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

**APPROVAL OF MINUTES:**      October 19, 2017

~Unable to approve minutes due to a lack of board members in attendance. These will be forwarded to the March meeting and placed on the agenda for action at that time.

**BZA RULES SUSPENDED TO ELECT OFFICERS:**

**\*\*Throckmorton moved to continue the election of officers for 2018 to the March meeting. McManus seconded. Motion carried by voice vote.**

**REPORTS, RESOLUTIONS AND COMMUNICATIONS:**

Jackie Scanlan reminded board members to complete and submit their City of Bloomington *Conflict of Interest Questionnaire* form as soon as possible to Barbara McKinney in the Legal Department.

Barre Klapper wanted to recognize and welcome Beth McManus as a new member of the BZA.

Barre Klapper thanked Sue Aquila for her long-term service on the Board, saying that she was a wonderful leader and that she would be missed. Joe Hoffmann will also be missed. He, too, was a long-term member of the Board and someone that always had sage advice and insight.

**PETITION CONTINUED TO:**      March 22, 2018

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

**PETITIONS:**

- CU/V-01-18      **Carole and David MacKay**  
                         506 S. High St.  
                         Request: Conditional Use approval for an Accessory Dwelling Unit (ADU) in the Residential Core (RC) zoning district. Also requested is a variance from side yard setback standards.  
                         *Case Manager: Jackie Scanlan*

Jackie Scanlan presented the staff report. The subject property is 0.77 acres and is zoned Residential Core (RC). The Growth Policies Plan (GPP) designation for this property is also Residential Core. There is a single-family house and one accessory structure on the south side of

the property. The surrounding uses are Residential Single-family (RS) in nature, including Institutional (IN) zoning across the street. This is a request for a Conditional Use approval for an accessory dwelling unit. The petitioner is seeking this approval in order for the apartment to become compliant with current Accessory Dwelling Unit (ADU) regulations in the Unified Development Ordinance (UDO). The ADU is existing and the detached garage is a legal non-conforming unit. This request meets almost all of the development standards from the new ADU rules that were passed by City Council in September of 2017. Accessory Dwelling Units were added to the zoning code in single-family residential neighborhoods and signed into law in October, and followed by development standards criteria being added to the UDO. Scanlan explained this petition meets all of the standards with the exception of the side yard setback for the western property line. Because the property has two street frontages to the north and east, both the western and southern line are considered side yards. The building meets the 5-foot setback to the south but not to the north and therefore the petitioner is seeking a variance from the side yard setback requirement. The code allows for existing one-story buildings to be exempted from the setback standards if they are converted to ADU's. However, it does not exempt existing legal non-conforming ADU's in one or two-story buildings that do not meet the code. Scanlan explained that the maximum number of Accessory Dwelling Units per lot is one. Also, only one family as defined by code can live in the unit which is the case here. The property has to meet the minimum lot size for the zoning district. The minimum lot size in the RC zoning district is 7,200 sq. ft., and this property is bigger than that at 33,000 sq. ft. Because this is the first ADU on record, the separation requirement from other ADU's that we might be asked to consider in the future is a moot point. Owner occupancy on the lot is required, and the owner of this parcel does live in the main house. Some of the design standards include a maximum square footage requirement, but it's different for an attached or a detached dwelling accessory dwelling unit. The requirement for a detached ADU is 440 sq. ft. The maximum number of bedrooms is one and this unit meets that requirement as well. The front yard setback requirement is that the Accessory Dwelling Unit has to have the same setback as the main house. In this particular case its set farther to the west than the house which is why the variance is being requested. Per code, the maximum height is 25 feet tall and this structure is under 19 feet. Practical difficulty is found in the location of the existing building. The garage has been in its current configuration and location since at least 1928. The legal non-conforming accessory dwelling unit has been in continuous operation since at least 1989. The parcel far exceeds the minimum lot size for the RC zone and could, theoretically, be subdivided into multiple lots. The historic pattern of development on the lot resulted in the garage being located directly behind and adjacent to the house. Again, the petitioner is seeking to legitimize an existing ADU. Given that this is the very first ADU request, Staff is trying to make sure that it meets the spirit of what the Accessory Dwelling Unit is trying to allow people to do in single-family zones. Staff found no adverse impacts from this request. Staff found multiple peculiar conditions which were mostly related to age of development and the size of the lot. Holding the ADU to the side yard setback doesn't seem to meet the intended purpose of UDO regulation as there is an existing separation from the closest neighbor because of the way the property has been developed and because of the unimproved alley. Staff recommends approval of this petition based on the written findings in the staff report, including the following conditions:

1. The Conditional Use is approved for the existing Accessory Dwelling Unit with existing dimensions.
2. Petitioner shall record a commitment to satisfy 20.05.0333(I), indicating that the ADU cannot be sold separately from the primary unit 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. Petitioner shall submit a copy of the property tax homestead exemption for the property.

Jim Rosenbarger, petitioner's representative, said this property has had several tenants over the years. In some ways it's a good kickball for an Accessory Dwelling Unit (Conditional Use) because it does show the success of an ADU over time. The house is historic and has similar details to an ADU which is a positive thing. This is a beautiful setup. He said they are now asking to get out from under their legal non-conforming status.

Jo Throckmorton questioned whether the Board would be hearing this request if the property conformed to all of the regulations.

Scanlan said the Board would still be hearing it but only the Conditional Use portion of the request without the variance.

Throckmorton asked if all future ADU requests would come before the BZA. Scanlan said yes.

Throckmorton: Even if the ADU meets all of the requirements? Scanlan responded yes.

Throckmorton: The west and rear setback is non-conforming? Scanlan said correct.

Throckmorton asked what significance the unimproved alley had on the code.

Scanlan explained that part of what the code is getting at by including setback requirements is separation from the property—the adjacent property. If you had a 5-foot setback on your property and so does your neighbor, then you're going to be at least 10 feet apart. In this situation, this unimproved alley is 12 feet wide so even if the neighbor wanted to build at some point they would have to meet current setbacks because it's a new building. In this particular case, it would be a separation of 17 feet if someone developed on the property next door.

Throckmorton asked Staff to verify that petitions brought to the BZA are not setting precedent and that they are all cited on an individual basis? Scanlan responded that is correct.

Throckmorton said so approving or not approving one single ADU doesn't set in motion some type of standard? Scanlan said that is correct.

Barre Klapper asked Staff to explain what is prompting the need for legitimizing the ADU.

Scanlan said a legal non-conforming use could go on in perpetuity but it holds the property in kind of a freeze zone. Because the property is non-conforming they couldn't do other expansions. If they wanted to do a small addition on their house they couldn't do it with the unit under its current legal non-conforming status. When the unit is brought up to current code standards then the entire property is no longer non-conforming.

No public comments.

Rosenbarger asked for clarification of condition #2 in the staff report regarding *"If the ADU approval is revoked at any time, the ADU must be removed from the property."* He wondered under what conditions the ADU could be revoked.

Scanlan explained the most likely scenario for having an ADU revoked would be if the petitioner were to leave the property. One of the requirements of an ADU is that the owner must live on the property. More specifically, the garage wouldn't have to be torn down but the way the residential units are described having to do with fixtures inside the unit would most likely have to be changed.

Throckmorton asked if a neighbor could petition for a revocation of an ADU.

Scanlan responded there is not a specific revocation process for ADU's. The neighbor would probably have to go through the court system if they wanted to file for remonstrance against a decision made by the Board.

Throckmorton said the decision of the BZA should suffice with regard to ADU's; however, with this new policy in place he wanted to make sure the process is clear.

**\*\*Throckmorton moved to approve CU/V-01-18 based on the written findings, including the three conditions outlined in the staff report. McManus seconded. Motion carried by voice vote 3:0—Approved.**

Meeting adjourned.