

STAFF REPORT

DATE: January 13, 2023

TO: Governing Body, City Manager

FROM: Planning Commission

RE: January 12, 2023, Planning Commission Meeting



CON-22-02 Property owner has requested to allow for an accessory apartment in an R-1 Residential Zoning district.

The planning commission considered an application to allow for an Accessory Apartment to be placed at 4046 N Harding Ave in Aurora Park.

Before the hearing was opened, Chairman Schmidt read the Zoning Regulations for R-1 zoning to clarify allowable uses and uses that required a conditional use in that particular zoning area noting that Accessory Apartments were a part of the allowed uses through a conditional use permit. He emphasized that conditional uses “shall be permitted in the ‘R-1’ District if reviewed and approved by the Planning Commission...”

Chairman Schmidt opened the public hearing and allowed the applicant to present the need and use of the Accessory Apartment and the reason for applying. The applicant stated that there was an accessory structure, or detached garage, on the premises that had burned and expressed the desire to rebuild the garage and add living quarters for guests and/or aging parents.

After hearing from the applicant, several citizens requested a chance to speak (both in favor of and against the application). Each citizen was given their chance to speak with a three (3) minute time limit. Sylvia Forte, 4072 N Harding Ave, was the first to speak against the proposed usage. She was not concerned with the intentions of the applicant but was concerned with the future use of the structure and its possibility of becoming a rental property. Melanie Penner, 4100 N Battin St, was the next to speak and discussed changing existing zoning and the issue that arose with that change. (This specific request is not a change to the zoning.) She spoke to protective covenants that exist in Aurora Park. The next to speak was Mark Arrasmith of 4001 Harding St. He spoke of the importance of being involved and taking these matters seriously. He also made a statement or request to understand the future of conditional uses and if they have a time limit before they become void. Mary Malicoat, 4150 N Battin St, was the last to speak. She was speaking on behalf of her father Robert Malicoat. She explained that as a lawyer, she believes that the City is required to approve the request if the conditional use meets the requirements in the Code.

After closing the hearing, the Planning Commission discussed the conditional use request and the concerns that were mentioned. Commissioner Floyd wanted to answer one of the questions that arose in the public hearing of the time frame of the conditional use permit and if it ran with the property. It was explained by Planning Commission Secretary, Jay Cook, the process of the conditional use. He stated that if the Planning Commission recommended approval of the application, there would be a vote

by the Governing Body for approval or denial. He also stated that before being presented to the Governing Body, there would be the opportunity for a protest petition to be filed if the citizens of the Notification Area chose to disagree with the decision of the Commission. The vote would still go before the Governing Body but the parameters of the vote would change. After explaining this process, he stated that an ordinance would be drafted (if approved) and the ordinance would be registered with the register of deeds and stay with the property in perpetuity.

There was discussion about the size of the lot, which is 2.75 acres, and that an accessory apartment would not be a burden on the density of the R-1 lot. The protective covenants were mentioned. It was explained that the Protective Covenants are the responsibility of the property owners of the neighborhood and is a private document that should not be taken into consideration by the City or the decision to be made. The last concern that was mentioned was the wording of the Code that calls the use an “Accessory Apartment” because of the negative connotation of the word “Apartment.”

After review, the Planning Commission voted (by passing a 6-0 motion) to **recommend to allow the accessory apartment in an R-1 district for use exclusively by owner of 4046 Harding Ave or guests as presented without conditions.**

Staff Report

There was nothing significant to report.

The Planning Commission voted unanimously to approve the next meeting date of 02/09/2023 at 6:30 in the Council Chambers.