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The Board of Zoning Appeals (BZA) met in the Council Chambers at 5:30 p.m. Members present: Klapper, Huskey, Throckmorton, and Brad Wisler (Wisler serving as proxy for Flavia Burrell).

APPROVAL OF MINUTES: November 2019 (*No December 2019 meeting*)

****Throckmorton moved to approve the November minutes. Huskey seconded. Motion carried by voice vote 3:1 (Wisler abstained).**

REPORTS, RESOLUTIONS AND COMMUNICATIONS:

The following petitions have been withdrawn: V-17-19 ► City of Bloomington – 105/111 W. 4th St. and 222 S. Walnut St. and UV/V31-19 ► Rimrock Companies - 1901 W. 3rd St., and 307 S. Cory Lane.

PETITION CONTINUED TO: February 2020

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

2020 ELECTION OF OFFICERS:

****Throckmorton moved to nominate Barre Klapper to serve as President. Huskey seconded. Motion carried unanimously by voice vote.**

****Huskey moved to nominate Jo Throckmorton to serve as Vice President. Wisler seconded. Motion carried unanimously by voice vote.**

PETITIONS:

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

Ryan Robling presented the staff report. The petition site is located at 1300 S. Lincoln Street and zoned Residential Core (RC). The property has been developed with a one-story single family house and a detached accessory structure. The surrounding properties to the north, south, east, and west are also zoned Residential Core (RC), and have been developed with single family houses. The property fronts on S. Lincoln St. to

the east and E. Driscoll St. to the north. As 1300 S. Lincoln has fronts along the north and east property line, the south and west property lines are considered side property lines. 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) district. Per 20.05.091, livestock shall be permitted only in a pasturage context. Pasture use shall be limited to one animal unit per acre of land actually used as pasture and accessible to the livestock. Goats equal 0.5 animal units as outlined in the UDO. If two goats were kept in the RE zoning district, they would require a total of one acre of dedicated pasturage to meet UDO requirements. Eligible RE 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. The petitioner currently has two goats on the property and she is proposing to continue keeping a maximum of two goats at this location. The petitioner has converted a majority of their backyard into an area for the goats. The backyard has a fence around the entire perimeter. An existing accessory structure, along the west property line, acts as shelter for the goats. The petitioner is requesting a use variance to allow the raising of goats on a single lot in the Residential Core (RC) zoning district. Staff finds adverse impacts associated with the proposed use variance. The sights, sounds, and smells of livestock are not customary in a small lot, urban, residential neighborhood; contributing to loss and value of adjacent properties. Staff finds no peculiar condition associated with the property which would cause the need for a variance. Staff recommends denial of UV-26-19 based on the written findings outlined in the staff report. Robling stated that Staff received several letters of support for this petition including three calls of support, and one call in opposition.

Kimberly Carballo, petitioner, reminded the Board that space considerations for Dwarf and Pigmy goats are very different than full size goats. The Unified Development Ordinance (UDO) was just amended to consider animals by size (height and weight) rather than by specific species. She said her goats are smaller than a lot of the large dogs that walk by her house weekly. She also talked about the benefits of having goats. Approval of this variance would allow support of the Comprehensive Plan towards urban farming and a more compact and productive food chain.

Brad Wisler asked Staff to provide an update on how the new UDO will impact this. He's aware of some of the changes that were made to livestock but didn't recall if City Council made any additional changes or not. Would this current situation be in violation of the new UDO once it goes into effect?

Robling explained that the Plan Commission made a change which would address the size of the goats but not the size of the property. This property would still fail to meet the ½ acre pasturage requirement. The new UDO expanded an "accessory use" in all single-family districts—not just the RE zoning district. Wisler confirmed this use would be permitted in the new UDO if it were on a ½ acre lot in the same zone. Robling agreed. Wisler said the question becomes if the Board wishes to allow the use on a smaller lot. Robling responded that it would no longer be considered a use variance (UV) but rather a development standards variance, and it would require several other variances including setbacks for the accessory structure. Cassandra Huskey wondered how the Board should consider the numerous support letters regarding their decision about this petition. Are the neighbors basically saying that the goats aren't injurious to the general

welfare? Robling said the neighbors are basically opposing Staff's recommendation that the use is injurious. Barre Klapper confirmed that the new UDO is NOT currently in place and the BZA is bound by the previous codes' definition of livestock and pasturage. Robling agreed that the Board is bound to the existing code. Further, the new code will require a ½ acre of pasturage for medium livestock, which is what these goats would be categorized. They would still be required to have a ½ acre of pasturage regardless of them being hand fed or not. Jo Throckmorton reiterated that the Board is operating under the current UDO and not the new one. Jo Throckmorton asked if the health risk finding for use variance would be consistent with the changeover to the new UDO. Robling said that is correct. It's the reason for the minimum lot size (required setbacks were also discussed). Robling stated that Staff's largest concern was the association with animal waste. Huskey asked if the fence runs along the property line or if there is some space between the fence line and the property line. Robling thinks the fence goes right up to the property line. Klapper questioned if the BZA would be considering this in the future, under the new UDO, as more of a development variance situation rather than a use variance. Robling explained that use variances are no longer an option in the new UDO, so this would be a development standards variance. Klapper asked what the zoning would be in the UDO conversion—R3 or R4? Robling said it would be R3 in a direct conversion, and the use would be allowed if it were to meet the requirements.

No public comments.

Carballo said the fence runs the property line but there is an existing garden that separates the fence and the property line. The goats don't have access to the garden. In terms of pasturage; the goats don't need pasture because they don't need to graze. They are fed alfalfa, goat specific food, and bird seed as an occasional treat. In her opinion, it's really about the space itself. Regarding waste; she understood those concerns too but she's very careful to keep it cleaned up. Also, she welcomes on-going inspections if that would help to alleviate those concerns.

****Throckmorton moved to deny UV-26-19 based on the written findings in the staff report. Huskey seconded.**

Jackie Scanlan, Development Services Manager, outlined the petitioner's options going forward in 2020 in order to keep the animals on-site; however, whatever decision the Board makes has to be made under the old Unified Development Ordinance (UDO) because this petition was filed in 2019.

Wisler is inclined to support the request for a use variance. Throckmorton respectfully disagreed. He said no one has been harmed "yet". Regulations are put in place to prevent harm from happening. Overlooking such a drastic change, especially in the size requirements, is going beyond what a variance might allow. It would be different if the property were much larger. Klapper said the petitioner argued that this animal doesn't require pasturage; an exception to other types of livestock who live off the land. Klapper asked Staff for advice in thinking about a variance how that could factor in. Robling explained that while pasturage is the area where the animal grazes, it's also the area where the animal moves around and lives its life, and does its waste. Even though the word may be focused on the food source of the animal, it isn't necessarily the intent of the UDO. The intent was to focus on the space being adequate enough for the size of the animal, which is why the size of the animal will change the amount of pasturage

required. Discussion ensued between the Board and Staff regarding the variance criterion. Jackie Scanlan, Development Services Manager, said the findings for a development standards variance are going to be similar—so the 3rd finding is going to be very similar to this. The lot is intended to be single-family. Scanlan said Staff is sympathetic; however, it's not something that can be legitimized through the findings that are required for a use variance.

ROLL CALL: 3:1 (Wisler opposed)—this petition is denied.

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

Ryan Robling presented the staff report. The petition site is located at 621 N. Lincoln St. and totals 3,310 square feet. 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 zoning 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 Planning and Transportation Department issued a Notice of Violation (NOV) to the property owner for a deck which encroaches into the required front building setbacks. This encroachment caused the property to be in excess of the maximum impervious surface coverage standards for the RM zoning district. In this zoning 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 zoning district, the UDO allows for a maximum of 40% of the lot area to be covered by impervious surfaces. Robling stated that 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. Staff finds injury with the requested variance from front building setbacks. Injury is also found in the requested variance from maximum impervious surface coverage. The creation of the deck reduces greenspace on the property and brings the site further out of compliance. No practical difficulties are found in the use of the property. The UDO does not prohibit decks from

being placed on properties as long as the required setbacks are met. There are no environmental or topographical challenges that prevent the property from meeting the terms of the UDO. Staff recommends denial of the requested variances based on the written findings outlined in the staff report.

Mike Carmin spoke on behalf of the petitioner. He read Mr. McGlothlin's written statement into the record since he was unable to attend the hearing. Mr. McGlothlin was surprised that he was in violation of the ordinance pertaining to setbacks. There were other properties in the neighborhood with similar construction and many that were closer to the street. Carmin said every structure from 10th St. to Cottage Grove on the east side is built closer to the sidewalk than the steps and deck of this property. He disagreed with Staff's finding regarding harm to public health and safety. The existing deck and stairs do not cause harm or injury to the general welfare of the community. In fact, you can't find a structure on Lincoln St. that is 22 feet back from the street (the right-of-way) which is the required setback. The wood itself allows some penetration of water. The structure of the deck (in between planks) is similar to pervious pavers where water is allowed to penetrate through and absorb into the ground below. He disagrees there is an impervious surface issue; there is grass growing underneath the deck. Also, a deck is a reasonable use of the property; therefore, he urged the Board to approve the variance.

Discussion ensued between the BZA and Staff with regard to impervious surface as described in the code (UDO) including Staff's interpretation; how Staff determined sight distance issues on Cottage Grove (turning right on to Lincoln) with regard to the existing deck structure. Robling explained that it's the combination of the encroachment towards Cottage Grove along with the encroachment towards N. Lincoln. The fact that it has two street frontages increases the amount of covered area; it makes the sidewalk difficult to see. Further, Cottage Grove is disjointed at its intersection with Lincoln; the western most portion is approximately 22 feet further south than the eastern most portion. It's already a tricky intersection for pedestrians; there is no stop sign along Lincoln in that location. Throckmorton asked Staff to elaborate on the complaint they received, if possible. Robling said he didn't receive the complaint but he thinks it had to do with the encroachment into the front setback as well as impervious surface. The complaint was from the adjacent neighbor to the south.

Carmin said he knew who made the complaint because he talked to him. He happens to be a friend and fellow attorney who owns property in this neighborhood. The friend told him that that he was tired of people not drawing their proper permits. Carmin said he thought he was under the impression that the petitioner needed a building permit.

Robling added that the existing deck is grandfathered. Huskey said this property is significantly smaller than the vast majority of other properties in the neighborhood, and therefore it has less land to consider for impervious surface and setbacks. Robling said the lot is smaller than the newly divided minimum lot size for the zoning district. Huskey wondered if that would be considered a peculiar condition to the property. Jackie Scanlan, Development Services Manager, said yes we've considered that in the past. Although this area is zoned RM, there are other comparable single-family lots and smaller lots in the immediate area. It isn't like there are a sea of lots that meet RM requirements and then this lot is a remainder. She asked Staff to explain why decks are considered as part of the impervious surface coverage. Scanlan said in these cases where you're covering up the ground where nothing could live there, you are hindering

the access of the water which has always been counted against impervious surface coverage. Huskey asked Staff to confirm that it's more about water getting to the land rather than something growing there or about what might live there. Scanlan said there are lots of positives for having open space. One of them is water percolation and some of the other things you mentioned. Scanlan added that Staff wants each site to have that and we have established a minimum of what that should be. Huskey said she drove through the area to look at the site but didn't see any issues with sight lines being blocked; therefore, she doesn't understand why it was considered to be injurious with regard to traffic. Scanlan said Staff agrees this one is a little bit borderline as well, which Staff discussed with Mr. Carmin. Staff believes the regulations are in place for a reason. Some of those reasons are for protections of pedestrians; a vehicular occupant could see a pedestrian. In this case, being a corner lot kind of works against the petitioner, because it could cause some concern. A deck is a feature that doesn't really fit on this particular site. Also, she questioned what the value of the home would be without the deck given that it's a rental property. Throckmorton said unfortunately the value of the home isn't something the Board is allowed to consider.

Public comments opposed to the petition:

James Ford, adjacent property owner, is opposed to the deck and requested variance. The petitioner is in egregious violation of code. Decks belong in the back of homes for the family to enjoy; front yards are for porches. He made the initial complaint to Planning and Transportation but at that point the deck wasn't built yet. He hopes the owner plans to fix it.

Rebuttal:

Carmin said the deck doesn't hinder the drainage of water. It's an added improvement to the property. Nothing can be done to the property other than steps without a variance.

Klapper said this property is located in an historic neighborhood and a Core Neighborhood. The code specifically states that deck encroachments are allowed on the side and back of homes. She plans to support the Staff's written findings as-is.

****Throckmorton moved to deny V-44-19 based on the written findings outlined in the staff report. Klapper seconded.**

Wisler disagreed with Staff's finding regarding potential injury of pedestrians. In this situation, the question really is more about the interpretation of impervious surface.

ROLL CALL: 2:2 (Huskey & Wisler opposed)—NO ACTION.

****Throckmorton moved to continue this petition to the next BZA hearing date. Wisler seconded. Motion carried by voice vote 4:0—petition continued to 2/19/2020.**

AA-45-19 **Tariq Khan**
520 E. 2nd St.
Request: Administrative Appeal of the Notice of Violation (NOV) issued related to the removal of windows in a historic structure.

Case Manager: Jackie Scanlan

Jackie Scanlan presented the staff report. The petition site is located at 520 E. 2nd Street; the property is zoned Residential Multifamily (RM). Mr. Khan is requesting an Administrative Appeal of the issuance of a Notice of Violation (NOV) of a Certificate of Zoning Compliance (CZC) #C18-582 issued on November 16, 2018 (with 6 conditions). The first three conditions were related to limitations on the allowed construction: 1) This permit authorizes the interior remodel as shown in the building permit. 2) The only exterior changes permitted to the structure is to replace existing boards on the porch. This does not permit the expansion of the porch. 3) No new windows or doors are permitted. No changes to the footprint of the house are permitted. The petitioner's request relates to non-permitted construction done on the house outside of the work allowed and outlined in the *Certificate of Zoning Compliance* (CZC) issued for the site. The property is listed as 'Contributing' in the City of Bloomington Survey of Historic Sites and Structures. Per code 20.09.230(b), no CZA allowing demolition or partial demolition can be issued for the structure without *Demolition Delay* review. The scope of work as described in the approved CZA did not reach the level of requiring *Demolition Delay*. However, the work that was done meets the UDO definition of 'partial demolition' and would have required *Demolition Delay* review. Scanlan said that Staff received a complaint from a member of the Historic Preservation Commission (HPC) regarding the work that had been done. The petitioner contends that no changes to any window or door opening had been made. Scanlan said it's clear that at the very least, the exterior south wall is completely different after the remodel which was not in the approved scope of work. Staff recommends denial of #AA-45-19 based on the written findings outlined in the staff report.

Tariq Khan, petitioner, stated the house was in poor condition and he detailed the changes he made that he believes were necessary for the integrity of the structure, including the fact that one of the building inspectors gave him the go ahead to complete the work he did to the structure. He's willing to put the window back that he removed. He thinks the fine imposed by the City is very steep.

Discussion ensued between the Board and petitioner regarding how many changes were made to the interior of the home. The scope of the *Certificate of Zoning Compliance* (CZC) was discussed, focusing on the conditions outlined of the CZC. Khan responded that he only reduced the size of the kitchen.

****Throckmorton moved to deny AA-45-19 based on the written findings outlined in the staff report. Klapper seconded.**

Throckmorton stated the petitioner has done many homes in Bloomington and should have known better.

Wisler said it's very clear the completed work was in violation of the CZC. He acknowledged that it could be confusing with regard to the different departments; however, an experienced developer should know the difference between the Monroe County Building Department and the City Planning Department.

Klapper added that the *Demolition Delay* process is an important one. In her opinion, this is a clear cut case.

ROLL CALL: 4:0—petition denied.

Meeting adjourned.