

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

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MEMORANDUM

DATE: October 6, 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 October 4, 2010

The following actions were taken by the Planning Commission on October 4, 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, Bates, Carter, Cohen, Gorecki, Huynh, Luepke-Pier, Schiff and Tucker – 9

Not present: Bourn

Committee Clerk: Lisa Baldwin (612) 673-3710

2. Jeff and Peggy Watson (Vac-1572, Ward: 11), 1008 51st St E ([Janelle Widmeier](#)). This item was continued from the September 7, 2010 meeting.

A. Vacation: Application by Jeff and Peggy Watson to vacate a triangular piece of the public right-of-way to the west of the alley on the block bound by 50th St E, 11th Ave S and 51st St E for the purpose of establishing a driveway with access to 50th St leading to a new garage located at the property of 1008 51st St E.

Action: The City Planning Commission recommended that the City Council adopt the findings and deny the alley vacation of that triangular part of the alley as dedicated in Block 2 of the plat of Chicago Avenue Highlands, Hennepin County, Minnesota, described as lying west of the northerly extension of the east lot line of Lot 22 of said Block 2, and southeasterly of the northeasterly extension of the northwesterly lot line of Lots 25 and 26 of said Block 2.

Staff Widmeier presented the staff report.

President Motzenbecker opened the public hearing.

Council Member Quincy: It was appreciated that you continued this item so the community could get together and talk about a potentially collaborative solution. On the 14th we did have a community meeting where all seven directly affected properties got together and were represented as well as folks from Community Planning and Economic Development and Dennis Morris and other folks from Public Works. At that meeting we identified some common goals and concerns and tried to find a solution that would meet everyone's needs and it was stressed that a solution was not really viable unless it also met the Planning Department's concerns. Some of the minor issues that we did get to talk about as a group were resolved. They were talking about things like parking and one of the issues was whether a trailer could be stored in that area. We've learned and had support from Public Works that they would address traffic concerns, post signs for no parking and do some of the other things that needed to be done which, frankly, have been ignored for years. In the end, the major issues of access to the garages and the thru-lots were not solved. The parcels on the 11th Ave area really objected to the idea of paying for, through the assessment process, of the widened alley when the current driving pattern allows access for everyone. As no one had a possible solution of how not to create the thru-lots, which was the big sticking point from the Planning Department's recommendation. Although I'm disappointed that we...I'm here talking to you today because I thought we could come to a mutual conclusion to the project but I'm very thankful for the opportunity to meet with the residents and for your time on this issue.

Jackie Cherryholmes (1216 Sheridan Ave N) [not on sign-in sheet]: I got involved in this because I know the neighbors and they're friends of mine. These are good folks who live in our city and I think have contributed a great deal to our city. They are good citizens and found themselves trying to figure out how to wind their way through this. A couple things struck me when I got involved in this. First, the historic nature of the garden that's there, it's really a fabulous garden. Granted, it should have some sort of permit and I think the neighbors are more than willing to work with Public Works and Public Works has indicated a willingness to figure out how to make that garden be a permanent thing there. The second thing that struck me was that we all live in a built city, I've lived in this city all my life and I've lived in a number of different houses. I've never had the privilege of having a driveway to any of my garages that I didn't, at some point, in the winter, somehow run into someone else's space or have to encroach over their space to get to and from my particular garage. That's just what happens when you live in this city. I think that if you can find your way to deny this this evening, I think there is a way to resolve this and it's probably through an encroachment permit though the applicant said she didn't want anybody driving on her driveway, but that's all part of living in the city and so I just think that this is a situation where we've got good folks who need access to a garage and their space and I would encourage you to deny this tonight.

Mark Besser (5028 11th Ave S) [not on sign-in sheet]: I believe the convenience of one should not come at the expense of everybody else. I want to point out that Director Elwood and the Public Works folks have a proposal to actually widen that alley by six feet so that we have some turning radius into those garages, but that comes at an expense. The neighbors do not support incurring additional cost or an additional expense when it's not needed. We have access the way it is today and all folks can actually get to their garages that way today. Nothing really needs to change. Denying the vacation request gives us all access to the garage exactly how we have it today. I ask that you deny the vacation request.

Peggy Watson [not on sign-in sheet]: I don't disagree with the gardens. The part that I would be vacating wouldn't be affecting those gardens. Keith Peters and I spoke, he lives at 1004, and we have talked about sharing the driveway so he could park in the back there as well. My drawings to you indicate that I don't mind sharing a driveway as long as some of the expense is shared as well.

President Motzenbecker closed the public hearing.

Commissioner Tucker moved the staff recommendation (Schiff seconded).

Commissioner Cohen: I would like to get some comments on this statement in the staff report, it says, "as an alternative to vacating part of the alley, the applicant has the option of applying for an encroachment permit to construct a driveway out to 50th St E. An encroachment permit would not prevent other people from driving over the driveway." Anybody have anything to say about that?

Commissioner Tucker: If we do deny, then that moves the discussion to where it should be. We need to get this off our agenda and on to the neighborhood's agenda.

President Motzenbecker: I agree. If this is denied tonight, I think that might be the next option that they would explore. We don't know for sure, but that is something that could be explored. All those in favor? Opposed?

The motion carried 8-0.

3. 2706-08 Pleasant Ave Rezoning (BZZ-4952, Ward: 6), 2706-08 Pleasant Ave ([Kimberly Holien](#)).

A. Rezoning: Application by Anne Skenzich, on behalf of Olga Stavrakis, for a rezoning from R2B to R3 to legalize a third dwelling unit in an existing building at 2706-08 Pleasant Ave.

Action: The City Planning Commission recommended that the City Council adopt the findings and **deny** the application for rezoning from R2B to R3 for the property at 2706-08 Pleasant Ave.

Staff Holien presented the staff report.

Commissioner Schiff: Can you explain how the parking in the back gets to be deemed a nonconforming use and they're allowed to maintain the amount of parking stalls but the unit itself is not nonconforming?

Staff Holien: It's not the parking stalls themselves but the amount of impervious surface in the back that's nonconforming so it has been paved over in some fashion so that's something that would have grandfather rights, it's not something that with a rezoning application we can't condition that they remove any of that pavement back there so it would be allowed to remain.

Commissioner Schiff: When did the 65% rule get written into the code, do you know?

Staff Holien: I believe that was in the '99 code, but I'm not totally sure.

Commissioner Luepke-Pier: Are they remodeling the third floor, why the new walls and windows? What's going on up there?

Staff Holien: There aren't any changes proposed to the third floor at this time. There is a dormer up there that's fairly new, but it is existing.

Commissioner Luepke-Pier: Fairly new meaning...I'm just kind of confused on whether or not there's enough headroom to have enough space up there without this big dormer and the design drawings are from this past July so I'm just curious when this happened.

Staff Holien: Here are some photos of the upstairs. There is enough headroom up there. If you note here, they have seven foot ceilings for 70% of that space up there currently. There's also two access or egress points, there are two staircases that access the third floor that's existing as well.

Commissioner Schiff: Kim, can you specify how access to the third floor unit is arranged? How do people get in and out?

Staff Holien: This is a staircase here. You enter the building from the front. You can either enter the first floor unit or you can go up the stairs here which brings you to the second floor unit and then that staircase continues. You can either enter the second floor unit or continue up to the third floor. There's also a staircase in the back of the building which provides access from the first floor to the third floor.

Commissioner Schiff: Was the staircase to the third floor added without permits or was that pre-existing and just a conversion from a storage?

Staff Holien: I don't know what the history is of when that staircase was established. There are some building permits from the 1915 renovation when the home was converted to a duplex. Those permits aren't very detailed, but it may have been that at that time the second and third floor were combined as one dwelling unit but I can only speculate, but that's how it happens. We don't have specific records as to when that staircase was established.

President Motzenbecker opened the public hearing.

Anne Skenzich (6136 Thomas Ave S): I will begin with the factual errors that the staff has presented to you. The 1915 rebuild was as a result of a fire. The house was right down to the foundation so it was effectively a new house. At that time, they established two units which was consistent with the use of the building at that time; first and second floor for the family, third attic floor for the staff or servants of the family. I saw one historical document from the Minnesota Historical Society that stated that that was a maid's room, but we've also found things that referenced a nanny's room or a teacher's room so we were never able to determine which it was or if it was all three. Consistent with houses of that nature from that age, it was common to have servant's rooms on premises or in the house. If you look at the houses on Pillsbury and Pleasant, many of which were single family homes as recently as 30 years ago and all but the exception of one are all now multi-family homes, thus the staff's statement that zoning has not changed since 1963 is false. With this block, using the City's own data and the City's website, this is the block on which the property resides. You can see that on the current block there are provisional licenses which are highlighted in blue. In addition, on the next block across the street or across the alley, we have an R5 directly behind the current property, it is not a single family home, it is not a duplex, it is a three unit home, unlicensed. The property on the corner on the Grand Ave side is also an R5, a six plus unit apartment building. On the other corner on the Grand Ave side is an eight to ten unit R5. Every single property abutting her house to the rear is R5. Across the street in the front, across Pleasant Ave, go across the street and over two properties and you have to R5s, therefore, the statement about continuing low density or going to medium density fears, is unfounded. You've already established that precedent. In addition, the failure of the city to do inspections on this property is rampant. They have continued a provisional license through three owners since 1995, beyond that, city licensing staff said that they couldn't find anymore records on that property, thus, provisional licensure has been in place for more than 15 years during which that third unit has been a continuous use the entire time. The house has been taxed as a triplex. The city has listed the property including the utilities and facilities on the third floor entirely since 1985, thus, the city has been aware of that third unit the entire time. To answer the question regarding the staircase, the staircase is existing from the original rebuild in 1915. The current owner has updated it to comply with code. The parking lot was paved in the last six months to comply with staff recommendations. An egress window has been installed to comply with staff recommendations. Improvements to the property in the amount of \$45,725.33 have been done in the past four years. That is despite the fact that this was an illegal unit. She has had a provisional licensure and has used that exclusively for this, they have never inspected it so she had a renter earlier this year who decided she wanted to move out without paying rent and then called the city inspector saying it was an illegal unit, which in fact it wasn't. Thus, the city's enforcement of existing law, the city's enforcement of rental applications has been vacated, their rights therein have been vacated by their lack of oversight. A denial of this will result in lawyers getting involved. I'd prefer that you either continue this or approve it based on the City's failure to comply with previous recommendations, the inconsistent statements of city staff telling us we had to rezone to make it compliant with property use and property type and then statements by Kim via email stating that property use and property zoning are never the same. Within the documents you have, this is my own investigation, it's using your website and it's going out and talking to people. It's all of the properties, except for four, within 350 feet. You can see how many provisional licensures, none of which have ever been inspected. I talked to city licensing for 45 minutes this afternoon and none of the houses that are provisionally licensed on these sheets have ever been inspected. The majority of the rental licensures in here are in violation because if they have been inspected they have not inspected and verified the number of units in place. Most of these homes, we have multiple homes which are homesteaded triplexes with no

rental licenses. I ask the council to disapprove the staff recommendation and approve this application.

Commissioner Luepke-Pier: You said it had provisional licensing for a number of years, was that like rental licenses for a triplex or for a duplex?

Anne Skenzich: The provisional licenses that I've seen did not specify number of units, they specified number of rooms and bathrooms.

Commissioner Luepke-Pier: Is it possible that in issuing the license they thought the third floor was part of the second floor unit?

Anne Skenzich: Don't see how they could. They never asked, it has never been except the first and second floor were one unit until about 1955 which is when I was able to trace back the original owner transfer through sale; previous transfers were through family warranty deeds, but that transfer in 1955-1956 was the first to someone outside of the family and that's when we believe that it became three units; first floor, second floor and attic floor whereas previous it was first floor, second floor and attic.

Commissioner Luepke-Pier: I guess I have a question for staff about whether licensing differentiates between a duplex and triplex.

Anne Skenzich: All we've ever wanted to do is just get this licensed as a triplex and staff has continually told us that we have to change the zoning, they told us we could not get a variance, we could not get a conditional use permit, we could only do this through a rezoning.

Commissioner Schiff: Do you have a copy of those documents you mentioned that you found at the Historical Society?

Anne Skenzich: They wouldn't let me print them because they were part of an entire book. I'd have to pay to print the entire book which was about \$475 because it was a book of all the properties in that neighborhood and they wouldn't let you print one page, that's their income source.

Commissioner Schiff: That's unfortunate. I may move a postponement and ask you to come back with some type of copy of those pages of the book.

Commissioner Cohen: While the applicant's representative is here I want to ask the lawyer a question regarding what the applicant said a few minutes ago and that is, is the city's failure to enforce various regulations, inspections, etc. in the past represent a waiver of its right to do so in the present?

Staff Wittenberg: I'd say the answer to that is no, it does not prevent us from enforcing our regulations.

Anne Skenzich: Failure to consistently and accurately enforce them does. The capricious and/or inconsistent enforcement is a violation of both the state and federal constitution and to do such would involve many lawyers in this case.

Commissioner Cohen: How could non-enforcement be capricious?

Anne Skenzich: Because now you're actively enforcing against one property rather than all the other properties. I took the 350 foot map and highlighted all the properties out of compliance either through rental licensure or zoning. If you're going to enforce against us, you're going to enforce against them as well. I only see that as fair, equitable and consistent.

President Motzenbecker: Jason or Kimberly, can you speak to Commissioner Luepke-Pier's question about triplex, tax code, licensing body kind of how that...

Staff Holien: How properties are taxed doesn't necessarily coincide with whether or not the use of the property is a legal use under the zoning code so, unfortunately, it does happen but they aren't necessarily taxing property in terms of whether or not it's compliant. As far as the rental license, I did check the rental license on this one and it looks like they were issuing a license for two units, that again can be tricky though in the case where you have owner/occupied buildings or buildings that are homesteaded or if the assumption is that they're owner/occupied the number of units that are licensed and the rental license may not always reflect the number of units that are actually in the building.

Commissioner Luepke-Pier: If something was licensed for two or three or units, is there a fee difference for two units versus three?

Staff Holien: I can't speak to that. We don't typically get involved in the issue of...

Commissioner Luepke-Pier: Is it homesteaded now?

Staff Holien: The applicant's representative could answer that, I don't believe that it is.

Commissioner Luepke-Pier: It's been licensed as a two unit building, but has it been homesteaded? Ok.

Marian Biehn (Whittier Alliance): We ask that you support the staff recommendation to deny this rezoning request from an R2B to an R3. I don't see this is capricious in any way. We, at the meeting this was presented at, we had two other requests of a similar nature. I think the city is just now catching up with some of the zoning enforcement nonconforming uses and a couple months ago we had another couple. It's not a matter of identifying one building and asking for special attention on that building. We ask, with the findings, that you support the findings. The Whittier Neighborhood, as you know, is dense. This building is located in an area of low and medium density of R2 buildings and it goes as well as being around this building, it goes to the north. The color variation is really subtle on this, but the building is located right here and the light yellow is kind of our area of the R2 and the R2B. The Whittier neighborhood is very limited in its number of dwellings that are low and medium density. One unit attached condo is 138, this is a 2007 report by Marketplace. Four hundred and twenty single family homes, two units, 657, and then you'll see that the R3 and higher is the primary zoning in the neighborhood. Out of 368 dwelling units, there are very few low and medium density units. To upzone this, even to an R3, would take away some of the housing choice that we have in the neighborhood and it would also be contrary to the Minneapolis Plan of providing choice in housing. We have limited choice in housing for single family and duplexes. We have multiple choice in multiple dwelling. By maintaining the R2, it would at least hold on to some of the less...it would maintain some of our

lower and medium density. The house has been used a two family home and the third unit was established, I'm sure because it was there and it was easy to convert, but there is a precedent for it to be used as a duplex. The third unit could be converted into the second unit or combined with the second unit to offer more bedrooms for a larger family, which we also have limited two, three and four bedroom units in the neighborhood. Making it an additional bedroom would offer another housing choice for the neighborhood. We urge you to support the staff findings and deny this. Thank you.

Peter Rickmyer (2118 25th Ave N): I would like to point out that the houses that are triplexes in that area are zoned R2 so what happens is that the buildings that are in this area would not show the buildings that are R3, instead they're shown as R2 so by the other houses not being zoned properly it kind of makes it confusing. Thank you.

President Motzenbecker closed the public hearing.

Commissioner Cohen: I will move the staff recommendation to deny (Tucker seconded).

Commissioner Schiff: I previously said I would move postponement to allow the applicant to provide that historical data, but given that this has to go forward to the full council regardless, there's still going to be another four weeks in the process for a rezoning application to go from the Planning Commission to the City Council so I will just make the statement now that if we do get new information please bring it to my attention before the full council votes on this because I do think there may be an eligibility for even nonconforming rights if you can prove that there was a historical use here that was built in 1915 when the property was apparently rebuilt from the ground up as you've stated. I'd be interested in seeing the historical data for that.

Commissioner Luepke-Pier: I will just say this was a little bit of a tough one because I'm all for density but I have to vote with the motion on the floor because it's not on a major commercial corridor. To me, hearing that the rental licenses for two units, to me, says all along there has been two units whether it was a first/second combination and the attic or first and second and they ignored the attic, I don't know, but it's the responsibility of the landlord to make sure they were paying for a license for three units knowing that they had three. I'm voting with staff recommendation on this one.

President Motzenbecker: All those in favor? Opposed?

The motion carried 7-0 (Schiff abstained)