

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, November 9, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on November 9, 2022. Vice-Chair Williams convened the meeting at 7:30 p.m.

A. Roll Call

Present: Vice-Chair Bryan Williams; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce; Alternate Board Member Nasseem Ramin; Student Representative Andrew Fuller

Absent: Chair Scott Clein; Alternate Board Member Jason Emerine; Student Representative MacKinzie Clein

Staff: Planning Director Dupuis; City Transcriptionist Eichenhorn, City Attorney Kucharek (left at 9:08 p.m.)

B. Approval Of The Minutes Of The Regular Planning Board Meeting of October 26, 2022

11-164-22

Motion by Mr. Share

Seconded by VC Williams Mr. Jeffares to approve the minutes of the Regular Planning Board meeting of October 26, 2022 as amended.

Motion carried, 7-0

VOICE VOTE

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

Nays: None

C. Chair's Comments

VC Williams welcomed everyone to the meeting and reviewed the meeting's procedures.

D. Review Of The Agenda

E. Unfinished Business/Courtesy Review

F. Rezoning Applications

G. Community Impact Studies

H. Special Land Use Permits

I. Site Plan & Design Reviews

J. Study Session

1. Outdoor Dining – Study Session

PD Dupuis and CA Kucharek presented the item and answered informational questions from the Board.

The Board motioned to receive and file the correspondence from the Bongiovannis and Michael Lang, dated November 7, 2022.

Public Comment

Kelly Allen, attorney, spoke on behalf of her clients. She praised the ordinance in general, and recommended that new or re-opened SLUPs be required to comply with the ordinance. She recommended that no sunset provision be required for present SLUP-holders.

Jim Bellinson, co-owner of Social, spoke in favor of permanent non-conforming use status being granted to appropriate establishments.

Pete Joelson, attorney, spoke on behalf of the owner of 470 Old Woodward. He concurred with Ms. Allen and Mr. Bellinson.

Michael Lang, co-owner of Market North End, noted that he would have built his establishment differently if the proposed ordinance had been enacted at that time. He also noted that Birmingham establishments tend to have a natural turnover, and that compliance with the ordinance would occur at a reasonable pace through that process alone, without the need for a sunset provision.

Joe Bongiovanni, co-owner of Market North End, noted that the goal of this process was to incentivize outdoor, off-season dining and said he did not believe that goal was met.

Ms. Allen and Messrs. Bellinson and Bongiovanni all also commented positively on the uses of isinglass.

In reply to Mr. Jeffares, Mr. Bongiovanni confirmed that isinglass substantially increases outdoor dining use.

Seeing no further public comment, the Vice-Chair returned the conversation to the Board.

PD Dupuis said the City previously chose to disallow isinglass because it essentially made an outdoor space into an indoor one.

Mr. Share noted that allowing or disallowing isinglass was not part of the evening's consideration.

Board comments were as follows:

- The ordinance was being designed with the interests of a number of parties in mind, including the City, the public, retail businesses, and restaurateurs;
- Outdoor dining is not a heated, partially-enclosed space, but rather dining in the outdoors with weather cover;
- The Board owes it to the City to achieve uniformity in outdoor dining, and a sunset provision would allow that to occur;

- Residents enthusiastically asked for more outdoor dining, and outdoor dining keeps the town vibrant;
- Changes in dining establishments in Birmingham occur relatively frequently, as evidenced by the few restaurants that have lasted twenty or more years. Consequently, those regular changes should be relied upon to bring establishments into ordinance compliance, instead of needing a sunset provision;
- Non-conforming outdoor dining has not been mentioned as a significant issue to the community;
- Dining establishments may not want to continue doing business in Birmingham if this ordinance goes into effect with a sunset provision;
- After hearing the operators that spoke at the present meeting, it became clearer how integral the design of their outdoor dining is to the establishments' functionality. The outdoor dining spaces were reviewed and approved at the time because the City thought they were good designs, and that has not changed just because the ordinance is changing. These businesses bring a lot of benefit to the community. It would be appropriate to move forward with these guidelines for future establishments; and,
- The ordinance should be advanced without Article 4, Section 4.44(D)(3). Additionally, creating individual dates for each establishment to come into compliance no longer seemed appropriate. The Commission could choose to include a sunset provision if deemed appropriate.

CA Kucharek noted that the Board and the members of the public who spoke generally seemed to agree on liking the ordinance. She concurred with Mr. Lang that some of the issues would cure themselves through restaurant openings and closures, and also through the physical longevity of the non-conforming items. If a sunset provision is chosen that accounts for how long much of the regular deterioration might take, that might be a fair compromise between the side that wants a sunset provision and the side that does not. She recommended eight years as a starting point for discussion.

In reply to CA Kucharek, it was noted that the ordinance allows for maintenance, which means that non-conforming outdoor dining could continue indefinitely if no substantial changes were made.

It was noted that in some cases, establishments may not be able to comply with Article 4, Section 4.44(C)(6) when the outdoor dining is located on a slope.

PD Dupuis noted that would likely be a case for the Board of Zoning Appeals (BZA).

VC Williams commented that in those cases, the Board would provide comment to the BZA about whether compliance was likely too onerous.

11-165-22

Motion by Mr. Jeffares

Seconded by Ms. Whipple-Boyce to set a public hearing date of December 14, 2022 to consider amendments to Article 4, Section 4.44, with the exception of Article 4, Section 4.44(D)(3) which should be struck, Article 3, Section 3.04, Article 3, Section

3.16, and Article 9, Section 9.02 to provide more clear and enforceable outdoor dining ordinances.

In reply to Mr. Share, CA Kucharek stated that if this ordinance were ultimately approved by the Commission, the applicable restaurants would retain a pre-existing non-conforming status until a sufficient action were taken to re-open their SLUP.

CA Kucharek stated that a change of ownership would amount to a re-opening of the SLUP and would result in an establishment losing its pre-existing non-conforming status.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Share

K. Miscellaneous Business and Communications

1. Pre-Application Discussions

i. 300 S. Old Woodward – RH

Victor Saroki introduced the project team in attendance and the proposed changes.

Gary Friedman, CEO of RH, presented the proposed changes.

Mr. Saroki answered informational questions from the Board.

VC Williams, Mr. Koseck, and Ms. Whipple-Boyce praised the proposed changes.

2. Communications

3. Administrative Approval Correspondence

4. Draft Agenda

5. Action List - 2022

Mr. Jeffares recommended that Mixed Use Requirements for Bonus Stories in the Triangle District be made the first item on the Action List.

VC Williams concurred that item should be moved higher on the Action List.

6. Other Business

L. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

M. Adjournment

No further business being evident, the Vice-Chair adjourned the meeting at 9:47 p.m.



Nick Dupuis,
Planning Director



Laura Eichenhorn,
City Transcriptionist

APPROVED