

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 523 W. 7<sup>th</sup> Street**

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

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**PETITIONERS:** Judie Baker and David Holdman  
523 W. 7<sup>th</sup> Street, Bloomington

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**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.

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**REPORT:** This appeal is the result of the issuance of a Notice of Violation related to the demolition of a structure at 523 W. 7<sup>th</sup> 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. 7<sup>th</sup> 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. 7<sup>th</sup> 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. 7<sup>th</sup> 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. 7<sup>th</sup> 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. 7<sup>th</sup>. 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.

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