

CITY OF BLOOMINGTON



NOVEMBER 21, 2013 @ 5:30 p.m.
COUNCIL CHAMBERS #115
CITY HALL



**City of Bloomington
Planning Department**

Memo To: Board of Zoning Appeals members

From: Patrick Shay

Date: November 14, 2013

Re: Changes to BZA Rules of Procedure

Proposed are changes to the BZA Rules of Procedure. These changes would amend the requirements for notification of interested parties (adjacent property owners) for petitions being heard by the BZA. The proposed amendment would increase the number of days that notification must be send prior to a BZA hearing from 10 days to 21 days. This change is proposed to allow additional time for adjacent property owners to review and comment on requests being made to the BZA. The proposed 21 days is consistent with the current Plan Commission notification requirements. The current notification requirement of 10 days prior to Hearing Officer meetings is not proposed to change.

In addition, it is being proposed to allow the Geographic Information System utilized by the Monroe County Auditor's office be used to determine the current names and addresses of interested parties. It is also proposed to shift the responsibility of creating the required list of interested parties from the petitioner to staff. These changes are intended to better reflect current technologies and internal policy as well as reducing the burden of notification requirements. It is also intended to reduce the potential for errant notifications.

CITY OF BLOOMINGTON

Last Revised: November 21, 2013

Deleted: April 8

BOARD OF ZONING APPEALS

RULES OF PROCEDURE

Article I - Meetings:

- A. Meetings of the Board of Zoning Appeals shall be held one evening per month as scheduled in a calendar published by the Planning Department and approved by the Board at the first meeting of each year.
- B. All meetings shall be held at 5:30 p.m. in the Council Chambers of Showers Center City Hall - Room #115, unless otherwise publicly announced.
- C. All meetings shall adjourn at 9 p.m. and no new cases shall be heard after 8:30 p.m. Any cases remaining shall be rescheduled for hearing at a special meeting to be held within one week of the original meeting.
- D. A majority of the voting membership shall constitute a quorum. No vote of the Board shall be official unless authorized by the affirmative vote of a majority of the total membership of the Board.
- E. All decisions on petitions shall be by roll call. The vote of each member of the Board shall be recorded and placed in the minutes of the meeting as a matter of permanent record.
- F. No member of the Board shall participate in the hearing or decision of the Board involving any matter in which that person is directly or indirectly interested in a financial sense. In the event that any member disqualifies himself or that any member's eligibility is challenged by a member of the public, such fact shall be entered on the records of the Board and shall appear in the minutes of the Board. Members who intend to disqualify themselves from a vote on a particular petition due to direct or indirect financial interest or for any other reason should notify the Planning Department staff of this fact a minimum of five business days prior to the hearing in order to provide staff and the Board of Zoning Appeals Chairperson adequate time to arrange the attendance of an alternate member, if applicable, and to make other arrangements as necessary. Alternate members may act at meetings as specified by the Bloomington Municipal Code.
- G. As soon as possible after a regular meeting a summary of minutes of the proceedings

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Proposed Amendments to
Rules of Procedure

shall be made available to each member of the Board.

- H. All minutes of the proceedings, findings of fact, tape recordings of the hearings and all exhibits submitted by the petitioners, remonstrators and staff shall be public records and shall be filed in the Planning Department office. These materials shall become a part of the case and all such materials shall be held by the Planning Department for a period of at least one-year. At the end of the one year time period, all materials held by the Board may be placed in a 'back filing' system for preservation of city records.
- I. The final disposition of any request, petition, or resolution before the Board shall be in the form of a motion, adopted according to proper parliamentary procedures. Said motion may be to grant, deny, continue, modify, or table the petitioner's request. Additionally, the members of the Board may attach such conditions to a motion as are deemed necessary for the furtherance of the public health, safety, or convenience, or to achieve consistency with the City Master Plan or Bloomington Municipal Code.

Article II - Officers:

- A. The Board shall, at its first hearing in each year, elect from among its members a chairperson and vice-chairperson.
- B. The chairperson shall preside over Board meetings and shall supervise over the determination of points of order and procedure, and shall be responsible for the signing of all official documents. The vice-chairperson shall have authority to act as chairperson of the Board during the absence or disability of the chairperson. In the case of the death or resignation of the chairperson, the vice-chairperson shall succeed to the chairmanship and a new vice-chairperson shall be elected from the membership.
- C. The Planning Department secretary shall be responsible for supervising the keeping of an accurate and complete record of all Board proceedings, including the keeping of records and minutes, findings of fact, and preservation of all papers and documents of the Board and the maintenance of a current roster with the qualifications of members.
- D. The Board shall request the City Attorney to serve as Counsel for the Board.
- E. The City's Director of Planning or his/her designate shall appear at all meetings and assist the Board presenting factual opinion on significant issues raised by the petition.

Article III - Filing of Petitions:

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- A. All requests to the Board or Hearing Officer shall be by petition and petitioners shall be required to follow these procedures:
1. All petitioners shall use the uniform petition forms approved by the Plan Commission, which are available upon request in the Planning Department.
 2. All petitions shall be filed no later than the deadlines established on the calendar of meetings to be adopted by the Board each year.
- B. Appeals:
1. Appeals of administrative decisions or from Hearing Officer decisions shall be filed with the Planning Department on forms available in the Planning Department.
 2. Appeals of administrative decisions or from Hearing Officer decisions must be filed with the Planning Department within (5) days of the administrative decision or Hearing Officer decision.
 3. Appeals of administrative decisions or from Hearing Officer decisions will be heard de novo by the Board of Zoning Appeals and following the testimony limits noted in Article V of these Rules of Procedures.

Article IV - Notices:

- A. All petitioners for any BZA or Hearing Officer approval shall inform the persons affected by their petitions (interested parties) by sending a copy notice of public hearing to their residences or the last known address of the property owners at least twenty-one (21) days before the date of the BZA hearing and ten (10) days before the date of the Hearing Officer hearing. Such notice may be sent using regular first class mail.
- B. Such notice shall state:
1. The general location by address or other identifiable geographic characteristic of the subject property.
 2. The name of the petitioner.
 3. The times and places the petition has been set for hearing.
 4. That the petition and file may be examined in the office of the Planning

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Department.

- 5. That the addressee may voice an opinion at the hearing and/or file written comments with the Board and/or Hearing Officer.
- 6. If the petition is to be considered by the Hearing Officer, the notice shall state that the Hearing Officer may, at his/her discretion, transfer the petition to the full Board and that in such case the hearing would be held at the next regular Board of Zoning Appeals meeting, unless continued, and shall include the date of the next regular Board meeting.

- C. 1. Interested parties shall be defined as all persons owning land adjacent and contiguous to the site as well as all persons owning land abutting the aforementioned immediately adjacent property (i.e., “two properties deep”). Notices shall be provided “two properties deep” only if the interested parties are located within 300 linear feet of the subject site. However, notices shall not be provided “two properties deep” if the interested parties property location exceeds 300 linear feet from the subject site for which the petition is being requested. Intervening public rights-of-way shall not be considered in determining what lands are adjacent or contiguous. Where any adjacent or contiguous parcel is owned by a petitioner, the property included in the petition shall be deemed to include said adjacent parcel or parcels owned by a petitioner, and owners of property adjacent and contiguous to said parcel(s) owned by a petitioner but not included in the petition shall be considered interested parties entitled to notice.

- 2. In order to determine the names and addresses of property owners to whom notice must be sent under this rule, ~~staff~~ shall consult ~~either~~ the current Plat Book ~~and computerized ownership records~~ located in the office of the Auditor of Monroe County, Indiana ~~or the Monroe County, Indiana Geographic Information System~~ to determine the name ~~and address~~ of each adjacent property owner. A good faith effort shall be made to investigate and resolve any discrepancies or omissions in or among such records in order to determine name and address of the current owner of record. Each notice shall be mailed and postmarked no later than the second business day after the date upon which the name and address of the owner were obtained from the Plat Book and the computer records in the Auditor's office as described above ~~or as gained from the Monroe County, Indiana Geographic Information System~~.

Deleted: the petitioner or his/her agent

Deleted: The petitioner or his/her agent shall then consult the computer located in the office of the Auditor to determine the most current mailing address for each adjacent property owner.

- 3. Proof of notice to interested parties shall be submittal of the following items to the Planning Department in the following manner:

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- a. A copy of the Notice of Public Hearing to be mailed to the interested parties.
- b. A list of interested parties with addresses.
- c. An Affidavit of Notice to Interested Parties in a form approved by the Planning Department including: name of person preparing and mailing the notice; name of petitioner; location of petition; and a statement that notice was mailed at least ten (10) days prior to the the public hearing of the Hearing Officer or at least twenty-one (21) days prior to the public hearing of the Board of Appeals, whichever applies.
- d. A map showing interested parties' property as generated by the Planning Department.

Deleted: or Hearing Officer public hearing

Deleted: plat

The Planning Department shall retain the proof of notice within the petition file.

- D. The Planning Department shall cause a legal notice to be published in a daily newspaper published and distributed in the City (10) days prior to the hearing. The petitioner shall bear the expense of said advertisement.
- E. If the Hearing Officer, at a lawfully convened meeting, transfers a petition to the Board of Zoning Appeals, said petition shall be placed on the agenda for the next regular meeting of the Board. The decision of the Hearing Officer to transfer the petition shall constitute due notice to interested parties.

Article V- Hearings:

- A. The order of business at regular meetings shall be as follows:
 - I. Roll Call
 - II. Approval of Minutes
 - III. Reports, Resolutions, and Communications
 - IV. Hearings
 - V. Discussion, Staff proposals, etc.
 - VI. Adjournment

- B. Limits on Testimony:

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1. The general format for each case will be an order and time limit as follows:
 - Staff Report
 - Presentation by Petitioner - 20 minutes total
 - Questions for the Staff and Petitioner by the Board
 - Public Comment – 5 minutes per speaker
 - Back to the BZA for final action

It will be the responsibility of staff to keep time for each speaker wishing to make comment. Staff will inform both the petitioner and speaker when there are 30 seconds left in their presentation time.

2. All speakers, other than staff, shall sign an attendance sheet provided by the Planning Department. Any person who wishes to speak shall first be sworn by the presiding officer. The form of this oath shall be as follows:

From the presiding officer, “Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?”

Speaker, “I do.”

3. If further public discussion is warranted in the opinion of the Board of Zoning Appeals, then the time limit may be increased by a majority vote of the Board.
- C. The Planning Department Secretary shall then compile a detailed report of all the hearing proceedings; setting forth in writing a record of the Board’s final decisions, including findings of fact, and a record of voting of individual members. These minutes shall be available for any interested party upon request.

Article VI - Docket:

- A. Each case to be publicly heard before the Board or Hearing Officer shall be filed in proper form, shall be numbered serially and placed on the docket of the Board or Hearing Officer after determination by the Planning Department that a petition has been presented in proper form with all the required exhibits and supporting documents. The docket numbers shall begin anew on January 1 of each year.
- B. The Planning Department shall also determine and identify whether application for variance is for variance of use or variance from development standards.

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- C. The identification of docket numbers shall be as follows:

Home Occupation - HO
 Administrative Appeal - AA
 Development Standards Variance - V
 Use Variance - UV
 Conditional Use – CU

- D. As soon as a petition is received, it shall be place on the docket and a date set for its hearing. On such date it shall come before the Board or the Hearing Officer in the regular order of consecutive numbers.

Article VII - Final Disposition of Petitions:

- A. The final disposition of any petition before the Board or the Hearing Officer shall be recorded in the minutes of the Board or Hearing Officer. The motion shall restate the findings of the Board or of the Hearing Officer for the record.
- B. The Board or Hearing Officer shall make a decision on any matter it is required to hear at the conclusion of its hearing on that matter. Decision on any matter shall be to approve, deny, or continue the petition.
- C. Final disposition of an administrative appeal shall be in the form of an order either reversing, affirming, or modifying the requirement, order decision or determination appealed from.
- D. Findings of Fact shall be adopted concerning each decision made by the Board or by the Hearing Officer. The Findings of Fact form shall be completed by planning staff and shall accurately reflect the Board’s findings on each case heard by the BZA. The Findings of Fact form shall be completed by the Hearing Officer on each case heard by him/her. The Board or Hearing Officer may elect to adopt the findings recommended by the staff without modification or with partial modification, or to adopt findings which conflict with the staff recommendation. In any case, the Board or Hearing Officer’s finding shall be reflected on the Findings of Fact form or other written document.
- E. No petition may be withdrawn by the petitioner after a vote has been ordered by the chairperson. No petition which as been withdrawn by the petitioner shall be placed on the docket again for hearing within a period of six months from the date of said

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withdrawal, except upon motion to permit redocketing adopted by the unanimous vote of all members present at a regular or special meeting.

- F. No zoning petition which has been disapproved by the Board shall again be placed on the docket for hearing within a period of 6 months from the date of the Board's original disapproval, except upon the motion of a member adopted by the unanimous vote of all members present at a regular or special meeting. In all cases involving a rehearing of a zoning petition previously disapproved by the Board, the Board may require the petitioner to demonstrate a material change in circumstances.
- G. Whenever a zoning petition is continued for three consecutive hearings, any further request for continuance requires a majority vote by the Board. If the Board denies such a request for continuance, the petition shall be treated as a denial unless the petitioner elects to formally withdraw the petition within 24 hours.
- H. In the case of a petition for variance or conditional use, the Board or the Hearing Officer may permit or require the owner of a parcel of property to make a written commitment concerning use or development of that parcel. The Board or the Hearing Officer may specify the form of any commitment and may also specify the termination date, if any. Such commitment, along with a copy of the site plan, shall be recorded in the office of the Monroe County Recorder and the original shall be filed with the records of application for variance or conditional use. The Hearing Officer may not modify or terminate a commitment, whether such commitment was permitted or required by the Board or by the Hearing Officer. A commitment may be modified or terminated only by the Board after notice and hearing in accordance with these rules. The Board, the City, the property owner, and any adjacent property owners shall be entitled to enforce commitments.

Article VIII - Expiration of Order:

Any variance or conditional use permit granted by the Board of Zoning Appeals or the Hearing Officer shall expire:

- A. In the case of new construction or modifications to an existing structure:
 - 1. Two (2) years after the date granted by the Board or Hearing Officer, unless a building permit has been obtained and construction of the structure or structures has commenced; or,
 - 2. At the date of termination established by the Board or Hearing Officer as a condition or commitment if different from (1) above.

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- B. In the case of occupancy of land which does not involve new construction:
1. Two (2) years after the date granted by the Board or Hearing Officer, unless an occupancy permit has been obtained and the use has commenced; or,
 2. At the date of termination established by the Board or Hearing Officer as a condition or commitment if different from (1) above.
- C. If an appeal by writ of certiorari is taken from an order, variance, or conditional use, the time during which such appeal is pending shall not be counted in determining whether the variance, order, or conditional use has expired under Subsection A(1) of this Article. In other words, if an appeal to the Board of Zoning Appeals ruling is filed, the clock stops as to the time of expiration until a determination is made.
- D. The Board may, upon proper showing in writing prior to expiration, grant extension of variance or conditional use for periods not to exceed two (2) years. Said extension shall run from the original date of expiration rather than from the date of granting the extension and the Board shall make written findings.
- E. The Board may renew a variance or conditional use after the expiration date for another two (2) year period. In considering said renewal, the Board shall consider only material changes relevant to the variance or conditional use criteria that have occurred since the variance or conditional use was last granted.
- F. The Hearing Officer may extend or renew a variance or conditional use that was originally granted by a Hearing Officer, subject to all provisions of C and D above.

Article IX - Miscellaneous Provisions:

- A. Every person appearing before the Board shall abide by the order and direction of the chairman. Discourtesy, disorderly or contemptuous conduct shall be dealt with as the Board directs.
- B. The Board, at its discretion, may continue or postpone the hearing of any case on an affirmative vote of a majority of the members. In the event that new information is presented by the petitioner, a member of the Board of Zoning Appeals (BZA) may make a motion to continue the case at that time.

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- C. Amendments to these rules of procedure may be made by the Board at any regular or special meeting upon the affirmative vote of a majority of the members of the Board.
- D. The suspension of any rules may be ordered at any meeting by a unanimous vote of those present.
- E. A person may not communicate with any member of the Board or the Hearing Officer before the hearing with intent to influence the member or Hearing Officer's action on a matter pending before the Board or Hearing Officer. Not less than five (5) days before the hearing, however, the planning staff may file with the Board or Hearing Officer a written statement setting forth any facts or opinions relating to the matter.

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BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
Location: 933 N. Walnut Street

CASE #: V-25-13
DATE: November 21, 2013

PETITIONER: Joseph Collison
PO Box 1208, Bloomington

REQUEST: The petitioner is requesting a variance from the maximum number of parking spaces for a furniture store.

SITE DESCRIPTION: This 0.4 acre property is located at the southwest corner of N. Walnut Street and W. 14th Street and is zoned Commercial General (CG). Surrounding land uses are commercial.

This petition comes as a result of a zoning violation. In late 2012, the petitioner moved a furniture store into a vacant commercial building without a Change of Use permit or site plan review. The last use in this building was a cosmetology trade school. Staff has been working with the petitioner since early 2013 in order to bring the property into compliance with the UDO. This petition was filed in May, however the petitioner has been working to find another solution to the violation, including demolishing the structure and redeveloping the property. All permitted continuances have now been used.

The building is 3,256 square feet and currently contains a furniture store. Furniture stores are permitted a maximum 1 space per 500 square feet, or 6 spaces for this building. The 1 per 500 ratio is one of the lowest ratios in the UDO. The property has been developed with approximately 32 parking spaces. The petitioner has proposed to reduce the number of spaces down to 12. This number of parking spaces is 1 more than the maximum number of spaces permitted for the majority of uses permitted in the CG district UDO (1:300 or 11 spaces). This arrangement requires a variance. The petitioner contends that this site plan will allow the greatest amount of flexibility for future re-use of the building. It will allow other uses with a higher maximum parking ratio to be added to the building without the petitioner re-constructing the parking spaces. In addition, no street parking is available on either Walnut St. or 14th St.

As part of the change in use, the property must come into compliance with change in use requirements as outlined in the UDO. Required site improvements include landscaping upgrades, bike racks, and a dumpster enclosure.

SITE PLAN ISSUES:

Landscaping: With the new use the property is required to meet all landscaping requirements. The petitioner has submitted a landscape plan but does not indicate species or the exact number of trees and shrubs. A detailed landscaping plan is required with the change in use permit.

Pedestrian Facilities: There are sidewalks along all property frontages that are in good condition. No new sidewalk construction is required.

Signage: A sign permit is required for the signs added and changed on the property without a permit.

CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

20.09.130 e) Standards for Granting Variances from Development Standards: A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

STAFF FINDING: The granting of the variance from the standards will not be injurious to the public health, safety, or morals.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

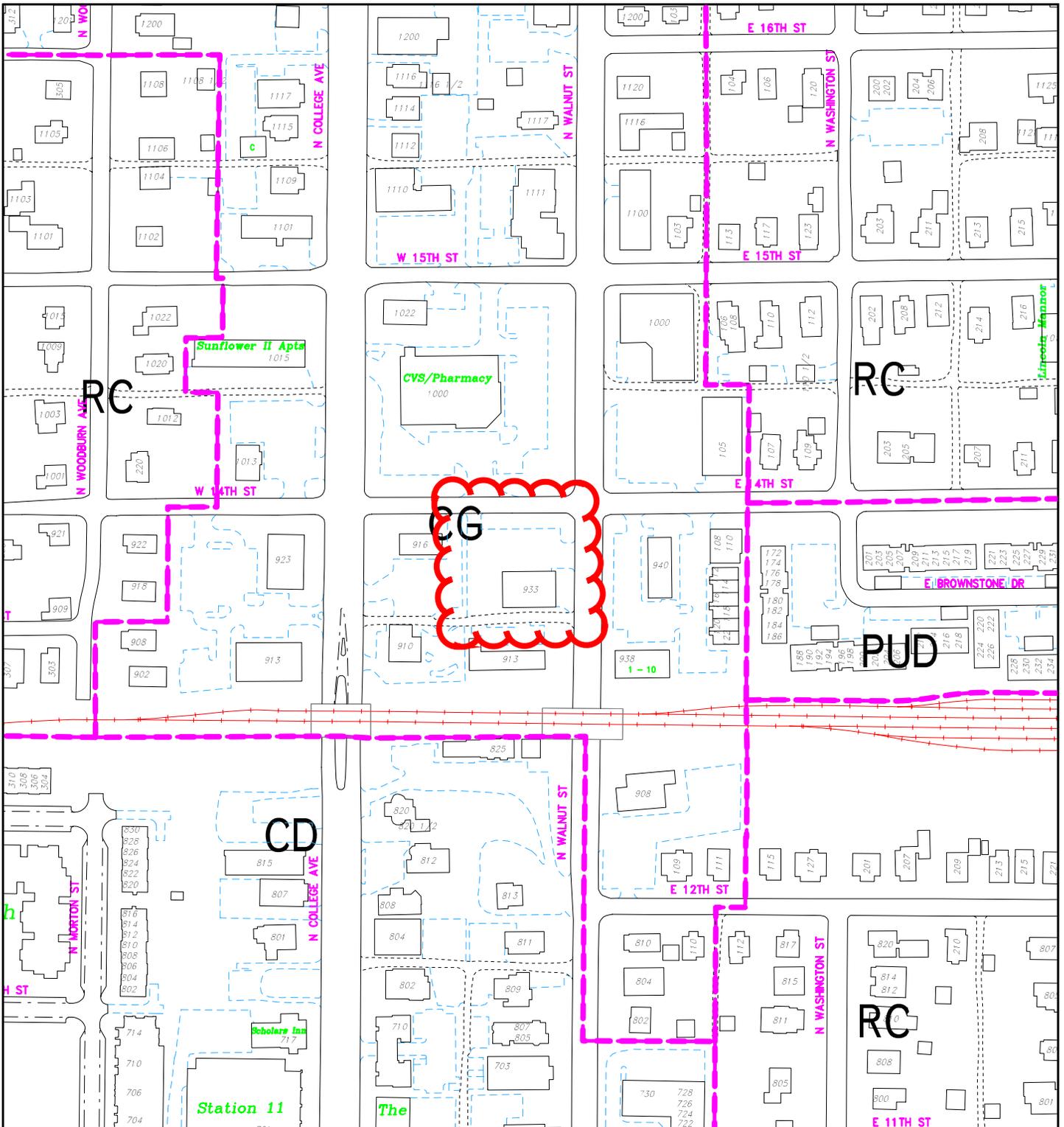
STAFF FINDING: Staff finds no negative effects from this proposal on the use and value of the areas adjacent to the property. Staff does find a positive impact on the use and value of the adjacent areas due to the re-use of this property.

- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

STAFF FINDING: Staff finds that the strict application of the UDO will result in practical difficulty in that the number of spaces allowed by code is one of the smallest ratios in the UDO. This building currently contains a furniture store, but in the past contained a trade school and could contain other more parking intensive uses in the future. Peculiar condition is found in the existing parking situation and the needs of future uses. The reduction from 32 to 6 spaces would result in a site that would be difficult to reuse as other permitted and appropriate uses in the future.

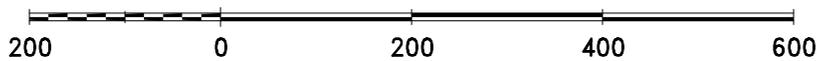
RECOMMENDATION: Staff recommends approval of the variance with the following conditions:

1. All areas that are not parking, building or sidewalk must be grass or other landscaping. Bark mulch or stone is permitted around plantings subject to the provisions of the UDO.
2. A sign permit is required for all new and altered signage.
3. A change in use permit is required prior to the commencement of any work on the property. This change in use permit must accurately represent all required landscaping (including species type), bike racks (including manufacturer and model number) and a dumpster enclosure.

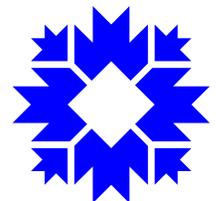


V-25-13
Location map

By: roachja
12 Nov 13



City of Bloomington
Planning



Scale: 1" = 200'

For reference only; map information NOT warranted.

Request for Zoning Variance for Lawful, Nonconforming Lots, Site, Structures and Uses

Petitioner/Owner: Joseph A. Collison

Property Address: 933 N. Walnut Street (Kenwood Lots 99 and 100)

Lot Sizes: Lot 99 is 66' x 132' (8712 sf) and contains a 3256 sf brick/block masonry building.

Lot 100 is 66' x 132' (8712sf) is a designated asphalt parking lot for lot 99.

Directly Surrounding Properties: Directly East is Elkins Apartments; Northeast is Grove's Square; North is CVS Pharmacy; West is Mancino's Pizza and Sub; Southwest is Just a Dream Lingerie Modeling; and South is Greene's Dental Laboratory.

Background: As a result of the change in use of this property from a Cosmetology School (1996 thru 2012) to its current lease arrangement as a furniture store, it is necessary to file a request for variance to comply with current city zoning requirements.

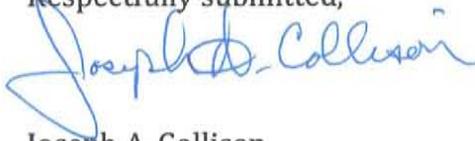
Petitioner request approval for the following and as shown on attachment:

1. Change current parking spaces from 21 to 12 as described below.
 - 1 Handicap
 - 2 Oversize parking for Loading and Unloading
 - 9 Standard Parking Spaces
2. Add Permanent Four-Station Bike Rack
3. Re-landscape as follows:

Expand landscaping by 1,044 sf by replacing current asphalt parking spaces with 3 trees, grass and ___ shrubs.

Remove gravel from existing landscaped areas and replace with 2 dwarf trees, grass and ___ shrubs
4. Add Dumpster Enclosure
5. Re-stripe parking areas and label handicap parking as required.

Respectfully submitted,



Joseph A. Collison
 P.O. Box 1208
 Bloomington, IN 47402
 Phone: 812-322-5278



James Roach <roachja@bloomington.in.gov>

Re: October 24th BZA meeting, 933 N. Walnut Street

Joe Collison <collisonja@yahoo.com>

Fri, Nov 1, 2013 at 11:28 AM

Reply-To: Joe Collison <collisonja@yahoo.com>

To: James Roach <roachja@bloomington.in.gov>, "mfigg@markfigg.com" <mfigg@markfigg.com>

Hi Jim,

Yes, I agree to go forward with the City proposed plan to bring the property at 933 North Walnut Street into compliance. That includes the 12 parking spaces up near the building and the other green space/landscaping requirements we discussed. This also includes the recommended compliance date of March 1st, 2014. Hopefully, this compliance date will be somewhat flexible as it relates to the possibility of any adverse weather condition delays that time of year.

Thanks,

Joe Collison

V-25-13
E-mail from petitioner

