

Memo

To: Planning Commission
From: Bryan Myrkle, Director of Community Development
Date: January 28, 2016
Re: Class A Non-conforming use request – 110 & 120 N. Sheldon Streets

On your February Planning Commission agenda is a request for Class “A” Non-Conforming Use status for the properties at 110 & 120 N. Sheldon.

These are two separate parcels, but are jointly owned and managed as a multi-family group of apartments with 6 units and a shared garage. Five of the six units are located in the older home on the southeast corner of Sheldon and Harris.

This area is zoned RT – Two Family Residential, which would allow for two units on each parcel. With 5 units on one parcel, the site is non-conforming.

As is now commonly the case, it is difficult for people interested in buying and selling a non-conforming property to get financing and insurance. Because it's non-conforming, if something destructive, such as a fire or tornado, were to destroy the home structurally by more than 51%, it's possible the city would not allow the property to be rebuilt in a similarly non-conforming way. In the eyes of banks and insurance companies, this makes the property bad collateral or a poor insurance risk.

The need for addressing this issue has become more pressing in recent years as these banking and insurance regulations have become more stringent. As a result, we have had many cases of this nature come before the Planning Commission in the past couple years. In fact, it's the most common item we now deal with.

The granting of Class “A” status to a non-conforming property is a method the planning commission can use to essentially ‘bless’ the non-conforming use, allowing it to endure and possibly be expanded.

Section 82-453(B) of the Charlotte City Code deals with Class “A” Non-conforming uses. It requires the Planning Commission to make several findings before granting Class “A” status. These include:

- The use was lawful at its inception.

- Continuance of the use does no significantly depress property values of nearby properties.
- Continuance of the use would be contrary to the public health, safety or welfare or the spirit of the ordinance.
- An improvement to an existing nonconforming condition will result.
- No useful purpose would be served by strict application of the rules which which this use does not conform.

In many cases, it is easy to make these findings. Many, perhaps even most, properties in the city built in the 1970s or earlier are non-conforming in some way. Usually, these non-conformances are not harmful and granting the Class "A" status has no significant negative effect on the neighborhood.

Since notices of this public hearing were mailed-out, two neighboring property-owners have contacted the city to express concern about this use continuing. They feel that having 5-units in the one home is too dense and has caused some problems in this neighborhood.

I have encouraged both of these people to attend the public hearing and state their concerns to you.

If they are able to make a compelling argument, you as Planning Commissioners may not be able to make all of the above findings.

If so, the Commission has several options – first, it can simply deny the request; second, it has the ability to impose conditions upon the approval that could help alleviate some of the problems; third, it could grant the request and later revoke it if the continued use of the property in its present state causes more problems.

In terms of the conditions the Planning Commission impose, they can include things like screening and landscaping; conditions regarding lighting, noise and visual impact; curbside parking limitations; and, finally, "such other safeguards and improvements as it may deem necessary to protect conforming uses in the surrounding area." As you can see, the final condition gives the Planning Commission some freedom to impose conditions that might be satisfying to neighboring property owners.