

ADVISORY PARKING COMMITTEE
WEDNESDAY, May 4, 2022 @ 7:30am

1. Roll Call
2. Introductions
 - New APC Member Kelly Cobb
3. Review of the Agenda
4. Approval of Minutes, April 6, 2022
5. La Strada Café – Outdoor Dining
6. 2021-2022 Construction Assessment Progress
7. Meeting Open to the Public for items not on the Agenda
8. Miscellaneous Communications
 - Parking System Update: Waitlist, Occupancy and Revenue
 - Role of APC
 - APC Attendance
 - OMA Memo
9. Next Meeting – June 1, 2022
10. Adjournment

Notice: Please note that board meetings will be conducted in person. Members of the public can attend in person at Birmingham City Hall or may attend virtually at <https://us06web.zoom.us/j/86082330819>

Meeting ID: 860 8233 0819

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para personas con discapacidad auditiva) un día antes de la reunión para solicitar ayuda a la visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

City of Birmingham
Advisory Parking Committee
Regular Meeting

Birmingham City Hall Commission Room
151 Martin, Birmingham, Michigan
Wednesday, April 6, 2022

Minutes

These are the minutes of the Advisory Parking Committee ("APC") regular meeting held on Wednesday, April 6, 2022. The meeting was called to order at 7:30 a.m. by Chair Vaitas.

1. Rollcall

Present: Chair Al Vaitas
Vice-Chair Richard Astrein
Steven Kalczynski
Judith Paskiewicz
Mary-Claire Petcoff
Lisa Silverman (left 8:56 a.m.)
Jennifer Yert

Absent: Aaron Black
Lisa Krueger

Administration: Ryan Weingartz, Parking Manager
Nick Dupuis, Planning Director
Laura Eichenhorn, City Transcriptionist
Sean Kammer, Birmingham Shopping District Director
Scott Zielinski, Assistant City Engineer

SP+: Catherine Burch

2. Introductions

3. Review of the Agenda

4. Approval Of Minutes: Meetings Of February 2, 2022

Motion by Ms. Yert

Seconded by Mr. Kalczynski to accept the minutes of February 2, 2022 as submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Yert, Paskiewicz, Silverman, Petcoff, Vaitas, Kalczynski, Astrein
Nays: None

5. 220 Merrill – Outdoor Dining

PD Dupuis presented the item.

The majority of the APC did not believe it was appropriate for 220 Merrill to be granted an outdoor dining deck when it already has 78 outdoor dining seats on its patio. They also expressed concern about the number of parking spots 220 Merrill would be occupying between its valet and its proposed deck.

Mr. Astrein emphasized the economic importance of available on-street parking for retailers and other businesses. He said that on-street dining decks represent a special privilege for restaurants versus other businesses.

Chair Vaitas concurred.

Dr. Silverman said she already hears complaints about congestion near 220 Merrill from drivers and pedestrians and expressed concern that a dining deck would make that congestion worse.

PM Weingartz recommended that 220 Merrill should be required to choose between valet and a dining deck.

In reply to Ms. Petcoff, PM Weingartz said he would not recommend a reduced combination of valet and dining deck spaces given concerns about congestion near the establishment.

Chair Vaitas and Mr. Astrein expressed concerns about a potential saturation of on-street outdoor dining decks in the City.

Chair Vaitas, Mr. Astrein, and Dr. Silverman said they did not understand why dining decks are billed to the establishments at a reduced meter rate.

Dr. Paskiewicz expressed confusion about why 220 Merrill has a valet when it is next to the Pierce parking deck.

Mr. Kalczynski noted that the impact of the pandemic is still being felt by dining establishments and that diners continue to want to dine outside. He said the APC represents the residents, and that residents' desire to dine outside outweighs the loss of the three parking spots in this case.

Brad Egan, representative for 220 Merrill, spoke on behalf of the request.

Mr. Egan clarified for the APC that:

- The valet services offered by 220 Merrill serve the public, not just customers of the restaurant;

- The operation of the valet uses their private alley, meaning that the vehicles using their valet are largely not causing congestion on the street; and,
- A dining deck would not impede the sidewalk.

Mr. Egan questioned the precedent that would be set for other dining deck requests if 220 Merrill's request was recommended for denial by the APC.

Mr. Egan contended that the size of 220 Merrill and its extant outdoor dining should not count against this request. He said that the request was proportionate, given the size of the restaurant. He also said that granting the dining deck would allow 220 Merrill's employees to recoup some of the income that was lost during the pandemic.

Chair Vaitas stated that each request is evaluated according to its particular circumstances. He also noted that the APC is in part charged with the creation and preservation of parking. He stated that the size of an establishment does not impact the APC's recommendation.

Ms. Petcoff asked if 220 Merrill could still consider reducing the number of valet or dining deck spaces in order to reduce the extent of their request. She noted that if 220 Merrill is already planning on increasing their valet staff, as was previously mentioned, then two on-street valet spaces may be sufficient.

Motion by Dr. Silverman

Seconded by Ms. Yert to recommend denial to the City Commission of the outdoor dining platform for 220 Merrill.

Motion carried, 6-1.

VOICE VOTE

Yeas: Yert, Paskiewicz, Silverman, Petcoff, Vaitas, Astrein

Nays: Kalczynski

6. Birmingham Shopping District Fund Request for S. Old Woodward Construction

BSDD Kammer and ACE Zielinski presented the item.

Mr. Astrein spoke in favor of the request, stating that the S. Old Woodward Construction will impact businesses during two of the busiest shopping times - the summer and early fall.

PM Weingartz stated that in 2018, the APC gave \$135,000 to the BSD for a similar request. He said that according to FD Gerber, all \$135,000 was not used by the BSD but the entirety of the funds were retained by the BSD.

In light of this information, PM Weingartz recommended that the APC grant the BSD the right to request funds up to a certain amount, to be reimbursed as the monies are spent. He explained this would help him retain the necessary funds for other parking projects.

BSDD Kammer said PM Weingartz's recommendation was reasonable. He said he would also speak to FD Gerber about what amount from 2018 went unspent and would inform PM Weingartz.

It was noted by Staff and the APC that BSDD Kammer could also return to the APC to request more funds if the entirety of the first amount is spent.

In reply to Mr. Astrein, BSDD Kammer stated that the BSD is also putting about \$140,000 of its own funds towards marketing, valet services, and maintenance for this project.

Motion by Ms. Yert

Seconded by Mr. Astrein to approve up to \$75,000, expensed to the Birmingham Shopping District as it is incurred, for parking-related accommodations related to the upcoming renovation of S. Old Woodward with the ability to come back to request additional funds if necessary.

Motion carried, 7-0.

VOICE VOTE

Yeas: Yert, Paskiewicz, Silverman, Petcoff, Vaitas, Astrein, Kalczynski

Nays: None

7. Monthly Parking Waitlist

PM Weingartz reviewed the topic. He noted he authorized the sale of additional passes at the Pierce parking deck.

Dr. Silverman commended Staff and SP+ on the reduction of the waitlist.

Dr. Paskiewicz noted that a pass release is usually deliberated on and granted or denied by the APC.

PM Weingartz confirmed that to be the case. He apologized for authorizing the release without bringing it before the APC.

Dr. Paskiewicz said it would be helpful for the APC to have more clarity about the role of the Parking Manager, since it is a new position in the City. She explained she would like clarity on the division of work between the APC and the Parking Manager; more information on who reviews items before they come to the APC; and more information on how the APC's opinions are presented to the Commission. She asked if they might be able to add this general topic to a future APC agenda.

PM Weingartz agreed to do so.

8. Parking System Update

PM Weingartz reviewed the item.

9. Meeting Open to the Public for items not on the Agenda

10. Miscellaneous Communications

PM Weingartz reviewed the communications.

- Current APC Openings
- Wayfinding Memo

11. Adjournment

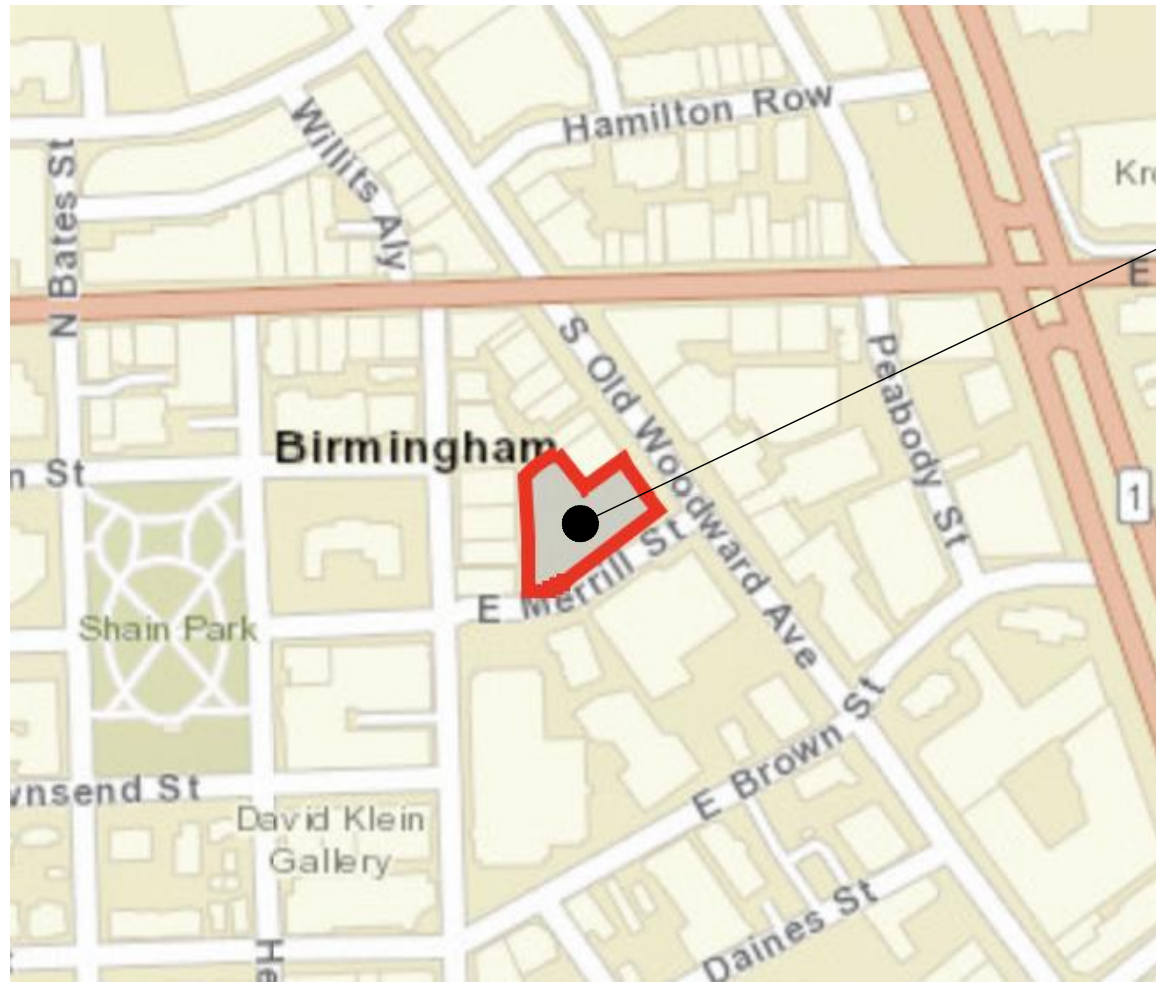
No further business being evident, the meeting adjourned at 9:03 a.m.

Parking Manager Ryan Weingartz



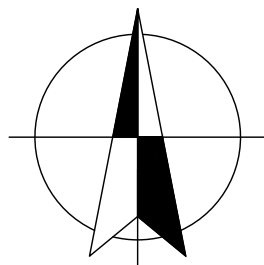
Laura Eichenhorn
City Transcriptionist

LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



LASTRADA CAFE'
241 EAST MERRILL STREET
Zoned: B-4
Overlay: D-5

Location Map



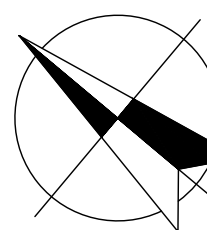
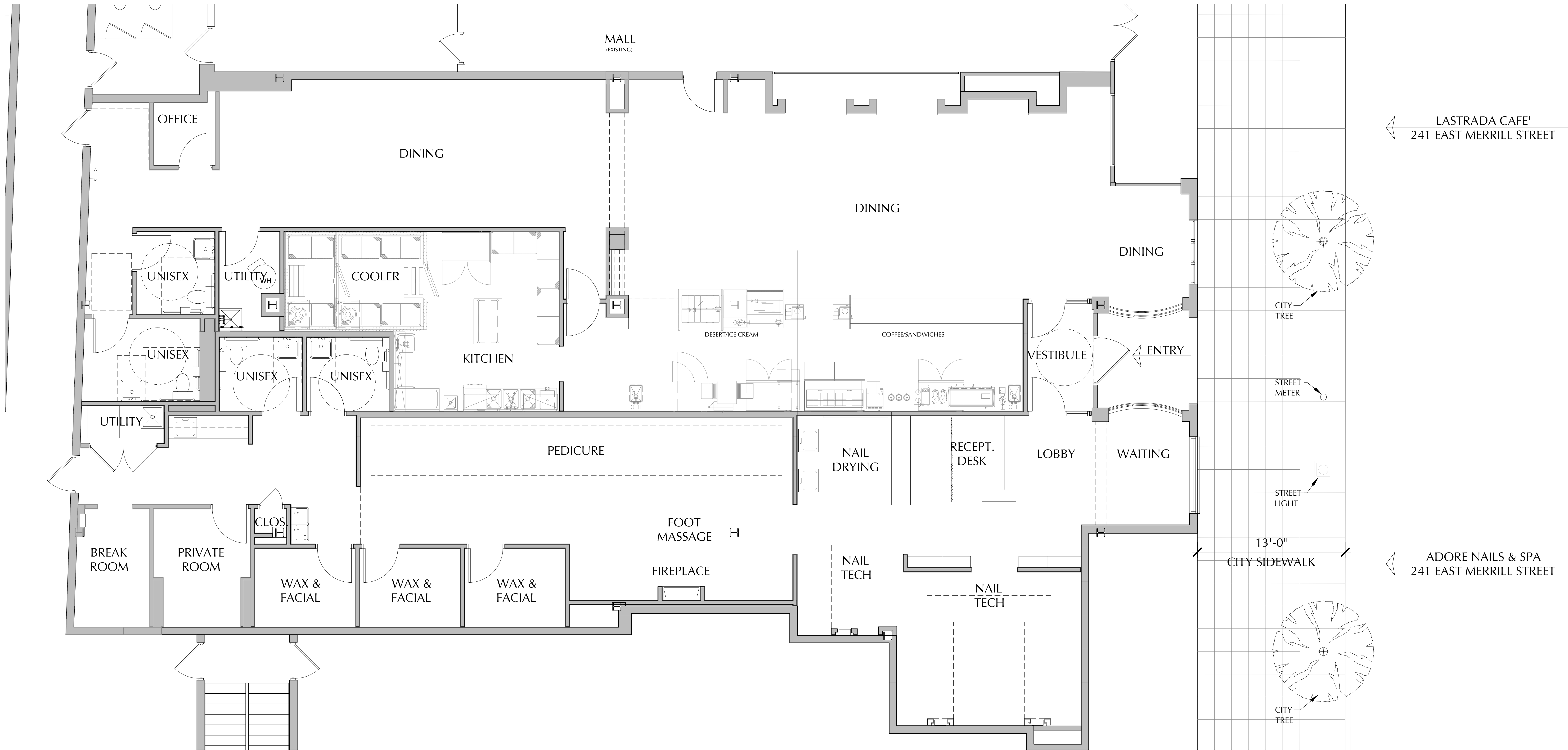
Site Plan

NOT TO SCALE

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

LASTRADA CAFE'

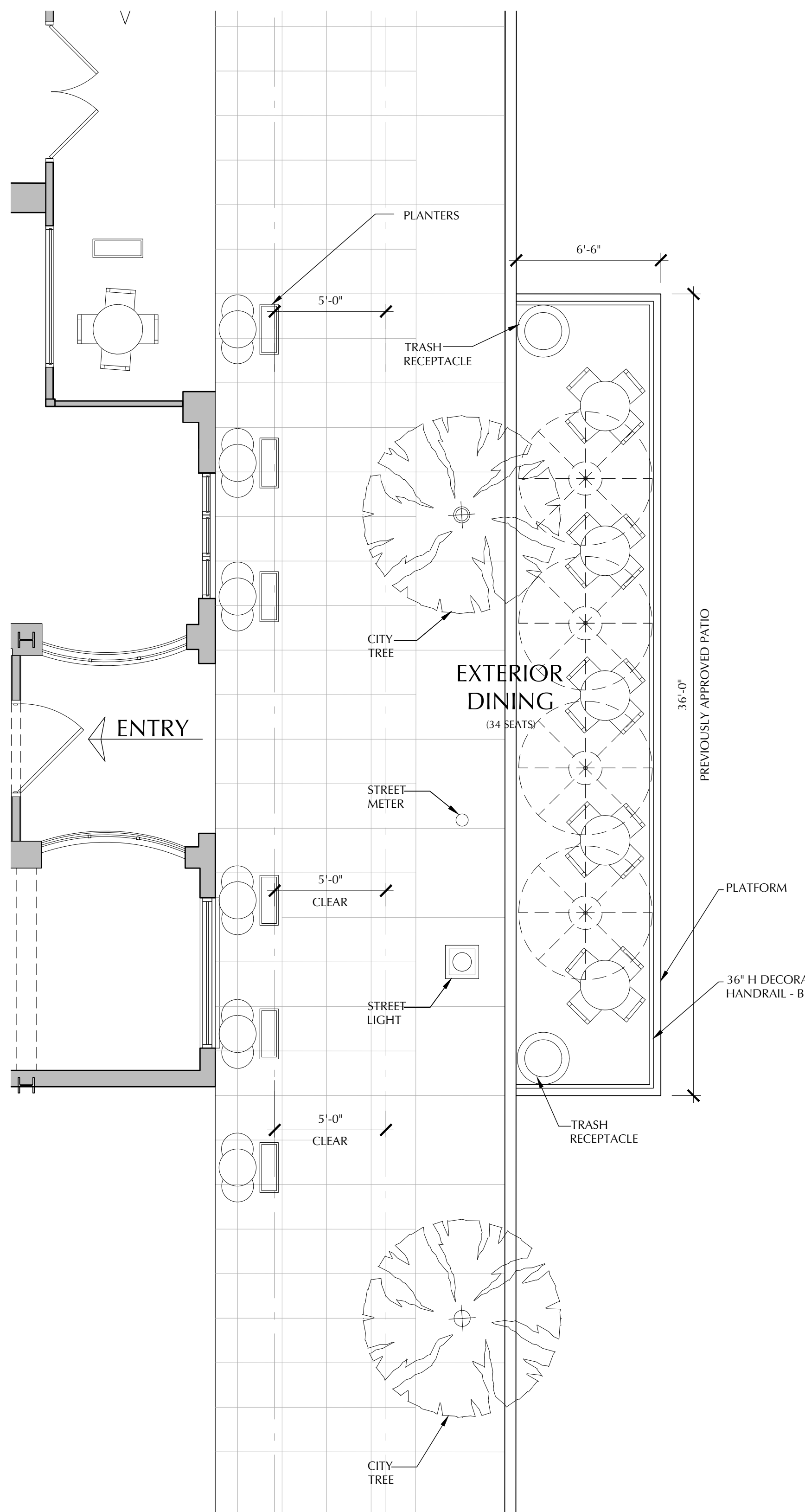
241 Merrill Street
Birmingham, Michigan 48009



EXISTING PLAN

NOT TO SCALE

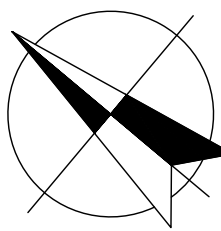
LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



PREVIOUSLY PERMITTED PATIO

OUTDOOR SEAT COUNT:

TABLE TYPE	No. of SEATS
2-TOP TABLE (6)	12 SEATS
4-TOP TABLE (6)	24 SEATS
TOTAL SEATS:	36 SEATS



Proposed Outdoor Dining Plan

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

1/4" = 1'-0"



PREVIOUSLY APPROVED - **UMBRELLA**
RED TREASURE GARDEN

PREVIOUSLY APPROVED - **RAIL**
36" H - BLACK DECORATIVE HANDRAIL

PREVIOUSLY APPROVED - **PLATFORM**
COMPOSITE WOOD



PREVIOUSLY APPROVED - **CHAIR**
ALUMINUM - FRAME
WHITE PLASTIC PANEL - SEAT AND BACK



PREVIOUSLY APPROVED - **TABLE**
ROUND BLACK PAINTED STEEL - FRAME
TEMPERED GLASS - TOP



TRASH RECEPTACLE
GLOBAL INDUSTRIAL™ ALUMINUM
ROUND OPEN TOP TRASH CAN,
20 GALLON, SATIN CLEAR



PLANTER
CONCRETE PLANTER
10"Wx27"Lx12"H

Birmingham, Michigan 48009

LaStrada Hour of Operation:

Outdoor: Tuesday - Saturday | Dinner 4pm - 12am

Monday Nights open for Special Events



We proudly Serve The Best Of Food To The Best Of People. Please Accept Our Appreciation And Sincere Thanks For Letting Us Serve Sometimes In A Rush Of Business Life, We Fail To Say "Thanks" Loud Enough. But You Can Be Assured That Your Patronage Is Never Taken Granted. Our aim is to please and satisfy. To serve you is a real privilege and pleasure!

Thank You

Formaggi

Salumi

Parmigiano Reggiano DOP 24 Month Cag 13
 Parmigiano Reggiano DOP 36 Month Cag 28
 Taleggio DOP 12
 Pecorino Toscano DOP 15
 Asiago Vecchio DOP 15
 Paoli St. - Caciottini's Sheep Milk 3 Month Cag 15
 Caciotta - 38 Month Cane Cag DOP 17
 Gorgonzola DOP 13

Tartufo Peccato Cella 11
 Salami Piccante DOP 11
 Coppo Piccante DOP 11
 Speck Alla Griglia - Smoked Prosciutto 15
 Prosciutto Delle Dolomiti - Smoked 15
 Prosciutto di Parma Sliced Label Cured 15
 Bresaola - Air Dried Meat Mignon 17
 Sanio de Balotia (Spiced Prosciutto) - Acorn Fed 100 % 17

Charolotte Dorée Boeuf Steak 20 Per Ounc

Antipasti

Olive 9

Carpaccio Olive, Curing, Extra Dry P100
 Bruschetta 15
 Olives 9 - Antipasto Menu - Antipasti Prosciutto - Antipasti Capicola
 Prosciutto e Melone 15
 Prosciutto alla Toscana, Italiani, Netello
 Assortimento di Salumi Capicola DOP 18
 Polenta, Nascosto, Nascosto, Beef, Pork, 1/2, 1/4, 1/8, 1/16, 1/32, 1/64, 1/128, 1/256, 1/512, 1/1024, 1/2048, 1/4096, 1/8192, 1/16384, 1/32768, 1/65536, 1/131072, 1/262144, 1/524288, 1/1048576, 1/2097152, 1/4194304, 1/8388608, 1/16777216, 1/33554432, 1/67108864, 1/134217728, 1/268435456, 1/536870912, 1/1073741824, 1/2147483648, 1/4294967296, 1/8589934592, 1/17179869184, 1/34359738368, 1/68719476736, 1/137438953472, 1/274877906944, 1/549755813888, 1/1099511627776, 1/2199023255552, 1/4398046511104, 1/8796093022208, 1/17592186044416, 1/35184372088832, 1/70368744177664, 1/140737488355328, 1/281474976710656, 1/562949953421312, 1/1125899906842624, 1/2251799813685248, 1/4503599627370496, 1/9007199254740992, 1/18014398509481984, 1/36028797018963968, 1/72057594037927936, 1/144115188075855872, 1/288230376151711744, 1/576460752303423488, 1/1152921504606846976, 1/2305843009213693952, 1/4611686018427387904, 1/9223372036854775808, 1/18446744073709551616, 1/36893488147419103232, 1/73786976294838206464, 1/147573952589676412928, 1/295147905179352825856, 1/590295810358705651712, 1/1180591620717411303424, 1/2361183241434822606848, 1/4722366482869645213696, 1/9444732965739290427392, 1/18889465931478580854784, 1/37778931862957161709568, 1/75557863725914323419136, 1/151115727451828646838272, 1/302231454903657293676544, 1/604462909807314587353088, 1/1208925819614629174706176, 1/2417851639229258349412352, 1/4835703278458516698824704, 1/9671406556917033397649408, 1/19342813113834066795298816, 1/38685626227668133590597632, 1/77371252455336267181195264, 1/154742504910672534362390528, 1/309485009821345068724781056, 1/618970019642690137449562112, 1/1237940039285380274899124224, 1/2475880078570760549798248448, 1/4951760157141521099596496896, 1/9903520314283042199192993792, 1/19807040628566084398385987584, 1/39614081257132168796771975168, 1/79228162514264337593543950336, 1/158456325028528675187087900672, 1/316912650057057350374175801344, 1/633825300114114700748351602688, 1/1267650600228229401496703205376, 1/2535301200456458802993406410752, 1/5070602400912917605986812821504, 1/10141204801825835211973625643008, 1/20282409603651670423947251286016, 1/40564819207303340847894502572032, 1/81129638414606681695789005144064, 1/162259276832213363391578010288128, 1/324518553664426726783156020576256, 1/649037107328853453566312041152512, 1/1298074214657706907132624082305024, 1/2596148429315413814265248164610048, 1/5192296858630827628530496329220096, 1/10384593717261655257060992658440192, 1/20769187434523310514121985316880384, 1/41538374869046621028243970633760768, 1/83076749738093242056487941267521536, 1/166153499476186484112975882535043072, 1/332306998952372968225951765070086144, 1/664613997904745936451903530140172288, 1/1329227995809491872903807060280344704, 1/2658455991618983745807614120560689408, 1/5316911983237967491615228241121378816, 1/10633823966475934983230456482242757632, 1/21267647932951869966460912964485515264, 1/42535295865903739932921825928971030528, 1/85070591731807479865843651857942061056, 1/170141183463614959731687303715884122112, 1/340282366927229919463374607431768244224, 1/680564733854459838926749214863536488448, 1/1361129467708919677853498429727072976896, 1/2722258935417839355706996859454145953792, 1/5444517870835678711413993718908291907584, 1/10889035741671357422827987437816583815168, 1/21778071483342714845655974875633167630336, 1/43556142966685429691311

Missioni 11

Antipasto "Tigullino", Melone, Pasta
 Zuppa del Giorno 12
 Zuppa di Minestrone 12
 Polenta 15
 Crema Pasticceria, Gelato - Antipasto
 Assortimento di Salumi Capicola DOP 18
 Polenta 15
 Polenta di Valtellina 15
 Polenta di Molise 15
 Antipasto Polenta,

Insalate	
<p>Tre Colore 13</p> <p>Angelo, Radicchio, Belgian Endive, FVCO - Lemon, Shaved Parmigano Reggiano</p>	<p>Campagnola 15</p> <p>Baby Greens, Toasted Peppers, Olives, Artichoke Heart, Tomatoes, Ficus Benjamina, Fennel seedlings, Candied Vinaigrette</p>
<p>Barbabietole 15</p> <p>Carpaccio Crisp Golden Beets, Baby Angelo, Toasted Almonds, Pistachio, FVCO</p>	<p>Caesar 15</p> <p>Armadillo Hearts, Shredded Tomatoes, Parmigiano Reggiano, Crisp Greek, Parmigiano Dressing</p>

Pizza	
Margherita [18] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Pomodori</i> [19] <i>San Marzano</i> [20]	Florencia [13] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Salsiccia</i> di <i>Napoli</i>
Marinara [21] con <i>San Marzano</i> , <i>Mozzarella</i> di <i>Napoli</i> (o <i>aglio</i>) [22]	Marinara – <i>Spacc</i> <i>Ho-Aldo</i> [23] [24] [25] [26] [27] [28] [29] [30] [31] [32] [33] [34] [35] [36] [37] [38] [39] [40] [41] [42] [43] [44] [45] [46] [47] [48] [49] [50] [51] [52] [53] [54] [55] [56] [57] [58] [59] [60] [61] [62] [63] [64] [65] [66] [67] [68] [69] [70] [71] [72] [73] [74] [75] [76] [77] [78] [79] [80] [81] [82] [83] [84] [85] [86] [87] [88] [89] [90] [91] [92] [93] [94] [95] [96] [97] [98] [99] [100] [101] [102] [103] [104] [105] [106] [107] [108] [109] [110] [111] [112] [113] [114] [115] [116] [117] [118] [119] [120] [121] [122] [123] [124] [125] [126] [127] [128] [129] [130] [131] [132] [133] [134] [135] [136] [137] [138] [139] [140] [141] [142] [143] [144] [145] [146] [147] [148] [149] [150] [151] [152] [153] [154] [155] [156] [157] [158] [159] [160] [161] [162] [163] [164] [165] [166] [167] [168] [169] [170] [171] [172] [173] [174] [175] [176] [177] [178] [179] [180] [181] [182] [183] [184] [185] [186] [187] [188] [189] [190] [191] [192] [193] [194] [195] [196] [197] [198] [199] [200] [201] [202] [203] [204] [205] [206] [207] [208] [209] [210] [211] [212] [213] [214] [215] [216] [217] [218] [219] [220] [221] [222] [223] [224] [225] [226] [227] [228] [229] [230] [231] [232] [233] [234] [235] [236] [237] [238] [239] [240] [241] [242] [243] [244] [245] [246] [247] [248] [249] [250] [251] [252] [253] [254] [255] [256] [257] [258] [259] [260] [261] [262] [263] [264] [265] [266] [267] [268] [269] [270] [271] [272] [273] [274] [275] [276] [277] [278] [279] [280] [281] [282] [283] [284] [285] [286] [287] [288] [289] [290] [291] [292] [293] [294] [295] [296] [297] [298] [299] [300] [301] [302] [303] [304] [305] [306] [307] [308] [309] [310] [311] [312] [313] [314] [315] [316] [317] [318] [319] [320] [321] [322] [323] [324] [325] [326] [327] [328] [329] [330] [331] [332] [333] [334] [335] [336] [337] [338] [339] [340] [341] [342] [343] [344] [345] [346] [347] [348] [349] [350] [351] [352] [353] [354] [355] [356] [357] [358] [359] [360] [361] [362] [363] [364] [365] [366] [367] [368] [369] [370] [371] [372] [373] [374] [375] [376] [377] [378] [379] [380] [381] [382] [383] [384] [385] [386] [387] [388] [389] [390] [391] [392] [393] [394] [395] [396] [397] [398] [399] [400] [401] [402] [403] [404] [405] [406] [407] [408] [409] [410] [411] [412] [413] [414] [415] [416] [417] [418] [419] [420] [421] [422] [423] [424] [425] [426] [427] [428] [429] [430] [431] [432] [433] [434] [435] [436] [437] [438] [439] [440] [441] [442] [443] [444] [445] [446] [447] [448] [449] [450] [451] [452] [453] [454] [455] [456] [457] [458] [459] [460] [461] [462] [463] [464] [465] [466] [467] [468] [469] [470] [471] [472] [473] [474] [475] [476] [477] [478] [479] [480] [481] [482] [483] [484] [485] [486] [487] [488] [489] [490] [491] [492] [493] [494] [495] [496] [497] [498] [499] [500] [501] [502] [503] [504] [505] [506] [507] [508] [509] [510] [511] [512] [513] [514] [515] [516] [517] [518] [519] [520] [521] [522] [523] [524] [525] [526] [527] [528] [529] [530] [531] [532] [533] [534] [535] [536] [537] [538] [539] [540] [541] [542] [543] [544] [545] [546] [547] [548] [549] [550] [551] [552] [553] [554] [555] [556] [557] [558] [559] [560] [561] [562] [563] [564] [565] [566] [567] [568] [569] [570] [571] [572] [573] [574] [575] [576] [577] [578] [579]

[illegible]

<h2 style="text-align: center;">Risotto Aquarello Carnarali 7 Year Aged</h2>	
Risotto Parmigiana 25 <i>Pappalardo, Amatore, Serfati</i>	Risotto Mare Monte 35 <i>Spring, Foresti, Madrone, Pini,</i>
Risotto al Prosecco Limone e Zafferano 30 <i>Lozano, Rinaldi, Saffron, Prosecco, Parmigiana, Troncale</i>	Risotto ai Funghi e Tartufo 35 <i>Carnarali - gourmet forest mushrooms, truffle sauce</i>
Preparation Time 45 Minutes	
Carnarali	

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Contorni

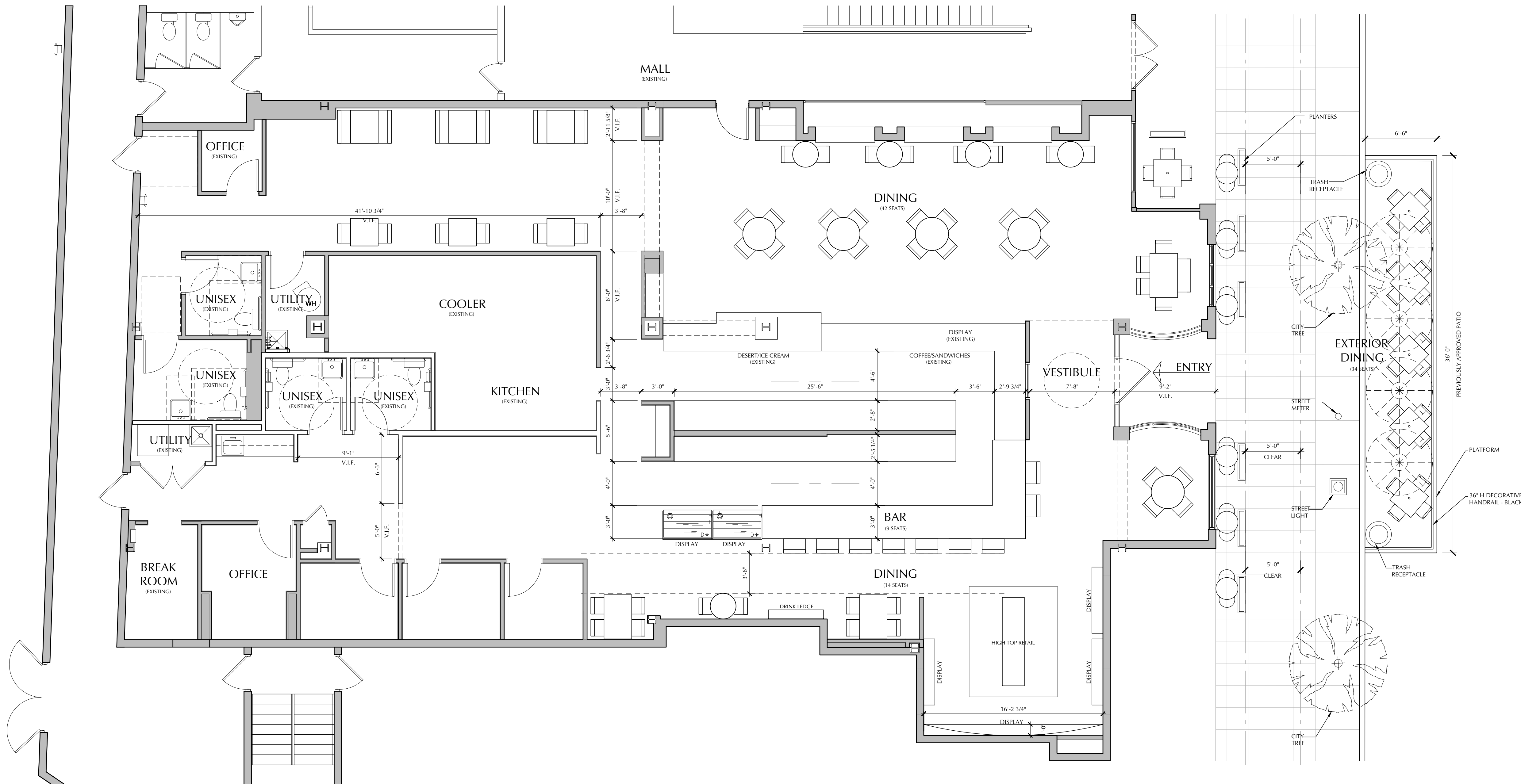
Spinaci-9	Gourmet-Mushrooms-11	Potato-Pure-9	Creamy-Polenta-9	Broccoli-Di-Saife-15
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Ask your server about menu items that are cooked to order or served raw.

Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of food borne illness.

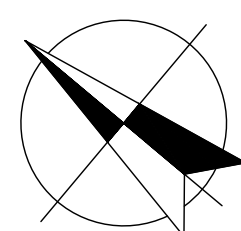
INDOOR SEAT COUNT:

TABLE TYPE	No. of SEAT
2-TOP TABLE (11)	22 SEAT
4-TOP TABLE (7)	28 SEAT
6-TOP TABLE (1)	6 SEAT
BAR (9)	9 SEAT
TOTAL SEATS:	65 SEAT



Proposed Plan

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

$$3/16'' = 1'-0''$$


SD.3.0

LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



Existing Elevation



EXISTING SIGN TO BE RELOCATED
CENTERED ABOVE ENTRANCE AWNING

Proposed Elevation



Wiss, Janney, Elstner Associates, Inc.
30700 Telegraph Road, Suite 3580
Bingham Farms, Michigan 48025
248.593.0900 tel
www.wje.com

June 9, 2021

Mr. Scott Grewe
Operations Commander - Birmingham Police Department
City of Birmingham
151 Martin Street
Birmingham, Michigan 48025

Birmingham Parking Structures

2021 Repairs
WJE No. 2019.6318

Dear Mr. Grewe:

Wiss, Janney, Elstner Associates, Inc. (WJE) is pleased to provide this proposal to perform engineering services relating to repairs and improvements at the following parking structures in Birmingham, Michigan:

- N. Old Woodward (NOW) Parking Structure located at 333 N Old Woodward Avenue
- Park Street Parking Structure located at 333 State Park Street
- Peabody Parking Structure located at 222 Peabody Street
- Chester Parking Structure located at 180 Chester Street

Please refer to our assessment reports issued in the month of May 2021 for descriptions of the structures, a summary of our assessment findings, and our provided recommendations.

Based on our recent discussions and meetings, the intent of the WJE scope of services presented herein is to develop construction documents and provide bidding assistance services for the scope of construction work presented in Appendix A. The work items listed in Appendix A are intended to be completed during the remaining 2021 construction season and include work identified as higher priority within the "Near-Term Recommendations" category of our assessment reports, as well as additional items at the NOW structure, per your request. The remaining work items recommended in our reports will be completed in subsequent years, and WJE will prepare separate proposals to provide engineering and construction period services for those projects when appropriate.

SCOPE OF SERVICES

Based on our understanding of the project objectives and our experience with the City of Birmingham (Birmingham) parking structures, as well as similar parking structure repair projects, we will provide the following Scope of Services with respect to the scope of 2021 construction work (Appendix A):

Phase 1 - Construction Document Development

We will develop construction documents consisting of technical drawings and project specifications for the proposed 2021 scope of work (Appendix A). Bid form(s) will also be provided for Birmingham's use in

obtaining competitive bids from qualified concrete restoration contractors. The bid forms will be tailored to provide Birmingham with flexibility regarding the final approved scope and schedule based on received bids.

For the purposes of this proposal, WJE assumes Birmingham will incorporate our technical repair drawings, specifications, and bid form(s) into Birmingham's 'front end specifications' (Division 00 and 01 specification sections), and that Birmingham will issue the documents for bidding. If requested, WJE can provide front end specifications and contract services under separate authorization.

Phase 2 - Bidding Assistance

WJE will lead a pre-bid meeting(s) to review the project scope with the bidding contractors and Birmingham representatives. During the bidding period, WJE will address relevant technical or scoping questions that may arise for incorporation into Birmingham's Addendum response. After the bidding period, WJE will review and analyze the provided bids (tabulated by others) to assist Birmingham with selecting a restoration contractor and finalizing the scope of work.

PROPOSED SCHEDULE

We understand that Birmingham would like to complete as many repairs as feasible during the 2021 construction season. To accommodate this request, we propose the schedule of milestones provided in Table 1 below, assuming WJE receives formal authorization to proceed by June 14, 2021.

Table 1. Proposed Schedule	
DATE	TASK
June 14, 2021	WJE commences with developing the construction documents
July 23, 2021	WJE issues construction documents for 95% "Owner Review"
July 30, 2021	WJE finalizes documents, documents are issued for bidding
August 6, 2021	Pre-bid meeting/walkthrough
August 11, 2021	Deadline for technical questions
August 13, 2021	Addendum issued, if necessary
August 20, 2021	Bidding Deadline
August 20 - September 3, 2021	Birmingham and restoration contractor execute contract
September 13, 2021	Construction Kick-off

CLOSING

Based on our preliminary cost estimates and our current progress under our existing contract with the City of Birmingham (dated October 28, 2019), we feel comfortable adding the above proposed Phase 1 and Phase 2 services to the scope of our existing contract and will utilize the remaining funds under that contract to complete the work.

Please note that this proposal **does not** include construction administration or construction period services which will be required during the construction work period. Such services may include, but not be limited to: progress meetings, construction observations, site visit reports, submittal reviews, material testing, payment application certification, and contract administration. WJE will issue a separate proposal to perform these services for the 2021 construction work once the final scope of work and awarded contractor are known.

We look forward to the opportunity to continue working with the City of Birmingham. Please feel free to contact Matthew Lewis at (248) 593-0900 if you have any questions regarding this proposal.

Sincerely,

WISS, JANNEY, ELSTNER ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "Matthew Lewis", with a stylized flourish at the end.

Matthew E. Lewis, P.E.
Senior Associate and Project Manager

Enclosure: Appendix A

APPENDIX A - PROPOSED SCOPE OF 2021 CONSTRUCTION WORK

*Work completed if not noted otherwise, as of 4/26/2022

North Old Woodward Parking Structure					
Item Description	Est. Qty.	Units	Unit cost	Est. Cost	
Loose concrete removal	2	work day	\$ 1,000	\$ 2,000	
Replace damaged/missing drain covers In-Progress	24	each	\$ 350	\$ 8,400	
Reset displaced and loose stair tower metal cover plates In-Progress	10	each	\$ 200	\$ 2,000	
Partial-depth topside slab concrete repairs* In-Progress, Roof Level Complete	5,000	SF	\$ 45	\$ 225,000	
Partial-depth underside slab concrete repairs* In-Progress	4,500	SF	\$ 100	\$ 450,000	
Rout and seal cracks and joints in slab In-Progress	25,000	LF	\$ 6	\$ 150,000	
Traffic bearing membrane on Level 5 and ramp leading to Level 5 In-Progress	41,000	SF	\$ 5	\$ 205,000	
Inspect and clean drain lines In-Progress	1	each	\$ 15,000	\$ 15,000	
Concrete wall repairs In-Progress	60	SF	\$ 100	\$ 6,000	
Replace sealant at cove seal joints In-Progress	1,000	LF	\$ 6	\$ 6,000	
Replace concrete masonry units at stair towers In-Progress	50	SF	\$ 20	\$ 1,000	
Localized repointing of clay masonry veneer In-Progress	20	SF	\$ 20	\$ 400	
North Old Woodward Parking Structure - Subtotal				\$ 1,070,400	
Chester Parking Structure					
Item Description	Est. Qty.	Units	Unit cost	Est. Cost	
Replace pre-molded expansion joint seals (Tier A through Tier 3), including expansion joints near stairs	1,200	LF	\$ 125	\$ 150,000	
Replace control joint sealant at intermediate PT anchorages (N-S joints)	2,000	LF	\$ 6	\$ 12,000	
Rout and seal cracks in elevated slab and replace failed sealant at isolated	750	LF	\$ 6	\$ 4,500	
Replace deteriorated horizontal lines at floor drains and associated	150	LF	\$ 90	\$ 13,500	
Inspect and clean drain lines as part of repair effort	1	LS	\$ 15,000	\$ 15,000	
Remove loose brick coping fragments and verify all brick coping units are secure (not loose)	1	LS	\$ 1,500	\$ 1,500	
Isolated brick repairs at regions of distress (Complete)				Chester Parking Structure - Subtotal	\$ 196,500
Peabody Parking Structure					
Item Description	Est. Qty.	Units	Unit cost	Est. Cost	
Investigation and repair of two Lower Level columns** In-Progress	1	LS	\$ 50,000	\$ 50,000	
Replace construction joint sealant	1,500	LF	\$ 6	\$ 9,000	
Rout and seal cracks in elevated slabs and replace failed sealant at isolated	500	LF	\$ 6	\$ 3,000	
Replace expansion joint seals	150	LF	\$ 125	\$ 18,750	
Inspect and clean drain lines	1	LS	\$ 15,000	\$ 15,000	
Isolated brick repairs at regions of distress (Complete)				Peabody Parking Structure - Subtotal	\$ 95,750
Park Parking Structure					
Item Description	Est. Qty.	Units	Unit cost	Est. Cost	
Replace construction joint sealant	900	LF	\$ 6	\$ 5,400	
Repair column stiffener and moment connection plates In-Progress	24	EA	\$ 1,000	\$ 24,000	
Inspect and clean drain lines	1	LS	\$ 15,000	\$ 15,000	
Park Parking Structure - Subtotal				\$ 44,400	
All - Subtotal				\$ 1,407,050	
General Conditions, Overhead and Profit (15%)				\$ 211,058	
Project Contingency (15%)				\$ 211,058	
Engineering/Testing/Construction Period Services (10%)				\$ 211,058	
All - Total				\$ 2,040,223	

*Quantities are increased to account for full-depth repairs where required.

**Pending further analysis during repair design phase; includes engineering, shoring, and masonry allowances.



MEMORANDUM

Parking Department

DATE: 5/2/2022

TO: Advisory Parking Committee

FROM: Ryan Weingartz, Parking Systems Manager

SUBJECT: Parking Update

Waitlist

	Authorized to Sell	Passes sold as of 5/2/22	Passes Available as of 5/2/22	Waitlist as of 5/2/22
Chester Garage	1368	1074	294	0
Old Woodward	981	827	154	0
Park Garage	945	945	0	86
Peabody Garage	536	523	13	18
Pierce Garage	751	829	0	135

Capacity

Average Total Occupancy March			Average Pass Holders Parking	Total Passes Sold	Percentage of Monthly Parking Showing up	
Chester Garage	31%		Chester Garage	331	1074	31%
Old Woodward	45%		Old Woodward	397	827	48%
Park Garage	52%		Park Garage	365	945	38%
Peabody Garage	70%		Peabody Garage	290	523	55%
Pierce Garage	69%		Pierce Garage	423	829	51%

Structure Revenue

	Monthly	Daily
January	\$ 294,277.00	\$ 113,626.00
February	\$ 269,232.00	\$ 121,682.00
March	\$ 276,640.00	\$ 180,601.00
April	\$ 277,810.00	\$ 156,482.00

Meter Revenue

	Total	Cash	Credit Card	ParkMobile
January	\$ 132,208.15	\$ 40,186.35	\$ 31,755.50	\$ 60,266.30
February	\$ 129,653.90	\$ 38,017.40	\$ 30,607.50	\$ 61,029.00
March	\$ 177,419.55	\$ 49,614.00	\$ 47,104.25	\$ 80,701.30
April	\$ 178,270.55	\$ 51,673.15	\$ 47,517.75	\$ 79,079.65

Referred to the Traffic and Safety Board for review of meters in the following locations to determine if they are still appropriate in view of the change in the entrance to the Baldwin Library: twelve 30-minute meters on Martin between Bates and Chester; five 15-minute meters on Bates between Maple and Martin; three 15-minute meters on Bates near the former entrance on Martin Street to the library.

8:07

08-881-84: CITY COMMISSIONER REPORTS

Commissioner Miller reported that the Otsu Children's Choir will sing at the Community House at 2:00 P.M., Saturday, August 11, 1984. She also commented that AAA will provide transportation for the children to Bob-Lo.

Mayor Appleford reported that he attended a reception in Ann Arbor last week for the Governor of Shiga Province.

8:08

08-882-84: ADVISORY PARKING COMMITTEE ESTABLISHED

MOTION: Motion by Miller, supported by Hockman:
To receive the report of the City Manager re: Advisory Parking Committee; to establish an Advisory Parking Committee as follows:

PURPOSE: There is hereby established an Advisory Parking Committee to provide guidance to the Birmingham City Commission in the management of the Birmingham Auto Parking System that will: recognize parking requirements of the various interests in the Central Business District (CBD); fairly assess the costs of the parking system to users of the facility; create the least possible traffic impact on the CBD and the immediately abutting residential areas; provide for attractive, well-maintained, safe facilities; include plans for an orderly and responsive answer to future parking needs.

MEMBERS: The Birmingham City Commission shall appoint the Advisory Parking Committee, consisting of seven (7) members, each to be appointed for a term of three (3) years, but in the first instance, two (2) members shall be appointed for terms expiring on the first Monday in September, 1985, two (2) members shall be appointed for terms expiring on the first Monday in September, 1986, and three (3) members shall be appointed for terms expiring on the first Monday in September, 1987.

The majority of the members shall be residents and there shall be one member representing each of the following:

- I. Downtown Commercial Representatives -
 - A. Retail - Two (2) members
 - B. Professional Firm - One (1) member
 - C. Building Owner - One (1) member
- II. Downtown Employee Representative - One (1) member
- III. Residential - Two (2) members who do not qualify under any of the above categories.

Members of the Committee can be removed for cause determined at a public hearing at any time by the City Commission. Vacancies occurring shall be filled for the unexpired term by the City Commission.

ORGANIZATION: The Committee shall elect a Chairperson from its membership annually at its first meeting after the first Monday of September. The City Engineer shall be a non-voting, ex-officio member of the Committee and shall serve as the coordinating link between the Committee and various City Departments. A secretary shall be furnished by the City for the purpose of keeping Minutes of Committee meetings.

MEETINGS: The Committee shall hold at least one (1) regular public meeting in each quarter on such date and at such time and place as may be established by resolution of the Committee. Special meetings may be called by the Chairperson of the Committee or by request of any three (3) members of the Committee. There shall be at least a two (2) day notice for any special meeting. The Committee shall adopt such rules for the conduct of its business as it may from time to time adopt by resolution. The Committee shall keep a written or printed record of its proceedings which shall be a public record and property of the City.

EXPENDITURES: The Committee shall have the power to expend such funds as may from time to time be appropriated to it by the City Commission for the purpose of carrying out the powers and duties of the Committee. Funds expended by the Committee shall be processed through regular City channels and be accounted for in the Auto Parking Fund budget.

POWERS AND DUTIES: The Committee shall recommend:

1. A proper rate relationship between the charges for street meters, parking lot fees (short term and long term), and permit fees.
2. Parking fees that, while maintaining the financial integrity of the system, are still attractive to users.
3. The proper ratio between the number of short term, long term, and permit parkers in the attendant-operated lots and structures.
4. The area in each structure that should be assigned for short term, long term, and permit parking.
5. An equitable method of assigning permit parking spaces.
6. Financial objectives that reflect the requirements of ordinances and the need for information on the revenue received from specific users of the system.
7. A public relations program that will educate the public to the location of parking facilities, their ease of use, their close proximity to many fine stores offering a great variety of merchandise and the benefits of validated parking.
8. Corrective steps if the level of either maintenance or policing of the system facilities is inadequate.
9. Specific ordinance changes that will encourage private off-street parking in the CBD and/or help to improve the system operation as a whole.

REPORTS: The Committee shall make and submit to the City Commission an annual report in January regarding the general activities, operations and accomplishments of the Committee for the preceding year. The Committee shall, from time to time as occasion requires, advise the City Commission in writing on recommendations for the improvement of the Auto Parking System.

BUDGET: Not later than the first day of February of each year, the Committee shall present to the City Commission a request for funds which the Committee believes necessary to carry out its function as an advisory committee.

VOTE: Yeas, 6 Nays, None Absent, Sights

MOTION: Motion by Kain, supported by Jeske:
That the Ad Hoc Parking Committee be dissolved.

VOTE: Yeas, 6 Nays, None Absent, Sights

Resumes for membership on the Committee are to be submitted by August 27, 1984, and Commissioners are to submit names to the Mayor by the first meeting in September. They are also to advise the Mayor if they have a particular area in which they are interested.

MOTION: Motion by Hockman, supported by Miller:
That resumes for appointment to the Advisory Parking Committee be submitted by August 27, 1984, for consideration by the City Commission at its September 4 meeting.

VOTE: Yeas, 6 Nays, None Absent, Sights

8:50

08-883-84: BORDERLINE TREES

MOTION: Motion by Jeske, supported by Jensen:
To receive the report of the City Engineer and the City Manager re: Borderline Trees; to direct the Administration to draft an ordinance whereby sidewalks damaged by trees which are entirely or partly in the public right-of-way will be City responsibility.

MOTION: Motion by Kain, supported by Hockman:
To amend the previous Motion by directing that the proposed ordinance state that the cost of sidewalk replacement resulting from damage caused by borderline trees be borne equally by the City and the property owner.

VOTE ON AMENDMENT: Yeas 3 (Hockman, Kain, Miller)
Nays, 3
Absent, Sights

AMENDING MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 3 (Appleford, Jensen, Jeske)
Nays, 3
Absent, Sights

MOTION FAILED

9:28

09-987-84: ORDINANCE AMENDMENT - B-4 PARKING
REQUIREMENTS

MOTION: Motion by Jeske, supported by Sights:
To receive the report of the City Planner and the City
Manager re: Amendment to B-4 Parking Requirements; to
refer to the Planning Board for public hearing and
recommendation to the City Commission.

VOTE: Yeas, 7 Nays, None

9:29

09-988-84: INVOICE RE: BUTZEL, LONG, GUST,
KLEIN AND VAN ZILE

Report received from the Director of Finance and the City
Manager re: Invoice from Butzel, Long, Gust, Klein and
Van Zile.

9:30

09-989-84: ADVISORY PARKING COMMITTEE APPOINTMENTS

MOTION: Motion by Hockman, supported by Sights:
To receive the report of the City Clerk re: Appointments
to Advisory Parking Committee; to direct that street
parking meters be included in the charge to the Advisory
Parking Committee.

MOTION: Motion by Kain, supported by Jensen:
To amend the previous Motion to include only those street
parking meters in the Parking Assessment District.

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

MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 7 Nays, None

MOTION: Motion by Jeske:
To appoint Dante Lanzetta as a Resident Member to the
Advisory Parking Committee.

MOTION: Motion by Kain:
To appoint Anne Honhart to a one-year term as Resident
Member of the Advisory Parking Committee.

MOTION: Motion by Jensen:
To appoint Keith Ege as the Small Retail Member of the
Advisory Parking Committee.

MOTION: Motion by Appleford:
To appoint Katharine Beebe as the Professional Member of
the Advisory Parking Committee.

MOTION: Motion by Miller:
To appoint Samuel Walker to a one-year term as the Building
Owner Member of the Advisory Parking Committee.

MOTION: Motion by Hockman:
To appoint Katharine Thibodeau as the Downtown Employee
Representative Member of the Advisory Parking Committee.

MOTION: Motion by Sights:
To appoint James Peabody as the Large Retail Member of the
Advisory Parking Committee.

Discussion was held on whether or not Mr. Peabody met the qualifications for the Large Retail Member and Mr. Walker for the Building Owner Member.

MOTION: Motion by Kain, supported by Sights:
That the Commission recess for five minutes.

VOTE: Yeas, 7 Nays, None

10:05 P.M. - Meeting recessed.

10:22 P.M. - Meeting reconvened.

MOTION: Motion by Jeske, supported by Miller:
That the Advisory Parking Committee be expanded to nine members to include a Restaurant Owner Member and a Resident Shopper Member.

MOTION: Motion by Kain, supported by Sights:
To amend the previous Motion by adding an ex officio member for a three-year term to the Advisory Parking Committee, the number of committee members to remain at seven.

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

MOTION FAILED

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

MOTION: Motion by Sights, supported by Kain:
To vote for the nominations on the floor, and to appoint the Large Retailer Member and Resident Shopper Member at the Commission Meeting of September 10, 1984.

In response to a question from Commissioner Jeske, Commissioner Sights stated that he is changing his nomination of Mr. Peabody from the Large Retail Member to that of Restaurant Owner Member.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Kain, supported by Hockman:
That the term of office for the nine-member Advisory Parking Committee shall be three years, but, in the first instance, three members shall be appointed for terms expiring on the first Monday in September, 1985, three members shall be appointed for terms expiring on the first Monday in September, 1986, and three members shall be appointed for terms expiring on the first Monday in September, 1987.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Jeske, supported by Jensen:
That the terms of the seven remaining members be decided by draw.

VOTE: Yeas, 7 Nays, None

05-152-00: INTERVIEW FOR ADVISORY PARKING COMMITTEE

Mr. Peter Wilde of the Townsend Hotel was interviewed for appointment to the advisory parking committee. Commissioner Lanzetta expressed concern about the legalities of the appointment of Mr. Wilde as the "large retail" member of this committee. The city attorney advised that the commission could amend the original resolution for the advisory parking committee to broaden the interpretation of large retail representative to include retail services as well as retail goods.

MOTION: Motion by Lanzetta, seconded by Chafetz:
To interpret the category of large retail representative on the advisory parking committee to include retail services as well as retail goods.

VOTE: Yeas, 4 Nays, None Absent, 3 (DeLaura, McKeon, Wooley)

MOTION: Motion by Moss, Seconded by Chafetz
To determine that Mr. Peter Wilde of the Townsend Hotel meets the criteria as the large retail representative on the advisory parking committee and, further, to continue this appointment until the city commission meeting of June 12, 2000.

VOTE: Yeas, 4 Nays, None Absent, 3 (DeLaura, McKeon, Wooley)

05-139 -17 USE OF ALTERNATES, REPORTING BOARD ATTENDANCE, AND MODIFYING REQUIREMENTS FOR BOARD MEMBERS

Assistant to the City Manager Haines presented results of a review of board and committee attendance suggesting that three groups might benefit from having two alternate positions added to increase attendance and/or achieve quorum: 1) Advisory Parking Committee, 2) Parks and Recreation Board, and 3) Public Arts Board.

MOTION: Motion by Commissioner Bordman, seconded by Mayor Pro Tem Harris:
To amend the ordinances of the Advisory Parking Committee, the Parks and Recreation Board, and the Public Arts Board, to add 2 alternate positions to each as follows:

To amend Resolution No. 08-882-84 – August 6, 1984, Advisory Parking Committee, Members.

AND

To amend Part II of the City Code, Chapter 78, Parks and Recreation, Article II., Parks and Recreation Board, Section 78-26, Created; composition.

AND

To amend Part II of the City Code, Chapter 78, Public Arts Board, Article V., Public Arts Board, Section 78-103, Composition and terms of members.

AND

To direct the city clerk to standardize the attendance reporting of all city boards and committees as outlined in the May 12, 2017 memorandum to the city manager and as clarified by the Commission and to direct staff to amend the Recommended Process for Use of Alternates as clarified by Commissioner Bordman.

VOTE: Yeas, 7
Nays, 0
Absent, 0

10-258 -19**AMEND ADVISORY PARKING COMMITTEE MEMBERSHIP**

City Manager Valentine presented this item.

- Recommending a modification to the composition of the board to enable the City to fill some long-time vacancies.
- Replace a building owner with a BSD board member to participate on the board
- Remove the City Engineer and Replace with the City Manager or his designee.

Brad Host expressed that he thought it might be a mistake to eliminate a representative from Engineering.

MOTION:

Motion by Commissioner Sherman, seconded by Commissioner Harris:

To adopt the resolution to amend Advisory Parking Committee membership to remove the Building Owner position and replace it with a board member of the Birmingham Shopping District and to remove the City Engineer (non-voting, ex-officio) position and to replace this position with the City Manager, or his/her designee.

VOTE:	Ayes:	5
	Nays:	0
	Absent:	2

MEMORANDUM

DATE: April 28, 2022
TO: All Boards and Committees
FROM: Mary M. Kucharek
SUBJECT: Update Concerning Open Meetings Act

This memorandum will serve as an update regarding the Open Meetings Act regarding committees and member participation.

The Open Meetings Act is a Michigan statute which basically provides that all meetings of a public body shall be open to the public and shall be held in places available to the general public. According to the Michigan Court, the intent of the Open Meetings Act is to facilitate public access and transparency to governmental decision making. The statute should be broadly interpreted, and its exemptions strictly construed. Discussions have ensued, questioning whether committees and subcommittees, which are advisory in nature, are subject to the Open Meetings Act and its regulations. In order to determine whether a meeting or situation requires regulations of the Open Meetings Act, four questions need to be asked:

1. Whether the committee or subcommittee is a public body.

According to the Open Meetings Act:

“Public body’ means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 40 of the home rule city act.”

To simplify, a public body is a group whose work and purpose is part of the process of government. A committee or a subcommittee which has been created by recommendation, resolution or direction by the legislative body (in our case the City Commission) would be a public body.

2. Whether there is a meeting of the public body.

"Meeting" is defined in the Open Meetings Act as:

"The convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy."

The inquiry is whether or not, when the group of people meet, are they working towards or rendering a decision, in order to make an advisory recommendation to the legislative body? If the group is deliberating and collectively decide a recommendation, then pursuant to the Michigan Court of Appeals, it is, in fact, a meeting.

3. Whether a decision effectuating public policy will be made.

Pursuant to the Open Meetings Act, a decision is "a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates the form of public policy." In *Schmiedicke v Clare School Board*, 1998, the Court of Appeals analyzed whether or not a committee was, in fact, making a "decision" according to the Open Meetings Act. The Court ruled it is important to determine if a recommendation is actually made. The recommendation is a delegation of authority to perform an act. "The focus of inquiry is the authority delegated to the committee not the authority it exercised." The Court of Appeals pointed out "the primary purpose of the Open Meetings Act is to ensure that public entities conduct all their decision making activities in open meetings and not simply hold open meetings

where rubber stamped decisions were previously made behind closed doors.” Therefore, when a subcommittee makes a recommendation, and if that subcommittee was not open to the public, it effectively forecloses any involvement by members of the public, and essentially means that the decision made by the subcommittee at a closed meeting is fait accompli. The definition of fait accompli means “a thing that has already happened or decided before those affected hear about it, leaving them with no option but to accept.”

4. Whether any exceptions are applicable.

Exceptions are listed in the Open Meetings Act with specificity.

The Attorney General of Michigan has created an *Open Meetings Act Handbook*. One paragraph in the handbook states, “Open Meetings Act does not apply to committees and subcommittees composed of less than a quorum of the full public body, if they are merely advisory and capable of making recommendations concerning the exercise of governmental authority.” I contacted the Attorney General’s Office and spoke with James Kelley, who is an expert regarding the Open Meetings Act. I asked him how that paragraph as written by Attorney General Frank Kelley in 1997, be true in light of the *Schmiedicke* case? Mr. Kelley advised the cited paragraph applies when an advisory committee is meeting and their purpose is to collect information, report and then make a recommendation to the governing body. They may do so without being an open meeting only if the recommendations that they give to the governing body, include all of the potential options available before they make a recommendation. As an example, if a committee is collecting information and then come before the governing body, and state, for instance, there were five (5) different choices to an issue, and then state, we believe choice number three (3) is the correct way to go, they may do so as long as they advise about all five (5) choices. In this example, there is not an “open meeting” because they did not make a

decision. However, if the members of the advisory committee discuss, weigh and determine ahead of time at their meeting before presenting to the governing body their choice of one option, and then they make a recommendation to the Commission and do not advise about all possible options, then they were making a "decision," and are, therefore, in violation of the Open Meetings Act.

Mr. Kelley believes the practice of failing to notice all committees, even those that are advisory in nature, is a "slippery slope." His recommendation is to notice each and every meeting that occurs, including every committee, subcommittee, ad hoc committee, etc.

It is my recommendation that the City simply notice every meeting. Notice is easily achieved by a simple posting notice on the City doors. The likelihood is participation is minimal to these meetings, but if they are noticed, there can never be an opportunity for an accusation or violation of the Open Meetings Act.

Furthermore, a question has been posed inquiring if a board member is unable to attend a board or a committee meeting in person, including public deliberating and voting on a particular issue, is there any law or rule of procedure that would allow the member to participate as a private citizen and make comments during public comment via Zoom?

The answer is "no." The Open Meetings Act, specifically MCL § 15.263(2) states absent members of a public body may only attend remotely due to active military duty or a disability that has been recognized by Title II of the ADA requiring a reasonable accommodation in order to actively participate in a public meeting. Therefore, when members of committees or boards are absent due to any other reason, no exception exists permitting them to attend, participate or vote remotely as a public body, board or committee member. While certainly board or committee members can watch remotely, no comment should be made virtually by appointed members, whether the comment is made during public comment or any other time. In fact, one should

only watch anonymously and not have their names advertised on Zoom. Courts have opined that any comment made by fellow board members can be influential and, therefore, part of the deliberative process of the public body which can only be accomplished in person. The purpose of the OMA is to ensure transparency of all decision making and deliberations of the public body.

While some board members may find this challenging, or feel that this impinges their First Amendment rights, the courts have deemed that you are still a member of the public legislative body and, therefore, cannot simply relinquish the duties you are sworn to uphold by simply saying you are only speaking as a private citizen.

In conclusion, I recommend that absent board members simply watch the meeting of their public board or committee, if possible. It is the best practice for all board and committee members to not speak remotely when they are absent so as to avoid a potential OMA violation, keeping in mind that an OMA violation is a criminal misdemeanor under Michigan law.