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Title: Memorializing the City Council's decision of May 18, 2016 granting the appeal of Joelle Olson to a decision of the Planning Commission denying the establishment of nonconforming use as a triplex at 897 Goodrich Avenue.

Sponsors: Rebecca Noecker

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Date	Ver.	Action By	Action	Result
7/8/2016	1	Mayor's Office	Signed	
7/6/2016	1	City Council	Adopted	Pass

Memorializing the City Council's decision of May 18, 2016 granting the appeal of Joelle Olson to a decision of the Planning Commission denying the establishment of nonconforming use as a triplex at 897 Goodrich Avenue.

WHEREAS, Mike and Joelle Olson, on July 2, 2015, duly applied for an establishment of nonconforming use permit under PED Zoning File No.15-138929 pursuant to Legislative Code § 62.109(a) for property commonly known as 897 Goodrich Ave and legally described as Summit Park Addition, Lot 20, Blk 24, [Parcel Identification NO. 02.28.23.31.0055]; and

WHEREAS, the purpose of the Olson's application was to allow the legal occupancy of a basement unit previously identified by the Fire Inspection Division of the department of safety and inspections on December 2, 2011 as being illegally occupied. According to PED staff, 897 Goodrich Avenue is located within an RT1 zoning district which allows duplex units. Triplex units are not permitted uses in RT1 districts. According to the Fire Inspection Division, a follow-up inspection in February 2012 indicated that the subject property was occupied as a duplex as permitted in RT1 districts. The Olson's purchased the subject property in July 2014. On March 13, 2015, a Fire Inspection Division inspection determined that the property was again occupied as an illegal triplex. The Fire Inspector ordered the Olson's to either discontinue the illegal occupancy or covert the occupancy to a legal use which caused the Olson's to file with the Planning Commission the said application to establish a nonconforming use; and

WHEREAS, on August 13, 2015 and pursuant to Leg. Code § 61.303, the Commission's Zoning Committee duly conducted a public hearing on the Olson's non-conforming use application where all persons present were afforded an opportunity to be heard; and

WHEREAS, the public hearing was duly closed upon the conclusion of the hearing testimony and the Zoning Committee, after discussing the merits of the application, moved to lay the matter over to September 10, 2015 in order to allow the Olson's additional time to located any leases establishing continued occupancy of three distinct units over the last ten year period; and

WHEREAS, on September 10, 2015, the Zoning Committee took up the said matter where it was reported that the Olson's desired additional time to locate the lease information requested by the Committee; and

WHEREAS, for the purposes of compliance with the provisions of Minn. Stat. § 15.99, the Olson's submitted a written request to lay the matter over indefinitely in order to permit the Olson's additional time to locate the information requested by the Zoning Committee; and

WHEREAS, during the week of March 21, 2016, the Olson's finally submitted the information that they were able to locate regarding lease information for the subject property; and

WHEREAS, in a memorandum from PED zoning staff to the Zoning Committee presented to the Committee at its April 7, 2016 meeting, zoning staff advised the Committee of the receipt of information and, upon receiving this information, the Committee directed that the matter be set on to its April 15, 2016 calendar for the purposes of considering the additional information and to make its recommendation on the matter to the Planning Commission that had now been laid over since August 13, 2015; and

WHEREAS, on April 15, 2016, zoning staff presented to the Zoning Committee the Olson's additional information together with the original staff report and materials. There being no motion to reopen the public hearing following the Committee's receipt of the additional information, the Committee duly moved to recommend denial of the Olson's application as recommended in the original staff report dated July 23, 2015; and

WHEREAS, on April 15, 2016, the Planning Commission finally considered the Olson's application and based upon all the evidence presented to its Zoning Committee, as substantially reflected in the minutes, the reports

of staff and all the records submitted into the records, moved to deny the Olson's application to for establishment of a nonconforming tri-plex use at 897 Goodrich Ave, based upon the following findings as set forth in Planning Commission Resolution No. 16-13, which shall be herein incorporated by reference:

"1. The applicant is seeking establishment of a nonconforming use of their property as a triplex. Under the RT1 two-family residential district, a two-family dwelling is permitted, while a three-family dwelling is not permitted.

2. The Planning Commission's triplex conversion guidelines state that staff will recommend denial unless the following guidelines are met:

(a) Lot size of at least 6,000 square feet with a lot width or front footage of 50 feet. This guideline is not met as the subject property is 6,000 square feet, but only has a 40- foot lot width.

(b) Gross living area, after completion of triplex conversion, of at least 2,100 square feet. No unit shall be smaller than 500 square feet. This guideline is met. The gross living area exceeds 3,800 square feet, and the smallest unit, the basement unit, exceeds 1,000 square feet.

(c) Four off-street parking spaces (non-stacked) are preferred; three spaces are the required minimum. This guideline can be met if the unpaved portion of the outdoor parking area is paved in accordance with Leg. Code § 63.316. The parking requirement for three two-bedroom apartments is four parking spaces. This site currently has two garaged spaces and has sufficient space for two surface spaces. Upon review of site photos, a small portion of the parking area adjacent to the screening wall on the eastern property line is not paved. Section 63.316 of the zoning code states: "all parking spaces...shall be paved with standard or pervious asphalt or concrete or with brick, concrete or stone pavers, or material comparable to the adjacent street surfacing."

(d) All remodeling work for the triplex is on the inside of the structure unless the plans for exterior changes are approved by the Planning Commission or Board of Appeals. This guideline is met. No exterior changes are proposed.

(e) For the purpose of protecting the welfare and safety of the occupants of any structure that has been converted into a triplex without the necessary permits, a code compliance inspection shall be conducted and the necessary permits obtained to bring the entire structure into conformance with building and fire code standards; or the property owner must, as a condition of the approval, make the necessary improvements to obtain the necessary permits and bring the entire structure into building and fire code compliance within the time specified in the resolution. This guideline is met. The property has abated all of the code violations noted in a 2015 inspection, with exception to the zoning issue addressed by this application.

3. Leg. Code § 62.109(a) of the zoning code provides that the Planning Commission may grant legal nonconforming status to uses or structures that do not meet the standards for legal nonconforming status in Leg. Code § 62.102 if the commission makes the following findings:

(a) The use or a nonconforming use of similar or greater intensity first permitted in the same zoning district or in a less restrictive zoning district has been in existence continuously for a period of at least ten (10) years prior to the date of the application. This finding is not met. According to City records, on December 1, 2011, the illegal third unit was identified by a fire inspector as part of an inspection required to receive a certificate of occupancy, and upon re-inspection on February 23, 2012, the building was found to be a compliant duplex. To meet that, the previous owner would have had to meet the requirements to show it was being used only as a two-unit building. Based on this information, the use of the building as a triplex would have had to be discontinued for some period of time and thus cannot establish continuous use for ten years prior to this application.

(b) The off-street parking is adequate to serve the use. This finding is met subject to paving the unpaved portion of the outdoor parking in accordance with Leg. Code § 63.316. The parking requirement for three two-bedroom apartments is four parking spaces. This site currently has two garaged spaces and has sufficient space for two surface spaces. Upon review of site photos, a small portion of the parking area adjacent to the screening wall along the eastern property line is not paved. Leg. Code § 63.316 of the zoning code states: "all parking spaces...shall be paved with standard or pervious asphalt or concrete or with brick, concrete or stone pavers, or material comparable to the adjacent street surfacing."

(c) Hardship would result if the use were discontinued. This finding is not met. This building is constructed as a duplex, and the building would continue to have reasonable use as a duplex. Re-use of the improved basement space in conjunction with the first-floor unit would require some reconfiguration of the layout of the space should a laundry facility continue to be shared between the two units.

(d) Rezoning the property would result in “spot” zoning or a zoning inappropriate to surrounding land uses. This finding is met. This property is zoned RT1 two-family and all of the properties fronting on Lincoln and Goodrich Avenues from Victoria Street west to Oxford Street are within the same zoning district.

(e) The 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. This building has been operating on and off as a three-unit building for an undocumented number of years. It does not appear that use of the building as a triplex would endanger the health, safety, or general welfare of the surrounding area.

(f) The use is consistent with the comprehensive plan. This finding is met. This property is designated Established Neighborhood in the Comprehensive Plan. Established Neighborhood land use is defined as “predominately residential areas with a range of housing types. Single family houses and duplexes predominate, although there may be smaller scale multifamily housing scattered in the neighborhood...” A triplex would be consistent with smaller scale multifamily housing.

(g) A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet the subject property has been submitted stating their support for the use. This finding is met. The petition was found sufficient on July 13, 2015: Twenty-one parcels eligible; fourteen parcels required; eighteen parcels signed.”

WHEREAS, On April 22, 2016, Joelle Olson, in PED Zoning File No.16-030022 and pursuant to Leg. Code § 61.702(a), duly filed an appeal from the Planning Commission’s April 7, 2016 decision and requested a hearing before the City Council for the purpose of considering the actions taken by the Commission; and

WHEREAS, on May 18, 2016 and pursuant to Leg. Code § 61.702(b), the City Council, upon notice to affected parties, duly conducted a public hearing on the said appeal where all interested parties were afforded an opportunity to be heard; and

WHEREAS, having heard the statements made and having considered the said application and all the records and minutes including the reports of PED staff, the recommendation of the Zoning Committee and Planning Commission's Resolution No.16-13, the Council, does hereby

RESOLVE, pursuant to Leg. Code § 61.704, that the City Council hereby reverses the Planning Commission's decision in this matter, based upon the following findings of error made in this matter by the Commission:

The Council hereby finds that the evidence submitted by the Olson's suggests that three housing units were continuously occupied in the building throughout the ten-year time period in compliance with Leg. Code 62.109 (a) and that the weight of this evidence outweighs the Planning Commission's conclusion, which is based only upon an inference drawn from the records of the Fire Inspections Division indicating that the building was used as a duplex during a Certificate of Occupancy compliance inspection on February 23, 2012 such that the occupancy of the contested basement unit was not "continuous." Accordingly, continuing use of the home as a triplex meets the finding required under Leg. Code 62.109(c) as the Council finds that it would be a hardship for the Olson's to reconfigure the home into a duplex. Finally, the Council finds that use of the subject building and property as a triplex has apparently worked with little issue or impact on surrounding properties despite being located on a forty-foot wide lot as opposed to the tri-plex conversion guidelines calling for fifty-foot wide lots for tri-plex occupancies.

AND, BE IT FURTHER RESOLVED, that the appeal of Joelle Olson be and is hereby granted for the reasons set forth above and, accordingly, the application of Mike and Joelle Olson for an establishment of nonconforming use as a triplex at 897 Goodrich Ave is hereby granted; and

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Mike and Joelle Olson, the Zoning Administrator and the Planning Commission.