

City Of Birmingham
Special Meeting Of The Planning Board
Thursday, March 31, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the special meeting of the City of Birmingham Planning Board held on March 31, 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, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Jason Emerine; Student Representative MacKinzie Clein

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

Administration:

Nick Dupuis, Planning Director
Laura Eichenhorn, City Transcriptionist

03-73-22

B. Minutes

None.

03-74-22

C. Chair's Comments

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

03-75-22

D. Review Of The Agenda

03-76-22

E. Unfinished Business

None.

03-77-22

F. Rezoning Applications

None.

03-78-22

G. Community Impact Study

1. 770 S. Adams – Request for a new 4-6 story mixed use building

Chair Clein and Mr. Emerine recused themselves from Item G1 and H1 at 7:35 p.m., both citing business relationships with members of the applicant team.

Vice-Chair Williams assumed facilitation of the meeting. Vice-Chair Williams introduced the item.

PD Dupuis summarized the updates to the item.

Vice-Chair Williams and Mr. Share noted that the applicant's traffic consultant and the City's traffic consultant had satisfactorily resolved any potential traffic issues.

Motion by Mr. Share

Seconded by Mr. Boyle to accept the Community Impact Study as provided and updated for the proposed development at 770 S. Adams with the following conditions:

- 1. The applicant must submit details as to how they plan to mitigate noise, dust, debris, and other nuisances during the construction process;**
- 2. The applicant engage with City Staff to discuss the Worth Plaza.**

Motion carried, 5-0.

ROLL CALL VOTE

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

Nays: None

03-79-22

H. Site Plan & Design Review

1. 770 S. Adams – Request for a new 4-6 story mixed use building

PD Dupuis summarized the updates to the item.

Randy Wertheimer of Hunter Pasteur spoke on behalf of the request. He stated:

- The remaining three residential units on Adams would be more similar to the townhomes on Brown than to All Seasons, which some Board members had previously compared the units on Adams to;
- The applicant was offering to make a \$100,000 contribution to the build-out of Worth Park, with no time restrictions;
- That if the City determines that additional pedestrian facilities on Adams are necessary, the applicant is willing to contribute \$20,000 towards those improvements;
- While there were differences of opinion regarding whether the Adams side of the project should feature some residential or be entirely commercial, the project would still serve as a catalyst for development in the Triangle either way.

In reply to Mr. Share, Mr. Wertheimer said the commitment for the \$100,000 and the \$20,000 contributions would run with the property, but he said that if the owners were ever to sell the property there could also be a condition that both amounts are contributed at that time. He said the hope is that the \$100,000 contribution would encourage the City to pursue the development of Worth Park sooner.

For final site plan and design review, Mr. Boyle asked the applicant to bring images, samples, and examples if available of the proposed synthetic landscaping materials.

In reply to Mr. Jeffares, Mr. Wertheimer said his team would provide the product specifications for the synthetic landscaping materials at final site plan as well.

Ms. Whipple-Boyce explained:

- While she appreciated the applicant's modifications to Adams since the original plan, she believes it is a mistake that there will not be shops and retail on Adams;
- The problem is that retail along Adams is not required by the ordinance the way she would like to see it;
- The Triangle Plan establishes a 'vision' that describes retail on the first floor and residential above it;
- The Board needs to review that aspect of the ordinance since the City will receive more applications for development in the Triangle in the future;
- It would be disappointing to see apartments on the first floor of other parts of Adams when retail could be there instead;
- This project, as proposed, misses the mark on the intent of the redevelopment of the Triangle, which is a failure on the City's part;
- This project technically satisfies the zoning requirements;
- She remained disappointed in the applicant's unwillingness to provide first-floor retail;
- She challenged the applicant along the way, and Adams received a slight increase activation, but the amenities moved to Adams will not draw in the public;
- Retail is viable on Adams, as evidenced by the retail from Woodward to Bowers;
- 300 people will be living in the building, next to a densely populated residential area, which establishes a significant customer base for any retail/commercial uses in the building;
- She believed the applicant was unwilling to add retail to Adams because they were unwilling to give up any of their parking to satisfy the retail requirements; and,
- This project could be perfect with the addition of retail on Adams.

Ms. Whipple-Boyce concluded by telling the applicants that they still have time to replace the residential on Adams with retail, and that she hoped they would.

Mr. Jeffares shared comments he stated he had written in advance. He explained:

- His comments would be similar to Ms. Whipple-Boyce's;
- The City needs to put more effort into making sure its plans come to fruition;
- He spent five years working in strategic planning with a Fortune 50 company, and he knows if further steps are not taken after a plan is completed then it is just a document that remains on a bookshelf;
- The ordinance does not define 'mixed use';
- The current proposal before the Board offers 2% retail, which technically complies with 'mixed use' but is really residential with minimal incidental retail;
- The zoning ordinance is not specific enough to deliver the directions the Triangle Plan set out;
- The City often uses SLUPs to deliver on goals when the ordinances are not specific enough, but they do not seem like the right tool in this case;
- The City has also not been proactive in achieving other goals set out in the Triangle Plan, such as acquiring land for public space or efficient parking;

- The Triangle Plan also calls for 'streets lined with pedestrian-oriented buildings', a 'vibrant, mixed-use neighborhood', 'brownstones and townhomes on local streets' - not primary streets;
- On primary streets the Plan calls for 'apartments and condominiums above offices and storefronts', but the ordinance has not been modified to require this;
- The Plan also calls for 'buildings oriented towards primary streets', but this project proposes a leasing office and a front door on a largely unused street;
- Of all the commercially-zoned property in the Triangle, this project alone represents 7%;
- This property is the largest parcel in the Triangle;
- There are 33 parcels in the Triangle that are .3 acres or larger;
- Of these parcels, about 25%, or 7.8 acres, could likely redevelop within the next 10-15 years;
- This project represents a quarter of that 7.8 acres, and is offering only one 4,000 sq. ft. space for retail out of an approximately 88,000 sq. ft. footprint;
- While the ordinance does not call for first-floor retail, the proposed three residential units on Adams are inconsistent with the area's current development;
- If one were to walk on Adams from Lincoln to where single-family homes begin, the street level is entirely commercial and retail;
- This proposal will stand out from its surrounding environs in a significant way;
- The City needs to review its ordinances, standards, and definitions to ensure that they reflect the vision of the area and master plans the City creates; and,
- Otherwise, the City is inefficiently using the time of its boards, Staff, and community.

Mr. Jeffares concluded by saying that while this project will be good, he agreed with Ms. Whipple-Boyce that this could be perfect with the addition of first floor retail. He said that allowing a project to provide 2% retail in exchange for two more floors is something the City needs to review. In light of his comments, Mr. Jeffares said he would not be voting to support the development.

Mr. Share addressed his colleagues, stating that it is not the developer's fault or responsibility that the City did not put into code things that the City may have wanted. He cautioned that the perfect should not be the enemy of the good in this case, and agreed with Mr. Wertheimer that the project will likely catalyze development in the Triangle. He said that many in the City believed that no development in the Triangle would occur without a public deck, and this project will occur without one. He said he would be supporting the project.

Mr. Boyle concurred with Mr. Share, saying he was concerned the Board was asking a private developer to accommodate goals the City itself did not implement. He said politics and financing were the reasons the Triangle Plan was not pushed forward at the time, and that the City should not hold the development back for the City's mistakes. He said that while he was disappointed as well, the development has improved immensely through discussion. Mr. Boyle stated he hopes this development will be a catalyst for development to the south of the area.

Vice-Chair Williams explained:

- The City did nothing towards developing Worth Plaza for 15 years, and that lack of implementation is not the developer's responsibility. The responsibility is on the City;

- The lesson to be learned from this development is that plans are not codes or ordinances. There has been a misconception during the 2040 Plan process that the Plan rezones properties. This project is a prime example of the fact that a plan alone does not change ordinance or code;
- He agreed with his colleagues that the City has not adequately ensured that its ordinances reflect its plans' visions, and that needs to be corrected going forward;
- The City should use the 2040 Plan process to update ordinances for the Triangle, citing Lincoln and Woodward as one area that will need ordinance changes to reflect the vision of the 2040 Plan;
- He said the City should now focus on getting its goals into ordinances quickly;
- The Commission could ask the Board to translate the vision of the Triangle Plan into appropriate ordinance and code immediately if so desired;
- When the City was looking for additional residential areas in the City that would not adversely affect single family residential, this was one of the designated areas;
- The developer choosing to locate residential in this area is a huge boon to the City; and,
- The City needs additional residential which this project in part provides.

He concluded that while he understood Ms. Whipple-Boyce's and Mr. Jeffares' concerns, he did not share the same level of concern regarding retail on Adams. He stated his decision would be governed by code and ordinance, and he agreed with Mr. Share on his points.

Motion by Mr. Share

Seconded by Mr. Boyle to approve the Preliminary Site Plan for 770 S. Adams, based on a review of the site plans submitted and the requirements outlined in Article 7, Section 7.27 of the Zoning Ordinance, with the following conditions:

- 1. The applicant must provide full screening details for all proposed mechanical units at Final Site Plan;**
- 2. That the applicant bring specific samples of proposed synthetic materials at final site plan for consideration of the Board, or revise the landscaping plan to include living plant material, or obtain a variance from the Board of Zoning Appeals;**
- 3. The applicant must submit revised plans showing a loading space that meets the requirements of Article 4, Section 4.24 (C) of the Zoning Ordinance;**
- 4. The applicant must submit lighting and material specifications, samples, photometric plan and all other required information for the proposed building to complete the Design Review at Final Site Plan;**
- 5. The applicant must comply with the requests of all City Departments;**
- 6. The applicant must engage with Staff with respect to Worth Plaza; and,**
- 7. That the applicant enter into an agreement with the City for the contribution of up to \$20,000 to mitigate potential pedestrian crossing issues on Adams Road in the future, and \$100,000 to be used in connection with the implementation of Worth Park.**

Vice-Chair Williams asked the applicant to confirm that the language regarding the \$20,000 and \$100,000 contributions was acceptable.

Mr. Wertheimer confirmed that the language regarding the \$20,000 and \$100,000 contributions was acceptable.

Motion carried, 4-1.

ROLL CALL VOTE

Yeas: Share, Boyle, Whipple-Boyce, Williams

Nays: Jeffares

Vice-Chair Williams advised the applicant to consider Board comment regarding the three residential units on Adams in advance of the final site plan review.

03-80-22

I. Special Land Use Permit

1. 220 Merrill – Request for new outdoor dining platform in Merrill St. right-of-way

Chair Clein and Mr. Emerine returned at 8:23 p.m. Chair Clein resumed facilitation of the meeting at 8:23 p.m.

PD Dupuis presented the item.

Zaid Elia, owner of 220 Merrill, spoke on behalf of project.

In reply to Mr. Boyle, Mr. Elia stated that there have been no traffic incidents, accidents or police reports that would indicate an issue with the dining platform in its two years of operation.

Steve Ferich, In-House Valet, described 220 Merrill's valet operations.

In reply to Mr. Share, Mr. Ferich said that of the valet operations he runs in the City 220 Merrill is one of the least challenging.

In reply to Mr. Emerine, Mr. Elia stated he has an easement with the owners of the private alley to the south and the circular area allowing shared access.

In reply to Board inquiry, Mr. Elia stated that the rail and ramp are interior to the platform and do not extend onto the sidewalk.

In reply to Ms. Whipple-Boyce, PD Dupuis said he would double-check with the Building Department to determine whether there are any concerns about the distance between the railing on the platform and the backs of the chairs.

In reply to Mr. Jeffares' comment regarding the total amount of proposed outdoor dining, Mr. Elia stated that compared to some other operators in the City 220 Merrill has a lower ratio of indoor to outdoor seating. He opined that the proposed outdoor dining was proportional to the size of the restaurant overall.

Mr. Boyle said that the view of the platform coming off of Old Woodward might help slow traffic coming in that direction, and would add vitality to the street. He said he had no preference for the color of the outdoor seating and that 220 Merrill's valet operations had been well-explained. He said he would support the request.

Mr. Williams concurred with Mr. Boyle that drivers are likely to be more cautious when seeing an outdoor dining deck, and that the valet operations were well-explained. He said he has dined on 220 Merrill's dining deck and found no problem with its navigability. He said he was glad to know the ramp is within the deck and does not extend to the sidewalk.

Ms. Whipple-Boyce said the applicant should maintain the pink for the outdoor seating if they prefer, praising the uniqueness of the choice. She concurred with Messrs. Boyle and Williams that the platform slows traffic and that it has worked well in its two years of operation. Since the platform will be smaller than before, she expressed concern about the same four-tops fitting well. She said that the drawings need to be updated to accurately reflect the proposal. She said she was inclined to support it but would like to see it drawn as intended.

Mr. Emerine said he concurred with Messrs. Boyle and Williams. He said he was not worried about the loss of parking spaces given 220 Merrill's proximity to the Pierce Street Garage. He echoed Ms. Whipple-Boyce's comment that the drawings should be revised to accurately reflect the proposal. He said he was supportive of the project.

Mr. Jeffares said he was unsure about wheelchair or scooter maneuverability on the platform if the ramp is interior. He said he was more concerned about speeding on the street than some of his colleagues, but that increased police enforcement could help. He said the platform seemed to work well when it was in operation.

There was a discussion regarding whether the platform would be accessible. A number of Board members expressed concern that it would not be, given its size and layout.

Mr. Emerine noted that since 220 Merrill's other outdoor dining area is accessible, the platform may not need to be accessible.

Chair Clein said he just wanted to ensure that the applicant was aware that accessibility of the platform may be an issue.

After brief discussion, the Board also concurred that the necessary revisions to the site plan could be administratively approved before it goes to the Commission.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend approval to the City Commission for the Special Land Use Permit Amendment for 220 Merrill – 220 Restaurant – subject to the conditions of Final Site Plan and Design Review.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

03-81-22

J. Site Plan & Design Review

1. 220 Merrill – Request for new outdoor dining platform in Merrill St. right-of-way

Discussed during Item I1.

Motion by Mr. Boyle

Seconded by Mr. Williams to recommend approval to the City Commission for the Final Site Plan and Design Review for 220 Merrill – 220 Restaurant – with the following conditions:

- 1. The applicant must obtain an Outdoor Dining Permit and enter into a contract with the City for the SLUP Amendment;**
- 2. All outdoor activity must cease at the close of business;**
- 3. The applicant must obtain a favorable recommendation from the Advisory Parking Committee prior to City Commission review;**
- 4. The applicant must submit a Design Review application to the Historic District Commission prior to City Commission review;**
- 5. The applicant must comply with the requirements of all departments;**
- 6. The applicant must submit, for administrative review, a site plan that adheres to the requirements as set by the discussion tonight.**

Public Comment

In reply to Mr. Elia, the Board had no direction regarding the color of the outdoor seating.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

03-82-22

K. Study Session

None.

03-83-22

L. Miscellaneous Business and Communications

- 1. Pre-Application Discussions**
- 2. Communications**

3. Administrative Approval Correspondence

4. Draft Agenda

5. Other Business

i. Action List – 2022

03-84-22

L. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

03-85-22

M. Adjournment

No further business being evident, the Chair adjourned the meeting at 9:15 p.m.



Nick Dupuis
Planning Director



Laura Eichenhorn
City Transcriptionist