



**Request for City Council Committee Action from the Department of Community Planning
& Economic Development – Planning Division**

Date: January 14, 2010
To: Council Member Gary Schiff, Chair of Zoning and Planning Committee
Referral to: Zoning and Planning Committee
Subject: Referral from the January 11, 2010 City Planning Commission Meeting
Recommendation: See report from the City Planning Commission

Prepared by: Lisa Baldwin, Planning Commission Committee Clerk (612-673-3710)

Approved by: Jason Wittenberg, Supervisor, CPED Planning-Development Services

Presenter in Committee:

3. 846 22nd Ave, 846 22nd Ave SE, Kimberly Holien, City Planner, x2402

Community Impact (use any categories that apply)

Other: See staff report(s) from the City Planning Commission

Background/Supporting Information Attached

The attached report summarizes the actions taken at the City Planning Commission meeting held on January 11, 2010. The findings and recommendations are respectfully submitted for the consideration of your Committee.

**REPORT
of the
CITY PLANNING COMMISSION
of the City of Minneapolis**

The Minneapolis City Planning Commission, at its meeting on January 11, 2010 took action to **submit the attached comment** on the following items:

3. 846 22nd Ave (BZZ-4617, Ward: 2), 846 22nd Ave SE ([Kimberly Holien](#)).

A. Rezoning: Application by Robert Zak has submitted an application to rezone property at 846 22nd Ave SE from R1A to R4 to increase the maximum occupancy to allow one family and up to four unrelated persons to reside in the existing dwelling.

Action: The City Planning Commission recommended that the City Council adopt the findings and **deny** the petition to rezone the property of 846 22nd Ave SE from the R1A, Single-family District to the R4, Multiple-family District.

Department of Community Planning and Economic Development – Planning Division
Rezoning Petition
BZZ – 4617

Date: January 11, 2010

Applicant: Robert Zak

Address of Property: 846 22nd Avenue SE

Project Name: 846 22nd Avenue Rezone

Contact Person and Phone: Robert Zak (763) 785-1495

Planning Staff and Phone: Kimberly Holien, (612) 673-2402

Date Application Deemed Complete: December 9, 2009

End of 60-Day Decision Period: February 7, 2010

Ward: 2 Neighborhood Organization: Southeast Como Improvement Association

Existing Zoning: R1A, Single-family District; UA, University Area Overlay District

Proposed Zoning: R4, Multiple-family District; UA, University Area Overlay District

Zoning Plate Number: 16

Legal Description: Lot 21, Block 16, Coles and Weeks Addition to Minneapolis

Proposed Use: Single family dwelling

Concurrent Review:

Petition to rezone the property of 846 22nd Avenue SE from R1A to R4.

Applicable zoning code provisions: Chapter 525, Article VI Zoning Amendments

Background: Robert Zak has applied for rezoning from R1A to R4 for an existing single family dwelling at 846 22nd Avenue SE. The property is also within the boundaries of the University Area Overlay District. The purpose of the rezoning request is to increase the maximum occupancy to allow one family and up to four unrelated persons to reside in the existing dwelling. The property was recently cited for illegal occupancy for having six unrelated people living in one dwelling unit. The R1A District allows one family plus up to two unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five persons. No physical changes are proposed to the existing single family home.

REZONING: Petition to rezone from R1A to R4.

Findings as required by the Minneapolis Zoning Code for the rezoning petition:

1. Whether the amendment is consistent with the applicable policies of the comprehensive plan.

The Minneapolis Plan for Sustainable Growth designates the property as urban neighborhood on the future land use map. The urban neighborhood land use category is defined as a predominantly residential area with a range of densities, with highest densities generally to be concentrated around identified nodes and corridors. The subject site is not on near a node and is two blocks south of the closest Community Corridor. As such, the higher density allowed in the R4 zoning district would not be appropriate in this location.

The following policies of the comprehensive plan also apply to this request:

Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.

1.1.4 Support context-sensitive regulations for development and land use, such as overlay districts, in order to promote additional land use objectives.

1.1.5 Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.

The site is within the boundaries of the University Area Overlay District. This overlay district was the result of a year-long moratorium in the University area due to an interest in protecting the livability of the study area by examining issues such as parking, density, and whether the existing pattern of zoning districts within the study area is consistent with the policies of the comprehensive plan. The UA University Area Overlay District was established to ensure high quality residential development through site design and off-street parking regulations that acknowledge the unique demands placed on land uses near a major center of educational employment and enrollment. Rezoning the property to allow increased occupancy in a single family dwelling would not be consistent with the intent of the new Overlay District. During the rezoning study, it was determined that the existing base zoning in the area is appropriate and consistent with adopted policy guidance.

2. Whether the amendment is in the public interest and is not solely for the interest of a single property owner.

An amendment of the zoning district to R4 would be solely to accommodate the existing tenants in the single family home. The amendment is not in public interest and is solely in the interest of the property owner.

3. Whether the existing uses of property and the zoning classification of property within the general area of the property in question are compatible with the proposed zoning classification, where the amendment is to change the zoning classification of particular property.

The existing single family home is a permitted use in the R4 District. The applicant has stated the single family home on the property would not be altered, but that the rezoning request is to allow up to five unrelated persons to reside in the dwelling.

The property directly north of the subject site is zoned R1A and contains a non-conforming duplex. The property directly south of the site is also zoned R1A and contains a single family dwelling. The property to the east of the site, across the alley, is zoned R2B and contains a duplex. The properties to the west across 22nd Avenue SE are zoned R1A and contain single family dwellings. In general, the surrounding area is a mix of single and two-family dwellings. There are no properties in the general area that are zoned to allow for multiple-family dwellings of more than two units. There are no structures in immediate area that contain more than two dwelling units. As such, the proposed R4 zoning classification, which would allow multi-family development up to four stories in height, is not consistent with the character of the surrounding area.

4. Whether there are reasonable uses of the property in question permitted under the existing zoning classification, where the amendment is to change the zoning classification of particular property.

The property contains a single family dwelling. This structure is a permitted use under the existing zoning classification. The existing zoning classification allows occupancy equal to one family plus up to two unrelated persons living together as a permanent household. Reasonable use of the property exists under the current zoning.

5. Whether there has been a change in the character or trend of development in the general area of the property in question, which has taken place since such property was placed in its present zoning classification, where the amendment is to change the zoning classification of particular property.

The west half of the block on which the property is located on is zoned R1A, as are the three blocks to the west of the site. The east half of this block is zoned R2B. Most of the residences in the area are single- and two-family dwellings. In 1987, the subject property, and other property in the immediate area, was down-zoned from R2B to R1A as part of a 40-acre study of the Como area. Higher density development has not occurred in the area since the rezoning study. The recent study associated with the moratorium in the University area found that the existing pattern of zoning districts within the study area is consistent with the policies of the comprehensive plan and no changes were proposed.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the Rezoning:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission and City Council adopt the above findings and **deny** the petition to rezone the property of 846 22nd Avenue SE from the R1A, Single-family District to the R4, Multiple-family District.

Attachments:

1. Statement of use
2. Zoning Matrix
3. Zoning map
4. Correspondence
5. Site Plan and Floor Plans
6. Photos

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

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(612) 673-2157 TDD

MEMORANDUM

DATE: January 14, 2010

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of January 11, 2010

The following actions were taken by the Planning Commission on January 11, 2010. 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 Motzenbecker, Carter, Cohen, Gorecki, Huynh, Luepke-Pier, and Tucker – 7

Not present: Bates (excused) and Schiff

Committee Clerk: Lisa Baldwin (612) 673-3710

3. 846 22nd Ave (BZZ-4617, Ward: 2), 846 22nd Ave SE ([Kimberly Holien](#)).

A. Rezoning: Application by Robert Zak has submitted an application to rezone property at 846 22nd Ave SE from R1A to R4 to increase the maximum occupancy to allow one family and up to four unrelated persons to reside in the existing dwelling.

Action: The City Planning Commission recommended that the City Council adopt the findings and **deny** the petition to rezone the property of 846 22nd Ave SE from the R1A, Single-family District to the R4, Multiple-family District.

Staff Holien presented the staff report.

President Motzenbecker opened the public hearing.

Robert Zak: I purchased this property back in January 2007. I have a daughter that started at the University of Minnesota and I have a son that will be attending the University of Minnesota as well. My primary purpose when I bought this property was to give them the best accommodations possible for attending school. My daughter did live in the dorm the first year. What I want to do is touch base on the five aspects that Kimberly brought up, but I want to rebut them as well. I did a little research and I just want to make clarification and open it up for discussion as well and we'll go from there. Section one, the Planning Commission findings, neighborhood is defined as predominately residential area on future land use maps. The neighborhood has changed from single family and I have documentation that goes into that to explain that a little bit. Another thing about the rezoning would not be consistent with the intent of the overlay district, yes it would. One thing that Kimberly did not mention is that I have proposed to put parking spaces in the rear and then I've also proposed to put bike racks or bike stalls in the rear as well, covered bike stalls. That goes with the university overlay or area overlay district, that was their intent, parking and transportation. I did read through that and it's a huge piece of that is parking and transportation to clean that up. If you look at the university area overlay district I'm sure everybody is familiar with it and the area that it does cover. My house is on the northern side of this district area but definitely included in it. This is the university area overlay district, it's the memorandum that defines and specifies what's going on and everybody should be familiar with that as well. I want to draw your attention to section five of that memo. It says "changes in the character or trend of development of the property in question"...they did research and what was found is that the primary trend in this area is shifting from owner/occupied homes to high density rental residences, particularly those catering to students. This overlay is put in place because of the students attending the University of Minnesota. There is no question about it, the population that is there, the extra cars there, the transportation issues, biking issues, that's why this overlay is put in place. The plan I proposed would help alleviate a little of that, it would put parking in the rear and take bikes off the street of off the front of the house as well. Another map just looking at the different areas that are zoned out here, predominately in the area I'm in is definitely R1A. Right across the alley is R2, few blocks down is R4, you have a R5 and commercial all in this little area. There is a multitude of different zoning groupings in this area. I did another study. I did a little research on the properties sold in the area. I went to Edinarealty.com and 92 properties were listed as being sold in the last 24 months and that's as far back as I could go. What I found in a map of the area where they were sold was that a third of the properties were homesteaded, 62 were not. Some of them might be relative homestead with rental license. These properties are being purchased as rentals, it's a changing neighborhood. There is definitely a trend there, it's recognized by the overlay memo, it's recognized by the home sales in the area. I did try to find rental applications or licenses given out in this area, I was unable to obtain that from the City of Minneapolis but I bet it would show a trend each year increasing in this area. Number two, zoning changes would not be in the public interest, it would solely be the interest of the property owner, I disagree with that. There are 55,000 students that attend the University of Minnesota, it's one of the biggest institutions in the nation. What we have going on is a huge housing demand in this area and this is why there's traffic problems, this

is why there is parking problems and this is why the overlay was put into place. My daughter lived in Comstock, a small little dorm room, a three person room is 235 square feet, the cost is \$4062 for the year. A four person room is available in Bailey Hall, 497 square feet for four unrelated people. I have a house that is 1258 square feet above ground and I can accommodate over three unrelated people on this property for a maximum of five. The occupancy for that house is still a maximum of five it's just whether they can be related or not. My rent is \$3600 that I get from these students. I give them a lot. It's a savings for a student given these economic times that we have and it's a great incentive for a student to be there. I have more livable room for students. They get a place of enjoyment and a little bit of a yard, private study areas. If you went to college, you've been in a dorm room and you can't study in there so you try to go to the common community area to study and it's very distracting and very tough. This provides a great place for kids to study and learn. It's a more affordable housing option. My tenants prefer living there rather than the dorms. They love the house. I'm very responsive to their needs. I work at the University of Minnesota, I've been there for 16 years, I don't own properties, I'm not the proverbial slumlord, my kids are going to school, their friends want to go to school, we had an option and I thought it was a pretty good option. I provide the utilities, gas, electric, water, cable, wireless internet set up for them. It's not solely for my interest. I think I'm providing a good service for students that want to attend the University of Minnesota. Planning Commission finding number three, no structures in the immediate area zoned R4, relatively close, not across the street but relatively close. Multi-family development up to four stories not consistent with the character of the area, if it's the city's concern that I'm going to tear down the house and put up a four story building, we could make it approved R4 contingent on that won't happen, but I know you can't do that. Number four, reasonable use of property exists under the current zoning, I don't believe that's true anymore because the neighborhood is changing from single family residential to rental to accommodate the University of Minnesota students. Current zoning on this property was appropriate for single family residential neighborhood, right now not for a neighborhood of student housing...that's how it was proposed before, that's where the RIA was, not for the student housing now. Section five, whether there has been a change to the property and character of the general area of the property in question, there has been character change in that neighborhood, significant change from predominantly residential area to an area that's high density rental, it's next to a university, it's clearly changing over. I don't want 20 kids in the house, I want up to five, the house can accommodate it and whether they are related or non-related, I think in this area, providing student housing which this community does for the university, it should be allowable. In section five of the university area overlay district amendment adopted by the City of Minneapolis kind of understands that it's a changing neighborhood by simply adopting that. I just ask there is some consideration being given. I understand that it's a tough case. I understand that making changes is a little bit difficult. It is a changing neighborhood and we have to face that. I think we can make it better for the students. The related part up to five, I think for a house it's a pretty tough restriction for an area that caters to students.

Commissioner Luepke-Pier: The basis for your argument is that since it's a changing neighborhood then it should be allowed to change? Is that the basic focal point that your argument hinges on?

Robert Zak: My argument is that the area provides student housing and being that it is a changing neighborhood. I understand if it's a residential neighborhood, I understand the opposition with that. I think things change and change is hard but yes it is a changing neighborhood that provides student housing. I think, for that reason, consideration should

seriously be given to that. There are students all over that whole area, close to 50 percent of that area right now. That is the basis of my argument, it is a changing neighborhood, it's providing student services, housing for them.

Dick Poppele (97 Arthur Ave SE): I'm here representing the University District Alliance. The Alliance, as many of you are aware, was set up by the state legislature following a mandated report in 2007 on the impact of the university on the surrounding Minneapolis neighborhoods. The Alliance is a coalition among the university, the City of Minneapolis, the neighborhoods and business associations in the university district as well as student government organizations. The Alliance has initiated or encouraged programs in several areas of interest in the university district addressing the recommendations of the 2007 report to the legislature, including but not limited to the housing regulation and enforcement, homeownership preservation, student civic engagement and vision and planning for the university district. The Alliance developed a consensus for development in the university district that calls for holding the line on owner occupied housing and encouraging a diverse residential population of homeowners and renters with an emphasis on living near your work. It also worked with city officials and departments in supporting the extensive zoning and planning regulatory review that Kimberly referred to earlier. She pointed out the result of that study was that there was a change made to the zoning code to establish a university overlay district and it did not recommend changes in the underlying zoning in any of the district neighborhoods. In fact, spot rezoning that does not address a strategic vision for the district would not be recommended by the Alliance. Sometimes progress can only be measured in small steps and often in critical areas that were already near the tipping point so that future progress may be at stake. Many parts of the Southeast Como and Marcy Holmes neighborhoods have been identified as comprising such critical areas. We hope that you're able to take these considerations into account in reaching your decision today. While it's not the position of the Alliance to take a stand on specific issues that may be better addressed by its member organizations, we feel that it is important to communicate the shared vision that the Alliance as broadly as possible.

Joan Menken (1067 14th Ave SE) [not on sign-in sheet]: I'm from Southeast Como. You did get the letter from the Como neighborhood association, I've had a lot of people contact me and the basic argument is that this is suitable for this specific property owner. If we're back to spot rezoning, spot rezoning then should be in effect for the entire city. If you're going back to this type of rezoning in imbedded low density areas such as Como, then the whole city should be participating in this type of rezoning. No one prevents a parent from buying a property, but this is housing for five other people. This is an economic benefit to this property owner. I can pay my mortgage and so could my children if we put four more people in all of our houses. Change of character in the neighborhood, somewhat yes, but we've also seen...we have some young families back in this neighborhood. The university has made it very clear that the number of students is not going to increase and we have seen some substantial higher density housing in the R4 areas along University Ave and the Dinkytown area. Character can change either by plan or change as we've had it happen in our neighborhood, from investors simply coming in, buying up tons of properties, renting them illegally, over occupying and now we're seeing a lot of those properties deserted and they are no longer able to rent those houses. We strongly oppose this rezoning.

President Motzenbecker closed the public hearing.

Commissioner Gorecki: I want to commend Mr. Zak for a very thorough and thoughtful presentation, we don't always get that. Unfortunately I don't agree with your premise so I'm going to move staff recommendations. First, reasonable use, there is reasonable use for this particular property based on homesteaded versus non-homesteaded, we're not removing his right to rent the property, he's asking for a much greater use with a R1 versus and R4 plan that is inconsistent as pointed out by staff with the Minneapolis Plan. Also, if we began the process of doing spot zoning like this throughout the city in residential neighborhoods where these particular houses have no business being in an R4 district, it'd really destroy the character of neighborhoods and I think that's why we have the zoning and planning we do in place and I think that's very consistent. With that, I move staff recommendation for denial (Huynh seconded).

Commissioner Tucker: I want to repeat for my appreciation for the applicant basing his argument on the findings that are needed. That helps us a lot and I think we have to note that when applicants do go through all the findings that's very helpful. Like Mr. Gorecki, I don't agree that your conclusions are correct. I'd say you misunderstood the purpose of the university overlay and it did not call for spot zoning or rezoning, it was not designed to make the way for student housing throughout its entire area, it was recognizing that there is a lot of student housing in that area but that student housing has to share neighborhoods and blocks with people who are living in the area for other reasons. It was to get many groups living together and understanding how that might work and might be a little different from other parts of the city. Just one other thing, I don't think you should be confusing homestead versus non-homestead as a zoning category; those are tax categories and the increase in non-homestead doesn't in any way suggest that the rezoning should be made. Thank you.

Commissioner Luepke-Pier: I will also be voting for staff recommendation based on the reasons the other commissioners listed. I really did appreciate the PowerPoint presentation, it was very clear. I didn't quite agree with your analysis of your stats. Housing sales listed don't necessarily reflect what you think they reflect. If I had seen a radical shift in non-owner occupied houses versus owner occupied houses over the last few years it would have meant something, but this just tells houses that sold not that they shifted from one to another. I'm happy to see that they're holding their own at over 50 percent owner occupancy in the neighborhood which kind of helps stabilize things.

President Motzenbecker: The motion on the floor is staff recommendation to deny the rezoning from R1 to R4. All those in favor? Opposed?

The motion carried 6-0.