



Date April 21, 2014

RESOLUTION SETTING HEARING ON REQUEST FROM DENISE CODY (OWNER) REPRESENTED BY CURTIS WHITE (POWER OF ATTORNEY) TO REZONE PROPERTY LOCATED AT 912 43RD STREET FROM "R1-60" ONE-FAMILY LOW-DENSITY RESIDENTIAL DISTRICT TO "R-2" TWO-FAMILY DISTRICT, TO ALLOW THE SUBJECT PROPERTY TO BE OCCUPIED AS A TWO-FAMILY DWELLING

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on April 3, 2014, its members voted 9-0-1 in support of a motion to recommend **DENIAL** of a request from Denise Cody (owner) represented by Curtis White (power of attorney) to rezone property located at 912 43rd Street from the R1-60" One-Family Low-Density Residential District to the "R-2" Two-Family District, to allow the subject property to be occupied as a two-family dwelling; and,

WHEREAS, the subject property is more specifically described as follows:

Lot 35, Chamberlain Heights, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa, at 5:00 p.m. on May 5, 2014, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.



Roll Call Number

Agenda Item Number

26

Date April 21, 2014

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MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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(ZON2014-00037)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



April 15, 2014

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held April 3, 2014, the following action was taken regarding a request from Denise Cody (owner) represented by Curtis White (power of attorney) to amend the Des Moines' 2020 Community Character Plan to revise the future land use designation from Low Density Residential to Low/Medium Density Residential and to rezone property located at 912 43rd Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley			X	
Tim Fitzgerald	X			
Dann Flaherty				X
Jann Freed	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones				X
William Page	X			
Christine Pardee	X			
CJ Stephens				X
Vicki Stogdill				X
Greg Wattier	X			

APPROVAL of staff recommendation to find the proposed rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan; **DENIAL** of a request to amend the Des Moines' 2020 Community Character future land use designation from Low Density Residential to Low/Medium Density Residential and **DENIAL** of the rezoning from

“R1-60” One-Family Low-Density Residential District to “R-2” Two-Family District to allow the subject property to be occupied as a two-family dwelling.

(21-2014-4.03 & ZON2014-00037)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found not in conformance with the Des Moines’ 2020 Community Character Plan.

Part B) Staff recommends denial of the requested amendment to the Des Moines’ 2020 Community Character future land use designation from Low Density Residential to Low/Medium Density Residential.

Part C) Staff recommends denial of the requested rezoning from “R1-60” to “R-2” based on a finding that it would not be compatible with the surrounding predominant “R1-60” zoning of surrounding neighborhood properties.

Written Responses

0 In Favor

7 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The owner is seeking to lease the residential property as a two-family dwelling.
2. **Size of Site:** 64 feet by 130 feet irregular shaped (7,680 square feet).
3. **Existing Zoning (site):** “R1-60” One-Family, Low-Density Residential District.
4. **Existing Land Use (site):** The property contains a 2,095-square foot two-story single-family dwelling. This is also consistent with the Polk County Assessor’s tax classification for the property.
5. **Adjacent Land Use and Zoning:**
 - North** – “R1-60”; Uses are single-family dwellings.
 - South** – “R1-60”; Uses are single-family dwellings.
 - East** – “R1-60 & R-4”; Uses are single-family and multiple-family dwellings.
 - West** – “R1-60”; Uses are single-family dwellings. There is a two-family dwelling at 4401/4403 Chamberlain Drive on the same block to the west.
6. **General Neighborhood/Area Land Uses:** The subject property is located within a predominantly single-family residential neighborhood area north of Roosevelt High School and west of the Roosevelt Shopping district on 42nd Street.

7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Waveland Park Neighborhood. This neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on March 14, 2014. Additionally, separate notifications of the hearing for this specific item were mailed on March 14, 2014 (20 days prior to public hearing) and March 24, 2014 (10 days prior to the public hearing) to the Waveland Park Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on March 28, 2014.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Waveland Park Neighborhood Association notices were mailed to Eric Burmeister, 1517 42nd Street, Des Moines, IA 50311.

The applicant will report a summary of their neighborhood engagement at the hearing.

8. **Relevant Zoning History:** On November 20, 2013, the owner appealed a decision of the Zoning Enforcement Officer that the property did not have legal non-conforming rights to a two-family dwelling use. The Board upheld the Zoning Enforcement Officer's decision.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Parking & Access:** The property has a two car detached garage in the rear yard with access coming from an internal public alley system within the block. There is no other off-street parking provided on the premises. The parking requirement is two spaces for a two-family dwelling.
2. **Zoning Enforcement Comments:** Based on zoning enforcement research, the first known use of the premises for a two-family dwelling was in 2005, when notice of violation was issued for not having a rental inspection certificate. The City Neighborhood Inspection Division issued a rental inspection certificate for a second unit on the subject property, with one unit being owner-occupied and not requiring a certificate. This was done in error without review of the Zoning Ordinance provisions at that time prohibiting two-family use of the property. The most recent rental inspection certificate for the property expired on August 10, 2013. Since that time, complaint was received regarding illegal rental occurring on the property. Inspection of the premises determined that the dwelling was occupied by two families, neither of which was the owner of the property. This included one unit that did not require a certificate as it was previously owner occupied.

3. Des Moines 2020 Community Character Plan: In order to recommend rezoning of the property to “R-2”, the Commission would need to recommend amendment to the future land use plan designation from Low Density Residential to Low/Medium Density Residential. While there are examples of dwellings with more than one unit in the surrounding neighborhood area, the character of the immediate block is predominantly single-family dwellings. Staff does not believe that rezoning the property individually and amending the future land use designation would be appropriate.

Additionally, if the property were zoned to “R-2”, a two-family dwelling would require a minimum of 10,000 square feet of lot area and a minimum 75 feet of lot width, thereby necessitating appeals of these standards to the Zoning Board of Adjustment.

III. STAFF RECOMMENDATION TO THE PLAN AND ZONING COMMISSION AND BASIS FOR APPROVAL

Part A) Staff recommends that the requested rezoning be found not in conformance with the Des Moines’ 2020 Community Character Plan.

Part B) Staff recommends denial of the requested amendment to the Des Moines’ 2020 Community Character future land use designation from Low Density Residential to Low/Medium Density Residential.

Part C) Staff recommends denial of the requested rezoning from “R1-60” to “R-2” based on a finding that it would not be compatible with the surrounding predominant “R1-60” zoning of surrounding neighborhood properties.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

Tim Fitzgerald asked if this building been cut in half or if it was just an extra room.

Jason Van Essen stated he understands that at one time there was an owner that had a professional office i.e. dentist or something and that office was converted.

Mike Ludwig stated he believes at the time of the conversion, the property owner was living in the dwelling and the second dwelling was the rental.

Jason Van Essen stated that when the rental certificate was issued it was technically just one certificate for the rental unit. The rental certificate was still issued in error.

Kenneth Wieland Attorney at Law 1502 30th Street stated the applicant purchased this house with the idea that she was buying a duplex. He stated that attached to the application copies of the listing, rental certificate and a statement from the real estate agent that sold the applicant the house indicating that the primary intention was having two rental units. The applicant lived there for a period of time before moving out and renting out the main house as well. At that time a rental certificate was issued although it may have been issued in error. The applicant along with her fiancé Mr. White looked at this property and researched and saw that it had a rental certificate and the zoning code for this particular area indicated there was a grandfather clause in 1996 that anything that was being used as

a multi-family housing at that time would still be allowed. He pointed out that there is an 8-plex across the street so this property is not deep inside a zoning area, it is on the edge of a single-family zoning line. An 8-plex versus a little tiny efficiency apartment. No one had any complaints about this property until the main unit got rented out. He believes that the real problem is that the family now living in the main house is large and everyone in the neighborhood is upset because there are so many of them. But that would not change renting out the small unit because the large family is still in the main house. The rental certificate suggests they can rent out the main house, they just cannot rent out both the main house and the smaller unit. Any complaints regarding this large family living there is not going to be remedied by denying the use of this efficiency apartment on the side. When taking into consideration the property owner only purchased this property because it was a rental there is an issue of fairness. If the City of Des Moines had not issued the rental certificate the applicant never would have purchased it.

JoAnne Corigliano asked who owned the house when the certificate was issued.

Kenneth Wieland stated there is nothing on the certificate that indicated the house was owner occupied.

JoAnne Corigliano asked if the person who applied for the certificate was living in the house.

Kenneth Wieland stated that he did not know.

JoAnne Corigliano stated that if it was owner occupied then that little apartment is not a big deal in her opinion but she is not so sure that the rental certificate applies to the duplex situation.

Kenneth Wieland stated that when the house was purchased it was under a trust deed because the previous owner was deceased.

JoAnne Corigliano stated she did not think it would be difficult to find out who owned the house when the certificate was issued and whether or not the person who asked for that certificate was in deed the owner and occupier of the main portion of the house.

Tim Fitzgerald asked when there is a certificate of occupancy for a duplex his understanding is that both unit must have a refrigerator, stove, plumbing a living space. Can they just rent a room as a duplex?

Mike Ludwig stated that he could not speak to the specifics on the rental certificate of the property. He assumes that if the unit complied with the rental code the certificate was issued. But the rental certificate does have to be renewed. It is not a permanent certificate. So if codes change the owner is responsible for complying with the current code when applying for their rental certificate.

Tim Fitzgerald stated he believes that they might have gotten that certificate because they have plumbing without actually being a dual dwelling at the time but he didn't see how a 120 square feet apartment would have enough room for more than a bed. He doesn't believe there are adequate facilities to make this a dwelling unit.

Christine Pardee asked staff if someone can speak to whether or not the owner occupied dwelling needed a rental certificate.

Roger Brown stated an owner occupant does not need to get a rental certificate of what they are occupying. At the time the rental certificate was issued the owner was living in the main part of the building. There was no rental certificate for the main part.

Kenneth Weiland stated he might be able to answer the question that was asked by Commissioner Corigliano, as to who owned the house when the certificate was issued. A rental certificate was issued to Richard Leth 912 43rd Street at one point in time and the certificate was also issued with an address of 3930 Grand Avenue. Both units were addressed to Richard Leth which would imply when the second one was issued he was not living there.

Mike Ludwig asked if the second rental certificate had its own address.

Kenneth Weiland stated each one just indicated an address of 912 43rd Street.

CHAIRPERSON OPENED THE PUBLIC HEARING

Curtis White 912 43rd Street stated he and his fiancé bought this property with the intention of having a rental unit attached to it. All they have received from the City of Des Moines is that they are sorry they made a mistake. That was a \$190,000 mistake that they are stuck with to try and figure out what to do. He believes that it is very unfair that they have to suffer because of a mistake made by the City. This property was sold by a reputable company, Iowa Realty. He personally called the City of Des Moines to validate the rental certificate. They would not have bought this property had they known that it could not be used for a rental. He has been in real estate for 20 years now and have other additional rental properties and know to work with the City and not against them. But to have this error brought to them this way and say hey it's your lost is totally unfair. When purchasing this property they budgeted for a certain amount of money to pay off the mortgage. To take away the income that would come from that unit puts about a \$550 deficit into their budget for the next 15 years. The bottom line is the applicant was sold a house by Iowa Realty based upon the City of Des Moines' information that this was a property that had a valid rental certificate. It showed that it had been rented over and over before. The tenant was in there when they purchased the property and to now tell them the very first time that it is up for renewal sorry it was a mistake is wrong.

John "Jack" Hilmes asked are they currently living on the property.

Curtis White stated not now.

John "Jack" Hilmes stated that the applicant just gave the property being discussed tonight as his address.

Curtis White stated that he thought that was the address he needed to present.

Jacqueline Easley asked what his personal address is.

Curtis White stated 4107 Lakeland Court.

Tim Fitzgerald asked since Mr. White has been in the business for 20 years what does he know about the rental laws.

Curtis White if he is talking about a rental certificate or this particular property that he really did not question because the City issued a rental certificate on it and an inspector has been there and it passed everything.

Tim Fitzgerald stated that he understands that. The large part was being rented and there may have been a mistake. Now they are asking for a duplex. What does Mr. Curtis know about occupancy permits in individual units to get that certificate?

Curtis White stated he is unable to answer that. He trusted that if the City needs a certain amount of plumbing, a certain amount of space that they have checked it for compliance.

Tim Fitzgerald stated that Mr. Curtis said that he knew there was an occupancy permit. Now he is asking that it be rezoned so that it could be a duplex. Mr. Curtis also said that he went in there knowing that there was a rental certificate. But now he is asking for a two rental units. They are not asking to renew the one that they had but asking to rezone it so that it would be a duplex.

Curtis White stated when they purchased the property there was a tenant there. He is not sure about the question the Commissioner is asking.

Tim Fitzgerald stated that Mr. Curtis stated this property was sold as a duplex so he thought everything was taken care of. However, the permit was for a single-family unit. Now they are asking to have a duplex. His question then is what needs to be done to get a second unit.

Mike Ludwig stated that he believes that the Commissioner is mixing rental code and zoning and asked that they be a little cautious on that. Mr. White has indicated how they purchased the property.

Theodore Stroope 4309 Chamberlain Drive stated that he did not appreciate Mr. Weiland implying that there is a conspiratorial racial or cultural bias in their neighborhood against the current occupants of that house. It is very offensive. His daughters play with the lovely daughters of the current tenants. He believes the character of the neighborhood is very important. California Drive/Chamberlain Circle actually has a duplex on it. It has adequate off street parking. It has been a duplex, it was built as a duplex. It is two separate units. The 8-plex on the corner of 43rd and Chamberlain opposite of his house has adequate off street parking for the anticipated tenant load. They also have on street parking in front of the building that is very often full because obviously folks own more than one car or people just want to come and go. That is a very busy intersection. Because of that triangle median it spurs a lot of parking issues. There is no parking adjacent or on the triangle median and because it is a rounded corner the typical "here to corner" space is not an option. The property in question has the least amount of off street parking in the entire circle. The only off street parking the applicant's property has is the apron in front of the garage. So there is only one off street space for two units. This is a lovely house and could be rented for the mortgage cost plus profit easily to a single family.

Chris Naumann 920 California Drive stated his concerns are keeping the characteristics of the circle and blocking the traffic from the multiple cars that are there.

