provided that the residential units meet the minimum unit requirements identified in each two-page layout in Article 2. Where there is a conflict between this provision and the requirements of Section 4.02, this section shall take precedent.

CC. Family Day Care Home: Family day care home shall be state licensed and meet the following family day care home provisions:

- 1.** All family day care homes must be licensed with the city. Application for a family day care home shall be made to the City Clerk on such forms as shall be provided. An application fee as established by the City Commission and set forth in Appendix C shall be payable upon submitting an application for a family day care home. See Chapter 26 of the Birmingham City Code for licensing procedures.
- 2.** Only the care provider and his/her immediate family shall reside in the home.
- 3.** The maximum number of children permitted in a family day care home shall not exceed that permitted by the state.
- 4.** All outdoor play areas shall be enclosed with a fence of no less than 4 feet nor more than 6 feet in height, capable of containing the children within the play area.
- 5.** Children not related to the care provider shall not be dropped off or picked up between the hours of 8:00 p.m. and 7:00 a.m.
- 6.** There shall be no signs for the family day care home.
- 7.** No family day care home shall be located closer than 750 feet from another family day care home or foster care facility except as permitted as follows:
 - j.** The Board of Zoning Appeals may approve the location of a family day care home within 750 feet of another family day care home or foster care facility if the Board of Zoning Appeals finds that the concentration of uses will not generate traffic, noise or other nuisances in a volume greater than would normally be expected in a residential neighborhood. The applicant is required to provide the following information to the Board of Zoning Appeals for all family day care homes within 750 feet of another family day care home or foster care facility:
 - i.** Location of parking for parents/guardians and caregivers.
 - ii.** Hours of operation.
 - k.** If the Board of Zoning Appeals gives approval to an additional family day care home within 750 feet of another family day care home or foster care facility, such approval is valid for 2 years from the date of approval.
 - l.** Any family day care home licensed by the state at the time this section becomes effective and located within 750 feet of another state-licensed family day care home or foster care facility shall be permitted to continue in operation subject to its compliance with the other provisions of this section and the Zoning Ordinance.
- 8.** Family day care homes shall operate Monday through Saturday only.

- DD.** Food or Drink Establishment: A food or drink establishment is permitted excluding drive-in facilities.
- EE.** Kennel: A kennel is permitted when completely enclosed within a building.
- FF.** Loading Facility: A loading facility is permitted accessory to the principal use.
- GG.** Parking Facility: A parking facility is permitted accessory to the principal use.
- HH.** Parking Structure: A parking structure is permitted accessory to the principal use.
- II.** Regulated Uses: Regulated uses are permitted if located more than 1,000 feet from any lot for which a certificate of occupancy has been issued for another regulated use, and shall be limited to a maximum floor area of 6,000 square feet. The City Commission shall hear and deny, approve or approve with conditions all requests for permission to carry on a regulated use where a regulated use is permitted, in accordance with Article 7.
- JJ.** Renting of Rooms: The renting of rooms is permitted to not more than 2 roomers or boarders per dwelling unit.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk



MEMORANDUM

Planning Division

DATE: January 5th, 2018
TO: Planning Board
FROM: Brooks Cowan, Assistant Planner
SUBJECT: Renovation of Commercial Properties

Background:

Questions have been posed as to the procedure for determining what level of board review is required for the renovation of a building or construction of a new building. Currently there are three boards that review proposed modifications to buildings: the Planning Board, the Design Review Board, and the Historic District Commission.

Article 7, Section 7.25 of the Zoning Ordinance establishes the reviewing board for site plan reviews as follows:

For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will be conducted by the Historic District Commission and the Planning Board. Site Plan Reviews by the Planning Board are required for non-historic properties and the following types of developments:

- A. Single-family cluster developments.*
- B. Accessory building in all zoning district except single-family.*
- C. Attached Single-Family Residential (R8).*
- D. Two-Family Residential (R4).*
- E. Multiple-Family Residential (R5, R6, R7).*
- F. Neighborhood Business (B1).*
- G. General Business (B3, B2B, B2C).*
- H. Office/Residential (B3).*
- I. Business/Residential (B4).*
- J. Office (O1).*
- K. Office/Business (O2).*
- L. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.*
- M. Mixed Use (MX).*

Thus, Article 7, section 7.25 requires site plan review for new development of all historic properties by the Historic District Commission and the Planning Board. Meanwhile site plan review for new development of non-historic properties is required by the Planning Board.

Article 7, Section 7.08 of the Zoning Ordinance establishes the review procedure for design reviews for all building renovation and construction activities as follows:

- *All Design Review plans for new non-historic construction also requiring Site Plan Review will be submitted to and reviewed by the [Planning Board](#).*
- *All plans, not requiring Site Plan Review or Historic District Review, for new construction, the alteration or painting of the exterior of any building and/or the addition of any lighting, signs, equipment or other structures which substantially alter the exterior appearance as determined by the City Planner shall be submitted to the [Design Review Board](#) for review.*
- *All plans for additions or alterations to historic structures or structures within a historic district shall be submitted to the [Historic District Commission](#) in addition to any required Site Plan Review.*
- *For uses requiring a special land use permit, Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26. Those items not requiring Design Review by the Design Review Board are as follows:*
 - A. Single-family residential buildings and structures not located within a cluster development.*
 - B. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.*

Thus, Article 7, section 7.08 states that for all new non-historic construction projects, the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB.

Article 7, section 7.08 also states that all Special Land Use Permit reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required.

City policy has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain design review.

Current Planning Department Practice:

The Planning Department has discretion to determine what plans go to Planning Board vs Design Review Board as per Section 7.08 of the Zoning Ordinance.

New development and modifications to existing non-historic buildings that require Planning Board Site Plan review include:

- Modifications that increase or decrease the principal building's square footage
- Modifications to the site that change the areas circulation
- Modifications to the approved Site Plan that are of lesser quality than previously approved

New development and modifications to existing buildings that require Design Review Board review include:

- new construction
- the alteration or painting of the exterior of any building and/or
- the addition of any lighting
- signs
- addition of equipment or other structures which substantially alter the exterior appearance as determined by the City Planner

Issue:

The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review.

Some recent examples of projects that have been reviewed by the Design Review Board exclusively include the following:

- Lavery Audi dealer – 34602 Woodward
- Meadowbrook Urgent Care – 33722 Woodward
- OWC wine shop – 912 S. Old Woodward
- Holiday Market select – 1740 W. Maple

On June 19, 2017 the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. When discussing the existing regulations regarding the renovation of existing buildings several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

On August 9th, 2017 The Planning Board held further discussion related to new construction and examined sample ordinance language requiring site plan approval for any alteration that affects the flow of traffic, the addition of square footage, and if more than 25% of the exterior elevations are torn down. This discussion was carried into the next meeting on September 13th, 2017 where the Planning Board suggested revising the draft ordinance language to require site plan approval if more than 33.3% of the exterior elevations are torn down.

In an attempt to create objective criteria to delineate between what requires site plan review and what requires design review the Planning Staff has provided draft ordinance language which would codify the existing City policy as described above. If the Planning Board feels that

additional or altered regulations should be applied then the Planning Staff can take the feedback and provide revised draft language at a future meeting.

Suggested Action:

To set a public hearing date of February 21st, 2018 to consider amendments to Chapter 126; Zoning, of the Code of the City of Birmingham to Article 7, Section 7.25; Review, and Article 7, Section 7.08; Requirements in order to clarify the board review process for renovation and new construction.

THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 07 PROCESSES, PERMITS AND FEES, SECTION 7.25, REVIEW TO CLARIFY REQUIREMENTS FOR SITE PLAN REVIEW.

Article 07, Section 7.25 shall be amended as follows:

7.25 Review

1. For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will be conducted by the Historic District Commission and the Planning Board. Site Plan Reviews by the Planning Board **only** are required for non-historic properties. ~~and the~~ **The new construction or expansion of the** following types of developments **shall require site plan review:**
 - A. Single-family cluster developments.
 - B. Accessory building in all zoning district except single-family.
 - C. Attached Single-Family Residential (R8).
 - D. Two-Family Residential (R4).
 - E. Multiple-Family Residential (R5, R6, R7).
 - F. Neighborhood Business (B1).
 - G. General Business (B3, B2B, B2C).
 - H. Office/Residential (B3).
 - I. Business/Residential (B4).
 - J. Office (O1).
 - K. Office/Business (O2).
 - L. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.
 - M. Mixed Use (MX).
2. **For the purposes of this section new construction shall include the partial demolition and reconstruction of an existing building where 33.3% or more of the exterior elevations are demolished.**
3. **For the purpose of this section the addition of square footage to any development shall be considered an expansion which requires site plan review.**
4. **Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require site plan review.**

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 07 PROCESSES, PERMITS AND FEES, SECTION 7.08,
REQUIREMENTS TO CLARIFY REQUIREMENTS FOR SITE PLAN REVIEW.

Article 07, Section 7.08 shall be amended as follows:

7.08 Requirements

All Design Review plans for new non-historic construction also requiring Site Plan Review will be submitted to and reviewed by the Planning Board. All plans, not requiring Site Plan Review or Historic District Review, for ~~new construction~~, the alteration or painting of the exterior of any building and/or the addition of any lighting, signs, equipment or other structures which substantially alter the exterior appearance as determined by the City Planner shall be submitted to the Design Review Board for review. All plans for additions or alterations to historic structures or structures within a historic district shall be submitted to the Historic District Commission in addition to any required Site Plan Review. For uses requiring a special land use permit, Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26. Those items not requiring Design Review by the Design Review Board are as follows:

- A. Single-family residential buildings and structures not located within a cluster development.
- B. Uses requiring a special land use permit. Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26
- C. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynesberge, City Clerk

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

3 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.

3.8 RENOVATION OF COMMERCIAL PROPERTIES

Planning Director Ecker explained that there are three boards that review building improvements consisting of the Planning Board, the Design Review Board and the Historic District Commission. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. Site plan reviews go to the Planning Board. If the building is in the historic district, it will also go to the Historic District Commission. If it is a design change only to an existing building, it would go to the Design Review Board. This issue came up particularly with the Audi building because they had not changed the footprint; it went to the Design Review Board. The question is should there be a clarification made to some of the ordinance language to determine how much of a renovation to an existing building is a renovation, or when it becomes new construction or a new building. She noted that this is not the first time for this issue.

She also suggested clarifying what exactly is a design change vs. a site plan change. In the past, a site plan change has been interpreted as a change in the footprint in the building or square footage, but it is unclear in the ordinance. Would the City like to see the review procedures amended for new construction and/or the renovation of existing buildings, both in terms of which boards review those actions and also whether there needs to be clarification on what constitutes renovation of an existing building, and where the line is drawn between that and new construction. Also, does the Commission wish to see a distinction or clear definition as to what constitutes a site plan change and what constitutes a design change.

Commissioner Sherman suggested it would be wise to have more of a review than what we have now.

Mr. Jeffares asked about dramatic changes in use. Ms. Ecker responded that would require an application for an occupancy permit and any building permits needed. The Building Department would route the plans to the other departments. The Planning Department would look at the use to confirm it is an approved use, and at parking to confirm it met the parking requirements. If there are no exterior changes to the building, it does not need to go to a board for planning review, according to the current ordinances.

Mr. Koseck asked if the Design Review Board look at things such as site issues, pedestrian flow, trash, pickup, access, etc. Ms. Ecker said the DRB focuses more heavily on the design and the signage than the site issues. They do discuss the site issues, but not as much detail as the Planning Board and have input.

Mayor Pro Tem Harris asked for specific examples when the ordinance did not require a site plan review and the project later was thought to have needed to have site plan review. Ms. Ecker said the Audi building was an example of one that had concern expressed as to whether it needed a site plan review as well, but no changes were made to the layout of the site, access, etc. The Wachler building and the McCann building were other examples. A site on Cole Street was required to also go for site plan review, because changes were proposed to the parking lot and dumpster.

Commissioner DeWeese said the difference between design review and site plan review is not understood, and thinks it would be useful to have those defined and explained. He said that is also true of renovation and new construction. He added that site plan review considers internals, layout of other buildings around to see the interconnections between them, while Design Review does not look at as much, and so at a certain scale, it becomes important for site plan review.

Mayor Nickita said this is most evident in downtown overlay where we have specific requirements. The Surnow building is an example where we need the expertise of the Planning Board and the review that deals with specifics for a project of that sort. Maybe during the process, a recognition of the extent is clear, and if it is very minor and not much change, then it can be overlooked because we do not want to create difficulties when they are not there. We do not always know in the beginning of a project how big it might become. He thinks the Planning Board should have some type of review to be certain the project adheres to the City's guidelines.

Commissioner Bordman expressed concern about what happens when a project turns out to be more involved than originally thought. She is unsure that our ordinance could even address a situation like that without causing problems for the builder.

Ms. Boyce said it becomes more of a planning issue when an extensive renovation matched with a change in use occurs. She would like the Planning Board to have the opportunity to review it to make sure all of the issues are addressed.

Mayor Nickita said there seems to be solid support for reviewing this further and identifying a plan of action to address having a further review than we have done in the past. The intention is not to create another level of regulation, but we have to make sure we have the proper checks and balances.

Mr. Valentine said this issue will be added and brought back to the Commission.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 9, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

08-154-17

2. Renovation and New Construction of Commercial and Mixed-Use Buildings

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board ("DRB") and the Historic District Commission ("HDC").

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the HDC and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 of the Zoning Ordinance establishes the review procedure for design reviews for all building renovation and construction activities. For all new non-historic construction projects the Planning Board is responsible for conducting both the Site Plan Review and Design Review. All plans for projects not requiring Site Plan Review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB.

Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board.

The DRB is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or what necessitates a site plan review. City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain design review only.

On June 19, 2017 the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. When discussing the existing regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a Site Plan Review as opposed to a Design Review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing

recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

Ms. Ecker explained that right now there is no distinction between minor renovation and major re-build. Mr. Baka said the DRB did the Design Review for the Fred Lavery building. No one knew that he was going to tear half of his building down but use the same footings and foundation. Mr. Lavery didn't anticipate how much of his building would have to come down until they were into construction. The question is how to handle that sort of situation.

Ms. Ecker maintained that if nothing else, the board should define what a site plan change is. Applicants are still appearing before a board, unless the change is so minor that it can receive administrative approval. Mr. Baka thought if a threshold is set where a project requires site plan review, but there are larger buildings that might not be making significant changes, they shouldn't be required to have a site plan review.

THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 07 PROCESSES, PERMITS AND FEES, SECTION 7.25, REVIEW TO CLARIFY REQUIREMENTS FOR SITE PLAN REVIEW.

Article 07, Section 7.25 shall be amended as follows:

7.25 Review

For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will be conducted by the Historic District Commission and the Planning Board. Site Plan Reviews by the Planning Board **only** are required for non-historic properties. ~~and the~~ **The new construction or expansion of the** following types of developments **shall require site plan review:**

- N. Single-family cluster developments.
- O. Accessory building in all zoning district except single-family.
- P. Attached Single-Family Residential (R8).
- Q. Two-Family Residential (R4).
- R. Multiple-Family Residential (R5, R6, R7).
- S. Neighborhood Business (B1).
- T. General Business (B3, B2B, B2C).
- U. Office/Residential (B3).
- V. Business/Residential (B4).
- W. Office (O1).
- X. Office/Business (O2).
- Y. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.
- Z. Mixed Use (MX).

For the purposes of this section new construction shall include the partial demolition and reconstruction of an existing building where 25% or more of the exterior elevations are demolished. The addition of square footage to any development shall be considered an expansion which requires site plan review. Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require site plan review.

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

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

THE CITY OF BIRMINGHAM ORDAINS:

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

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All Design Review plans for new non-historic construction also requiring Site Plan Review will be submitted to and reviewed by the Planning Board. All plans, not requiring Site Plan Review or Historic District Review, for ~~new construction~~, the alteration or painting of the exterior of any building and/or the addition of any lighting, signs, equipment or other structures which substantially alter the exterior appearance as determined by the City Planner shall be submitted to the Design Review Board for review. All plans for additions or alterations to historic structures or structures within a historic district shall be submitted to the Historic District Commission in addition to any required Site Plan Review. For uses requiring a special land use permit, Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26. Those items not requiring Design Review by the Design Review Board are as follows:

- D. Single-family residential buildings and structures not located within a cluster development.
- E. Uses requiring a special land use permit. Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26
- F. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.

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

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**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, SEPTEMBER 13, 2017**

09-176-17

3. Renovation and New Construction of Commercial and Mixed-Use Buildings

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and it is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board and the Historic District Commission.

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the Historic District Commission and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 states that for all new non-historic construction projects the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB. Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required.

City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain only design review.

At the joint City Commission/Planning Board meeting on June 19, 2017 discussion occurred regarding current planning issues in the City. When discussing the regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

In an attempt to create objective criteria to delineate between what requires site plan review and what requires design review, the Planning Staff has provided draft ordinance language which would codify the existing City policy as described above.

The issue was discussed at the Planning Board meeting on August 9, 2017. The meeting reaffirmed the issue that right now there is no distinction between minor renovations and major re-builds of commercial buildings in Birmingham, and the possibility of a threshold being introduced to determine which board (DRB or PB) will perform the review. Members of the Planning Board agreed that the ordinance language should be clarified to say:

- A full Site Plan Review is required if more than 33.3% of the exterior elevations are torn down;
- The addition of square footage to any development shall be considered an expansion which requires site plan review;
- Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require Site Plan Review.

Accordingly, the Planning Division is once again providing the draft ordinance language for comment by the Planning Board.

Mr. Baka explained if this ordinance language was in place Fred Lavery Audi Dealer would not have received approval offa demolition permit because they would not have had Site Plan Review, which would have been required as more than 33.3% of the building sides were removed. The DRB looks at the site, but does not consider the streetscape requirements.

Chairman Clein stated they are trying to avoid four walls going away and being rebuilt that feel like new construction but with no regard to any other site plan issues.

It was agreed to defer this topic to a future date.

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- AA. Single-family cluster developments.
- BB. Accessory building in all zoning district except single-family.
- CC. Attached Single-Family Residential (R8).
- DD. Two-Family Residential (R4).
- EE. Multiple-Family Residential (R5, R6, R7).
- FF. Neighborhood Business (B1).
- GG. General Business (B3, B2B, B2C).
- HH. Office/Residential (B3).
- II. Business/Residential (B4).
- JJ. Office (O1).
- KK. Office/Business (O2).
- LL. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.
- MM. Mixed Use (MX).

For the purposes of this section new construction shall include the partial demolition and reconstruction of an existing building where 25% or more of the exterior elevations are demolished. The addition of square footage to any development shall be considered an expansion which requires site plan review. Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require site plan review.

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

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Cherilynn Brown, City Clerk

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- G. Single-family residential buildings and structures not located within a cluster development.
- H. Uses requiring a special land use permit. Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26
- I. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.

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

Mark Nickita, Mayor



MEMORANDUM

Planning Division

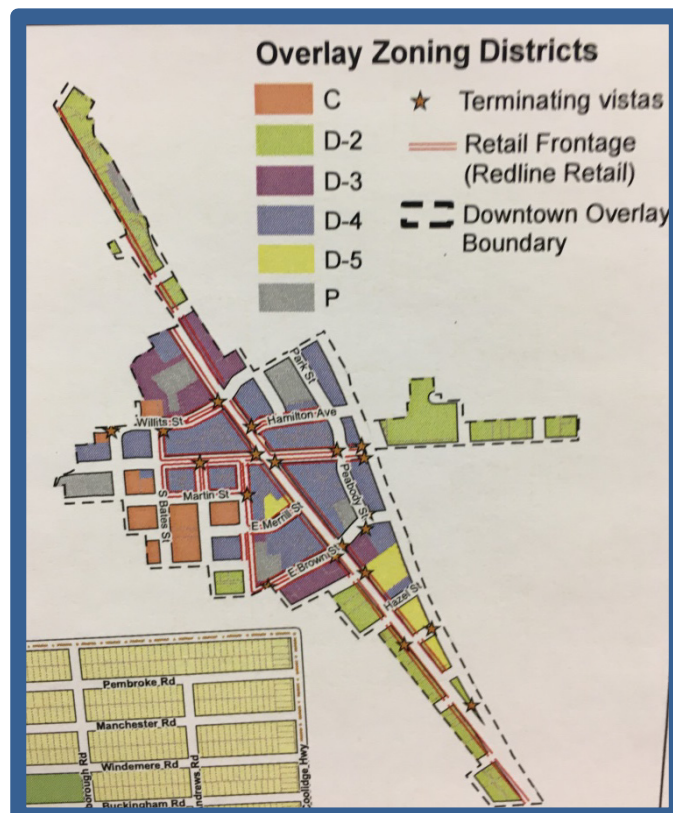
DATE: January 4, 2018

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Downtown Birmingham Retail District

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.



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.

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for the care of apparel and other personal items, but not including business to business services, medical, dental and/or mental health services. *(Adopted in November 2017)*

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). Previously, there was no definition for personal services and the City Commission expressed concern about the types of service uses that had been approved in the Redline Retail District over the past several years.

On March 29, 2017, the Planning Board began a detailed discussion on the retail requirements downtown, and potential options to strengthen the definition of retail throughout the Redline Retail District or in a more defined area. The Planning Board identified several potential areas of study:

- The future of the retail industry in light of current trends and the increase in online shopping and how these may affect retail in Downtown Birmingham;
- Establishing a definition for personal services to clarify personal service uses to be permitted in the Redline Retail District;
- Re-evaluating the 20' depth requirement for retail use in Downtown Birmingham to determine if it is sufficient to create an activated, pedestrian-friendly retail district;
- Establishing a maximum dimension for first floor permitted lobbies for hotels, offices and residential units located on the upper levels of buildings in the Redline Retail District;
- Re-evaluating the size and location of the Redline Retail District; and
- Establishing one or more secondary retail districts to allow a broader range of uses outside of the retail core.

Over the next several months, the Planning Board reviewed substantial research on retail districts and requirements in other walkable downtowns, including downtown Walnut Creek, CA and Hinsdale, IL, as well as additional research on retail requirements in Palo Alto, CA, Oakland, CA, Highland Park, IL and Evanston, IL.

In July 2017, the City Commission directed the Planning Board to immediately draft a definition for personal services to clarify the types of services that are permitted in the Redline Retail District, and after this was complete, to further study the larger issues of retail in Downtown Birmingham. Accordingly, the Planning Board drafted the definition noted above for personal services for review by the City Commission.

On November 13, 2017, the City Commission adopted the definition for personal services drafted by the Planning Board, and again directed the Planning Board to continue studying the larger issue of retail use in Downtown Birmingham. Formal direction was provided in a memo from the City Manager which is attached for your review. Specifically, the direction provided from the City Commission was to recommend any needed ordinance amendments, including but not limited to, the following:

1. To evaluate the current geographic boundary of the Retail District for possible modification and also consider a priority level hierarchy consisting of the downtown core and other areas within the current Retail District boundary.
2. To evaluate current properties in the Retail District that were not built to support first floor retail uses and provide recommendations to address this issue. Such properties may, for example, have not been built with first floor frontage at grade or the building was not previously designed to support a retail use.
3. To evaluate the prohibition of desks, workstations and office related amenities placed within the first 20 feet of depth of window frontage within the Retail District and recommend ordinance language to address this issue.

Next Steps: Areas of Study

Retail District Boundaries

Most of the research that the Planning Board began studying last spring on creating great urban retail districts emphasized the importance of strictly controlling the types of retail permitted in the core urban shopping district, and also limited the core retail area to no more than 2 -4 blocks in size. Reducing the size of the premier retail area creates a much stronger retail destination with the synergy to support itself. Outside of the main retail, other quasi-retail uses may be permitted. Thus, the Planning Board began to discuss the possibility of reducing the size of the existing Redline Retail District, and strictly defining those retail uses permitted on the first floor in this core area, and then creating a secondary district within the downtown that could allow some quasi-retail and personal service uses.

The City Commission has now directed a continuation of this study. Please see the attached research from other walkable, urban downtowns that provide examples of smaller core retail districts with secondary retail districts that allow a greater variety of uses. The Planning Board may wish to consider eliminating some of the outlying areas on N. and S. Old Woodward from the core retail district and creating a more flexible secondary downtown district for these areas.

Retail Depth Requirement

Last spring, the Planning Board also reviewed the minimum retail depth requirements in the Redline Retail District, which are currently 20', as well as the retail depth requirements in similar downtown environments. Concerns were raised that the 20' depth required in Birmingham is not a large enough area to support a viable retail establishment, and that it lends itself to proprietors stretching the definition of retail by placing token objects in this space that are for sale, even if they are not the main business of the establishment. Research on the minimum retail depths in other cities has demonstrated that 20' in depth is the minimum, with many sources indicating that 35'-80' in depth would ensure quality retail use. Several articles and examples from other cities are attached for further information. All sections regarding retail depth have been highlighted in purple.

Based on the direction of the City Commission, the Planning Board should not only review the required minimum retail depth, but may wish to provide regulations that govern the display area in and / or the use of this frontage, specifically to prohibit desks, cubicles, meeting tables and other office-type amenities in this space and ensure that the area is used for the display of retail items for sale that will provide storefront interest.

First Floor Lobby Allowances

The Planning Board may also wish to consider whether to establish a maximum dimension for permitted lobbies for hotels, offices and residential units within the Redline Retail District. While the Zoning Ordinance currently allows 50% of the first floor retail space to be used for

lobbies, in large buildings, this allows lobbies to occupy a large expanse of the storefront space, thus creating a less active and less visually attractive section of storefront that breaks up the retail area. Many other communities have provisions to offer some first floor retail space for lobbies for upper story uses, but place a maximum dimension on the lobby space.

Retail Use Requirements in Existing Buildings

Finally, the City Commission has directed the Planning Board to evaluate current properties with buildings located in the Redline Retail District that have not been constructed to support first floor retail uses, such as buildings with first floor garden levels (which are located partially below grade), buildings with very low ceiling heights on the first floor, or split level first floor spaces, to name a few design challenges.

Once the Planning Board has determined the recommended geographic boundaries of the retail district, the Planning Board may wish to identify the buildings with design constraints that may limit their first floor use, and draft regulations to allow for exemptions from the retail use standards and/or to allow for non-retail uses to be grandfathered in as non-conforming until major construction or renovation is proposed for the building.

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 **Mr. Boyle suggested** 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.

Planning Board Minutes
May 24, 2018

OLD BUSINESS

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 Eshaki, 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.

Planning Board Minutes
June 14, 2017

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.

Joint City Commission / Planning Board Minutes
June 19, 2017

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 the May 8, 2017 resolution adopted by the City Commission specifically stated* 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.

**Planning Board Minutes
July 12, 2017**

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.

Ms. Lazar recused herself due to a familial relationship with the applicant.

The Chairman opened the public hearing at 7:40 p.m.

Mr. Clein stated that based on the discussion between the City Commission and Planning Board at the June 19, 2017 joint 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 a 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.

Motion by Mr. Williams

Seconded by Mr. Boyle to continue the public hearing to Wednesday evening, August 9, 2017.

There was no discussion from the public on that motion.

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Boyle, Clein, Jeffares, Prasad, Whipple-Boyce

Nays: None

Recused: Lazar

Absent: Koseck

Chairman Clein closed the public hearing for tonight at 7:41 p.m.

07-131-17

STUDY SESSIONS

1. Definition of Personal Services

Ms. Lazar continued to be recused for this study session.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to accept and file the following communications as part of the official record:

- **E-Mails from various individuals -**
 - **Elizabeth Elkin on July 10;**
 - **Tom Booth on July 10;**
 - **Karen Mucha on July 10;**
 - **Andrea Rehm on July 5.**

- **E-Mail to Planning Board members from Christopher Longe on July 11.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Prasad

Nays: None

Recused: Lazar

Absent: Koseck

Ms. Ecker advised there is a desire by the City Commission to provide clarification on the definition of personal services in the Zoning Ordinance. The current definition of retail use includes commercial use as a permitted use. Commercial use, as defined, includes the category of personal services. However, the term personal services is not defined and left to the interpretation of City Staff.

Ms. Ecker advised the City Manager has provided a letter that makes clear the direction from the City Commission to the Planning Board at the joint Planning Board/City Commission meeting held on June 19, 2017, which is as follows:

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 future 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 14, 2017 meeting does provide a definition for further discussion - however, the City Manager's

comment was that the 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.

Further direction from the City Manager states that 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.

Consensus was that at this time, the board's direction is to focus only on the definition of Personal Services.

Mr. Williams wanted to know by the time of the public hearing how many vacancies there are in the Redline Retail District and what the current mix is, by percentage of square footage and number of units. Also, if information is available what new vacancies will come up in the immediate future.

Mr. Jeffares summarized his view that the core of personal services is from a business (B) to an individual consumer (C), rather than from a business (B) to a business (B) which deals with large corporate clients and doesn't cater to individuals.

Mr. Williams thought the current definition is way too restrictive. He doesn't like making lists. Since the Building Official is the one who must deal with the practical application issues, it would be nice to have him present to provide input. Also, he wanted to hear from the representative of the Birmingham Shopping District ("BSD"). Ms. Whipple-Boyce agreed it is very difficult to provide a list of permitted uses and keep it current. In her opinion it would be more logical to list businesses that they don't want to see Downtown. She worries what may be left out in the present list of permitted services.

Mr. Boyle suggested they want the Downtown to operate as accessible, vibrant, colorful, safe, walkable. They have achieved that. Now he is worried that attempts to define all of the individual uses might backfire. So he thought the board might pay more attention to what they want the City to be and not try to tell people what uses they can or cannot have. Mr. Williams agreed. He feels the City needs a new Master Plan and thinks interim solutions are a mistake. He would rather have a definition that is more expansive and focused on individual services as opposed to corporate or institutional services. He also does not like lists, as they are soon outdated. He supports a broader statement of intended uses by persons in activating the street.

Several board members agreed that they don't want lists. It would be better to offer guidance. Regardless of what uses they come up with, there will always be a body of uses that will not be defined.

The board then discussed whether they concur with the definition of personal services if the list of services it taken out. Ms. Whipple-Boyce observed that the ordinance contains pages and pages of lists. That is part of what makes it work for the Building Official and for people who are looking to do certain things in certain areas. They know exactly what is permitted there. Ms. Prasad agreed it is important for the board to provide examples and direction for the types of uses they want to see.

Mr. Williams did not understand why the board cannot list excluded categories.

Chairman Clein synthesized what he has heard: An establishment that is open to the general public and is primarily engaged in providing services directly to the consumer; including but not limited to personal care, care for apparel and other personal items, and any other service directly sold to the consumer; but does not include business to business services, medical, dental, or mental health services.

At 8:58 p.m. he invited members of the public to come forward to talk about Personal Service.

Mr. Richard Huddleston appeared on behalf of Unit 1 at Birmingham Place, 401 S. Old Woodward Ave., which is approximately 110,000 sq. ft. of commercial and retail space. After walking the Redline Retail District Mr. Huddleston found 10 vacancies out of 110 total storefronts, of which about forty were not retail type uses. He offered his opinion that what is good for retail is foot traffic, and the biggest source of foot traffic in a retail area is high density office.

Ms. Jeanette Smith, VP of Marketing for Core Partners, urged that before a public hearing is held an advisory group be formed that includes people from different walks of life who can weigh in. An interim solution seems a little premature.

Mr. Richard Sherer said his family owns property on Pierce and W. Maple Rd. He stated that any attempt to legislate what can be in buildings is very nebulous. It will be extremely damaging to landlords.

Ms. Cheryl Daskas who is a resident, a retailer, and a property owner, said she does not want to see first-floor offices in her town. As Tom Markus once said, It takes three things: it's your downtown, your neighborhoods, and your school system. If one falters, then the whole thing crumbles. She noted first-floor offices stop the foot traffic.

Ms. Ecker said what she heard from the majority of members is that Personal Services is an establishment that is open to the general public and engaged primarily in providing services directly to an individual consumer; including but not limited to personal care services, care of apparel and other personal items; and not including business to business services, medical, dental, and/or mental health services.

Mr. Boyle stated the board needs to have a serious conversation about the Downtown. Everyone knows there is a lot of change happening. His thought was that it behooves the City Commission to take the leadership and create some form of opportunity for people to weigh in on this issue of the nature of our Downtown. So he strongly recommended to the City

Commission to give that serious consideration and get it moving in advance of yet more delays on the Master Plan.

Planning Board Minutes August 9, 2017

PUBLIC HEARINGS

1. An ordinance to amend Chapter 126, Zoning 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

The Chairman opened the public hearing at 8:15 p.m.

Ms. Lazar and Mr. Share recused themselves and Chairman Clein rejoined the board.

Ms. Ecker explained that at the last meeting based on the direction memo from the City Manager, the point was to solely focus on the Personal Services definition. Thus, tonight the board will focus on Article 9, section 9.02 Definitions to add a definition for Personal Services. The proposed definition is as follows:

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including but not limited to: personal care services, services for the care of apparel and other personal items but not including business to business services, medical, dental and/or mental health services.

There has been a lot of discussion so far and Ms. Ecker briefly went through some of that history. The Planning Board started discussing retail at large in March of this year. In April and again in May there was direction from the City Commission to move forward with ordinance amendments that would 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. The Planning Board talked about this at several subsequent meetings.

On June 19, 2017 the Planning Board and City Commission held a joint workshop session. At that time it was discussed that the public hearing scheduled for July 12, 2017 should be postponed. The Planning Board postponed the public hearing to August 9, 2017 to allow the Planning Board to hold an additional study session on July 12, 2017, specifically with regards to drafting a definition for Personal Services. Based on the direction by the City Commission and City Manager to review the Redline Retail Area, staff provided a review of the retail intent in the 2016 Plan, including the type of uses through the definition of retail and commercial. Within the definition of commercial the 2016 Plan said that personal services should be included and permitted in the Redline Retail District. It did not, however, define personal services. Therefore, the City Commission has directed the Planning Board to zero in on a discussion of personal services and to draft a definition to be added to the Zoning Ordinance.

Thus, tonight the board will talk about a potential definition for personal services and what should be included in the Redline Retail District. In the direction from the City Manager that the Planning Board received, there was a recommendation not to list the businesses that are not included. However, at the last meeting the Planning Board felt they wanted to leave in the list of exclusions for business to business services, medical, dental and/or mental health services.

The thought was that this list clarifies which services are allowed and which services are not allowed when reading the ordinance.

Mr. Williams received information that the Red Line Retail District stops just before Oak on the east side of Woodward and goes all the way down to Lincoln. In response to Mr. Williams, Ms. Ecker noted the City does not have a listing of all vacancies, although the BSD does have a list of some vacancies as reported by brokers and property owners. Also, the City has a list of all of the Downtown businesses, but they are not categorized as retail or non-retail under the definitions in the Zoning Ordinance.

It was concluded that in order to categorize a business the City would need a letter from them indicating what their primary business is.

Mr. Boyle noted this is a very wide spread concern among other communities and not something that is specific to Birmingham. This board is attempting to try and find a way to continue to have activity on our City streets. Mr. Jeffares thought Birmingham has been incredibly successful for being able to still have its retail environment.

Chairman Clein brought out the fact that the 2016 Plan was drafted in 1996 and it is 21 years old now. If there is ever a reason a Master Plan should be updated it is this. It will be important to have a full discussion with all stakeholders about the nature of modern businesses in our community.

Mr. Williams stated it is a mistake to downplay the Master Plan in order to have piecemeal items before it on the Planning Board's Action List. On a priority basis the board will never get to it. The Master Plan should be moved up, but this board does not control that agenda. He feels the board is currently dealing with a problem that doesn't exist.

In response to a question from the board, Ms. Ecker explained that any existing use can continue as long as it is consistent and continuous and isn't stopped for more than six months.

Mr. Jeffares thought it is very remiss that the people in this building who could be of help as part of this process are not present. At this point several board members thought the list of businesses not included as Personal Services causes more trouble than it is worth.

Chairman Clein noted the following correspondence that has been received:

- Letter dated July 27, 2017 from Joseph A. Sweeney, Intercontinental, against the definition;
- Letter dated August 4, 2017 from Paul S. Magy, Clark Hill, concerned that the planned action will erode the City's tax base by restricting the use of first floor commercial in the Redline Retail District;
- Letter dated August 8, 2017 replying to Mr. Magy from Timothy J. Currier, Birmingham City Attorney, indicating that public meetings are the place for discourse;
- Letter dated August 9, 2017 from James Esshaki, Essco Development Co., against the proposed definition and citing several buildings that would be difficult if not impossible to fill with retail.

Motion by Mr. Williams

Seconded by Mr. Koseck to receive and file the four letters.

Motion carried, 6-0.

ROLLCALL VOTE

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

Recused: Lazar, Share

Nays: None

Absent: Prasad

At 8:43 p.m. Chairman Clein opened up public discussion on the definition before the board.

Mr. James Esshaki, Essco Development Co., questioned how medical services cannot be considered as Personal Services. Chairman Clein responded there is strong consideration to just eliminate that from the definition. Further Mr. Esshaki asked what landlords, after spending millions of dollars for their buildings, should do with their spaces when they cannot lease them. No retailer would come in and pay money for a secondary location where there is no traffic. In his mind this is a take.

Mr. Paul Terrace, 1288 Bird, said he is a host of *Tough Talk with Terrace*, which is a public access TV show. It is his intention to tape a show with a developer and a broker and invited anyone who supports this proposal to come on his show also.

Mr. Ted Alsos, Retired Regional Manager of Ford Motor Credit Co, said he resides at 401 S. Old Woodward, unit 806. He is president of the Condominiums of Birmingham Place Master Association and is appearing on behalf of the members of the association. He read a statement to the effect that their association is opposed to the proposed action to limit the uses in the Redline Retail District. They believe that restructuring the uses in Downtown Birmingham will result in increased numbers of vacant storefronts. As vacant storefronts increase, the appeal of Downtown Birmingham decreases and correspondingly decreases values for property owners in Downtown Birmingham, if not the entire City. They are concerned that reduction of the tax base will fall on the residents. Lastly, the Association firmly believes that landlords need flexibility to cope with the changing market conditions for tenancy in Downtown Birmingham.

Mr. Michael Surnow, 320 Martin, co-founder of the Surnow Co. said that boards rely on experts and hire them all the time. The experts are right here - the landlord community -and they are all vehemently opposed to this action.

Mr. Richard Huddleston asked if there is a precise definition of the Redline Retail District in words in the Zoning Ordinance. Ms. Ecker answered that the ordinance refers to a map of the District, which can be found on the City's website.

Mr. Derick Hakow, 211 E. Merrill, Apt. 504, noted that he appreciates the vibrancy of the Downtown Community. He loves the live, work, play mentality that the City has created and would not want to see that jeopardized by change.

Mr. Richard Sherer said he owns multiple properties in Birmingham. He read a couple of sentences from two magazines. Amazon has online sales six times higher than those of

Walmart, Target, Best Buy, Nordstrom, Home Depot, Macy's, Kohl's and Cosco combined. The New York Times states that the retail sector looks quite vulnerable economically with the transition to e-commerce. However, health care has much better numbers. This is the direction things are going.

Ms. Jeanette Smith is VP of Core Partners who has a lot of clients and listings in Birmingham. She has been to all of these meetings and thinks there are a couple of points that are recurring:

- Incomplete data - Other communities should be investigated for either successes or failures when they have enacted a change like this. It just feels premature to make a change at this time;
- She believes it is within the Planning Board's purview to decline to vote this and send it forward as well as to urge the City Commission to work on the Master Plan.

Mr. Paul Magi from Clark Hill, 151 S. Old Woodward Ave., Suite 200, and also a Birmingham resident at 708 Shirley, said he represents many of the people in the room this evening. They not only care about their buildings, but they really deeply care about the City. It seems that it would be appropriate for the board to say they are very interested in doing the right thing. However, before they do that they will make sure they have a full and complete understanding that there is in fact a problem to solve; that they have a study of this District that identifies all of the existing uses and the vacancies; an understanding of how long those vacancies may have occurred; what efforts have been made to re-tenant those spaces, and what the prospects are. Their recommendation should be to first determine if it is broken before it is fixed. If the board has to do something it seems what they could do is request that the important studies be done, including what the long-term impact might be on the City's tax base. This is an absolutely wonderful place and it is likely to continue that way without any kind of change.

Ms. Cheryl Daskas, a resident, property owner and successful retailer spoke. She said the reason people want to come to Birmingham is because of the vibrancy of the Downtown. If it all became offices people would not want to be here. That would affect the property values of the people who do live here. Every other business would shut down at 5 p.m. and at night Downtown will be dark and dreary. It is a shame the building owners don't want to work with someone who is experienced with bringing retailers into town. They would rather lease to office.

Mr. Dan Jacob, 361 E. Maple Rd., said he works with many national retailers every day. He doesn't think the landlords should be restricted. It is not like people are knocking on their doors. He understands the synergy of retail and that some of the retailers want that co-tenancy, but trends are changing and landlords are desperate. Malls pay their tenants for co-tenancies but for individual landlords it is hard to get that synergy.

Mr. Williams noted the BSD expert has not come to these meetings. He thought it would be difficult to take a percentage of how many sales a business has to individuals versus to contractors. What evidence will be required and how will it be policed.

Mr. Koseck wondered how medical/dental crept in as an exclusion and why some are suggesting that it be included. For simplicity purposes he is willing to move this forward and let the Commission do as they please, but he really would like to study it in greater detail.

Mr. Jeffares said that personally he does not like to walk by a storefront and see people hunched over in a cube and working on a PC. It would be horrible to have that everywhere. However, this process doesn't feel right to him for something that has this kind of magnitude - the first floor on the biggest chunk of Downtown. He doesn't feel that he has all of the necessary information to move this forward. He still thinks it is something for a Master Plan and he would prioritize that as number one on the Action List.

Ms. Whipple-Boyce indicated she doesn't like the definition for a couple of different reasons. She doesn't believe that medical/dental and mental health services are an appropriate use for our first-floor retail. Also she does not see how it is possible to not allow a business to business service and be able to understand and keep track of that. She is in favor of a true retail situation in the Redline District and she thinks a lot of the Personal Services that are included in the definition are inappropriate. She hopes to have an opportunity to study the retail situation further through a Master Plan approach.

Mr. Williams indicated he does not like the definition for a variety of reasons. He thinks the board can vote no and send it up to the City Commission and that is what he intends to do.

Mr. Boyle proposed that the board vote tonight on a request to the City Commission that its conclusion is to delay any decision on retail zoning until the City completes its deliberations through a comprehensive Master Plan process.

Chairman Clein took that a step further and made the following motion:

Motion by Chairman Clein

Seconded by Mr. Williams that the Planning Board of the City of Birmingham acknowledges the importance of a vibrant, active Downtown with strong first-floor retail uses. However, tonight he moves that the Planning Board recommend that the City Commission does not adopt the definition of Personal Services as presented in the proposed amendment to Zoning Ordinance Article 9, section 9.02, Definitions, and further recommend that the City of Birmingham expedite an immediate update to our comprehensive City wide Master Plan in order to properly address this issue and those that surround it.

Mr. Koseck summarized that this motion suggests the Master Plan be taken off the back burner and brought to the front so that the Planning Board can bring in people with much more of a global expertise and unbiased opinions. The Chairman explained that his point is to address not only the definition but to address the limits of the Redline Retail as well as residential neighborhoods, the Triangle and Rail Districts, along with the parking implications.

Mr. Williams explained one of the reasons he felt the impetus to move towards a Master Plan was the experience with O-1, O-2, TZ-1, TZ-2, TZ-3 where they tried to grapple with transition areas affecting residents and commercial property owners in transition areas. What the board learned was that they didn't have a Master Plan and it took them seven years from the time they started talking about it until they reached a final conclusion on all of the pieces. They took their time, did it right, and didn't move on an interim solution. What they learned was that piecemeal solutions are a bad idea. That is why he thinks this City needs a Master Plan. He would like to hear from all property owners and would also like the residents to speak up.

No one from the public had comments on the motion at 9:24 p.m.

Motion carried, 6-0.

ROLLCALL VOTE

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

Recused: Lazar, Share

Nays: None

Absent: Prasad

The Chairman closed the public hearing at 9:30 p.m. and board members took a short recess.

City Commission Minutes
September 25, 2017

09-260-17 SET PUBLIC HEARING TO CONSIDER ADDING DEFINITION OF PERSONAL SERVICES TO ZONING ORDINANCE

Commissioner Sherman said he would like to see the list the Planning Board made in their consideration of the definition of personal services before the Commission schedules a public hearing.

City Manager Valentine confirmed for Commissioner Sherman that the Planning Board's first meeting in November would be November 8, and that the Commission should ask to receive the Planning Board's list and notes by November 9 at the latest. C

Commissioner Sherman clarified he does not want the Planning Board to hold another public hearing; rather, he wants the list the Planning Board had been working on to be provided to the Commission. Commissioner Sherman explained to City Planner Ecker that he would like the list to be inclusive of the uses the Planning Board did and did not consider including in their definition of personal services.

Commissioner Bordman echoed Commissioner Sherman's comments, and added that in all the personal research she had conducted on personal services definitions in different communities, illustrative lists of uses were included.

Commissioner Bordman continued that when the Planning Board provides the Commission with its list, it should also include pros and cons for including or excluding each use.

Commissioner DeWeese stated:

- He was similarly bothered by the lack of real-world examples, and this lack could lead to uncertainty in interpretation of the ordinance.
- He would like to see how all the businesses currently operating in the red-line retail district would be categorized, even with the understanding that those businesses are grandfathered in, so as to be able to refine how the definitions and uses should be applied.
- o He is not comfortable moving forward with a definition without a more concrete sense of this information.

Mayor Nickita summarized that he was hearing the Commissioners call for more specific examples and information from the Planning Board.

Commissioner Hoff pointed out:

- The Planning Board was originally hesitant in providing a list because every use would have exceptions.
- Other approaches might be more consistent with the Commission's desire to promote vibrant, active businesses in the City's retail areas.
- Giving the Planning Board sufficient leeway to explore other approaches might be beneficial.

Mayor Nickita stated that the Commission seemed to be addressing two related issues: use issues and application issues. Citing Lululemon as an example, Mayor Nickita explained that if they, as a retail business, decided to put an office desk in one of their windows that would be both a use and an application issue. Commissioner Hoff echoed Mayor Nickita's point, saying that Lululemon was a good example because they have frequent customers and less dynamic windows, which brings up difficulties with this ordinance and its application.

Commissioner Sherman reiterated that the topic before the Commission was whether to set a public hearing on the public services definition, or to send the topic back to the Planning Board with a request for further information.

Mayor Pro Tem Harris stated:

- This topic has been discussed in at least three joint sessions.
- He believes the Planning Board fulfilled the Commission's request to provide a definition for public services.
- The Commission now has a number of options, including:
 - o Rejecting the definition;
 - o Accepting the definition; or
 - o Asking the Planning Board to generate a list of additional ways to create a vibrant and active downtown.
- He does not want to send the current definition back to the Planning Board for further elaboration.

Mayor Nickita:

- Agreed with Commissioner Hoff that asking for a list of uses may be complicated because exceptions will exist, but added that he also does not believe the Commission has been provided enough information by the Planning Board to move forward with crafting the ordinance.
- Preferred to receive a list from the Planning Board, even with the drawbacks of generating one, in order to address the issue of clarity around the ordinance's implementation.

Commissioner Hoff reminded the Commission that Chairman Scott Clein of the Planning Board called for further study of the definition before implementation, and that Chairman Clein did not likely intend that a list of uses would be sufficient substitute for that study.

Mayor Nickita replied that the Planning Board's recommendation of further study of the definition would be beneficial long-term, but would not resolve the short-term issue of current, appropriate implementation of the ordinance.

Commissioner DeWeese stated:

- His request for a list is in order to provide the Commission with concrete examples with which to work.
- He also agrees with Commissioner Hoff that the more pressing issue at hand is to figure out what rules or regulations should be applied to the first twenty feet of space in these types of zoning situations, and this is more than a use issue.
- There are some uses that may be technically prohibited, but would be more vibrant and interesting to passersby than other uses which are technically permitted but visually lacking, and that acknowledging these potential contradictions will allow the Commission to achieve its ultimate goal of making streets livelier, independent of the master planning process.

MOTION:

Motion by Commissioner Sherman, seconded by Commissioner Bordman:

To send the issue of the definition of personal services back to the Planning Board for the purpose of providing the Commission with the list of uses discussed at the Joint City Commission/Planning Board meeting on September 18, 2017, have the Planning Board complete the list, including the rationale for each use's inclusion or exclusion, and submit the list by November 9 or earlier.

Commissioner Bordman asked to add "to provide rationale for including or excluding each use" to the motion.

Commissioner Sherman suggested the information may be in the Planning Board's minutes, and Commissioner Bordman replied she did not believe it was.

Mayor Nickita suggested that if this were to be added as an amendment, the request would need to be more specific. He added that requesting a pro and con list for every use considered may be cumbersome.

Commissioner Bordman said that maybe it would be more efficient to include pros and cons for categories instead of individual uses, and Mayor Nickita agreed.

Upon Mayor Nickita's request, City Clerk Mynsberge read the amendment proposed as: "You are sending this issue back to the Planning Board for the purpose of having them provide us with their list of uses discussed at the joint meeting, to have that list cleaned up, have it back to the Commission by November 8, and to include the rationale of the advantages and disadvantages for each category."

Mayor Nickita and City Manager Valentine agreed to change "cleaned up" to "completed".

Commissioner DeWeese stated:

- He would still like to have concrete examples of how the definition applies within Birmingham's redline retail district.
- The information could come from the Planning staff instead of the Planning Board.

City Manager Valentine suggested that Commissioner DeWeese's concerns could be addressed administratively.

Mayor Nickita concurred that a presentation on the topic would be useful.

Commissioner Hoff stated she was still concerned because the Planning Board did not endorse its own definition, and therefore a list of rationales to build on the unendorsed definition would not be beneficial.

Mayor Nickita requested that further Commission comments be related to the motion.

Commissioner Boutros stated:

- Ultimately, in requesting a list, the Commission is asking the Planning Board to commence a limited study without appropriate time or resources.
- He believes the Commission should either accept the currently provided definition or not, and move forward from there.
- He believes a list with sub-items would only further complicate the issue. Mayor Nickita reminded the Commission the motion on the table was to request further information from the Planning Board so as to clarify the ordinance, and that such a motion could be beneficial so the Commission does not continue to attempt performing work more appropriately carried out by the Planning Board.

Mayor Nickita explained to Commissioner Hoff that the intent of the motion was to provide a list of categories that fall within the definition of personal use, and the rationale for the uses' inclusion or exclusion. In this way, the Commission hopes to gain information as to how the ordinance may be more clearly implemented.

Commissioner Hoff stated she believes the motion just delays the Commission's effort towards cultivating vibrant and active streets.

Mayor Nickita replied that, while he agrees the issue has already been more delayed than he expected, this motion would only delay the process by an additional month, with a public hearing at the end of November instead of the end of October. He continued that doing so has the benefit of being as informationally complete as possible.

Planning Board Minutes October 25, 2017

STUDY SESSION

Personal Services Definition

Mr. Share recused himself because he represents a property owner in the Redline Retail District.

Ms. Lazar recused herself because of a familial relationship with a property owner in the Redline Retail District.

Chairman Clein recalled the Planning Board has held several public hearings on the definition of Personal Services, and provided a definition to the City Commission along with a recommendation as to what to do with the definition. The City Commission has asked for support and clarification to help them understand this board's thinking as to why the language was drafted as it was, and for the purpose of having the Planning Board provide the City Commission with their list of uses and categories they think are in or out. The board is not revising the definition, but simply providing clarification and supplemental information to the Commission at their request.

Ms. Ecker said that during the City Commission meeting on September 25, 2017, the Commission expressed concern that the Planning Board had not considered enough sample definitions of personal services in other communities. Based on the concern expressed that more definitions were not discussed, the five sample definitions that were previously shown as options in previous agenda packets are provided, along with 12 additional definitions from other communities to supplement the ones originally selected.

Mr. Williams' view was that the board should send forward all 17 definitions to the City Commission. They all contain sub-categories of lists which may or may not be helpful to the Commission. Ms. Ecker said that staff has gone through categories of uses and put together a list of uses that could be considered personal services, as well as the ones the board has specifically talked about. The City Commission asked for them to be categorized, along with their pros and cons. The two last columns will say "Does the proposed definition include this use in Redline Retail District," and "Does the proposed definition not include this use in Redline Retail District."

Definition of Personal Services

An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers including, but not limited to personal care services, services for the care of apparel and other personal items; but not including business-to-business services, medical, dental, and/or mental health services.

Chairman Clein said the City Commission is unclear on what that definition would allow and they have asked the Planning Board to help them understand how it views the definition. Mr. Williams said the better approach is to give the Commission the 17 communities and give them

the list of categories, what the uses are, what the pros are, and what the cons are. The board has not reached consensus on whether a use is within the Personal Services definition or out.

After much deliberation, the board reached mostly unanimity on which uses should be excluded within the Definition of Personal Services:

<u>Uses</u>	<u>Comments</u>
<ul style="list-style-type: none">• Dental Office• Medical Office• Physical Therapy service• Marketing Services• Professional Consulting Services• Website/Media Services *• Insurance Services*• Self-Service Laundry*	<ul style="list-style-type: none">- More a medical use, therefore not personal- Not a personal service- Not a personal service- May be both personal and professional service-May be both personal and professional service- Personal service but may be inappropriate
<ul style="list-style-type: none">• Eliminate the Last Two Columns as to whether the Definition includes the use in the Redline Retail District and add a Comment Column which is only filled in on a few uses	

* Lack of unanimity because of concerns that it is more office use than actual Personal Service

Move Printing and Copying to Business Services and include it.

Mr. Williams said in hindsight it would have been a better approach to come up with a more generic definition with specific examples and maybe general caveat language for the Building Official, which is what some municipalities have done. Everyone agreed with that comment. Chairman Clein added that the board has put forth its best effort by summarizing concerns, complexity, and providing more detail. Now the City Commission can decide what measure to take.

There were no comments from members of the public at 10:20 p.m.

Planning Board Minutes November 8, 2017

STUDY SESSION

Personal Services Definition

Chairperson Lazar recused herself because of a familial relationship with a property owner.

Mr. Williams took over the chair.

Temporary Chairman Williams recalled that on September 25, 2017, the City Commission asked the Planning Board to provide them with their list of personal service uses discussed at the joint meeting. As there was no such list previously created, the Planning Division prepared for the Planning Board's review a sample list of potential uses, along with the pros and cons for potentially allowing such uses in the Redline Retail District. The Commission requested that the list include the rationale of the advantages and disadvantages for each category of use.

During the City Commission meeting on September 25, 2017, the City Commission also expressed concern that the Planning Board had not considered enough sample definitions of personal services in other communities. Planning Staff indicated that a number of sample definitions were selected from the research completed to provide the Planning Board with multiple options to consider for Birmingham. Based on the concern expressed that more definitions were not discussed, five sample definitions that were previously provided as options in previous agenda packets were included, along with 12 additional definitions from other communities to supplement the ones originally selected as possible options.

At their last meeting on October 25, 2017, the Planning Board reviewed the draft chart of potential personal service uses prepared by the Planning Division staff, and made modifications to the pros and cons of each use. In addition, the Planning Board requested that the last two columns be removed as to whether a use should or should not be allowed, and a comments column be added to note where there was not a unanimous opinion of the entire Planning Board. The requested changes have been made, and the chart now provides the following columns: Category, Uses, Pros, Cons, Comments, and Current Examples.

Temporary Chairman Williams added there are examples of businesses currently in the Redline Retail District that would not be permitted under the refined definition and the categories of uses that the board has come up with. The City Attorney has pointed out that those existing businesses would be grandfathered.

Ms. Ecker noted that on October 30, 2017, the City Commission set a public hearing date for November 13, 2017 to consider the proposed definition of personal services that was forwarded by the Planning Board on August 9, 2017:

Definition of Personal Services

An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers including, but not limited to personal care services, services for the care of apparel and other personal items;

but not including business-to-business services, medical, dental, and/or mental health services.

Temporary Chairman Williams noted the board has said it is not in favor of this whole concept but they have tried to follow through on the specific request of the City Commission to the best of their ability.

Mr. Boyle noticed that Travel Agencies is not mentioned as a category. Ms. Ecker thought it could be added under Other Services:

- Pros - Provides services to local residents and businesses and a potentially vibrant window display
- Cons - Parking demand

Motion by Ms Whipple-Boyce

Seconded by Mr. Jeffares that the information with respect to the 17 communities and the list of uses including pros, cons, comments, and current examples with the addition of travel agencies be forwarded to the City Commission in accordance with their request.

The Temporary Chairman took discussion from the audience at 9:34 p.m.

Mr. James Esshaki, Essco Development Co., asked for an explanation of what the first 20 ft. means before a use is allowed. Ms. Ecker answered that in the Redline Retail District the first 20 ft. of a business must be a Retail or a Personal Services use. Then behind that there could be something else, but in the D-4 not more than two floors of office. Mr. Esshaki did not know why the issue of defining Personal Services cannot wait for a Master Plan to be developed. Temporary Chairman Williams noted the board has responded specifically to a direction by the City Commission.

Ms. Jeanette Smith, Core Partners, received confirmation that when Google moves out the next tenant will have to adhere to the mandate of the Redline Retail District for their first 20 ft. An RFP for a Comprehensive Master Plan may go out the first of next year, but that is up to the City Commission.

Mr. Brian Najor, Najor Companies, commended the board members for the time and effort they have put into this study. He added that some new use will always come up. Temporary Chairman Williams clarified the board has only furnished the list of uses to the Commission as additional information. The definition of Personal Services has not changed and their public hearing is on the definition that was forwarded to them. Mr. Najor asked whether the definition should have been altered, considering all the new information. Ms. Ecker replied that at this point the Planning Board was not asked to alter the definition.

Ms. Whipple-Boyce said it is not exactly true that the board does not agree to this but they are doing it at the request of the City Commission. There are people on the board that do believe that some businesses are not in the appropriate place. The growing trend of businesses like Shift Digital in Downtown is what brought this to the board's attention. There is a concern that the City Commission believes to be true, and some board members agree and some don't.

Mr. Koseck said several first-floor tenants have come to the Planning Board and indicated they don't want office on either side of their business. Temporary Chairman Williams noted that to be fair, they have had people the other way too.

Motion carried, 5-0.

ROLLCALL

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

Nays: None

Recused: Lazar

Absent: Clein

Chairperson Lazar took back the gavel.

**City Commission Minutes
November 13, 2017**

**PUBLIC HEARING OF AMENDMENT TO ARTICLE 9 OF THE ZONING ORDINANCE TO
ADD A DEFINITION OF PERSONAL SERVICES**

Mayor Harris explained that the purpose of this hearing was to clarify language. He urged all speakers to be concise and specific to the point, and for comments not to be repetitive. Mayor Harris declared a two-minute time limit for speakers. Mayor Harris opened the public hearing at 9:02 p.m.

City Planner Ecker laid out the history of the issue. Most recently, the Planning Board:

- Created a draft chart of potential personal service uses;
- Made modifications to the pros and cons of each use;
- Requested that the last two columns be removed and a comments column be added to note where there was not a unanimous opinion of the entire Planning Board. In addition, City Planner Ecker explained that:
 - A column was added to provide examples of existing businesses in the City that would fall under each category.
 - The Planning Board re-reviewed the 5 sample definitions that were previously provided as options in previous agenda packets; and,
 - Added 12 more definitions from other communities to supplement the ones originally selected as possible options.

City Planner Ecker confirmed for:

- Commissioner Nickita that none of the supplied example definitions of personal services included offices as one of the possible business types.
- Commissioner Hoff that the Planning Board's chart designated their agreement or disagreement on whether a type of business could be a personal service.
 - o White comments reflected general agreement that the business-type in question was a personal service;
 - o Green comments reflected general agreement that the business-type in question was not a personal service; and,
 - o Red comments reflected a split on whether the business-type in question could be considered a personal service.

Attorney Currier told Mayor Pro Tem Bordman that the chart cannot be appended to the ordinance language as guidance to staff, since ordinance language reflects City law.

City Planner Ecker explained that the definition proposed in 9.02 could be changed to include the chart, but that it would be a substantive change to the proposed definition.

Commissioner Sherman stated the Commission may be better off looking at the proposed ordinance amendment, passing it, and then sending it to be reviewed, as has been done in the past.

Commissioner DeWeese expressed concern that the proposed personal services definition does not sufficiently exclude office or quasi-office use, and desired that the definition stand-alone without a chart since the chart may be subject to shifts over time.

City Planner Ecker confirmed for Commissioner Hoff that Article 9, Section 9.02 of the City Ordinances specifies personal services, but that office use has never been permitted under this definition of retail use in the redline retail district. She reiterated that issue before the Commission now is to clarify the grey area between office and personal service use.

Commissioner Boutros outlined four options he sees for the definition of personal services: it could be enforced, it could be left flexible, the City could hire consultants for the process, or it could be included in the master plan. Commissioner Boutros then listed his considerations regarding the approaches:

- Enforcing a personal services definition excluding offices could cause vacancies in the redline retail district should the retail market crash.
- A flexible personal services definition could allow for a wider range of businesses to fill vacancies in the event of a retail crash.
- Hiring consultants, as the City has done in the past, would allow the City to have dedicated advice on the matter. He stated that he does not feel there has been sufficient economic information or study to move forward on this.

Mayor Pro Tem Bordman stated that:

- The Commission currently has several documents recommending against first-floor office space under personal services, including the 2016 Plan.
- The Commission also has dozens of community definitions of personal services which exclude office use as a type of personal service.
- The local communities of Ferndale, Royal Oak, Plymouth and Holland do not have firstfloor offices in their retail districts.
- Birmingham is not sufficiently different from the other communities to require a different approach to this matter.
- The issue needs to be resolved quickly. She would like to see a yes or no vote, with the possibility of adjustments at a later date.

Commissioner Hoff commented that while the ordinance officially does not permit office space, offices have been allowed under this ordinance. She added that perhaps the best option is to try an approach for six months, and to see how it affects the City.

City Planner Ecker confirmed for Mayor Harris that the definitions of personal services before the Commission were selected for specificity in their language, but no other criteria. She also clarified that Birmingham City staff only looked for definitions of personal services within other cities' ordinances. As a result, cities' considerations of retail definitions, office spaces, and types of zoning may not have been included in the report, or may be very different from Birmingham's considerations.

Commissioner Nickita reminded the Commission that:

- This is not a process that has been done haphazardly, as 3,000 members of the public and a professional team worked on the downtown plan as recently as two years ago.
- The author of the plan described it as the most advanced plan he had ever worked on.
- The Commission's responsibility is to now fill in a gap they have been made aware of. Commissioner Sherman explained that there are no offices allowed under the current ordinance. Any offices currently occupying first-floor retail spaces are there because of an interpretation of personal services by tenants and landlords. That is the potential loophole the Commission is looking to clarify.

Scott Aikens (owns 350 N. Old Woodward) stated that:

- Birmingham's redline retail district is extraordinarily overbroad.
- The buildings on the hill between Willits and Harmon were designed as office buildings, and office space is at a premium there.
- Landlords can charge more for office space within the redline retail district.
- If 350 N. Old Woodward were to lose an office tenant and not replace it within six months, Mr. Aikens is afraid they would have to rent to a retail store.
- If that were to happen, Mr. Aikens explained he might be forced to sue.
- He is profoundly disheartened that the City would treat its landlords like this.

Marlin Wroubel, developer of "Google" building, stated that no one was interested in renting retail on the first floor of the building. Mr. Wroubel was in the process of selling the building when the Commission first started talking about disallowing office use, and he said that every offer he had has been pulled off the table since as a result.

Ted Eisholz (401. S. Old Woodward - President of Condominiums at Birmingham Place Association) appeared before the Commission to state the Birmingham Place Association's opposition to limiting the uses of the redline district. Mr. Eisholz continued that there were significant retail vacancies in 2010, and since then the value of the Association's properties has more than doubled. The Association does not wish to move forward with anything that would impede this positive trend.

James Esshaki, owner of Essco Development Company:

- Reminded the Commission that the Planning Board unanimously recommended not changing the definition of personal services.
- Emphasized City Planner Ecker's point that studying other communities' personal services definitions does not necessarily tell the Commission how those communities handle office rentals within retail districts.
- Requested that the Commission differentiate between grade level and first floor level.

Richard Huddleston (representing owner of Unit 1 of Birmingham Place) stated:

- That his company owns about 110,000 sq. ft. of office and retail space.
- That they brought Birmingham Place out of foreclosure in 2010.
- That he most recently counted 21 vacant store fronts in Birmingham, including four in a row on Old Woodward. 10 November 13, 2017
- That having Google in Birmingham, along with attorneys, medical offices, and architects is preferable to vacancies.
- The Commission should adopt as broad a definition of personal services as possible as retail declines.

Jeanette Smith (Core Partners) explained that the real estate community would like the Commission to hold off on a definition until there has been more collaboration and study as part of the master planning process, especially since available data suggests a 10% retail vacancy over the next few years for the City of Birmingham.

Richard Astrein, jeweler in downtown Birmingham, stated:

- That retail density is important in the redline retail district;
- That offices add strain to Birmingham's limited parking resources, whereas retail enables a faster parking turnover; and,
- That if Birmingham continues adding offices to its retail district, it will no longer have the uniqueness that interests potential homebuyers in the community.

Karen Daskas (co-owner of Tender) stated that:

- Business of Fashion, a digital fashion publication, recently released a study that said independent retailers are gaining traction.
- Birmingham needs a strong group of independent retailers that are here to stay.
- Offices in the middle of a retail walking area limit walkability.

Debbie Astrein spoke as a lifetime resident of Oakland County and explained that:

- Birmingham has always been a unique place to visit.
- Adding first-floor offices will significantly alter the feel of the City negatively.

Lane Caruso (Caruso + Caruso, 166 W. Maple Road) asked the Commission to name businesses in order to clarify what they will and will not allow in downtown, and then to leave some room for future determinations.

Paul *Terrace Taros (resident) reminded the Commission that parks and recreation upkeep requires a large tax-base, and allowing these landlords to rent to offices will allow Birmingham to have that. He added that the landlords are the experts, and what is good for them will be good for Birmingham.

Brian Najor (Najor Companies) said:

- There is a wide variety of expert opinions, and a lot of remaining confusion on the issue.
- He would not be comfortable seeing something passed tonight, especially since the Planning Board itself was so against the definition's adoption.
- That it might behoove the City to reduce the size of the redline retail district, possibly by focusing on a few key areas.
- While retail is desirable for everyone, there are enough vacant spaces to accommodate Birmingham's retail demand.
- Maintaining the grey area afforded by the current understanding of personal services may provide the flexibility the City needs in order to make discretionary decisions about businesses within the redline retail district.
- He believes medical and dental practices should be allowed.

Mayor Harris confirmed for Mr. Najor that the *downtown citywide master plan is currently undergoing requests for proposals (RFP).

Commissioner Nickita clarified for Mr. Najor that:

- The Master Plan and the downtown plan are different.
- The Master Plan is a citywide plan, which is out for RFP.
- The citywide plan deals with Birmingham on a macro level, and not necessarily the details of the downtown.
- The citywide, Master Plan will be different than the Rail District Plan or the Triangle District Plan, which were more detailed regarding those areas.
- The 2016 Plan was created 20 years ago, but was updated in 2014 during a full review of the Plan and its progress.

Richard Astrein stated that, as a landlord in Birmingham, he has seen very high offers for his property, and does not believe that the City is in danger of plunging real estate values.

There being no further comment, Mayor Harris closed the public hearing at 10:25 p.m.

Mayor Pro Tem Bordman clarified that any businesses currently in operation in the redline district would be grandfathered in.

Commissioner Boutros stated that:

- He is a huge supporter of retail.
- As a retailer his three most important considerations are visibility, convenience, and parking.
- He wants to see a study before decisions are made for the definition.
- Birmingham is vibrant because of offices in the downtown, but not the first floor, which has been ruled out.
- The issue does not seem to be the personal services definition.
- Birmingham now has a retail consultant who he would like to see work with the retailers and landlords to better secure the position of retail in Birmingham.

Commissioner Nickita agreed with Mr. Najor. He reiterated that offices are not allowed on the first floor. The Commissioner continued that:

- The definition of personal services needs clarification so City staff knows how to implement it.
- The loophole in the definition of personal services needs to be closed because the ordinance currently permits businesses that are not allowed per ordinance in downtown.
- Within the definition business-to-business services should be prohibited, and a focus on individual services should be encouraged, which would be progress for the definition.
- Many types of further study would be useful, but for now the Commission needs to clarify the definition.

Commissioner Sherman pointed out that this conversation has been on-going since June 2016. He moved the ordinance as-is in order to close the loophole, while acknowledging it is not perfect. He stated that more clarification in the future would likely be necessary.

Mr. Aikens explained to Commissioner Hoff where 350 N. Old Woodward is, and described some of the offices within the building.

City Attorney Currier confirmed for Mayor Pro Tem Bordman that:

- If a landlord has an ongoing office tenant on the first floor, or replaces an office tenant on the first floor with another office tenant within six months, then the first floor could remain designated for office use under this ordinance.
- If a vacancy occurs on the first floor of any building within the retail district, however, and the vacancy lasts more than six months, it would be required to become retail under the proposed ordinance.

Commissioner DeWeese expressed:

- Discomfort with the definition, especially due to the Planning Board's lack of endorsement;
- A belief that the definition does not fulfill its intentions;

- A concern with potential consequences of the definition;
- That the Commission has not done due diligence before passing this; and
- His support for retail.

The Commissioner finished by stating that, due to these reasons, he is not in support of the motion.

Mayor Harris explained he is inclined to support the motion because:

- Of the 17 communities surveyed, not one includes office use in their definition of personal services.
- The ordinance does not allow for offices, which means an update of the definition of personal services would encourage an interpretation more in line with the ordinance's original intent.
- The definition can be modified in the future if there are damaging unforeseen consequences.

City Manager Valentine confirmed for Commissioner Hoff that this definition does clarify the ordinance for staff implementation because, in addition to the other language included, it specifies "services primarily provided directly to individuals" being the primary focus of first floor businesses.

Commissioner Boutros expressed his hesitancy once more to make a change without having sufficient information on the potential impact on the Birmingham Shopping District.

Mr. Esshaki thanked Commissioner DeWeese and asked what Birmingham would propose to do with the office buildings north of Maple that were built as office buildings. He added that the Commission stands reduce the value of these buildings significantly, and that this motion should not be passed without considering the ramifications.

Mr. *Ballard Baller (resident) stated that there are some sections of the City being included in this ordinance that are not suitable for retail, like Brown Street, N. Old Woodward, and S. Old Woodward. He believes those areas should be excluded from this definition, and is surprised to hear they were originally included.

Jeannette Smith (Core Partners) stated that she is still seeing inconsistencies in the application of this definition, but that the compromise might be to focus on the geography of its application like other speakers have suggested.

Derek Dickow (lives at Merrillwood Building) expressed opposition to this motion, and he thinks parking is a much bigger issue.

Mr. Caruso:

- Agreed with other speakers that the loophole needs to be closed, but that this solution may be too adversarial.
- Expressed concern that the City is setting itself up for a lawsuit, and that if the loophole is closed this way the redline retail district must immediately be studied and redefined.
- Said that his feeling is that the retail district should be Maple Road from Southfield to Woodward, and the Old Woodward corridor to some degree.
- Finished by saying that there are certain parts of the City currently defined as redline retail that would actually prevent a retailer from succeeding there without an online presence or an already-loyal local clientele.

City Planner Ecker confirmed for Mr. Najor that:

- Every tenant within the redline retail district has to follow the overlay standards which include first floor retail.
- Internally it has been decided that the first 20' beyond the windows or doors on the first floor cannot include desks or cubicles.

City Planner Ecker confirmed for Mr. Caruso that any businesses that are open to the public, display their merchandise, and display their services for the first 20' beyond the door are operating within the City's requirements.

Commissioner Hoff stated that she supports this but does not support it for the whole geographic area being considered.

MOTION:

Motion by Commissioner Sherman, seconded by Mayor Pro Tem Bordman:

To amend Article 9, Section 9.02, Definitions, to add a definition for personal services to the Zoning Ordinance. (Appended to these minutes as Attachment B)

VOTE: Yeas, 4 Nays, 3 (DeWeese, Hoff, Boutros) Absent, 0

Commissioner Nickita stated he believes it would be beneficial to move forward with a review of the redline retail district.

Commissioner Sherman stated that:

- The Planning Board has a review of the redline retail district on their agenda.
- The list of business types provided by the Planning Board may be used to provide further guidance for ordinance implementation.
- He would like the Planning Board to revisit the issues broached in this public hearing.

Mayor Harris said he would like to see geographic study of the redline retail district moved to the top of the Planning Board's agenda, given the concern expressed by members of the public at tonight's hearing.

Mayor Pro Tem Bordman, Commissioner Hoff and Commissioner DeWeese agreed.

Commissioner Nickita agreed with Mayor Harris and added that perhaps different standards could be applied depending on location and how far out the business in question is from the core of Birmingham's shopping district.

Commissioner DeWeese added he would also like to see buildings discussed that currently fall within the redline retail district, but were originally built and have remained office buildings.



MEMORANDUM

Office of the City Manager

DATE: November 21, 2017

TO: Planning Board

FROM: Joseph A. Valentine, City Manager

CC: City Commission

SUBJECT: Downtown Retail Review

At the City Commission meeting of November 13, 2017, the City Commission approved an amendment to Article 9 of the Zoning Ordinance to add a definition for Personal Services (copy attached). In accordance with the prior directive by the Commission to promptly address this issue, there was also an interest by the Commission to have the Planning Board further review the application of retail within the Downtown Retail District.

With the completion of the recent action clarifying the personal service category by definition, the City Commission has directed the Planning Board to expeditiously begin a review of the Retail District to consider all retail related requirements contained in the Zoning Ordinance and recommend any needed amendments, including but not limited to, the following:

1. To evaluate the current geographic boundary of the Retail District for possible modification and also consider a priority level hierarchy consisting of the downtown core and other areas within the current Retail District boundary.
2. To evaluate current properties in the Retail District that were not built to support first floor retail uses and provide recommendations to address this issue. Such properties may, for example, have not been built with first floor frontage at grade or the building was not previously designed to support a retail use.
3. To evaluate the prohibition of desks, workstations and office related amenities placed within the first 20 feet of depth of window frontage within the Retail District and recommend ordinance language to address this issue.

The City Commission has requested the Planning Board immediately begin discussions on Item 6 of its Action List and provide its recommendations at its earliest opportunity.


ORDINANCE NO. 2252

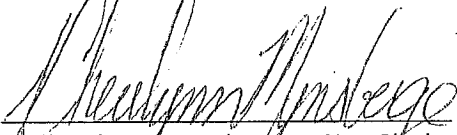
The City of Birmingham ordains:

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.

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for the care of apparel and other personal items, but not including business to business services, medical, dental and/or mental health services.

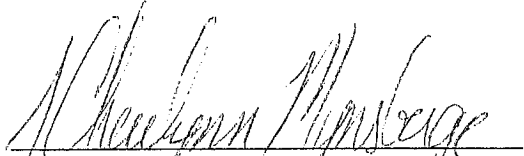
ORDAINED this 13th day of November, 2017 to become effective 7 days after publication.



Andrew Harris, Mayor

J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held November 13, 2017, and that a summary was published in the Observer & Eccentric newspaper on November 19, 2017.



J. Cherilynn Mynsberge, City Clerk

OPINION

THE WEEKEND INTERVIEW with Kemper Freeman | By Stephen Moore

How Retailers Can Thrive in the Age of Amazon

Bellevue, Wash.
If you prefer to do your Christmas shopping the old-fashioned way—dressing up and driving to the mall, or strolling down New York’s Fifth Avenue or Chicago’s Miracle Mile—Kemper Freeman has some holiday cheer. Despite the growth of online commerce, retail stores and shopping malls aren’t going the way of the dodo.
Mr. Freeman, 76, owns Bellevue Square, a multilevel mall east of downtown Seattle, which features scores of restaurants, hotels, department stores and novelty shops. Foot traffic is up 21% this year, Mr. Freeman says, and he is planning a multimillion-dollar expansion—a bet that even in the age of Amazon, Americans won’t give up in-person shopping.

The secret, says Bellevue Square’s owner, is to provide customers with ‘emotional fulfillment.’

Mr. Freeman’s bullishness on brick-and-mortar makes him an outlier. This past week Westfield Corp., which operates some of America’s biggest high-end malls, sold out to a European rival, a move said to have been motivated by brutal e-commerce competition. “If Amazon were an animal it would be an octopus,” a Journal tech reporter recently observed—its tentacles reaching just about everywhere in the consumer economy, from products like pharmaceuticals, groceries and cars to services like housecleaning. A CNN report recently said that with anchor stores like JC Penney, Sears and Macy’s shutting down, “America’s malls are rotting away” and “the worst is yet to come.” But not at Bellevue Square, where Mr. Freeman says retailers are lining up to pay \$100 a square foot for store space, about three times the industry average.
His company is family owned and has employed tens of thousands of people over three generations. It was Mr. Freeman’s grandfather who, 71 years ago, bought 10 acres in Bellevue, a town of 6,000, and developed 16 stores.

Mr. Freeman’s father turned it into a multimillion-dollar shopping complex before handing it off to Kemper, who has expanded it in what is now a city of 140,000 across Lake Washington from Seattle.
Early this month Mr. Freeman and I stood on the roof deck of the new Westin Hotel (which he owns) and gazed down at tens of thousands of shoppers lining the four-block stretch of Bellevue Way that has become known as Snowflake Lane. At 7:00 each night during the Christmas season, artificial snow starts falling as a light show blankets the sky in brilliant colors. Down the way comes a Rose Bowl-like parade of floats, drummers and sleigh-riding Santa Clauses. “It’s the biggest outdoor Christmas celebration in the country, and we do it every night of the week,” Mr. Freeman says with glee. “It’s the kind of thing that brings people to the mall. I pay for it all myself.” Over the holiday season he estimates the parade attracts some 500,000 customers, who shop or eat dinner in one of the mall’s dozens of restaurants.
Mr. Freeman insists that reports of retail’s demise have been greatly exaggerated, and he’s prepared to make the case with numbers. He tells me that a 2016 government report totaled retail sales (excluding restaurants, gasoline and automobiles) at \$3.4 trillion nationwide. He asks me to guess how much of that was online. I say 15%. “No,” he says, “it’s 11%, or \$400 billion. And the online sales is less than 10% when including restaurants. Now, it used to be 3%, so it’s growing, and it’s not capped. But it’s still only a fraction of the business. It may someday go to 20% or 30%, but it’s not going to take over the world.”
Mr. Freeman concedes that shopping centers are tremendously overbuilt in America, but he says that’s owing to a real-estate frenzy that long preceded the online-sales phenomenon. By his estimate, the U.S. has at least 50% more retail space per person than Canada—and Canada’s figure is 50% higher than Germany’s. “It’s Germany that has it about right,” he concludes—which would mean the optimal amount of retail space is less than half the current American total. “I’ve traveled all over the country,” Mr. Freeman says.



“The challenge is to find a place where retail *isn’t* overbuilt.” If he’s right, a severe real-estate contraction is coming, and weak stores and malls will get eaten alive. Can Macy’s survive? Probably not: “They are run by bean counters”—lawyers and accountants, not entrepreneurs.
How can a retailer flourish in such a daunting environment? By providing “emotional fulfillment,” which is one of Mr. Freeman’s favorite phrases. He means the joy customers take in seeing, touching, sniffing and testing the product before they pull out the credit card. A computer can’t match that experience, Mr. Freeman insists: “We are social animals. We aren’t robots who are going to make all our purchases from robots.”
Somewhat counterintuitively, he argues that e-commerce is “not our enemy” but is becoming complementary to retail. Here’s his challenge to anyone who thinks digital sales are set to crush the old analog kind: “Explain Blue Nile. They were one of the first to sell online jewelry. Blue Nile comes in and blows the door off as one of our most successful stores.

Who else? Apple! You can buy your phone online, and they can ship it to your house. But the Apple Store almost everywhere does giant business. Microsoft—same thing. Peloton is another one. They make exercise equipment and have just opened a store next to Nordstrom, highest sales in the country. They’re killin’ it.”
With a twinkle in his eyes, he tells the story of Bellevue Square’s 1,800-square-foot Tesla showroom. Tesla is largely an internet-based company, but it helped produce one of the biggest days in the mall’s history when Mr. Freeman says it sold close to \$16 million worth of cars in 12 hours. “There were lines 10 blocks long, and the average person waited five hours,” he recalls, “the way people used to wait outside stores on Black Friday. There was even a sign in front of the store that read ‘limit of two cars per customer.’”
If that isn’t enough, he adds: “Guess what’s one of our most successful stores we just opened up three months ago? Amazon. They already mastered online book sales. Why are they creating a physical presence? Because they know they need to connect and

fuse with you as a consumer.” That’s what he means by emotional fulfillment.
He sketches out a strategy for retail in the digital age. It starts with making the mall an appealing place to visit. Parking is free, he says, and the stores are full of helpful employees. “We tell our retailers that one of the primary value added of retail shopping is the expertise that the salesclerks can offer customers,” he says, “They better be knowledgeable about what they are selling, or people will go online or to a discount store.” He urges his tenants to pay well more than the minimum wage to attract better employees, and he says most of them do.
Mr. Freeman thinks too many retailers have ignored the time-honored principle that the customer is king. He spends an hour or two a day walking through stores—“it’s my daily exercise routine”—and watching and chatting with customers. “You can’t believe the kind of intelligence I pick up from these folks,” he says.
Just as Amazon is expanding into services, shopping centers are branching out into sports, exercise and entertainment. “We have billiards, and Lucky Strike bowling,” he says. “Top Golf simulated driving ranges is the latest big thing out there.” For decades Bellevue Square has hosted one of the largest art fairs on the West Coast. “All of these activities are social experiences that are big hits with millennials,” the critical age cohort if malls are going to survive.
Mr. Freeman has been working since age 9 and has been in sales for just short of 50 years. Would he consider going the way of Westfield by selling out to a conglomerate? “Are you kidding?” he asks, “I wake up every morning like it’s Christmas Day. Even those days I’m getting the crap kicked out of me, I always love the interaction with the tenants, the employees and the customers. You couldn’t blow me out of here with dynamite.” Are shopping malls here to stay? Mr. Freeman certainly is.
Mr. Moore is a senior fellow at the Heritage Foundation and a consultant with FreedomWorks.

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The abandoned Randall Park Mall in North Randall, Ohio // Joshua Gunter/AP

The Great Retail Retrofit

RICHARD FLORIDA DEC 19, 2017

In late October of this year, the office-sharing startup WeWork announced that it was buying Lord & Taylor's flagship store in New York City. Coming as this did in the wake of the bankruptcies of such long-established retailers as The Limited and Toys "R" Us, it was widely viewed as the latest harbinger of the "retail apocalypse."

It isn't just chain stores in economically distressed suburbs that are going belly up, but high-end luxury goods purveyors along the retail corridors of America's leading cities, such as New York's Madison Avenue, Rodeo Drive in Beverly Hills, and Chicago's Miracle Mile. All told, roughly 100,000 retail jobs were lost between October 2016 and April 2017. In the next five years, one out of every four malls is projected to close, according to an analysis by Credit Suisse. The square footage of America's already dead malls covers more land than the city of Boston.

But painful as this retail retrenchment may be, it creates real opportunities that cities and suburbs can take advantage of.

First things first: Brick-and-mortar retail is not going away. Even as it sheds workers, the sector is still growing at a rate of 3 percent per year. The research and advisory services firm the IHL Group estimates that retail sales are up by more than \$100 billion this year, and 4,000 more chain stores will have opened than closed in the U.S.

Much of what we are seeing is in fact a long-overdue correction. The United States devotes four times more of its real-estate square footage to retail, per capita, than Japan and France; six times more than England; nine times more than Italy; and 11 times more than Germany.

The way we shop is also undergoing a fundamental reset. As more and more people shop online, the stores that are drawing in customers are those that emphasize experiences. Customers want to sit on that new sofa, feel the weight of a stainless-steel skillet in their hands, and try out new gadgets.

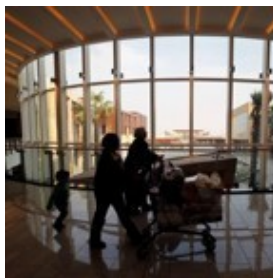
In fact, the line between e-commerce and physical retail is not as hard and fast as most people think. The most successful virtual stores are currently increasing their physical presences. Amazon is opening up bookstores, and with its acquisition of Whole Foods, it has gained a footprint in hundreds of affluent cities and suburbs. As the physical embodiment of Apple's brand proposition, Apple Stores showcase cutting-edge designs, provide service and advice, build community, and are a big part of what differentiates Apple from its competition.

Recommended



From the Ruins of a Retail Meltdown, Post-Industrial Playgrounds Emerge

BENJAMIN SCHNEIDER
NOV 16, 2017



The Future of Retail Is Stores That Aren't Stores

JOE PINSKER
SEP 14, 2017



While there can be no doubt that the lost jobs and diminished tax bases that accompany the retail retrenchment hurt, the shift has an upside as well.

WeWork's takeover of Lord & Taylor could be a good portent for urban economies. Work, not shopping, is the key to urban productivity and growth. When asked why rents are so high in cities like New York and Chicago, the Nobel Prize-winning economist Robert Lucas famously answered that it had nothing to do with the availability of high-end shopping; higher urban rents, he said, are a function of higher urban productivity.

As talented people and high-paying jobs move back to cities, there is demand for more office space. Big companies like Google or Amazon can afford to build their own new facilities. But smaller companies and gig-economy workers need flexible coworking spaces that companies such as WeWork provide, and they need affordable living spaces as well. Both of these can be built in the shell of former retail spaces. In downtown Providence, Rhode Island, for instance, the Greek Revival Westminster Arcade, built in 1828 as the nation's first indoor shopping mall, has been re-developed to include dozens of micro-apartments.

The back-to-the-city movement is driven by the preferences of talented people for urban amenities, including places like mom-and-pop shops and small hardware stores that are increasingly threatened by sky-rocketing rents that only big retail chains and luxury brands can afford to pay. However, as those companies scale back their retail, real-estate developers have an opportunity to refill their storefronts with independent, artisanal, and local shops. While property owners will take a hit on commercial rents, the overall value and desirability of their buildings will likely rise.

The problems confronting distressed suburbs and rural communities run much deeper than the retail blight that stands as a physical symbol of the economic crisis they face. Yet a striking number of such communities are developing innovative strategies to transform their empty malls and big-box stores, and the acres upon acres of asphalt parking lots around them, into more productive assets for future growth.

Ellen Dunham-Jones of Georgia Tech is perhaps the world's leading expert on the redevelopment of old suburban malls, and is co-author, with June Williamson of the City University of New York, of the landmark book *Retrofitting Suburbia* and a recent article on re-inhabited malls in the journal *Loose Fit Architecture*. They have put together a database of more than 1,500 retrofits or redevelopments of abandoned malls, strip centers, big-box stores, and other similar developments across the United States. As these anachronistic retail spaces begin their second lives, a few distinctive use cases have emerged, which Dunham-Jones and I described this past weekend in the *Wall Street Journal*.

New condominiums were part of the mixed-use district built to replace a mall in Lakewood, Colorado. (David Zalubowski/AP)

Educational and healthcare facilities, two land use types that are growing as retail shrinks, are a logical fit for these large, boxy spaces. The former Hickory Hollow Mall in Antioch, Tennessee, was redeveloped as a satellite campus of Nashville State Community College as well as a practice rink for Nashville's pro hockey team. The campus also includes a downsized mall centered around a food market featuring immigrant businesses, highlighting the trend of malls better reflecting local demographics.

The old Highland Mall in East Austin, Texas, is now occupied by Austin Community College, which built a high-tech math lab on the second floor of a former J.C. Penney and is building student housing in the parking lots. With a new light-rail stop, the area is becoming a hub for local employers.

Mall retrofits can also help with resilience and sustainability efforts. Dunham-Jones and Williamson estimate that 10 such projects have been transformed into green infrastructure or parks. The old 1960s-vintage mall in Meriden, Connecticut, which paved over a creek and contributed to chronic flooding, was demolished and transformed into a park that also serves as a catchment basin for stormwater runoff. The Northgate Mall outside Seattle saw a paved-over salmon stream restored, along with new subsidized housing for seniors.

Some of the most ambitious mall redevelopments are becoming mixed-use neighborhoods. The Villa Italia Mall in Lakewood, Colorado, outside Denver, was almost completely demolished to make way for a new street grid lined with offices, arts facilities, parks, and residences, as well as new stores. The project is already generating four times the tax revenues that the old mall did. In the Denver metro, eight of 13 malls are currently in some stage of rehabilitation to more productive uses.

These examples are just the tip of the iceberg. Dunham-Jones and Williamson estimate that there as many as 650 mall retrofits in some phase of development across the country. From megachurches to indoor paintball parks, former malls and retail spaces are being converted to all manner of uses that better reflect the way we live. Instead of bemoaning the (admittedly exaggerated) death of retail, we should applaud and deepen these efforts to turn old shopping centers and chain storefronts into more viable and productive community assets.

About the Author

Richard Florida

🐦 [@RICHARD_FLORIDA](#) / 📡 [FEED](#)

Richard Florida is a co-founder and editor at large of CityLab and a senior editor at *The Atlantic*. He is a University Professor and Director of Cities at the University of Toronto's Martin Prosperity Institute, and a Distinguished Fellow at New York University's Schack Institute of Real Estate.



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Amr Dalsh/Reuters

The Future of Retail Is Stores That Aren't Stores

JOE PINSKER SEP 14, 2017

"We actually don't call them 'stores' anymore—we call them 'town squares.'" That was an executive at Apple, speaking about the company's largest stores during the its afternoon-long product-release event on Tuesday. In these "town squares," aisles will be "avenues" and trees will provide customers shade from overhead fluorescents. The company dreams its flagship stores will become "gathering places," complete with classes on coding, music, and photography.

Earlier, this week provided another such glimpse of the strange future of retail, in which going to a store is just as much about buying things as it is about being in a nice place—an “experience,” if you will. Nordstrom, a day before Apple’s event, announced that it will be opening a Nordstrom Local concept store next month in West Hollywood, in Los Angeles. The store will not stock clothes, or much of anything else. But it will have spa services, tailor, personal stylists, and a bar that serves beer, wine, coffee, and juice.

Retailers are, very consciously, promoting these in-store “experiences” —or at least, they are doing so at the flagship stores in big cities that they like to draw attention to. It’s a reaction to the fact that buying is now something that can be done anywhere, and that reaction can be detected in a linguistic shift. “There is no question that people are trying to get away from the use of the word *store* as well as *mall*,” says Leonard Schlesinger, a professor of management at Harvard Business School. “They are increasingly perceived as remnants of a retail world which is increasingly under siege.” Schlesinger thinks companies with physical stores will have trouble if they don’t adjust to the fact that the internet has taken away many consumers’ reasons for visiting physical locations in the first place.

That fact seems to be the motivation behind a few other companies’ initiatives announced in recent years. Starbucks, watching with distaste the rise of high-end competitors like Stumptown and Blue Bottle, a couple years ago opened a 15,000-square-foot “roastery” in Seattle. “We’re going to take the customer on a journey, immersing them in an interactive environment where they’ll be introduced to handcrafted, small-batch coffees within feet of where they’re being roasted,” Howard Schultz, Starbucks’s CEO, told *The New York Times*. (The company plans to open more roasteries in other cities starting later this year.)

In a less intuitive outgrowth of a company’s core business, the Philadelphia-based retailer Urban Outfitters announced in 2015 that it’d be acquiring Pizzeria Vetri, a beloved local restaurant chain. Investors were initially baffled—Urban’s stock declined sharply after the announcement—but the idea is that pizzerias might be placed near, or even in, the stores. “Now you can order a sofa on the internet,” Marc Vetri, the chain’s founder, told *Bloomberg*, adding, “if you want to eat at the hot new restaurant, you have to leave your living room and you have to venture out.”

Does downtown become just a string of corporate “town squares” and wine tastings?

This is exactly the thinking that more retailers should be experimenting with as they adjust to the buy-anywhere reality of the internet, according to Oliver Chen, the head of retail and luxury equity research at the investment-research firm Cowen and Company. Two questions he says retailers are asking are, "What are modern consumers enjoying doing, and then how can retail solve into that experience?" And "that experience," he says, usually means "eating and drinking and working out and concerns about health and wellness."

A juice bar or a pizzeria might give a retailer an edge at a time when competitors are scrambling to adapt. But what happens in the longer run, once "experience" is prioritized more widely? Does downtown become just a string of corporate "town squares" and wine tastings? Chen says that a retail experience that emphasizes human interaction and pleasant environs could just become the new normal, much like how rapidly shifting consumer expectations have pushed online retailers to make free, two-day shipping standard. Still, he says, "There are things we may have to do where a robot can't really do it to us"—there will probably be brick-and-mortar businesses, like tailors and hairdressers, that remain impervious to these trends.

The funny thing about stores-as-experiences is that, even as a notion that is shaping retail's future, it also represents a return to its past. "Apple might be interested to know that the first post-WWII malls often used similar rhetoric about public squares," Tracey Deutsch, a professor of history at the University of Minnesota, wrote to me in an email. "Victor Gruen, who designed Southdale (the first indoor mall) and who really created the look for many of these shopping centers, saw himself as creating new public space. That's surprising in retrospect, but not if you understand retail the way he did—as a key site for public encounters." Gruen imagined malls serving roles in society similar to "the ancient Greek Agora, the Medieval Market Place and our own Town Squares," and in the '50s and '60s some malls had auditoriums, meeting rooms, and ice rinks.

In the 19th century, the creators of early department stores, too, were attuned to the experiences of shoppers, particularly the middle- and upper-class women they catered to. Deutsch notes that these stores had cafes and tea rooms in which customers could rest, along with plenty of attendants to help carry any purchases. "One reason they promised this," she says, "was because shopping was an experience—and sometimes that experience was uncomfortable or caused anxieties for folks worried about conservative gender norms. (Think, for instance, about the encounters that could happen walking from a store to a restaurant, or looking for a place that would serve women at all.)" Indeed, well into the modern era there have been onsite dining options at high-end stores like Bloomingdale's and Barneys.

Recommended**Indie
Bookstores
Embrace the
Side Hustle**KATE SILVER

SEP 14, 2017

**D.C.: Don't
Give the
Carnegie
Library to
Apple**KRISTON CAPPS

MAY 16, 2017

But an important break with the past, Deutsch says, is that this shopping experience, once it opened up to a more-diverse group of shoppers, used to be more democratic. “What’s striking to me is that now these retailers are trying to associate certain experiences—learning, conversation, personal attention—with high-end consumer goods and services,” she says. “It used to be the norm for all consumers to have access to these things.”

The journalist and historian Marc Levinson offered another historical precedent for experiential retail. He told me about the Great American Tea Company, which set up a coffee-roasting plant in Manhattan’s Greenwich Village in 1865 that aimed to dazzle people walking by with its sights and smells. (Levinson says the idea was inspired by the spectacle of P.T. Barnum’s nearby American Museum, which displayed live animals and freak shows.) “A few years later,” Levinson explained, “the company, renamed Great Atlantic & Pacific Tea Company”—aka A&P, which would later become the largest retailer in the world—“played up its supposed connection with Chinese tea growers by painting its stores in vermillion and gold leaf, adding Chinese wall hangings and oriental lanterns, and turning the cashier’s station into a pagoda. Customers were meant to experience a bit of China as they bought their tea.” It’s not unlike that roastery in Seattle—just 150 years ahead of Starbucks.

This article originally appeared in [The Atlantic](#).

About the Author**Joe Pinsker**

🐦 @JPINSK / 📡 FEED

Joe Pinsker is an associate editor at *The Atlantic*, where he covers business.



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MEMORANDUM

Planning Division

DATE: January 3, 2018

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Site Plan Submittal Requirements

On December 4, 2017, the City Commission reviewed and approved the Special Land Use Permit ("SLUP") and Final Site Plan & Design Review for 33353 Woodward to allow Tide Dry Cleaners to open a storefront. During this review, several questions were raised by Commissioners and neighbors regarding the layout and proximity of adjacent properties, and the potential impact of the drive in dry cleaning facility on the surrounding property owners. At the end of the meeting, Commissioner Nickita specifically requested that the Planning Board review the existing submittal requirements for site plan reviews and SLUP reviews, and to determine if amendments should be made to add additional details of the subject site and/or adjacent sites to provide context for discussion. This direction to the Planning Board was provided by the City Manager.

In the past, Planning Board members have also raised the issue about applicant's providing details on the surrounding properties to allow for a complete evaluation of the impact of a proposed development on one site to the surrounding properties and neighborhood as a whole.

Accordingly, the Planning Board may wish to consider the draft ordinance language attached to consider amending the submittal requirements for site plan review and SLUP review require all applicants to include details on adjacent properties on their site plans.

CITY OF BIRMINGHAM
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 7, SECTION 7.26, APPLICATION, TO AMEND THE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

7.26 Application

Each Site Plan submitted to the Planning Board in accordance with the requirements of the Zoning Ordinance shall be on such forms and contain such information as the Planning Board shall determine necessary, including but not limited to a site plan, photometric plan, landscape plan, elevation drawings, interior floor plans, specification sheets for all lighting and exterior mechanical equipment, and samples of all exterior building materials. **All site plans submitted for review and approval must show the subject site in its entirety, must include all property lines, buildings and structures, and must show the same details for all adjacent properties within 200 feet of the subject sites' property lines.**

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM
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 7, SECTION 7.34, SPECIAL LAND USE PERMIT REVIEW, TO AMEND THE SPECIAL LAND USER PERMIT REVIEW PROCESS TO INCLUDE SITE PLAN REVIEW SUBMITTAL REQUIREMENTS TO INCLUDE ADJACENT PROPERTY DETAILS

7.34 Review

Site Plan and Design Review for special land uses shall be considered and acted upon by the City Commission. Prior to its consideration of a special land use application 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. **Each Site Plan submitted in accordance with the requirements of the Zoning Ordinance shall be on such forms and contain such information as the Planning Board shall determine necessary, including but not limited to a site plan, photometric plan, landscape plan, elevation drawings, interior floor plans, specification sheets for all lighting and exterior mechanical equipment, and samples of all exterior building materials. All site plans submitted for review and approval must show the subject site in its entirety, must include all property lines, buildings and structures, and must show the same details for all adjacent properties within 200 feet of the subject sites' property lines.** After receiving the recommendation **of the Planning Board**, 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. ~~Site Plan Review and Design Review in this article shall not be required.~~

ORDAINED this _____ day of _____, 2018 to become effective 7 days after publication.

Andrew Harris, Mayor

Cherilynn Mynsberge, City Clerk

DRAFT City Commission Minutes
December 4, 2017

12-317-17 PUBLIC HEARING TO CONSIDER THE FINAL SITE PLAN AND SPECIAL LAND USE PERMIT FOR 33353 WOODWARD AVENUE – TIDE DRY CLEANERS

Mayor Harris opened the public hearing at 8:44 p.m.

From Senior Planner Baka's report to City Manager Valentine dated November 27, 2017:

The subject business is proposed to be located at 33353 Woodward Avenue in a new one-story 7,227 sq. ft. commercial/retail building and parking lot that is replacing the former Tuffy Automotive building on the west side of Woodward between Davis and Smith. The applicant is a drive-in service for customers to pick up and/or drop off their garments while remaining in their vehicle. The service of patrons while in their vehicles is considered a drive-in facility and requires a Special Land Use Permit (SLUP) under Article 2, Section 2.31 (B2B – General Business). Article 9, Section 9.02 (Definitions) defines a drive-in as a commercial establishment developed to serve patrons while in the motor vehicle in addition to within a building or structure. The parking area for service to patrons in vehicles will be located on the west elevation along the alley under a metal canopy attached to the back of the building outside of the west entrance. The Planning Board recommended the SLUP for approval with the following conditions: 1. The total square footage of signage must be reduced to 108 sq. ft. or less; 2. The canopy must be attached to the building.

Planning Director Ecker explained to:

- Commissioner Boutros that the SLUP is required because of the drive-in service, and that the parking spaces are required because of the size of the building.
- Commissioner Hoff that the building is intended for multi-tenant use.

Shannon Marklin, a real estate manager for corporate Tide, stated that the canopy is an added convenience as protection from weather. Ms. Marklin confirmed for Mayor Pro Tem Bordman:

- The company has 60 of these drive-ins across the United States;
- This drive-in would be the first Tide location in Michigan; and, • Tide has also signed a lease for a drive-in in Shelby Township. 6 December 4, 2017
- The parking lot would allow customers to enter from both Woodward and Davis whether Tide occupies the end cap of the building or another business does.
- Transaction times average between thirty seconds and 2 minutes, and two cars could be helped at any given time.

- On-site dry-cleaning would only be for the Birmingham location. The Shelby Township location does its own dry-cleaning.
- A delivery van will be available to provide delivery service and will be parked at the operator's house every evening.
- According to a traffic study in Chicago, peak times yielded twelve cars per hour.

Planning Director Ecker confirmed for Commissioner Nickita that the canopy must be fully attached to the building, but the method of attachment will be approved administratively during the permitting process.

Commissioner Nickita expressed concern:

- That the Commission was not provided with information on the method of affixing the canopy since it is a required part of the proposal; and
- That there is not sufficient information in the site plan regarding proximity to residences, sidewalk connections, adjacent buildings, and the general neighborhood layout.

Duane Barbat, property owner, explained to Commissioner Nickita that:

- There is a parking lot barrier between the building and the closest residents; and
- The lot is not owned by Mr. Barbat; and,
- If the canopy is approved, drawings by a State of Michigan engineer will be submitted to the building department.

Commissioner Nickita expressed:

- Confidence in Mr. Barbat's plan based on his previous work in Birmingham; but
- That he still views this plan submission as incomplete. Mr. Barbat replied that his company has not been asked to submit structural plans to the Commission before.

Mr. Barbat told Commissioner Hoff:

- There is no plan to prevent left-turn exits onto Davis.
- The proposal is for two covered spaces to be serviced by employees, the total lease to Tide is 3,000 sq. ft. contingent on the drive-in approval, and 2,000 sq. ft. will be dedicated to the cleaning plant, which may service other small operations in the future.

Planning Director Ecker noted that preventing left turns onto Davis was not a requirement put forth by the Planning Board for approval of the plan.

Ms. Marklin explained to:

- Commissioner Hoff that environmentally-friendly Green Earth solvent and Tide detergent would be used to process the dry-cleaning. 7 December 4, 2017
- Mayor Pro Tem Bordman that the only 24/7 parts of the business are a drop-box in the back and a kiosk in the front where a customer can pick up their dry-cleaning before or after hours with a code.

Mr. Ken Platt, a resident on Davis, submitted a communication to the Commission expressing opposition to the project.

Brian Fitzerman expressed his general approval of the plan, but added that he would like to see

- No left turn onto Davis;
- A STOP sign added to the exit onto Davis; and,
- The drop-box moved to the Woodward side, so as to not disturb the Davis-side residents late at night.

Ms. Marklin addressed Mr. Fitzerman's concerns by stating:

- There would be an additional drop-box on the Woodward side; and,
- Based on experience in other locations, if the drive-in spaces are occupied, customers will park and enter the store, so queuing cars should not be an issue.

Ms. Marklin told Commissioner Hoff there are usually two to three employees at a time, with five to seven employees working over the course of a day.

Mr. Barbat added there is a side lot for employee parking, leaving sufficient parking for customers.

There being no further comment, Mayor Harris closed the public hearing at 9:20 p.m.

Commissioner DeWeese noted the no left turn sign could be placed in future if necessary.

Commissioner Hoff expressed concern for the residents, and stated that it is important in Birmingham to get the residents' buy-in and respect. Mr. Barbat stated that he has attended two meetings only seen two residents and one letter.

Mary McCray (1332 Davis) stated that she is concerned with left turns onto Davis, and the potential need for overflow parking which might end up on Davis.

Commissioner Hoff expressed support for a no left turn sign in the parking lot.

Commissioner Nickita stated that he lives very close to this area, and that almost no other businesses have parking lot signage preventing certain exits. He continued that businesses busier than the proposed Tide dry-cleaner have not caused complaints of cut-through traffic, and that adding the parking lot signage lacks both precedent and necessity based on other examples.

MOTION:

Motion by Commissioner DeWeese, seconded by Mayor Harris:

To approve the Final Site Plan and Special Land Use Permit to allow service to patrons in their vehicles at 33353 Woodward Avenue – Tide Dry Cleaners as recommended by the Planning Board on October 25, 2017. (Resolution appended to these minutes as Attachment A.)

VOTE: **Yeas, 7**
 Nays, 0
 Absent, 0

12-235-17 COMMISSIONER COMMENTS

Commissioner Nickita reiterated the need for a more detailed site plan for the proposed Tide dry-cleaners, and stated he would like a mandate that site plans are sufficiently detailed in the future.

Planning Director Ecker stated the ordinance can be changed to require more details.

Commissioner Nickita requested that the Planning Board examine what details should be required in a site plan, and those findings should be added to the ordinance.

The Commission and City Manager Valentine concurred, and City Manager Valentine stated he would pass the direction onto the Planning Board.

[Back to Agenda](#)

Administrative Approvals

Period : Jan 01/2 2017 - December 31, 2017

Reference	Permit Type	Date Issued	Address	Description
17-0001	PB	denied	856 N. Old Woodward	Material Change
17-0004	PB	2/24/2017	588 S. Old Woodward	Storage shed
17-0019	PB	3/21/2017	369 N. Old Woodward	Entry design change
17-0022	PB	3/28/2017	2410 Lincoln	BBQ
17-0030	PB	4/20/2017	555 S. Old Woodward	antennae
17-0036	PB	4/20/2017	1734 Graefield Unit 42	Paint exterior
17-0037	PB	4/25/2017	2200 Holland	Signage
17-0040	PB	5/2/2017	2100 E. Maple	Signs
17-0041	PB	5/2/2017	20275 E. 14 Mile	Screening
17-0044	PB	5/10/2017	735 Forest	Outdoor dining/New Bathroom
17-0048	PB	5/22/2017	277 W. Brown	Driveway
17-0049	PB	5/25/2017	280 W. Maple	Roof replacement
17-0050	PB	6/23/2017	1964 Southfield	N. elevation glazing
17-0052	PB	5/25/2017	34915 Woodward	Outdoor dining
17-0053	PB	6/21/2017	33477 Woodward	Parking lot
17-0054	PB	6/7/2017	33353 Woodward	Meter Bank
17-0063	PB	6/23/2017	35975 Woodward	Minor design changes
17-0065	PB	6/29/2017	885 N. Old Woodward	Roof
17-0068	PB	7/5/2017	662 Purdy	Replace parking lot
17-0069	PB	7/18/2017	856 N. Old Woodward	Design
17-0070	PB	7/6/2017	180 Pierce	RTU screening
17-0073	PB	8/8/2017	602 Riverside	Retaining wall
17-0074	PB	7/19/2017	539 Chester	Driveway
17-0082	PB	8/8/2017	300 Strathmore	Cell tower
17-0083	PB	8/8/2017	1158 W. Maple	Landscaping
17-0084	PB	8/16/2017	999 Haynes	Dumpster enclosure
17-0093	PB	8/25/2017	300 Strathmore	Cell tower
17-0095	PB	9/12/2017	555 S. Old Woodward	RTU
17-0099	PB	10/2/2017	2100 E. Maple	Landscape

17-0100	PB	9/20/2017	2020 Hazel	Rear Deck
17-0102	PB	10/6/2017	380 Bates	Fence
17-0114	PB	11/8/2017	1225 Derby	Roof
17-0118	PB	11/10/2017	400 S. Old Woodward	Screen Wall
17-0128	PB	12/6/2017	33633 Woodward	Parking lighting
17-0133	PB	12/20/2017	2023 Hazel	Patio addition



New York's vanishing shops and storefronts: 'It's not Amazon, it's rent'

Vacant storefronts are becoming more noticeable in the capital of consumption, as small retailers are being pushed out by wealthy investors

Edward Helmore in New York

Sun 24 Dec '17 04.00 EST

Walk down almost any major New York street - say Fifth Avenue near Trump Tower, or Madison Avenue from midtown to the Upper East Side. Perhaps venture down Canal Street, or into the West Village around Bleecker, and some of the most expensive retail areas in the world are blitzed with vacant storefronts.

The famed Lincoln Plaza Cinemas on the Upper West Side announced earlier this week that it is closing next month. A blow to the city's cinephiles, certainly, but also a sign of the effects that rapid gentrification, coupled with technological innovation, are having on the city.

Over the past several years, thousands of small retailers have closed, replaced by national chains. When they, too, fail, the stores lie vacant, and landlords, often institutional investors, are unwilling to drop rents.

A recent survey by New York councilmember Helen Rosenthal found 12% of stores on one stretch of the Upper West Side is unoccupied and 'for lease'. The picture is repeated nationally. In October, the US surpassed the previous record for store closings, set after the 2008 financial crisis.

The common refrain is that the devastation is the product of a profound shift in consumption to online, with Amazon frequently identified as the leading culprit. But this is maybe an over-simplification.

"It's not Amazon, it's rent," says Jeremiah Moss, author of the website and book *Vanishing New York*. "Over the decades, small businesses weathered the New York of the 70s with it near-bankruptcy and high crime. Businesses could survive the internet, but they need a reasonable rent to do that."

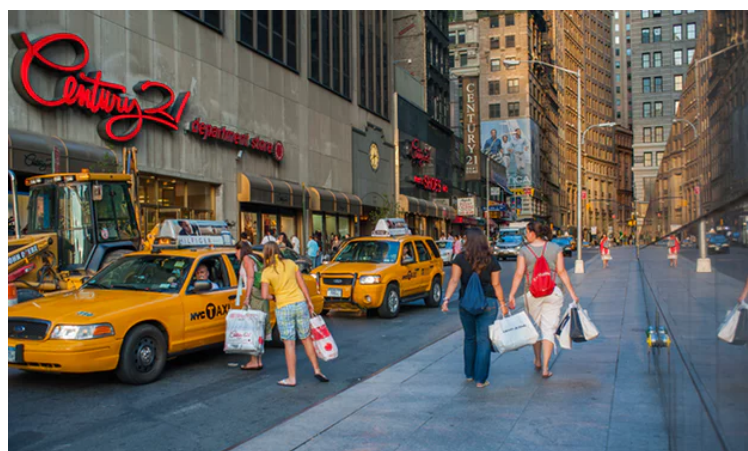
Part of the problem is the changing make-up of New York landlords. Many are no longer mom-and-pop operations, but institutional investors and hedge funds that are unwilling to drop rents to match retail conditions. "They are running small businesses out of the city and replacing them with chain stores and temporary luxury businesses," says Moss.

In addition, he says, banks will devalue a property if it's occupied by a small business, and increase it for a chain store. "There's benefit to waiting for chain stores. If you are a hedge fund manager running a portfolio you leave it empty and take a write-off."

New York is famously a city of what author EB White called "tiny neighborhood units" in his classic 1949 essay *Here is New York*. White observed "that many a New Yorker spends a lifetime within the confines of an area smaller than a country village".

In *Vanishing New York*, Moss writes of the toll the evisceration of distinct neighborhoods through real estate over-pricing has on the city. "It's homogenizing and changing the character of the city," he says. Even where landlords are offering competitive leases, they are often for two or five years, not the customary 10.

"We're seeing more stores front emptying, and we're seeing a lot of turnover where you see spaces fill temporarily and then empty. And it's continuing to get worse," he says.



Shoppers in the financial district in New York. Photograph: Kevin Clogstoun/Getty Images/Lonely Planet Images

In business terms, the crisis in commercial real estate has led to a wave of consolidations. Earlier this month, France's Unibail-Rodamco and Australia's Westfield agreed to merge in a deal worth

\$24.7bn to form the world's second-biggest owner of shopping malls, including Manhattan's Brookfield Place.

Vacant real estate is not the only effect of an over-priced market; the boom in WeWork, a work-space company valued at around \$20bn, and store pop-ups could also be responsible.

But some believe the market could have reached a turning point. "It's like Hunger Games," says New York retail property agent Robin Zendell. "If you're smart and innovative you can survive this market. Landlords and retailers are having to listen to a new generation of shoppers."

Like Moss, Zendell believes it's too simplistic to blame Amazon. The same signals of over-pricing are seen in every area of real estate, including housing. "When you see [that] every corner has a bank or a pharmacy, and there is a gym on the second floor, there's a simple reason for that: people can't afford the rent.

"Why did restaurants go to Brooklyn? Because it's cool? No, because it was cheap, and [because] restaurateurs were sick of giving investors' money away so they could pay their rent."

In some areas, notably Bleecker Street, once lined with fashion boutiques including Ralph Lauren and Marc Jacobs, too many vacancies create their own problems. "Rents have fallen but now there are so many empty stores there, nobody wants to be alone. So they've created more of a crisis."

But there are glimmers of turn-around. Zendell has observed five deals in SoHo in the past month, indicating that landlords are becoming too nervous to sit around. "They helped to create the bubble, but now it's our market."

Renters insist landlords have an investment in the game, either through taking a performance-based interest in the tenant or some other mechanism. Retailers that signed 10-year leases at a high number per sq ft and then had to pay to get out of that lease are insisting on some participation.

"Any new deal is going to have a pre-nup, the location has to be right, and the landlord has to have some skin in the game," says Zendell.

Zendell also believes some retailers are beginning to find their way. She cites Everlane as an example of upcoming brand that is managing to harness the power of the internet to bricks-and-mortar retail. Online, she points out, is good for things you need, but less so for things you want.

"You still need people and interaction, but you need a different approach: the modern customer is very smart. Brick and mortar used to be only about sales, now it's about marketing, driving people to the internet and for helping people to understand your product."

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