## CITY OF BLOOMINGTON



## June 24, 2021 @ 5:30 p.m. Zoom Meeting:

https://bloomington.zoom.us/j/95275880178?pwd=L0FaUGdTYjNF cDVIcDBpK3ZDdjITdz09

#### CITY OF BLOOMINGTON BOARD OF ZONING APPEALS June 24, 2021 at 5:30 p.m.

#### Virtual Meeting:

https://bloomington.zoom.us/j/95275880178?pwd=L0FaUGdTYjNFcDVIcDBpK3ZDdjITdz09

#### **ROLL CALL**

APPROVAL OF MINUTES: October 22, 2020 \*\*Note: The November 19, 2020 minutes were approved at the May 20, 2021 hearing March 18, 2021 April 22, 2021 hearing cancelled – no minutes May 20, 2021

#### **REPORTS, RESOLUTIONS, AND COMMUNICATIONS:**

Resolution 20-01: Electronic Meetings Policy

#### **PETITION WITHDRAWN:**

V-06-21 David Kerber

2400 W. 3<sup>rd</sup> St. Request: Variance from front yard parking setback requirements. <u>Case Manager: Keegan Gulick</u>

#### PETITIONS CONTINUED TO: July 22, 2021

- CU/V-19-20 **Robert latarola** 1504 W. Arlington Rd. Request: Conditional Use approval for a Home Occupation in the R2 zoning district. Also requested are variances to allow a Home Occupation to be located within an accessory structure and to allow deliveries (of pallets) to the property. *Case Manager: Jackie Scanlan*
- V-05-21 **Nancy Armstrong** 619 S. Fess Ave. Request: Variance from rear yard setback requirements for a detached Accessory Dwelling Unit (ADU). <u>Case Manager: Jackie Scanlan</u>

#### PETITION:

V-08-21 Starbucks Coffee Company S. Liberty Dr. (Parcel #53-09-12-101-001.000-016) Request: Variance to allow vehicle parking in excess of the Maximum Vehicle Parking Allowance for a "restaurant". <u>Case Manager: Jackie Scanlan</u> PETITION MAP: <u>https://arcg.is/eWuXb0</u>

\*\*Next Meeting: July 22, 2021

Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call <u>812-349-3429</u> or e-mail <u>human.rights@bloomington.in.gov</u>.



#### CITY OF BLOOMINGTON LEGAL DEPARTMENT MEMORANDUM

TO:Board of Zoning AppealsFROM:Michael Rouker, City AttorneyRE:Resolution 21-01 - Electronic Meetings PolicyDATE:June 18, 2021

#### **MEMORANDUM**

Resolution 21-01 modifies the BZA's Rules of Procedure and establishes an Electronic Meetings Policy ("Policy") for the BZA. The Resolution and the policy it contains are consistent with policies adopted by the Common Council and other Bloomington boards and commissions. During the state-declared public health emergency, which currently extends to June 30, 2021, the BZA has conducted its meetings using electronic communication. This has, until recently, been allowed under executive orders issued by the Governor. On April 20, 2021, a new state law (HEA 1437, included herein) was signed that creates a statutory framework to allow for a different form of electronic meeting participation. The law provides rules that apply when under a declared public health emergency, as well as rules that will apply during nonemergency times.

When under a declared public health emergency, the BZA will be able to conduct its meetings remotely and all members may attend via electronic means. Such meetings must allow for the public to simultaneously attend and observe the meeting. When not under a declared emergency, state law now provides for certain minimum requirements that the BZA must follow. These requirements are reflected in Resolution 21-01. The BZA's procedures may be more restrictive than the procedures in the state law, but may not be less restrictive. Additional limitations include:

- limiting the number of members who may participate by electronic communication in any one (1) meeting so that at least a quorum of members must be present at an in-person meeting;
- (2) limiting the total number of meetings in a calendar year by which a member of the BZA may participate electronically, and
- (3) requiring a member, except for certain emergency meetings, who plans to attend a meeting by any electronic means of communication to notify the presiding officer and staff at least six days ahead of the meeting, so that arrangements may be made for the member's participation by electronic communication and so that notices may be appropriately modified.

Sections 7 and 8 of the Policy address the participation by members of the public and city staff in BZA meetings, respectively. These provisions are not required by state law, but reflect how the BZA has operated since the beginning of the public health emergency. The BZA may amend the Policy as needed after adoption, but should consider adopting a policy before the declared public health emergency expires.

#### **RESOLUTION 21-01**

#### A RESOLUTION ESTABLISHING THE POLICY BY WHICH MEMBERS OF THE BOARD OF ZONING APPEALS, ASSOCIATED STAFF, PETITIONERS, AND MEMBERS OF THE PUBLIC MAY PARTICIPATE IN MEETINGS BY ELECTRONIC MEANS OF COMMUNICATION

- WHEREAS, the Indiana General Assembly adopted HEA 1437 in the 2021 Regular Session, which amended Indiana Code (IC) 5-14-1.5-1 et seq. (Act) by amending IC 5-14-1.5-3.5 to prescribe new requirements by which members of the governing body of a public agency of a political subdivision may participate in a meeting by an electronic means of communication; and
- WHEREAS, a member of the governing body may participate by any means of communication that:
  - allows all participating members of the governing body to simultaneously communicate with each other; and
  - except for a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting; and
- WHEREAS, the Act requires the governing body to adopt a written policy establishing the procedures that apply to a member's participation in a meeting by an electronic means of communication and allows the governing body to adopt procedures that are more restrictive than the procedures established by IC 5-14-1.5-3.5; and
- WHEREAS, the Bloomington Board of Zoning Appeals ("BZA") is a governing body of the City of Bloomington, Indiana and wishes to adopt such a policy;

THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

<u>Section I</u>. The BZA's Rules of Procedure are modified to add a new Subsection under Article I entitled Subsection "J", which shall read as follows:

#### Article I. Meetings

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J. In accordance with Indiana Code sections 5-14-1.5-1 and 5-14-1.5-3.5, et seq., Board of Zoning Appeals' meetings may be conducted electronically. The Board of Zoning Appeals adopted an electronic meetings policy via Resolution 21-01, which is incorporated into these Rules of Procedure by reference.

<u>Section II</u>. The BZA hereby adopts the following policy on the participation of a member of the BZA, city staff, and members of the public in a meeting of the BZA by an electronic means of communication:

#### ELECTRONIC MEETINGS POLICY

Section 1.

(a) The provisions of the Act, including definitions, apply to this resolution.

(b) This resolution shall be known as the "Electronic Meetings Policy" and applies to the BZA and any of its committees.

#### Section 2.

(a) Subject to Sections 3 and 5, any member may participate in a meeting by any electronic means of communication that:

(1) allows all participating members of the governing body to simultaneously communicate with each other; and

(2) other than a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting.

(b) A member who participates by an electronic means of communication:

(1) shall be considered present for purposes of establishing a quorum; and

(2) may participate in final action only if the member can be seen and heard.

(c) All votes taken during a meeting at which at least one (1) member participates by an electronic means of communication must be taken by roll call vote.

#### Section 3.

(a) At least fifty percent (50%) of the members must be physically present at a meeting at which a member will participate by means of electronic communication. Not more than fifty percent (50%) of the members may participate by an electronic means of communication at that same meeting.

(b) A member may not attend more than a fifty percent (50%) of the meetings in a calendar year by an electronic means of communication unless the member's electronic participation is due to:

(1) military service;

(2) illness or other medical condition;

(3) death of a relative; or

(4) an emergency involving actual or threatened injury to persons or property.

(c) A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication. A member must attend in person at least one (1) meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to:

(1) military service;

(2) illness or other medical condition;

(3) death of a relative; or

(4) an emergency involving actual or threatened injury to persons or property.

(d) A member who plans to attend a meeting by any electronic means of communication shall notify the presiding officer and relevant staff within six (6) days before the meeting so that arrangements may be made for the member's participation by electronic communication and so that notices may be prepared.

Section 4. The memoranda and any minutes prepared for a meeting at which any member participates by electronic means of communication must:

(1) identify each member who:

(A) was physically present at the meeting;

- (B) participated in the meeting by electronic means of communication; and
- (C) was absent; and
- (2) identify the electronic means of communication by which:

(A) members participated in the meeting; and

(B) members of the public attended and observed the meeting, if the meeting was not an executive session.

Section 5. No member of the BZA may participate by means of electronic communication in a meeting if the BZA is attempting to take final action to:

(1) adopt a budget;

(2) make a reduction in personnel;

(3) initiate a referendum;

(4) impose or increase a fee;

(5) impose or increase a penalty;

(6) use the eminent domain authority; or

(7) establish, raise or renew a tax.

Section 6. In the event the governor declares a disaster emergency under IC 10-14-3-12 or the executive (as defined in IC 36-1-2-5) of a political subdivision declares a local disaster emergency under IC 10-14-3-29, the BZA may meet by any means of electronic communication if the following requirements of IC 5-14-1.5-3.7 are satisfied:

(1) At least a quorum of the members of the BZA participate in the meeting by means of electronic communication or in person.

(2) The public is able to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.

(3) The memoranda and any minutes prepared for a meeting held under this section must:

(A) state the name of each member of the BZA who:

(i) participated in the meeting by using any electronic means of communication; and

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(ii) was absent; and

(B) identify the electronic means of communication by which:

(i) members of the BZA participated in the meeting; and

(ii) members of the public attended and observed the meeting, if the meeting was not an executive session.

(4) All votes taken during a meeting under this section must be taken by roll call vote.

Section 7. At any meeting of the BZA where any member participates by an electronic means of communication, members of the public and petitioners shall also be able to attend and observe the meeting via electronic means. Subject to the BZA's rules for making public comment, members of the public and petitioners may also participate in the meeting via electronic means.

Section 8. At any meeting of the BZA where any member participates by an electronic means of communication, staff members may also participate in the meeting via electronic means, provided there is no actual need for a staff member to be physically present at a particular meeting. Such need shall be determined in the sole discretion of the presiding officer.

SECTION III. If any section, sentence, or provision of this resolution, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

SECTION IV. This resolution shall be in full force and effect from and after its passage by the BZA.

ADOPTED by the Board of Zoning Appeals of the City of Bloomington, Monroe County, Indiana, upon this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2021.

Barre Klapper, President Bloomington Board of Zoning Appeals

#### **SYNOPSIS**

This resolution adopts an Electronic Meetings Policy for the Bloomington Board of Zoning Appeals pursuant to newly-enacted state statutes concerning electronic meetings. The Policy mirrors a policy adopted by the Bloomington Common Council and establishes the procedures that apply to a member's participation in a meeting by an electronic means of communication, as well as to the participation of the public and city staff members by electronic means of communication.

#### CASE #: V-08-21 DATE: June 24, 2021

<b>PETITIONER:</b>	Starbucks Coffee Company 111 North Canal Street, Chicago IL
	Bryan Rental Inc. 1440 S Liberty Drive, Bloomington IN
CONSULTANT:	Kimley-Horn & Associates 250 E 96 <sup>th</sup> Street Suite 580, Indianapolis IN

**REQUEST:** A variance to allow vehicle parking in excess of the Maximum Vehicle Parking Allowance for a 'restaurant'.

**SITE DESCRIPTION:** This 1.05 acre property is located northeast of the intersection of S. Liberty Dr. and W. State Road 45 and was zoned Planned Unit Development (PUD) at the time of filing. The properties to the north, east, and west were within PUD 26 at the time of filing and have been developed with commercial uses. The property to the south was a part of PUD 83 at the time of filing and has been developed with commercial uses.

The petitioners are proposing to construct a 'restaurant' at this location, with a total of 33 parking spaces. PUD 26's District Ordinance does not create standards for parking and loading. The UDO limits "restaurant" uses to a maximum vehicle parking allowance of 10 spaces per 1,000 sq. ft. Gross Floor Area (GFA) of indoor seating, and 5 spaces per 1,000 sq. ft. GFA of outdoor seating. The proposed site design would allow for a maximum of 11 spaces. The petitioners are proposing to include a total of 33 vehicle parking spaces on the site. The 22 spaces over the limit are proposed to utilize permeable pavers. The petitioners are requesting a variance to allow 22 parking spaces over their maximum vehicle parking allowance.

#### 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; and

**PROPOSED FINDING:** No injury is found with the allowance of additional parking spaces. The spaces will be designed as permeable to offset their runoff and the site will still meet impervious surface requirements.

(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; and

**PROPOSED FINDING:** No adverse impacts to the use and value of the surrounding area associated with the proposed variance are found. The variance is not expected to have off-site negative consequences, and in fact, will allow for more room on the site to hopefully decrease vehicular stacking.

(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 questions; that the development standards variance will relieve the practical difficulties; and

**PROPOSED FINDING:** While it seems likely that practical difficulty can be found in the use of the property based on expected use, a need for triple increase of parking allowance has not been demonstrated. The Department requested additional information related to similar store locations, and has not received that information.

**RECOMMENDATION:** Based upon the written report, the Department recommends the Board of Zoning Appeals continue the petition to the July BZA hearing.



For reference only; map information NOT warranted.

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### Kimley **»Horn**

May 25, 2021

City of Bloomington 401 N Morton St Bloomington, IN 47404

Re:

*Starbucks Bloomington Development Standard Variance Request 2105 Liberty Drive Bloomington, IN* 

Dear BZA Member,

On behalf of Starbucks, we respectfully request the acceptance of the attached Development Standards Variance Application and supporting documents for the development of the proposed Starbucks quick serve restaurant facility (QSR).

#### **Project Narrative:**

Starbucks is proposing to develop approximately 1.05 acres into a quick serve restaurant located at 2105 Liberty Drive. The existing property is currently vacant land and is zoned PUD, Planned Unit Development. It is proposed that two points of ingress and egress be provided and located off Liberty Drive.

#### We respectfully request variance from : <u>Bloomington Indiana Unified Development Ordinance</u>, 20.04.060 <u>Parking and Loading</u>, Table 4-10 Maximum Vehicle Parking Allowance for a "Restaurant"

The petitioner requests to be permitted to develop the site with additional parking spaces that exceed the defined maximum allowable (as stated above). The proposed Starbucks would provide approximately 800SF of interior seating space and 350SF of outdoor seating. Per the UDO, a restaurant use is allowed to provide 10 spaces for every 1,000SF of interior seating space and 5 parking spaces for every 500SF of outdoor seating space. Per these ratios the proposed Starbucks would be permitted to provide 11 parking spaces. We are requesting that the proposed Starbucks be permitted to provide 33 parking spaces for their employees and customers.

There are several key reasons why we believe the proposed increase in the permissible parking is necessary. A Starbucks does not fit the mold of a traditional restaurant use. Starbucks are frequented by a high volume of customers, most of which are making quick trips. Many of Starbucks customers come to the restaurant individually. In a traditional restaurant setting, there are typically multiple customers in a single vehicle, but given that many customers are commuting during the peak hours, there is a higher ratio of vehicles per customers for this restaurant. Given the beverage emphasis on the menu, many of the seating options inside the restaurant are more compact than a traditional dining environment. Additionally, while most restaurant buildings reserve approximately two-thirds of the building area for seating, a Starbucks generally reserves closer to one-third of the building area for seating. The average Starbucks restaurant has 10 employees during the maximum shift. In addition to employee parking spaces and spaces required to be reserved for Handicap Accessibility, we are also proposing three spaces to be reserved for mobile order pickup. As many have observed over the course of the past year, the mobile ordering and curbside pickup service has increased tremendously. As a result of this, having multiple spaces reserved for this purpose is crucial to Starbucks' business. Although many of the trips made into Starbucks are quick, there are also those customers that utilize Starbucks as a café that offers wifi to its customers which can prolong a few of the customer time in the store.

Lastly, the location of the proposed store is in a traditional interchange outlot style development and not a mixed-use urban area. These types of traditional interchange type developments do not have the walk-in traffic that a more urban store would have thus increasing the number of cars entering and exiting the site. Also, given the site's proximity to I-69, it is likely that this restaurant will be visited by not only locals but also those traveling along I-69.

The proposed parking ratio is a result of providing one parking space per employee at the maximum shift, one parking space per one and a half seats, and three designated mobile order pickup spaces. The stand-alone quick serve restaurant building with associated parking for the subject property are as depicted by the attached proposed site plan.

#### **Development Standards Variance Criteria:**

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

The variance will not be injurious to the public health, safety, morals, and general welfare of the community because the additional parking spaces will provide enough spots to safely accommodate the public. Without the additional parking additional traffic may create a safety hazard to the traveling public. Additionally, the adjacent properties may be adversely impacted by the additional traffic if customers use their parking as overflow. The proposed parking is not substantially different parking conditions than surrounding properties.

#### 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:

Without additional parking there may be added traffic, which would create an adverse impact to the adjacent properties. The variance will reduce the potential for vehicles backing up into Liberty Drive. Even with the increase in parking, the proposed site plan is still compliant with the landscaping and maximum lot coverage requirements. The proposed parking layout will only have single drive aisle around the building, which is consistent with the neighboring properties.

# 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:

Given the small size of the property and its proximity to the interstate, it would be difficult to meet the high parking demands required for this use with the strict application of the code. A Starbucks close to an interstate sees not only local customers, but also those traveling through Bloomington along I-69. The proximity to the interstate attracts a higher number of commuters which results in higher peak volumes. This further amplifies the need for additional parking during the peak hours. Another unique constraint for this site is the limited access along SR 45. Even though the property has two frontages, access can only be granted from Liberty Drive. Since all customers must enter and exit to and from Liberty Drive, it is even more important that there be an adequately sized parking lot to allow customers sufficient space to maneuver around the restaurant and drive-thru. In addition to the unique conditional parking. The requested additional parking will reduce the potential traffic issues along Liberty Drive, overflow onto adjacent properties, and also alleviate the pressure on the drive-thru.

Thank you for your time and consideration of this request. Please contact me at (317) 218-9566 or <u>Mike.Timko@Kimley-Horn.com</u> should you have any questions

Sincerely, Kimley-Horn and Associates, Inc. Mike J. Timko, PE



