

Department of Community Planning and Economic Development – Planning Division

Appeal of the Zoning Administrator
BZZ-3940

Applicant: Toua Xiong

Address of Property: 4140 Fremont Avenue North

Contact Person and Phone: Toua Xiong, (612) 382-6401

Planning Staff and Phone: Brian Schaffer, (612) 673-2670

Date Application Deemed Complete: February 4, 2008

Publication of Staff Report: February 29, 2008

Public Hearing: March 6, 2008

Appeal Period Expiration: March 17, 2008

End of 60 Day Decision Period: April 4, 2008

Ward: 4 **Neighborhood Organization:** Webber-Camden Neighborhood Organization

Existing Zoning: C1 Neighborhood Commercial District

Appeal of the decision of the Zoning Administrator: Toua Xiong is appealing the decision of the Zoning Administrator that there are nine grandfathered parking spaces for a mixed use building located at 4140 Fremont Avenue North in the C1 Neighborhood Commercial District.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis:

The applicant is appealing the calculation of grandfathered parking spaces for a mixed use building that contains four commercial tenants and four residential units.

Grandfathered parking spaces is the city's way of giving structures, that were built prior to zoning ordinance requiring off-street parking, credit for the uses in the structure prior to the zoning ordinance change. These grandfathered parking spaces can be used to satisfy the off-street parking requirements of the uses in the building. The intent is to lessen the parking burden for business located in structures that were developed prior to requiring off-street parking as most of these areas are fully developed and the only way to provide off-street parking is to demolish buildings to create parking lots.

Since most uses at the time of the ordinance change are not known, staff typically gives each commercial tenant credit for the parking requirement of general retail and sales, which is a minimum of four spaces, and one additional parking space per every 300 square feet in excess of 4000 square feet. If there is an accessory parking area associated with the structure and uses in question. Staff reduces the grandfather rights for the structure or use by the number of off-street parking spaces that the parking area can accommodate while being in compliance with the zoning ordinance's requirements for parking areas such as drive aisle widths, landscaping and parking stall dimensions.

The structure at 4140 Fremont Avenue North was built in 1926, prior to zoning ordinance requirements for parking. The subject site also contains a paved parking area in the rear. At one point there was garage on the rear of the property, this garage was demolished in somewhere between 2005 and 2006. This parking area is not striped and is not in compliance with the zoning ordinance.

The subject site has four commercial tenant spaces that are approximately 1750 square feet each. It also has four residential dwelling units. The historic parking requirement would have been:

- 4140 – 1750 square feet: 4 parking spaces
- 4142 – 1750 square feet: 4 parking spaces
- 4144 – 1750 square feet: 4 parking spaces
- 4146 – 1750 square feet: 4 parking spaces

4 residential units – 1 parking space per unit: 4 parking spaces

In total, staff calculated the historic parking requirement at 20 parking spaces. The subject site also contains the un-striped paved parking area in the rear of the site. The grandfathered parking spaces would be the result of subtracting how many parking spaces the unimproved parking lot could accommodate (if it met the requirements of the zoning ordinance) from the historic parking requirement, 20 spaces.

On October 29, 2007 the applicant submitted a plan for preliminary development review that showed 12 parking spaces in the parking area. To completely comply with the zoning ordinance one of the parking spaces needed to be removed. The plan demonstrated that the parking area could accommodate 11 parking spaces while meeting the requirements of the zoning ordinance. The zoning administrator determined that the grandfathered rights for the structure were nine parking spaces.

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20 historical required parking spaces
– 11 parking spaces legally accommodated on the accessory parking lot
= 9 grandfathered parking spaces

In the applicant's statement of appeal he mentions "that the removal of the garage was intended to increase available parking for the Property." The applicant's appeal statement has not offered what he believes the grandfathered parking spaces should be. He indicates that the Zoning Administrator stated that there were 20 grandfathered parking spaces and then "arbitrarily and capriciously reduced the Appellant's Grandfathered parking spaces from 20 to 9 spaces." An email sent to Al Hanson on November 16, 2007 from staff and later forwarded to Timothy Maher, the applicant's representative, on November 28, 2007 states the following:

In total there would be 20 grandfathered spaces. However, there is the unused, non-striped parking lot behind the subject building. This area was designed for accessory parking for the commercial and residential units in the building. The 20 grandfathered spaces will be reduced by the number of legal parking spaces that can be provided. The applicant is showing in the PDR submittal that 12 parking spaces can be provided. After zoning review of the plans it has been determined that only 11 spaces can be legally created in the layout proposed.

So, 20 grandfathered spaces minus the 11 legally provided spaces are 9 grandfathered spaces.

Staff understands that the calculation and perhaps the original wording is confusing, but clearly stated that the property has 9 grandfathered parking spaces. The applicant might be confusing the historic parking demand and the grandfathered parking spaces. In an email response to Timothy Maher on January 9, 2008 staff reiterated the calculation of grandfathered parking spaces. This was further explained in email correspondence to Mr. Maher on January 24, 2008 and January 30, 2008.

The applicant has indicated that he is proposing the following uses. Staff has added the required parking spaces for the proposed uses.

4140/4142 – grocery/meat store: 4 parking spaces
4144 – catering: 4 parking spaces
4146 – video store: 4 parking spaces
4 residential dwelling units: 4 parking space

As previously proposed the uses require 16 parking spaces. The applicant has 9 grandfathered parking spaces and would be required to provide parking for the remaining 7 required parking spaces. The applicant could chose to seek a variance to reduce the parking requirement by 7 parking spaces, provide the 7 parking spaces on site, or attempt to provide the parking in an off-site parking location that complies with the Zoning Ordinance requirements.

In the statement of appeal the applicant indicates that the City Planning Commission (CPC) confirmed the decision of the zoning administrator on January 24, 2008. The City Planning Commission was never involved in this decision. This item was never brought before the CPC; the grandfathered parking calculation was made by staff and confirmed by the Zoning Administrator.

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Recommendation of the Department of Community Planning and Economic Development - Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment **deny** the appeal of decision of the Zoning Administrator that there are nine grandfathered parking spaces for a mixed use building located at 4140 Fremont Avenue North in the C1 Neighborhood Commercial District

Attachments

1. Applicant's Statement and pictures
2. Map of Area
3. Preliminary Development Review Report. November 7, 2007