



Planning & Development Services

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Historic Preservation Commission

Worksession / Hearing Minutes of June 23, 2008

Commission Members Jennifer Stevens, Chairman, Christopher Pooser, Betsy McFadden,
Present Barbara Dawson, Stephen Smith, Katherine Forsythe

Members Present Sarah Schafer, Julie Archambeault, Teresa Sobotka, Nicki
Heckenlively

DRH08-00169 / Eric Wilde / 1209 N. 24th Street

Requests Historic Preservation approval to construct a garage with an accessory dwelling unit and a deck on the main structure on property located in an R-1CH (Single Family Residential with Historic overlay) zone.

Julie Archambeault: Presented an abbreviated staff report with recommendation of approval with conditions:

- a. The proposed garage shall meet current zoning setbacks, or be reduced in size to 1,000 square feet or less or a Variance be granted for a reduced setback.
- b. The accessory dwelling unit requires separate approval through the Planning & Development Services Department.

The property is located at 1209 N. 24th Street in the middle of the block. It used to have an open front porch in 1949 which has been retained. This is the current condition. The request is to construct an accessory garage with dwelling unit and a deck at the rear of the property. The property next door is a 1 ½ story. It is a mixed neighborhood. This is an adjacent 1 ½ story garage. This is a picture of the alley with 1 and 1 ½ story garages. The garage will be placed to the rear of the property. It will be turned 90 degrees from what you see on the screen in order to meet the zoning code. This is the house. This is the garage. You can see that the garage is going to be a little shorter than the house. The garage is going to be sunk into the ground to ensure that it is shorter than the house and it won't overpower the house on the lot. This is the new site plan to which meets the condition of approval.

CHAIRMAN STEVENS: Are the doors going to be facing the driveway now?

JULIE ARCHAMBEAULT: Facing the alley. The house is 17 ft. 16 inches and the proposed garage will be 17 ft. There will be an ADU inside the garage and that will require a separate application which will follow if this is approved tonight.

CHAIRMAN STEVENS: A separate application to us?

JULIE ARCHAMBEAULT: No. Planning.

CHAIRMAN STEVENS: We are entering a drawing of the site plan with the garage turned 90 degrees as Exhibit 1.

COMMISSIONER McFADDEN: Did you say to the peak of the house is 17 ft. 6 inches and the peak of the garage is 17 ft.?

JULIE ARCHAMBEAULT: That is correct.

SITE VISITS

Commissioners Smith, McFadden, Pooser, Stevens, Dawson and Forsythe visited the site prior to the hearing.

KEN REED: I have no problems with any of the site visits and appreciate their efforts. I also have several more copies of the site. This is a contributing structure in a strange way. If you look at the site plan it is discombobulated. The original structure is what you see in the picture. There is a structure to the north close to the property line that is the bedroom. It contains a tract size window, and it needs to be changed to an egress compliant window. If you noticed the siding it is a wide clapboard/particle board that was traditional earlier. We figured there was enough room to remodel this into something habitable. We wanted to remodel this into something that would better fit into the neighborhood. We want to change the exterior siding to a bevel and the windows to meet egress. We are not changing the roofline and we are not adding to the footprint. He wanted to have something more than just a window to get out off. There is an ADU to be added to the back. Per the guidelines it is just slightly lower than the main dwelling. We needed to shrink this slightly. We kept the footprint small. It was my fault that I misinterpreted the code for 1,000 sq. ft. footprint versus overall square footage. Those are the changes we would like to add to the exterior.

COMMISSIONER DAWSON: I have questions on Pages 20 and 21 of the packet. I am assuming that Page 20 is the existing and Page 21 is the proposed.

KEN REED: That is correct.

COMMISSIONER DAWSON: Some of the windows have grids and some of them do not. Is that correct?

KEN REED: I added the grids for some character for the windows on the front. I did not add the grids to the side windows.

CHAIRMAN STEVENS: Though they will be grided on the front?

KEN REED: On the application on Page 33, Item 4 fully explains the nature of the proposal. The thinking on the windows was not only code compliance for that bedroom, but the south facing is kind of a storage room as existing and I've turned that into a little breakfast nook and I've tried to create that was a little more light filled than the windows that were existing. As you look at the elevations, the existing windows are small and don't allow much light in. The windows that I am proposing do let additional light in.

TERESA SOBOTKA (Legal): We need to talk about the application a little bit. What was advertised was the garage, ADU and the deck. The windows and the siding were not advertised. We simply can not talk about those tonight. I am pushing it as far as I can in letting the house be turned without it being advertised.

CHAIRMAN STEVENS: If you look at the yellow poster that was posted at the house itself it says, "Approval to construct a garage with and ADU and a deck on the main structure and change windows on the house on property located at 1209 N. 24th Street. That was certainly in our packet about the windows.

COMMISSIONER POOSER: And the siding.

CHAIRMAN STEVENS: Page 12 of our packet. It's a photograph of the yellow poster that was at the house. I agree it doesn't say anything about the siding, but it does talk about the windows.

TERESA SOBOTKA (Legal): Page 12? I see it now.

SARAH SCHAFER: I need to check one additional location before we say everything is fine. It wasn't on the letter of legal notice that went out to everyone. We don't have to publish in the paper for residential historic, but we do have to send out the legal notices within 30 days. The legal notices for projects within 300 ft. did not contain the siding and the wording.

TERESA SOBOTKA: Was this posted for correctly for the right amount of time?

SARAH SCHAFER: Yes.

TERESA SOBOTKA: Then let it go. The fact that it was posted probably gives due process. The notice generally says that the whole project is up for review. What was posted gives specifics on the windows so it would be okay to do the windows, but it's a close call.

CHAIRMAN STEVENS: And the siding?

TERESA SOBOTKA: You're not seeing anything that talks about the siding.

CHAIRMAN STEVENS: Our packet did. Not on this yellow piece of paper...no (*referring to posting*).

TERESA SOBOTKA: You're not seeing any notice that talks about siding? I'm looking at due process issues. Windows yes...siding no.

CHAIRMAN STEVENS: Could the siding be approved at staff level?

JULIE ARCHAMBEAULT: Yes.

CHAIRMAN STEVENS: If we were to approve this we could send that to Staff?

JULIE ARCHAMBEAULT: Yes.

PUBLIC TESTIMONY

DAVEY THOMAS: The exterior staircase was not mentioned on either the green public notice page or the yellow sign. We are concerned about this being used as a multi-family dwelling. We are concerned about the ADU being used as the owner occupied unit while the main dwelling is rented out. We are concerned with the pad being the additional parking and access to this is only from the alley. We do want assurance that we are allowed to have a statement for this being a multi-family dwelling. We are concerned about the small children in the area. We would also like assurance that we would have recourse if there is an application for the multi-family dwelling. By the garage being sunken, are they being allowed a larger structure than what would typically be allowed? We are concerned about the water flowing down into the sunken garage and breeding mosquitoes. Is there anything to pump out water? We oppose the south stairwell to the basement of the home. It adds a false sense of history and destroys the integrity to the house. We don't feel there is a need for the exterior stair when there is already an interior staircase to the house. What it does do is...we feel...opens up the opportunity for a possible additional exterior access for a future rental. Without seeing the plans for the basement we highly question the intent of adding an exterior stairwell.

JERRY WEST: This is a single family residence and converting it to a rental is not in line with the historic nature of the house. I am concerned with the sunken garage creating a hazard. This will also create a view into the neighbor's house. I don't understand how the garage is going to face now.

CHAIRMAN STEVENS: Mr. Davey, could you please bring that drawing up to the podium and leave it there for everyone to see.

JERRY WEST: It is my understanding that the building will be set back 15 ft. now. I am concerned about it looking down into my neighbor's backyard. It won't affect mine. I

don't see the need for the added staircase. I don't see why the interior stair won't work instead of the exterior stair if it isn't going to be turned into a rental. I don't see any need for this to be turned into a multi-family dwelling. That shed in the rear was built by Tim Woodard of the Idaho Statesman. It is historically significant. I would hate to see that historic structure eliminated. My question is if it is going to load from the alley and it is a 15 ft. setback?

RICH PRASCH: I live directly behind the proposed garage and I'm concerned with the height. The cars will be backing into my driveway. I am concerned with it turning into a tri-plex and don't think it is historically appropriate. I am mostly concerned with the proximity of the garage forcing people to back up into my driveway.

TERESA SOBOTKA (Legal): The neighbors brought up the external staircase and I can't find....

KEN REED: The Comprehensive Plan is clear in that it encourages ADU's to increase density and infill. We have met the guidelines keeping the structure below the home and recreating some elements that are not present at this time. I don't know the status of the stairs. With a basement...if you are going to have one that is habitable there isn't much harm in adding the staircase because the ceiling heights are only 7 feet. There is only the washer and dryer. I don't think there is any reason that he shouldn't have that access to the basement. The interior stairs wouldn't allow for anything more than a box to be moved to the basement.

COMMISSIONER POOSER: Could you address the concerns about water in the garage?

KEN REED: You would abate the water through a drain at the front of the garage. You usually use a 2 inch metal grate that will keep the water from ponding there. We would create a dry well that would take the water away and keep it away.

CHAIRMAN STEVENS: Sometimes it does rain very hard.

COMMISSIONER DAWSON: That drainage area would be on the outside of the garage doors?

KEN REED: Yes it would. It isn't complicated and I am sure you have been in many places where this is actually present.

COMMISSIONER McFADDEN: The other thing to address is the backing out of the garage? With the 15 ft. setback and the alley width...is it a 12 ft. alley?

KEN REED: It is a 12 ft. alley. When you add 8 ft. and 15 ft. you get 23 ft. back up space and code is 22 ft. This building actually lower than the building to the south. If there are any privacy issues I believe the building to the south can actually look down into the backyard of the building to the north on my client's property.

COMMISSIONER POOSER: There has been some opposition to it being a rental?

TERESA SOBOTKA (Legal): The scope of your review is the external features and if it is congruous with the Historic District. Use isn't an issue that you can look at. To some degree it may be looked at by Planning and Zoning but not by this Commission.

CHAIRMAN STEVENS: We look at use in some instances.

TERESA SOBOTKA (Legal): I may have missed understood what was being implied.

CHAIRMAN STEVENS: It is advertised as an ADU.

TERESA SOBOTKA (Legal): Yes, you would have to look at it as a change in use.

COMMISSIONER POOSERL: It is a change in use from single-family residential to a rental.

TERESA SOBOTKA (Legal): You will have to see if it meets your definition or not.

COMMISSIONER POOSER: Wasn't that something Staff addressed as a change in use from a single family to a two single family...?

TERESA SOBOTKA (Legal): Staff, I don't think felt it was a change in use, but what I'm telling you is it is up to you to look at the code. If you feel that it is a change in use then we would need to set all this over and look at change in use first. You need to look at your code and decide if you feel that meets the definition you have in your code is change in use.

JULIE ARCHAMBEAULT: Sometimes when we get an ADU in it's for a guestroom. Sometimes when we get an ADU application in it is specifically for a rental unit. Either one.

COMMISSIONER POOSER: What was the first one?

JULIE ARCHAMBEAULT: A guest room for visiting in-laws.

SARAH SCHAFER: Additionally we typically review the ADU's as just an alteration through our alteration findings. We haven't typically addressed the ADU's as a change in use with this ordinance. However, if that's how you would like for us to proceed you would need to make those findings on the record for us tonight, but that's not how we have historically done this.

TERESA SOBOTKA: The other thing is you can simply put a condition on that says that it's not to be used for commercial purposes.

COMMISSIONER POOSER: Is a rental a commercial purpose?

TERESA SOBOTKA: Sure.

COMMISSIONER SMITH: We have talked about lack of advertising. Would we have to advertise a hearing item for a change in use?

TERESA SOBOTKA: If you feel the item rises to a change in use you would have to advertise and you also have to decide change in use first. You would have to continue this hearing to another date which is what I was referring to, advertise, and then take that matter up first. I do agree that often times ADU's are used just for additional family members, etc. If you feel your definition is such that it rises to a potential for a no rental then either handle it through a condition of approval so that they would have to come back if that's what they want to do or set it over.

COMMISSIONER SMITH: I have one other question for Legal...will we have to set it over because of the stairwell?

TERESA SOBOTKA (Legal): You can clarify that with the applicant about whether he wants an approval of what was advertising and he'll come for the stairway or if he wants to set it over.

CHAIRMAN STEVENS: I'm going to read our definition of Change in Use under our ordinance which is 2-18 of the Boise City Code. *"Any change of use affecting the land or structure where a conditional use permit or administrative review is required under Title 11, Chapter 4, of the Boise City Zoning Code or Record of Survey required under Title 9, Chapter 20"*. I guess I'm hearing Staff tell us that this is going to be reviewed under Title 11, Chapter 4 by the Zoning Commission. Correct? Therefore, it does in fact meet our definition of Change in Use.

SARAH SCHAFER: I believe ADU's are reviewed under Title 11, Chapter 5 and not Chapter 4.

COMMISSIONER POOSER: I have another question for legal. If, on my property, I had an exterior guest room and I wanted to turn that into a rental would I have to come to the City to get approval for that? Have I just changed my use from residential to residential/commercial?

TERESA SOBOTKA: Right now it's an ADU. An ADU from Planning and Zoning's point of view...they don't care about whether it's a rental or not. They're going to look at does it have a bathroom in it, a kitchen in it, those kinds of things. If it already has that in it then I don't think you would have to come back. If it doesn't have that in it right now and you want to put in those items then you would have to come back to Planning and Zoning.

CHAIRMAN STEVENS: Not entirely.

COMMISSIONER POOSER: No...not really.

CHAIRMAN STEVENS: Do they look at an ADU simply as it's an ADU. They don't look at the use of the structure at all when they're reviewing it.

TERESA SOBOTKA: No.

SARAH SCHAFER: ADU's are governed by Title 11, Chapter 5 and what they look at in regards to those is square footage of the ADU, if the correct amount of parking can be obtained.

TERESA SOBOTKA: Like you the big thing is to make sure that it is accessory to the main unit. They're not looking really at the use.

COMMISSIONER POOSER: We don't know if there's going to be a change in use in this case. I don't think we have that application be us. We'd just be speculating that there would be a change in use.

TERESA SOBOTKA: That's the way I took it in the beginning.

COMMISSIONER POOSER: From a personal view I don't know how we can consider that when it's not before us. You made a suggestion that if in fact it is turned into a rental that would actually have to come before us and we could put that as a condition that it would come before us and we do at that point consider a change in use. It seems that would happen anyway. Under the code that would be a requirement that if you have a property in the Historic District and it's a single family dwelling and then all of a sudden you want to add some portion of your property to be a rental then you would have to come before the Historic Preservation Commission to get approval for that. Is that correct?

TERESA SOBOTKA (Legal): I don't believe that's the way we have traditionally looked at it. It is certainly a way that you possibly could. Change in use is not defined in the State Code. It's how you define change of use in your code and then how you apply that definition. Traditionally we have not looked if someone had a rental on their own property as an ADU that looked at that as a change in use. However, I'm not foreclosing that idea if you want to do it. From the very beginning I've said to me from the testimony I've heard tonight it looks like it is speculation at this point as to whether or not it would be. I would go back, if you feel it could possibly meet that definition, put a condition on that says if they're going to rent it out they have to come back to you.

COMMISSIONER POOSER: It doesn't sound like we have the authority to do that from what you just said.

TERESA SOBOTKA (Legal): I'm not going to interrupt your code for you. You need to look at the definition of a change in use and determine if it could possibly apply to a

rental. Just because they haven't done it in the past it doesn't mean it applies or doesn't apply. It just means that we've never applied it that way.

CHAIRMAN STEVENS: It's a little frightening...I'm going to step in here and say whether it's an accessory dwelling unit or...what I'm hearing is that the same logic would apply to somebody who owns a home and decides they want to rent it whether they move out of state for two years...that's a bit overstepping. I don't know of any government around the entire country that does something along those lines so I'm a little weary of doing something along those lines and starting it here tonight.

COMMISSIONER POOSER: I am too. If we had a precedent that...at least since I've been on the Commission for however many months that's how we've always acted. For us to come in now do a new requirement today especially since it's a more a hypothetical situation...it seems like we need to perhaps have Legal maybe look at this issue and bring it back to the Commission so we can make an informed decision on how to proceed in future instances.

TERESA SOBOTKA: I'm not in anyway advocating that you look at this as a change in use. You brought the question to me and I'm sticking with my answer. I see it as speculation and I see it as your job as Commissioners to determine if you feel that it could possibly be put the condition on otherwise don't. I can simply tell you what we've done in the past.

SARAH SCHAFER: One other thing is that in our decision matrix which we have in place it does state that administrative level approvals for change in use or any of the other administrative level applications can be done at an administrative level on our part as well so if the applicant had a garage that already had an upstairs unit and they came in for their accessory dwelling unit permit which is a staff level permit through current planning we would have reviewed historic preservation wise if they were adding an exterior door and an exterior parking space at staff level. We wouldn't have brought it up to you at the Commission level for that change because it is an administrative level approval through the current planning process.

JULIE ARCHAMBEAULT: I wanted to add that the exterior stair could also be handled at a staff level along with the change in the siding.

COMMISSIONER DAWSON: Something that was mentioned in some of the ordinances had to do with extra parking if this is an ADU for another party. Is that something that the Planning and Zoning people when they review this application will make that decision?

SARAH SCHAFER: That is correct. The primary dwelling will require whatever they'd previously had on site. Sometimes its one parking space, sometimes they previously had two. An ADU also requires a parking space so this property will be required to house anywhere between two and three parking spaces for its use.

KEN REED: I have done a number of ADU's and they are very complex. They require three parking spaces. They can not be more the 600 sq. ft. and they can not exceed "X" amount of sq. ft. If this is converted to a separate unit...there is a deed restriction that the owner has to live on the property. This was set up by City Council stating that they have to live on the property and can rent out one of the units. You can not rent it out and only let family stay there when they visit. I know this is complex. Finally, I think the stair is unobtrusive and I would like it if we could address that at this hearing.

PUBLIC PORTION CLOSED

COMMISSIONER POOSER: The first issue is if this is a change in use. I don't think we are ready to review this as a change in use. To do that today would be drastic. As far as the concern of it being a rental I don't see that as in our authority. In regards to the windows they are appropriate. As far as the garage I think the massing is appropriate as well. As far as the siding, it sounds like it and the exterior stairwell can go to Staff. With respect to the garage and the windows I will be voting in favor of the application.

COMMISSIONER SMITH: I am uncomfortable moving forward without the understanding of if we can give authorization on what appears to be a change from single-family residential to multi-family residential. I understand that we don't have any evidence before us, but we have had at least three people testify that this is the intended use. I would prefer to hold this over as we would have to consider the exterior stairway at some point. I don't like the legal posture of this right now. I think we have to settle this one way or another.

CHAIRMAN STEVENS: I am torn between the fact that we have never discussed it as a change in use and the fact that it is being brought before us tonight. It is a tangle. We should establish some sort of policy before we depart from what we have done in the past. That would have us as arbitrary. On another note the diversity of the neighborhood is good. I don't think rentals are evil. My opinion is that we need rentals, we need big houses and little house so that we can have a vibrant city. I think it is a good proposal as far as ADU's go. The materials and the windows and the siting are all good. Even with the addition of the ADU it falls under the lot coverage requirements. I do support the application, but I do think it brings up a legal question. I think it is something that needs to come back within the next month.

TERESA SOBOTKA (Legal): I am willing to do this but my position is that you do need to interpret your ordinance.

COMMISSIONER SMITH MOVED TO TABLE THIS APPLICATION UNTIL WE GET AN OPINION FROM LEGAL ON THE INTERPRETATION OF THE ORDINANCE OR IF WE CAN PROCEED ON THIS APPLICATION AS SUGGESTED.

CHAIRMAN STEVENS: Motion dies due to lack of a second.

COMMISSIONER POOSER: I will offer a substitute motion...

CHAIRMAN STEVENS: I don't think it is a substitute. The first motion died for lack of a second.

COMMISSIONER POOSER MOVED TO APPROVE DRH08-00169 BASED ON THE FINDINGS OF FACT AND CONCLUSION OUTLINED IN THE STAFF REPORT WITH THE EXCEPTION OF THE PROPOSAL TO CHANGE THE SIDING AND TO ADD THE EXTERIOR STAIRWELL INCLUDING THE SPECIFIC SITE CONDITIONS OF APPROVAL A. THAT THE PROPOSED GARAGE SHALL MEET CURRENT ZONING SETBACKS OR BE REDUCED IN SIZE TO 1, 000 SQ. FT. OR LESS OR A VARIANCE BE GRANTED FOR A REDUCED SETBACK AND B. THE ACCESSORY DWELLING UNIT REQUIRES SEPARATE APPROVAL THROUGH THE PLANNING AND DEVELOPMENT SERVICES DEAPARTMENT.

COMMISSIONER DAWSON SECONDED.

CHAIRMAN STEVENS: For clarification siding and exterior staircase will have to be re-advertised but can be considered part of this same application and be dealt with at staff level.

TERESA SOBOTKA (Legal): You don't have to re-advertise.

CHAIRMAN STEVENS: Isn't the problem that it wasn't advertised in the first place?

TERESA SOBOTKA: As part of this application...staff level does them completely opposite. They will approve it and then they will send out a notice of their approval for an appeal. That's why it's a problem.

COMMISSIONER MCFADDEN: I agree with the motion because the review of the ADU will go forward under a separate approval. I encourage the people that are here to go through those channels to make sure their concerns are addressed. I also want to agree with Chairman Stevens that the diversity of the neighborhood is important and rentals are not the worst thing.

ROLL CALL VOTE 5:1. MOTION CARRIES WITH COMMISSIONER SMITH OPPOSED.