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

**APPROVAL OF MINUTES:** April 2018

**\*\*Stewart Gulyas moved to approve the minutes with the correction that the February and March minutes were approved at the April hearing. Kappas seconded. Motion carried.**

**REPORTS, RESOLUTIONS AND COMMUNICATIONS:**

Jackie Scanlan, Development Services Manager, welcomed Nicholas (Nick) Kappas to the BZA. He will be a member of the Board for the rest of 2018. Scanlan noted that with the addition of Nick to the BZA, we now have a full Board consisting of five (5) members.

**PETITIONS CONTINUED TO:** August 23, 2018

~AA-12-18 (**Bryan Rental, Inc.**), V-14-18 (**M. Boulton—Storage Express**), AA-19-18 (**Indiana Center for Recovery Residence, LLC**), and AA-20-18 (**Indiana Center for Recovery, LLC**).

**PETITIONS:**

- UV-13-18      **UJ Eighty (UJ80) Corporation**  
1640 N. Jordan Ave.  
Request: Use Variance to allow a dwelling unit in the (I) zoning district.  
*Case Manager: Jackie Scanlan*

Jackie Scanlan presented the staff report. This petition was heard at the May 24, 2018 Board of Zoning Appeals hearing. The property is located at 1640 N. Jordan Ave., on the northeast part of town. The site is .95 acres and is zoned Institutional (I). The Comprehensive Plan designation for the site is *Institutional/Civic*. There is an existing formerly occupied fraternity building on the site. Surrounding uses included other fraternities, sorority buildings, and Indiana University properties. The Use Variance request is to allow residential (RS) use (Dwelling, single-family detached) in the existing building. The request is made so that someone can occupy the house while it's vacated by the fraternity, which is the situation currently on the site. Dwelling, single-family detached is not a permitted use in the Institutional (I) zoning district and that is why the Use Variance is being requested. Again, the petitioner is seeking to have a full-time caretaker or caretaker(s) live on-site. In this particular zoning district there are thirty-five

(35) uses available, of which twenty-six (26) are permitted and nine (9) are conditional. We did learn at the last hearing that there is a deed restriction on the property where only a fraternity or sorority is allowed to be used on the property. However; that is a self-imposed deed restriction and it doesn't have anything to do with the zoning code. In addition, it is not related to what we (Planning and Transportation) can permit as uses; it's a restriction only between the seller and buyer of the property. A couple of notes from the Comprehensive Plan. The *Institutional/Civic* designated area includes uses such as libraries, schools, cemeteries, municipal buildings, fire stations, and utility stations. The intent of the district is to provide adequate land to support activities of compatible government, social service, and limited non-profit entities. When requesting a Use Variance there are five (5) sets of criteria that have to be met by facts about the property in order for a Use Variance to be approved. Staff feels that the first two criterion are met. The request is not injurious to public health, safety and morals. There isn't a large impact on the neighbors or the community as a whole by allowing 1 to 5 people to live in this property while the property owner figures out what to do next about renting to another fraternity. No adverse impacts on the neighbors are found. Again, it's a little bit innocuous; they're not asking to do anything outside of the property but just have someone live on the site full-time. The third criterion involves peculiar condition. No peculiar condition for the property is found. As previously mentioned, there are thirty-five (35) uses available, including the use fraternity/sorority house which is allowed by their own deed restriction in which the building was previously used for. No practical difficulties were found in the characteristics of the site that hinders some, one, or all of those permitted uses to be used on the site. No unnecessary hardship is found because all of those thirty-five (35) uses are still available for use here, although not preferred by the property owner. The biggest one for the department is that the request does substantially interfere with the Comprehensive Plan, which does not envision single-family in the *Institutional/Civic* zoning designation. At the last hearing, the Board was somewhat sympathetic to a temporary use; a temporary caretaker staying on-site. Staff has not received any information from the petitioner since the last hearing indicating a time limit, which was one of the concerns raised by board members or a limit on the number of residents (*Besides the limit that is inherent in our definition of family*). The department, in conjunction with working with the Legal Department, just didn't feel like much has changed in the petition request since you originally heard it for us to be able to change our recommendation. While a caretaker use may be customarily incidental to a fraternity use, there is no fraternity use on this site right now. So allowing an accessory use without a primary use isn't something that we typically support. Again, no proposed timeline was discussed openly at the last hearing or received from the petitioner since that time, and no proposed restriction to one person which was something that was discussed at the last hearing as well. With that being said, the department continues to find that the petition does not meet three of the five required findings for the Use Variance. Staff recommends that the Board adopt the *Findings of Fact* outlined in the staff report and deny the petition UV-13-18.

Garry Founds is representing the petitioner. At the May hearing the Board recommended tabling the issue of limitations and addressing them at the next hearing (June). That hearing was to be in June and that did not occur. It was our understanding that the Board would propose language that was acceptable to the Board. I understand that, that

has not occurred and that is not the case necessarily. If not, we certainly have language that we would propose tonight that would place limitations that comport with the limitations we discussed initially with the Planning Department (*Founds read that particular language into the record. He presented a copy of that language to the Board and for the case file*). Our proposal is temporal and limited to a single caretaker.

Stewart Gulyas: Is this the first time Staff has seen this language?

Scanlan said yes. I think it reflects some of the things that were discussed at the last hearing, but the Board was asking for something more specific time wise. Our understanding is that the Board was looking for a more specific end date.

Barre Klapper said let's take a step back. All of this is resulting from an interpretation of the definition in the UDO (Unified Development Ordinance)—the enforcement issue. Is there any other process or is this the only process? None of our tools allow us to address the actual definition of what the fraternity is and who can live there.

Scanlan explained the other petition they had in May was an Administrative Appeal where they were appealing our interpretation that there was no longer a fraternity there. So through that process, there may have been some way to say, "*We do think they meet the definition*" but you all denied that request. So now that has moved on to the next stage which is in the Circuit Court. In order to have someone live on-site a Use Variance is required, because there are only a handful of residential uses in the Institutional (I) zoning district and none of them apply to what they are requesting to do.

Nick Kappas asked Staff if the interpretation and the Notice of Violation (NOV) is because there is a caretaker on-site. And if there was no caretaker there wouldn't be any violation?

Scanlan said correct. There was a fraternity living on-site. The fraternity was vacating and they did not entirely vacate the premises. As far as we know some people stayed on-site. At the time we found out about it, it was more than one person so we issued a Notice of Violation (NOV) saying, "*Hey there aren't any residential uses here. You can't just have people living here if you're not a fraternity.*" In our definition of "fraternity" you have to be sanctioned by I.U., by whatever process they choose to do that. This group was no longer sanctioned so they filed an Administrative Appeal to say that they did not think that it was applied properly. The Administrative Appeal was denied in May 2018. The Use Variance was also filed so that it could allow for the continuation of someone to live there. What the department presented last time was that fact that we don't think the property is unique enough that it's required (referring to an on-site caretaker). Do we think it's not a huge deal? Probably not but there are five things that have to be met and we don't agree that they are met.

Kappas: If this Use Variance were to be passed; if a fraternity were to come back would they have to come back (referring to the BZA)?

Scanlan said if a fraternity moved in tomorrow that would be fine. Any fraternity could live there as long as they meet the definition of fraternity. In this situation, it's just a random person living in a building in an Institutional (I) zoning district and the code does not currently allow that.

Carol Stewart Gulyas asked the petitioner what is the need for this person to be there.

Founds responded that we addressed this at-length at the May hearing but I'll address it again. It's a vacant building. It's in close proximity to other fraternities and sororities and it's an easy target. The building has also been vandalized recently.

No public comment.

**BZA Discussion:**

Klapper said at the last hearing we wanted to think about some further conditions so we would have a level of comfort with providing a Use Variance. I don't know where we are this evening.

Kappas said there isn't a timeline which was asked for prior. I don't find this to be unique. This happens on a yearly basis where a fraternity or a sorority moves out of a house for another one moving in. It's just musical chairs of houses so that part isn't unique. If you would like to provide more context to what the Board was feeling from a temporary standpoint that would help me a little bit.

Klapper said in thinking about this further, I don't believe it rises to the level of a variance which is the issue. I think there is definitely an issue here that is not being fully addressed adequately, but I don't know if the variance is really the right tool for resolving it. We have some pretty high bars in terms of *Findings of Fact* in order to vote for a variance.

Stewart Gulyas said I would agree. I'm not sure why a security person couldn't be hired or some other alternative to a Use Variance which again seems like a big step.

Founds said we considered that and there are cameras on the property but despite that it's still being vandalized. It is unique in that it's a large property; you can't cover all the angles. A security force cannot be there 24/7. The type of property surrounding this property invites partying at this location and vandalizing the property. We have had someone watch the building. It is certainly not the ideal situation and it doesn't address the problem as fully as it could. (Stewart Gulyas: Thank you).

Kappas: Has there been requests for this site to be inhabited by another fraternity and/or sorority?

Founds said I know the petitioner is in talks with someone right now. I can't say that it will definitely be inked so to speak, but we anticipate occupation for the next school year.

If this particular tenant moves forward they will require significant renovations. So it won't be ready for this school year.

**\*\*Stewart Gulyas moved to deny UV-13-18 based on the written findings and recommendation of Staff as outlined in the staff report. Kappas seconded. Motion carried by voice vote 3:0—petition is denied.**

CU-21-18    **Recover Together, Inc.**  
1355 W. Bloomfield Rd.  
Request: Conditional Use approval to allow a rehabilitation clinic in the Commercial Arterial (CA) zoning district.  
Case Manager: Eric Greulich

Eric Greulich presented the staff report. The petitioners are requesting a Conditional Use approval to allow for a rehabilitation clinic in the Commercial Arterial (CA) zoning district. To the north of this site is the Landmark Planned Unit Development (PUD) which is a mix of medical and offices. To the west and east of this site are also CA zoned properties and to the southeast there are properties zoned Single-family Residential (RS). Most of the surrounding properties have been developed with several intensive Commercial Arterial (CA) land uses. This property is located along 2<sup>nd</sup> Street which is designated as a Primary Arterial road. This Conditional Use is being requested to allow for the rehabilitation clinic to occur within one of the tenant spaces of the building located on the north side of the property. This property has two buildings that are being used by several tenants; all are divided into multi-tenants spaces. There are also several parking spaces that adjoin both of these buildings that are used by all of the tenants. The property is not over the maximum number of parking spaces. With this request, there are a few site improvements that need to be done to bring the site into compliance with the zoning code. Specifically, some shrubs around the parking area and a bike rack. This particular use involves the petitioners having clients or tenants come to the property to seek guidance, to go through several courses, and discuss and meet with people, and then they are given a prescription that is filled at a different location. Customers coming to this location are people who are suffering from various forms of drug addiction. The petitioners will be doing counseling sessions with them, meeting and talking with them, and then going to other pharmacies in order to get prescriptions filled or for other needs they might have. Again, this particular location is really functioning as an office use mostly, but since they are treating people that are suffering from drug addiction it's classified as a rehabilitation clinic. Rehabilitation clinics are a Conditional Use within the CA zoning district, so Staff has evaluated this based on the Conditional Use standards that are in the Unified Development Ordinance (UDO). There are nine (9) standards that we made positive findings for. Again, this clinic would be located on 2<sup>nd</sup> Street which is a Primary Arterial road in Bloomington. This is not embedded in a single-family neighborhood or adjacent to any predominant residential uses. The hours of operation will be normal business hours from 8 AM to 6 PM. Staff found that the petitioner met all of the requirements for the Conditional Use standards. Staff recommends that the BZA adopt the *Findings of Fact*, including the following three conditions as outlined in the staff report:

1. A total of 60 shrubs are required within 5' of the parking area adjacent to this use.
2. A bike rack suitable for at least 4 bicycles is required within 50' of the entrance to the building.
3. Per the petitioner statement, no medicine is approved to be distributed from this location.

Jeremy Carpenter, Executive Director, said we are building a counseling practice to support adults struggling with opioid use. We don't treat any other substance of abuse. Obviously, this is addressing a large population at times that are struggling. Our demographics range from A to Z. Each one of our patients are seen on a weekly basis, no more than 10-12 (maximum) in an office visit with group therapy—similar to an NA or AA group. The group function is handled in-office with State licensed counselors and providers such as emergency room doctors, osteopathic, and primary care doctors. We bring in a lot of key players in the community that are already supporting potentially outside of our function, but we contract them in so we will have those physicians on-site as well. This is very similar to a general practice.

Nick Kappas asked the petitioner if medication or syringe medication would be brought on-site. (Carpenter: No. They will not be brought on-site).

Kappas: Okay, I just wanted that clarification.

No public comment.

**\*\*Stewart Gulyas moved to approve CU-21-18 based on the written findings, including the three conditions outlined in the staff report. Kappas seconded. Motion carried by voice vote 3:0—Approved.**

CU-22-18      **Andrew Szakaly**  
950 E. Wilson St.

Request: Conditional Use approval to allow an existing accessory building to be converted into an Accessory Dwelling Unit (ADU) in the Residential Core (RC) zoning district.

Case Manager: Eric Greulich

Eric Greulich presented the staff report. The petitioner is requesting Conditional Use approval to allow for an Accessory Dwelling Unit (ADU) on the property. The property is zoned Residential Core (RC). There is an existing house and detached garage that are both located on the property. All surrounding land uses to the north, west and south are all residential; to the East of this site is the Carlisle Brake Factory. Again, this is a request for a Conditional Use to convert the existing detached structure into an Accessory Dwelling Unit (ADU) that will be owned by the petitioner's son. The petitioner's son does own the property and they have applied for the homestead credit in his name as well. The son will be living in the Accessory Dwelling Unit and the house itself will be rented. Greulich noted that this is allowed within the ADU standards. Those

standards do require that the owner of the property live on-site whether it's in the main unit or the accessory building both are allowed. The petitioner also meets all of the other requirements that were outlined in the Unified Dwelling Unit (UDO) for Accessory Dwelling Units, including separation from any other approved ADU's. There are not any other approved ADU's within 300 feet of this property. The Accessory Dwelling Unit (ADU) meets all of the setback requirements as well as the imposed size limitation. There would be some minor improvements to the detached garage in order to turn it into an ADU. Greulich said these improvements would consist of minor interior remodeling for the kitchen and bedroom. The remodeling would be handled with a building permit. Staff finds that this petition met all of the requirements of the UDO for the Accessory Dwelling Unit. Staff recommends that the BZA adopt the proposed *Findings of Fact* as outlined in the staff report, including the following conditions:

1. The Conditional Use is approved for the existing accessory structure as submitted.
2. Prior to issuance of a building permit, the petitioner shall record a commitment to satisfy 20.05.0333(I), indicating that the ADU cannot be sold separately from the primary units and that the Conditional Use approval shall only be in effect as long as the owner(s) of record occupies either the house or the ADU as his or her primary residence. If the ADU approval is revoked at any time, the ADU must be removed from the property.
3. Prior to use of the structure as an ADU, the petitioner must submit a copy of the property tax homestead exemption for the property.

Andrew Szakaly, petitioner, agreed with the Staff recommendation and he would be happy to answer any questions.

Kappas asked the petitioner if he talked to his neighbors about this beforehand.

Szakaly said yes. As part of the requirement, I sent thirteen (13) letters. I also contacted a local neighborhood association and nobody objected. (Kappas: Okay, thank you.)

No public comment.

**\*\*Kappas moved to approve CU-22-18 based on the written findings, including the three conditions outlined in the staff report. Stewart Gulyas seconded. Motion carried by voice vote 3:0—Approved.**

**Meeting adjourned.**

