

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, OCTOBER 28, 2020**

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 28, 2020. Chairman Scott Clein convened the meeting at 7:31 p.m.

A. Roll Call

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Student Representatives Rachel Hester, June Lee

Administration: Jana Ecker, Planning Director ("PD")
Jamil Alawadi, IT Staff
Nicholas Dupuis, City Planner ("CP")
Laura Eichenhorn, City Transcriptionist

10-125-20

B. Approval Of The Minutes Of The Regular Planning Board Meeting of September 23, 2020

Chairman Clein asked that the word attendant be stricken from his comments on page three of the minutes.

**Motion by Mr. Boyle
Seconded by Mr. Koseck to approve the minutes of the Regular Planning Board Meeting of September 23, 2020 as amended.**

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

10-126-20

C. Chairperson's Comments

Chairman Clein welcomed everyone to the virtual meeting. He stated the meeting was being held under the auspices of recently enacted state legislation. Chairman Clein then reviewed procedures for the meeting.

10-127-20

D. Review Of The Agenda

There were no changes to the agenda.

10-128-20

E. Unfinished Business

- 1. 34745 Woodward (JAX Car Wash)** – Request for Revised Final Site Plan & Design Review for site plan and design changes to Jax Car Wash (Postponed from September 23, 2020, Request to postpone to future meeting).

Chairman Clein recommended this item be postponed without a date certain. He said doing so would allow the applicant sufficient time to finish updating and submitting their documentation to the City.

Motion by Mr. Share

Seconded by Mr. Boyle to postpone the Revised Final Site Plan & Design Review for 34745 Woodward (JAX Car Wash) *without date*.

In reply to Mr. Williams, Chairman Clein explained that postponing without a date certain would allow the applicant to resubmit without a fee whenever their documentation is ready.

Mr. Koseck commented that the Board has been waiting on this application for several months, which he said makes it seem like its postponement is less a matter of some missing details and more a matter of whether the applicant is reconsidering larger aspects of the application.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

10-129-20

F. Rezoning Application

- 1. 566 Ann Street, Roby Law Building** – Request for rezoning from R3 (Single Family Residential) to TZ2 (Transitional Zone).

CP Dupuis presented the item.

Sachit Verma, of Nova Consultants, was present on behalf of Roby Law Associates, PLLC. He reviewed his June 29, 2020 letter and the October 23, 2020 addendum regarding the reasons for the rezoning request which can be found in the present meeting's agenda packet.

Referencing the Planning Department's report on the item, a number of Board members commented that the 2040 Plan should not be used to guide Planning discussions before the 2040 Plan has been finalized and adopted by the City.

CP Dupuis noted their feedback for the future.

In reply to Chairman Clein, Mr. Verma said he and his client were agnostic about whether to seek a rezoning or a variance to try and meet their end goals. He said it was the applicant's intention to try for a rezoning first and then to pursue a variance if rezoning was unsuccessful.

Mr. Williams said that either a variance or a rezoning with limitations on development would be appropriate in this case. He noted that the latter tack is not a currently available option since the City Commission has chosen not to permit contract zoning, which he said they should reconsider.

Mr. Share noted that rezoning this parcel would result in it being zoned differently from the adjacent properties, which could make future conversations about zoning in the area more challenging.

Chairman Clein concurred with Mr. Share.

Chairman Clein explained that the rights of use of the property would not be changed with a rezoning, contrary to the applicant's contention. The current zoning is appropriate for the applicant's use of the parcel. The only reason they are pursuing a rezoning is to add an accessory structure, which Chairman Clein stated has nothing to do with the land use or zoning of the site itself. He said he remained unconvinced that the City's previous master plan and the 2016 Plan would be supportive of rezoning this parcel to increase density in this area. Even if the 2040 Plan were to be used as a guide here, Chairman Clein said it was not clear to him that the parcel was located in a seam. He was also not sure he would personally be supporting the concept of seams, at least as they have been presented so far, in the next draft of the 2040 Plan.

The Board agreed that rezoning would not be appropriate since it would allow for a substantial increase in permitted uses of the site. It was noted that while the current owner is committed to maintaining the current use, if the rezoning were granted the future sale of the parcel would open the door to a variety of other uses that could be detrimental to the surrounding neighborhood. There was consensus that a dimensional variance would be the most appropriate way for the applicant to try and achieve its goal.

A number of Board members commended the applicant for their efforts towards sustainability and historic preservation and said their discouragement of a rezoning should not reflect negatively on those efforts.

Seeing no further Board comment, Chairman Clein welcomed public comment.

Linda Ulrey spoke as a representative of the western neighbor abutting the applicant's property. She said she was in agreement with the Board's findings. She said that if the variance were granted by the Board of Zoning Appeals (BZA) she would like the BZA to require that a green belt

be installed and maintained by the applicant between the applicant's property and the abutting property to the west.

Eric Wolf said he lived in the property to the south of the applicant's, and that he agreed with and was relieved by the Board's findings. He said that in his view the 2040 Plan should not guide planning decisions until it is adopted in its final form by the City.

David Bloom echoed the previous comments regarding not using the 2040 Plan as a planning rubric until it is adopted. He also said the area surrounding the applicant's property is one that has been targeted for attempts at upzoning over the years, and that he and other residents have worked to keep the neighborhood's zoning to remain as-is.

Seeing no further comment, Chairman Clein returned the discussion to the Board.

Chairman Clein told Ms. Ulrey that the BZA would not be able to mandate a green belt as a condition for variance approval.

Chairman Clein also clarified that the Planning Board could not comment on whether a variance would be appropriate until the Board has had an opportunity to review a site plan.

Mr. Williams concurred with Chairman Clein that the Board should review a site plan before making comments about the appropriateness of a variance. He said a site plan would also help the neighbors get a better sense of the applicant's proposal and would allow them another opportunity to offer comments.

PD Ecker clarified that since the property is zoned R3 it would not be required to return to the Planning Board for a site plan review before being sent to the BZA. She said the Board could choose to perform a courtesy review of a site plan.

Mr. Williams said an appearance before the BZA by the applicant would sufficiently meet his recommendation to allow the neighbors an opportunity to review the site plan and comment on it.

Chairman Clein said he would even recommend that the applicant meet with the neighbors to discuss their concerns outside of a board context. He noted that such dialogues often resolve issues between applicants and their neighbors.

Mr. Williams agreed.

Motion by Mr. Koseck

Seconded by Mr. Williams to recommend denial to the City Commission the rezoning application for 566 Ann St. from R3 to TZ2 for the following reasons:

- 1. All of the preceding comments made by the Planning Board members during the present discussion.**
- 2. The arguments made as part of the application were not valid and did not meet the criteria to merit a rezoning.**

3. **A rezoning could have a negative impact on the neighboring properties and the neighborhood in general.**
4. **There are other paths available to the applicant to try and gain entitlement to the right to install the desired solar panels.**
5. **The request is inconsistent with the existing 1980 Master Plan.**

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Chairman Clein addressed Mr. Verma, saying that the outcome of the vote is no reflection on Mr. Verma or on Roby Law. Chairman Clein stated he was highly supportive of sustainable design practices and said he hoped the applicant could find a way to make their sustainability goals align with the City's long-term goals. He reiterated his recommendation that the applicant reach out to the neighboring property owners to resolve any concerns they have before pursuing a variance.

10-130-20

G. Special Land Use Permit (SLUP) and Final Site Plan and Design Review

1. **470 N. Old Woodward, EM Bistro (Former Red Salon) – Request for a Special Land Use Permit to consider approval of a new bistro EM (Employee Meal).**

PD Ecker reviewed the item.

Chairman Clein asked why the Planning Board was being asked to perform this review when the exterior changes were already approved by the Design Review Board (DRB).

She explained that since applicant knew they had to change the facade and install ductwork before they had decided on an interior use, they sought approval from the DRB first for those changes. When the applicant subsequently decided to pursue a bistro use for the interior, the need for the present SLUP and final site plan and design review by the Planning Board resulted.

Chairman Clein stated he was not implying that there was anything untoward about the process, only commenting that it was unusual.

In reply to Mr. Williams, PD Ecker said EM Bistro would pay a rental fee for any public property leased from the City, would have to enter into a license agreement with the City, would have to receive an outdoor dining permit, and would pay for the value of the parking space used in front of their building. Those conditions would be part of the signed contract with the City.

Darrell Dinges, architect for the project, said the rails that extend into the parking space would be removed when the Trex deck in the parking space is removed at the end of the outdoor dining season.

Mr. Boyle expressed concern that the four lavatory stalls would not be sufficient for the combined seating capacities of EM Bistro and Market North which could total up to 219 people indoors and out.

Mr. Dinges confirmed that the seating-lavatory ratio meets the requirements of the Building Code.

PD Ecker confirmed for Mr. Share that the Building Department would review the height and solidity of the outdoor dining railings to make sure they meet all requirements. She confirmed that it would be the Planning Board's province to approve or disapprove of the aesthetics of said railings.

In reply to Chairman Clein, PD Ecker confirmed that if the Planning Board recommended the railings for aesthetic approval this evening, and the Building Department then disapproved of the sturdiness or height of the railings, then the applicant would have to submit revisions of their plans for the railings.

Chairman Clein noted the Planning Board could possibly permit those changes to be administratively approved if it came to that.

Mr. Williams shared concern that the rails in the parking space were too close to the adjacent parking space and could cause damage to vehicles. He said it should be set back and that perhaps another juniper could be placed there instead.

Mr. Dinges talked the Board through the style of the proposed bistro chairs and table bases, a sample of the wooden table top, and the design of the bench that would run along the window of the interior of the restaurant. The bench will be custom built from stained wood that will match the stained wood of the tables.

Joe Bongiovanni, co-owner, thanked the Board for reviewing the project. He reviewed the letter he and his wife Kristin submitted as part of the bistro application proposal, which can be found in this meeting's agenda packet. He acknowledged the impact Covid-19 is having on the restaurant business, and stated he was aware that takeout food quality and service would be more important to many customers for the next number of months than ambiance would.

In reply to Board comments, Mr. Bongiovanni said:

- There were some options available to ensure adequate lavatory space including possible upstairs lavatories.
- EM Bistro would be using its own kitchen facilities and not those of Market North End.
- The railing in the parking space could be adjusted so as to minimize potential conflict with adjacent vehicles.

Seeing no further Board discussion, Chairman Clein invited public comment.

Susan Hall said she lives behind Market North End, and listed the following concerns:

- The speed of traffic in the neighborhood, which could be increased by increased traffic to EM Bistro.

- Potential traffic congestion in the neighborhood late at night stemming from the bistro, particularly on weekend evenings.
- Rodent problems in the neighborhood which may be stemming partially from the operation of restaurants nearby.

Ms. Hall stated she enjoys the Bongiovannis' restaurants in general, but wanted to know what could be done either by the City or the owners to address her concerns.

PD Ecker said at this time the City has no plans to change the traffic patterns through the adjoining little San Francisco neighborhood or to introduce traffic calming measures. She encouraged Ms. Hall to contact the Birmingham Police to report her concerns. PD Ecker said the Police Department would then look into possible increased enforcement or other potential safety measures, including possible multi-modal improvements.

Chairman Clein asked Mr. Bongiovanni if there was anything more he could do as the operator to assuage Ms. Hall's concerns.

Mr. Bongiovanni said he has the most influence over the behavior of the restaurant's vendors and suppliers, and that they work to make sure those individuals travel through the neighborhood safely. He stated that over the past three years Market North End has been working diligently to increase its security in terms of unruly or intoxicated guests. Mr. Bongiovanni said he has also been shocked sometimes at the vehicle speeds through the neighborhood and said he is sympathetic to the concern. Regarding rodent control, he said his businesses are very aggressive about maintaining the area around them to minimize the issue as much as possible. He noted that issues with rodents appear in neighborhoods throughout the City. As part of the efforts towards minimizing rodent issues, he stated that the dumpster outside the restaurant is emptied every day. Mr. Bongiovanni said he believes that the most important guest of any of his restaurants is the guest that lives closest. As a result, he said he prioritizes making the area around his restaurants pleasant for the neighbors, both in order to be a good neighbor and in order to do good business.

Mr. Williams agreed with PD Ecker's recommendation that residents concerned about vehicle speeds reach out to the Police Department for a further discussion.

Mr. Bloom raised concerns about potential lack of parking in the area if this bistro is approved given the other popular bistros and restaurants nearby.

Paul Reagan said he thought the Planning Board should deal with the concerns about traffic speeds, and that tasking Ms. Hall with contacting another City department was an insufficient response to her concerns. He echoed Mr. Bloom's concerns about there being sufficient parking. He also said the Board should be focusing more on the potentially insufficient lavatory space instead of on the stylistic designs of the furniture or interior.

Seeing no further public comment, the discussion was returned to the Board.

PD Ecker notified the Board that since the present meeting's agenda packet went out she has received 16 letters in support of EM Bistro and two letters against. She listed the authors as Brian

Najor, Michael Brennan, Melissa Erkelani, Christina Bajaj, Claudia Dekai, Brook Shaw, Amy Gooch, Jeffrey Clarke, Tran Grider, Jeff Delaney-Lehrer, Jeff Sakwa, Craig Karamanian, Kelly Richardson, Mike Richardson, John Locker, Kevin Denha, Jason Scott, Jon Miller, and Natalie Gaeda.

Mr. Williams suggested that if there were only two letters opposed it could be helpful to hear the content of those letters.

PD Ecker read the letters in opposition to EM Bistro, written by Brian Najor and Kevin Denha. In summary, Mr. Najor stated:

- The Bongiovannis already have three bistros in the north end and that another could create a monopoly.
- The City had recently raised concerns about a different owner creating a monopoly situation with their restaurants and an application by that owner was denied as a result.
- If the application for EM Bistro is approved, the City should not cite bistro saturation in the north end as a reason for disallowing other applicants from opening bistros in that area.
- The application for EM Bistro should be denied.

In summary, Kevin Denha stated:

- He was also concerned that the Bongiovannis were creating a monopoly in the area.
- To deal with potential parking difficulties resulting from an increase in traffic to and from EM Bistro, the Bongiovannis should consider providing employee parking by renting parking spaces from businesses with their own dedicated lots.
- If the application for EM Bistro is approved, then more bistros should be allowed in the north end.

PD Ecker stated that 470 N. Old Woodward is located in the Parking Assessment District, which means the applicant is not required to provide parking.

In reply to Mr. Jeffares, PD Ecker confirmed that Mr. Najor has recently has applications for two bistros before the City Commission, one of which was moved forward and one of which was denied. The Commission said they did not want two applications moving forward at the same time from the same investor.

Mr. Jeffares said he also wanted to assure the public that issues with speeding vehicles and rodents are not unique to the little San Francisco neighborhood. He said both were an issue in his neighborhood as well. Mr. Jeffares opined it would be helpful to residents if the City were writing more speeding tickets as a deterrent.

Mr. Williams said the preceding comments indicated why the City must deal with parking as an aspect of its master planning process, and stated that it would be a mistake not to. He said it was also important that the comments about speeding vehicles be minuted, and stated that even in his neighborhood on the west side there were often vehicles traveling at excessively high speeds. He said it was important that the City Commission and Birmingham Police Department be made aware of these issues both through these minutes and through residents showing up to Commission meetings to talk about it. Mr. Williams said that the fact that residents throughout the City have concerns about speeding vehicles shows that the issue is not specific to the area around the Bongiovannis' businesses.

Mr. Bongiovanni asked to make a clarifying comment, which Chairman Clein permitted. Mr. Bongiovanni explained that he and his wife own Market North End, and Salvatore Scallopini and Luxe were owned by his father, who passed about 18 months ago. He said that there was a familial relation, but not an ownership one. Mr. Bongiovanni asked the Planning Board and the Commission to recognize that his family has worked hard to provide this area of the City three distinct restaurants that serve the neighborhood's needs. He said that the family has not marketed their restaurants as being part of one entity, and that it has been important to them to keep the establishments separate. Mr. Bongiovanni concluded by saying it has been a pleasure to serve Birmingham through Market North End thus far, and that he wants to continue to create great food and experiences with EM Bistro. He thanked the City for its support to date of the Bongiovannis' endeavors.

Mr. Boyle said he applauds the work done by the Bongiovanni family and said that the bistros it runs have met the goals Birmingham set out for the north end 14 years ago. He said he concurred with previous comments that the City must also be careful about not packing too much into that area, and should think further about mitigating the parking concerns. Mr. Boyle said the City should find better ways, for instance, to use its technology to publicize the fact that the parking decks are virtually empty in the evenings and should be utilized by restaurant-goers. Mr. Boyle continued that adding a small, specialized bistro to the area would be appropriate providing that the City provides the area the support it needs.

Mr. Jeffares said there are some restauranteurs that operate reliably good restaurants, and that the Bongiovannis are one such group.

Motion by Mr. Boyle

Seconded by Mr. Jeffares to recommend approval of the Final Site Plan to the City Commission to permit a bistro license for EM at 470 N. Old Woodward with the condition that the following items be provided prior to the hearing at the City Commission:

- 1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;**
- 2. Provide the proposed hours of operation for EM Bistro;**
- 3. Submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening;**
- 4. Clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End, and verify receptacles in the outdoor dining areas;**
- 5. Provide specification sheets for the proposed outdoor furniture; and,**
- 6. The applicant comply with the requests of all City departments.**

Ms. Whipple-Boyce noted that the outdoor bench will be custom built, and said that while the City could expect a drawing of the bench they would not likely get a more formal specification sheet for that item. She said she just wanted it noted in regards to condition five of the motion so there was no confusion later on.

Mr. Williams said the contract referenced in condition one should indicate that the benches and rail will be moved further away from the adjacent parking space on the street.

Mr. Share noted that many of the concerns raised by the residents during public comment are problems that come with success. He concurred that the City needs to work on managing those issues. He encouraged business owners and restaurateurs to cooperate with the City to see what options may exist for further mitigation of those concerns. He said it would have been better if the applicant had more specific ideas regarding how they would endeavor to reduce those issues for the neighbors. Mr. Share said he was ultimately supportive of the project because the City wants to keep that area of town vibrant, because it is a good project, and because its modest size will not add too much to the area.

Replying to previous concerns raised by Mr. Boyle and Mr. Reagan, Mr. Dinges commented that the four lavatory stalls accommodate 300 people according to the Building Code.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Jeffares

Seconded by Mr. Share to recommend approval of the SLUP to the City Commission to permit a bistro license for EM at 470 N. Old Woodward with the condition that the following items be provided prior to the hearing at the City Commission:

- 1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;**
- 2. Provide the proposed hours of operation for EM Bistro;**
- 3. Submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening;**
- 4. Clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End, and verify receptacles in the outdoor dining areas;**
- 5. Provide full lighting details for any proposed exterior lighting;**
- 6. Provide specification sheets for the proposed outdoor furniture; and,**
- 7. The applicant comply with the requests of all City departments.**

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Chairman Clein told Mr. Bongiovanni to take the comments from the residents to heart.

Mr. Bongiovanni assured the Planning Board that he would. He shared his gratitude for City staff's work on this item and for the Board's and residents' support.

10-131-20

H. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

PD Ecker reviewed an administrative approval request from the owners of 2101 E. 14 Mile Road.

Given the number of proposed changes to the site plan, the Board agreed that the request should not be administratively approved and that they would perform a site plan review at a future meeting.

c. Draft Agenda for the next Regular Planning Board Meeting (November 11, 2020)

- **Discussion of the master plan draft proposal for Haynes Square, the South Woodward Gateway and the Rail District.**

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to change the December 9, 2020 PB meeting format from a master plan review to a regular meeting at which site plan reviews and land use permit reviews can be heard.

Mark Hyland, representative of Beztak Properties, said he would be very in favor of the Board hearing site plan reviews and land use permit reviews on December 9, 2020.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

d. Other Business

10-132-20

I. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

10-133-20

J. Adjournment

No further business being evident, the Chairman thanked staff, Board members, and all in attendance. He adjourned the meeting at 10:23 p.m.

Jana L. Ecker

Planning Director

APPROVED