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The Board of Zoning Appeals (BZA) met on August 25, 2022 at 5:30 pm; a hybrid meeting was held both in the Council Chambers, located in Room 115, at 401 N. Morton Street, City Hall – Bloomington, IN 47404 and remotely via Zoom. Members present in the Council Chambers: Barre Klapper, Jo Throckmorton, and Tim Ballard. Flavia Burrell present via Zoom (Erik Coyne absent).

**APPROVAL OF MINUTES:** May 26, 2022

**\*\*Throckmorton moved to approve the May 26, 2022 minutes as distributed. Ballard seconded. Motion carried unanimously.**

**REPORTS, RESOLUTIONS, COMMUNICATIONS:**

Jackie Scanlan, Development Services Manager, stated BZA alternates are needed at this time. Anyone interested can apply on the City of Bloomington website.

**PETITIONS CONTINUED TO:** September 22, 2022

- AA-17-22 Joe Kemp Construction & Blackwell Construction – Summit Woods (Sudbury Farm Parcel O) W. Ezekiel Drive – Administrative Appeal of the Notice of Violation (NOV) issued March 25, 2022. (Case Manager: Jackie Scanlan)
- V-28-22 Warren Witt (Chipotle) – 3151 W. 3<sup>rd</sup> St. – Variances from entrance and drive standards to allow a driveway in the front parking setback, from maximum parking standards, and from pedestrian sidewalk connection standards. (Case Manager: Eric Greulich)
- AA-31-22 Lamar Advertising Co. – 1800 N. Kinser Pike – Administrative Appeal of Notice of Violation (NOV) for a sign. (Case Manager: Jackie Scanlan)
- V-32-22 Richard Judd – 508 W. 3<sup>rd</sup> St. – Variance from rear setback standards to allow for construction of stair access to and from a driveway in the Residential Small Lot (R3) zoning district. (Case Manager: Karina Pazos)
- V-34-22 Adam Jackson (Caritas-Indiana, LLC) – 1420 W. Kirkwood Ave. – Variance from buffer yard standards to allow construction of a 16-unit multifamily building in the Residential High Density Multifamily (RH) zoning district.

**PETITIONS:**

AA-24-22

**John Mackey**

221 E. Allen St.

Request: Administrative Appeal of Notice of Violation (NOV) for failure to obtain a Certificate of Zoning Compliance (CZC).

*Case Manager: Liz Carter*

Liz Carter, Senior Zoning Compliance Planner, presented the staff report. This case is an administrative appeal of the issuance of a notice of violation for failure to obtain a CZC (Certificate of Zoning Compliance). This property is at the corner of Allen Street and Lincoln Street and is 0.10 acres and is zoned Residential Small (R3). The Building Department issued a Stop Work Order on April 8<sup>th</sup> when they found work was happening at this location without a building permit or CZC, by the Planning and Transportation Department. A building permit was applied for on April 14<sup>th</sup> and on May 12<sup>th</sup> it was noted that work was continuing to happen without a building permit, it was being reviewed but had not been issued. On May 13<sup>th</sup> a Notice of Violation (NOV) fine letter was issued. Even after a stop work order was issued and the petitioner was aware a building permit was needed, one was not issued but work continued. The UDO (Unified Development Ordinance) requires that a CZC is obtained for any alteration, erection, construction, reconstruction, division, enlargement, demolition, and partial demolition or moving of any building structure, sign or mobile home. The petitioner is appealing the NOV.

John Mackey, petitioner, said he hired guys to reroof the home at 221 E. Allen St. He was under the impression it was a re-roof but in fact it wasn't. He said his roofers called and told him there is a dead valley in the roof, where one roof meets the other roof with no drainage out of the valley. At the recommendation of the roofer he approved alterations to correct the dead valley. No longer a re-roof and ceased work and applied for a permit. While waiting on the permit there was a downpour of rain and he instructed workers to fix roof so leaking would stop. Building inspector issued a stop work order at that time.

**BZA Discussion:**

Throckmorton asked Staff to display the timeline of work, asked about timeline for getting issuing the CZC. Jackie Scanlan, Development Services Manager, cannot issue a CZC for the work the petitioner has already done at the site because the materials are not code compliant. When you do a re-roof, a building permit isn't required by the Monroe County Building Department, but in this case a permit is required because it's a new roof. We cannot issue a CZC until he either takes the current work down or if he uses materials that are permitted. Throckmorton asked what material owner is using that is not in compliant. Scanlan said he is using corrugated barn siding metal, which does not meet code. If the work was being done with approved materials then we could have issued a CZC, but it is not. Standing seam metal is allowed, petitioner was made aware of this, but that is not what was used. Throckmorton asked how long it would take to issue a CZC if petitioner has been using correct materials. Scanlan said that depends on how busy staff is.

**No public comment.**

**Back to the petitioner:**

Mackey said he did what he did in terms of the work because he felt like the roof leaking was an emergency situation.

Klapper said if the petitioner had safety concerns, did he have recourse with the Building Department or P&T staff? Scanlan said we couldn't have expedited his permit because the materials didn't comply with code. Sometimes you have to put a tarp over it until we figure out what the solution is.

Throckmorton had a follow up question for petitioner, which was did they tarp the roof or did they continue to use the material you had on hand. Mackey said he has about \$15,000 in metal on the roof right now. Throckmorton asked why he couldn't have put a tarp over it. Mackey said in retrospect that's probably a good idea but tenants' personal items were getting wet from the leaking roof, so I told my contractor to get up there and fix it. Throckmorton asked the petitioner when he is planning to tear out the non-compliant materials and rebuild. Morton said he would remove current material and replace with material that meets code.

Throckmorton moved to approve the Administrative Appeal with the stipulation that the petitioner commits to removing the materials that don't comply with code, within the next six months.

Mike Rouker, City Legal, said he didn't know if that is an acceptable way to frame a motion for an administrative appeal. Scanlan clarified that whether he gets the appeal or not he will have to take the roof down and replace with code compliant materials.

Burrell clarified that petitioner did the work without a CZC because it was an emergency repair. Scanlan said that is partially what he is saying, he started his work without a CZC, he created a situation where it was leaking and he continued the work after a stop work order was issued.

Klapper said there were other potential options before the owner, he could have moved those residents temporarily or he could have tarped the roof.

Throckmorton withdrew his motion.

Ballard said the reality is there were opportunities that were not acted upon that could have changed this outcome.

**\*\*Ballard moved to deny the Administrative Appeal (AA-24-22) based on the written findings and recommendation in the staff recommendation. Burrell seconded. Motion carried 4:0—Administrative Appeal is denied.**

CU-25-22      **Doug McCoy (Grant Properties)**  
110 S. Roosevelt St.  
Request: Conditional Use approval for a 'dwelling, duplex' in the Residential Small Lot (R#) zoning district.  
Case Manager: Karina Pazos

Karina Pazos presented the staff report. This property is located at 110 S Roosevelt Street and is currently zoned Residential Small Lot (R3) and all surrounding properties

are also zoned R3. The property currently contains a one-story single family structure that is proposed to be demolished with this proposal. The petitioner is requesting conditional use approval for a dwelling duplex in the R3 zoning district and this proposal includes a 1.5 story duplex with each dwelling to contain two bedrooms. The dwelling duplex is listed as a conditional use approve in the R3 zoning district and the petitioner is therefore requesting conditional use approval to allow for this dwelling type. The petitioner held a neighborhood meeting on June 6<sup>th</sup> of this year and there was concern about parking and the amount of cars currently at other surround properties. To address this concern the petitioner has proposed to maintain the existing two off-street parking spaces. There are use-specific standards that apply to a duplex within the R3 zoning district and each unit of a newly constructed duplex shall have a separate exterior entrance facing a public or private street. The design shall incorporate similar design elements as the majority of the existing dwelling structures on that walk face. Additionally, no duplex swelling structure shall contain more than six bedrooms and each unit shall have separate utility meters.

The proposed duplex structure meets all of these design requirements, the petition also complies with other applicable regulations, utility service and improvement standards as required by the general compliance criteria. The petition request constitutes new construction which requires full compliance with the development standards in the UDO. This proposal is in line with the goals of the Comprehensive Plan, the Comprehensive Plan identified this area as Mixed Urban Residential land use category, which is in favor of this proposed duplex. Replacing the existing dwelling structure on this lot with two smaller dwelling units should not put undue strain on surrounding public services.

The Planning Department recommends that the Board of Zoning Appeals adopt the proposed findings and recommends approve of CU-25-22 with the following conditions:

- This conditional use is limited to two 2-bedroom units, as proposed in the filing documents.
- A compliant minor site plan is required before issuance of a building permit.
- A building permit is required before construction can begin.
- The petitioner must provide information about solar ready building design before issuance of a building permit.
- The petitioner must provide specifications on proposed outdoor lighting before issuance of a building permit.

Doug McCoy, petitioner, said we're excited to do this project. We believe this project will be positive for the neighborhood; the neighborhood meeting was also positive. The proposed units will be really pretty, replacing a really odd structure currently there.

**BZA Discussion:**

Klapper asked staff to define a "solar ready building design" as stated in the staff report. Scanlan explained that was added to the recent UDO update. Any new primary structure that is built in the City of Bloomington now has to meet a solar ready design. It allows us to have options to encourage solar for a new development.

**Public Comment:**

Elliot Lewis said he has owned houses in this neighborhood since 1978; he no longer owns any houses at this time but believes there are certain structures in the neighborhood that should be replaced, Mr. McCoy is doing is excellent job. He believes everyone should be in full support of the proposal.

**Back to the petitioner:**

McCoy said their goal is to improve the community. You will see that we always go the extra mile to improve the community.

**\*\*Throckmorton moved to approve CU-25-22 based on the written findings, including the five conditions outlined in the staff report. Ballard seconded. Motion carried 4:0—Approved.**

V-26-22      **Bailey 8, LLC (Cedarview Management)**

200 E. Kirkwood Ave.

Request: Variance from height standards to allow for the construction of two additional stories for a total of 4-stories and 57' in height. Also requested is a variance from development standards to allow for the existing drive-thru on E. Kirkwood to remain in the Mixed-Use Downtown, University Village Downtown Character Overlay (MD-UV) zoning district.

Case Manager: Karina Pazos

Karina Pazos presented the staff report. This property is located at 200 E Kirkwood Avenue, on the southeast corner of Kirkwood and Washington, the lot is bounded by an alley on the south side and the Graduate Hotel on the east side. The property is zoned Mixed-Use Downtown with University Village character overlay. The properties to the northeast and south are also zoned MDUV and the properties to the west are zoned Mixed-Use Downtown with Courthouse Square character overlay. The site currently contains People's State Bank and on June 15<sup>th</sup> was voted by City Council to be designated as its own historic district with a rating of notable. Petitioner is proposing to develop two stores above the existing building and a four-story building that will attach to the southern exterior wall of the existing building. The commercial space will remain on the first level of the existing building with the second level being converted to residential uses. The upper levels above the existing building and the upper three levels of the New Forestry structure will also contain residential units with sustainable development incentives to achieve the fourth floor. The petition is subject to major site plan review and it is on the schedule for Plan Commission Agenda for September 12, 2022.

The petitioner is requesting three variances, a variance from height standards allowed for the construction of two additional stories for a total of four stories at a height of 60 feet. A variance from development standards to allow for the existing drive-thru located on E Kirkwood Avenue to remain and a variance from the downtown character overlay standards to allow for the existing windows and doors on primary facades and the face articulation to remain and for new portions of the building(s) to mimic the existing design.

For the first variance, the UDO states that projects that satisfy the sustainable development criteria shall be eligible for one floor of building height, not to exceed twelve feet beyond the maximum primary structure height and that is forty feet in the zoning district. It appears the elevation is showing fifty three feet in height that is one foot over the maximum allowed with the sustainable incentive. May need petitioner to clarify

whether the fifty three foot height shown here is from the finished grade and the proposed height from the average grade is sixty feet. We do feel that the sixty foot height is appropriate to the scale.

The UDO states on local streets no entrance or drive shall be installed within one hundred feet of any intersecting street, the existing drive-through is located approximately seventy feet from the Washington Street intersection.

The UDO requires a minimum of 60% of the first floor façade facing the street in the Kirkwood corridor area of the University Village overlay district to be transparent glass or framed façade open area consisting of display windows. The upper floor facing a street shall have a minimum of 20% transparent glass or façade openings and shall have the appearance of double hung windows. Additionally the façade articulation module maximum length is fifty feet and the minimum length is twenty feet in this overlay district. However, we think the architectural standards will be difficult to meet due to having to build around the existing building.

So we think the proposal meets the criteria for the first and last variances but does not meet the criteria for the second variance. The second variance would allow for the existing drive-thru to remain located less than one hundred feet from the Washington Street intersection which disrupts the pedestrian zone along Kirkwood Avenue. The design guidelines are included to protect the use and value of adjacent properties so that infill developments can maintain the character of the area. Kirkwood has a street typology of shared street so the site design should limit drive cuts that negatively impact adjacent pedestrian experience. There were no practical difficulties found here and we think the historical component of the drive-thru can still be highlighted on the building with the drive cut on Kirkwood removed.

Based upon the report and written findings, the Department recommends that the Board of Zoning Appeals adopts the proposed findings for V-26-22 and approves the first and last requested variances for building height standards and downtown character overlay standards. But denies the request of variance from development standards to allow for the existing drive-thru to remain on Kirkwood.

Tim Cover, Studio 3 Design, is representing the petitioner. Over the past few months they have been working with the Historic Preservation Commission (HPC) for the site plan. They received approval from the HPC for the proposed project and received a *Certificate of Appropriateness (COA)*. The memo from the HPC went through each item and details staff support for each one. They agree with Staff on everything with the exception of the removal of the existing drive through. The entire site is designated as historic, not just the building itself. The building itself has always been a bank. It's always had a drive through with an exit onto Kirkwood. We're not changing the drive through; we're building over the top of it. This is basically a technicality of the UDO. The drive has existed for over 62 years. We don't believe it's injurious to the public. Where is the proof that people have been injured with the drive onto Kirkwood? The drive and drive exit have been part of the historic fabric and character of the site for 62 years, how does that not maintain the fabric of the street and neighborhood and the character if that has always been there? There are not asking for a new drive-thru, they are just asking to maintain the current drive-thru.

**BZA Discussion:**

Throckmorton asked if there is any other purpose for the drive other than a drive through. Cover said its primary purpose is for a drive through. Throckmorton asked if the denial of this drive is due to the language in the UDO. Scanlan said because of the new building on the site, the site has to be brought up to full compliance with the UDO. Throckmorton asked about the southeast corner of Lincoln and Kirkwood. Scanlan explained that was approved under the old Code when overlays allowed waivers. It would have gone to the Plan Commission and not before the BZA. Site plan waivers which we no longer have in the zoning code. Burrell asked if this is a practical difficulty for the business. Cover said absolutely because their customers will not allowed to have a drive-thru.

**Public Comment:**

Duncan Campbell is an advisory member of the Historic Preservation Commission (HPC). He said Tim is right; when the historic designation was determined for this bank, Serving historic character of the building, and allowing it to be used in the modern world is very complicated. HPC assumed the drive-thru would remain, never occurred to them that it would not continue to be, they designated the entire site and that includes the driveway. We wholeheartedly support it and think the drive should be used.

**Back to the petitioner:**

Elliot Lewis, owner, said this isn't the first time that we've worked with Mr. Campbell and used his expertise. There are several examples in the downtown of what we've done with other historic properties. It's been a large effort to work within the HPC's architectural guidelines. In this case, we've followed everything the HPC asked us to do. The current drive-thru needs to remain a drive through and not be a walk-up drive through; security factors are involved as well. We are applying a new rule to a building that has been there since the 1960's. We are doing everything in our power to comply with all of the City requirements. The existing drive-thru is an integral part of the bank.

**\*\*Burrell moved to approve V-26-22 based on the written findings in the staff report. This is to approve all three (3) variances requested by the petitioner. This approval is based on the practical difficulty and peculiar state of the drive-thru and because it is a historic site to preserve the site intact. Ballard seconded the motion.**

Pazos read the Alternative Findings of Fact into the record.

Burrell adopted the proposed Alternative Findings of Fact.

Klapper said I would like to amend the last proposed finding.

Scanlan suggested the following revised finding, *"The denial of the variance to allow for the exiting drive cut located on E. Kirkwood Ave. to remain will result in practical difficulties in the use of the property because the historic designation contains the driveway as an integral part of the history of the site which is that of a bank facility."*

Burrell accepted the proposed finding as stated by Scanlan.

**Roll Call: 4:0—Approved.**

V-27-22

**Cutters Kirkwood 123, LLC**

115 E. Kirkwood Ave.

Request: Variances from Downtown Character Overlay standards to allow less non-residential area and less large display windows; and a variance from the requirement to align with the front setback of an adjacent historic structure in the Mixed-Use Downtown zoning district with the Courthouse Square Character Overlay (MD-CS).

Case Manager: Karina Pazos

Karina Pazos presented the staff report. The site is located at 115 E Kirkwood Avenue, across from the Buskirk-Chumley Theater, on the north side of Kirkwood Avenue. It is bounded by an alley on the north and west sides, and a historic building (CVS) on the east side. It is zoned Mixed-Use Downtown with Courthouse Square Character overlay (MD-CS). The site currently contains a surfaced parking lot. The petitioner is proposing to redevelop the site as a four-story mixed-use building containing a ground floor parking garage with the entrance off the alley to the west of the site and roughly 2,200 square feet of retail space facing the street. The proposal includes three upper stories containing 15 dwelling units and will implement sustainable development incentives to achieve the fourth floor with a maximum height of 52 feet. The petition is scheduled to be heard at the Plan Commission public hearing on September 12, 2022.

The request includes two variances, the first is a variance from the Downtown Character overlay standards, to allow for a smaller percentage of the total ground floor area dedicated to a non-residential use other than the parking garage use. The UDO requires that a minimum of 50% of the total ground floor area of a building located along each street needs to be occupied by a non-residential primary use listed in the allowed use table of the UDO and needs to be listed as either permitted or conditional in the MD zoning district. The enclosed parking garage does not count toward that required non-residential use, therefore it is not meeting the 50% requirement. The proposed retail space is 2,200 square feet and that is approximately 19% of the ground floor. The second variance required a minimum of 70% of the first floor façade facing a street in the Courthouse Square overlay district be large display windows and shall incorporate transom windows and window bases, or kick plates as well as a freeze or sign band above the display windows. One of the purposes of these standards is to encourage a site design that engages directly with the public realm of the street and to promote pedestrian accessibility instead of the site uses being buffered from the pedestrian zone. A second purpose is to reflect the historic design and use patterns of the Courthouse Square character district.

The proposal doesn't meet 50% of the ground floor for a non-residential use other than the parking garage and less than 70% of the façade is display windows. The petitioner has made revisions to increase the total percentage to approximately 51% and the proposal has made efforts to support the same goals of engaging directly with the public realm and promoting pedestrian accessibility but may not support the reflection of the historic patterns.

We believe the overlay desires robust non-residential uses on the first floor, while providing ample percentage for a garage or residential space, a reduced retail space



devalues the interface between the public and private realm on Kirkwood Avenue and there were no practical difficulties found for the denial of the experience. The proposal currently indicated 51% of the ground floor façade which is under the minimum 70%. The window requirement is included to reflect the historic pattern of large picture windows in the area. The community and UDO anticipate and encourage infill development, but adherence to the design standards helps to protect the character of the pedestrian experience in the area. There is no practical difficulties found for the denial of this variance because the property is vacant and new construction can be done to meet the 70% requirement.

Based upon the report and written findings the departments recommends the Board of Zoning Appeals adopts the proposed findings for V-27-22, and denies the requested variances from Downtown Character overlay standards to all for less dedicated space to a non-residential use, other than a parking garage use, in the ground floor and less large display windows in the first floor façade facing the street.

Randy Lloyd, petitioner, the building itself is still the same design that was approved by the Plan Commission pre-COVID, including a new garage entry to the side. There is considerable infrastructure to be done on this project; all power lines through Duke Energy still have to be moved. Kirkwood can get kind of crazy at times, and I don't think people realize how much we use our alleys and supports our downtown businesses that are committed to remaining in the downtown. The parking is critical to owner-occupied residences and therefore the parking garage is critical. With the changing nature of the economy, it's easier to rent to a boutique for example versus having larger/vacant spaces. Our practical difficulty is just the market. For owner-occupied condos people expect to have a parking spot, without parking they just don't have a viable project.

Ryan Strauser, Strauser Construction, said we worked with City staff for several months in order to meet every aspect of the UDO (Unified Development Ordinance). Design restrictions and hardship is the site has a lot of topography, the low side of the site is the Kirkwood street side. You cannot ramp into the building and get on the lower level to a garage because there is such a grade change. The first level is where the parking really needs to be because of that reason.

Lloyd cited the percentage of openings for various buildings along Kirkwood such as The Book Corner, Buskirk-Chumley building and the Uptown Café. We don't see any harm to have the window space at less than 70%, and they are requesting the BZA's support of our two variances.

Scanlan said this petition was originally approved in March 2018. The permit didn't happen so it expired. Covid started in 2020. This has been expired as of March 2019, which is at least one year pre-Covid. Waivers are not allowed anymore. You have to show why you cannot meet code. If someone doesn't like code standards, that can be addressed in another forum but not through the BZA. The variance is supposed to be a practical difficulty to meet and staff doesn't believe the petitioner has. This is in the heart of the downtown—one block off of the square, so if the code can't be met, and staff feels it can be met here given the location of the site, just wanted to give the board background on why the code is the way it is.

**BZA Discussion:**

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Klapper asked Staff to define how practical difficulty is defined. Scanlan stated that practical difficulty is defined in code as, “The strict application of the terms of the UDO 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.”

Lloyd wanted to point out that they were in the process of applying for a grading permit when Public Works contacted them about repaving Kirkwood and asked if they could do some work for Public Works, they did the work without getting the permit because Public Works was in a hurry. They did do the sewer connects, waterline connects and were ready to do the work before actually pulling any permits so Public Works could pave.

Strauser said one of the delays for this project was the Duke Energy infrastructure. After Plan Commission approval there was eight to twelve months of working with Duke Energy regarding moving utilities which basically stalled the design and everything. That extended out everything past the initial approval date.

Throckmorton wanted to know why you didn't ask for an extension of time. Lloyd acknowledged that it was an oversight on his part to not apply for an extension. Throckmorton wondered if extension would have been granted because of the extenuating circumstances, considering the update of the UDO and knowing that things were changing. If your requests were to fail you would have to essentially start over and go back to the Plan Commission. Lloyd said if that was the case then this project wouldn't be a condominium project without the parking. Throckmorton wasn't saying it can be that kind of project, it would just have to be redesigned to meet current code. Lloyd acknowledged they would have to redo everything.

Klapper asked Strauser if elevated parking above the ground floor had been considered. Strauser responded by the time you ramp up to the next level you have taken up 20-25% of the ground floor which is eating away at the commercial space. It would be a total redesign of the building, if even possible to move parking to another level.

**Public Comment:**

Galen Cassady manages the Uptown Café and he is in full support of the variances and the overall project. He thinks the downtown could use some more owner-occupied projects. Feels fellow restaurants and other retail businesses would benefit from having this kind of housing.

Kimberly Stanley wondered what type of research had been done for this type of project. Who are “these people” who will be buying these owner-occupied units? And have these issues then thought through?

**Back to the petitioner:**

Lloyd wanted to go back to the clarification of practical difficulties, there are practical difficulties for them on the economics of this project because they are committed to doing owner occupied units. They have reserved buyers who want to live in the downtown area. Respectfully asked for approval of both variances.

**Back to the BZA:**

Throckmorton asked is any of his colleagues have any ideas for language for the additional findings for the variances.

Ballard said you could grant it because if you take away the parking you are devaluing the project and if you don't grant the variances then they most likely won't do the project. Klapper said the difficult things about variances is the way that "practical difficulties" is defined, which is really narrow and doesn't allow them to think about the business model or what is being proposed. Ballard said there is the evaluation of the property and if the variance is not granted it lowers the valuation of the property.

Klapper said the way that they have to look at a piece of property that there has to be something unique physically about that property that can be related to what is currently proposed. Because this existing parking lot is depressed, is there anything unique about this site, apart from the business model and the product they are wanting to put there. We have a very narrow purview. Throckmorton said there is a lot to be said for the topography but is it enough to warrant the variance? Klapper said maybe that point and the nature of the alleys that are highly used. I understand that's what makes this project work but it's not up for consideration. Burrell agreed the alleys are highly used. The topography is complicated—it's a flat surface. I don't know how the parking can be accomplished.

Strauser said their unique circumstance is they don't have access off of Kirkwood which limits one of our access points to the building. There are two very busy alleys that also have sloped topography. We have limited access points; the varying topography of the site, including the existing alleys that have infrastructure in that cannot be adjusted, which causes us to be constricted by all of those points. Throckmorton summarized by saying it is the parking that is causing the problem and they would have to counter the UDO to have owner-occupied housing rather than apartments the board needs a compelling reason to allow this type of request to be granted. Klapper said in reality this might not be the right project for this site based on the UDO today.

Scanlan said Staff knows that parking can come off the property to the east of the site, which is what the original approval was, asked the board to be cognizant of that when considering variances, but acknowledged that was not in their purview because it is not in variance request.

Throckmorton asked what options, if any, the petitioner has if this request were denied. Scanlan said there is a time limit, of six months, if they wanted to come back or they could come in compliance with code and move forward. They would have to go before the Plan Commission no matter what happens with the BZA. Burrell asked if there was any advantage to continuing this to another meeting for the petitioner to look for substantial findings. Klapper doesn't see findings that would allow them to grant the variances

Klapper didn't think alternative findings could be crafted to support the variances based on the details of the project. Throckmorton said this is rather confusing. The site is rather odd but it's in conflict with the UDO. Because of the issues that you cannot change the alleys, etc., I'd like a little more time to think about it. I think it's a really difficult piece of property. Klapper said if we decide to continue this petition, we need some specifics and

how it sets up a unique dynamic to this piece of property that doesn't occur with other properties along Kirkwood.

Scanlan said this amount of parking (the proposed parking) isn't required, the petitioner just wants it. The proposed parking isn't what the site requires. Though the UDO allows parking, they have to be able to fit it into the space. Doesn't mean it can be granted because it is allowed by the UDO. Sometimes things just aren't ideal for the physical space available.

Lloyd is in favor of a continuance, it would be better than a denial and they feel that could put together additional information for the board.

Throckmorton explained to the petitioner his options, if the board moves to deny the request they would have the option to repetition and come back. The board would be then be asked at the beginning of the meeting whether they are willing to hear your new petition, they would have to vote to allow that before you would be able to present. The board has the opportunity to say they are not going to hear the case again, it has been closed.

Rouker said if there is additional information brought forward by the petitioner, the BZA could consider it by allowing the petitioner additional time present additional information.

**\*\*Throckmorton moved to continue V-27-22 to the September 22, 2022 hearing.  
Ballard seconded. Motion carried 4:0.**

Meeting adjourned at 8:30 p.m.