

MINUTES OF THE ZONING COMMITTEE
Thursday, August 13, 2015 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Edgerton, Makarios, Merrigan, Padilla, and Wencil
EXCUSED: Nelson, Reveal, and Wickiser
STAFF: Jamie Radel, Nicole McCarthy, Jake Reilly, and Peter Warner

The meeting was chaired by Commissioner Padilla.

Mike and Joelle Olson - 15-138-929 - Establishment of nonconforming use as a triplex at 897 Goodrich Avenue, between Victoria St. S. and Milton St.

Jamie Radel presented the staff report with a recommendation of denial for the establishment of nonconforming use permit. She stated District 16 recommended approval, and there were 5 letters in support, and 5 letters in opposition.

Chair Padilla noted that she prefers that a handout showing an entire list of campaign contributions be removed from public record. She understands that it was submitted to show that Mr. Chelseth was a resident at 897 Goodrich, but that is already noted in another document. The list is public record, but this is a zoning matter, and it isn't useful in this context.

Ms. Radel explained she wanted to make it available to the Committee because the applicant submitted it in pursuit of establishing that the building had been used as a triplex for the last ten years.

The applicant, Joelle Olson, 897 Goodrich Avenue, provided background information on the property. At the time they were looking to purchase the home the second floor and basement were occupied and the main floor was vacant. They purchased the home in July 2014 and the leases carried through the sale. Last winter an inspector came to their home and gave them a list of corrections to follow, one of which included applying for a nonconforming use permit to allow for the use of the third unit. They would like to continue to use the basement as a rental unit as it has been used for the last few decades. They have an outstanding amount of support from neighbors. Over 90% of the parcel is in compliance. The Summit Hill Association understands their reasons for this request. They want to clarify to neighbors that what they are asking to do is not an incremental change or disruption it's simply being able to utilize the basement as a separate unit. This will not include any amount of construction. She noted documentation she submitted from the prior owner confirming the basement usage as a separate unit for the last few decades. The neighbor at 903 Goodrich Avenue also confirmed the usage of the home over the last decade as a triplex. She also submitted a history of the tenants that lived in the unit throughout the time the home was listed as a duplex. There is evidence the home was used as a triplex from 2012 to 2014. She explained that hardship would result if they were to reconvert the basement unit and connect it to the main unit. Connecting the two units would disrupt the stairwell that is a shared space between all three units. If they were to connect the basement to the main unit they would be cutting off a second exit point to the tenant on the second floor creating a fire hazard. The shared laundry access would also be cut off which would require construction on the second floor unit.

Upon inquiry from the Commissioners, Ms. Olson stated she didn't recall her conversations with the real estate agent regarding if the home was a duplex or triplex. When they were looking at the house it was set up as a triplex with the second floor and basement units rented.

Ms. Radel stated that the listing represented the home as a triplex. The information from Ramsey County she reviewed stated it was a duplex.

At questions from the Commissioners, Ms. Olson stated that all the information submitted at this point regarding the home has been a grassroots effort. Upon sale of the home the only information that they received was a lease for the basement and second floor unit. There were no prior records that they received on the property. They have done their due diligence to talk to prior tenants and stitch the history together to figure out how the home had been utilized over that time frame. From what she has gathered the document showing it was a duplex was for a temporary time and the home was never used as a duplex.

Commissioner Wencil commented on the MLS listing submitted. She said that even though it states it has three units, it clearly states that the home is a duplex. It doesn't legally state that this home is a triplex.

Upon questions from the Commissioners, Ms. Olson confirmed that at the time they purchased the home there were three kitchens with the basement and second floor occupied. She and her husband were planned to live in the main floor unit.

No one spoke in support or opposition. The public hearing was closed.

Commissioner Barb Wencil moved denial of the establishment of nonconforming use permit. The motion failed for lack of a second.

Commissioner Makarios stated there is a very significant dispute about the facts. While there is some record of the use as a duplex being abated there is compelling evidence that it wasn't in fact abated, even though it shows that on paper. The applicant makes a compelling argument that it has been a nonconforming use for the last ten years. When they purchased the home it had three kitchens and people living in two units as well as stating it is a triplex on some of the documents. There is a strong case to make that condition 3(a) is met and he agrees with the hardship argument the applicant has made.

Commissioner Padilla stated hardship is subjective and it's not just a matter of whether it would be personally tough. The Committee has seen this before where someone has taken what a realtor has said at face value and not completed their own research on conflicting information in documents. There are also legal standards related to what a reasonable person should know or try to discover when they buy a property. There may be some legitimacy to the argument that we don't know for certain whether or not anyone was actually living in the basement unit at the time of inspection. The previous owner did do something to make an inspector believe that there wasn't a third unit in the property. If the prior owner did something illegally to avoid enforcement, rather than trying to get a legal permit at the time, can't be known for certain. What is proven is that it was inspected and it was a duplex for a period of time, legally interrupting the ten year period of a nonconforming use. Per the zoning code, when there are disruptions on

nonconforming uses, the intention is to bring them into conformity so they are supporting the goals of the surrounding neighborhood. She appreciates the property owner's struggle, but she can't support approval of the application.

Commissioner Merrigan stated that the structural changes that would need to be made to convert the upstairs and downstairs use together are significant from an architectural and safety point of view.

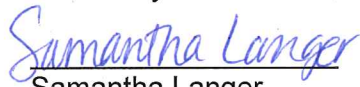
Peter Warner, City Attorney, stated that in terms of the conflict with respect to testimony there is a letter from the fire department stating that the third unit was not there at the time of inspection. At this point no legal lease documents have been submitted only statements by people who state that they lived in the third unit at the property. If the Committee would like more information in order to evaluate how much of a gap there was in occupancy the applicant will need to supply more evidence to determine whether or not the application meets the standards.

Commissioner Paula Merrigan moved to lay over the establishment of nonconforming use permit to September 10, 2015, in order to allow the applicant time to present documented leases for three distinct units over a period of the last ten years and any additional information the fire department may have on the inspection. Commissioner Dan Edgerton seconded the motion.

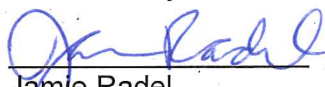
The motion passed by a vote of 4-1-0.

Adopted Yeas - 4 Nays - 1 (Wencl) Abstained - 0

Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Jamie Radel
Zoning Section

Approved by:


Julie Padilla
Chair

