

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)**

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MEMORANDUM

DATE: October 1, 2013

TO: Zoning and Planning Committee

FROM: Jason Wittenberg, Manager, Community Planning & Economic Development – Land Use, Design and Preservation

SUBJECT: Planning Commission decisions of August 26, 2013

The following actions were taken by the Planning Commission on August 26, 2013. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Tucker, Brown, Cohen, Gagnon, Huynh, Kronzer, Luepke-Pier and Schiff-8

Not present: Slack (excused) and Wielinski (excused)

Committee Clerk: Lisa Kusz (612) 673-3710

3. 3328-30 18th Ave S (BZZ-6170, Ward: 9), 3328-30 18th Ave S (Kimberly Holien).

A. Rezoning: Application by Mina and Gregory Leierwood to rezone the property at 3328-30 18th Ave S from the R2B, Two-family district to the R3, Multiple-family district to legally establish an existing third dwelling unit.

Action: Notwithstanding staff recommendation, the City Planning Commission recommended that the City Council **approve** the application for rezoning from the R2B (Two-family) District to the R3 (Multiple-family) District for the property at 3328-30 18th Ave S, based on the following findings:

1. The rezoning is consistent with the Comprehensive Plan as it would allow for a mix of residential densities one block from a community corridor.
2. It is in the public interest to provide a diverse range of housing types, including smaller units such as this.
3. The project's parking can be accommodated on-site with the proposed three units.
4. It is apparent that third dwelling unit had existed prior to 1963.

Aye: Cohen, Gagnon, Huynh, Kronzer, Luepke-Pier and Schiff

Nay: Brown

Staff Holien presented the staff report.

President Tucker opened the public hearing.

Greg Leierwood (3330 18th Ave S): We purchased the building as an existing triplex, licensed as a duplex, in 2000. We lived one block away and have been caretakers of that neighboring block. We moved into the property in 2000. Since acquiring the property, we continued the licensing as a duplex, but have operated it as a triplex during that time. From the photos you can see in your packet, visual from the street there are three mailboxes, three doorbells. The neighbors view it as a triplex and have been aware of its use historically as a triplex. We have been awaiting a rental licensing inspection. We were inspected this year. Prior to that, we've had multiple inspectors within the building and on the exterior with work we've had done. Now we are an operating triplex under a duplex license. The inspectors have asked us to pursue R3 zoning as a recourse and so that's why we're here. The Powderhorn Neighborhood Association feels that the matter is inconsequential and did not have a public hearing about that other than posting it on their website for comments. I've given you a packet. When contacting Ms. Holien, she said that generating such a report was too time consuming so the report she just made, she didn't provide to me. I just looked up on the Hennepin County site about what is determined to be duplex, triplex or fourplex. Within 200 feet of our address, which is this dot here, we have a fourplex and four triplexes around the area. It's expanded from Ms. Holien's report. Within this area further, there are multiple triplexes and fourplexes. These are all within the R2B district. If you have R3 district, how do you determine that and what is that going to be going forward? I think that's an important policy issue that you have to come up with. Because of that, I think that our building fits within the character of the neighborhood, it's been used as a triplex and functionally it is in a mixed use area with multiple and single family duplex and triplex buildings. We're predominately surrounded by duplexes. Historically, it's been a triplex and we wish to continue that. In terms of land use, we have high use on Cedar Ave with two bus lines within one block. Many streets nearby have bus lines.

Commissioner Kronzer: How many onsite parking stalls do you have?

Greg Leierwood: We were told by Ms. Holien initially that we did not have adequate parking stalls. I used the City measurements and we do comply with that in excess, but she said we didn't comply so I parked three large vehicles and sent her a picture and welcomed her to have the staff come park as well. This is after asking us to make a \$400 deposit to make a variance, but then she said that it is only needed for the fourplex and above status. There is ample parking for one vehicle for each unit and a new garage.

Commissioner Luepke-Pier: If you bought it in 2000 as a triplex, why were you only licensing it as a duplex until just now?

Greg Leierwood: It's the historical use. There's no method to say if it's grandfathered or not. We were just going to wait until the inspection was done.

Commissioner Luepke-Pier: The inspector that came through, did he look at the unit himself or just say he can't value the third unit until you get it legitimized?

Greg Leierwood: I was not there, my wife was.

Mina Leierwood (3330 18th Ave S): It was Markeeta Keyes. What she said that it was historically not a triplex as far as the City is concerned, but as far as code goes, it was almost complete up to code. It looks as though it was built that way. She basically said we need to install a handrail and one other smoke detector and that was it. Everything else was up to code with the third floor.

Commissioner Luepke-Pier: Including the bedroom ceiling height?

Mina Leierwood: She didn't comment on that.

Greg Leierwood: In the packet I gave you we have letters of support from neighbors.

Maren Ward (2220 16th Ave S) [not on sign-in sheet]: I work in the homeless industry and I support people looking for housing. It seems ironic to have this big need for housing and then to have this question about this very reasonable situation on the matter of density of the neighborhood for three people who are firmly entrenched and big givers in the community. In this instance, it's just so profound that this might not be able to happen given the circumstances of these people as I know them as community leaders.

President Tucker closed the public hearing.

Commissioner Cohen: Is this spot zoning?

Staff Holien: As we've discussed here before, spot zoning is defined as a zoning that is not supported by policy and is in no way in the public interest. In this case, it may be a little more subjective than in some others. There's not real clear cut policy support for medium density housing or medium density development in this location. There aren't any land use features that would support higher density right here than what's allowed under the R2B.

Commissioner Cohen: Let me paraphrase your answer. If I understood your original statement, it was that this was not in the public interest and that it's not supported by the existing zoning. That to me would seem to reflect a conclusion that this was, in fact, spot zoning.

Staff Holien: Based on the findings that have been made by staff, I would say that's correct.

Commissioner Cohen: So the implications of spot zoning, if I understand them correctly, are that that set a precedent that makes it difficult to deal with subsequent cases that arise. Is that one of the implications of spot zoning?

Staff Holien: Any time you have a rezoning application you have to look at the implications of requests for additional rezoning to that same density or that same zoning district up and down the block or on either side of the street. This would definitely be used in the context for further evaluation of any other rezoning applications in this area.

Commissioner Schiff: I'm familiar with Powderhorn Park neighborhood. I used to live in it and I've represented it for the last 12 years on the City Council. About four or five times a year I've been asked to approve a rental unit that was suddenly discovered by the City of Minneapolis. I toured this property this afternoon and I can tell you it has been there for a very long time. The millwork is quite old, the radiators are quite old, the five panel wood doors are quite old. This was not something that showed up in the middle of the

night. There are also letters of testimony from other people in the neighborhood who can recall the names of tenants dating back to the 80s who used to live in the property. Just while standing at this property and looking around, it's easy to see other triplexes, some of which have been obtained through legal nonconforming use certificates, others that have yet to be discovered by the City of Minneapolis. We have been playing a game of cat and mouse with these units as long as I've been on the City Council and I've come to the point where I no longer see the point of trying to get these units out of circulation. I don't see the point of taking a perfectly livable unit and making it illegal. I don't see the point of sending in housing inspectors to see if it's being rented out again year after year. I think it will benefit the renters in the future to know that this unit is legal. The difference in density between R2B and R3 for this particular lot, even if this is precedence for the future, is inconsequential to the Powderhorn neighborhood as a whole. I just don't see the point of this anymore. When we can accommodate density in a way that doesn't affect the livability of neighborhoods, when we can take units that have existed for decades and make them legal, bring them above the radar, allow them to be licensed by the City of Minneapolis so that tenants don't feel that they are somehow engaging in an under the table business transaction with their landlord and they're afraid that they are going to get caught someday and be evicted. This happens all over the place and this type of housing stock has been built to be well accommodated for a third attic unit ever since these buildings were built. I think on our definition of urban neighborhood, we talk about a range of densities in the urban neighborhood designation. When you look at the zoning map for this particular area, you'll see R5 zoning as well as R2B zoning. A range of densities would mean that it's not all or nothing; it doesn't have to be just R5 or R2B, let's have some R3. Let's allow a range of densities as we say we want in our urban neighborhood definition. This is also one block from a community corridor and additional density of one additional unit within walking distance of a community corridor also meets a lot of density and land use planning goals. I support this rezoning. I support it for this property and I'm going to support it for other properties that make sense in the Powderhorn Park neighborhood association. I think the fact that the neighborhood association didn't even want to weigh in because they thought it was such an inconsequential decision speaks to the mindset and values of the neighborhood. These units have been around for a very long time, it's just a question of when the city of Minneapolis is going to recognize it and allow them to be legal.

President Tucker: I take that as a motion to approve?

Commissioner Schiff: That'd be a motion with a very long speech to approve it (Gagnon seconded).

Commissioner Luepke-Pier: I have a question for staff. If this rezoning happens, does that mean this will get inspected as if it were a new unit or does this just get grandfathered in? I have some concerns. I don't think this will be up to code, necessarily, today. I think it could be brought up to code, but I just want to know what standard this is going to be held to.

Staff Holien: They would need to pull a building permit that would essentially be a conversion permit where they would need to come in and show floor plans for all three floors. They would need to show ceiling heights and show that it can legally function as a dwelling unit and meet all the building code provisions and then it would be inspected to make sure that it does comply and that it would be considered a legal dwelling unit at that point if the rezoning were approved.

Commissioner Luepke-Pier: I think Commissioner Schiff made some really good points. I have concerns about the precedent this would set in my neck of the woods. I do want to say that while I am sympathetic and actually inclined to support the motion. It's only because of the fact that you've been able to establish that this has been a unit for so long and because the neighbors are in support of it because they've been aware of it. In my area of the city, we could see illegal units popping up all the time and it would be very detrimental and I

would not be at all in support of it unless they had some sort of extenuating circumstances such as this. At the moment I am reluctantly leaning toward supporting the motion because I see this as a unique situation, not because I think that illegal units should be allowed throughout the city. I'm hoping this doesn't set precedent in other areas where we are trying to control quality housing stock.

Commissioner Gagnon: I am also in support of the applicant's request. I very much appreciate what Council Member Schiff said. We have a lot of homeless youth and families in the city. The fact that this is a more affordable place to live than the affordable housing units and that it's a neighbor run rental unit, I think this is something we do want to promote in the city of Minneapolis. It is more of a pedestrian area so I do support this and appreciate sites like this that do allow for families an affordable place to live so they are not out in shelters.

Commissioner Cohen: I found Commissioner Schiff's presentation persuasive. We do have a genuine need for housing in the city and a genuine shortage of housing. I am concerned about the effects and implications of this change, but I think it's probably time that we took the step forward and see where it leads in any event. I'm willing to support it. I've got my fingers crossed that it's going to work and it's not going to open a flood of problems and that will contribute to the housing stock in the city in a positive fashion. I think it's worth a chance to go ahead with it and approve the rezoning.

Commissioner Brown: I agree with the other commissioners. When we consider a rezoning, I have some concerns because ultimately we have five findings we need to make. I have some serious concerns about our ability to make findings two, four and five. First, that the amendment is in the public interest and not solely in the interest of the property owner. Finding four, whether there are reasonable uses of the property. Use of a property as a two unit dwelling in that area is a reasonable use of the property since there are many other two unit structures in the immediate area. I think it could be difficult to make finding number five, whether or not there has been change in character or trend in the development of that general area. That area has been developed for a long time, there hasn't been a lot of new construction in that area in some time and certainly since that R2B zoning designation that was adopted with the map there really hasn't been a change. I have some concerns in making those findings. I don't support the motion.

Commissioner Kronzer: I am going to support the rezoning of this property. I see this as invisible density. It's been there over 100 years and it's just a matter of how many people are in there; we're not expanding it, it's not a five story building adjacent to a single family structure. The parking is accommodated on site, it's walkable to buses. I'm familiar with this neighborhood and this is a positive thing. There are things in the public interest that we can go through in the findings. Maintaining the density of our urban city is important and that's certainly laid out in the Comprehensive Plan.

Commissioner Huynh: When I read through the packet I was kind of split between having a rezoning occur within the block, but then having all this information – I realize it's a unique context. There are a lot of other diverse housing types within a two block radius and also a commercial corridor that supports growth and density. Because of the context that it lies within, it does support additional growth and the unit could be accommodated and fit within this neighborhood so I will be supporting the motion.

Commissioner Schiff: I was just going to make a few more points for the record and for the findings of fact. This will go before the full City Council and so the City Attorney will have an opportunity to review it and raft findings of fact. This whole block was zoned F5 up until 1963, so at that point, use of this property as a triplex would have been legal. It was only the downzoning from R5 to R2B after 1963 that either made this a nonconforming unit or made it an illegal unit. The property has remained the same. I'm not a house historian

by any means, but it certainly looked to me like the work was done prior to 1963 based on the quality of the millwork and the radiators and the living space. While the area hasn't changed with character and development, the city zoning has certainly changed over time to change the ways in which this property could be used. I just wanted to state that for the record. I also think there is a public interest in allowing small affordable units like this in our housing stock and in our neighborhoods. I really love that phrase "invisible density". I think that the ability to be able to find small units like this throughout the city is part of what helps keep neighborhoods vibrant.

Aye: Cohen, Gagnon, Huynh, Kronzer, Luepke-Pier and Schiff

Nay: Brown

President Tucker: We're going against the staff recommendation. Commissioner Schiff, I think you've mentioned quite a few findings already so I don't know if we need to repeat them.

Commissioner Schiff: I would ask the City Attorney's office to look at the record and the discussion here and draft those findings.

President Tucker: I think we're looking at the Comprehensive Plan in a holistic way with the different densities that are appropriate for this area and find this to be in the public interest as well as that of the owner.