

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, April 27, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 27, 2022. Chair Scott Clein convened the meeting at 7:30 p.m.

A. Roll Call

Present: Chair Scott Clein (left at 9:40 p.m.); Board Members Robin Boyle, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Student Representatives MacKinzie Clein, Andrew Fuller

Absent: Board Member Stuart Jeffares; Alternate Board Members Jason Emerine, Nasseem Ramin

Administration:

Nick Dupuis, Planning Director
Leah Blizinski, City Planner
Brooks Cowan, Senior Planner
Laura Eichenhorn, City Transcriptionist

B. Minutes

Mr. Share asked that more information be included about the concerns prompting the side yard a/c unit ordinance revision. He said he recalled the aim was to permit homeowners with existing side yard a/c units to repair broken units without having to go through a months-long process to do so.

Chair Clein said that CP Blizinski had provided an explanation of what the proposed ordinance changes would address that should be minuted.

The Chair recommended that the minutes be tabled until more detail could be added to those two aspects of the side yard a/c unit discussion.

C. Chair's Comments

Chair Clein welcomed everyone to the meeting and reviewed the meeting's procedures.

D. Review Of The Agenda

E. Unfinished Business

None.

F. Rezoning Applications

**1. Watkins/Brown Property (No address, Parcel Identification Number:
1936151027) – Request to rezone property from R8 to R2**

SP Cowan presented the item.

In reply to Mr. Share, SP Cowan said that R8 allows for the construction of a single-family residence. This particular lot cannot be split, however, so the only way to build on it would be a rezoning to R2.

The Chair emphasized for the public that the Board was constrained to making its recommendation based solely on the five criteria set forth in Article 7, section 7.02(B)(5). He said that while the public may have a number of other valid concerns, those concerns were not part of the Board's present purview.

Mr. Williams noted this project was previously before the Board. He said to his recollection, there was at least one previous proposal for multi-family residences on this site which was not approved. He stated that the neighbors on Watkins had objected to this parcel being developed as R8 at the time, and that the objection by the neighbors was extensive. He said that when the site plan was first brought before the Board, development of this parcel was to be limited to single-family residential development.

At the direction of the Chair, SP Cowan twice read aloud the five criteria set forth in Article 7, section 7.02(B)(5) for both the Board's and public's clarification.

The Chair then invited public comment.

Public Comment

Brian Gordon, resident of W. Brown, said the appropriate time to consider a lot split for this parcel was before the development commenced. He said that the developer has since maxed out the lot and was seeking a lot split and rezoning to develop further, which Mr. Gordon said he found disingenuous.

Michael Tyranski, resident of Watkins, said he concurred with Mr. Gordon. He continued that adding another residence would exacerbate already-difficult traffic conditions on Watkins, would deflate the values of the nearby brownstones, and would hurt the character and integrity of the neighborhood. Mr. Tyranski said the neighbors were willing to work with the developer and the City to offer market price to purchase the parcel in question.

The Chair noted the Board's receipt of a letter from Mr. Tyranski and an email from Maria VanHees both in opposition to the rezoning. He asked for a motion to receive and file the communications.

04-99-22

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to receive and file the letter from Mr. Tyranski and the email from Maria VanHees.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

A resident of Watkins reiterated that neighbors in the area were offering to buy the lot, which he said would be the most mutually agreeable outcome for the developer, the neighborhood, and the City.

The Chair clarified that the City could not participate in any discussions about a potential private purchase agreement between the neighbors and the developer.

The resident said he believed that the neighbors' potential purchase of the parcel would benefit the City as well. He said the City should consider the perspective of its residents, that the homeowners' association should be able to veto the rezoning, and that there is an issue with traffic congestion on Watkins.

Seeing no further public comment, the Chair invited comment from the applicant.

Anthony Palleschi was present on behalf of LB Land.

In reply to Mr. Palleschi, SP Cowan confirmed that when applicant previously applied for a lot split, Staff's recommendation had been for the applicant to postpone the lot split and to pursue a rezoning to R2 first.

The Chair then returned discussion to the Board.

Ms. Whipple-Boyce noted that when this parcel was before the Commission on May 24, 2021, the applicant was advised that a lot split would be required in order to add further multi-family residences. She said she wanted to clarify that information was just a factual statement of what would be required for further multi-family residences, not a recommendation to do so.

Chair Clein said it was a useful clarification.

Mr. Share asked whether the Board should consider the three questions set forth in Article 07, section 7.02 of the Zoning Ordinance in addition to the five criteria set forth in Article 7, section 7.02(B)(5) in making its recommendations on this matter.

Chair Clein said the Board has always taken the three questions to inform its discussion of a rezoning request. He said that while the three questions and five criteria are not identical, they are related and do inform his vote on a recommendation.

Mr. Share said:

- It was true that the applicant had a piece of property that could not be developed as currently zoned;

- It was also true that in considering the map, the neighborhood, the existing uses of the property, the suitability of the property and the trend of development in the area, this parcel is more suited for single-family residential than multi-family residential;
- The difficulty was whether to look at this land as part of the existing condominiums or on its own;
- Whether the land should be separated from the condominium was not before the Board, and was not within the Board's control;
- The Board had always been led to believe that single-family residential would be developed on this parcel, except for one proposal for a duplex;
- From a land use perspective, R2 is a more appropriate zoning than R8;
- He was inclined to believe that the neighbors' concerns about traffic, usage, and intensity would be more appropriately addressed as part of a discussion on a lot split; and,
- He was struggling with how to proceed for these reasons.

Mr. Williams said:

- While the developer had initially proposed single-family residential for this parcel, the developer proceeded to develop it according to the allowances of R8;
- Before the original development started, the developer could have requested a rezoning of this parcel to R2 from the Board but did not;
- Attempting to do so now was 'backwards';
- He raises the issue of the original development because from the inception of the project this parcel was envisioned as an R2 development;
- He was troubled by question three, since the proposed rezoning would be detrimental to many of the surrounding properties; and,
- The developer's failure to reserve this parcel for future development was a mistake.

Mr. Boyle said:

- The developer previously told the Board that a landscape architect would redesign this parcel, which has not been done;
- Every residential, suburban scheme in the country has odd-shaped lots, which often become valuable open space;
- This parcel is no different, and could become a public space to serve the neighborhood. While this is not a comment on R2 versus R8, in terms of long-term use it should be considered for active development in the public interest to enliven the area; and,
- He did not think the parcel was appropriate for a single-family residence.

In reply to Ms. Whipple-Boyce, SP Cowan explained why this lot could not be split into two R8 lots.

Chair Clein said:

- The matter presently before the Board was one of land use, and not one of a potential lot split;
- The map view indicates that the property should be rezoned to R2, while the more practical view indicates that the lot was developed as one site and now the developer wants to try and squeeze more development in because the lot was not developed properly the first time; and,
- He did not know that it was the Board's responsibility to help fix mistakes.

Mr. Koseck said the Board reviewed this lot as a total piece, and that the review likely considered the design based on the context of the entire lot.

Mr. Palleschi said the original survey provided for 525 W. Brown had single-family residential sketched on the lot in question. He said the developer had made its intent to build single-family residential on this plot from day one.

In response, Mr. Boyle said the Board pressed the applicant's architect and the developer to describe how they would intend to built the single-family residential. He said the applicant's team declined.

Chair Clein and Mr. Williams concurred with Mr. Boyle's recollection.

Chair Clein said:

- He believed, ever so slightly, that it was more appropriate for the property to retain its R8 designation;
- Rezoning would be detrimental to a portion of the neighborhood;
- Retaining the current designation does not prevent the owner from enjoying the rights of usage. The applicant retains the rights of usage, and in fact determined on their own how they would develop the lot;
- While the City's Master Plan and the existing zoning in the area is a compelling argument, the suitability of the current zoning of the property was not proven to be inappropriate;
- Consequently, he would recommend denial of the rezoning.

04-100-22

Motion by Mr. Williams

Seconded by Mr. Boyle that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends denial to the City Commission of the applicant's request for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential.

Mr. Share said he leaned just slightly in favor of the proposed rezoning to R2. He said that a rezoning would be appropriate when solely considering this as a matter of land use. Consequently, in sticking to the parameters set forth in the zoning ordinance, he would vote no on the motion. Mr. Share continued, however, that his vote did not mean that he necessarily thought a single-family residence on the lot would be appropriate. He said he would not want the Commission thinking this was anything but an exceedingly close case. He said he would not want anyone, including the Commission, thinking that he would necessarily recommend a lot split to enable construction on the site. Mr. Share stated that a number of compelling reasons were given for why developing this property into a single-family residence would not be the right thing to do.

Mr. Boyle said that two members of the Board referred to this matter as an issue of land use. He specified that it was not just a matter of land use, but of future land use

of the area. He said this is a planning matter, and not just a zoning matter. Mr. Boyle continued that the case was made by a number of residents and by the Board in the past that the section of the parcel in question should have considered the parcel as a whole. He contended that an appropriate land use for this section of the parcel now would be some form of organized open space.

Motion carried, 5-1.

ROLL CALL VOTE

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

Nays: Share

G. Community Impact Study

None.

I. Special Land Use Permit and Final Site Plan and Design Review

1. 588 S. Old Woodward – Phoenicia – Request for small addition to rear of building

SP Cowan presented the item. He added that Phoenicia would be required to provide a parking lease agreement to the City every year during liquor license renewals in order to demonstrate the provision of sufficient parking or risk losing its SLUP agreement, per the City Attorney. He noted that a memo provided to the Board at the beginning of the meeting also provided updated motion language to that effect.

04-101-22

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the memo from SP Cowan dated April 27, 2022 to the Planning Board.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Mr. Koseck noted a discrepancy between the parking proposals on the architectural site plan and the civil site plan and asked which was correct.

SP Cowan stated that the architectural site plan showed the accurate parking proposal.

Mr. Boyle asked why the City would measure parking based on square footage when the Board has a plan that states the establishment's number of seats. He noted that half of the proposed addition would not be holding seating, and asserted as a result that the number of additional parking spaces being required was excessive. He said the City needed to amend its parking regulations accordingly or the ordinance would result in overparking.

Messrs. Share, Williams, and the Chair concurred with Mr. Boyle that the City's parking regulations require updating.

Victor Saroki, architect, and Samy Eid, owner, spoke on behalf of the project.

Mr. Saroki commented that a parking requirement of one parking space per 75 feet of gross area within an establishment is no longer valid by today's standards. He said that the applicant would likely pursue a variance at the Board of Zoning Appeals (BZA) and asked if the Planning Board might be willing to provide comment for that potential appeal. He also asked the City to consider a revision to the City's parking requirements.

Jack Reinhardt, managing partner of The 555 and 555 Commercial, said he was fully in support of Phoenicia and confirmed that 555 Commercial and Phoenicia would be entering into a five year lease to provide Phoenicia with 20 extra parking spaces.

Mr. Reinhardt also contested the parking counts described on page 38 of the agenda packet. He said he does counts at 10 a.m. and 2 p.m. and that he usually counts between 180-200 parked cars in the 555 parking structure at those times. He said he would go further into his objection of the parking counts later on.

Messrs. Eid and Saroki expressed concern that Phoenicia's SLUP agreement would be tied to the continuance of the parking agreement, noting that unforeseen future changes in the 555's management could leave Phoenicia in a difficult situation with no recourse.

Chair Clein acknowledged Mr. Eid's statement but said the Board had no leeway in following direction from the City Attorney.

In reply to Mr. Boyle, Mr. Saroki confirmed that the walls on the east side of the parking lot would be replaced with a well-maintained hedge and three trees.

Mr. Boyle opined that while he appreciates vegetation, this is a very urban space and the walls work well in this context.

In reply to Mr. Koseck, Mr. Saroki confirmed that the front door would continue to be the main entry for the majority of patrons.

In reply to Mr. Share, Mr. Eid confirmed he understood that if he did not maintain an adequate number of parking spaces that he could lose the ability to operate out of the restaurant's addition.

In reply to Mr. Share, SP Cowan confirmed that the parking counts were based off a standard office and a standard retail usage, and not some of the more high-intensity retail usages.

Mr. Share said he wanted to make sure that Mr. Reinhardt understood that if he enters into this parking lease with Phoenicia, it may have an impact on the parking available to other tenants in the building in the future.

Mr. Reinhardt confirmed he understood.

SP Cowan clarified that the parking calculations for this item were based on 100% occupancy, whereas an analysis of a tenant's parking needs would only be based on current demand. He also noted that The 555 would be doing a bit more restriping in its lot, which would add a few more parking spaces.

In reply to the Chair, Mr. Saroki said he could likely expand the clear pedestrian path adjacent to the outdoor dining deck to be closer to six feet.

The Chair said he would appreciate an expansion in the pedestrian clear path adjacent to the outdoor dining deck, and said he would be comfortable with an administrative approval on those changes.

PD Dupuis asked if the Planning Board would be willing to provide comment for the applicant's potential future variance request at the BZA.

Mr. Williams said he was not willing since he wanted to address the issue by ordinance since this is not the only parcel adversely affected by the current parking regulations.

The Chair concurred.

Public Comment

Wendy Zabriskie stated that the City's parking requirements are archaic. She advocated for the City to change its parking requirements so Phoenicia, a long-running small business, would not be at risk of losing its ability to operate.

Mr. Reinhardt spoke in favor of retaining parking in the S. Old Woodward area.

04-102-22

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Final Site Plan and Design Review for 588 S. Old Woodward – Phoenicia – subject to the following conditions:

- 1. The applicant submit a signed parking lease agreement for 20 parking spaces or obtain a variance for required parking spaces from the BZA;**
- 2. The applicant submit an updated photometric plan that satisfies the foot candle level requirements for parking lot circulation areas;**
- 3. The Planning Board allow evergreen parking lot screening in place of a masonry screen wall;**
- 4. The Planning Board allow the glazing standards for the northern elevation with a public entrance to be modified; and,**
- 5. The City Attorney draft language to be included in the Special Land Use Permit contract to require that the applicant demonstrates satisfactory parking is maintained to satisfy compliance with the current parking ordinance during its review in the annual liquor license review with the City; and,**
- 6. The applicant comply with the requests of all City Departments.**

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

04-103-22

Motion by Mr. Williams

Seconded by Mr. Koseck to recommend approval to the City Commission of the Special Land Use Permit for 588 S. Old Woodward – Phoenicia – subject to the following conditions:

- 1. The applicant submit a signed parking lease agreement for 20 parking spaces or obtain a variance for required parking spaces from the BZA;**
- 2. The applicant submit an updated photometric plan that satisfies the foot candle level requirements for parking lot circulation areas;**
- 3. The Planning Board allow evergreen parking lot screening in place of a masonry screen wall;**
- 4. The Planning Board allow the glazing standards for the northern elevation with a public entrance to be modified; and,**
- 5. The City Attorney draft language to be included in the Special Land Use Permit contract to require that the applicant demonstrates satisfactory parking is maintained to satisfy compliance with the current parking ordinance during its review in the annual liquor license review with the City; and,**
- 6. The applicant comply with the requests of all City Departments.**

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

- 2. 243 E. Merrill – La Strada – Request for expansion and a new outdoor dining platform**

CP Blinzinski presented the item.

John Henke, attorney, was present on behalf of item.

In reply to Mr. Boyle, Mr. Henke confirmed the six square four tops shown on page 131 of the agenda packet would actually be round. He said he would have the architect update the drawings accordingly.

04-104-22

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to approve the Final Site Plan & Design Review application for 243 Merrill St. – La Strada – with the following conditions:

1. The applicant must provide revised plans with clear dimensions to ensure compliance with the Zoning Ordinance;
2. The applicant must provide a certified survey;
3. The applicant is required to install a city standard grate to protect the street tree;
4. The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list;
5. The applicant must receive Historic District Commission approval for all exterior changes proposed within the Downtown Historic District;
6. The applicant must obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces;
7. The Planning Board approves the use of the chairs as proposed; and,
8. The applicant must comply with the requests of all City Departments.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

04-105-22

Motion by Mr. Boyle

Seconded by Mr. Share to recommend approval to the City Commission of the Special Land Use Permit amendment application for 243 Merrill St. – La Strada – with the following conditions:

1. The applicant must provide revised plans with clear dimensions to ensure compliance with the Zoning Ordinance;
2. The applicant must provide a certified survey;
3. The applicant is required to install a city standard grate to protect the street tree;
4. The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list;
5. The applicant must receive Historic District Commission approval for all exterior changes proposed within the Downtown Historic District;
6. The applicant must obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces;
7. The Planning Board approves the use of the chairs as proposed; and,
8. The applicant must comply with the requests of all City Departments.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

J. Site Plan & Design Review

1. 294 E. Brown – Request for a new 4-story mixed-use building

Chair Clein recused himself from this item, citing a business relationship with one of the members of the applicant team, and left the meeting at 9:40 p.m.

Vice-Chair Williams assumed facilitation of the meeting at 9:40 p.m.

PD Dupuis reviewed the item.

Mr. Saroki and Michael Dul, landscape architect, spoke on behalf of the item.

Mr. Koseck noted that the applicant was providing all the landscaping required by ordinance, and that the synthetic landscaping would be in addition to the required landscaping.

In reply to Mr. Boyle, Mr. Saroki said the management of 294 E. Brown would stipulate that the building's residents should not allow their pets to relieve themselves on the synthetic turf.

Mr. Dul said the synthetic turf could also have sprinklers added.

Public Comment

Patti Shain, resident at the corner of Daines and Purdy, expressed concern about the increasing density in her neighborhood.

The Vice-Chair stated that the proposed project complies with all the zoning requirements as regard density. He advised Ms. Shain that concerns regarding zoning density in the City would be most appropriately addressed to the Commission.

In regards to the proposed infinity edge rooftop pool, Mr. Koseck said he felt the proposal met the spirit and intent of the ordinance in that the goal was to prevent the viewing of rooftop activity.

Ms. Whipple-Boyce also said she supported the proposed infinity edge rooftop pool, saying the five foot setback from the eave line was clearly intended to prevent amenities on the surface of the roof from being on the edge of the building, and not for a situation in which an amenity is embedded within the roof like the pool would be. She said she wished she could vote to approve that amenity presently without the applicant being required to go to the BZA.

04-106-22

Motion by Ms. Whipple-Boyce

Seconded by Mr. Share to approve the Final Site Plan and Design Review application for 294 E. Brown with the following conditions:

- 1. The Planning Board grants a waiver for innovative landscaping design and approves the synthetic planting material (turf, groundcover, birch trees, etc.) proposed;**

2. The Planning Board approves the non-cutoff light fixtures pursuant to Article 4, Section 4.21 (D)(1);
3. The applicant must submit a revised photometric plan demonstrating light levels that do not exceed 1.5 maintained foot-candles along the rear property line;
4. The Planning Board approves the preliminary building sign design plan;
5. The applicant must submit revised plans demonstrating a 5 ft. setback from the eave line for all rooftop amenities, or obtain a variance from the BZA;
6. The Planning Board approves one row of glass for the loading dock garage door on Daines Street rather than the three shown, the Planning Board grants flexibility from the glazing standards for the door, and the changes to the door may be approved administratively;
7. The applicant must comply with the requests of all City Departments; and,
8. The Planning Board approves arborvitae in lieu of a screening wall around the transformer.

Motion carried, 5-0.

ROLL CALL VOTE

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

Nays: None

Vice-Chair Williams, Mr. Share, and Mr. Boyle added their concurrence to Mr. Koseck's and Ms. Whipple-Boyce's comments about the appropriateness of the proposed infinity edge rooftop pool.

K. Study Session

None.

L. Miscellaneous Business and Communications

1. Pre-Application Discussions
2. Communications
3. Administrative Approval Correspondence
4. Draft Agenda

PD Dupuis requested a motion to allow both site plan and study session items at the May 11, 2022 meeting.

Vice-Chair Williams recommended that Mr. Koseck abstain from the vote since he had a conflict arising from one of the items on the May 11, 2022 agenda.

04-107-22

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to amend the rules of procedure to permit the regular Planning Board meeting on May 11, 2022 to consider both site plan and study session items.

Motion carried, 4-0.

ROLL CALL VOTE

Yeas: Share, Boyle, Whipple-Boyce, Williams

Nays: None

Abstain: Koseck

5. Other Business

i. Action List – 2022

M. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

N. Adjournment

No further business being evident, the Vice-Chair adjourned the meeting at 10:42 p.m.



Nick Dupuis
Planning Director



Laura Eichenhorn
City Transcriptionist