

**CITY OF BOULDER**  
**PLANNING BOARD AGENDA ITEM**  
**MEETING DATE: February 18, 2016**

**AGENDA TITLE:** Continuation of a Public Hearing to consider a motion to approve findings of fact and conclusions of law for the denial of the application for a Nonconforming Use Review, application no. LUR2015-00073, for the addition of two bedrooms in the basement of an existing nonconforming duplex at 940 14th St.

Applicant: Lani King, Michael J Hirsch Companies  
Owner: 20<sup>th</sup> Street Apartments 1 LLC and 20<sup>th</sup> Street Apartments 2 LLC

**REQUESTING DEPARTMENT:**

Planning, Housing & Sustainability  
David Driskell, Executive Director  
Susan Richstone, Deputy Director  
Charles Ferro, Development Review Manager  
Sloane Walbert, Planner I

**OBJECTIVE:**

Define the steps for Planning Board consideration of this request:

1. Planning Board action to adopt the findings of denial, as proposed, or modify and adopt the findings of denial for Nonconforming Use Review, case no. LUR2015-00073.

**SUMMARY:**

**Proposal:** NONCONFORMING USE REVIEW for the addition of bedrooms in the basement of an existing nonconforming duplex.  
**Project Name:** 940 14<sup>TH</sup> ST NONCONFORMING DUPLEX  
**Location:** 940 14<sup>th</sup> Street  
**Size of Tract:** 0.11-acre  
**Zoning:** Residential - Low 1 (RL-1)  
**Comprehensive Plan:** Low Density Residential

**SUMMARY**

On February 4, 2016, the Planning Board held a quasi-judicial hearing to review the proposed application for a Nonconforming Use Review at 940 14<sup>th</sup> St. described above. On a motion by **L. Payton**, seconded by **L. May**, the Planning Board voted 4-2 to deny the application (B. Bowen and J. Putnam opposed). Subsequently, on a motion by **L. Payton**, seconded by **J. Putnam**, the Board unanimously voted to continue the hearing to its next meeting for preparation and consideration of draft findings of fact. The Planning Board is required to make findings within 30 days of the hearing. Staff has prepared the following draft findings of denial.

## **FINDINGS OF FACT**

### **Introduction**

In accordance with the requirements of Chapter 9-2-15, B.R.C. 1981, the City of Boulder Planning Board (the "Planning Board"), on February 4, 2016, held a public hearing after giving notice as required by law on the application for the above captioned Nonconforming Use Review.

Lani King of Michael J Hirsch Companies, as the proponent (the "Applicant") of the application for a Nonconforming Use Review, is seeking approval to convert the basement of a legal nonconforming duplex, which was previously approved for "utility" and "storage" purposes, into two bedrooms and a bathroom, thereby converting the lower unit of the duplex from a one bedroom unit into a three bedroom unit. The resulting duplex would have two 3-bedroom units. The development proposal includes several site improvements to improve the physical appearance of the site and life safety upgrades to the basement.

The Applicant has the burden of proof to demonstrate that the application meets all applicable requirements of the Boulder Revised Code, Subsection 1-3-5(h), B.R.C. 1981. (Nonconforming Use Review # LUR2015-00073) (the "Project").

### **Criteria**

The review criteria for a non-conforming use review can be found in Section 9-2-15(e) and (f), B.R.C. 1981, and read as follows:

- (e) Criteria for Review: No use review application will be approved unless the approving agency finds all of the following:
  - (1) Consistency With Zoning and Nonconformity: The use is consistent with the purpose of the zoning district as set forth in section 9-2-5, "Zoning Districts," B.R.C. 1981, except in the case of a nonconforming use;
  - (2) Rationale: The use either:
    - (A) Provides direct service or convenience to or reduces adverse impacts to the surrounding uses or neighborhood;
    - (B) Provides a compatible transition between higher intensity and lower intensity uses;
    - (C) Is necessary to foster a specific city policy, as expressed in the Boulder Valley Comprehensive Plan, including, without limitation, historic preservation, moderate income housing, residential and nonresidential mixed uses in appropriate locations and group living arrangements for special populations; or
    - (D) Is an existing legal nonconforming use or a change thereto that is permitted under subsection (f) of this section;
  - (3) Compatibility: The location, size, design and operating characteristics of the proposed development or change to an existing development are such that the use will be reasonably compatible with and have minimal negative impact on the use of nearby properties or for residential uses in industrial zoning districts, the proposed development reasonably mitigates the potential negative impacts from nearby properties;
  - (4) Infrastructure: As compared to development permitted under section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, in the zone, or as compared to the existing level of

impact of a nonconforming use, the proposed development will not significantly adversely affect the infrastructure of the surrounding area, including, without limitation, water, wastewater and storm drainage utilities and streets;

- (5) Character of Area: The use will not change the predominant character of the surrounding area or the character established by adopted design guidelines or plans for the area; and
  - (6) Conversion of Dwelling Units to Nonresidential Uses: There shall be a presumption against approving the conversion of dwelling units in the residential zoning districts to nonresidential uses that are allowed pursuant to a use review, or through the change of one nonconforming use to another nonconforming use. The presumption against such a conversion may be overcome by a finding that the use to be approved serves another compelling social, human services, governmental or recreational need in the community, including, without limitation, a use for a daycare center, park, religious assembly, social service use, benevolent organization use, art or craft studio space, museum or an educational use.
- (f) Additional Criteria for Modifications to Nonconforming Uses: No application for a change to a nonconforming use shall be granted unless all of the following criteria are met in addition to the criteria set forth above:
- (1) Reasonable Measures Required: The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding area, including, without limitation, objectionable conditions, glare, adverse visual impacts, noise pollution, air emissions, vehicular traffic, storage of equipment, materials and refuse, and on-street parking, so that the change will not adversely affect the surrounding area.
  - (2) Reduction in Nonconformity/Improvement of Appearance: The proposed change or expansion will either reduce the degree of nonconformity of the use or improve the physical appearance of the structure or the site without increasing the degree of nonconformity.
  - (3) Compliance With This Title/Exceptions: The proposed change in use complies with all of the requirements of this title:
    - (A) Except for a change of a nonconforming use to another nonconforming use; and
    - (B) Unless a variance to the setback requirements has been granted pursuant to section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or the setback has been varied through the application of the requirements of section 9-2-14, "Site Review," B.R.C. 1981.
  - (4) Cannot Reasonably Be Made Conforming: The existing building or lot cannot reasonably be utilized or made to conform to the requirements of chapter 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981.
  - (5) No Increase in Floor Area Over Ten Percent: The change or expansion will not result in a cumulative increase in floor area of more than ten percent of the existing floor area.
  - (6) Approving Authority May Grant Zoning Variances: The approving authority may grant the variances permitted by subsection 9-2-3(d), B.R.C. 1981, upon finding that the criteria set forth in subsection 9-2-3(h), B.R.C. 1981, have been met.

## Summary of Findings

Based on a consideration of the entire evidentiary record, the Planning Board makes the following findings of fact. The Applicant failed to demonstrate, based upon a preponderance of evidence, that:

1. Compatibility: Section 9-2-15(e)(3), B.R.C. 1981. The location, size, design and operating characteristics of the proposed change to the existing development are such that the use will be reasonably compatible with and have minimal negative impact on the use of nearby properties.
2. Character of Area: Section 9-2-15(e)(5), B.R.C. 1981. The use would not change the predominant character of the surrounding area.
3. Reasonable Measures Required: Section 9-2-15(f)(1), B.R.C. 1981. The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding area, including, without limitation, objectionable conditions, glare, adverse visual impacts, noise pollution, air emissions, vehicular traffic, storage of equipment, materials and refuse, and on-street parking, so that the change will not adversely affect the surrounding area.
4. Cannot Reasonably Be Made Conforming: Section 9-2-15(f)(4), B.R.C. 1981. The existing building or lot cannot reasonably be utilized or made to conform to the requirements of chapter 9-6, "Use Standards," B.R.C. 1981, 9-7, "Form and Bulk Standards," or 9-9, "Development Standards," B.R.C. 1981.

## Findings of Fact and Conclusions of Law

In evaluating the credibility and weight to be given to the evidence, the Planning Board considered the entire record (which included materials provided by the Applicant, Planning staff, and the public and testimony and information produced at the public hearing), and weighed a number of specific factors, the collective and corroborative weights of which were considered as follows:

1. Compatibility: Section 9-2-15(e)(3), B.R.C. 1981. The Applicant failed to demonstrate by a preponderance of evidence that the addition of bedrooms would be reasonably compatible with and have minimal negative impact on the use of nearby properties. The site of the Project is located in the Residential-Low 1 (RL-1) zoning district, which is defined as *"single-family detached residential dwelling units at low to very low residential densities."* All of the properties surrounding the project site are also zoned RL-1. Duplexes are generally prohibited in the RL-1 zoning district. The Board determined that the addition of bedrooms would increase the likelihood of higher occupancy of the duplex and with such would increase negative impacts on the use of nearby properties in terms of vehicular traffic, parking, and noise. The addition of residents would not be compatible with the intent of the 1974 downzoning of the area to a low density single-family zone district.
2. Character of Area: Section 9-2-15(e)(5), B.R.C. 1981. The Applicant failed to demonstrate by a preponderance of evidence that the addition of bedrooms would not change the predominant character of the surrounding area. The area is currently zoned RL-1 for detached single-family dwelling units. This zoning designation establishes the character of the area. The 1974 downzoning to RL-1 was intended to limit the addition of higher intensity uses in the area. The addition of bedrooms would change the practical occupancy capacity of the building. The area is currently a mix of student renters and permanent residents. The addition of bedrooms in the basement would likely attribute to a change in the character of area by exacerbating the trend of changeover from permanent residents to

student residents who typically live in higher occupancy situations, such as this building would offer, than permanent residents.

3. Reasonable Measures Required: Section 9-2-15(f)(1), B.R.C. 1981. The Applicant failed to demonstrate by a preponderance of the evidence that the Applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding area. The addition of two bedrooms to a one bedroom unit, increasing the overall number of bedrooms in the building to six, would increase the occupancy capacity of the unit and building and would thereby exacerbate the effects of the nonconformity of the use as a duplex in a zone allowing only detached single-family units. Evidence showed that higher occupancy in this area typically increases vehicular traffic, parking needs, noise issues, and other objectionable conditions such as adequate storage of materials, equipment that adversely affect the surrounding area.
4. Cannot Reasonably Be Made Conforming: Section 9-2-15(f)(4), B.R.C. 1981. No evidence has been presented to demonstrate that the building or lot cannot reasonably be utilized or made conforming as a detached single-family unit rather than a duplex.

### **Conclusion**

For these reasons, the Planning Board finds that the Applicant has failed to establish that the proposal meets the non-conforming use review standards of section 9-2-15, B.R.C. 1981.

### **PLANNING BOARD OPTIONS**

Planning Board may adopt the findings of denial, as proposed, or modify and adopt the findings of denial.

### **STAFF RECOMMENDATION**

Staff recommends that Planning Board adopt this memorandum as findings of denial for the 940 14<sup>th</sup> Street Nonconforming Use Review application in the form of the following motion:

The Planning Board finds that application no. LUR2015-00073 fails to meet the requirements of the Boulder Revised Code, denies the application, and adopts the staff memorandum dated for the February 18, 2016 Planning Board meeting as findings of fact and conclusions of law.