
BZA minutes are transcribed in a summarized manner. Video footage is available for viewing in the (CATS) Audio-visual Department of the Monroe County Public Library at 303 E. Kirkwood Avenue. Phone number: 812-349-3111 or via email at the following address: moneill@monroe.lib.in.us

The Board of Zoning Appeals (BZA) met in the City of Bloomington – Utilities Board Room at 5:30 p.m. Members present: Klapper, Huskey, Kappas, Hoffmann and Throckmorton.

APPROVAL OF MINUTES: March 2019 and April 2019

****Hoffmann moved to approve the April 2019 minutes. Kappas seconded. Motion carried unanimously by voice vote.**

****Hoffmann moved to approve the May 2019 minutes. Kappas seconded. Motion carried unanimously by voice vote.**

REPORTS, RESOLUTIONS AND COMMUNICATIONS:

Eric Greulich, Planning staff, said there were a few meeting handouts that filtered in at the beginning of the meeting and some others that were received by the department after the packet was distributed to board members. Greulich reminded the board they are not obligated to look at information handed out at the meeting--it's at their discretion.

PETITIONS CONTINUED TO: September 19, 2019

V-17-19 **City of Bloomington**
105/111 W. 4th St., and 222 S. Walnut St.
Request: Variances from entrance and drive standards in the Commercial Downtown (CD) zoning district.
Case Manager: Jackie Scanlan

PETITIONS:

V-20-19 **Doug Wissing**
521 W. Smith Ave.
Request: Variance from rear yard building setback standards to allow an addition to an existing residence.
Case Manager: Eric Greulich

Eric Greulich presented the staff report. The subject property is located at 521 W. Smith Avenue and zoned Residential Core (RC). The petitioner is requesting a variance from rear yard building setback requirements to allow for a 7'x13' addition to the existing residence. The proposed addition would consist of a small dining area. The home itself is approximately 3,000 square feet in size. Greulich noted there are several lots within this neighborhood, especially along Smith and Howe that have been developed in a similar pattern of property layouts as the petitioners—all very small lots. This is often seen in older neighborhoods. The proposed addition to the rear of the property (or to the

south), would extend into the setback approximately 5 feet. Patio doors would extend to the east as well as windows along the south and west sides. This home is located within the *Prospect Hill Historic District*. Since the addition is not visible from the street, a *Certificate of Appropriateness (COA)* is not required for the addition. Staff received several letters of support from adjacent property owners and those were included in the packet. Staff recommends approval of the variance based on the written findings in the staff report, including the following conditions:

1. The petitioners must obtain a building permit prior to construction.
2. This variance applies to the addition as proposed only. Any subsequent encroachment would require a variance.

Doug Wissing, petitioner, is requesting a variance to add a small dining room to an 1880's vernacular cottage that was restored over 20 years ago. The kitchen is very small. Constructing a dining room would increase the overall livability of the home and make it more attractive.

Discussion ensued between the Board and the petitioner regarding how far the existing brick patio extends from the existing back wall. Wissing responded approximately 8 feet. Throckmorton confirmed the proposed dining area, extending 7 feet, would actually extend or protrude less than the existing patio.

Public comments in favor of the petition:

Steve Pollack said Howe St. almost functions like an alley; nobody drives down Smith once you get to know the neighborhood. Routine traffic has abandoned the street because it's so constrained. He believes it's a perfect use of space and therefore supports the variance.

****Throckmorton moved to approve V-20-19 based on the written findings, including the two conditions outlined in the staff report. Hoffmann seconded. Motion carried by voice vote 5:0—Approved.**

UV-26-19 **Kimberly Carballo**
1300 S. Lincoln St.
Request: Use variance to allow the raising of goats on a single lot in the (RC) zoning district.
Case Manager: Ryan Robling

Ryan Roblin presented the staff report. The subject property is located at 1300 S. Lincoln Street and zoned Residential Core (RC). The site has been developed with a one-story, single-family house and detached accessory structure. The petitioner is requesting a use variance to allow the raising of goats on a single lot in this zoning district. The Unified Development Ordinance (UDO) defines the keeping of livestock other than chicken flocks as the use 'crops and pasturage'—'crops and pasturage' is not an approved use in this zoning district. 'Crops and pasturage' is only an approved use with special conditions in the Residential Estate (RE) zoning district. If two (2) goats were kept in this zoning district, they would require a total of one acre of dedicated pasturage to meet UDO requirements. Eligible Residential Estate lots are required to be

no less than 5 acres, and structures containing livestock or livestock waste must be setback a minimum of 75' from the front property line, and 50' from side property lines. Staff finds negative impacts with this request. Close proximity to animal waste is a potential health risk to surrounding residents. The health and safety of livestock on such a small parcel also poses concern. Ultimately, the size of the property does not adequately allow for livestock and livestock waste to be located safely away from surrounding residents. Additionally, parcels within the RC zoning district were not intended to house livestock. This parcel could easily continue as a single-family use. Staff recommends denial of the use variance based on the written findings outlined in the staff report.

Kimberly Carballo, petitioner, said she's owned dwarf goats approximately 1-1/2 years. She outlined her use variance request and detailed the benefits of raising *Nigerian Dwarf* goats, including how they are a positive contribution to her household, the neighborhood and town. Her backyard is a daily stop for families who walk around the neighborhood hoping to visit the goats. She said many people within the neighborhood have asked what they can do to support keeping the goats. Further, their waste goes to three gardens for fertilizing. She also gets milk from them. In her opinion, these animals are not bad for the neighborhood. Her goats are well taken care of and content in their surroundings so they won't jump the fence. She urged the Board to approve her request.

Discussion ensued between the Board and the petitioner regarding the size of her goats as opposed to a regular goat; fence height; whether *Nigerian Dwarf* goats jump or not; types of daily care needed for goats. Also discussed was the definition of livestock versus domestic animals. Throckmorton confirmed that her goats are able to jump approximately 3 feet in height. Hoffmann questioned how this use should be classified, and asked for the definition of "livestock". Greulich explained the code lists very specific species which are classified as livestock. Hoffmann asked if there is a definition for "pet animal" in the code. Greulich said no. Greulich added the "Adoption Draft" of the Unified Development Ordinance (UDO) is not being considered as part of this request. The idea of allowing for more urban agricultural uses has come up in City conversation; it's in the proposed draft of the UDO. In his opinion, the proposed UDO would allow for this use because there is still going to be a minimum lot size. Hoffmann said he's simply trying to figure out where this type of use fits. Greulich advised the Board to stay away from discussions regarding the (proposed) new code because at this point it hasn't been vetted. With the proposed updates to a new zoning code, Staff believes that is the appropriate time to have a community-wide discussion of whether or not there should be wholesale changes to allow for this. Hoffmann asked what would happen to the goats in the interim. Greulich said it would be an enforcement issue through Planning and Transportation. The department would give them a certain amount of time to come into compliance with current code. If the code were to change and this use permitted, there would be no enforcement issue.

Public comments in favor of the petition:

Ray Feldmann, Susan Swainey, Libby Gwinn, Rick Sorpa, Joshua Herring, Steve Pollack, and Ian Woollen. All parties encouraged the Board to approve the variance request in order to allow the goats to remain. The overall consensus is that goats are a benefit to the neighborhood in terms of urban agriculture. The neighborhood itself is full

of houses that are all different; the yards are wildlife refuges, native grasses, as well as crops. It's part of the neighborhood vibe to use your lawn in that way.

Throckmorton mentioned the possibility of predators preying upon the goats and asked the petitioner what she knew about the issue of predatory behavior. Carballo said predators usually go after the smallest breed of goats. Huskey asked if this variance were to be approved, would it allow only this particular owner to have these particular goats on the property. Greulich responded that the use variance would apply to only this property. The BZA would need to make written findings that this property is unique and that it doesn't allow it to meet code in some way. With an approval, the Board could limit it to "X" number of goats or any other condition(s) the Board deemed appropriate. To clarify; the use variance approval would run with the property and not the owner.

****Throckmorton moved to deny UV-26-19. No seconded. Motion died for lack of a second.**

****Kappas moved to continue UV-26-19 to the next regularly scheduled meeting.**

BZA Discussion:

Hoffmann believes that Staff is correct. Under the current UDO and under the legal requirements for granting a variance, this is not a variance the BZA is empowered to grant. It's also a very unusual situation because we have already declared in the Comprehensive Plan that this is an issue that we intend to take up as we move forward with the new UDO. It seems like this is a case that should be tabled even though we can't do that. This is a great case for the Plan Commission to talk about as the UDO draft is being discussed. Hoffmann said this case is peculiar because we know the issue has already been raised, and is in the process of being discussed by people who are engaged in the UDO adoption. We've already got it in the Comprehensive Plan that we should be doing more to encourage urban agriculture. Some changes have even been made in the draft UDO that would push this closer to a permitted use in this zone than it is in our current code. The Plan Commission is already moving in that direction and therefore it's premature to act before the Plan Commission does. Hoffmann said he would be in favor of continuing this petition until such time as the issue gets resolved at the Plan Commission. Klapper wondered if a continuance of this petition could be open ended. Throckmorton asked for a second motion for reasons of clarity.

****Kappas offered a friendly amendment to continue UV-26-19 until such a time when the Plan Commission has completed the final adoption process of the UDO. Hoffmann seconded.**

Discussion re: the motion:

Huskey said goat waste was addressed. The nuisance idea was also addressed. There were a large number of people in the community saying these goats are not a nuisance. It sounds like they are much less of a nuisance than a lot of large dogs running around. It sounds like they are domesticated animals—pets. The other issue is that the Comprehensive Plan is actually supporting this. Huskey wasn't sure why the Board wouldn't be able to approve the petition. Throckmorton said the issue of waste was a personal observation by the petitioner; the Board doesn't know. And just because there

hasn't been a predator of goats doesn't mean there won't be a predator. There are reasons for having the ordinance in place. Throckmorton said based on the current code including the information presented, is the reason why he it was the BZA's responsibility to deny the petition until such a time when the City changes the code. Throckmorton added the Board isn't in a position to table cases. With that being said, there is no sense of urgency when you table a case and decisions need to be made. Throckmorton reiterated that under the current code this particular use is in violation. The City has stated that this issue is still up in the air. Variances are based on individual decisions and unable to be precedent setting.

Hoffmann withdrew his second.

****Kappas revised his friendly amendment to state the following: "To continue UV-26-19 to the November 2019 hearing until the Plan Commission addresses this in the draft UDO. Hoffmann seconded.**

Klapper addressed Huskey and said the "peculiar aspect" of the property of any case is the hardest thing to find and I think you're having a problem doing that.

► Throckmorton abstained since he made the original motion to deny.

Roll Call: Motion carried 4:0. Petition continued to November 2019.

V-28-19 **Zachary Thomas & Kelli Hostettler**
804 W. Howe St.
Request: Variance from maximum fence height.
Case Manager: Ryan Robling

Ryan Robling presented the staff report. The subject property is located at 804 W. Howe Street in the *Greater Prospect Hill Historic District*, and is zoned Residential Core (RC). The property has been developed with a single-family residence approximately 7,200 square feet in size. The property has three fronts; W. Howe, S. Maple, and W. Smith Avenue. The petitioners are requesting a variance to allow a fence in excess of the maximum height requirements outlined in the Unified Development Ordinance (UDO). Currently there is a 6-foot tall fence which runs along the east/west and north property lines. The western property line runs along S. Maple and the north property line runs along W. Smith. The standards for maximum height of a fence for a corner lot in the UDO states that, "*Fences and walls along the lot frontage of the secondary front building wall, shall not exceed 4 feet forward of the build-to line.*" South Maple is the property's secondary front building wall, as the property's primary front is along Howe. The UDO establishes the build-to line in the Residential Core zoning district as 15 feet from the proposed right-of-way or the block face average whichever is less. Robling pointed out that 804 W. Howe St. is the only property on the block along S. Maple, and as such sets the block face average. The structure at this location has been built 9 feet from the proposed right-of-way of S. Maple St., so any fence built between the house and the right-of-way can be a maximum of 4 feet in height. Staff visited the site and determined that W. Smith Ave. functions as an alley despite its classification as a road. No structures front on that portion of Smith Ave. The street is narrow and there is no sidewalk. Staff finds that a 4-foot fence would be appropriate along that frontage in areas

not between the house and Maple St. Based upon the Staff's written findings, the department recommends adoption of the proposed findings and denial of V-28-19.

Zachary Thomas, petitioner, said he and his wife hired Award Fence to build their new fence in late May 2019 primarily to keep their huge dogs secure. The contractor didn't see any issue with the proposed location so they proceeded with the project. He is opposed to having a 4-foot fence because it wouldn't be tall enough for the size of their dogs. Thomas said they received a letter of support from the *Prospect Hill N.H. Association*, including a letter from Patrick Murray that he submitted to Staff. The neighborhood association came up with a solution and that is to reduce the height of the fence to 4 feet with 2 feet of lattice above or at the top.

Public Comments:

Patrick Murray, Secretary for Prospect Hill N.H. Association, explained the solution was to lower the solid part of the fence down to 4 feet and create a lattice from 4 to 6 feet at the top. This would still allow for visibility in the yard and also be a deterrent for their dogs to jump the fence.

****Throckmorton moved to deny V-28-19. Hoffmann seconded.**

Klapper confirmed that the only portion of the fence at issue would be along Maple St. Klapper asked Staff about a compromise.

Greulich explained that denial of the variance would mean that the petitioner would need to come into compliance with the UDO. The fence would need to be cut down to 4 feet or moved back to be even with the face of the house. If the Board were inclined to make findings that the property is unique in some way, then the Board could add a condition of approval that would allow for a deviation.

Roll Call: 5:0—petition denied.

V-30-19 **Catalent Indiana, Inc.**
1300 & 1400 S. Patterson Dr.
Request: Variance from riparian buffer standards.
Case Manager: Eric Greulich

► Let the record reflect that Nick Kappas recused himself from this petition due to a conflict of interest.

Eric Greulich presented the staff report. The subject property is located at 1300 S. Patterson Drive, located on Tract B within the Thomson Area Planned Unit Development (PUD). The property has been developed with 2 large buildings that were constructed as part of the Thomson/RCA manufacturing plant which is the former use on this site, and then subsequently re-used by Cook Pharmica when they moved into the property in the early 2000's. And now the use is Catalent. The petitioner is requesting a variance from riparian buffer standards in order to allow for the relocation of an existing access drive on the south side of the building. This drive accesses some parking spaces and a loading dock. There is a fence that runs along this area that separates the drive from the properties to the south. The petitioner is proposing a large remodeling project to the

existing building, and there will be some cooling towers that are proposed to be located along this side. With that being said, they need to move that access drive to the south approximately 15 feet in order to work around the location of the proposed cooling towers. There is an intermittent stream off of the site approximately 70 feet that has a riparian buffer of at least 75 feet. This buffer does not allow for any disturbance within that particular area. The petitioner is proposing to encroach into the buffer approximately 15 feet in order to allow the drive to be moved. Staff finds this request meets the variance criteria as outlined in the Unified Development Ordinance (UDO). Staff recommends approval of the requested variance based on the written findings, including the following conditions:

1. This variance applies to the scope of work for this exact project as proposed only. Any subsequent encroachment would require a variance.
2. The petitioner shall continue to work with Staff to come up with a proposed landscape mitigation plan.

Bill Riggert, Bledsoe Riggert and James, is present for the petitioner. He reiterated their request and explained that the eastern end of the Catalent building is going to be torn down and completely rebuilt for a new production line. In order to support the production line they need cold air and chilled water. In order to accomplish this, the parking lot needs to be reoriented and the access drive relocated.

Discussion ensued between the BZA and Staff regarding the access drive, the landscape mitigation plan, as well as the extent of the encroachment into the riparian buffer. Greulich explained that Staff would continue working with the petitioner in order to come up with a plan to help with improvements. Currently there isn't anything between their building and the fence line, it's just grass. This particular industry has very specific needs and limitations in terms of vegetation that can be close to the building. Staff would like to continue working with the petitioner on a plan for improvements in that location. Hoffmann added that the Environmental Commission wasn't in favor of the requested variance; however, if the variance were to be approved they suggested having an environmental easement. Huskey wondered if the environmental situation would actually be improved with this proposal. Greulich said Staff would like to get some landscaping along the south side of the drive to the extent possible; landscaping that works within the easement restrictions as well as Catalent's limitations.

No public comment.

*****Hoffmann moved to approve V-30-19 based on the written findings, including the two conditions outlined in the staff report. Huskey seconded. Motion carried by voice vote 4:0—Approved.***

Meeting adjourned.