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The Board of Zoning Appeals (BZA) met in the Council Chambers at 5:30 p.m., members present: Hoffmann, Neher, Southern, and Throckmorton (Aquila and Klapper absent).

Roach explained we do not have a President or Vice-president in attendance so we need a nomination for a temporary President.

****Hoffmann nominated Darryl Neher to serve as the acting President for tonight’s meeting. Southern seconded. Motion carried unanimously by voice vote.**

APPROVAL OF MINUTES: March 23, 2017

****Throckmorton moved to approve the 3/23/17 minutes. Neher seconded. Motion carried unanimously by voice vote.**

REPORTS, RESOLUTIONS AND COMMUNICATIONS: None at this time.

PETITION CONTINUED TO: May 18, 2017

- UV-04-17 **Lewis Development Company**
200 S. Washington St., 114 E. 4th St., 121 E. 3rd St.
Request: Use variance to allow the use “drive through” in the Commercial Downtown (CD) zoning district.
Case Manager: Jackie Scanlan

PETITION WITHDRAWN:

- V-08-17 **Lewis Development Company**
200 S. Washington St., 114 E. 4th St., 121 E. 3rd St.
Request: Variance from development standards for the entrance and drive from 3rd Street into a parking garage.
Case Manager: Jackie Scanlan

PETITIONS:

- UV-40-16 **Naples, LLC (Doug Duncan)**
1610 N. Kinser Pike
Request: Use variance to allow first floor residential uses in a Commercial General (CG) zoning district.
Case Manager: Amelia Lewis

Amelia Lewis (Long-Range Zoning Planner) presented the staff report. The site is located at the southeast corner of N. Kinser Pike and N. Gourley Pike and zoned Commercial General (CG). The site is approximately 1.2 acres in size. The Growth Policies Plan (GPP) designation for this location is Community Activity Center. The site is currently vacant. Surrounding land uses include commercial, single-family residential, office, and multi-family residential. The petitioner is requesting a use variance to allow first floor residential within the Commercial General zoning district. This petition was forwarded to you with a favorable recommendation by the Plan Commission on April 17, 2017. At the same meeting, the site plan was approved. The site plan consists of a 3-story, 39-unit multi-family building. The apartments face Kinser Pike. The building would include 39 one-bedroom units. The parking is located to the rear tucked behind the building. Lewis noted there is one area of the Lot that remains undeveloped due to environmental constraints. There is a sidewalk proposed along both street frontages. This is the west elevation along Kinser Pike, so you can see the front door steps that residents would be able to access. In addition, on the other side of the building, which is the side facing the parking lot, there are external balconies; stairways which are half covered. On the front side they're not visible but this is how you gain access to the 2nd and 3rd floors. Here are the north and south elevations. As previously mentioned, the southern portion of the site will remain undeveloped due to tree preservation standards, steep slopes, and a creek which requires a 75-foot riparian buffer which extends and goes up to the proposed parking. The Commercial General zoning district prohibits ground floor residential units; the petitioner proposes all residential and no commercial. The BZA must determine if this petition meets the criteria and findings for a use variance. Lewis said there are five findings for a use variance. There is an affordable housing component with this project. There is only one curb-cut off of Gourley Pike which limits access along Kinser, which is a very busy street. The use and value of the adjacent area will not be substantially affected in an adverse manner. Staff believes this serves as a buffer between adjacent properties that have already been developed with the commercial to the north and the single-family to the south. It also creates pedestrian connections. It's also located along a bus route. The need for the variance arises from some condition peculiar to the property involved. Staff finds that the southern portion of the Lot is undevelopable due to environmental constraints, which is a condition unique in particular to the Lot itself. This results in a smaller developable area and it prevents a large mixed-use development that would likely be able to support commercial in a more effective way. The strict application of the UDO would constitute an unnecessary hardship. Staff finds this to be true as it would require approximately 23,000 sq. ft. of ground floor commercial and entirely precludes the option for ground floor residential units. The last finding is that the approval does interfere substantially with the GPP. As previously mentioned, this is designated as a Community Activity Center (CAC). The plan outlines that the CAC will be primarily commercial; however, residential units may be developed. Staff believes this incorporates a balance of land uses in the area and allows residents to take advantage of the commercial services to the north. This area is already fairly built out and is the last vacant parcel, so this would just fit into the existing neighborhood with a use and design that is consistent with the CAC. Staff recommends approval of this petition based on the written findings outlined in the staff report, including the following condition:

1. All terms and conditions of the Plan Commission site plan review, SP/UV-41-16 are binding on this petition.

Jeff Fanyo, Bynum Fanyo & Associates, is representing the petitioner. Doug Duncan of Naples, LLC is also present. We've spent several months working with the Planning staff. As stated, we've met all of the UDO requirements. We've stayed away from all of the environmentally

sensitive areas. In order to develop the property, we require this variance to make the project viable. I'm happy to answer any follow-up questions.

Jenny Southern said she visited the site and looked at the lay of the land. It's a very difficult piece of land. It seems like the limestone breaks through all along it. You're going to be building right on top of bedrock? It doesn't seem to be dirt.

Fanyo said you're right about it being a very difficult piece of land to develop. My client bought this piece of property in 1995. I've worked on several different reiterations trying to come up with something that physically works on the property. Since that time, additional requirements have come in with the zoning ordinance such as tree preservation, steep slopes and riparian buffers which makes the site even more difficult to work with. I believe a lot of the limestone you saw might be fill material. They filled a portion of this property in 1996 or 1997 where they built the law offices (offices used to be on the Bypass at Kinser—north of this site). The office building next to this, has a walk-out lower level and I don't believe they hit any rock so what you saw might be just rubble fill—hopefully.

Southern: So you say that's fill? And you're going to have to build it more "out" to put your parking on top of it? Is it going to be a wall?

Fanyo said yes, we'll have a retaining wall along our east property line. It was something that was worked out between the owner to the east of us and the developer. We have a satisfactory agreement with him on that.

Southern: Since it's fill you'll probably be able to do the retention pond you have on the plan?

Fanyo: Yeah.

Southern said I don't have any objection to the residential but wasn't sure how you were physically going to work with it. Referring to page 14 of the packet; I'm wondering what the oval is on Kinser Pike that's in front of the buildings?

Hoffmann said it's a temporary topsoil stock pile.

Fanyo said in order to get our Rule 5 permit, we have to show why we're stockpiling topsoil where we have concrete washouts and things like that.

Southern: Good luck building there. You might need to do some blasting or something, I don't know.

No public comments.

****Hoffmann moved to approve UV-40-16 based on the written findings, including the one condition outlined in the staff report. Southern seconded. Motion carried 4:0—Approved.**

Meeting adjourned.