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Title: Memorializing the City Council's decision to grant Brett Ripley's appeal from the decision of the Saint Paul Planning Commission in order to permit the reestablishment of a legal nonconforming 4-family dwelling on property commonly known as 1685 Taylor Avenue.

Sponsors: Mitra Jalali

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Memorializing the City Council's decision to grant Brett Ripley's appeal from the decision of the Saint Paul Planning Commission in order to permit the reestablishment of a legal nonconforming 4-family dwelling on property commonly known as 1685 Taylor Avenue.

WHEREAS, on April 5, 2018, Brett Ripley ("Applicant"), in PED Zoning File No. 18-050-373, applied to the Saint Paul Planning Commission ("Commission") under the provisions of Leg. Code §§ 62.102, 62.106(h), and 62.109(e) for a permit to reestablish as a legal nonconforming use a 4-family dwelling on property commonly known as 1685 Taylor Ave., [PIN No. 28.29.23.41.0037] and legally described as Lot 9 and W 37 ft. Lot 10, Block 3, College Place Taylor's Division; and

WHEREAS, on May 24, 2018, in accordance with Leg. Code § 61.303, the Commission conducted a public hearing at which all persons present were given an opportunity to be heard and, upon the close of the public hearing, the Commission, based upon all the evidence presented at the public hearing as substantially reflected in the minutes and the staff report dated April 19, 2018, duly moved to approve a permit to reestablish a nonconforming use either as a 2- or 3-family dwelling and subject to the condition that the property obtain a Certificate of Occupancy within one year of the approval date but denied Applicant's request for a permit to reestablish a 4-family dwelling on the property and also not as a 2-family dwelling as recommended in the April 19, 2019 report of staff as set forth in the findings of fact in Planning Commission Resolution No. 18-39 dated June 1, 2018 which is adopted herein by reference and, for the purposes of this Resolution, read as follows:

"1. The original building permit for the house at 1685 Taylor Avenue shows that it was constructed in 1897 as a one-family dwelling. The 1930 census shows that it was a one-family dwelling with owner occupants, John and Minnie Gebhard, and their son. The 1940 census shows that it was a one-family dwelling with a 74-year old owner occupant, Minnie Gebhard. City directories as recent as 1948 list only one resident in the house. In 1949 and again in 1965, city directories listed four apparently unrelated individuals residing at 1685 Taylor, with no indication of the number of units. A 1975 city directory listed four apparently unrelated individuals residing at the address, along with a phone number for each, suggesting that there were four units in the structure at that time. A Sanborn Insurance map covering the years 1929-1955 shows that the house was a

one-family dwelling in 1929 and that it had been converted to flats by 1955, very likely between 1949 and 1955.

2. The property was zoned "B" Residence, which allowed one- and two-family dwellings, from 1922 to 1975. The property was rezoned R4 one-family residential when the City adopted a new zoning code in 1975. The property has never been zoned to allow more than two dwelling units.

3. Department of Safety and Inspections (DSI) records show that the house received a Certificate of Occupancy (C of O) for four dwelling units in 1982, which appears to have remained in place until 2006, even though the property has never been zoned to allow more than two dwelling units and there is no evidence of building permits to convert the house to three or four units.

4. Both the applicant and City records (a C of O) indicate that the previous property owner began using the first and second floor as one living unit around 2006, and continued to rent the third-floor unit and the basement dwelling unit. By 2011, all units were vacant. The structure was registered as a Category II vacant building in 2012. At that time, a DSI inspector confirmed that the first and second floors were still designed as two separate dwelling units (a locking door separating the units, and each having a fully functioning kitchen), and DSI Zoning ordered that the locking door be removed and one kitchen be removed by removing all cabinets and capping gas, water and drain lines inside the walls, and disconnecting them at the source if feasible. Compliance with these orders was to be required prior to issuance of a C of O for the property, a condition of sale for a Category II vacant building. The responsible party at the time (the executor of the previous owner's estate) appealed the order. It does not appear that the appeal was granted, but DSI Zoning agreed to removal of the basement unit in lieu of the required alternations to the first and second floor units.

5. On or about August 20, 2012, a DSI inspector met with the executor and Brett Ripley (the applicant) at the property and informed them that the structure was eligible for a C of O as a three-family dwelling, provided compliance with the previous order and that a fire separation between the first and second floors was established. According to City records, the sale of the home to the applicant was scheduled to close on August 29, 2012, and a new Certificate of Occupancy was issued in January 2013.

6. Zoning Code § 62.102 states: "A use or structure will be presumed legally nonconforming if it can be demonstrated by clear and convincing evidence that prior to October 25, 1975, the use or structure was established, converted, or expanded and occupied pursuant to building permits issues by the city; if the use or structure was allowed in its location at the time it was established; or if it can be demonstrated by clear and convincing evidence that the particular use or structure has been in existence continuously since December 13, 1956. The burden of proof shall be on the property owner. ...the planning commission may approve permits granting legal nonconforming status to uses or structures that do not meet these standards as set forth in section 62.109(a) and (b)". Based upon clear and convincing evidence that use of the house at 1685 Taylor Avenue as a two-family dwelling was established under the old "B" Residence zoning that allowed a two-family dwelling at this location, use of the house as a two-family dwelling can be presumed to have had legal nonconforming status under the current R4 one-family residential zoning.

7. Zoning Code § 62.106(h) states: "When a legal nonconforming use is discontinued or ceases to exist for a continuous period of more than one (1) year, the building, or building and land in combination shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be reestablished at the number of units for which it was originally constructed provided that it has not been physically converted to a fewer number of units". It appears that the house at 1685 Taylor, which was originally constructed as a one-family dwelling and is located in the R4 one-family residential zoning district, lost its legal nonconforming status as a two-family dwelling when it was vacant from 2011-2013. Zoning Code § 62.106(h) provides that the legal nonconforming use may be reestablished as set forth in § 62.109(e).

8. Zoning Code § 62.109(e) states: When a legal nonconforming use of a structure, or structure and land in

combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

(1) *The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose.* This finding is met for reestablishment of legal nonconforming use of the house as a 2-family dwelling or (based on findings of previous zoning administrators and other City building officials) as a 3-family dwelling, but not as a 4-family dwelling. While the house was originally constructed as a one-family dwelling, which it was designed for, it is a relatively large house that was legally converted to a two-family dwelling several decades ago, and it would not be reasonable or economical to require conversion back to a one-family dwelling now. It appears that the house could reasonably and economically be used as a 2-family or 3-family dwelling.

(2) *The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use.* This finding is met for reestablishment of legal nonconforming use of the house as a two-family dwelling or (based on findings of previous zoning administrators and other City building officials) as a 3-family dwelling, but not as a 4-family dwelling. Based upon clear and convincing evidence that use of the house as a two-family dwelling was established under the old "B" Residence zoning that allowed a two-family dwelling at this location, use of the house as a two-family dwelling can be presumed to have had legal nonconforming status in the current R4 one-family residential zoning district under the requirements for this in Zoning Code § 62.102. Use of the house as a two-family dwelling is equally appropriate to the R4 one-family residential district as the previous legal nonconforming use of the house as a two-family dwelling. Use of the house as a 3-family dwelling is equally appropriate to the R4 one-family residential district as the previous use of the house as a 3-family dwelling that a City inspector told the applicant in 2012 was eligible for a C of O, and for which a C of O was issued in 2013.

(3) *The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.* This finding is met. The structure has been used for up to four units with no indication that it was detrimental to the existing character of development in the immediate neighborhood or that it endangered the public health, safety, or general welfare.

(4) *The proposed use is consistent with the comprehensive plan.* This finding is met. This property is located in an area that the Comprehensive Plan gives a future land use designation of "Established Neighborhood", described as a "predominantly residential area with a range of housing types. Single family houses and duplexes predominate, although there may be smaller scale multifamily housing scattered within these neighborhoods". The Hamline Midway Community Plan advocates for "the development of alternatives to single-family housing throughout the neighborhood".

(5) *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use.* This finding is met. The petition was found sufficient on April 6, 2018: 16 parcels eligible; 11 parcels required; 11 parcels signed.

AND, WHEREAS, on June 11, 2018 and pursuant to Leg. Code § 61.702(a), the Applicant duly filed an appeal from the determination made by the Commission in Planning Commission Resolution No. 18-39 and requested a hearing before the City Council for the purpose of considering the actions taken by the Commission; and

WHEREAS, on July 11, 2018, the City Council, pursuant to Leg. Code § 61.702(b) and upon notice to affected parties duly conducted a public hearing on the Applicant's appeal where all interested parties were given an opportunity to be heard and, following the close of the public hearing and a discussion of the matter, the Council duly moved to lay the matter over to July 18, 2018 for the purpose of considering the hearing testimony; and

WHEREAS, on July 18, 2018, the Council again took up the matter whereupon it was duly moved that the Council, having heard the statements made at the July 11, 2018 public hearing and having considered the application, the report of staff, the record, minutes and recommendation of the Zoning Committee and the Commission's resolution, the Council does hereby

RESOLVE, That the Council of the City of Saint Paul pursuant to Leg. Code § 61.704 hereby reverses the decision of the Planning Commission in this matter, based on the following findings of the Council:

All the files and testimony in this matter show that the subject house, located in a single-family residential district, functioned as a non-conforming 4-unit dwelling complete with a certificate of occupancy until 2006. There are no records of any complaints regarding its occupancy as a 4-unit dwelling during that time. The record also shows that after the house went on the vacant building list in 2012, the previous owner wanted to establish a 3-unit dwelling and that the City was willing to grant a certificate of occupancy for 3-units provided the basement unit was removed and fire separation was provided between the first and second floors. Accordingly, the City issued a certificate of occupancy for a 3-unit building in 2013.

The record is also clear that this is a large home. The Applicant seeks to reestablish the previous 4-unit occupancy arguing that the size and cost to renovate this large home makes it unreasonable to operate this house with less than 4-units. The Planning Commission agreed that it was neither reasonable nor economical to convert the house back to single-family occupancy. The Commission's staff recommended that the house be reestablished as a 2-unit dwelling. Although the Commission denied the Appellant's application for a 4-dwelling unit, the Commission also rejected the staff recommendation. Instead, the Commission approved 3-dwelling units as an appropriate non-conforming use in this R4 district, subject to the condition that a certificate of occupancy inspection was scheduled within a year.

Under these facts, the Council finds that the Commission erred when it denied the Applicant's request to reestablish a 4-unit non-conforming use. Specifically, the Commission's Resolution findings at sections 8(1) and 8(2) are in error. First, finding that it was not reasonable to reestablish the previous 4-unit non-conforming use, given the building's 4-unit occupancy history, was in error. The Applicant's desire to reestablish the building as a 4-unit non-conforming use is reasonable under the specific circumstances of this application. The Appellant argued, and the Planning Commission agreed, that the building cannot reasonably or economically be used as a conforming use. Further, the Applicant's uncontroverted evidence regarding the cost to convert the building to a 3-unit non-conforming use rather than reestablish the previous - and presently configured - 4-unit non-conforming use is equally reasonable and compelling especially, when considering the Commission's Resolution's findings under section 8(3- 5) each of which were found to have been met. Second, whether a previous owner used the building as a 3-unit building but failed to physically convert the building to a 3-unit is not dispositive. It is undisputed here that the Applicant acquired the building configured with 4-units. Finally, the Commission's Resolution at sections 4 and 5 also support the Applicant's request to reestablish a 4-unit non-conforming use to be equally if not more appropriate here than the 3-unit non-conforming use approved by the commission based upon the findings. For these reasons, I move to grant the Appellant's appeal subject to the condition that

AND, BE IT FURTHER RESOLVED, based upon the findings of error noted above, the Applicant's appeal to allow the reestablishment of a nonconforming 4-unit residential home at 1685 Taylor Ave is hereby granted subject to the conditions that fire separation between the units using approved fire rated construction materials are provided and inspected for compliance within one year of this approval; AND,

BE IT FINALLY RESOLVED, that a copy of this resolution shall be immediately mailed to the Applicant, the Zoning Administrator, the Building Official, the Planning Administrator and Planning Commission.