

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, July 13, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on July 13, 2022. Chair Scott Clein convened the meeting at 7:30 p.m.

A. Roll Call

Present: Chair Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Jason Emerine; Student Representative MacKinzie Clein

Absent: Alternate Board Member Nasseem Ramin; Student Representative Andrew Fuller

Administration:

Nick Dupuis, Planning Director
Laura Eichenhorn, City Transcriptionist

B. Approval Of The Minutes Of The Regular Planning Board Meeting of June 22, 2022

Mr. Williams asked that the fourth bullet point after 'Mr. Williams said' on page four be edited to say 'The neighbors' original stance was relevant to the question of rezoning and was relevant to the current acerbic tone of some of the neighbors' recent comments'.

On page six, second paragraph from the bottom, Mr. Share recommended that 'on S. Old Woodward' be added after 'in the early morning'.

07-136-22

Motion by Mr. Williams

Seconded by Mr. Share to approve the minutes of the Regular Planning Board meeting of June 22, 2022 as amended.

Motion carried, 7-0

VOICE VOTE

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

Nays: None

C. Chair's Comments

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

D. Review Of The Agenda

F. Rezoning Applications

G. Special Land Use Permits (SLUPs) and Site Plan and Design Reviews

1. 460 N. Old Woodward – Wilders – Request for new bistro and associated exterior renovations.

The Chair recused himself from Item G1 at 7:35 p.m. citing a business relationship with the owner of the building. Vice-Chair Williams assumed facilitation of the meeting at 7:35 p.m. Mr. Emerine participated as a voting member for this item.

PD Dupuis presented the item.

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

In reply to Board comment, Mr. Saroki stated Mr. Eid could have his deliveries come early in the morning, and delivery drivers could park to the north or south of the outdoor dining deck.

Public Comment

In reply to Joe Bongiovanni, owner of EM Bistro, Mr. Saroki reiterated the information about deliveries and Mr. Eid said he was uncertain whether he would be pursuing valet parking for the restaurant.

Zharko Palushaj, owner of La Strada, spoke in favor of the project.

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

Mr. Jeffares said delivery trucks parking in the street for a few minutes during their deliveries is part of living in a City, and that deliveries to Wilders did not concern him.

Mr. Boyle spoke in favor of the project having an outdoor dining platform instead of locating its outdoor dining on the sidewalk, since it gives more room for pedestrians. He said he was very glad that Mr. Eid changed the proposal to locate the outdoor dining in the street to maintain the area's walkability.

07-137-22

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend approval to the City Commission of the Special Land Use Permit for 460 N. Old Woodward – Wilders – subject to the following conditions:

- 1. The applicant must submit revised sign plans that meet the requirements of the Sign Ordinance; and,**
- 2. The applicant must comply with the requests of all City Departments.**

Motion carried, 7-0

VOICE VOTE

Yeas: Share, Emerine, Jeffares, Boyle, Whipple-Boyce, Williams, Koseck
Nays: None

07-138-22

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend approval to the City Commission of the Final Site Plan and Design Review for 460 N. Old Woodward – Wilders – subject to the following conditions:

- 1. The applicant must submit revised sign plans that meet the requirements of the Sign Ordinance; and,**
- 2. The applicant must comply with the requests of all City Departments.**

Mr. Koseck said he was glad the Board asked the project to return, and said this proposal for the outdoor dining was much improved than the initial proposal. He spoke favorably of the design, layout, and materials.

Vice-Chair Williams said he was glad that no parking spots would be lost as a result of the plans.

Motion carried, 7-0

VOICE VOTE

Yeas: Share, Emerine, Jeffares, Boyle, Whipple-Boyce, Williams, Koseck
Nays: None

H. Site Plan & Design Reviews

I. Study Session

The Chair returned at 8:04 p.m. and resumed facilitation of the meeting.

1. Side Yard A/C Units

PD Dupuis introduced the item.

Public Comment

Patrick Hillberg reviewed his email to the Board.

07-139-22

Motion by Mr. Share

Seconded by Mr. Williams to set a public hearing date of August 10, 2022 to consider amendments to Article 4, Section 4.03, of the Zoning Ordinance to add language to permit air conditioning units in the side yard under certain conditions as indicated in the draft language contained on pages 77, 78, and 79 of the meeting's agenda packet.

Motion carried, 7-0

VOICE VOTE

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

Nays: None

2. Outdoor Dining

PD Dupuis presented the item.

Board member comments were as follows:

- The Board should have the discretion to locate outdoor dining either next to the building or in the furnishing zone;
- Applicants should be required to provide aerial views of the outdoor dining of other establishments within 300 feet;
- The definition of the furnishing zone needs to be expanded for areas that do not have the described streetscape amenities included in the proposed definition. Describing the furnishing zone as a certain number of inches from the curb may suffice;
- The ordinance could include graphics to help readers understand the furnishing zone;
- The City Attorney will need to review the definition of the furnishing zone;
- The Board should consider allowing outdoor dining in both the furnishing zone and next to the building, perhaps contingent on being able to provide more than a five foot clear path in between;
- Article 4, Section 4.44(C)(5) could be amended to 'Outdoor dining not permitted in both the furnishing zone and against the building. Exceptions may be made where the Planning Board determines that there is significant open space to permit pedestrian movement', or something to that effect; and,
- It may be worth raising the width for the pedestrian clear path in certain areas of the City or under certain streetscape circumstances.

In response to the Chair's request for initial reactions, PD Dupuis said preliminarily that it would be his preference to prohibit outdoor dining both adjacent to the building and in the furnishing zone. He said he was more amenable to outdoor dining next to the building and on a platform. He said that while a site plan can make it seem like there is enough space for the former condition, in reality outdoor dining furniture moves and can come to impede the pedestrian clear path. He continued that changing the pedestrian clear path according to district might make less sense since sidewalk widths vary widely within districts. He said he was supportive of diagrams in the ordinance.

Board member comments continued:

- Awnings and canopies need to be defined - awnings are attached to buildings and canopies are freestanding and could be on a deck;
- The heights of canopies and umbrellas should be regulated in part because they can block the sign band of other establishments;
- Other cities have limited the height of any freestanding vertical elements in outdoor dining to nine or ten feet;
- The scale, massing, and materials of canopies need to be appropriate for the context;

- Many communities regulate the amount of clear space underneath umbrellas;
- The Board may also want to regulate the pitch of canopies;
- Canopies should be allowed in outdoor dining platforms in the street but not on public sidewalks;
- Wind can knock over or otherwise move umbrellas far from their initial locations and umbrella bases are sometimes used to weigh open doors or perform other non-climate related tasks;
- The Board tends to regulate the material and appearance of canopies more than it does umbrellas because canopies are structures that are replaced only occasionally, whereas umbrellas are changed more frequently;
- When a height is indicated it needs to be made clear where the measurement begins, whether grade, sidewalk, or other potential options;
- Windbreaks should perhaps be more limited in height, more limited to certain times of year, or possibly prohibited entirely;
- Any language regarding legal non-conformities should not include the temporary Covid-19 outdoor dining allowances the City made; and,
- The ordinance should assign a date at which point legal non-conformities must come into compliance.

The Chair asked PD Dupuis to consider whether valet plans, aerial showings of other outdoor dining layouts, and similar items are more ordinance requirements or application requirements.

Public Comment

John Henke spoke against a sunset date for the legal non-conformities. It would require a number of establishments to re-open their SLUPs, which would take a number of months each and cost each operator more in fees. He advocated for the Board giving itself more flexibility in terms of locating outdoor dining, using awnings, the massing, scale, and material requirements for canopies, and windbreaks/eisinglass. He said that including too many restrictions makes the process more onerous for the Board, Staff, and operators. He noted that the intent of revising the ordinance was to expand access outdoor dining and recommended the Board adhere to that.

Mr. Bongiovanni noted that the Board conversation took over an hour before public comment was solicited. Outdoor dining is very popular even in inclement weather. The success of outdoor dining has increased the walkability of the City as much as any other aspect has.

Mr. Eid said he would have been against bistros earlier in his career, but now sees them as one of the best decisions the City has made. He said he understood that some of the concerns are in reaction to the relaxation of outdoor dining standards that occurred during the beginning of the Covid-19 pandemic, but he asked the Board not to swing too far in the other direction.

Jim Hayosh, owner of Commonwealth Cafe, expressed some confusion and concerns about the implications of potential ordinance changes. He also expressed appreciation that the Board had clearly integrated prior feedback. He advocated for flexibility which would allow operators to show their creativity.

Mr. Williams thanked Mr. Hayosh for coming and participating.

Bill Roberts, owner of Streetside Seafood, said the City has done a terrific job of activating its dining scene. He encouraged the Board to pursue more feedback from operators because they experienced a lot of hardship during the initial phase of the Covid-19 pandemic. He thanked the Board for their work.

PD Dupuis said he was sure that the restauranters' attorneys advised them of tonight's meeting and advised them to attend, and noted that the meeting still had very few attendees. He said he believed the City had done all it could to solicit feedback. He continued that these ordinance would expand outdoor dining allowances in a number of ways. He concluded by saying that he was concerned about the possible enforcement of things like awning pitch and heights and said it would not be a great idea.

Ms. Whipple-Boyce asked operators to look specifically at page 163 and after of the agenda packet and to provide feedback on whether something like that would be useful. She said a guide like that would likely help clarify a lot for operators.

3. Window Standards

PD Dupuis introduced the item.

Board consensus was to eliminate 'Window treatments shall be limited and utilized only when necessary to provide relief from harsh sunlight.'

The Board then recommended that PD Dupuis add a preamble explaining that the purpose of this section is to support street activity, pedestrian experience, visual connectivity between inside and outside, and any other relevant points in order to have some enforcement ability in extreme cases.

Ms. Whipple-Boyce raised the topic of semi-translucent window decals for establishments where back-of-house areas face windows.

After discussion, Mr. Share noted that liquor license renewals could help the Commission address those problem areas if they so chose.

The Chair and PD Dupuis said that particular issue was also broadly covered this section of the ordinance.

07-140-22

Motion by Mr. Share

Seconded by Mr. Jeffares to set a public hearing date of August 10, 2022 to consider amendments to Article 3, Section 3.03, Article 4, Section 4.90 and Article 9 of the Zoning Ordinance to revise the window standards.

Motion carried, 7-0

VOICE VOTE

Yeas: Share, Clein, Jeffares, Boyle, Whipple-Boyce, Williams, Koseck
Nays: None

J. Miscellaneous Business and Communications

- 1. Pre-Application Discussions**
- 2. Communications**
- 3. Administrative Approval Correspondence**
 - i. 117 Willits – Shift/Sidecar/Slice**

The Board said the platform could not be approved administratively and that the furniture could be approved administratively.

ii. 555 S. Old Woodward

The Board said that if all required, ordinance-compliant screening was provided it could be done administratively; otherwise, it should be submitted for Board review.

iii. 2030 Hazel/Crosswinds Development

The Board said the decks could be administratively approved.

- 4. Draft Agenda**
- 5. Action List - 2022**
- 6. Other Business**

K. Planning Division Action Items

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

The Chair said the Board may want to review the projection ordinance especially vis-a-vis awnings at a later date.

L. Adjournment

No further business being evident, the Chair adjourned the meeting at 10:21 p.m.



Nick Dupuis
Planning Director



Laura Eichenhorn
City Transcriptionist

APPROVED