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The Board of Zoning Appeals (BZA) met in the Council Chambers at 5:30 p.m., members present: Aquila, Hoffmann, Klapper, and Throckmorton (arrived after roll call).

**APPROVAL OF MINUTES:** November 16, 2017

**\*\*Hoffmann moved approval of the minutes as distributed. Klapper seconded. Motion carried via voice vote.**

**REPORTS, RESOLUTIONS AND COMMUNICATIONS:**

James Roach, Development Services Manager, said we have a bare quorum until board member Throckmorton arrives and as such it will take a unanimous vote of the BZA for any action.

**PETITIONS:**

- UV/V-30-17 **Gwynne and Ben Shively**  
722 W. 2<sup>nd</sup> St.  
Request: Use Variance to permit a barber/beauty shop in the Medical (MD) zoning district and a variance from architectural standards.  
*Case Manager: Amelia Lewis*

Amelia Lewis (Zoning & Long Range Planner) presented the staff report. The site is located at 722 W. 2<sup>nd</sup> Street immediately adjacent to The Building Trades Park. The property is zoned Medical (M) and located at the edge of the Prospect Hill Local Historic District. The property consists of an approximate 1,400 sq. ft. single story detached structure that has been converted to a barber/beauty shop. This use was established prior to the existing UDO (Unified Development Ordinance), making it a legally non-conforming use. The petitioners are proposing to demolish the existing structure and construct a 3-story, mixed-use structure. The existing barber/beauty shop would be relocated to the first floor of the new building. The second floor would consist of an owner-occupied unit, and the third floor would be a one 2-bedroom unit and one 1-bedroom unit. Since the structure is located in a historic district, the petitioners were required to receive a *Certificate of Appropriateness* (COA) from the HPC (Historic Preservation Commission). In order to move forward with this proposal, the petitioners are requesting a Use Variance to permit a barber/beauty shop in the Medical zoning district and a variance from architectural requirements regarding the roof eaves. An overview of the site; there is an existing alleyway along 2<sup>nd</sup> Street. Pavers would be located in between the sidewalk and the building. The main entrance to the building would be along the east side. There are 8 parking spaces proposed; 6 on the side of the building and 2 spaces in the garage for the owner-occupied unit. The site plan meets density, height, parking, and all other UDO features besides the two variances. Looking at the building the east elevation would be immediately adjacent to the park which is one of the more visible facades. The proposed materials include smooth white stucco and wood planks with a walnut stain; the roof is architectural asphalt shingles. Focusing on the architecture variance; roof eaves are required to hang over the roof by 2 feet which is more traditional in design. The building is fairly modern in design and the petitioner has chosen not to

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put eaves on the building. Staff could not find any injury to the public or undue adverse effects from this proposal. It's primarily a result of conflicting standards between the UDO and the Historic District architectural guidelines; however, the design was approved through the Historic Preservation Commission (HPC). Any changes would be required to receive a new *Certificate of Appropriateness (COA)*. Regarding the Use Variance; the Medical district prohibits most commercial uses, including barber/beauty shops. Staff could not find any adverse impacts to the neighbors and no injury to the public. The site is currently being used with the same use, it's just going into a new building. Given that the site is zoned Medical, including the eventual move of the hospital, the area is likely to change substantially. The Growth Policies Plan (GPP) designates this property as Public/Semi-Public/Institutional. The GPP notes that this land use is designed to provide support to the hospital and with the anticipated land use change this request does not substantially interfere with the general and specific policies of the GPP for this area. Staff recommends that the BZA adopt the findings and approve the petition based on the written findings outlined in the staff report, including the following conditions:

1. The landscape plan will be approved by Staff prior to the release of grading and building permits.
2. Prior to occupancy the petitioner shall record a *Zoning Commitment* acknowledging that the one bedroom unit shall only have one room used as a bedroom.
3. The existing sidewalk ramps shall meet ADA standards.

Mike Shively, Architect for the project, said the COA through the HPC was done in two phases. The first phase involved a lot of neighbor feedback on the property. The site is unusual in that it's in a sensitive neighborhood district but still on a commercial street and a mixed-use property. The proposed height of the building was lowered by 5 feet from the original submittal in order to be more in keeping with the existing ridge heights throughout the neighborhood. He's hoping to get a unanimous approval on their second review.

Barre Klapper asked the petitioner about the south elevation which faces 2nd Street. The door doesn't look very prominent on the south elevation. Given that this door faces the major street, she asked if he had any other architectural features such as lighting, canopy, or signage that would help to accentuate that area.

Shively said they received the same feedback from the HPC so they made the entry much more prominent. The glass door is approximately 48 inches wide (on the 1<sup>st</sup> floor), and there is another aligned window directly above it that is similarly scaled to bring out the full height of the façade.

Klapper asked if there would be signage.

Shively said there would be to the extent that it isn't confusing. The actual entrance to the salon will be on the side adjacent to the parking. This would be a door to allow salon access out to the paver area in front of the building.

*No public comment.*

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**\*\*Hoffmann moved approval of UV/V-30-17 based on the written findings, including the three conditions outlined in the staff report. Klapper seconded. Motion carried via voice vote 4:0—Approved.**

- V-32-17      **Jeff Meyer (Culver’s)**  
1914 W. 3<sup>rd</sup> St.  
Request: Variances from development standards including parking setback, maximum number of parking spaces, and tree preservation requirements in the Commercial Arterial (CA) zoning district.  
*Case Manager: Jackie Scanlan*

James Roach (Development Services Manager) presented the staff report. The property is located on the west side of Bloomington along W. 3<sup>rd</sup> Street. It is approximately 2.3 acres in size and zoned Commercial Arterial (CA). Immediately to the west is the Master Rental tool and party supply store which is northeast of the intersection of Cory and 3<sup>rd</sup> St. If you come north off of that signalized intersection there is a private drive that serves both Master Rental and the property to the east. This property is listed as a *Community Activity Center (CAC)* in the Growth Policies Plan (GPP). The property is currently undeveloped and includes a wooded area and some disturbed grassed areas, and then some artificial slopes coming down to the street that were a result of the W. 3<sup>rd</sup> widening project several years ago. The petitioner is proposing to build a new 5,500 square foot Culver’s restaurant. It would be a one story restaurant with a basement storage area. Approximately 1 to 1-1/2 years ago, Staff worked with the petitioner at another location further to the west regarding a parking variance issue which was later reviewed by the Hearing Officer. For various reasons that property did not end up working out and the petitioner continued to look for suitable land. The petitioner has been looking at this section of land for quite some time. Staff has worked with the petitioner the past 8+ months to try and get this petition as close to code compliance as possible. However, there are three elements of the project that do not meet the UDO requirements and therefore variances are being requested from those three items. The first is a variance to allow more parking than would normally be allowed; variance from maximum parking requirements. The second is a variance from the parking setback and drive aisle setback requirements for parking a drive closer to the street than would normally be permitted. The final variance addresses tree preservation requirements and the tree canopy preservation percentages. Regarding the maximum parking variance; for a restaurant of this type the UDO has a maximum permitted parking count of 55 spaces. Roach explained that many cities regulate parking by minimums. Businesses must provide a minimum number of spaces and then they can provide more spaces to the extent that the property can maintain, but Bloomington does it differently in that we have a maximum parking allowance. The community would prefer that developers not build more than what they need on a typical basis; the number in the code is 55 spaces. The UDO was adopted in 2006; however since that time it’s been understood that we may have gotten those numbers wrong in that we might not have taken into account every business model or type of use. In this case, the petitioner has four other locations (stores) that they have studied and those numbers are in your packet. The petitioner believes they need approximately 75 parking spaces with a store of this size. This takes into account their employees; no opportunities for spillover parking and no street parking on 3<sup>rd</sup> and Cory Lane; no opportunities for a shared parking situation either. Staff has determined that 75 spaces is justified. So the first variance is to allow 75 parking spaces instead of 55. Moving on to the parking setback and drive aisle variance. The UDO requires that both drives, drive through, and parking spaces be set back from the front of the building along the street at least 20 feet beyond the front building wall of the structure; parking is wrapped around the back or the side to make the building the prominent feature on the property. In this case, the petitioner has attempted to do that as much

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as possible but there are two things limiting that. One, there is a large number of trees along the back of the property. Attempting to preserve those trees causes all of the development to be pushed further to the south. If they were able to take down all of those trees they could move the parking back and not need a variance but in this case that isn't possible. The second item is the access on 3<sup>rd</sup> Street. The property is accessed from a shared drive coming off of a signalized intersection at 3<sup>rd</sup> and Cory. This drive is used by two different businesses: Master Rental to the west and this business to the east. There is a very short distance between the proposed drive-through and where the signal is located. Given that amount of distance you can only have a couple of cars stacked up at the light waiting to exit onto 3<sup>rd</sup> St. before you start blocking access to Master Rental and access to the rear of the property. To that end, it creates a situation where they need another way out for their drive through as well as their customers. The petitioner designed a drive (with no parking along it) in front of the building that would bring cars back out to a secondary entry/exit onto 3<sup>rd</sup> St. on the east side of the property. Keep in the mind that even that drive cannot serve traffic heading eastbound into the city because of the median in place on 3<sup>rd</sup> St. If anyone were headed west they would have to use the shared drive and traffic signal. This would only exacerbate the problem with the stacking distance. So the second variance is to allow for 6 parking spaces in front of the building setback, but not in front of the building, and a drive heading east and west between the building and the street. The final variance deals with tree preservation. This property subject property is 2.3 acres and approximately 1.1 acres of that (a little less than 50%) is covered with a tree canopy. Based on the UDO requirements they are required to preserve 70% of that. Once you take into account setback requirements and the preservation itself that means preservation of about 0.9 acres. So 0.9 acres out of 2.3 acres would be required to be retained. The petitioner is proposing to retain a little less than half of that at 0.41 acres. Roach noted the shape of the tree canopy/wooded area is very unusual. It's not all situated to one side or the back. It's a little bit of both which creates a strange shaped piece of land for development. The petitioner has put together a mitigation plan. Instead of preserving all of the required acreage, they plan to replace all of the native trees. They have found there are 22 native trees in the area to be disturbed. There are more trees than that but some of those trees are non-native or invasive trees. The trees to be replaced would be new native trees, 4 inches in diameter. This would allow them to have an opportunity to grow and thrive in order to recreate the canopy quicker than smaller trees would. The wooded area is a mix with a lot of invasive species around the edges, edge habitat, undergrowth, and also areas where human interaction has trampled the inner growth. In summary, this is a permitted restaurant use and not a Use Variance. The petitioner has shown a need for more than the 55 parking spaces that would normally be the maximum. There is no opportunity for on-street or shared parking in this situation. The shallow stacking distance at the light necessitates additional opportunities to be found for cars exiting the property, especially with the median. All of these issues lead to the requested parking setback variance. Given the difficult shape and layout of trees, parking needs, and the proposed mitigation, Staff believes this petition meets the criteria necessary for variance. Staff recommends approval of V-32-17 based on the written findings, including the following conditions:

1. Approval is for a maximum of 75 parking spaces.
2. Front yard setback approval is for a maximum of what is shown on the petition site plan. No additional encroachments can be added without further variance approval.
3. Replacement trees must be 4 inches in diameter.

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4. The petitioner shall record a tree preservation easement identifying those portions of the site that will remain tree canopy as a *Zoning Commitment* in the Monroe County Recorder's Office prior to the issuance of final occupancy.
  5. A construction site plan indicating measures to be incorporated to protect the trees that will remain must be submitted and approved by the City of Bloomington, Senior Environmental Planner before any Certificates of Zoning Compliance (CZC) will be issued.

***\*\*Note: In addition to the five (5) conditions above, the Planning staff is proposing that all mitigation/replacement trees be native species.***

Jeff Fanyo, petitioner's representative, said they have been working several months with the Planning Department trying to come up with a plan that is acceptable. During that time, several things have been done to reduce the number of parking spaces. Originally 83 parking spaces were being requested and now the request is for 75 spaces. Circular drive lanes have been removed whereby reducing the amount of impervious surface area. This helped to provide tree preservation along the east property line. Parking studies were also done to demonstrate the need for the requested parking spaces. Several representatives are present from other Culver's store locations should the BZA have questions about spillover parking and how they utilized shared parking by leasing spaces from other businesses. The drive aisle really improves the maneuverability of vehicles in/out of the site without congesting the intersection. The tree canopy causes the site to be difficult to develop. There are a lot of broken limbs and branches in the wooded area due to the weight of vines growing up through them. Basically the woods isn't healthy. They would like to clean-up the invasive species and vines and try to preserve as many trees as possible. This would include mitigating the removal of trees with new native species trees that are 4 inches in caliper. The proposed 22 trees will be planted in areas adjacent to the canopies to expand the existing canopy in addition to meeting the landscape requirements throughout the site.

Jo Throckmorton asked Staff if the BZA were to approve a variance from tree cover with the mitigation plan how would it be policed.

Roach explained the new 22, 4-inch native trees would have to be shown on their construction plans. And before the building were to be open to the public, Staff would ensure those trees were there and they would need to meet the required element of their landscaping plan so they would need to stay in perpetuity.

Joe Hoffmann asked if the drive being shown in the photograph is actually a shared drive with Master Rental.

Roach said yes. The red line is just to highlight the property and the green line is a closer approximation of the property line. The drive actually splits.

Hoffmann: And it's a two-way drive? Roach said yes.

Hoffmann said if you're coming up that drive, the first drive you pass is going to be an out only correct? And then you go into the second turn on the right?

Roach: When you are coming east to the west?

Hoffmann: No. Coming off of 3<sup>rd</sup> St. from either direction but on the shared drive.

Roach said the intention is that it's mostly to be exiting for the drive through but it was wide enough to allow for two.

Hoffmann asked the petitioner to clarify if the first entrance would be a two-way or one-way.

Fanyo said it would be a one-way, exit only.

Hoffmann asked where the exit is located via the beginning of the drop-off on the Master Rental side of the drive; there is a drop-off with a railing on the Master Rental site.

Roach suggested he ask the petitioner.

Hoffmann asked if the exit point is south of the beginning of the drop-off in question (referring to where the vehicle is parked on the left in the photograph).

Fanyo: Correct. It is.

Hoffmann: So its south of it? Fanyo said yes.

Hoffmann said so when people are exiting there is no chance of them going into the existing railing because they would be south of it at that point?

Fanyo said that is correct. Our access point is about 60 plus feet from the edge of pavement on 3<sup>rd</sup> St. I'm not exactly sure where the retaining wall is located but I believe it's just beyond that.

Hoffmann asked Staff if there is a reason to care about having a reflector or something to indicate to people they shouldn't go in the direction of the railing and a drop-off. Roach said Staff could look into it.

Hoffmann said it might not be necessary based on what Jeff said about where the drive aligns up with the railing.

Roach said it might be as simple as making sure there is good lighting.

Hoffmann: Okay, thank you.

Barre Klapper referred to the 22 mitigation trees that are being proposed to be planted. This number was arrived at after the inventory of the area that is going to be removed—the non-invasive native species?

Fanyo: Yes. He said his "survey section" did a tree survey of the entire area and they located all trees that were over 6 inches in diameter and chest height. Those were classified and labeled on the plans. The 22 trees were native species that show up in the City's landscape ordinance and those are the ones that will be replaced.

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Klapper said the Environmental Commission (EC) report expressed their concerns about the possibility of not having enough space to plant those 22 specimen trees (14 feet apart) nor enough room for them to adequately thrive and grow.

Fanyo responded they may not be able to go to their full growth spans due to proximity but the trees would still be able to mature and survive. We have checked that out with Jeff (Meyers) landscape architect. Sometimes when we mitigate we will do off-site mitigation. If we had that opportunity we would do that as well. We can enhance what is there on-site with the existing plantings. We could have a mature forested area in a very short period of time.

Klapper asked if it's possible to plant trees in the area in the back that is proposed to be cleaned up, preserved, and maintained in order strengthen it further. Fanyo said we can do that.

Klapper said the EC Report outlines concerns regarding the contiguous nature of a stand of trees and the life that it supports. She asked if a maintenance plan would be in place to ensure those invasive species don't return.

Fanyo: Yes. We discussed that today. We have to do a facility maintenance plan on most of these projects to cover maintenance of all aspects of site design. In this case, it would include the mitigation plan and the preservation of the existing trees. When the invasive species are removed there will be more room for the 22 proposed trees.

Klapper said a healthy stand of trees has different levels of trees. Would the petitioner be open to the mitigation plan also involving the replanting of the three woodland stories with native plants?

Fanyo: Not that I'm sure about what all of that means but I'm sure it would be appropriate here.

Klapper: But you would be open to something of that sort? Fanyo said yes.

Klapper said there have been a number of petitions in the past where we have, based on need, raised the allowance on the number of parking. Percentage wise can you give us a sense of where we've been on those? Is it often that we're going almost 50% higher than the allotted number?

Roach didn't have those numbers in front of him but said the Board has seen a handful of parking variances. For restaurants it's been a mixed bag. In the past, there was a situation where we were dealing with a 300 square foot barbecue restaurant with a 2-space maximum, and that wouldn't even cover all of their employees so they were approved for 6 or 8 spaces. In addition, he recalled Cheddar's on Franklin Drive who were looking at almost double the maximum amount of parking and the BZA approved a variance closer to 40 or 50% percent above. This request is in the neighborhood of a 40% increase. Roach said it's not outside of the realm of past approvals and Staff believes the petitioner has demonstrated a need for the additional spaces.

Fanyo said Burger King on the eastside was allowed 14 spaces and the BZA approved 31 spaces which more than doubled the amount of parking.

Klapper asked the petitioner if they considered a smaller restaurant on this site. The stores cited in Indianapolis were in the 4,000 square foot range and this one is larger than that.

Fanyo said they considered it but the difference between Indianapolis and some of the other cities that Culver's are located in, is that there are several Culver's stores within driving distance of each other in Indianapolis but Bloomington is going to have one store. With that being said, you need a bigger store because you don't have another one on the other side of the city. Financial feasibility is another reason a bigger store is needed.

Aquila asked who owned the property.

Roach said there are two owners. The western property is owned by the owners of Melody Music (owner names were not provided), and the eastern property is currently owned by the City of Bloomington.

Aquila asked what the front distance is from Master Rental to 3<sup>rd</sup> Street.

Roach said he would estimate that it's between 20-25 feet.

Aquila asked what the distance is from the adjacent building--Spencer Psychology.

Roach said the measurement from the Master Rental building to the sidewalk is in the neighborhood of 25 feet. The other building is approximately 43 feet from the building to the sidewalk.

Aquila: And Culver's will be?

Roach asked Fanyo if he had a measurement on that distance. Fanyo said it's approximately 75 to 80 feet.

Aquila asked if the existing dead-end drive gets removed. Roach said yes.

Aquila asked how far the new (proposed) street cut would be from the stoplight. Roach said it's similar in location to the existing drive.

Fanyo said it's somewhere around 200+ feet but he didn't have the exact dimension.

Aquila asked if there are any adjacent properties with similar massing in terms of the amount of parking.

Roach said the American Legion Post has quite a bit of parking which is a building located to the northeast. There are other large parking lots. Advance Auto Parts has a large parking lot and there is a considerable amount of asphalt/storage area around Master Rental but it's not necessarily all parking.

Klapper said according to the information the BZA received from Lee Huss, the City's Urban Forester, he counted 56 trees that are impacted by the proposed development that are non-invasive?

Roach deferred to Lee Huss.

Lee Huss said he gave a detailed list of 56 different trees ranging from 13 walnut trees down to 1 Hackberry—all different types of species. These are basically 5 inch DBH (diameter of a tree trunk) and above.



Klapper said the proposed plan is that the petitioner would plant 22 new trees and we would be losing 56 trees?

Huss said he didn't think we would necessarily be losing 56 trees because he inventoried trees in both parcels.

Klapper: Including the area that will be preserved? Huss said correct.

Klapper said in your professional opinion, since we haven't seen a proposed mitigation plan like this with the planting of new trees, do you think there is sufficient space and a way to do it that is meaningful?

Huss responded he did. For the most part, if you look at the DBH breakdown, it's relatively a young forest. This area was probably cleared in the 1950's or 1960's and has just been allowed to grow back naturally. You have a high canopy level and then you have a low area of the Asian Brush Honeysuckle; the invasives have moved in below it. Sunlight drives everything. By getting rid of some of the invasives it would open up and allow sunlight in for the additional plantings that are being proposed.

No public comment.

**\*\*Hoffmann moved to approve V-32-17 based on the written findings, including the five conditions outlined in the staff report plus the sixth condition of approval that Staff presented, which is that replacement trees shall be native species. Throckmorton seconded.**

Klapper proposed a friendly amendment. She suggested the mitigation plan be aimed at the three woodland stories with native plants in an effort to help the growth.

Hoffmann proposed the following language: ***“The landscape mitigation plan will seek to address all three stages of woodland growth.”*** Will that work? Klapper said I think so.

Hoffmann accepted her friendly amendment.

Hoffmann restated that the motion includes the five (5) conditions of approval set forth in the staff report, a sixth (6<sup>th</sup>) condition of approval that replacement trees shall be native species, and a seventh (7<sup>th</sup>) condition that the landscape mitigation plan will seek to address all three stages of woodland growth.

Hoffmann commented that this is a balancing act and that it's a complicated site with a lot of limitations.

Aquila said she would be voting no because the parking and mass size of the building are excessive for the area. She is also uncomfortable with the setback from the street.

Klapper said this is a tough case. She questioned whether this type of use is the right fit for the site. Culver's stores in Indianapolis have shared parking arrangements available. She believes this is exactly the kind of use that the UDO and the City likes to see in terms of opportunities. This

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standalone site creates a lot of stress and significant variances have to be considered in order to make it happen.

Hoffmann said if the site were zoned differently and if they were asking to do a PUD or change the zoning, then he would agree that it isn't appropriate but with the CA (Commercial Arterial) zoning designation it seems reasonable. He reiterated that it's a balancing act.

Throckmorton asked what would happen if the vote were 2:2.

Roach explained with a tie vote there is no action. The petition would be forwarded to the next BZA meeting and hopefully five board members would be present so there wouldn't be a tie.

**Roll Call: 2:2—No action (Aquila and Throckmorton opposed). This petition is automatically continued to the January 18, 2018 hearing.**

*\*\*Please note that Barre Klapper recused herself and Jenny Southern is her replacement on the Board for the next petition—V-33-17.*

- V-33-17      **Edward and Wendy Bernstein**  
1326 E. Maxwell Lane  
Request: Variance from architectural standards to allow for a carport in the Residential Single-family zoning district.  
*Case Manager: Jackie Scanlan*

Jackie Scanlan (Sr. Zoning Planner) presented the staff report. The property is developed with a single-family house and zoned Residential Single-family (RS). The Growth Policies Plan (GPP) designates this area as Urban Residential. This is a request to allow polycarbonate on a portion of a new carport that is being built on the house. The petitioners have a building permit to build a carport at this location. The petitioners are requesting to use polycarbonate plastic on part of the roof of the carport above the pedestrian entrance. The UDO designates certain materials that are allowable in the (RS) zoning districts. The acceptable materials chosen are: shingles, shakes, tile, standing seam metal and V-grain metal. The materials are intended to be functional, durable, provide consistency in the neighborhood and be aesthetically pleasing material options. The polycarbonate plastic is not an approved material which is why a variance is being requested. The location of the material in this particular request would not be visible from the road; the material would be laid flat. The western side of the carport has a sloped roof and the eastern side has a flat roof. The polycarbonate would only be used in the rear portion over the door. The petitioner did submit information about the potential material that would be used. Staff finds there are no adverse impacts on the welfare of the community or surrounding uses by allowing a small non-visible area to use an alternative material. No physical characteristics of the property are found to be peculiar to address the third Finding of Fact from similar properties. No practical difficulties are found on this typical development lot and therefore Staff recommends that the BZA adopt the proposed findings and deny this petition.

Cynthia Brubaker, Springpoint Architects, is representing the Bernstein's. Her clients came to her looking to design a covered parking area for their home. They are retired and wish to age in place in this mid-century home. They park their cars outside the house; there is a garage that is part of the house underneath, but they also wanted to have covered parking for when they don't pull the car in and for a second vehicle. There is a large Walnut tree that was important for them to maintain but also to protect the cars from falling debris from the tree. It was somewhat of a task to

figure out where to locate the carport. Several issues: First, it was important to place the carport in front of the garage. Secondly, it was important to use the existing curb cut. Third, there is the existing (mature) walnut tree which was important to maintain. Also, there is the 15-foot setback requirement. There is also a culvert next to the roadway which gives extra space and pushes the property line closer to the house and requires with that setback that we have the carport right up against the house. Even though this is a corner property and you could place the carport in other locations, this makes the most sense to place it where it's being proposed. Additionally, the proposed material is one that has been developed over time to be more durable. The plastic material is hidden behind the front design of the carport and is compatible with the architecture of the building. The placement of the carport in this location allows the most transparent way of allowing light to pass through the carport.

Jenny Southern questioned the strength of the polycarbonate material and whether or not it would be strong enough to walk on should the petitioners need to get on the carport to clean off walnuts and leaves.

Brubaker said it isn't a large area so it would be possible to remove anything by using a ladder at the edge of that area.

Southern asked if a skylight would have been allowed if proposed.

Scanlan said if it was in a window frame and Staff could call it a skylight then I think we could.

Southern wondered how the polycarbonate would compare to glass.

Brubaker didn't know how it would compare to glass per se but didn't think it would be a concern for the types of things that would fall on the carport in this location.

Southern said she hadn't seen a list of approved materials before and asked Staff to elaborate on how this list came about.

James Roach, Development Services Manager, responded that there has been an approved list of siding and roofing materials for single-family homes going back until at least 1995. This list exists to provide homeowners and homebuilders options of proven, traditional materials that are acceptable. However, the list isn't comprehensive and therefore we might want to consider widening it in the future as we look to update the UDO.

Southern said she's seen entire carports in neighborhoods made of polycarbonate. She wondered if they exist because the carport isn't attached to a house. Roach said it likely predates the standards.

Joe Hoffmann asked if the petitioner considered putting in a traditional skylight which would be legal.

Brubaker said the issue with a skylight is that you have a whole different construction type. You have to build a frame that holds the window which isn't what is in this structure. This is the most efficient way to deal with this small area.

Hoffmann: What do you mean by efficient?

Brubaker meant in terms of getting the light through the space or a surface of this size (6' x 4'). She added that in 1995 this material didn't exist in this form so twenty years later it's more widely used and is an accepted material for applications like this. A skylight would be a bulkier construction that would be a greater cost and a greater weight that would require more structure to support it.

Jo Throckmorton asked if this is an existing carport. Brubaker said it's a new structure.

Throckmorton: The right half we're looking at has a sloped roof? Brubaker said yes.

Throckmorton: So half of the carport has a sloped roof and the other half near the doorway is flat?

Brubaker explained there is a flat section that goes all the way across and then there is the sloped piece that goes over the top.

Throckmorton: Over the top of half of it? Brubaker said right.

Throckmorton said currently the doorway underneath the proposed polycarbonate is exposed with no cover? Brubaker said correct.

Throckmorton said this is essentially the first time that a porch overhang is being created? Brubaker said correct.

Throckmorton said so this is essentially a porch overhang? Brubaker said it doubles as a carport and a porch overhang.

No public comments.

Final comments from the petitioner:

Ed Bernstein has been the owner of the property since 1992. He and his wife are seniors and they would like to get a little bit of light. There are a lot of walnut trees and they have been dealing with them since they moved in. It's been 20 years since the polycarbonate material was first introduced so he believes that it's gotten better and stronger.

**\*\*Hoffmann moved to deny V-33-17 based on the recommendation in the staff report and on the grounds there is no practical difficulty based on a peculiar condition of the property.** Hoffmann said it's a nice design and he has nothing against it. He thinks the code probably needs to be reconsidered on this basis but that isn't legally what the BZA is allowed to grant a variance for. The peculiar conditions of the tree and culvert are all reasons why the carport has to be where it is, that part is clear. However, there is a legal way to get light to the door and the peculiar condition has to justify the deviation from what is legally permitted. If appropriate, he hopes this is something that Staff will look at and bring about some kind of change to the ordinance given that this material has apparently evolved over time. Additionally, cost isn't one of the things the Board is allowed to consider as part of a variance approval.

Throckmorton thinks this is being generated out of a want rather than a need. There is a garage on the building. They currently have light because there is nothing blocking it through the doorway. The desire to build the carport and then the need to request a variance is the

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complicating issue. He said it's difficult for him to go against code just because of a petitioner's desire rather than a building need.

**Throckmorton seconded. Roll Call: 4:0—Denied.**

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Aquila said I have been serving on the BZA since Mayor Fernandez asked me to. Every time my appointment came up, I would get a very nice letter from Mayor Fernandez or Mayor Kruzan thanking me for my service and congratulating me on my next appointment; I did not receive one this time. I want to thank both Mayor Fernandez and Mayor Kruzan for the opportunity. I have been very fortunate to work with Tom Micuda and Christy Langley who are excellent and are missed. The Staff here tonight (Eric isn't here), but we have been through too many fence cases to count among other things. But you have been nothing but a pleasure to work with. The Board has been one of the best we've had and I will miss it greatly. I will hold the record going forward for the fastest meeting and I challenge you all to beat that. It's been a great experience. Thank you so much!

Meeting adjourned.