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The Board of Zoning Appeals (BZA) met on July 21, 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, Flavia Burrell, Tim Ballard and Erik Coyne (Jo Throckmorton absent).

APPROVAL OF MINUTES: None at this time.

REPORTS RESOLUTIONS & COMMUNICATIONS:

Jackie Scanlan, Development Services Manager, announced that two petitioners are requesting a continuance to the August 2022 hearing. The Board will need to vote on this since both petitions are on the agenda to be heard. ****Coyne moved to continue AA-24-22 (John Mackey) to the August BZA hearing. Burrell seconded. Motion carried unanimously. **Coyne moved to continue V-27-22 (Cutters Kirkwood 123, LLC) to the August BZA hearing. Burrell seconded. Motion carried unanimously. Both petitions will be heard on August 25, 2022.**

PETITIONS CONTINUED TO: August 25, 2022

AA-17-22, Joe Kemp Construction & Blackwell Construction; V-26-22, Bailey 8, LLC; V-28-22, Warren Witt; AA-31-22, Lamar Advertising Company; CU-25-22, Doug McCoy (Grant Properties).

PETITIONS:

AA-20-22 **Bryan Rental, Inc. (Dave Kamen)**
3175 W. 3rd St.
Request: Administrative Appeal of the Staff determination that sign permit #C20-677 expired on June 2, 2022.
Case Manager: Gabriel Holbrow

Gabriel Holbrow presented the staff report. In March 2018, representatives for Bryan Rental initiated steps to obtain a sign permit for a new freestanding sign adjacent to 3rd Street on the property located at 3175 W. 3rd Street. At that time, the property was zoned as part of a Planned Unit Development (PUD) with allowances for number, size, and height of signs specific to the PUD. On May 17, 2020, zoning map amendments took effect that rezoned the property to the Mixed-Use Corridor (MC) zoning district. On November 25, 2020, the Planning and Transportation Department received a sign permit application from Hi-Rise & Sign Services on behalf of the petitioner for a freestanding sign at 3175 W. 3rd Street. The proposed sign is 30.26 feet in height with 125 square feet of sign face area. Based on signage standards that applied to the PUD before May 2020, the Department issued sign permit #C20-677 on February 9, 2021 for the requested sign. On May 20, 2022 (15 months later), Green Sign Company contacted the Planning and Transportation Department asking whether sign permit #C20-677 was still active. After confirming that the sign had not been erected, Staff sent an email to Bryan

Rental and Green Sign Company on June 2, 2022 indicating that sign permit C20-677 had expired. On June 3, 2022, David Kamen as the representative of Bryan Rental, Inc. filed an Administrative Appeal of the Staff determination that the permit had in fact expired. The Unified Development Ordinance (UDO) establishes the time validity of sign permits in **Section 20.06.050(j)(3)(C) – i. Duration:** The sign authorized by a sign permit shall be completed and erected within six (6) months of the date of issuance; otherwise, the sign permit shall lapse and become null and void, unless good cause of an extension of time for completion is approved by the Planning and Transportation Director. **ii: Extension:** One extension of up to six (6) months may be authorized by the Planning and Transportation Director for reason/cause. The petitioner shall submit the request for extension in writing to the Planning and Transportation Director, and the Planning and Transportation Director shall make a written determination regarding his or her decision to extend or deny extension. Both the request and the determination shall be made part of the sign permit record. So this section of the UDO establishes that sign permits last for six (6) months, with a possible six (6) month extension, for a total duration of 12 months. Holbrow said even if one permissible extension had been authorized, the sign permit would still have lapsed on February 9, 2022. As of May 2022, the sign authorized by the permit had not been completed or erected in accordance with the video. Because this petition is an Administrative Appeal, Staff does not make a formal recommendation.

Thomas Densford, Attorney is representing the petitioner. He said I don't disagree with the factual information provided in the staff report. I agree that what has been presented to this Board is an accurate text of the relevant sections in the ordinance, but there is a background here that the petitioner release provides authority for this Board to exercise its discretion to find there is good cause for an extension of the construction period for an additional six (6) months. The original application was made on November 25, 2020 and the permit was issued February 9, 2021, but prior to that, there was approximately 2-1/2 years of back and forth between the property owner and members of the Planning staff. Bryan Rental felt they had a right to build this final sign within Whitehall Plaza. There was a plat that was approved and recorded decades ago that provided for multiple signs and there was still a sign that remained to be built according to the number that had been originally approved. The Planning staff disagreed. Construction of another sign would require a show of necessity before the Plan Commission. This dispute continued for months before the Legal Counsel for the City of Bloomington ruled in favor of Bryan Rental. This has gone to the wayside because of the new zoning in the Mixed-Use Corridor district. As it turns out, the sign application was submitted and approved at the height of the Covid pandemic. This was a time when it was very difficult if not impossible to get materials like fabricated steel, assistance for professional services, architects, and contractors. In addition, there were labor shortages. Everything necessary to construct this sign was simply not available. These issues were not unique to the construction of this sign, these are issues that were endured globally, so as a result the sign did not get completed within the 6 month period. The interpretation by the Planning staff that the construction time any 6 month extension have to run concurrently, isn't expressly stated in your ordinance; there is no connection between those two. The petitioner is requesting that the BZA recognize that the Covid pandemic and the associated difficulties and delays in construction constitute "good cause" which is the term used in your ordinance, and allow for a 6 month extension beginning this evening to complete the construction of the sign. I would also point out there is no one from the public opposing this appeal. He urged the Board to consider the spirit of the ordinance which provides for exceptions to these deadlines.

Tom Orman said he's a friend of Dave Kamen and he's been with him throughout this sign project. In simple terms, they "kind of" got caught up in Covid. Dave was prepared to build the sign in 2018 and it was the Planning Department that delayed him for three years, and then the Legal Department had to get involved which is a fair assessment. So when he did receive the permission to do it, we were at the height of Covid and naturally everything was shut down. These meetings were even shut down—they were all Zoom. We are asking forgiveness for what took him three years due to Covid, and give him a chance to get what is owed to him at this point.

Dave Kamen, petitioner, talked about projects he was involved in pre-Covid and those were completed with no problems. He also talked about projects that he was involved in, in Bloomington and Ellettsville during the Covid period with multiple delays due to supply chain problems, subcontractor issues, and architect issues; waited for weeks on Duke Energy. Simple remodels were delayed too. Kamen said if I had received the sign permit pre-Covid, when I asked for it many times, we wouldn't be here today. The Planning Department process took one month shy of three years for me to get the approval. The process during the Covid period was broken. I would appreciate your consideration because Covid has been difficult and not just for me. Let's all work together and try to help each other out. The determination from the City's Legal Department is we were right from the start.

BZA Discussion:

Barre Klapper asked Staff to refresh her memory on a prior case pertaining to signs that the Board heard regarding this same property. **Jackie Scanlan, Development Services Manager**, said that case wasn't related to this sign but rather the "At Home" sign where they were trying to have more signage on that sign than was allowed by code. **Klapper** said just to make it clear; the reason they can't just apply for the sign permit is because the code changed and PUD's are no longer in place. So those rights go away and now they have to comply with current code? **Scanlan** explained the petitioner can apply for a permit but it won't be of the type of sign design they desire. The property was previously zoned PUD for decades. This property was rezoned and when we did the zoning map update in 2019-2020, this property was rezoned from PUD. So the only reason they were allowed to have a sign of the size that this permit allowed was because of those PUD rules and now those rules are gone. Mr. Kamen is right; it was a very complicated process to figure out what kind of sign could go here at the time when the permit was issued. None of that is within the purview of this Board. You do not have the purview to offer them relief because they didn't like the experience they had or because their sign expired because of Covid. So your purview is to say they have made an Administrative Appeal to our determination that their permit is expired. They didn't request an extension. Your purview is to say whether or not we have read that correctly in an Administrative Appeal situation. If they were requesting a variance to sign standards and asking for a sign that doesn't meet code, and then explaining why they thought they needed that, that would be a different conversation but in an appeal it's very specific about them appealing our determination. **Erik Coyne** said since the new UDO came in in 2020, why was this sign approved in 2021? **Scanlan** said Mr. Rouker (Legal Dept.) can jump in, but it was a determination made by the City Council at that time, based on the discussions we had been having with them previously. So yes, it's odd that they got a permit in 2021 for their previously zoned PUD. Again it's not within your purview to decide whether or not that permit was issued in error, it's whether or not the permit that was issued expired. **Klapper** asked the petitioner if anybody asked about the standard

sign permit expiration. **Densford** said there was no disclaimer or information that would inform the petitioner, that there was a six (6) month construction period. That particular provision is located on Page 302 of your ordinance which was not known to the petitioner at the time. **Kamen** said he got lucky and was able to finally meet with Philippa Guthrie (City Attorney) after his fourth request, so that's why there was a big lag time on my timeline between when the determination was that I had to go to the Plan Commission. **Burrell** asked if the petitioner could still apply for an extension. **Scanlan** said an extension could be applied for if a permit is current. In this situation, the permit has already expired. **Coyne** asked why is this even before the Board if they cannot extend an expired permit. Shouldn't this go to civil court? **Scanlan** said this is a step that is necessary before it goes to civil court. **Rouker, Legal Counsel**, confirmed this to be true.

PUBLIC COMMENTS: None.

Densford says the position the Planning Department has taken is not based on the strict reading of the Ordinance, it's based on policy and interpretation they have established that favors them 100% of the time. The Ordinance says the permit should have been issued in 30 days, but it took 90 days for approval; P&T is 60 days behind their own deadline. Urging the Board to grant an extension for a 6 month period.

Coyne asked Planning & Transportation if there has been a formal request for an extension. **Holbrow** responded that Staff did not receive a request for an extension. **Scanlan** said if an extension request has been received they would have run it by legal (Legal Dept.) and based on previous conversations the request would have been denied.

****Klapper moved to deny AA-20-22 based on the staff recommendation and findings outlined in the staff report. Burrell seconded.**

Back to the BZA:

Burrell asked if the permit was so hard to obtain, why wasn't there more attention paid to the expiration? Unfortunately they have to follow what the UDO says. **Ballard** believes the stance of the Staff seems very subjective and believes the Ordinance as cited by the petitioner makes more concrete sense. COVID was responsible for a lot of delays in projects. This petitioner has a good track record for completing projects in a timely manner and this issue is complex. He believes they should help the developer in this circumstance. **Klapper** said we're so far out of date from when the original permit was issued. We are being asked to interpret what is in the UDO and she feels uncomfortable stretching things to this degree. Seems very clear to her what the Ordinance says. I don't feel this is discretionary, she will be voting to deny the appeal. **Coyne** agreed with Klapper, doesn't think this Board has the authority to grant this type of extension when a request for an extension wasn't requested.

ROLL CALL: 3:1 – DENIED (Ballard Opposed).

AA-23-22 **Leo Pilachowski**
2028 E. 1st St.
Request: Administrative Appeal from the Planning and Transportation
Department's decision regarding a drive cut.
Case Manager: Jackie Scanlan

Mike Rouker, Legal Counsel, presented AA-23-22 regarding a non-compliant drive cut at 2028 E First Street, in order to bring the property into compliance with the UDO the Staff directive was the drive cut was to be removed and curbing be installed as part of the development of the adjacent lot. During an inspection, Staff verified that the petitioner eliminated the non-compliant drive cut and installed the required curb. There remains no allegation from the City that the property is not compliant with the UDO. The City must dismiss AA-23-22 as moot, because the City does not allege the petitioner is not compliant. The dispute is no longer valid because the City lacks no sizable interest in the outcome, City Staff has determined the current issue is compliant with the UDO and no one from the City is suggesting otherwise. Second, the principle question at issue seems to be a matter of real controversy. The petitioners performed the construction activity altering the curb so the Planning Department and BZA have no interest in pursuing any municipal prosecution against the petitioners for violation of zoning code proper curb cut. Finally and most persuasively this Board is unable to render effective relief to either the petitioner or the City. The Board is prohibited from rendering a decision that is merely an advisory opinion for use in some theoretical subsequent proceeding in front of a different body, this Board must adjudicate actual controversies and there is no controversy between the City and the petitioners. If the petitioner believes that he is entitled to civil damages he is welcome to initiate a cause of action against the City in civil court, but not before this Board. This party may not render a mere advisory opinion, so the BZA must dismiss this appeal.

Leo Pilachowski, petitioner, asked why this Board has jurisdiction to hear and decide this case. Would like to address Mr. Rouker's three points that he outlined in his presentation. Petitioner noted there is no case law in Indiana that pertains directly to this point for the BZA. The issue is he disagrees with the Planning Department on whether the existing street level curb constitutes a driveway access point as not defined in the UDO. The UDO says you can only have one, but is it a legal controversy. This was not explained until this evening by Mr. Rouker. It wasn't explained in the memo that the deciding Board must have the ability to readdress the grievance or to provide an avenue for the grievance to be readdressed. The second point is with the appellate courts, appellate courts usually don't award damages they either confirm the previous ruling or they send the thing back to the previous determining body to say you made a mistake and you need to look at this again. Why can't the Board provide me a readdress? As Mr. Rouker did not tell you, in this case the Indiana Code, the UDO and case law in Indiana all require and specifically state that for matters of zoning code interpretation or for administrative decisions the BZA has original jurisdiction. The civil courts only have appellate jurisdiction after decision are made by the BZA and that is a strict rule of law in Indiana. There is only one exception that is if someone claims the whole UDO is invalid, but that is not the case here. Looking at Mr. Rouker's example, if he wanted to get civil damage for having to do something I shouldn't have had to do, which he said that was a possibility, he cannot go to civil court and say the City has interpreted the law wrong and that he did not have a street level curb as a second driveway access point. Because he has not gone to the BZA yet and had them make that determination, so he can't argue with the BZA determination because there isn't any. So if he went to civil court Mr.

Rouker would argue that they exhausted all administrative remedies. Therefore a decision by this Board is necessary if I wish to take this to a civil court. The BZA is not going to give him the readdress but it will provide him the avenue. The Board is an appeal of an administrative position and that is what you are allowed to do, he is not asking for an appeal, he is just asking for the interpretation of the code. He is asking the Board to make the decision, not whether to not hold this hearing, but to decide if they have jurisdiction to hear this case or whether their decision will allow him other avenues to readdress.

BZA Discussion:

Coyne asked for clarification on what the petitioners appeal would be for, would the appeal be for the curb? **Pilachowski** said he would appeal the interpretation of what a second driveway access point is. **Burrell** asked the petitioner if there were two driveways when he bought the property. **Pilachowski** said when he bought the property there was access on the west side with a little gravel, not a true driveway but he wanted to put in a driveway 100 feet to the east. He removed the apron for the original access but was hesitant to replace the curb because of the issues with getting the work done. In his opinion, there were never two drive ways there. **Coyne** asked Mr. Rouker, based on his memo, if anyone who complies with a Notice of Violation (NOV) loses any opportunity to appeal to this Board, whether or not that notice is valid. **Rouker** said that is not the case. In a lot of cases there will be a fine or something that will be outstanding that makes something an active case for controversy but there is nothing like that in this case. There were no fines issued to Mr. Pilachowski, he could have left the curb and then got it sorted out before any fines could have accumulated against him. **Pilachowski** said he was forced by the City Engineer to remove the curb. The City would have taken away my right-of-way permit. He felt he didn't have any choice. He would have gladly delayed the work if the City hadn't forced him to do so. **Scanlan** said the removal of the driveway entrance were discussed during the permit process and if he did not agree with the interpretation at that time. He could have come to this Board at any time after that which could have been beneficial.

****Coyne moved to dismiss AA-23-22 based on its mootness. Burrell seconded. Motion carried 3:1 (Ballard opposed) – the Administrative Appeal is dismissed.**

V-29-22 **Mistie Nigh, ASA Above the Rest**
2105 Liberty Dr.
Request: Variance from signage standards to allow the installation of a digital order screen covering more than 40% of the area of a sign face for a permitted drive-through use in the Mixed-Use Medium Scale (MM) zoning district.
Case Manager: Gabriel Holbrow

Gabriel Holbrow presented the staff report for a variance request for 2105 S. Liberty Drive on the west side near State Road 45 and I-69. The existing land use is a Starbucks restaurant with a drive-through. The use has received approvals and construction is getting close to complete. The property has also obtained a sign permit for new permanent signage that is fully compliant with the Unified Development Ordinance (UDO), including wall signage, a freestanding sign on the State Route 45 frontage, and a menu board for the drive-through lane. The petitioner is requesting a variance to install a digital order screen for the drive-through lane. With the digital order

screen, drive-through customers can see and confirm their order details and total bill while they speak with drive-through staff through the audio communications device. The proposed digital order screen is incorporated into a sign mounted on a canopy. The area of the sign face is 9.625 square feet, more than 60 percent of which is the digital order screen. The height of the sign is adjustable, up to 5.5 feet in height. The canopy itself is approximately 9.8 feet in height. The UDO has a few extra allowances for signs specifically for drive-through uses. The requested sign could be considered one of two freestanding signs allowed by UDO section 20.04.100(j)(5)(B) as in Bravo. One direction sign for the drive-through has already received a permit under this subsection, so there is an allowance for one more. However, these freestanding signs are each limited to four square feet in area and four feet in height, smaller than the proposed sign with the digital order screen. It would be more consistent with the intent of the UDO to consider the proposed sign as a second sign of the type permitted in UDO Section 20.04.100(j)(5)(A) as in Alpha, which allows one 36-square-foot sign up to six feet in height for each drive-through lane. There is only one drive-through lane, and the allowance in (j)(5)(A) has already been taken up by a permitted menu board. A variance is required to allow a second sign of this type for the single drive-through lane. A digital screen, when incorporated as part of a sign, is categorized by the UDO as an “electronic reader board”. UDO Section 20.04.100(g)(3) allows electronic reader boards, quote, “provided that they do not exceed more than 40 percent of the total area of any sign face, and that information is displayed in increments of no less than 20 seconds.” The proposed digital order screen comprises more than 60 percent of the proposed sign face. A variance is required to allow the proposed size of the digital order screen in relation to the size of the proposed sign and to allow displays of information in increments of less than 20 seconds. The provisions in the UDO allowing additional signs for drive-through uses was written based on the former standard practice and technology for drive-through ordering, where a customer would speak into an audio communications device while looking at a static menu board. Digital order screens, such as the one requested in this petition, are increasingly becoming the industry standard for drive-through uses through-out the county. Staff intends to propose an update to the UDO in 2023 to accommodate these types of digital order screens in some way. However, they are currently not allowed under the City of Bloomington UDO because of the limit on the number of signs for each drive-through lane and the limit on sign area for an electronic reader board. As you know, there are three criteria for approving a variance and the petition has to satisfy all three.

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
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.
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 standard variance will relieve the practical difficulties.

The proposed findings are that the petition passes the first two criteria, but fails on the third. Based on the report and the written finding of fact, the Department recommends that the Board adopt the proposed findings for V-29-22 and denies the requested variance.

Mistie Nigh, petitioner, Starbucks is asking for variance approval for the digital order screen at the Liberty Drive location, as well as the N. Jacob Drive location. They feel the digital order screen serves an important purpose as part of the drive through process as our communities grows, so does our population, making it imperative that customers and drive through are served as quickly and efficiently as possible to maximize business, ensure a positive customer experience and to prevent traffic issues caused by long drive through lines. Starbucks prides itself in offering approximately 87,000 drink combinations on its menu, which could certainly cause delays in the ordering process and allow for mistakes to be made. Starbucks has incorporated the digital order screen into their drive through process as it allows customers to see their order pop up on the screen. It gives customers an opportunity to correct their order before the orders prepared. She has brought some drawings from other Starbuck sites that are either already installed or in the permitting process that include digital order screens. As these digital order screens are becoming an industry standard for drive through uses throughout the county we are seeing more of them being permitted and sign permit regulations being changed to allow them.

Tim Ballard had a question about the recommendation to amend the UDO in 2023, would that allow for this sign to be approved? **Holbrow** noted they have looked deeply into it so he can't say whether it would. He is not able to answer that question at this time. **Barre Klapper** asked if they could consider as a proposed finding for number three a practical difficulty would be the efficiency of running this type of business and that the peculiarity of this property is that it is being developed as this business. **Holbrow** said the answer to the question is yes, you can consider that. **Klapper** is suggesting that they create another proposed finding that there is practical difficulty and it is peculiar to these businesses.

No public comment.

Morgan Aussprung is a Project Manager with Hilton Display who is a sign vendor for Starbucks. Contributes to speed of order. The key word is efficiency. It will also prevent traffic issues by getting people in and out of the drive-through as quickly as possible.

BZA Discussion:

- (1) 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.

V-29-22 ALTERNATE FINDING FOR CRITERIA 3 - Adopted by BZA at 7/21 hearing:

FINDING: Not being able to offer drive-through customers a digital order screen results in a practical difficulty in the use of the property for a drive-through use. As stated by the petitioner, it is imperative that drive-through customers are served as quickly and efficiently as possible to maximize business, ensure a positive customer experience, and to prevent traffic issues caused by long lines of queueing vehicles. The digital order screen provides a higher level of accessibility for customers to see their order, not just hear their order. The property in question is peculiar within the city because it is completely surrounded by other vehicle-oriented land uses, including the I-69 interstate highway, State Route 45, drive-through uses adjacent to the east and west, a vehicle

fuel station, and other vehicle-oriented commercial uses. Road noise can also contribute to difficulty in auditory communication between drive-through staff and customers. Allowing the proposed digital order screen would relieve the practical difficulties created for this property because of its existing use.

****Burrell moved to approve V-29-22 with alternative Findings of Fact for criterion #3 as stated by Gabriel Holbrow during the hearing. Ballard seconded. Motion carried 4:0—Approved.**

V-30-22 **Mistie Nigh, ASA Above the Rest**

284 N. Jacob Dr.

Request: Variance from signage standards to allow the installation of a digital order screen covering more than 40% of the area of a sign face for a permitted drive-through use in the Mixed-Use Corridor (MC) zoning district.

Case Manager: Gabriel Holbrow

Gabriel Holbrow presented the staff report. This variance request is very similar to the last one. This one is for 284 N. Jacob Drive, in the Whitehall Crossing Shopping Center. This property is 1.22 acres is zoned Mixed-Use Corridor (MC), which is slightly different from the previous petition. The Comprehensive Plan designation is Regional Activity Center, also slightly different from the last petition but not substantially different for what were are talking about. Existing land use is a restaurant with a drive through in a multitenant non-residential center so that is another slight difference. Surrounding uses to the north is restaurant, to the south is the same property, small retail sales, west is big box retail sales and east is I-69. Drive-through customers currently enter with their vehicles from the two-way drive on Jacob Drive on the upper left, proceed right and then right again along the side of the building. Currently ordering and pickup happens at the same window. The restaurant intends to move the ordering step of the drive-through to a grass area at the north end of the property, where you see the labels for E and D in the upper right, earlier in the travel path for the drive-through. As part of that modification to the drive-through layout, the petitioner has proposed new freestanding signs for the drive-through use as well as some replacement wall signage. All but one of the proposed signs are fully compliant with the Unified Development Ordinance (UDO). The petitioner is requesting a variance to install a digital order screen for the drive-through lane. With the digital order screen, drive-through customers can see and confirm their order details and total bill while they speak with drive-through staff through the audio communications device. The proposed digital order screen for this location is incorporated into a freestanding sign 12.96 square feet in area and 5.96 feet in height. The screen comprises 10.12 square feet, which is 78 percent of the total area of the sign face. The proposed sign is shaded by a 10.32-foot-tall canopy. The UDO has a few extra allowances for signs specifically for drive-through uses. The requested sign could be considered one of two freestanding signs allowed by UDO section 20.04.100(j)(5)(B) as in Bravo. One fully compliant direction sign for the drive-through as a whole has already been proposed under this subsection, so there is an allowance for one more. However, these freestanding signs are each limited to four square feet in area and four feet in height, smaller than the proposed sign with the digital order screen. It would be more consistent with the intent of the UDO to consider the proposed sign as a second sign of the type permitted in UDO Section 20.04.100(j)(5)(A) as in Alpha, which allows one 36-square-foot sign up to six feet in height for each drive-through lane. There is only one drive-through lane, and the allowance in (j)(5)(A) has already been taken up by a

permitted menu board. A variance is required to allow a second sign of this type for the single drive-through lane. A digital screen, when incorporated as part of a sign, is categorized by the UDO as an “electronic reader board”. UDO Section 20.04.100(g)(3) allows electronic reader boards, quote, “provided that they do not exceed more than 40 percent of the total area of any sign face, and that information is displayed in increments of no less than 20 seconds.” The proposed digital order screen comprises more than 60 percent of the proposed sign face. A variance is required to allow the proposed size of the digital order screen in relation to the size of the proposed sign and to allow displays of information in increments of less than 20 seconds. The provisions in the UDO allowing additional signs for drive-through uses was written based on the former standard practice and technology for drive-through ordering, where a customer would speak into an audio communications device while looking at a static menu board. Digital order screens, such as the one requested in this petition, are increasingly becoming the industry standard for drive-through uses through-out the county. Staff intends to propose an update to the UDO in 2023 to accommodate these types of digital order screens in some way. However, they are currently not allowed under the City of Bloomington UDO because of the limit on the number of signs for each drive-through lane and the limit on sign area for an electronic reader board. As you know, there are three criteria for approving a variance and the petition has to satisfy all three.

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
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.
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 standard variance will relieve the practical difficulties.
4. The proposed findings are that the petition passes the first two criteria, but fails on the third.

Based on the report and the written finding of fact, the Department recommends that the Board adopts the proposed findings for V-30-22 and denies the requested variance.

Mistie Nigh said her comments from the previous petition stand for this petition as well. This site has a lot of road noise from the I-69 Highway. This site is smaller and it’s difficult to hear from the road noise.

No public comments.

V-30-22 ALTERNATE FINDING FOR CRITERIA 3 - Adopted by BZA at 7/21 hearing:

FINDING: Not being able to offer drive-through customers a digital order screen results in a practical difficulty in the use of the property for a drive-through use. As stated by the petitioner, it is imperative that drive-through customers are served as quickly and efficiently as possible to maximize business, ensure a positive customer experience, and to prevent traffic issues caused by long lines of queueing vehicles. The digital order screen provides a higher level of accessibility for customers to see their order, not just hear their order. The property in question is peculiar within the city because it has no direct access to a public street and is completely surrounded by other vehicle-oriented

land uses, including the I-69 interstate highway and other commercial shopping center uses. Road noise can also contribute to difficulty in auditory communication between drive-through staff and customers. Allowing the proposed digital order screen would relieve the practical difficulties created for this property because of its existing use.

****Burrell moved to approve V-30-22 with alternative Findings of Fact for criterion #3 as stated by Gabriel Holbrow during the hearing. Ballard seconded. Motion carried 4:0—Approved.**

Meeting adjourned at 7:45 p.m.