

BZA minutes are transcribed in a summarized manner. Video footage is available for viewing in the (CATS) Audio-visual Department of the Monroe County Public Library at 303 E. Kirkwood Avenue. Phone number: 812-349-3111 or via email at the following address: moneill@monroe.lib.in.us

The Board of Zoning Appeals (BZA) met in the Council Chambers at 5:30 p.m., members present: Hoffmann, Klapper, Sandweiss and Stewart Gulyas.

APPROVAL OF MINUTES: None at this time

PETITIONS CONTINUED:

- V-37-17 **Dwellings, LLC**
1353 W. Allen St.
Request: Variance from maximum parking standards to allow 67 parking spaces for a multi-family complex.
Case Manager: Eric Greulich

REPORTS, RESOLUTIONS AND COMMUNICATIONS:

--James Roach welcomed Stewart Gulyas and thanked her for her willingness to serve on the BZA for 2018. He also thanked Sandweiss for her willingness to serve as an alternate member for this particular meeting.

--Election of Officers:

****Hoffmann moved to continue the election of officers to the February meeting since the membership of the BZA will change by next month; therefore, it seems premature to elect officers at this meeting. Sandweiss seconded. Motion carried by voice vote.**

--Roach advised the Board that they should expect to receive information in the near future about a kickoff meeting to be held February 5, 6, & 7 for upcoming changes to the Unified Development Ordinance (UDO). The City has contracted with a consulting firm (Clarion Associates) to start an approximate year-long effort to re-evaluate and update the City of Bloomington development laws known as the Unified Development Ordinance.

--Klapper said the variance petition for David Howard at 608 N. Dunn Street has been withdrawn and will not be heard.

PETITIONS:

- RS-36-17 **City of Bloomington**
Amendment to the BZA Rules of Procedure to expand petition sign requirements to include all BZA petitions.
Case Manager: Jackie Scanlan

Jackie Scanlan presented the staff report. This is a request from Staff to amend the Rules of Procedure for the Board of Zoning Appeals. We recently did a similar amendment for the Plan Commission. This is an effort to increase visibility of petitions for both the Plan Commission and

BZA. This is being done to identify physical properties that have BZA petition requests pending. Basically this amendment will require that, when a petitioner files a request for something before the BZA such as a (Use Variance, Variance, or Conditional Use), the petitioner will need to place a sign/placard on their property indicating that a zoning request has been filed for that site. Currently, we hand out signs for petitions that are filed for Conditional Use. Staff is proposing to open it up to all petitions that the Board sees so that neighbors who drive or walk by who may not be immediate adjacent neighbors will be informed about the petition. The sign lists the Planning and Transportation Department phone number. Anyone can call and request information about the site itself. Currently in the Rules of Procedure, the petitioner sends notification letters two property owners deep on all sides—up to 300 feet from the subject property, and that will not change. Staff recently found that sometimes this creates an issue for renters because they don't receive the letter. And if the property owner doesn't let them know, then they have no idea a petition has been filed and they might not find out until it's completely over. This is an effort to bring a little more clarity and openness to the process. Staff recommends approval of RS-36-17, with one condition. Scanlan said the rules were not cleaned up 3-4 years ago when the Planning Department merged with the Engineering Department. There are approximately 21 instances where the rules just say "Planning Department or Planning Director", and Staff would like for the retitling of the department to Planning and Transportation to be added to this resolution to correct that part of the Rules of Procedure.

No public comment.

****Hoffmann moved to approve RS-36-17 with the condition of approval that all instances of the word planning (referring to the department or director) shall be replaced with Planning and Transportation. Sandweiss seconded. Motion carried via voice vote 4:0.**

- V-32-17 **Culver's (Jeff Meyer)**
 1914 W. 3rd St.
 Request: Variances from maximum allowable parking spaces, the parking front yard setback standard, and tree preservation requirements.
 Case Manager: James Roach

James Roach presented the staff report. The property is located just northeast of the intersection of 3rd and Cory. Surrounding land uses were cited. The site is 2.3 acres and zoned Commercial Arterial (CA). This is a high intensity commercial corridor zoning district. The GPP labels this property as a *Community Activity Center (CAC)* area for the community and it's currently undeveloped. There is an existing shared private drive that would be used by this property as well as Master Rental to the west. There are three variances being requested. This petition was heard at the December Plan Commission meeting but no action was taken. There was a 2:2 tie vote which automatically forwarded this petition to this hearing to discuss the matter again. Please note the BZA needs a vote of 3 affirmative on any action in order to take action on a petition. So 3 votes is a majority of the 5 member, membership. Staff has been working with the petitioner for many months to help them navigate the UDO and help them figure out the best way to develop this property so it serves their needs as well as come as close as possible to meeting the City's development laws. There are three parts of the UDO that the petitioner is unable to meet; maximum parking requirements, drive aisle and parking setback requirements, and tree preservation standards. The parking variance; the Board sees many parking variances. Bloomington is unique. Most cities have minimum parking requirements but Bloomington actually has a maximum parking requirement. Any particular business is prohibited from building more than a certain number spaces depending on the type of business or how big the business is.

We've found that some of those numbers don't work exactly right. Every restaurant and office building is not the same which is why the Board sees requests for more parking spaces than is normally permitted. A restaurant of this size would normally be permitted no more than 55 parking spaces—the request is for 75 parking spaces. The petitioner has conducted a study of other Culver's in similar situations around central Indiana. Based on the number of employees, the seating capacity of the restaurant, and the fact that there is little opportunity for shared parking on neighboring property or utilization of street parking, they believe 75 parking spaces is necessary for a restaurant of this type and of this size. The Planning and Transportation Department also agrees with that assessment based on the numbers the petitioner presented. The second set of variances deals with the parking setback. The UDO requires a 20-foot parking setback behind where the building is located. In this particular case, there are quite a bit of trees—more than an acre of trees. The petitioner is making an attempt to preserve as many of those trees as possible and those trees just happen to be in the back. So the petitioner could meet the parking setback standard but it would push the parking even further from the street, deeper into the lot, and it would make it even more difficult to preserve those trees. The second request pertains to the drive aisle placement. The UDO prohibits drive aisles from also being in the parking setback. The purpose of that is to create situations where buildings are the prominent thing on the property; there is good interaction between the building and the street. But in some cases it just isn't feasible. The petitioner believes it is not feasible mainly due to the location of the shared drive. The shared drive serves and accesses a signalized intersection at 3rd and Cory. When vehicles are stopped at the signalized intersection they will stack up. Once you get 3-4 cars on the shared drive, there is no opportunity for vehicles exiting the drive through to go anywhere. The petitioner is proposing a narrow, one-way aisle that would come in front of the building to provide another opportunity to get the cars back out onto the transportation system. In addition, any car going eastbound on 3rd Street is also going to have to use that light. Even if a future customer isn't using the drive through, but they're heading back towards the City, they will have to use the shared access drive because of the median in W. 3rd Street. This further exacerbates the problem of stacking and stacking of cars at the signal at 3rd and Cory. Staff finds that this is a peculiar condition on the property and therefore recommends the Board approve it. Finally we get to tree preservation. This 2.2 acre property contains approximately 1.1 acres of woods, which is a little less than 50% of the property covered by a wooded area. The UDO has a graduated scale for how much a wooded area has to be preserved on a property when it's developed. In this situation, the petitioner would be required to maintain 70% of the tree canopy or the wooded area, which amounts to approximately .09 acres. Again, .09 acres of the tree canopy would be required to be preserved on this 2.2 acre property. The petitioner is proposing an alternative arrangement. They believe the shape of the canopy being preserved would cause an odd shape of land for development. Instead of hitting the 0.9 acres, the petitioner is proposing to preserve 1.4 acres and they have also developed a mitigation plan to offset the impacts of removing that acreage. The petitioner also conducted a tree survey and they have committed to plant new trees on the site to replace the 22 native species (10 inches) that are being removed. Since the last meeting, the petitioner has refined their landscaping plan, including refining the placement of those trees. The petitioner has been working with our Environmental Planner to pick appropriate species. Staff believes this plan will probably be tweaked more as we get further into the development cycle. There may be opportunities as non-native and invasive trees are removed, that some of the trees can be placed in the existing wooded area. But the landscape plan includes all required landscaping as well as 22 new (4 inch caliper) trees. Typically new landscape trees only need to be 2 inches, so this is a larger tree. These trees will be healthier and be able to integrate back into the wooded area more quickly. Roach said he wanted to touch on some of the questions that were raised at the last meeting. Board members had a question about the proposed distance between the building and the street and how that compared to other buildings in the area. Staff

put together an analysis that the proposed Culver's would be approximately 86 feet from the right-of-way to the structure, and there is a range of setbacks in the area from 15 feet at the Advanced Auto property up to almost 400 feet for the American Legion. Roach said there is a wide range of setbacks but this proposal would be 86 feet. Other questions were raised about ownership of the property. The petitioner is not the current owner yet. They do have options to purchase. The larger piece of property on the west side is owned by Melody Music and the smaller piece on the east side is currently owned by the City of Bloomington. There was a question about how far apart the two drives would be. The new drive cut onto 3rd and the existing shared drive at the Cory light is approximately 175 feet. Roach said there was one question about other parking lots of similar size in the general area. The American Legion has a very large parking lot. Advanced Auto to the southwest has a larger parking lot, including some of the outdoor storage associated with the Master Rental to the west. Staff recommends approval of this petition based on the written findings in the staff report, including the following conditions:

1. Approval is for a maximum of 75 parking spaces for this particular restaurant use.
2. Front yard setback approval is for a maximum of what is shown in the petition site plan. No additional encroachments can be added without further variance approval.
3. Replacement trees shall be 4 inches in diameter and native species.
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.
6. Petitioner shall submit a landscape mitigation plan for the wooded areas that will remain on the site that will seek to address all three stages of woodland stories with native landscaping.

Terri Porter, Director of Planning and Transportation, believes the Culver's project is a good balance between the project itself and the enhancement and preservation of greenspace. This lot has been vacant for many years and it's a difficult site to develop. Lee Huss, the City's urban forester, believes the site was scraped in the 1950's and 1960's and just allowed to grow back naturally which helps to explain the overabundance of invasive plants and trees. The developer is proposing to enhance the site and we will hear more about that later. They have committed to remove the invasive plants and unhealthy specimens and replace them with healthy native trees and plants, including a landscape mitigation plan to keep the invasive species from returning. When Culver's approached Planning and Transportation several months ago, we were skeptical. However, after working with them for a better part of a year and walking the site and carefully considering their proposal as a whole, Staff fully supports the granting of the requested variances for this project. Staff also believes the landscaping enhancements will result in a beautiful tree canopy that will be enjoyed for years to come.

Jeff Fanyo of Bynum Fanyo & Associates reiterated that they are requesting three variances. They also conducted a parking study of four other Culver's stores in Indiana. The one in Fishers is the exact same size as the one being proposed here. The Fishers store has 94 parking spaces and at certain times of the day all 94 spaces are full. The other three were smaller stores by 500 to 600 feet and all of them max out their parking during peak hours. The stores in Indianapolis have adjoining parking areas like we do at the mall. One store has a Menards next to it and they lease 25 spaces from them. Other stores are next to large parking lots where they can lease spaces and have overflow parking. We don't have this opportunity on W. 3rd Street so parking needs to be provided on-site. The parking setback is being requested to keep everything forward. When 3rd Street was widened in 2009, they lowered the street for sight distances at this intersection and as a result, there is a several foot incline adjacent to the street. We have to get into the site and get access to that and actually have ADA access into the site. The elevation of the road being cut down from what it was originally requires more of a run to get up to the building site. But as a result of this, the actual parking lots that are closer to the street needing a variance will be virtually invisible from the street. It's going to be approximately 5 feet and it varies above street level, so the area really won't be visible. The drive aisle was put in as a way to eliminate potential conflicts of vehicles trying to enter/exit the site. It won't take very many cars trying to exit the site to lock the intersection. So this lane was put in to allow people to go to the east and access 3rd Street which is approximately 175 feet east of this intersection. The existing trees are damaged so the condition of the woods isn't very good. Lee Huss can speak on that in more detail. We plan to remove the invasive species and put in mature trees that are not native to this area. In addition, provide a mitigation plan that is recommended in the Environmental Commission (EC) report, and maintain the native species after they're planted. The EC report stated that we misidentified some of the trees that are desirable. If so, we would add those to the 22 trees that we're removing that we feel are good trees and replace those as well. They are offering to mitigate and improve the health of the existing woods.

Joe Hoffmann asked if there is a policy on how an entrance drive is signed or if it's left up to the petitioner; thinking more about the exit location in front of the building back to the shared drive. His understanding is that it will be signed as DO NOT ENTER because it's a one-way, west bound at that point (the sign facing west). He's also concerned about people leaving and going the direction they're supposed to go out that particular drive and the fact that there will be entering traffic within 52 feet. The 52 feet isn't a lot of distance if cars are coming through the intersection on Cory or turning right off of 3rd Street. He asked if there could there be a sign facing east that would say "Cross Traffic Doesn't Stop" or something similar to alert people when leaving the site.

Fanyo said they would work with Andrew Cibor on signage details. He agreed that it's important to have on-site signage to direct people.

Hoffmann said he didn't want to create an unsafe condition with traffic entering the site. Just a stop sign might be good enough.

Stewart Gulyas asked for clarification of the term DBH in the tree report. Fanyo said DBH stands for diameter breast height.

Barre Klapper asked how the restoration plan would be overseen and monitored in the future.

Roach said the mitigation plan, other than the large trees, is still being worked out. As part of that, we (Staff) would work on some inspection cycles. He anticipated an inspection after the invasives

are removed, probably when new species are planted, and then multiple follow-up inspections two or three times throughout this season and going into the next season to ensure things are living.

Klapper asked if the maintained area to the back of the property would be placed in an easement. Fanyo responded that is correct.

Klapper: The owner is still going to maintain that area?

Roach said correct. There are two different types of easements in the UDO. One is a tree preservation easement and one is a conservation easement. Conservation easements are usually preserved for very pristine areas. Tree preservation is mostly just concerned with the trees, and the terms of that easement can be written in any type of way. Staff will write it in such a way where it will be okay for new plantings or for the removal of invasives.

Klapper asked Staff to clarify the comment that was made about possible discrepancies in the original cataloging of trees. She said the Board received a report from Lee Huss but wanted to make sure it was clear.

Roach said the differences have to do with the way an undesirable tree is categorized. The UDO lists a silver maple as an undesirable tree because the UDO is anticipating people planting trees in parking lots or at the edges of commercial properties. Silver maples have a tendency to drop their limbs and have a lot waste. However a silver maple in the middle of a wooded area, there isn't anything wrong with that. These were undesirable species; undesirable because of a parking lot context and not necessarily for a wooded lot context. The petitioner can re-evaluate those numbers and find additional places for them either on-site or off-site.

Public Comments:

Nick Kappas, chair of the Environmental Commission (EC), said the Board should have received two memos from the commission recommending denial of the requested variances (especially for tree preservation) and urging the BZA to deny the petition. In this case, it's important to consider that woodland is not landscape. It is not aesthetic, it's an eco-system. This lot with its 1.1 acres is part of an important inter-connectivity between two large environmentally green areas (to the northwest and southwest). He said there is always an economic portion to it. Based on preliminary research the EC's done in terms of lot valuation, those lots that have more natural landscape tend to have a higher value. This property is a full woodland. The commission believes there might be a better site for Culver's. The EC isn't saying there shouldn't be a Culver's in Bloomington; however, this area is so vital to the ecological transportation network.

Andrew Kinser is a graduate student at the Kelly School of Business. He spoke on behalf of all students in the Bloomington community by saying that Culver's would be good for Bloomington. He thinks they provide high-quality service. He added that Culver's is always one of the first stops he makes when going home for school breaks.

David Widdington said the parking setback becomes inconsequential from the street level because it's set so high. He isn't an expert on the woodlands but zoning and planning is about forward looking. He encouraged the Board to look forward about 15-20 years as a site that's been

stripped in the past. If this property isn't developed within that amount of time it's not going to get better on its own. The mitigation plan is certainly encouraging. It seems that the petitioner has done their best to work with the department for many, many months and has come up with a workable solution. In his opinion, Jeff Meyer and John (last name inaudible) who are business partners in this project, are the kind of people we want to open businesses in Bloomington.

Susan Graves, a Bloomington realtor, said she grew up in Highland Village and she has never seen this property look nice. She believes this would be a great location for Culver's. They serve quality products; she's looking forward to their restaurant being in Bloomington.

Jeff Smith said Mr. Fanyo is doing a wonderful job to fix all of the problems and he has good recommendations to make the project work. Also, he's happy to see more employment come to town no matter what is being sold. He said the lot itself isn't very pretty so it will be a major improvement.

Lisa Smith is a Bloomington resident and business owner. She said the stretch between Rogers Street and Highway 37 has always been very low profile and kind of a utilitarian/dilapidated area. It isn't an exciting entrance in to the City of Bloomington. It also seems to create a divide between the west side and the downtown area with nothing to draw folks from one side of town to the other. She believes a fresh, new Culver's restaurant would spark interest in the area for other new businesses to settle on W. 3rd Street. Culver's offers a step up in terms of quality from other fast food restaurants. In her opinion, Culver's is popular similar to Chick-fil-A on the east side of town.

J.C. Hulls is a big Culver's fan and loves their quality food. He also loves what they bring to the community. He likes the family atmosphere in their restaurants. He thought Jeff (Fanyo) did a great job of coming back and fulfilling the requirements that were being requested by the City. He urged the Board to approve the project.

Jim Sowders is a property owner and has lived in Bloomington for 33 years. He said there is nothing to be maintained on this site. The property looks terrible. He urged the Board to approve the request.

Jeremy Carpenter is a lifelong resident in the community and he is in favor of Culver's. He said his property is one of the many eyesores on that stretch of W. 3rd Street. There is no other restaurant in this area like Culver's and he thinks their food is amazing; dining at Culver's is a great experience too. They are unlike any other chain restaurant. Often times, Culver's will help to support their local community by raising funds for various causes. They might offer free food to patrons or, for example, have a certain percentage of their proceeds go towards raising money for someone who has an illness.

End of public comments.

Jeff Fanyo rebutted by saying the petitioner looked all over Bloomington to find a location but they weren't finding a suitable property. He said they will know a little more about what they are really working with on-site once they get in there. In closing, he said they are committed to making the woodlands healthy.

****Hoffmann moved to approve V-32-17 based on the written findings, including the six conditions outlined in the staff report. Sandweiss seconded.**

Hoffmann said it's clear to him there is practical difficulty in developing the property and he believes the proposed project is a reasonable compromise.

Stewart Gulyas thanked Staff for their diligent work on this project and stated that regulations are vital.

ROLL CALL: 4:0—Approved.

Meeting adjourned.