

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

250 South Fourth Street, Room 300  
Minneapolis, MN 55415-1385  
(612) 673-3710 Phone  
(612) 673-2526 Fax  
(612) 673-2157 TDD

---

**MEMORANDUM**

---

DATE: December 9, 2013

TO: Zoning and Planning Committee

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

SUBJECT: Planning Commission decisions of November 12, 2013

---

The following actions were taken by the Planning Commission on November 12, 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, Huynh, Kronzer, Schiff, Slack and Wielinski – 8

Not present: Gagnon (excused) and Luepke-Pier (excused)

Committee Clerk: Lisa Kusz (612) 673-3710

---

**5. 2535 Aldrich Ave S (BZZ-6081, Ward: 10), 2535 Aldrich Ave S (Kimberly Holien).**

**A. Rezoning:** Application by Paul Halvorson for a rezoning from R2B, Two-family district to the R3, Multiple-family district to legalize a third dwelling unit in the residential structure at 2535 Aldrich Ave S.

**Action:** Notwithstanding staff recommendation, the City Planning Commission recommends 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 2535 Aldrich Ave S.

1. There is R3 zoning on this block.
2. There is commercial zoning on the other side of the block, which makes this the mix of zoning and zoning densities that the urban neighborhood designation describes.
3. Policy 1.8 in the comprehensive plan supports this: Preserve the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses.

4. The rezoning promotes affordable housing and recognizes population projections that suggest the City will accommodate over 100,000 additional residents by 2040.
5. The rezoning would create more diversity in available housing types in this area.

**Aye:** Brown, Cohen, Huynh, Kronzer, Schiff, Slack and Wielinski

**Absent:** Gagnon (excused) and Luepke-Pier (excused)

**B. Variance:** Application by Paul Halvorson for a variance to reduce the minimum lot area requirement in the R3 district from 5,000 square feet to 4,756 square feet for the property located at 2535 Aldrich Ave S.

**Action:** Notwithstanding staff recommendation, the City Planning Commission **approved** the application for the variance to reduce the minimum lot area requirement from 5,000 square feet to 4,756 square feet for the property at 2535 Aldrich Ave S, based on the following findings:

1. With the approval of the rezoning, the variance is reasonable and in keeping with the spirit and intent of the ordinance and the comprehensive plan.

**Aye:** Brown, Cohen, Huynh, Kronzer, Schiff, Slack and Wielinski

**Absent:** Gagnon (excused) and Luepke-Pier (excused)

Staff Holien presented the report.

**Commissioner Kronzer:** How many off-street parking stalls are available on this property?

**Staff Holien:** There are four.

**Commissioner Kronzer:** The estimate of how long this has been a three unit building?

**Staff Holien:** I don't know. There was a building permit pulled in 1996 for some modifications to that third floor unit. At that time, it was to be a duplex unit with the second floor so it was sometime after 1996 that it was converted to a triplex.

**Commissioner Kronzer:** The last time we had one of these in front of us we had a map that showed other two, three and four unit properties; do you have anything like that?

**Staff Holien:** That's not something we typically prepare. I had done that in one other case in conjunction with another staff member who has more in depth GIS skills than I do. In this case we have identified these, which are primarily duplexes on this side of the block. There are some higher density projects at the corners and then primarily duplexes and some single family across the street.

**Commissioner Cohen:** The adjoining units on either side of this proposed rezoning, are they both legal duplexes?

**Staff Holien:** Yes.

**Commissioner Cohen:** I read between the lines here in this proposal that this is spot zoning and this would set a precedent that would make it difficult for us to hold the line with the duplexes on the block. Is that correct?

**Staff Holien:** It could set a precedent for other rezonings on this block. Spot zoning is zoning that is unsupported by any rational basis for promoting the public welfare. In this case you would have to look to the comp plan and ask if it's in the public interest to accommodate higher density right in the middle of this block.

Looking in the comp plan, my conclusion is there is no support for the rezoning in this location and it could be a precedent.

**Commissioner Slack:** Technically it's not a triplex, but the applicant pays taxes for a triplex and pays annual rental license fees for three apartments.

**Staff Holien:** That's a fairly common disconnect between the legal use of the property and the established use of the property. Hennepin County taxes properties on the existing use of that property, they don't tie that to the zoning or go into any research as to whether or not that use is existing legally. Because there are physically three units in the building, that's how they're being taxed whether or not those three units are legally established. As far as the rental license goes, this was something that was caught by housing inspections when they were doing some sweeps in this part of the city earlier this year. They only inspect the properties geographically as they come up in their system so they're not inspected annually. It should have been caught that this was not a legal triplex and that a rental license should not have been issued for three units, but unfortunately in this case it was not caught and that rental license was issued.

**Commissioner Slack:** Based on the findings of this zoning application, will the applicant actually only pay property taxes for a duplex?

**Staff Holien:** If this application is denied the property would have to be converted back to a duplex and they would only be taxed as a duplex.

President Tucker opened the public hearing.

**Paul Halvorson (730 Upton Ave N) [not on sign-in sheet]:** In 1996 I bought a building at 2535-37 Aldrich where I lived for 12 years. At the time I bought it, it was listed as a nonconforming triplex. I bought it as a triplex. It had been occupied and used as a triplex even though I recognize now it's not acknowledged in the eyes of the City's Zoning. In 1946 it was converted. At one point the building was zoned as allowed for three units until 1976 when it was rezoned to R2B. I also understand in 1999, you did an overhaul of the zoning and you have precedence for grandfathering in those properties that were nonconforming triplexes and continuous use since prior to 1999. The biggest case that I would make before you today is allow this exception to your rule because it has been used as a triplex continuously since before 1999 and since before I bought it. When I purchased it in 1996 the owner was living in the third floor and renting out the first and second floor. I owner occupied it for 12 years and I paid for two rental licenses in addition to me occupying it. I have spent considerable funds restoring the building. The City restricts the number of unrelated adults that can live in an apartment to three. The first and second floor already have three apartments that are 1400-1500 square feet. The third floor is unused excess space. It was already being used, I just upgraded it to a two bedroom, bathroom and laundry apartment and I paid money to do that. Three rents allows me to pay an extra \$2300 a year in taxes over a duplex that can help fund City infrastructure. A triplex provides an additional unit in a highly desired neighborhood where lots of young couples and individuals like to live. It doesn't change the urban character of the neighborhood because nothing will change on the outside. There is a four car garage in the back. Physically nothing is changing. It's illegal in designation and name only. Change it from R2B to R3 and everything is in compliance. The government can collect extra taxes and fees. The tenants who lived there for years and want to stay living there can continue living there and I'll have the additional rental revenue to continue to maintain and upgrade that property. I argue that it's in the public interest to maintain housing stock to provide additional housing and additional revenue to the city. By denying this request, you create a series of problems that I will honor, but you will have less money, I'd have to move tenants out and it's just another example of why people aren't happy with the City. All we're asking is that you change the designation in name only. There are very few properties left south Minneapolis that have the oversized attic that will lend themselves to triplexes. You may consider as a public policy matter identifying those existing nonconforming triplexes that aren't being taxed as triplexes as a revenue generating strategy for yourself.

**Commissioner Schiff:** Do you have photos of the interior?

**Paul Halvorson:** Here for example, to preserve the historic character of the Victorian duplex, I reconstructed porches here and you can see I did a wraparound faux roof with a third story deck on top. It continues to preserve the character of building but it provides three decks, one for each unit. Here you can see what some of the deck looks like upstairs. Here are the stairs to the third floor. There are also stairs on the back. There is proper egress, proper windowing, proper square footage for floor space, it meets all the building code requirements for a triplex. Here is the kitchen. There are stained glass doors between the living area and the dining area. Here is the bathroom and a skylight. It gives you a sense of the building. It's about 950 square feet on the third floor.

**Commissioner Huynh:** You mentioned that when you purchased the property you were told that it was a nonconforming triplex so was that a legally established nonconforming triplex? I'm trying to understand the nuance, but for legal reference I'd like to know what you were told versus what the City considers as nonconforming.

**Paul Halvorson:** The MLS service listed it as a nonconforming triplex for sale for \$135k in 1996. I paid the asking price. I was told there are many properties in south Minneapolis where you have these nonconforming units and it's just something that is. It's like a "don't ask, don't tell" policy. It's just the way it is and I entered into that, but as an owner occupant I want to upgrade the property to make it decent, which I did. I thought that by paying taxes as a triplex and by being able to have three rental licenses and when I look at the property tax statement it says "M3M" so I thought I was in compliance. I discovered 18 months ago that I am not in compliance from a zoning perspective. I now understand a whole lot more how taxing works and how zoning works, which is why I am here before you today. I paid the fee to bring this to you in order to request this be done legally.

**Ashish Agarwal [not on sign-in sheet]:** There are a lot of properties out there that have these nonconforming third units which were built decades ago. There should be a policy where some of these properties should be grandfathered in because it does create a negative impact to the neighborhood when these properties go into foreclosure. If you lose one unit, the rental income is not there and you cannot pay your mortgage. As we've gone through this housing crisis, I think we need to think more creatively and differently than trying to do the same thing just because it doesn't fit the mold. It doesn't make overall sense.

President Tucker closed the public hearing.

**Commissioner Cohen:** Kimberly, address this grandfathering issue if you would. Did we actually at some point in time grandfather some of these units in and others not? Give us some historical background on this if you would.

**Staff Holien:** There is nothing in our building permit history or in the record for this property that shows that a third unit was ever legally established. While it may have been existing at one point in time, all of the permits that we have that refer to this attic space refer to it as being a part of the second floor unit. If there were a third unit that were legally established at some point in time and then when the property got downzoned in 1976, that third unit were to stay and be occupied consistently with no gaps for a period of more than a year, then yes it could have been grandfathered in, but that's not the case with this particular property.

**Commissioner Schiff:** I'm going to make a motion. I'm reminded of a very similar application that we saw just last month and one of the commissioners talked about invisible density. I'm going to move approval of the rezoning (Kronzer seconded). I don't know of another type of property owner that the City of Minneapolis tortures more regularly than duplex owners. This issue has been going on so often it's...there are so many property owners out there who have duplexes that have been used as triplexes. This one, the remodeling permit was pulled in 1996, the City noticed in 2011 that it was now being used as a triplex. During that period

of time I'd like to know what harm happened to this block. If the attic space meets the building code then I think we should allow it to be a livable space. There is R3 zoning on this block just four doors down. For us to come up with a logical argument that state R3 is acceptable three doors down, but not on this property, I think would be fairly difficult to bank. We also have commercial zoning on the other side of the block just separated by the alley. This is clearly the mix of zoning and zoning densities that the urban neighborhood designation and the Planning Commission is describing when it says that we should have the predominantly residential areas with a range of densities. The difference between a duplex and a triplex is so nominal in the big picture, we should do everything we can to encourage that these buildings are invested in, that people are able to live in legal units that are quality and this is so similar to so many others that we've seen. I wish that this commission could tackle this issue citywide in the future because right now it's a piece by piece, case by case, whoever gets caught, whoever files the application, whoever comes forward and makes their case, and then whoever the council member happens to be determines whether or not triplex owners are able to use their buildings to their full extent. I think we really need a new policy that recognizes that there is nothing wrong at all in allowing this attic space to be rented out and for this building to have the same zoning as a building just three doors down from it.

**Commissioner Brown:** I support the motion as well. I would like to cite policy 1.8 in the Comprehensive Plan – to preserve the stability and diversity of the City's neighborhoods while allowing for increased density in order to retain and attract long-term residents and businesses. I agree with what Commissioner Schiff just said. I would like to add one thing. In general, our existing code really seems to discourage three and four unit buildings in the R2B district with the lot area requirement. In the longer term I would like to maybe see this issue addressed through the code so we don't have as many nonconformities in some of these existing buildings. In this case, I'd rather not see individual properties rezoned piecemeal, but in this case due to the presence of higher R zoning, the presence of commercial zoning, the fact that the property is one parcel removed from the commercial corridor and is similar in terms of its use to the surrounding properties I think R3 is appropriate zoning at this location.

**Commissioner Cohen:** I'm persuaded that Commissioner Schiff is on the right track. I would go back to a policy decision we made as this commission just about a month ago when we said we were going to try to address zoning as a question where marketing would drive the zoning rather than zoning drive the marketing and I think in the broad sense this is an example where we can put that policy into effect. There is a market for this and there has been for a long time. We've also taken measures recently to decrease the requirement size for residential densities in order to encourage higher densities and more occupancy to grow the population of the city so I think in a broader strategic sense this measure is a good one and I can support it.

**Commissioner Kronzer:** I support the motion. Met Council in 2040 is projecting over 105k people to be living in the city of Minneapolis. This is a very low impact way of adding people. It's also a low impact way of not removing people from this neighborhood. It also supports small businesses and supportive housing and a choice of housing needs in an area of town where rents are increasing pretty dramatically year after year.

**Aye:** Brown, Cohen, Huynh, Kronzer, Schiff, Slack and Wielinski

**Absent:** Gagnon (excused) and Luepke-Pier (excused)

**Commissioner Schiff:** I will move approval of item B (Kronzer seconded).

**Aye:** Brown, Cohen, Huynh, Kronzer, Schiff, Slack and Wielinski

**Absent:** Gagnon (excused) and Luepke-Pier (excused)