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The Board of Zoning Appeals (BZA) met in the Council Chambers at 5:30 p.m. Members present: Klapper, Throckmorton, Stewart Gulyas and Beth McManus.

**APPROVAL OF MINUTES:** January 18, 2018

**\*\*Stewart Gulyas moved to approve the January minutes as distributed. Klapper seconded. Motion carried unanimously by voice vote.**

**REPORTS, RESOLUTIONS AND COMMUNICATIONS:**

Tom Miller, Director of Innovation for the City, said we are working on a large project which is part of a bigger initiative to run CATS videos through machine automated transcription. This is a cool computing technology that listens to the words and transcribes them into text. It's about 90% accurate so you will find some things that don't make any sense, but we have just added the last 2-3 years of BZA meetings to our YouTube page. Folks can now search through a transcript for specific words or look for different things in the text.

**PETITIONS CONTINUED TO:** May 24, 2018

- V-05-18      **Shahyar Daneshgar**  
703 W. 9<sup>th</sup> St.  
Request: Variance from front yard setback standards to build a porch in the Residential Core (RC) zoning district.  
*Case Manager: Jackie Scanlan*
  
- AA-09-18      **U.J. Eighty (UJ80) Corporation**  
1640 N. Jordan Ave.  
Request: Administrative Appeal of Staff's decision to issue two Notices of Violation of non-compliance with the *Unified Development Ordinance (UDO) Section 20.02.500*  
*Case Manager: Jackie Scanlan*

**PETITIONS:**

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

Eric Greulich presented the staff report. This is a request for a property located at 1353 W. Allen St. The petitioners are requesting a variance from the maximum number of parking spaces to allow 67 parking spaces for a 60-bedroom apartment complex. The property is zoned Residential Multi-family (RM). A building and grading permit were both issued in 2014 in order to allow for the new buildings on the site. The property had been developed with several apartment buildings and

the petitioner was looking to expand the development to include a few new buildings and parking areas. Dwellings, LLC constructed the buildings and installed the parking areas; however, they also felt like they needed additional parking spaces due to the on-site demand for parking from existing residents as well as new residents. With that being said, there were 7 additional parking spaces installed with that development. These additional spaces were not shown on the approved grading plan but they were added by the petitioner during construction. The Unified Development Ordinance (UDO) only allows for a maximum of 1 parking space per bedroom. Dwellings is now coming forward to request a variance in order to allow those 7 parking spaces to remain as-is. The petitioner submitted a parking study which is included in the BZA's packet. The 7 additional parking spaces were installed on the far south side of the property adjacent to a detention pond. The parking study also shows that there are occasional times when the amount of utilized parking spaces is above the allotted 60 spaces. According to the parking study, the existing number of spaces being used is 64. There were also some additional parking spaces that weren't documented along an interior drive that were also being utilized. Staff received a few emails from current tenants and those emails were distributed to the Board. All of those emails expressed support for the additional parking spaces being requested as part of the variance petition. While Staff understands that there might be an occasional need for more parking spaces above the 1 space per maximum, Staff cannot find anything unique about this piece of property that doesn't allow it to meet code. Greulich noted there might be a need to adjust the current zoning code to allow for guest parking spaces. Staff recommends denial of the requested variance based on the lack of peculiar conditions that are unique to this particular property.

Jeff Fanyo of Bynum Fanyo & Associates is representing the petitioner. This is a piece of property that was developed in the late 1970's with apartments fronting on Allen Street with a mobile home park behind it. It was a property that was originally developed before the current zoning standards you see today. As a result, Dwellings bought the property around 1992 and in 1995 there were some units added on the western portion of the property (west of the mobile home park). And over a period of time Dwellings has been adding additional units. The current number of total units is 47—this includes 34 one-bedroom units and 13 two-bedroom units. Typically the one-bedroom units will have more than one person in the unit; husband and wife or some other arrangement and both have cars. This results in a higher need for parking other than 1 space per bedroom. Fanyo said this area is kind of rural. All of the apartments west of this site were developed in the mid-1990's which is after the purchase of this property. At that time, there were no parking minimums so you will see large parking fields from this property to the west. The ordinance that limits the parking to 1 space per bedroom makes a lot of sense when you have other options for parking. For example, if you're in the downtown area you have on-street parking or structured parking. If you drive along Allen Street you will see the rolling nature of the road; it has a lot of grade to it and it's relatively narrow. As a result, there isn't room to park anywhere on Allen Street. The other option is the internal driveway that comes in off of Allen Street. It's a 24-foot wide drive and it services the trailer park as well as the apartment complex. Currently, there is approximately 35 trailers on-site in addition to the previous apartments mentioned. Both of these properties are under the same ownership of the Lauchli's. What they are finding is that people are parking along this drive due to a lack of parking on-site. Fanyo said they conducted a parking study in late August to mid-September of 2017 and the study showed that more than 60 spaces is needed. In addition, Fanyo said he asked them to conduct a new parking study in January of this year. This study proved that 67 spaces are being utilized. Since the property is located where it's at and there is no other option for parking other than the entry drive this is an issue. It's also a safety issue for the Fire Department and their trucks in terms of their size and width. Fanyo said this is a unique situation in that there are no good options for off-site parking that you have elsewhere in the community, especially in the downtown and IU campus area. He urged the Board to grant the variance.

Barre Klapper asked Fanyo if the access drive is 24 feet wide. (Fanyo: Correct).

Klapper said right now neither side has any signage on it prohibiting parking? (Fanyo: Correct).

Klapper asked which properties are actually connected.

Fanyo said the southeast property is the mobile home park and the drive in question accesses both the mobile home park plus the apartment complex (Hilltop Court). Hilltop Village was owned by the Lauchli's at one time but they sold it off in early 2000.

Jo Throckmorton said but the road coming down from the north both feeds into Hilltop Court apartments and if you continue under those trees it will go into the mobile home park? (Fanyo: Correct).

Throckmorton asked where the second point of access is located.

Fanyo said further to the north. The access goes into the most recent addition to the project—there are two buildings there. The photographs you see were taken right by the entry.

Klapper addressed Staff and said she could not recall any parking variances from the last few years where the BZA approved additional parking for new development.

Greulich explained that the parking variances the BZA approved have been unique uses; sit-down restaurants which often have a higher demonstrated parking need than other restaurants. Medical clinics was another variance that was approved by the BZA.

Throckmorton: Are we allowed to consider precedent?

Greulich said no. Variances are not precedent setting.

Throckmorton said I don't think this is something that should even be in the record in terms of what we have done in the past for this particular question. (Klapper responded okay).

Throckmorton asked the petitioner if there was an approved plan for construction and then they added 7 additional spaces. (Fanyo: Correct).

Throckmorton asked why 7 additional spaces were built against the plan.

Fanyo said he isn't sure. It was done without his knowledge. They graded the property at a 2% slope when the project was designed with the idea that they could come back some day and request a variance and build those spaces. Fanyo said he didn't know if the contractor saw all of the flat space and did it himself or if the contractor was directed to do so.

Throckmorton said so in this case an approved plan was put in front of the developers and the developers went ahead and put the additional seven in, and now that it's already there they need approval to maintain them in the same location? (Fanyo: Correct).

Throckmorton: How long ago did that occur, 2014? (Greulich said the permits were issued in 2014).

Klapper wanted to know how the discrepancy came to light regarding the number of spaces approved versus the actual number of spaces.

Greulich said he believed it occurred during the City's inspection for occupancy.

Throckmorton: Was the inspection recent?

Greulich said it was probably in early 2017. (Fanyo added that he thought it was around July 2017).

Throckmorton asked Staff if it's the developer's responsibility to build to plan specifications when the plan is approved. (Greulich: Yes).

Throckmorton asked if there are conditions or anything attached to the approval of the plans when violations are found or does it come to the BZA.

Greulich explained that violations default to the enforcement section of the Unified Development Ordinance (UDO) which deals with violations of the UDO and how those are treated.

Throckmorton: Did this go through that process?

Greulich said I believe we sent them a Notice of Violation (NOV) which is what prompted them to come forward with the variance request.

Throckmorton: So that initiated this request? (Greulich: Yes).

Throckmorton asked the petitioner if there was any reason why this particular property needed to be developed with the number of bedrooms that were beyond what they could sustain with parking.

Fanyo believed the petitioner developed the property at a much lower density than permitted. He thinks by using the DUE's (Dwelling Unit Equivalency) they could have had a much higher density than they have currently.

Throckmorton said it has to do with the emails that have been received indicating the parking is already kind of tight in that space. There would really be no difference in that complaint from the occupants because whether there were half as many bedrooms there would still only be so many spaces per bedroom. (Klapper added it's about the ratio).

Throckmorton said so you feel the codes that are currently in place aren't adequate enough to address the current living conditions? (Fanyo: Correct).

Throckmorton: To be clear you want more than 10% additional spaces? (Fanyo said we would be happy with any spaces).

Klapper said the way the UDO looks at this property and the zoning really isn't any different in other areas of town outside of the core, right?

Greulich said correct. The parking requirements for this are the same throughout the entire City except for the downtown which has a different standard.

Steward Gulyas said the point you're making is that the nature of this property is unique because it's sort of constricted or doesn't have the option of going two blocks away?

Fanyo said yes, including an inadequate county road that has been paved. There is a neighborhood across the street that people could go in to park and it would be okay, but it would be a mid-block crossing in an area where it's not that safe so the options are not good.

Beth McManus asked Staff if it's unique in Bloomington to have a complex that has no access to street parking.

Greulich said no. In fact it's the complete opposite. Most of the time apartment complexes are not on public streets. If you look at the development just to the west of these, it's basically private streets on the internal portion of the site with parking immediately adjacent to it. It's rare to see a property developed with multi-family apartment complexes that have on-street parking. Further, Staff was unable to find any peculiar conditions to this site that were different from any other multi-family zoned property.

Klapper asked if there was concern about parking from the onset. She wondered if it would have been an option to dedicate the access road as a public right-of-way (ROW) and put parking there.

Greulich said the petitioner could dedicate it as right-of-way; however, whether or not it was built to public street standards and whether or not the City would accept it is a different question. The street would've had to have been built to the City's standards and the City would have to accept it so it's possible.

Klapper addressed Fanyo by saying current resident e-mails made it sound like they expected to have a dedicated parking space. Were you aware their lease agreement grants them more than 1 parking space?

Fanyo: I'm not aware of that but I'm not familiar with their rental program either.

Throckmorton read into the record an e-mail from Jason Suggs stating that, *"I had to wait for 4 months even to get a space drawn for me because of continual delays and approval."*

Fanyo said he didn't know about that but he does know that Dwellings dedicates parking spaces for other properties they own.

Throckmorton read a statement from Lee Michelle Davis stating that, *"There is no street parking available and all parking is assigned parking at the complex."* He said according to these letters, it's reasonable to deduce they have assigned spaces? Fanyo replied it sounds correct.

Klapper said she wanted to understand that there was an expectation that people would have more than 1 parking space available to them. The argument is being made that in one apartment there are people who may have two cars associated with one apartment, but when the lease is signed they really only have 1 parking space available to them.

Stewart Gulyas asked if emergency vehicles were considered in terms of them being able to have the necessary access.

Greulich responded that emergency access is a concern because it's a private street. Planning and Transportation doesn't regulate whether or not on-street parking is allowed or disallowed. Since the street is private, it counts as on-site parking so the parking spaces should not be there along the street.

No public comment.

Stewart Gulyas added it's sad the City doesn't have more public transportation when people are required to have two cars to get to two different jobs or places. Transportation can be a burden for people.

**\*\*Throckmorton moved to deny V-37-17 based on the written findings and recommendation of Staff.**

Throckmorton explained that it's problematic when a developer chooses to build beyond what was originally requested and approved. In his opinion, there are other avenues that could be taken in this situation (possibly a code change) rather than asking for forgiveness instead of permission.

Klapper added this property isn't that unique in terms of being in an area where there isn't a lot of other public parking options. There are many places in town where the same zoning codes apply. The Board has to find a peculiarity related to this specific property and she doesn't see it here.

**ROLL CALL: 4:0—Petition denied.**

- UV-08-18      **David Howard**  
608 N. Dunn St.  
Request: Use Variance to allow a ground floor residential unit in the Commercial Limited (CL) zoning district for a mixed-use building.  
Case Manager: Eric Greulich

Eric Greulich presented the staff report. The property is zoned Commercial Limited (CL). The petitioner is requesting a Use Variance to allow for a ground floor dwelling unit. The CL zoning district does not allow ground floor dwelling units. The petitioner is proposing to redevelop the site which is approximately 0.04 acres in size. The previous use on the property was a two-story, single-family house that was removed in order to allow for the redevelopment of the property (Greulich cited surrounding land uses). The petitioner has already removed the single-family house on the site and is requesting the Use Variance in order to allow for the site to be redeveloped with a mixed-use building. The new building would have ground floor commercial space as well as one ADA accessible dwelling unit on the back side of the site. State building code requires an ADA dwelling unit. In order to accomplish this often times an elevator is required to provide the required ADA accessibility. However; with the small size of the proposed building, the small size of the lot including a proposed elevator, it just wasn't feasible for the petitioner. With that being said, a Use Variance is required to have a ground floor unit. Regarding the redevelopment of the site; the site would have to come into compliance with all aspects of the Unified Development Ordinance (UDO). This would include landscaping plus a bike rack. Sidewalks already exist along Dunn Street. The petitioner plans to install street trees along Dunn, as required, as well as installing a grease interceptor. This interceptor would provide for the possibility of future restaurant uses on the site. The Plan Commission heard this petition at their April meeting and voted 7-0 to forward it to the BZA with a positive recommendation. The Plan Commission found that this proposal does not interfere substantially with the Growth Policies Plan (GPP). The GPP designates this property as Mixed Urban Residential. The Plan calls for mixed-use development along the edges of neighborhoods and along arterial roads, which this proposal meets. The proposed use will allow for infill development with a scale and massing that is appropriate for the surrounding area. This site isn't located directly on 10<sup>th</sup> Street. It's separated from 10<sup>th</sup> Street by another lot just to the south with residential zoning to the north of the subject property. The inclusion of one ground floor dwelling unit does not take away from the building

providing the mixed-use that was desired with the Comprehensive Plan as well as the zoning code. Again, the small size of the building as well as the small size of the lot limits the development potential on the site. Staff recommends approval of this petition based on the written findings in the staff report, including the following condition:

1. This approval allows for one ground floor dwelling unit as depicted on the submitted floor plan and site plan. No other ground floor unit is approved.

Matt Ellenwood of Matte Black Architecture is representing the petitioner. They looked at the guidelines in the UDO for CL zoning and it recommended mixed-use with limited commercial and residential, so they tried to incorporate it into their development. They wanted it to fit that middle ground between the existing commercial on 10<sup>th</sup> Street and the surrounding residential uses. He said they were looking at small units to meet maximum densities on the property which is what drove the need for an ADA residential unit on the ground floor.

Jo Throckmorton asked if this is a new development. (Ellenwood: Yes).

Throckmorton said he just wanted to make sure the petitioner doesn't plan to reuse part of the existing building. (Ellenwood said no because the old building had foundation issues).

Throckmorton: Is the overriding request for this variance the cost of the elevator?

Ellenwood: Essentially. The building is small. An elevator would probably cost \$100,000 including the space it would take up to have one.

Throckmorton asked how many units are planned for the upstairs.

Ellenwood responded there is one ground floor unit, two units on the second floor, and three on the third floor.

Throckmorton wondered how people with disabilities would be able to access the second and third floor(s).

Ellenwood said that's a good question. As with many apartment buildings, you typically have ground floor units and those must meet Type B—considered adaptable to be accessible. He thinks you have to have a pretty large building before you have to have fully accessible units.

Throckmorton asked Ellenwood to expand on that in terms of what he's not required to do in a building like this. For example, if there were no ground floor commercial space requirements, would you then be required (in a 6 apartment building—3 stories) to put in an elevator for access to the second and third floor?

Ellenwood said the building code states you must provide one when you're above three units, you must provide accessibility to a Type B unit.

Throckmorton: To all apartments or to a percentage?

Ellenwood said the building code is a little roundabout. Essentially, once you meet the maximum units, you must provide at least one accessible—I should say, one Type B which is also called an adaptable unit. The building code also states that whatever floors are accessible, by elevator or from grade, you must have a Type B residential dwelling unit at minimum.

Throckmorton asked Staff if there was no requirement for a commercial space on the ground floor, and if it was just a 6 apartment, 3-story building, how many of those apartments would have to be accessible and would there be an elevator requirement?

Greulich responded that the zoning code does not deal with ADA accessibility for ground floor units and that it's a Building Code requirement; therefore, Planning and Transportation is not allowed to regulate it.

**\*\*Throckmorton moved to approve UV-08-18 based on the staff's recommendation. Stewart Gulyas seconded.**

Throckmorton wanted to stress if there wasn't a commercial requirement there wouldn't be a need for an elevator. The overriding factor for this request is the cost of the elevator.

Klapper wanted to call attention to the peculiar condition of this location. She said the need for the commercial space is not as great because of the other community-serving commercial services in the area. Correct?

Greulich: Correct. Yes, that is how we outlined it in staff's report. This location being off of 10<sup>th</sup> Street including the small size of the property, created the unique condition to this site where 100% of the ground floor didn't need to be devoted to commercial space.

Klapper: We're also not supposed to take into account the financial part as an actual hardship.

Throckmorton agreed. I'd like to withdraw my comment about the elevator because it isn't the overriding factor. I was just interested in what the actual code was so I misstated that.

Greulich requested the Board include in their motion "per staff conditions" that were outlined in the staff report so Throckmorton restated his motion.

**\*\*Throckmorton moved to approve UV-08-18 based on the written findings, including the one condition outlined in the staff report.**

Klapper said we already have a second to the original motion.

**ROLL CALL: 4:0—Approved.**

*Note: Barre Klapper recused herself from the next petition because of Springpoint Architect's involvement. Moving forward Jo (Throckmorton) to serve as chair.*

- V-11-18      **South Central Indiana Housing Opportunity (SCIHO)**  
1901 S. Rogers St.  
Request: Variance from front yard parking setback standards to allow construction of 16-unit, multi-family apartment building.  
*Case Manager: Eric Greulich*

Eric Greulich presented the staff report. The petitioner is requesting a variance from front yard parking setback standards to allow for a parking space to be located approximately 5 feet in front of the building. The variance is being requested in order to allow for the site to be developed with a 16-unit, multi-family apartment complex. The site is zoned Residential High-density (RH) and was rezoned to its current zoning from the Industrial (I) zoning district which it was previously as part of the Switchyard Park development. This property as well as the property to the north was



rezoned as part of the Switchyard Park. This particular parcel was subdivided off from the remainder of the Switchyard Park property to allow for this site to be redeveloped with multi-family apartments. It was envisioned with the rezoning and subdivision that this redevelopment would be for an affordable housing component, which is part of this request as well. The site currently has a 1-story dwelling unit on it that will be removed to allow for the redevelopment of the site (Greulich cited surrounding land uses). There are two existing drive cuts along Rogers Street that will also be removed. The site would be developed in two phases. The building along the west side of the site as well as the parking would be installed with the first phase, and then the secondary building on the east side of the site would be installed at a later time with phase II. There are 8 parking spaces located on the south side of the site. Four of those 8 spaces are being shown as van accessible ADA parking spaces with two additional parking spaces. Most of the parking need for the site will be for staff members. The apartments would be utilized for affordable housing; the petitioner can speak more about that. The property is unique in that it sits kind of level along the front which is Rogers Street, and then about 70 feet into the site it drops down somewhere in the neighborhood of 6 to 10 feet. The petitioner is trying to provide ADA accessible parking spaces that will be able to access the building and utilize the topography of the land as best as possible, while trying to meet the zoning code requirements to get the parking behind the building. The Unified Development Ordinance (UDO) requires that parking spaces be located 20 feet behind the front of the building. The proposed parking spaces are shown approximately 5 feet in front of the building, meaning that these spaces are located in front of the building wall and not actually separating the parking spaces from the building from the street. The property has been shown and developed with the building still facing the street. The parking spaces are not between the building and the street, so the petitioner is still accomplishing a building forward design that was intended with the parking setback requirement. There is an entrance directly from Rogers Street to the front of the building, as well as a sidewalk connection from the parking spaces to the front of the building. Regarding Elevations; the petitioner is showing a pedestrian entrance on the west side of the building facing Rogers Street in order to provide a pedestrian access immediately to the street. A bus stop will be constructed on-site just to the north of the building in order to provide Bloomington Transit access. There is a storm water detention pond that will be constructed on the east side of the site in order to meet the on-site detention requirements, as well as a bike rack and landscaping according to all of the UDO requirements. The previously mentioned drop-off on the property creates difficulty in providing parking as well as providing ADA accessible parking spaces to the front of the building. Greulich noted the small size of the site makes it difficult to get the parking spaces behind the building. The proximity to the park also helps make this an ideal location for affordable housing immediately adjacent to the Switch Yard Park. This petition accomplishes a lot of the goals in the Growth Policies Plan (GPP) as well as the Comprehensive Plan, including the vision of the UDO regarding a building forward design. Staff recommends approval of this petition based on the written findings, including the following conditions:

1. A maximum of 8 parking spaces is approved.
2. A grading permit is required prior to any soil disturbance.
3. Parking locations are approved only as shown on the submitted site plan.
4. The previous access driveways for the site must be completely removed and replaced with a 5' concrete sidewalk and tree plot.
5. Street trees to be approved by the City Urban Forester prior to approval of the grading permit.

Steve Brehob of Smith Brehob & Associates is the petitioner's representative. He introduced Deborah Meyerson with South Central Indiana Housing Opportunity (SCIHO). Deborah is the Executive Director of that program and may be able to answer questions regarding housing and tenants. There is a phase I building and potentially a phase II building. The phase I building will contain 8 units and of those 8 units, 3 units are specifically reserved for people with disabilities. He said they need to be able to plan for the possibility that everyone on the ground floor would need an accessible parking space which is why 4 spaces are being shown. If tenants specifically need an accessible unit, hence the need for the total of 8 parking spaces.

Beth McManus said their petition states two buildings with a total of 16 units, but right now you're just talking about one building correct?

Brehob said the project will be built in two phases. Right now we're talking about the building in the front and 8 parking spaces on-site. With the phase II building we will not be adding additional parking on-site. Those additional parking needs will be met by parking in the Switchyard Park with an agreement we've worked out with the Parks Department.

McManus referred to condition of approval #1 stating, "*A maximum of 8 parking spaces is approved*" and asked if the number of spaces could be changed at a later time.

Greulich said they could certainly do less than that. There will be 8 units in the first building with phase I and the petitioner is proposing 8 parking spaces. Honestly, they could install more but they would have difficulty with impervious surface coverage as well as the general layout. This was just a way to lock in the variance approval to the site plan that was submitted.

Throckmorton said the petition revolves around the fact that it's nearly impossible to build the parking behind because of the grade change? (Greulich: Correct).

Throckmorton referred to condition of approval #5 regarding street trees. Are those street trees designed to mitigate the exposure of the parking spaces in front or is that another part of the property?

Greulich said the street tree condition was simply to highlight that the City's urban forester needs to approve the street tree species before they are installed.

Throckmorton: Anywhere on the property?

Greulich said along the front in the right-of-way where the street trees would be. Greulich explained that immediately on the west side, on the left side of those parking spaces, the petitioner plans to heavily landscape that area to help mitigate the impact and view of those spaces. For the most part, the 20-foot setback was to place a building in front with parking behind so it's not as visible. There are a very low number of parking spaces being proposed so the reduction of the setback doesn't have as much impact with the small number of parking spaces plus landscaping.

Throckmorton asked where the 20-foot setback would have been roughly on the site plan.

Greulich said probably about 3 handicap parking spaces.

Throckmorton: It would have started there and then moved onto the back of the property? (Greulich: Correct).

Throckmorton: But it drops off? (Greulich: Correct).

**Public Comment:**

Deborah Meyers said we appreciate Staff's recommendation on the project. We are looking forward to being able to provide these affordable housing units, especially the units that are being reserved for people with disabilities.

**\*\*Stewart Gulyas moved to approve V-11-18 based on the written findings, including the five conditions outlined in the staff report. McManus seconded. Motion carried 3:0—Approved.**

Meeting adjourned.