

CITY OF BLOOMINGTON



March 19, 2020 @ 5:30 p.m.
COUNCIL CHAMBERS #115
CITY HALL

**CITY OF BLOOMINGTON
BOARD OF ZONING APPEALS
March 19, 2020 at 5:30 p.m.**

◆Council Chambers - Room #115

ROLL CALL

APPROVAL OF MINUTES: January (Feb. meeting cancelled—no minutes)

REPORTS, RESOLUTIONS, AND COMMUNICATIONS: None at this time

PETITIONS CONTINUED TO: April 23, 2020

AA-08-20 **The Annex Group**
1100 N. Crescent Dr.
Request: Administrative Appeal of decision to enforce fines from 1/13/20 through 1/23/20.
Case Manager: Jackie Scanlan

PETITIONS:

AA-41-19 **Judie Baker and David Holdman**
523 W. 7th St.
Request: Administrative Appeal of the Notice of Violation (NOV) issued related to the demolition of two structures.
Case Manager: Jackie Scanlan

V-44-19 **Randall McGlothlin**
621 N. Lincoln St.
Request: Variances from front yard setbacks and maximum impervious surface coverage standards to allow for a deck.
Case Manager: Ryan Robling

V-07-20 **City of Bloomington**
105 & 111 W. 4th St.
Request: Variances from entrance and drive standards in 20.05.035 in the Commercial Downtown (CD) zoning district.
Case Manager: Jackie Scanlan

BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
Location: 523 W. 7th Street

CASE #: AA-41-19
DATE: March 19, 2020

PETITIONERS: Judie Baker and David Holdman
523 W. 7th Street, Bloomington

REQUEST: The petitioner is requesting an administrative appeal of the issuance of a Notice of Violation following the demolition of a structure without a Certificate of Zoning Compliance.

REPORT: This appeal is the result of the issuance of a Notice of Violation related to the demolition of a structure at 523 W. 7th Street. On May 17, 2019, property owner Judie Baker, acting through her son-in-law David Holdman, submitted a demolition application to the Monroe County Building Department requesting permission to demolish all structures at 523 W. 7th Street. On May 20, the County forwarded the application to Planning so that Planning could consider whether to issue a Certificate of Zoning Compliance (“CZC”) related to the application. On May 28, Planning forwarded the application to Historic Preservation Program Manager Conor Herterich for review. Mr. Herterich was required to bring the Petitioner’s request to the Historic Preservation Commission (HPC) because the structure at 523 W. 7th had been identified as Notable on the City of Bloomington Survey of Historic Sites and Structures because the property was surveyed as Notable in the 2001 City survey. The site was re-surveyed as Contributing in the 2014/2015 State survey, but exists as Notable in the City of Bloomington Survey of Historic Sites and Structures as a result of the 2001 rating.

As a Notable structure, the structure at the property was subject to a process called “Demolition Delay” outlined in Bloomington Municipal Code § 20.09.230. Demolition Delay requires that a demolition application be delayed for a period of 90 or 120 days while the Bloomington Historic Preservation Commission (“HPC”) considers whether or not to (1) recommend that the City Council locally designate the structure as Contributing, Notable, or Outstanding and places the structure under interim protection, (2) release the demolition delay so that the structure may be demolished immediately without waiting the applicable 90 or 120 day period, or (3) take neither of these actions during the applicable 90 or 120 day period. Essentially, under demolition delay, the HPC’s role is to determine (1) whether to release the demolition application and allow the structure(s) to be demolished immediately (in which case a CZC would be sent to the County immediately) or (2) whether to place the property under interim protection and recommend that the City Council protect the structure(s) as historic. Petitioner’s demolition application was assigned the number “Demo Delay 19-09” and was subject to a 90-day delay, with the delay period commencing May 28, 2019 and concluding on August 26, 2019.

In a series of three meetings during June, July, and August, the HPC determined that the property was important and should be protected. On August 8, 2019, the HPC voted to formally recommend that the City Council designate the property as historic. However, due to an inadvertent oversight, the HPC mistakenly forgot to take up a motion to place the structures under interim protection during its August 8 meeting. Interim protection would have precluded any action on the CZC during the weeks between the HPC’s consideration of the demolition and the City Council’s consideration of the possibly historic designation.

On September 25, 2019, Mr. Holdman hired Brad Gilliland Excavating to demolish all structures on the property. The very next day, on September 26, 2019, every structure at the property was destroyed. The City had not issued a CZC for the demolition and Building Department had not approved Mr. Holdman's demolition application. At no time during August or September of 2019 did Mr. Holdman reach out to any personnel at the City to check on the status of the CZC or to get clarity on whether or not he was legally allowed to destroy a property that was going to be considered for historic designation by the City Council. On October 16, 2019, Planning mailed a Notice of Violation assessing fines to Mr. Holdman and Ms. Baker for demolishing the property without first obtaining a CZC.

Bloomington Municipal Code § 20.09.220(b) [**Certificate of Zoning Compliance**] reads, in relevant part, as follows:

(b) Certificate of Zoning Compliance Required: The City requires that a Certificate of Zoning Compliance (herein after "CZC") shall be obtained for any of the following actions. A single CZC may be issued for a combination of such actions, if they occur together. Any application for a CZC, permit or other approval for an action described in Division (5) of this Subsection shall be subject to the procedures outlined in *Section 20.09.230: Demolition and Demolition Delay*:

(1) Alteration, erection, construction, reconstruction, division, enlargement, demolition, partial demolition or moving of any building, structure, or mobile home;

Petitioner cites four grounds for overturning staff's decision to assess fines for an illegal demolition. First, and primarily, Petitioner suggests that she was free to demolish the structures without a demolition permit or a CZC because she believes that a CZC should automatically have been issued at the conclusion of the 90-day demolition delay period. Therefore she argues that she was free to act as if a permit and CZC had been issued, even though it had not. Second, Petitioner argues that the fines are inappropriate because Ms. Baker and Mr. Holdman were not notified of the HPC's proceedings. Third, the Petitioner suggests that the HPC improperly considered interior features of the demolished structure in making its decision to recommend designation of the property. And finally, the Petitioner argues that the fines levied are excessive under Indiana and Federal law.

Petitioner first suggests that she was free to act as if a CZC had been issued to the Building Department and was therefore allowed to demolish structures at 523 W. 7th Street, even though no CZC had ever been issued. In support of this contention, Petitioner suggests that once the 90-day demolition delay period elapses without either (1) designation by the City Council or (2) placement of the property under interim protection, all parties are free to act as they please with regard to demolition, without actually obtaining approval from Planning or the Building Department for demolition.

However, neither the Monroe County Building Department nor the Planning and Transportation Department promotes this degree of lawlessness. Mr. Holdman and Ms. Baker irrevocably

demolished an historic, rare, one-of-a-kind building without first obtaining any government approval. Governments are in the business of issuing all manner of permits for various regulated activities, such as hunting, or driving, or carrying a firearm or demolishing a potentially historic structure. Citizens engaged in these regulated activities are not authorized to undertake these regulated activities without first having a permit in hand—even if said individuals believe that a permit *should* have been issued. Otherwise it would be fine to drive without a driver's license, if you believed that you *should* have been issued a driver's license. And otherwise it would be fine to carry a firearm without a gun permit—provided that you believed a gun permit *should* have been issued to you.

This degree of lawlessness cannot be allowed. If Petitioner believed that Planning should have issued a CZC at the end of the 90-day demolition delay period because the HPC had inadvertently neglected to vote on interim protection, the Petitioner should have at the very least contacted Planning to request that a CZC be issued. And, if that contact failed, Mr. Holdman and Ms. Baker should have asked a judge to intervene and order the issuance of a CZC—before permanently razing a structure. However, Petitioner took neither of these actions. Instead, Petitioner elected to take an irreversible action, eradicating all structures at the property without the approval of any government agency. And for this behavior, Planning properly issued a fine that should be upheld by this body.

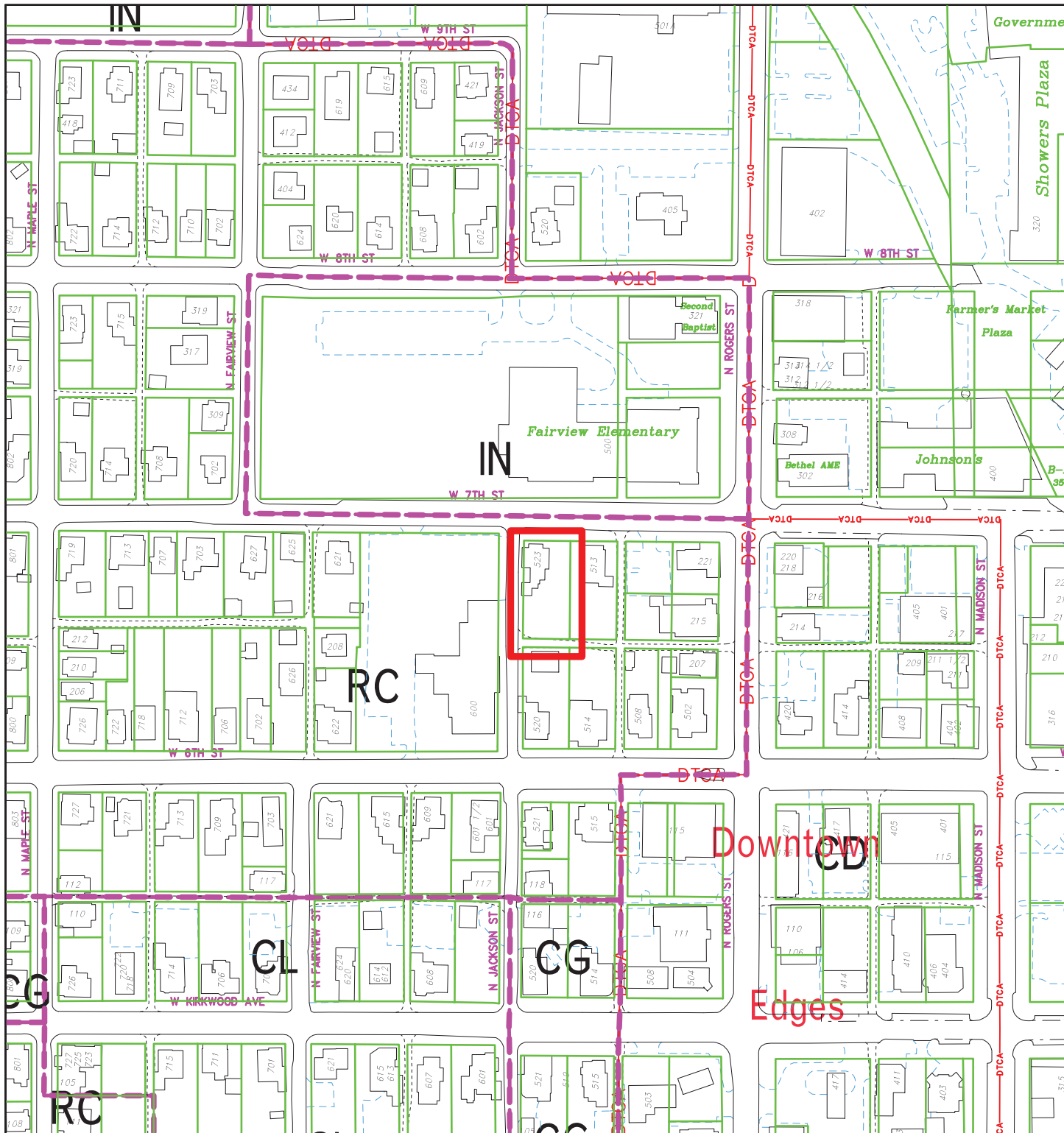
Petitioner also suggests that the fines are improper because she was not notified of the HPC's meetings discussing her property. This argument is faulty for two reasons. First, it is factually incorrect. Mr. Herterich contacted Mr. Holdman, and notified him of all three HPC meetings orally. In fact, Mr. Holdman attended two of the three HPC meetings where 523 W. 7th was discussed, and Mr. Holdman also attended an in-person site visit to the property along with four members of the HPC and Mr. Herterich. Mr. Herterich also mailed notice of the August 8 hearing to Ms. Baker, as required.

This argument is also faulty because it has no bearing on the violation itself—permanently and irrevocably demolishing a structure when no CZC had been issued. Whether or not Ms. Baker or Mr. Holdman had notice of the HPC's meetings is not relevant to the issue of whether or not they demolished a structure without first obtaining the proper approvals from government agencies.

Petitioner's third argument is that the HPC improperly considered interior components when deciding whether or not to recommend designation of 523 W. 7th. Again, this argument is both false and irrelevant. Mr. Herterich was able to identify, merely by examining the exterior of the house, that the house represented the unique and rare central passage style house. No interior inspection was required to make this determination. And, again, whether or not the HPC considered interior components of the structure when making a decision to recommend historic designation is not relevant to the behavior that gave rise to the NOV—that the property was irrevocably demolished with no approval in hand.

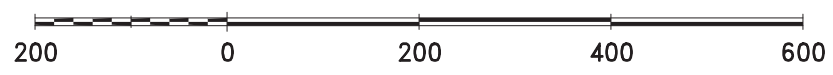
Petitioner's final argument is that the fines levied against her are excessive. As the BZA is well aware, arguments regarding the amount of fines are not appropriately addressed to this administrative body. They should instead be brought up through appeal to the Monroe County Circuit Court.

RECOMMENDATION: Based on the findings in this report, the Department recommends denial of Case # AA-41-19.

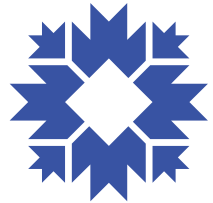


Downtown
Edges

By: scanlanj
13 Mar 20

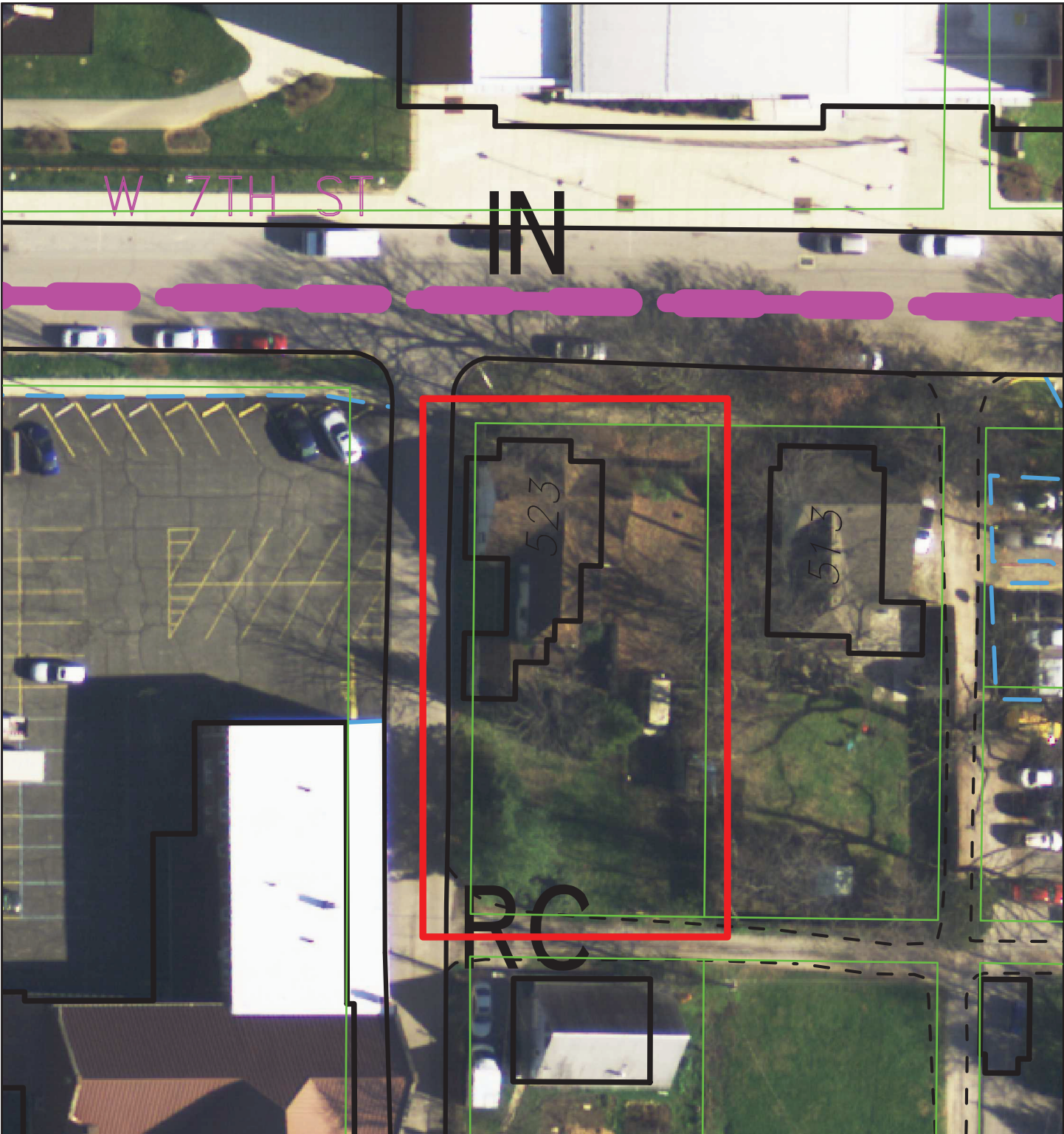


City of Bloomington
Planning & Transportation

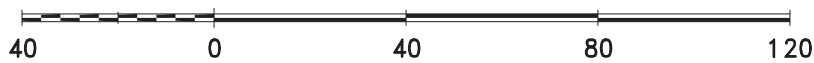


Scale: 1" = 200'

For reference only; map information NOT warranted.



By: scanlanj
13 Mar 20



For reference only; map information NOT warranted.



City of Bloomington
Planning & Transportation



Scale: 1" = 40'



David L. Ferguson

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December 5, 2019

Mike Rouker
 City of Bloomington, Legal Department
 City Hall – Suite 220
 401 N Morton St.
 Bloomington, IN 47402
 Sent electronically to roukerm@bloomington.in.gov

Re: Notice of Violation and Fines for Violations of Title 20 of the Bloomington Municipal Code
 Property located at 523 W. 7th Street, Bloomington, IN
 Failure to Obtain Certificate of Zoning Compliance (CZC)
Petitioners' Statement

Dear Mr. Rouker:

I am submitting this letter and attached documents as Petitioners' Statement for the appeal of the administrative decision of the City of Bloomington Planning and Transportation Department's Notice of Violation and Fines for Violations of Title 20 of the Bloomington Municipal Code addressed to Judie Baker and David Holdman and dated October 16, 2019. I am requesting that this Statement, along with the attached documents, be presented for consideration by the City's Board of Zoning Appeals ("BZA").

The City's Notice of Violation and associated fines should be overturned by the BZA because the City violated its own Code in failing to issue Petitioners a Certificate of Zoning Compliance. After the 90 day Demolition Delay waiting period ended, the City was required to issue a Certificate of Zoning Compliance and failed to do so. The City's failure to follow its own Code should not result in a fine to Petitioners.

Procedural and Factual Background

Petitioners, Judie Baker, through her contractor and son-in-law David Holdman, filed a Demolition Application with the Monroe County Building Department on May 17, 2019, indicating their intent to remove all existing structures on the lot located at 523 W. 7th Street (the "Structure" and the "Property"). (See Application.) The City deemed the Property was subject to Demo Delay, and on or around May 22, 2019, placed a sign in the yard of the Property. The Application was considered at the June 27, 2019, meeting of the Historic Preservation Commission ("HPC") as Demo Delay 19-09. No written notice of the

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June 27, 2019, HPC meeting was received by Baker or Holdman. (Holdman Affidavit, Baker Affidavit.) Holdman received a phone call from Conor Herterich on June 27, 2019, who informed him that the HPC would be meeting that day to discuss the Application. (Holdman Affidavit.)

Staff initially recommended releasing the Property from Demo Delay because staff did not believe the designation would ultimately save the Structure. (HPC Packet, June 13, 2019.) However, at some point prior to the HPC officially discussing the Property, staff changed its recommendation to starting the process for historic designation "if the petitioner continues to pursue full demolition." (HPC Packet, June 27, 2019.)

Holdman appeared at the June 27, 2019, HPC meeting. At the meeting, Herterich noted that they were twenty days into the 90 day period. The HPC voted to continue Demo Delay 19-09 pending the Commissioners' inspection of the Structure. (Meeting Minutes and Recording of HPC Meeting, June 27, 2019.)

The Application was discussed by the HPC at the July 11, 2019, meeting as well. Baker and Holdman did not receive written notice of the July 11, 2019, meeting. (Holdman Affidavit, Baker Affidavit.) Holdman was informed of the meeting either by a telephone call from Herterich on July 8 or when the Commissioners were at the Property on July 10. (Holdman Affidavit.) Holdman and Diana Holdman, Baker's daughter and Holdman's wife, appeared at the meeting. The HPC voted to start formal review of the Property for recommendation for local historic designation. (Meeting Minutes of HPC, July 11, 2019.)

The HPC met again on July 25, 2019, but no action was taken regarding the Property at that meeting. (Meeting Minutes of HPC, July 25, 2019.) The Application was not on the agenda, but was discussed during Commissioners' comments. Neither Baker nor Holdman were in attendance at this meeting, as they received no notice of the meeting. (Holdman Affidavit, Baker Affidavit.)

The HPC met on August 8, 2019, to discuss the Property. Neither Baker nor Holdman received notice of the August 8, 2019, meeting. (Holdman Affidavit, Baker Affidavit.) Moreover, unlike the June 27 meeting, Holdman did not receive a phone call to let him know that the meeting was happening and that the Property would be discussed at the meeting. However, according to the Meeting Minutes of the August 8, 2019, meeting, Herterich sent notice to the adjacent property owners that the HPC would be discussing the Property, "the merits of historic designation, and that HPC would make a motion on whether to forward 523 W 7th to the Common Council for designation." Neither Baker nor Holdman were present at the meeting. After taking public comment from a neighbor, the HPC approved the following motion: "Today the HPC declares that the property at 523 W. 7th St meets the following criteria for local designation referred to in the staff report: 2a, 2e, and 2g. Consequently, the HPC recommends its historic designation under Title 8 of the BMC to the Common Council with the attached map." (Meeting Minutes and

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Recording of HPC Meeting, August 8, 2019.)

Neither Baker nor Holdman received any notice of the HPC's decision. (Holdman Affidavit, Baker Affidavit.)

On September 27, 2019, 134 days after the Application was submitted and 113 days after the HPC indicated the 90 day period began, the Structure was demolished.

During the October 10, 2019, HPC meeting, the City sought input from the Commissioners on the fine to be levied against Petitioners. After acknowledging that the process for interim protection was not followed, Commissioner Goldin stated that the Petitioners knew the HPC's "wishes" and went ahead with the demolition anyway, and expressed that an "example should be made." Commissioner Hutton described Holdman as a "big bucks guy". Other Commissioners expressed that they did not believe the family had a lot of money. (Meeting Minutes and Recording of HPC Meeting, October 10, 2019.)

The Property was deeded to Baker on 1976. Since that time, the Structure has come into disrepair. Baker's son (Holdman's brother-in-law) was killed in the house. After his murder, Baker could not return to the property. Holdman reported to the HPC during the June 27 meeting that used hypodermic needles and used condoms had been found in the house, along with other signs that people were squatting there. Fires had been set in the property on multiple occasions. At the July 11 meeting, Diana Holdman informed the HPC that the structure was sitting on dirt and that there was no crawl space, there was no central air, and only one window opened. Holdman informed the HPC that it was not his intention to build a new apartment building in place of the Structure.

The HPC focused on the central passage feature of the Structure. A central passage floorplan was projected on the screen during the HPC June 27 meeting. Commissioners referred to the central passage feature as "rare" and "distinctive." At the July 25 meeting, Commissioner Hutton stated that the HPC was considering designation of the Property because the structure was central passage and asked how HPC can ask the owner of the Property to preserve the central passage house if HPC deals only with the outside of structures. Commissioner Goldin stated that HPC is only asking that the owner retain the exterior, and can only hope the owner saves the inside, and the HPC can only advise.

Structural Engineer, Kevin Potter, conducted a structural inspection of the Structure. Potter found that the exterior ground level was touching the bottom of the wood siding in several locations and that the framing was supported by individual stone piers. The interior floors were out of level. Potter determined that a restoration of the Structure would include replacing the entire floor structure and foundation piers, installing new foundation walls and interior pier supports, and installing a new floor structure. (Potter Report, included in Appraisal.)

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According to an appraisal completed by Figg Appraisal Group, based on Kevin Potter's report, the highest and best use of the Property was to raze the Structure. The home had no contributory value to the Property. The value of the Property is the value of the vacant lot, less the cost to remove the improvements. (Appraisal.)

Grounds for Appeal

Historic designation did not occur within 90 days and the CZC was improperly withheld.

Under 20.09.230(b), no certificate of zoning compliance ("CZC") authorizing release of a permit allowing the demolition listed as "Outstanding," "Notable" or "Contributing" on the City of Bloomington Survey of Historic Sites and Structures "shall be issued earlier than ninety . . . calendar days after notice has been given as provided herein." 20.09.230(b)(1).

During the 90 day period, "the HPC may conduct a hearing, in its sole discretion, . . . to determine if the HPC wishes to recommend any structure described below herein be locally designated by the common council." 20.09.230(b)(4) (emphasis added). If, within the 90 day period the property "is placed under interim protection or is locally designated as a historic or conservation district pursuant to Chapter 8.08, Historic Districts and Standards of the Bloomington Municipal Code, then no certificate of zoning compliance authorizing demolition or partial demolition may be issued." 20.09.230(d)(1). If, however, the 90 day period expires without such action, "a certificate of zoning compliance authorizing demolition shall be issued if owner has submitted a complete application and all other requirements of the Bloomington Municipal Code are met." 20.09.230(d)(2) (emphasis added).

Pursuant to 8.08.010, the City Council has the authority to designate structures as historic: "[b]efore an historic district or conservation district is established and the building classification takes effect, the map setting forth the district's boundaries and building classifications must be submitted to, and approved in an ordinance by the common council." 8.08.010(d).

The HPC may only make recommendations: "The Commission may recommend, and the council may provide that the establishment of an historic district shall occur in two phases. 8.08.010(b). Moreover, "[w]hen submitting a map to the city council under Section 8.08.010 of this title, the commission may declare one or more buildings, structures, or sites that are classified and designated as historic on the map to be under interim protection." 8.08.015(a).

It is not clear when the 90 day period began. Petitioners submitted the Application

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on May 17, 2019, and the City placed the sign in the yard around May 22, 2019. At the June 27, 2019, HPC meeting, Herterich stated that the HPC was 20 days into the 90 day period, indicating that the 90 day period commenced on June 7, 2019. However, no notice was ever issued to Petitioners and no notice is included in the HPC packets indicating the date the 90 day period began. Pursuant to 8.08.015(b)(3), the 90 day period should have started when the sign was placed in the yard of the Property on or around May 22, 2019. Regardless of when the calculation started, the Property was not designated as historic during the 90 day period. Even assuming the 90 days commenced on June 7, 2019, with no explanation as to why the Application was held for 21 days without action, to date, the Common Council has not designated the Property as historic.

Pursuant to 20.09.230(b)(4) and 8.08.010(b), it is the Common Council, not the HPC, that was the power to designate a property as historic. During the 90 day period, a property may be designated as historic or placed under interim protection. If neither occurs, a CZC shall be issued. Although the HPC took action to recommend designation to the Common Council, such action was not an official designation.

Moreover, the HPC's action did not include declaring the Property to be under interim protection. It is unclear whether the property could have been placed under interim protection. See HPC Meeting Minutes of June 7, 2018 ("Philippa Guthrie pointed out that the code provides for placing interim protection only on the structures that are classified and designated as historic.")

As no designation took place within the 90 day period and because the Property was not under interim protection, the CZC was required to be issued immediately upon expiration of the 90 day period. Because the CZC was improperly withheld, Petitioners should not be subject to fines for failure to obtain a CZC.

No notice was provided to Petitioners depriving them of their Procedural Due Process Rights.

Under 20.09.230(b)(2), Planning Staff is required to provide notice to the property owner or his/her representative "for any petition involving a demolition or partial demolition covered by this section." Section 8.08.010 further provides that the commission shall adopt rules that ensure that owners of all property within the property district, and all adjacent property owners, as determined by the most recent real estate tax lists, shall receive written notice of the hearing on the proposed historic district." 8.08.010(d)(3).

Planning failed to provide required notices to Petitioners. No notice was issued to Petitioners of any of the HPC meetings discussing the Property. Moreover, no notice was issued to Petitioners of the August 8, 2019, HPC decision recommending designation. Because no notice was given, the Petitioners were deprived of their procedural due

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process rights afforded by the United States Constitution. The Fifth and Fourteenth Amendments to the Constitution provide that no person shall "be deprived of life, liberty, or property, without due process of law." The HPC recommendation of historic designation, if timely passed by City Council, would deprive Baker of the full use of her property. Moreover, the City's attempt to fine Baker and Holdman constitutes a deprivation of property. Each of these violations stem from the August 8 HPC meeting, to which Petitioners were not provided notice or the opportunity to be heard.¹

Fines assessed for second and subsequent violations are inappropriate in this matter and in violation of Home Rule.

Under 20.10.040, certain "violations of this title shall be subject to the fines listed in the table below for the first offense." The table listed "Failure to obtain CZC" as a \$500 fine for a first offense.

Section 20.10.040 also provides, "if a responsible party commits a second or subsequent violation of the same provision of this title within three years of the first such violation, regardless of whether the second or subsequent violation is on the same property as the first such violation, the listed fine for such second or subsequent offense shall be twice the previous fine, subject to the maximum set forth in subsection (a) above."

It appears that the basis for assessing fines for a second violation is Planning's mistaken belief that the Property included two structures. Only one structure sat on the Property—a house with an attached garage. Although there was an error on the County Assessor's Property Record Card, aerial photographs show that the Property only contained one structure. (Property Record Card.) The drawing submitted with the Application also shows that the garage was attached to the house. Regardless, even if there had been multiple structures, all structures were included in the single Application, which stated the request was to demolish all structures, and only one CZC was to be issued. Because the fine is based on failure to obtain a CZC, instead of demolishing a structure, the number of CZCs that are alleged to have not been obtained is the standard.

The City does not have the power to prescribe a penalty of more than \$2,500 for a first violation of an ordinance and does not have the power to prescribe a penalty of more than \$7,500 for a second or subsequent violation of an ordinance. Ind. Code 36-1-3-8(a)(10)(B).

In Ritz v. Area Planning Commission, the local Planning Commission sought an injunction to prevent the Ritzes from storing automobiles and buses on their property. Ritz

¹ Petitioners also contend that the HPC is not a neutral decisionmaker, as required by the Due Process clause.

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v. Area Planning Comm'n, 698 N.E.2d 386, 388 (Ind. Ct. App. 1998). The Ritzes were fined \$147,500, based on a fine structure of \$500 per vehicle per day for each day the vehicles remained stored on their property. Id. The ordinance provided that "automotive vehicles" without current license plates or in inoperable condition were prohibited in residential districts. Id. The Court of Appeals found that the ordinance did not specify that the presence of each vehicle constituted a separate violation. Id. Moreover, the Court found that the focus of the zoning code was on the property itself, not the vehicles. Id. "A single parcel of real property will be out of compliance with the zoning code whether one or one hundred inoperable or unlicensed vehicles are present. Thus, there cannot be multiple violations of the zoning code due to the presence of more than one non-compliant vehicle." Id.

The City's attempt to exponentially increase its fine against Petitioners is similar to the municipality's attempt in Ritz v. Area Planning Commission. The City's ordinance allows it to issue a fine of \$500 for failure to obtain a CZC. The CZC covered all structures on the Property. However, the City is attempting to turn a single violation fine of \$500 into multiple, ongoing violations. If Holdman and Baker failed to obtain a CZC, that is a single action for which they can be fined. They did not, however, fail to obtain a CZC on each day. The alleged violation here, failure to obtain a CZC constitutes a single violation. There has been no allegation that Petitioners have failed to obtain a CZC on more than one occasion.

Moreover, as stated above, it was mandatory for the City to issue the CZC by the time the Structure was demolished. Petitioners did not have a CZC or a demolition permit only because the City improperly withheld it. The City's continuing to improperly withhold the CZC should not result in an ongoing violation for the Petitioners.

Planning has improperly applied the fine structure for second, subsequent, and ongoing violations. A failure to obtain a CZC is a single action, not meriting ongoing violations. Moreover, the City violated its own Code in failing to issue the CZC after the 90 days had lapsed. Petitioners were entitled to the CZC and City's failure to issue the CZC should not result in a windfall for the City.

Excessive fines violate the United States and Indiana Constitutions.

The City's Notice of Violation and assessed fines to Petitioners are excessive, in violation of the United States and Indiana Constitutions.

Pursuant to the Eighth Amendment to the United State's Constitution, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Supreme Court has held that the Eighth Amendment Excessive Fines Clause is incorporated by the Due Process Clause of the Fourteenth

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Amendment, and thus applies to the States. Timbs v. Indiana, 139 S. Ct. 682, 687 (2019).

The Indiana Constitution provides further protection from citizens against excessive fines. Section 16 of the Indiana Constitution states: "Excessive fines shall not be imposed. . . . All penalties shall be proportioned to the nature of the offense."

"When authorized, reasonable penalties may be imposed by ordinances and statutes in order to induce compliance with their terms, but such excessive penalties may not be exacted as are calculated to intimidate and coerce a party from testing the validity of the requirement. Whether a given penalty is reasonable or excessive must be determined in the light of the particular circumstances." Walkerton v. N.Y., C. & S. L. R. Co., 18 N.E.2d 799, 803 (Ind. 1939).

"A fine is considered excessive if it is grossly disproportional to the gravity" of the offense." Id. "Courts consider four factors when determining whether a fine is excessive: (1) the essence of the crime and its relation to other criminal activity; (2) whether the defendant fit into the class of persons for whom the statute was principally designed; (3) the maximum sentence and fine that could have been imposed; and (a) the nature of the harm caused by the defendant's conduct." Id.

The City's fine is neither a fixed sum nor linked to the harm caused by the underlying violation. The October 10 HPC meeting reveals that the City was not following a set code requirement for assessing the fine because it sought the HPC's input. Some of the HPC Commissioners desired for the City to consider other factors in determining how much to fine Petitioners, including Holdman's perceived financial status, their perception that Petitioners went against the HPC's desires to preserve the Structure, and whether an example should be made of Petitioners. The City arbitrarily and capriciously decided to assess a fine that was more than the value of the Property.

Based on the structural engineering report, an appraiser has determined that the Structure had no contributory value to the Property. The value of the Property immediately prior to demolition was \$83,000. The City's fine of \$83,500 exceeds the value of the Property by \$500.² This fine is disproportionate to the Petitioners failure to obtain a CZC that the City was improperly withholding.

The HPC improperly considered the interior features of the structure, which it could not protect.

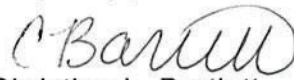
Throughout the HPC's consideration of the structure, it focused on the central

² Petitioners further contend that the City's levy of a fine in excess of the Property's value constitutes a taking in violation of the United States and Indiana Constitutions.

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December 5, 2019
Page 9

passage feature of the home. A central passage house is a house in which the hall and parlor are divided by a central passageway. Central passage is an interior floor plan feature. After a property is designated historic or placed under interim protection, the exterior appearance of the structure cannot be conspicuously changed. (8.08.015, 8.08.020) The HPC has no authority to control the interior of the Structure. Thus, the HPC's focus on the interior feature of the Structure in recommending the Property for historic designation was improper.

Very truly yours,

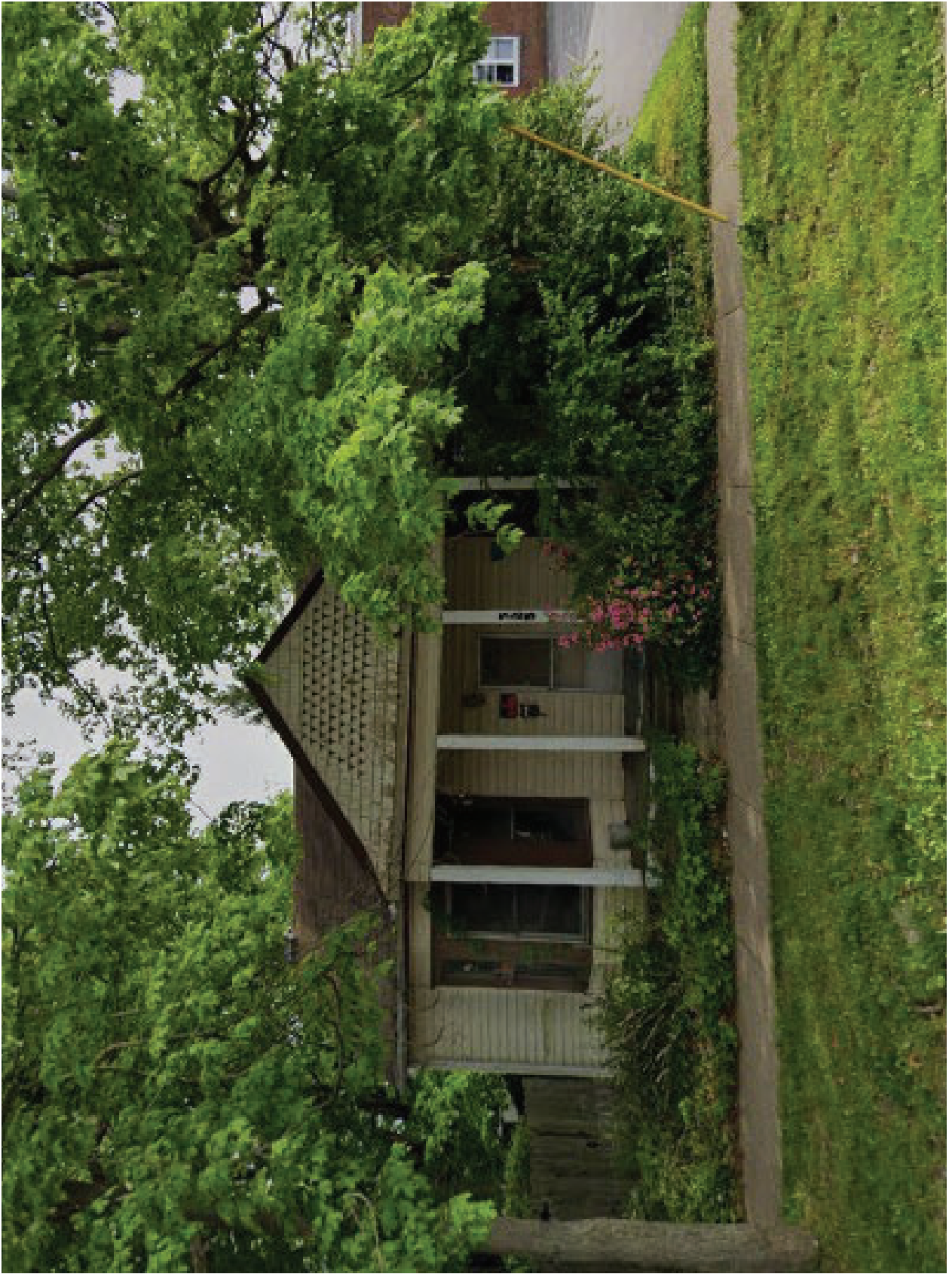


Christine L. Bartlett
David L. Ferguson

DLF/clb

Exhibits:

June 27, July 11, July 25, August 8, and October 10, 2019, Meeting Minutes and Recordings
June 13 and June 27, 2019, Packets
June 7, 2018 Meeting Minutes
Holdman Affidavit
Potter Report
Figg Appraisal
Fox Article
B Square Beacon Article
PRC
Demolition Application



BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT
LOCATION: 621 N. Lincoln St.

CASE #: V-44-19
DATE: March 19, 2020

PETITIONERS: Randall McGlothlin
621 N. Lincoln St., Bloomington, IN

REQUEST: The petitioner is requesting variances from front building setbacks and maximum impervious surface coverage for the construction of a deck.

PREVIOUS HEARING: The petition was heard at the January 23, 2020 Board of Zoning Appeals hearing. There was no agreement on an outcome, and the petition was automatically forwarded to the February hearing.

REPORT: The 3,310 square foot property is located at 621 N. Lincoln St. The property is zoned Residential Multifamily (RM) and has been developed with a detached single-family dwelling. The surrounding properties are also within the RM district. The properties to the north and east have been developed with multifamily dwellings. The properties to the south and west have been developed with detached single-family dwellings. The property fronts on N. Lincoln St. to the east, and E. Cottage Grove Ave. to the north.

On September 12, 2019, the Department issued a Notice of Violation to the property owner for a deck which encroaches into required front building setbacks, and caused the property to be in excess of the maximum impervious surface coverage standards for the RM district.

In the RM district, the Unified Development Ordinance (UDO) requires a minimum front building setback of “15 feet from the proposed right-of-way indicated on the Thoroughfare Plan; or the block face average setback of the existing primary structures on the same block face, whichever is more”. The block face average along N. Lincoln St. is 22 feet from the right-of-way line, which establishes the front building setback at 22 feet along N. Lincoln St. The block face average along E. Cottage Grove Ave. is 7 feet, therefore the front building setback is 15 feet along E. Cottage Grove Ave. The existing house is located at the front building setback along N. Lincoln St. and is encroaching into the front building setback along E. Cottage Grove Ave. The petitioner has constructed a deck which encroaches 6 feet and 2 inches into the front building setback along N. Lincoln St., and 15 feet into the front building setback along E. Cottage Grove Ave. The UDO allows decks to encroach up to 6 feet into side or rear setbacks, but makes no exemption for front building setbacks. The steps of the deck encroach into the front setback an additional 4 feet 3 inches along N. Lincoln St. In total, the deck and steps encroach 12 feet and 5 inches into the front building setback along N. Lincoln St. and 15 feet into the front building setback along E. Cottage Grove Ave.

In the RM district, the UDO allows for a maximum of 40% of the lot area to be covered by impervious surfaces. 45% of the lot area was covered by impervious surfaces, prior

to the construction of the deck. The construction of the deck has covered 48% of the lot area in impervious surfaces and therefore brought the property further out of compliance.

CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

20.09.130 e) Standards for Granting Variances from Development Standards: A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

PROPOSED FINDING: Injury is found with the requested variance from front building setbacks. The requested variance from front building setbacks will have negative impacts on public space and public safety. The creation of the deck further increases the amount of structure directly adjacent to E. Cottage Grove. The deck's 6'2" encroachment into the front building setback along N. Lincoln places the structure roughly 12 feet 5 inches from the right-of-way. This reduced separation between the structure and right-of-way along E. Cottage Grove, along with the encroachment into the front building setback along N. Lincoln may have negative impacts on pedestrian and vehicular traffic along E. Cottage Grove and N. Lincoln. The residence will continue to be used as a detached single-family dwelling, which is a permitted use in the district. Decks are a common building feature on residential uses.

Injury is found in the requested variance from maximum impervious surface coverage. 45% of the lot area (1,511 square feet) was covered in impervious surfaces, prior to the deck's construction. 48% of the lot area (1,599 square feet) is covered in impervious surfaces after the deck's construction. The creation of the deck reduces greenspace on the property and brings the site further out of compliance.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

PROPOSED FINDING: No adverse impacts to the use and value of the surrounding properties have been found as a result of the requested variance from the required front building setbacks. The deck utilizes the primary structure's front building setback along E. Cottage Grove. The deck will encroach 6'2", and the steps will encroach an additional 4'3", into the front building setback along N. Lincoln. The deck does not encroach toward adjacent properties and therefore should not negatively affect the use and values of those properties.

No adverse impacts to the use and value of the surrounding properties have been found as a result of the requested variance from maximum impervious surface coverage. The lot was previously over the RM district's maximum impervious surface percentage. The deck has increased the lot's impervious coverage by 3% (88 square feet).

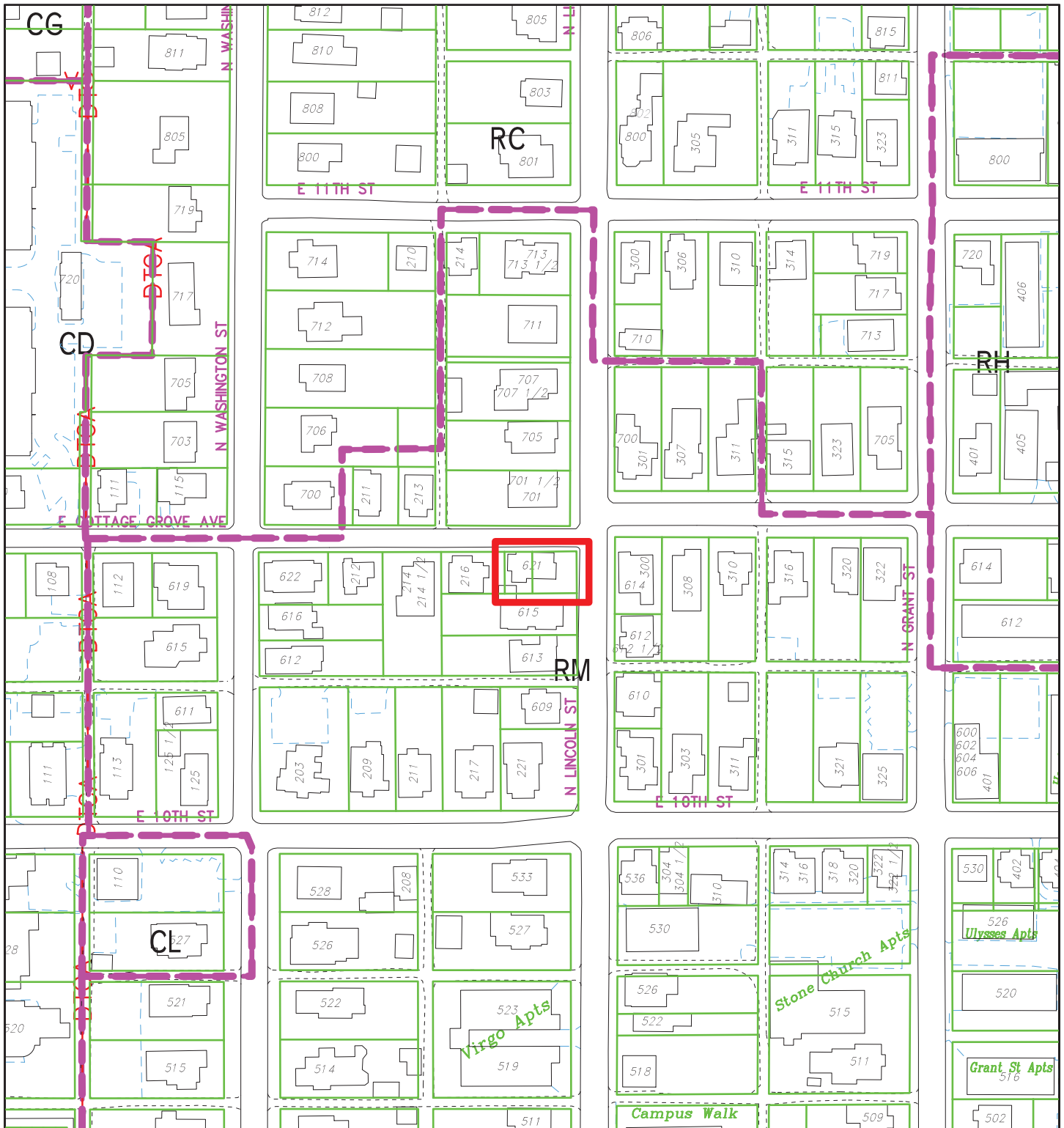
However, on July 16, 2019 the Department received a complaint about the deck from an adjacent property owner.

- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

PROPOSED FINDING: No practical difficulties in the use of the property as a result of the strict application of the setback standards of the UDO are found. Decks are a common building features on residential properties but they are incidental to the primary use. The property is currently, and was previously, used as a detached single-family dwelling. The UDO does not prohibit decks from being placed on any property, as long as they meet required setbacks. There are neither environmental constraints nor topographical challenges which prevent the property from meeting the terms of the UDO. As such, the requested variances will not alleviate any peculiar conditions on the property that limit its use.

No practical difficulties in the use of the property as a result of the strict application of the impervious surface standards of the UDO are found. The site is currently in excess of the UDO maximum impervious surface allowances. Because of this the construction of a deck would be limited. However, this limitation would apply to any increase in impervious surface coverage and is not unique to the construction of a deck nor the proposed use. There are neither environmental constraints nor topographical challenges which prevent the property from meeting the terms of the UDO. As such, the requested variances will not alleviate any peculiar conditions on the property that limit its use.

RECOMMENDATION: Based upon the written findings above, The Department recommends adoption of the proposed findings and denial of V-44-19.



V-44-19 Randall McGlothlin

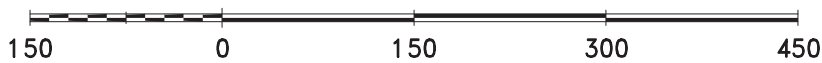
621 N. Lincoln St.

Board of Zoning Appeals

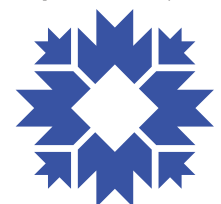
Location, Zoning, Parcels

By: roblngr

11 Dec 19

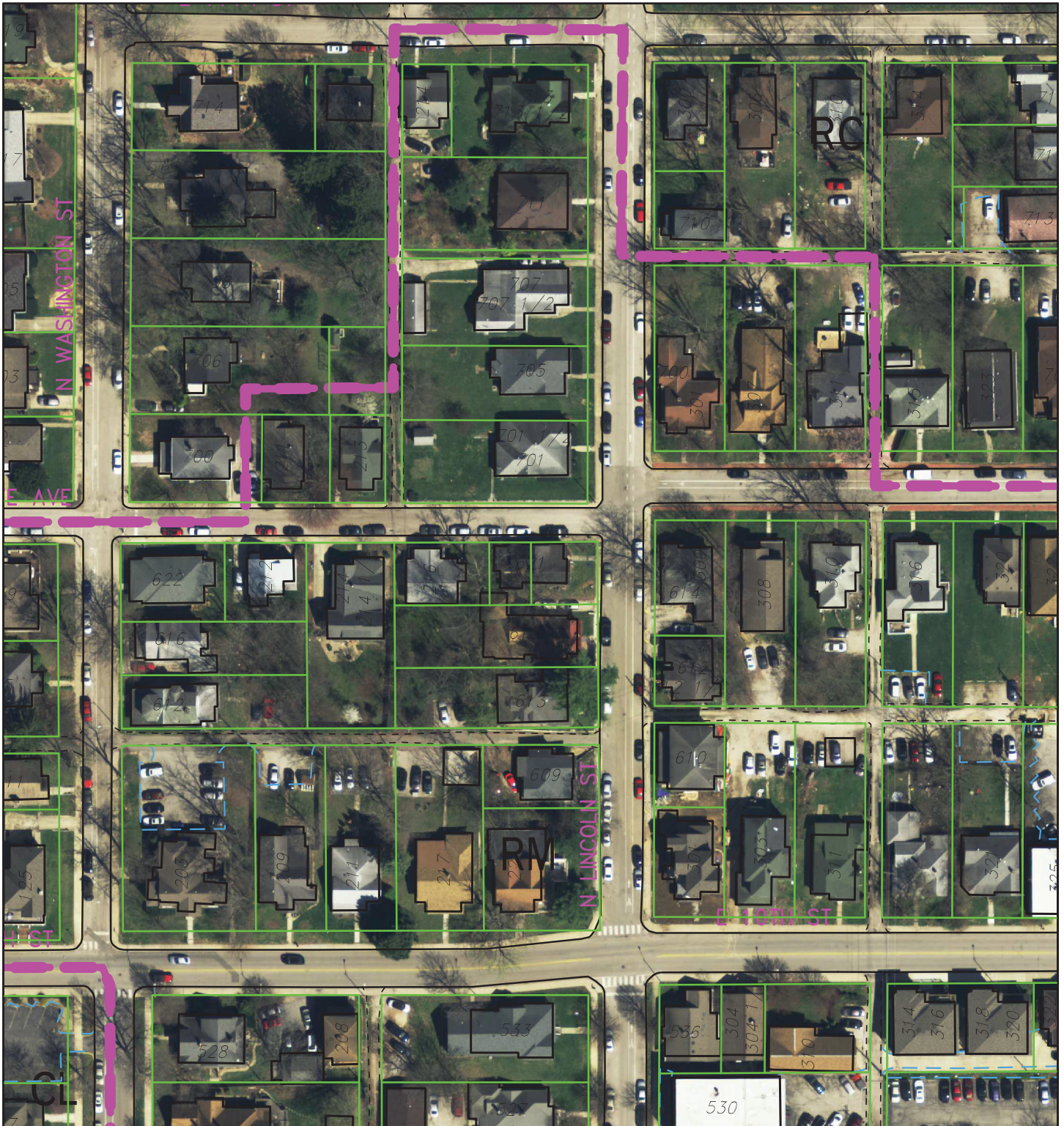


City of Bloomington
Planning & Transportation



Scale: 1" = 150'

For reference only; map information NOT warranted.



V-44-19 Randall McGlothlin

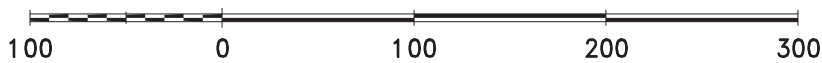
621 N. Lincoln St.

Board of Zoning Appeals

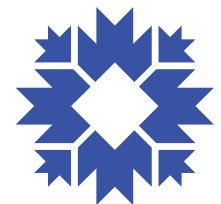
2016 Aerial

By: roblingr

11 Dec 19



City of Bloomington
Planning & Transportation



Scale: 1" = 100'

For reference only; map information NOT warranted.

PETITIONER'S STATEMENT

Randall McGlothlin owns property located at 621 N. Lincoln Street, Bloomington. The property is the southwest corner of E. Cottage Grove and N. Lincoln Street.

I request design standards variances from maximum impervious surface area and front yard setbacks.

The property and surrounding properties are all zoned residential, multi-family (RM). The lot was originally improved with a single family residential structure. The property was converted many years ago to a rental consistent with many, if not most, of the properties in the surrounding neighborhood.

The home was built at a time prior to a zoning ordinance and development standards. Because the lot is a corner lot, the property must now meet two front yard setback standards – Cottage Grove and Lincoln Street.

The existing residential structure does not comply with the front yard setback requirements along Cottage Grove.

The entry doorway to the residence is elevated. The house had a set of four concrete steps leading to the front door. There was no landing at the top of the steps. Guests coming to the home would be required to stand on the top step waiting for the door to be opened.

The home was without a porch or deck area.

I decided to add new steps covering over the existing concrete steps and a small deck, which also serves as a landing for persons coming to the front door, as well as serves as a small front porch. I called to check on any building permit requirement. I was told no permit required for the stairs and deck. I was not aware of any other permit or requirement. I looked around the neighborhood and saw other stairs and decks similar to what I intended to construct. I worked within the area on the lot less than areas on other lots where new stairs and decks has been added. I assumed that what I planned was permitted since it was less intrusive than I see for existing, recent construction on other lots in the neighborhood. I did not think there was any problem with my improvements to the property.

It is now my understanding that because of the modification I made by adding the steps and deck, the property was required to come into compliance with design standards. That is not possible. The wall of the residential structure cannot be moved nor the building come into compliance with the front yard setback on Cottage Grove unless the building is demolished and a new structure erected.

In addition to the encroachment into the setback area, I have been advised that the property does not meet the required minimum 40% maximum impervious surface requirement. The deck and steps that I added to the property did not increase the amount of impervious surface or at most a negligible amount. While the deck and steps are wood structures, it is not solid wood construction. It is planks, meaning there are gaps and spaces between all of the planks allowing rain water to run off the steps on the deck along the edges, but also between the planks and the boards that comprise the steps and the flooring of the deck. The deck is elevated and the ground beneath the deck is essentially undisturbed and remains the same surface as before with the exception of the support posts for the stairs and deck.

The steps and the deck/front porch are improvements to the property. The steps are a safety improvement. The creation of a landing at the top step is a safety improvement. Adding a front porch is a general amenity and I believe is consistent with planning philosophies to encourage front porches as a more pedestrian friendly development. A front porch allowing tenants/residents to sit and enjoy the front porch adds to the pedestrian friendly neighborhood.

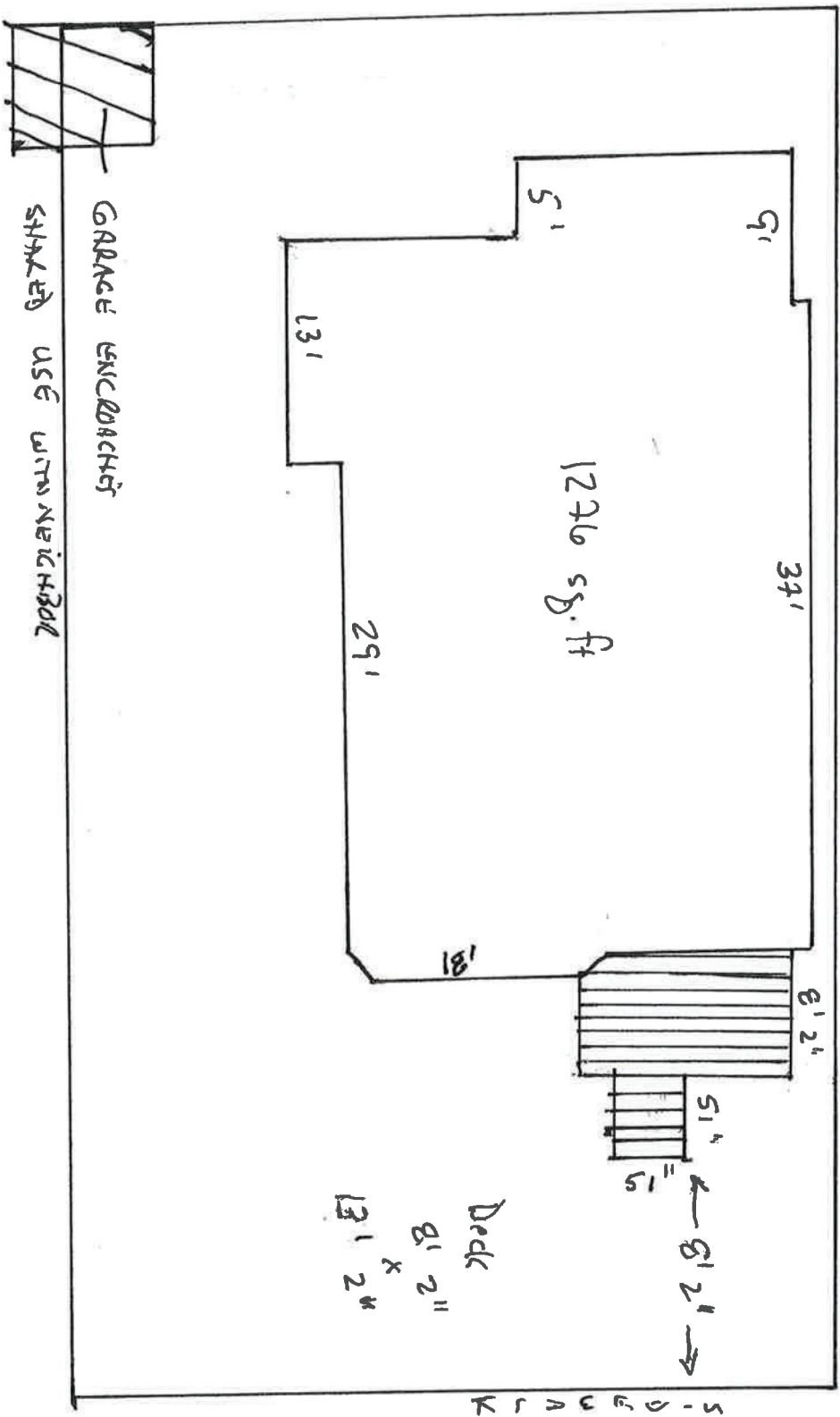
417276 / 24734-1

COTTAGE GARAGE

73' 6"

SIDEWALK

44' 6"

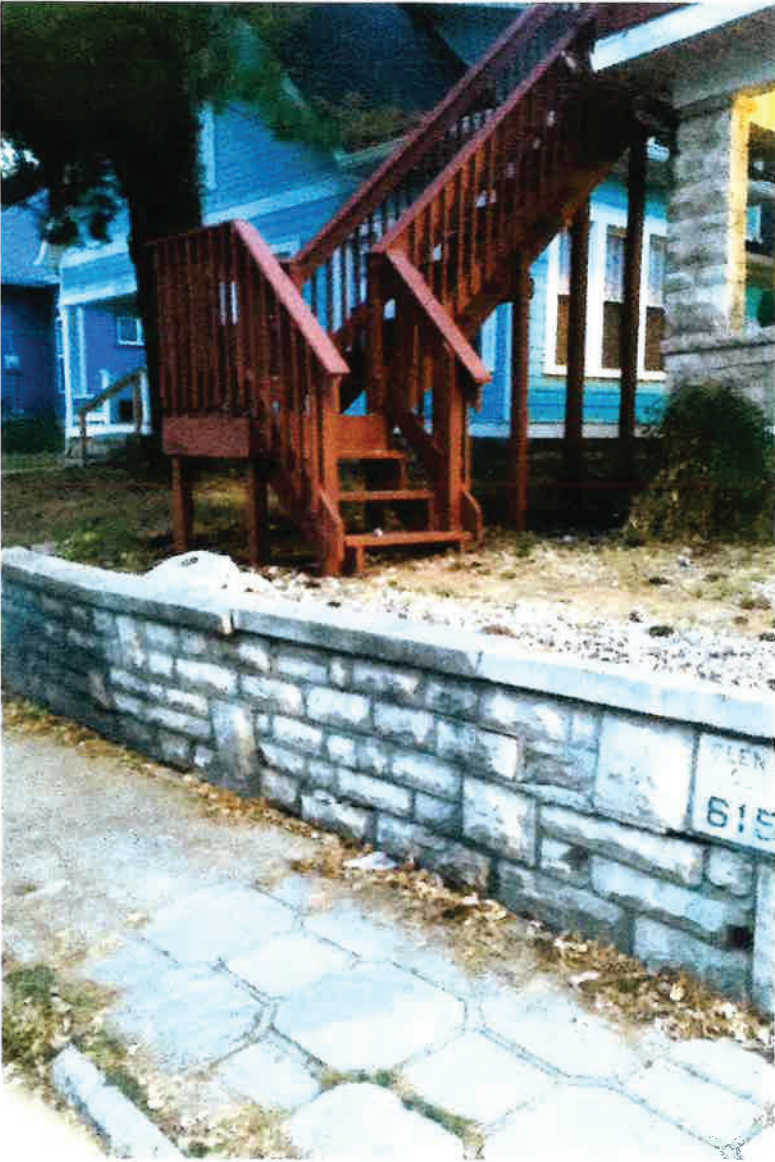


L - K - C - O - L - N

S - I - D - E - W - A - L - K

Deck
8' 2" x 13' 2"

GARAGE ENCLOSURE
SHARED USE WITH NEIGHBOR





PETTYMORSE'S PROPERTY



Petitioner's Property



Petitioner's Property



NEARBY PROPERTY





City of Bloomington
Planning and Transportation Department

September 12, 2019

Randall J. McGlothlin
5891 W State Road 48
Bloomington, IN 47404

Tenant
621 N. Lincoln St.
Bloomington, IN 47408

Re: **Notice of Violation (warning)**
Development Standards – 621 N. Lincoln St.

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with Unified Development Ordinance Section 20.02.160 Residential Multifamily (RM); Development Standards at 621 N. Lincoln Street. Records show that you are the owner (or tenant) of this property.

The City of Bloomington Planning and Transportation Department received a complaint of a development standards violation at 621 N. Lincoln Street on 07/16/2019. On 07/16/2019 staff observed a porch being built at 621 N. Lincoln Street.

According to the City of Bloomington Unified Development Ordinance (UDO) **Section 20.02.160 Residential Multifamily (RM); Development Standards**: Maximum Impervious Surface Coverage: 40% of the Lot Area. The total area of the existing impervious surface does not allow for additional impervious surface (i.e. stairs and porch) to be added to the lot.

Additionally, according to the City of Bloomington Unified Development Ordinance (UDO) **Section 20.02.160 Residential Multifamily (RM); Development Standards**: Minimum Front Building Setback: 15 feet from the proposed right-of-way indicated on the Thoroughfare Plan; or the block face average setback of the existing primary structures on the same block face, whichever is more. The block face average on N. Lincoln Street is 22 feet from the right-of-way line, therefore, the minimum setback is 22 feet. The house on your property appears to be 20 feet from the front property line.

According to the City of Bloomington Unified Development Ordinance (UDO) to UDO **Section 20.05.077 SB-01 [Setback Standards; General]**;

- (b) The following site feature setback requirements or exemptions shall apply:
- (N) Porches (uncovered, open): May encroach up to six (6) feet into the setback.
 - (O) Steps: May encroach up to six (6) feet into the setback.

In accordance with UDO Section 20.10, violations of this nature may result in a one hundred dollar (\$100) fine. Each code violation is considered a distinct and separate violation. Each day a violation is allowed to continue is considered a distinct and separate violation. Subsequent

violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500).

No fines have been issued at this time. You have the following options to remedy the situation.

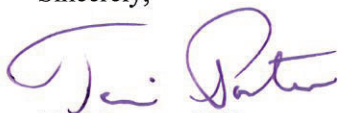
1. The Setback Standards as applied to your property would allow for a porch and stairs to extend 4 feet from the front of the building, however, the existing impervious surface coverage on your property does not allow for any additional impervious surface coverage (i.e. stairs and porch). Considering these factors, the remedy is to remove the stairs and porch by 09/26/2019, **OR;**
2. Make an appointment with a Planner to discuss filing a variance request. The appointment must be on or before 10/17/2019 for the 11/21/2019 Board of Zoning Appeals hearing.

If you dispute the City's assertion that the property is in violation of the above referenced sections of the Unified Development Ordinance, you may file an appeal with the City's Board of Zoning Appeals. Said appeal shall be filed with the Planning and Transportation Department within five (5) days of your receipt of this Notice of Violation and shall conform to the requirements of UDO Section 20.09.350.

Failure to resolve this violation may result in further enforcement action. If a fine is issued, the final fine amount shall be paid to the City of Bloomington. All fines may be contested in the Monroe County Circuit Courts.

Please contact the Planning and Transportation Department at planning@bloomington.in.gov or 812-349-3423 with any questions or concerns.

Sincerely,



Terri Porter, AICP
Director, Planning and Transportation

CC: Scott Robinson, AICP
Jackie Scanlan, AICP

**BLOOMINGTON BOARD OF ZONING APPEALS
STAFF REPORT**

**CASE #: V-07-20
DATE: March 19, 2020**

Location: 105 & 111 W. 4th Street

PETITIONER: City of Bloomington Redevelopment Commission
401 N. Morton Street, Bloomington

CONSULTANTS: Bledsoe, Riggert, Cooper, and James
1351 W. Tapp Road, Bloomington

CSO Architects, Inc.
8831 Keystone Crossing, Indianapolis

REQUEST: The petitioner is requesting variances from Entrance and Drive Standards in 20.05.035 in the Commercial Downtown zoning district.

BACKGROUND:

Area: .7 acres
Current Zoning: CD – Downtown Core Overlay
Comp Plan Designation: Downtown
Existing Land Use: Vacant
Proposed Land Use: Commercial / Parking Garage
Surrounding Uses: North – Waldron Arts Center
 West – Bank / Dwelling, Multi-Family / Bar/Restaurant
 East – Office / Firestone Tire Company
 South – Office

REPORT: The property is located at the southwest corner of 4th and Walnut Streets and is zoned Commercial Downtown (CD), in the Downtown Core Overlay. Surrounding land uses include the Waldron Arts Center to the north; an office building and Firestone Tire Company to the east; a bank, bars, a restaurant, and apartments to the west; and an office building to the south. The Downtown Transit Center is in the vicinity at the southeast corner of 3rd and Walnut Streets. The property is currently vacant, and was the home to a previous City-maintained public use parking garage.

The petitioner proposes to redevelop this property constructing a new 7 story parking garage with commercial space and public amenity space on the first floor. The parking garage would contain approximately 537 parking spaces. The design also includes 60 indoor bicycle parking spaces as well as a minimum of 4 outdoor bicycle parking spaces, office space for City Parking Staff, and 6,750 square feet of commercial space on the ground floor, as well as restrooms available to the public. The petitioner is proposing to include various green features, such as electric vehicle charging stations and solar panels. The petitioner is seeking a Silver level Parksmart designation.

The petitioner proposes the sole vehicular entrance to be on 4th Street. The current design requires a variance from 20.05.035(b)(2) because the driveway does not meet the separation requirement from Walnut street and a variance from 20.05.035(e)(2) because the driveway width exceeds the 24 foot maximum. The UDO requires a 100 foot separation from Walnut Street, and

the design only includes 65 feet of separation. The proposed driveway entrance is 39 feet wide, exceeding the maximum allowable width by 15 feet.

SITE PLAN ISSUES:

Parking and Surrounding Roads: No minimum number of spaces are required for either the commercial space in the building or the parking garage use. The petitioner is proposing a total of 537 parking spaces in the building. The petitioner intends to include a minimum of eight (8) on-street parking spaces at the north end of Walnut Street. Any changes to the right-of-way will need Board of Public Works approval.

Access: There is one proposed vehicular access to the parking garage on 4th Street. The entrance is for three total lanes. One dedicated entrance lane, one dedicated exit lane, and one lane to alternate as an entrance/exit as needed. The UDO allows for a maximum driveway width of 24 feet on 4th Street, and a maximum driveway width of 34 feet on any of the highest classified roads in the City. The petitioner is requesting a 39 foot entrance, which is comparable to the entrance on the former garage at this location, which was roughly 40 feet wide. The entrance width requires variance approval. Additionally, a 100 foot separation from Walnut Street is required, and the petitioner is showing about 65 feet of separation.

The Department has concerns about visibility of pedestrians on 4th Street from vehicles exiting the garage. The current design is open at the northeast corner, which may allow for more visibility, but a more interesting treatment of that interface, artistic bollards for example, would delineate the entrance as bicycle and pedestrian only, while allowing drivers in vehicles exiting the garage to be able to see pedestrians coming from the east. The petitioner is working with the Department to make changes to ensure pedestrian safety immediately adjacent to the vehicular entrance/exit.

CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

Driveway Separation

20.09.130 e) Standards for Granting Variances from Development Standards: A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

PROPOSED FINDING: No injury is found with this petition. The proposed entrance is as far west as the design allows while leaving room for much needed public restrooms with entrances on 4th Street, and the use of three drive aisles to maximize efficiency of the garage.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

PROPOSED FINDING: No negative effects from this proposal on the areas adjacent to the property are found. There has long existed a vehicular exist in this general location. The

building has been designed in order to allow for more visibility of pedestrians on 4th Street.

- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

PROPOSED FINDING: Practical difficulty is found in the limited amount of space on the 4th Street frontage to place the vehicular and pedestrian entrances. The UDO requires that the vehicular entrance be placed on the lower classified road, requiring vehicular access from 4th Street. The UDO requires 100 feet of separation from the corner of 4th/Walnut Streets to the entrance driveway cut, but the necessities of this garage, including an elevator/stair tower and the required public restrooms preclude the movement of the drive entrance. Additionally, the elevations of the property require that the tall stair tower be placed in the northwest corner, so as to be less imposing on the pedestrian realm, pushing the restrooms and pedestrian and vehicular entrances to the east. Peculiar condition is found in the relatively small footprint of the property. The garage design must incorporate useful ramps, and those can only be located in particular places relative to the rest of the garage. The width of the parcels limits the possibilities of that location.

CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

Driveway Width

20.09.130 e) Standards for Granting Variances from Development Standards: A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

PROPOSED FINDING: No injury is found with this petition. The width of the driveway is needed for three lanes of vehicular traffic to maximize the function of the garage. Additionally, the previous garage had a comparable driveway width.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

PROPOSED FINDING: No negative effects from this proposal on the areas adjacent to the property are found. 4th Street is a non-classified road, and the design of the structure has incorporated open design on 4th Street to provide protection for pedestrians along 4th Street. Additionally, the previous garage had a comparable driveway width.

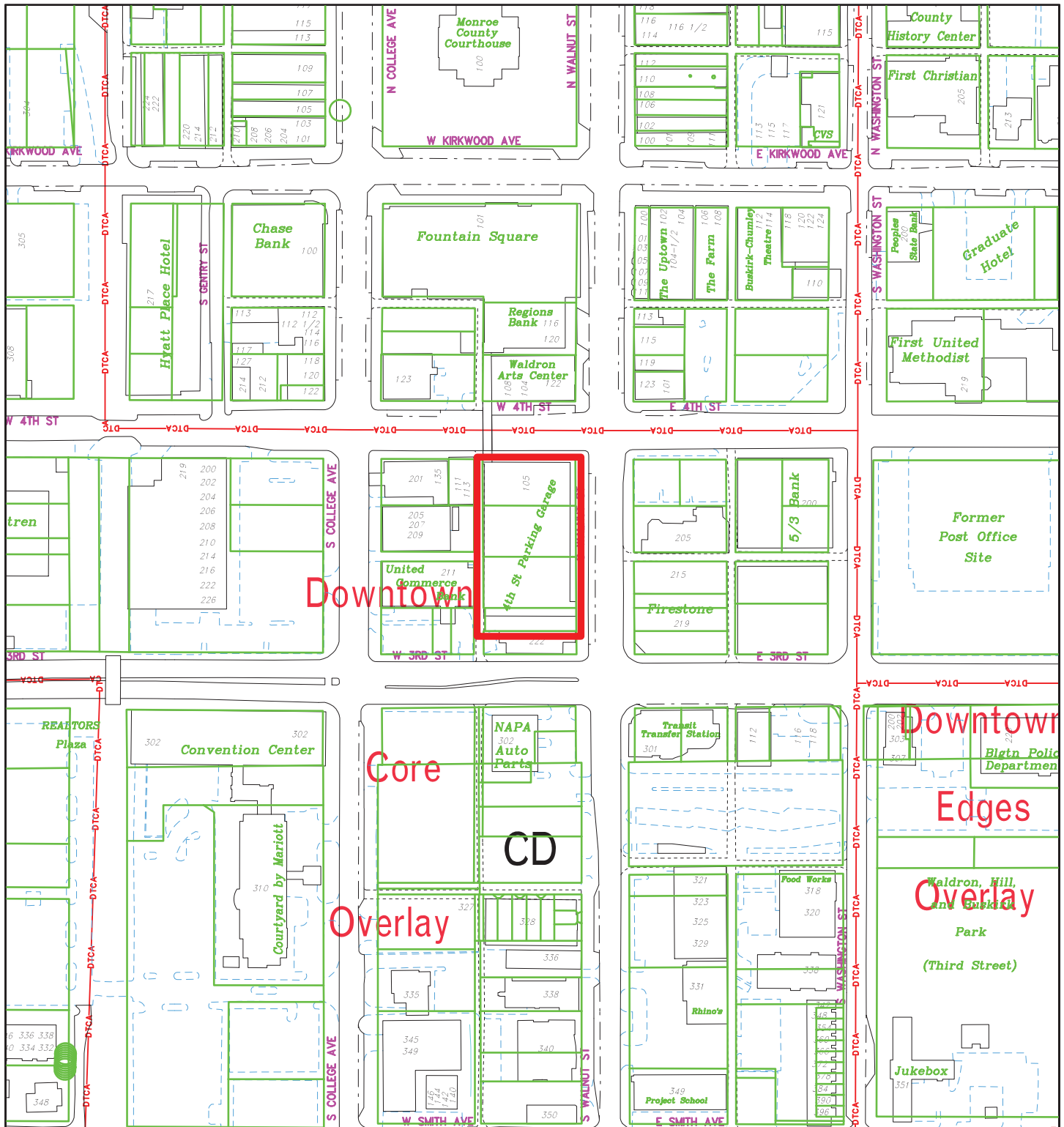
- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

PROPOSED FINDING: Practical difficulty is found in maximizing the efficiency on this

relatively size-restricted site. Because only one vehicular entrance/exit site is possible and the property width does not allow for lane expansion to take place within the structure, three lanes are needed for efficient use of the garage. Peculiar condition is found in the limited width of the site combined with adjacency to a non-classified road, which has much more restrictive width allowances than other road in the City. This site will be used to support large functions and day-to-day parking needs for the City and allowing three exit lanes is unique to this type of use, and not something predicted by the Unified Development Ordinance.

RECOMMENDATION: Based upon the written findings above, the Department recommends that the Board of Zoning Appeals adopt the proposed findings and recommends approval of V-07-20 with the following conditions:

1. The petitioners must obtain a building permit prior to construction.
2. Approved per terms and condition of Plan Commission case #SP-04-20.
3. The approval is for the drawings as submitted for case #SP-04-20 only. Any other non-code compliant changes require additional variance approval.



Downtown

Core

Overlay

CD

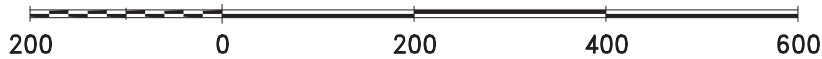
Downtown

Edges

Overlay

(Third Street)

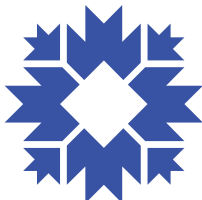
By: scanlanj
6 Mar 20



For reference only; map information NOT warranted.



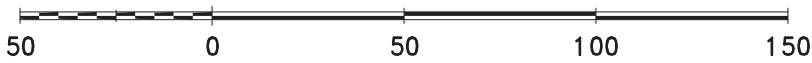
City of Bloomington
Planning & Transportation



Scale: 1" = 200'



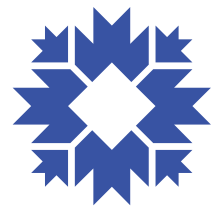
By: scanlanj
6 Mar 20



For reference only; map information NOT warranted.



City of Bloomington
Planning & Transportation



Scale: 1" = 50'

February 24, 2020

City of Bloomington Planning Commission
401 N. Morton Street
Bloomington, IN 47403

RE: City of Bloomington
4th Street Parking Garage, 111 W. 4th Street
Waivers from Downtown Core Overlay District Requirements

Dear Planning Commission Members:

On behalf of the City of Bloomington, we respectfully request your consideration of our request for site plan approval and waivers from Section 20.03.120 DCO Development Standards of the City of Bloomington, Unified Development Ordinance as follows below:

20.03.120.b.(2) Maximum Structure Height: The facility program call for the development of between 500 – 550 parking spaces. To achieve that requirement 7 parking decks are being provided with the building facade maximum height reaching 98 feet above the lowest grade at the building.

20.03.120.e.(6) Recessed Entrance: The facility's pedestrian entrances are immediately adjacent to the existing north south alley. Recessing the entrance creates a hide, blind corner and security issue.

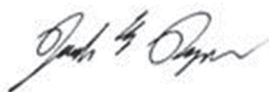
20.03.120.e.(6).(c).(B) Façade Modulation: The modulation of the façade will greatly impact the efficiency and cost of the garage. The required modulation does not lend itself to efficient garage layout or function.

20.03.120.e.(6).(c).2 Building Height Step Down: In order to accommodate the City's facility program of providing at least 500 – 550 spaces on the property available, in compliance other aspects of the UDO development standards, seven parking decks are required and thus the height of 98 feet is necessary.

20.03.120.e.(6).(c).(3).(A) Building Height Step Back: The functionality of the parking garage facility cannot accommodate this step back requirement above the 35 foot level.

We greatly appreciate your affirmative consideration of our request for the above waivers.

Sincerely yours,



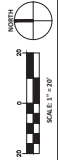
Joseph E. Raper. AIA
Project Manager



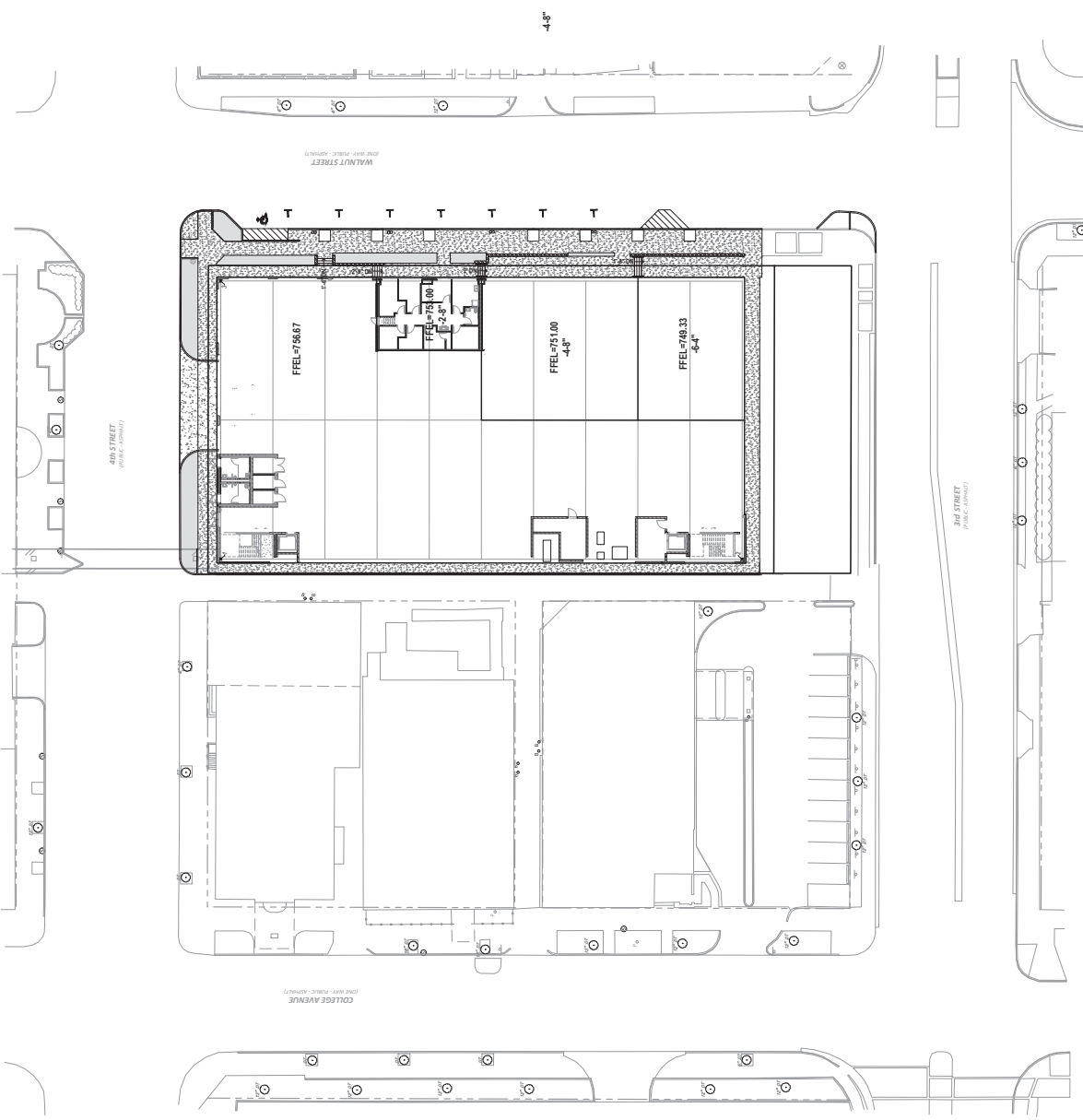
GENERAL NOTES

PLAN NOTES

LEGEND



REVISION	DATE	DESCRIPTION
1	02/05/14	ISSUED FOR PERMITS
2	02/05/14	ISSUED FOR PERMITS
3	02/05/14	ISSUED FOR PERMITS





■ Building Common Area / Non-Parking: 15,922 SF

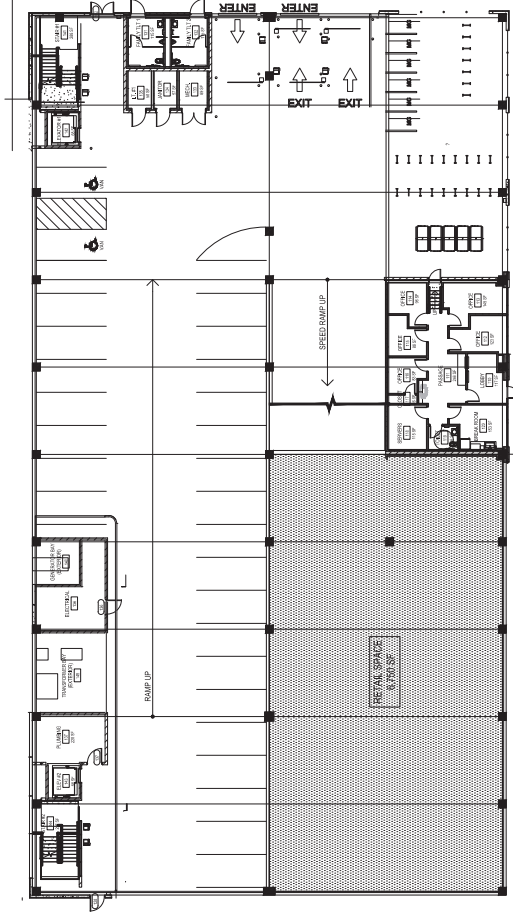
15,992 SF > 50% of 28,192
Gross Level 1 SF (14,096 SF)

PARKING DATA (plan w/ Retail):

Level	Std.*	C**	ADA	Total
0B-1:	27	0	2	29
1B-2:	67	0	2	69
2B-3:	87	0	2	89
3B-4:	87	0	2	89
4B-5:	87	0	2	89
5B-6:	87	0	2	89
6B-7:	81	0	0	81
Total:	525	0	12	537

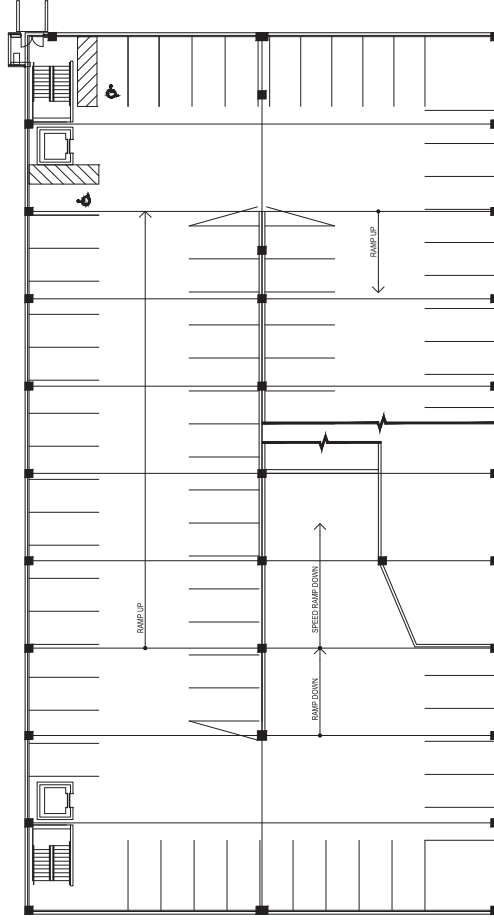
* Standard Space 8'-6" x 20'-0"

** Compact Space 8'-0" x 20'-0"



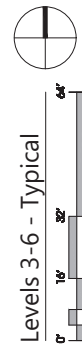
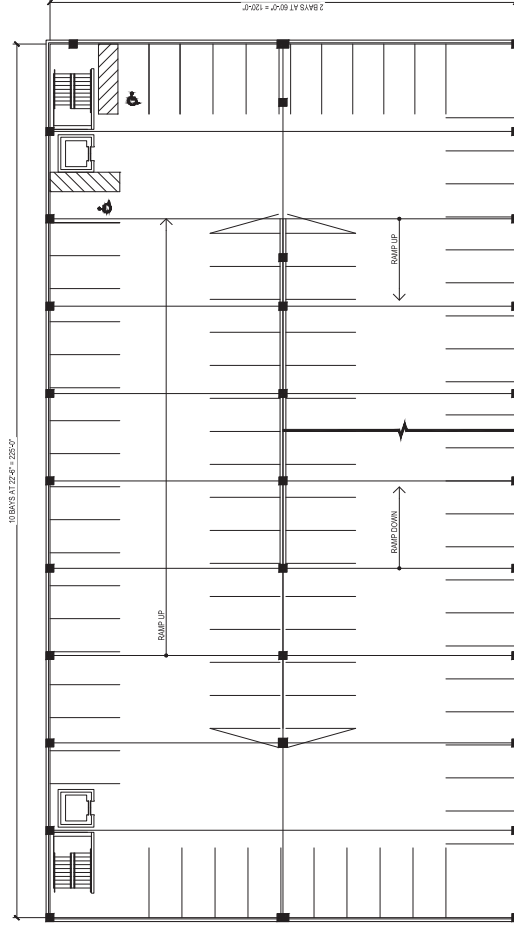
Level 1 w/ Commercial/
Public Use



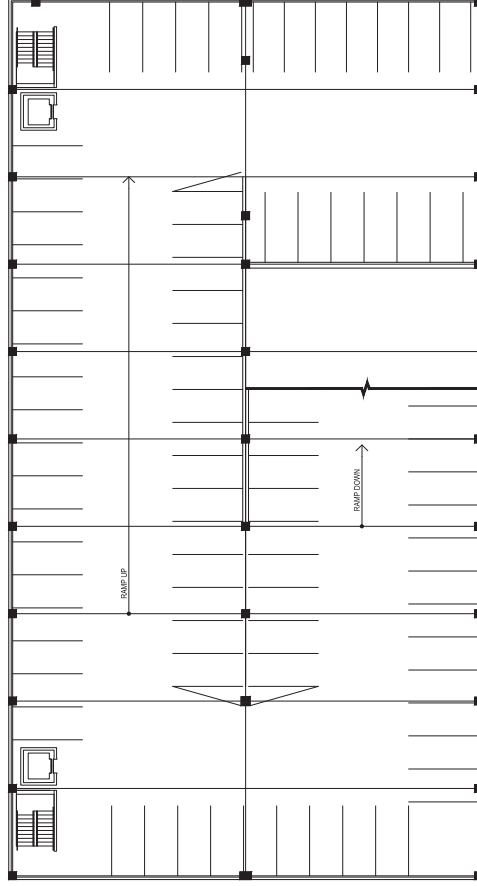


Level 2

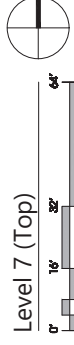


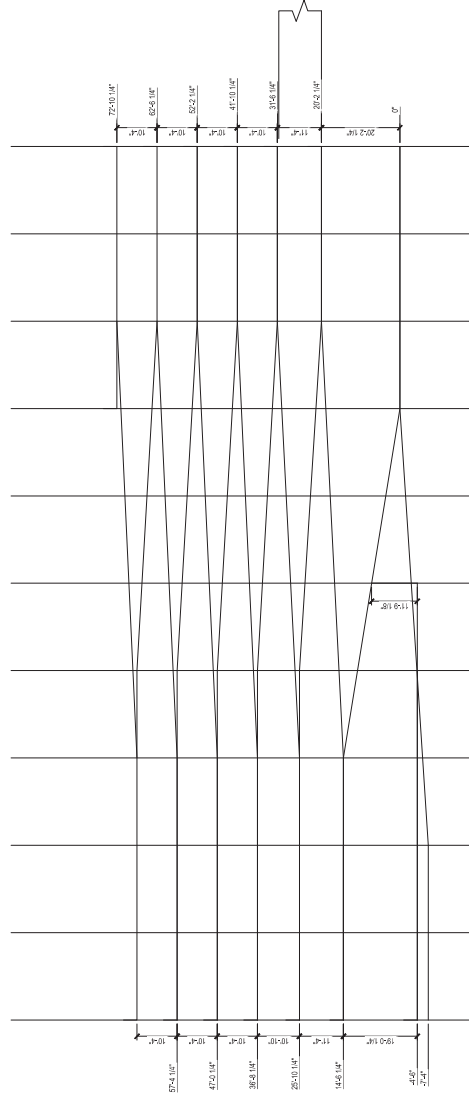


Levels 3-6 - Typical

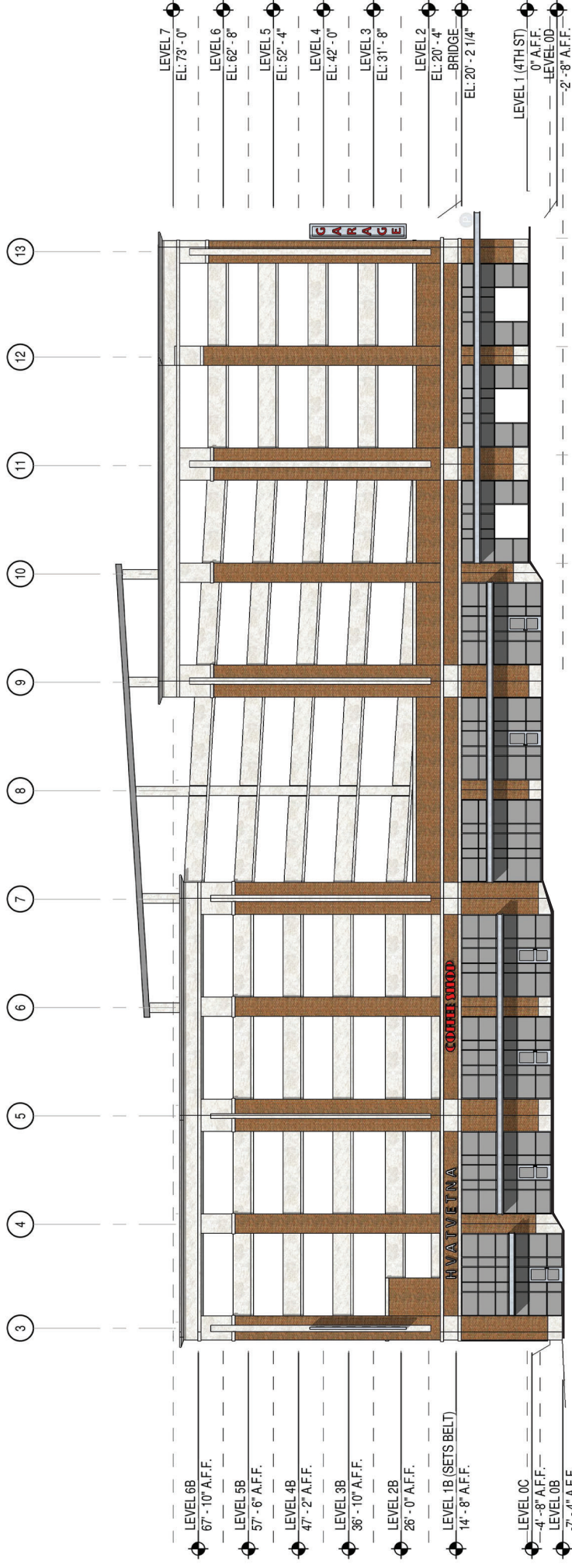


Level 7 (Top)

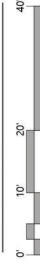


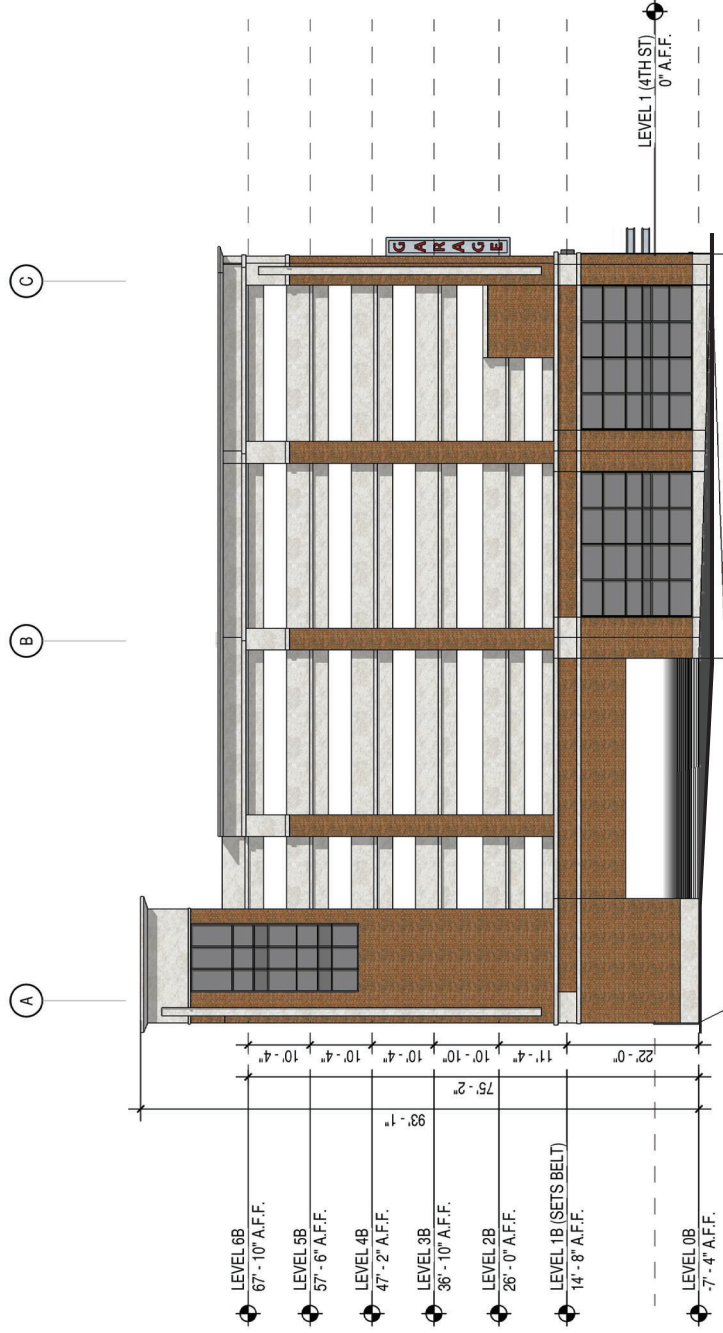


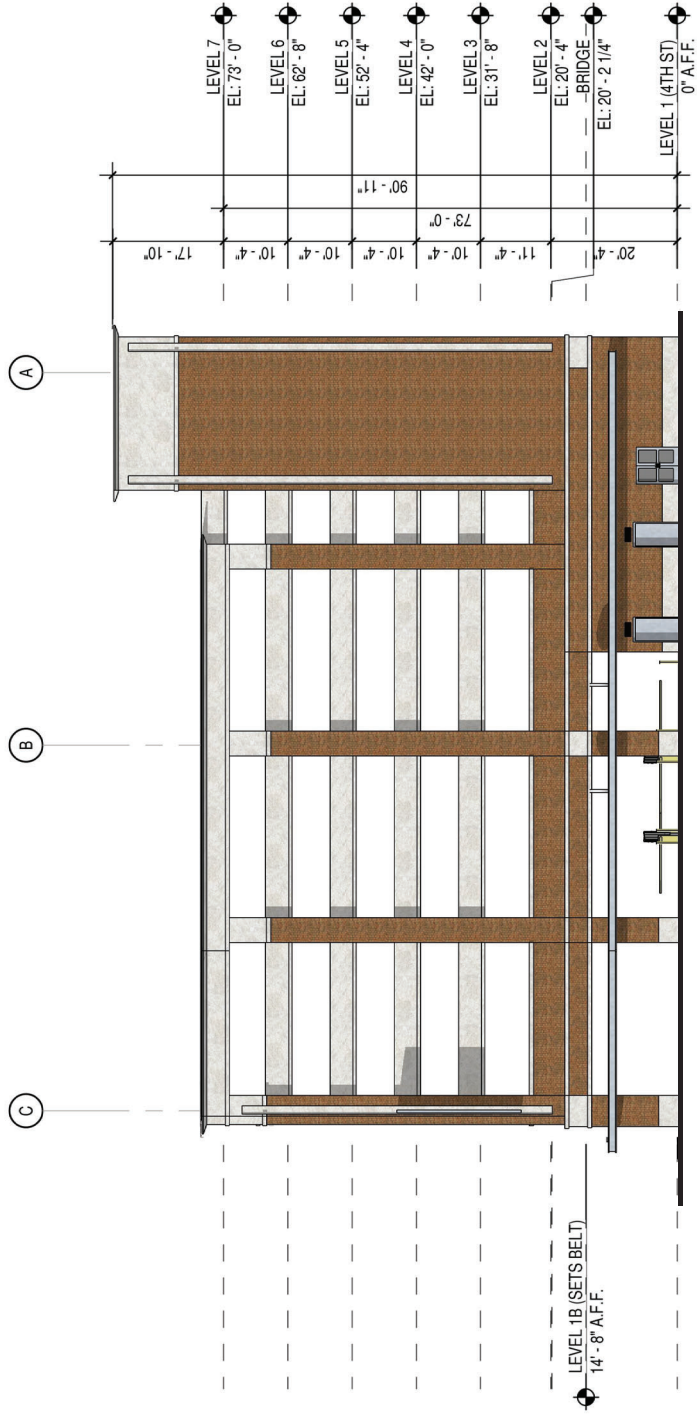
Section w/ Half Deck

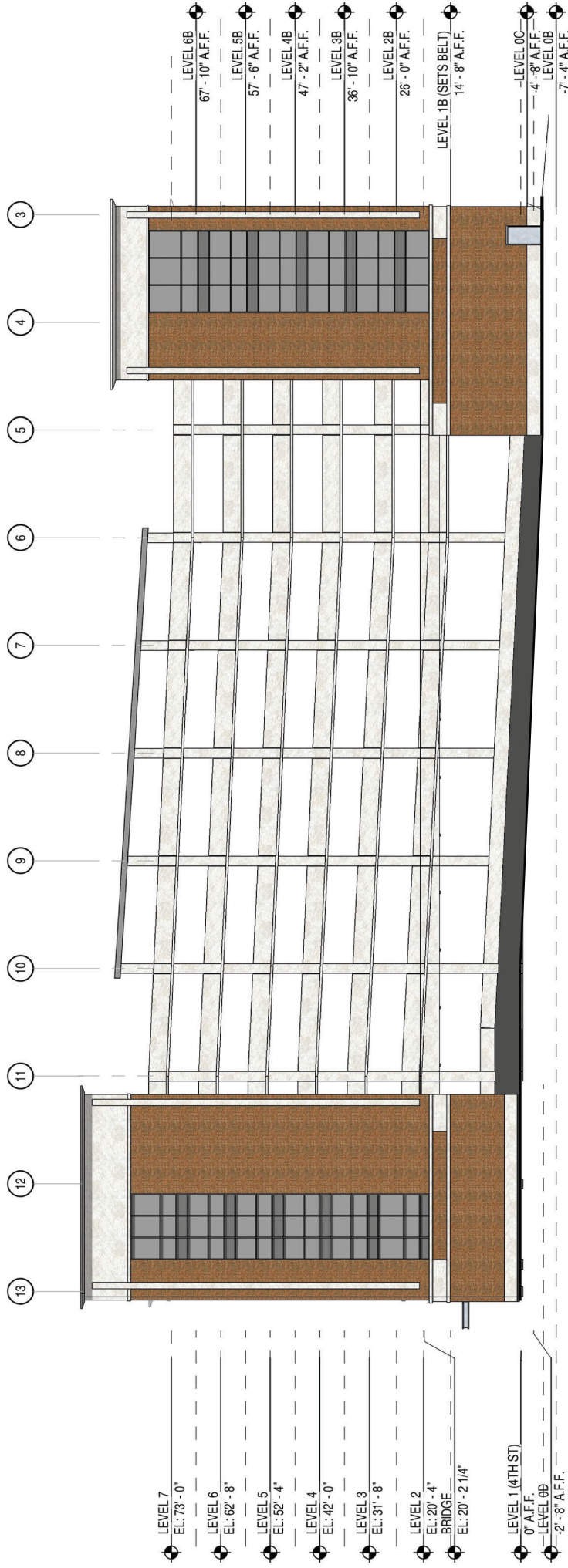


East Elevation







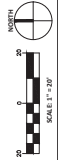


West Elevation
0 10' 20' 40'

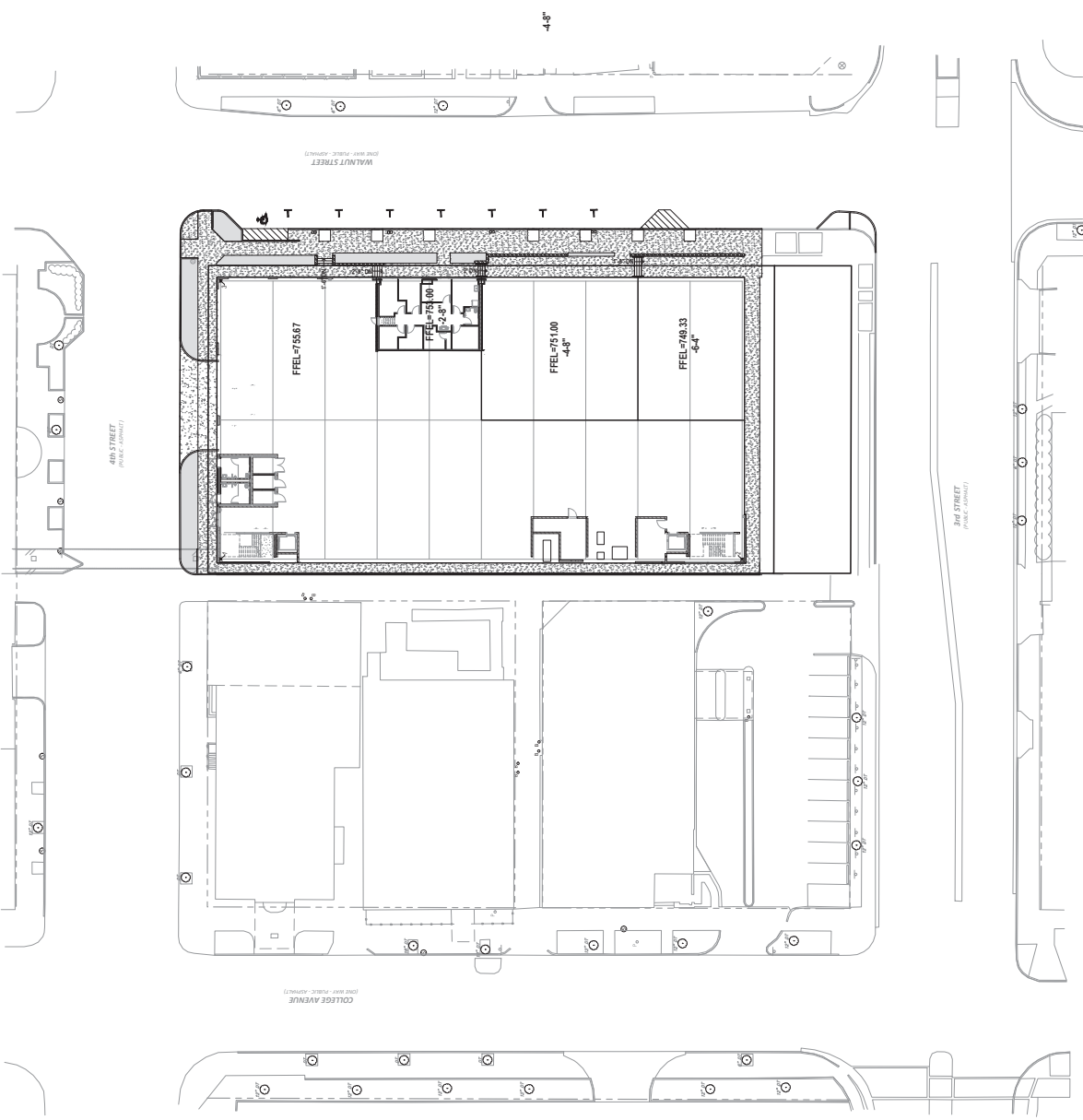
GENERAL NOTES

PLAN NOTES

LEGEND



REVISION	DATE	DESCRIPTION
1		ISSUED FOR PERMITS
2		ISSUED FOR PERMITS
3		ISSUED FOR PERMITS





Jacqueline Scanlan <scanlanj@bloomington.in.gov>

[Planning] Comments for plan March 9th commission packet re: 4th street garage

Greg Alexander <btopgreg@galexander.org>
Reply-To: btopgreg@galexander.org
To: planning@bloomington.in.gov

Wed, Mar 4, 2020 at 9:38 AM

Hi -

I have a document I'd like the members of the plan commission to see at their March 9th meeting, in regards to the site plan for the 4th street garage. If you could include it in the meeting packet, I'd really appreciate it! Please email me confirmation, so I know that this email wasn't lost to a spam filter or whatever...

The document is at

<http://galexander.org/x/parking.pdf>

If there are any problems and you want me to bring down a hardcopy instead, just let me know.

Thanks!

- Greg Alexander
812-391-3535
1015 N Madison St / 47404

Feb 2020 parking counts by Greg Alexander. A survey of facilities that serve displaced 4th St garage users.

Previous counts indicated 4th St garage was mostly a 9-5 (work-day commuters) garage, so that is the focus. Michelle Wahl (Bloomington Parking Services Director) indicated permit-holders in the 4th St garage were offered the NAPA lot (301 S College), Morton garage (238 N Morton), or Walnut garage (300 N Walnut). I also counted the convention center west lot.

Counts represent the number of cars present.

307 S Madison, SE corner of 3rd & Madison
CAPACITY: 220 spaces

Convention center west lot
one block surface lot

Tue Feb 18 10:00A	37	(17%)	
Thu Feb 20 11:12A	50	(23%)	<-- PEAK 50 of 220
Fri Feb 21 1:11P	46	(21%)	
Mon Feb 24 11:07A	46	(21%)	

301 S College, SE corner of 3rd & College
CAPACITY: 129 spaces

NAPA lot, east of conv ctr
half block surface lot

Wed Feb 19 11:17A	90	(70%)	<-- PEAK 90 of 129
Thu Feb 20 11:16A	82	(64%)	
Fri Feb 21 1:15P	90	(70%)	
Mon Feb 24 11:11A	73	(57%)	

300 N Walnut, NE corner of 7th & Walnut
CAPACITY: 353 spaces*

Walnut garage
5-level garage

Tue Feb 18 10:15A	209	(59%)	
Wed Feb 19 11:28A	218	(62%)	
Thu Feb 20 11:22A	220	(62%)	
Fri Feb 21 1:22P	237	(67%)	<-- PEAK 237 of 353
Mon Feb 24 11:17A	220	(62%)	

238 N Morton, SE corner of 7th & Morton
CAPACITY: 522 spaces

Morton garage
8-level garage

Wed Feb 19 11:41A	395	(76%)	
Thu Feb 20 11:34A	422	(81%)	<-- PEAK 422 of 522
Fri Feb 21 1:36P	392	(75%)	
Mon Feb 24 11:31A	377	(72%)	

TOTAL PEAK OCCUPANCY:	799 of 1224	(65%)	425 available
PEAK OF GARAGES:	659 of 875	(75%)	216 available
PEAK OF LOTS:	140 of 349	(40%)	209 available

Notes:

EV CHARGING: Walnut garage has 2 EV charging spaces, and in my 5 visits I saw cars there 3 times: 2 petrol cars and 1 EV. Morton garage has 2 EV charging spaces, and in 4 visits they were always empty.

BIKE PARKING: Walnut garage has bike parking on the bottom floor, which was never used during my survey. Morton garage has bike parking on each floor, which was used on about 50% of the floors. Both garages have prominent signs on each floor that say "PROHIBITED: BICYCLING".

* CONSTRUCTION: Walnut St garage is under construction to replace a stairway, which caused irregularities in the counting. If the construction had not been occurring, the capacity would have been reported as about 10 spaces higher and the usage about 10 spaces lower, for a total extra available 20 spaces.