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The Board of Zoning Appeals (BZA) met in a virtual (Zoom) meeting at 5:30 pm. Members present: Barre Klapper, Flavia Burrell, Erik Coyne, and Jo Throckmorton (Jessica Sonneborn absent).

APPROVAL OF MINUTES: None at this time.

REPORTS, RESOLUTIONS, COMMUNICATIONS: None this time.

PETITION CONTINUED TO: December 23, 2021

AA-20-21 **Sheila and Chris Calloway**
3310 E. Gosport Ct.
Request: Administrative Appeal of the Notice of Violation (NOV) for over-occupancy of one dwelling in the Residential Medium Lot (RS) zoning district.
Case Manager: Gabriel Holbrow

PETITIONS:

V-21-21 **North Folk Holdings, LLC**
1600 W. 3rd St.
Request: Variance from the maximum parking allowance in order to allow for 27 parking spaces for a new restaurant.
Case Manager: Keegan Gulick

Keegan Gulick presented the staff report. The 1.05 acre property is located on the northwest side of the intersection of W. 3rd Street and S. Patterson Dr. The property is zoned Mixed-Use Medium Scale (MM). Most of the surrounding properties are also zoned MM. Properties to the north are zoned Mixed-Use Employment (ME); properties to the south are zoned Planned Unit Development (PUD). The petitioner is requesting a Variance from maximum parking allowance in order to construct a new 'restaurant' at this location with a total of 27 parking spaces. The Variance is being requested because the UDO (Unified Development Ordinance) limits 'restaurant' uses to a maximum vehicle parking allowance of 10 spaces per 1,000 sq. ft. of Gross Floor Area of indoor seating, and approximately 5 spaces per 1,000 sq. ft. of Gross Floor Area of outdoor seating. The proposed site design would allow for a maximum of 20 spaces. Gulick noted that 13 of the proposed spaces in the parking lot are utilized for dining drive-in spaces so customers can stay in their cars while their order is delivered to them. Fourteen (14) of the proposed parking spaces are for standard vehicle parking. The Variance is being requested to allow for 7 parking spaces over their maximum vehicle parking allowance.

Criteria and Findings for the Development Standards Variance were outlined as detailed in the staff report. Conclusion: No practical difficulties are found in the use of the property. A compliant parking lot with the required maximum number of spaces could be constructed on-site. To that end, the petitioner has not supplied sufficient data or reasoning indicating that there are practical difficulties in the use of the site and that a Variance is necessary for relief. Therefore Staff recommends denial of V-21-21 based on the written findings and recommendation in the staff report.

Jacob Stauffer is representing the petitioner, North Folk Holdings, Inc. We are requesting 27 parking stalls for a new restaurant (Sonic). The strict enforcement of your zoning code, as written, will place us at a competitive disadvantage. We use a very small, efficient building to serve a relatively high number of customers. For example, we will do approximately 3 million dollars in sales out of this facility which is close to Culver's or McDonald's that are both located to the west of this facility. Both of those facilities have much larger buildings with approximately 40 parking stalls. Their stalls have actual menu boards and those boards are counted in the same manner as the parking stalls which are counted against your code CAP. Stauffer explained this store will serve about 600 customers per day. On average, our high volume hours will be between 100 and 120 customers per hour. Given our competitive business with the number of customers per hour, it just makes sense to have a slightly higher ratio of parking. This is different from what you would find in a traditional restaurant.

BZA Discussion:

Erik Coyne asked Staff to clarify which diagonal lines are actual parking spaces. Gulick (case manager) explained what lines depicted the canopy, menu boards, and where the traditional parking spots are located. Jo Throckmorton asked Staff if it's the responsibility of the Board and within the Board's purview, to help businesses achieve some kind of a competitive quality as part of the Board's deliberations. He said the petitioner seemed to assert that in his presentation. Jackie Scanlan, Development Services Manager, said the BZA's purview is to decide whether or not the property and use in conjunction with that has practical difficulties for the use and not economics. Flavia Burrell asked the petitioner about parking spaces under the canopy and whether or not those are used for temporary parking where customers order their food and then leave. Jacob Stauffer said that is correct, those spaces are for temporary parking. Burrell asked about the other parking spaces that don't have the canopy on top. Stauffer said the vast majority of those spaces will be occupied by employees. Traditionally we do between 5-10% of our sales on the patio depending on the weather, so those stalls are not heavily used by our customers themselves. Stauffer added there is another canopy near 3rd Street that will have outdoor furniture and a nice outdoor seating area. Burrell said a customer can potentially pick-up their food and sit in a better area to have lunch. Barre Klapper confirmed there is no inside dining. She also confirmed there is no other Sonic restaurant currently in Bloomington. Klapper: So this business model for a restaurant really isn't addressed in our parking ordinance in any particular manner in terms of how we define parking? Gulick replied I think that is accurate. We would just consider it a restaurant just as we would for any other restaurant, where the parking spaces that are

“dine-in” are just considered parking spaces. Discussion ensued regarding the number of parking spaces that would be allowed if the petitioner chose to expand the outdoor dining/patio area or make the building larger. Gulick explained that if the building were larger or the outdoor space expanded, the petitioner would be allowed more parking spaces. Throckmorton added if either were done the petitioner would be well within compliance and no Variance would be needed. Klapper stated that the 3rd criterion in the staff report is the most difficult to meet, which makes this petition kind of tough because there needs to be something inherent in the piece of property that creates practical difficulty. The UDO doesn’t really have a specific allowance for this type of restaurant; the issue around the Variance is tied to the piece of property so they’re kind of separate issues. Discussion ensued whether or not there is a definition in the code for “outdoor dining space” and if so, could parked cars be counted as a parking space? Scanlan said the zoning code doesn’t define “outdoor dining space” but does define “parking space.” Throckmorton asked how much larger would the outdoor dining patio space need to be in order to get the seven (7) additional spaces the petitioner desires. Gulick believes it would need to be 1200 sq. ft. Scanlan added that the site plan could be designed in a different way so that the petitioner could have ample outdoor seating space. The code doesn’t make a distinction between a parking space where you park and dine versus another parking space where you just park. Scanlan explained that Staff’s position is that these are parking spaces. Parking spaces count whether people decide to sit in their vehicles and eat or not. Design-wise they function the same as if someone parks their car—gets out—goes in and orders their food. Parking space maximums aren’t trying to limit business, but parking space maximums are in place to limit our impervious surface area and reliance on vehicles. Klapper asked the petitioner about the possibility of a larger patio area or building. Stauffer said theoretically we could build the building larger but I don’t know that it serves any benefit other than to meet the code, which is why we’re asking for the relief here today. Scanlan reiterated that this could be designed in a different way so that the petitioner could have ample outside seating space. Burrell commented that this is definitely a different business model than what we’re used to for a restaurant, where people dine-in and sit down. She wondered if the petitioner isn’t being penalized for their business model. Burrell said she’s wrestling with the idea that this is not really a parking area but an eating area. You’re just eating inside your car because of the business model. Klapper asked if Staff would elaborate more on the “parking” side of things and how it’s defined in the code. Scanlan responded that parking spaces count whether people choose to sit in their vehicles and eat or not. I do understand that it’s a different business model but design-wise they function the same as parking spaces where someone gets out and goes in and gets food. The code is written in such a way with parking maximums. Not to limit business but to limit impervious surface and our reliance on vehicles, and to encourage other types of development. If the Board is interested in thinking about the covered ordering spaces as something different than a typical parking space, I think we would still request that you hold them to the parking standard. Throckmorton asked if it’s the responsibility of the Board to work with the petitioner so that they can design to the standards of the community, or is it our responsibility to change and provide Variances so that we can conform to outside business models. Scanlan responded that it’s the department’s position to guide development through the land use laws that the community has

determined are appropriate, and determine whether or not they have unique characteristics that make those laws burdensome in a way that makes the use of those properties impossible or very difficult. Yes, it's our job to hold people to the rules of design and it's the Board's job that when a property is so unique that it can't function within the rules of the code, then you can provide relief so that the goals of the code are still met. Scanlan touched on other restrictive regulations on the property such as impervious surface. Klapper confirmed that at this point the petition does not have any impervious surface issues. Burrell wondered if a continuance of the petition was in order to allow the petitioner time to come up with relevant information to use for comparison purposes to support their request for additional parking. Scanlan said no, we don't think this property is unique and we think it's over parked. I mean it's hard to say, if the petitioner showed similarly sized buildings that are a mile and a half from a highway, and could show us parking counts where they are full at 35 (7 days a week), then that is something that we would have to talk to the Planning director about. However; with the lot itself and not being able to meet code, I just don't think we would be able to get there but that doesn't mean the Board wouldn't want to make that decision with the parking count data. Klapper asked Staff if this type of business could go into an outlier shopping mall situation where there is shared parking. Scanlan said yes, I think there are other design opportunities where any restaurant or use could capitalize on shared parking other than on a solo parking lot.

No public comments.

Back to the petitioner:

Stauffer said either way this project is going forward but if you don't grant the Variance, you're going to have a perverse result of having more impervious area.

****Throckmorton moved to deny V-21-21 based on the written findings and recommendation outlined in the staff report. Klapper seconded.**

BZA Final Comments:

Throckmorton made the point that the petitioner is going to move forward with the project regardless, so that means that they can certainly work with us within the code. We have a code for a reason and we're trying to build a certain type of community. It's not about economics—it's about the code. There is a solution for the petitioner that doesn't require a Variance being granted. Klapper said she didn't see anything peculiar to this piece of property that would create the need for a Variance. This business model doesn't fit well in our code because it doesn't address this type of business model in a

way that would allow this business to function on any piece of property, whether it's this one or one block over. Klapper said she didn't find anything peculiar about this piece of property that would allow the Board to grant the Variance.

Mike Rouker, Attorney for the City, addressed the Board and said a 2:2 vote in this case would be a failed motion and you would continue to debate.

Roll Call: Motion carried 4:0—petition is denied.

Meeting adjourned.