

RESOLUTION NO. 4316

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DENYING A CONDITIONAL USE PERMIT TO ALLOW A TRIPLEX WITHIN AN R2 SINGLE FAMILY RESIDENTIAL ZONE AT 504 H STREET NE, AUBURN, WASHINGTON

WHEREAS, Application No. CUP07-0003, dated August 31 , 2007, was submitted to the City of Auburn, Washington, by Leonard Gazhenko for approval of a Conditional Use Permit to allow a triplex within the R2 Single Family Residential Zone, at 504 H Street NE in Auburn, Washington; and

WHEREAS, said application was referred to the Hearing Examiner for study and public hearing thereon, along with staff review; and

WHEREAS, the Hearing Examiner held a public hearing to consider said application in the Council Chambers of the Auburn City Hall, on October 17, 2007, and the Hearing Examiner recommended approval of the application on December 6, 2007, subject to two conditions; and

WHEREAS, a request for reconsideration of the Hearing Examiner's recommendation was filed by neighbors of the subject property on December 17, 2007, and the Hearing Examiner issued a response to the request for reconsideration on January 9, 2008, affirming the recommendation; and

WHEREAS, on December 17, 2007, the City Council decided to conduct a closed record hearing on the Conditional Use Permit request; and

WHEREAS, on February 6, 2008, the City Council conducted a closed record hearing and considered said application and rejected and denied the Hearing Examiner's recommendation and proposed conditions for the issuance of a Conditional Use Permit (CUP) to allow a triplex within an R2 Single Family Residential Zone at 504 H Street NE in Auburn, Washington based on the following Findings of Fact and Conclusions hereby entered by the City Council, to-wit:

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Leonard Gazhenko.
2. Open Record Hearing. The Hearing Examiner conducted an open record public hearing on the application at 5:30 p.m. at Auburn City Hall in the Council Chambers on October 17, 2007.
3. Closed Record Hearing. The City Council conducted a closed record hearing on the application on February 6, 2008 at Auburn City Hall in the Council Chambers.

Substantive:

3. Site Description: A one-story single family residence built in 1941 exists on a 23,116 square foot lot. The lot is relatively flat and abuts single family residences. The lot has many trees (35 mature trees with heights up to 65 feet according to a neighbor, Sara Meier; Exhibit No. 13). The property is at the southeast corner of the intersection of Fifth Street N.E. and H Street N.E. A 48-inch chain-link fence is currently located on the east perimeter of the property; no other fencing is visible on the property.
4. Proposal Description. The applicant proposes to build a triplex at 504 H Street N.E. in the R2 (single-family residential) zone. The single-family home is proposed to be removed prior to construction of the triplex. As shown on Exhibit No. 2, the triplex would be accessed off of H Street N.E. via a 12-foot-wide, paved driveway with a hammerhead-like turnaround. As shown on the site plan (Exhibit

No. 2), the applicant proposes to retain about six trees in addition to some shrubs. Stormwater is proposed to be addressed by an infiltration trench on the northwest side of the property. The applicant proposed a six-foot cedar fence along the north perimeter of the property. Each triplex unit will be two stories, each containing three bedrooms and a two-stall attached garage. The subject lot will remain the same.

6. Characteristics of the Area. According to the Hearing Examiner, the subject property is surrounded by single-family homes in a setting aptly described by one of the neighbors as "quaint, cozy, and cottage-like." The homes are relatively modest in size and located in a park-like setting with an abundance of trees and well-maintained landscaping. Neighbors clearly take great pride in their neighborhood and the "small-town" atmosphere they have created for themselves as an enclave from surrounding urban development.

FINDING OF FACT & CONCLUSIONS OF LAW

1. Hearing Examiner Recommendations & City Council Finding of Facts. ACC 18.64.020(A) grants the Hearing Examiner the authority to make a recommendation to the City Council on a request for a Conditional Use Permit. The City Council then reviews the record and affirms, remands back to the Hearing Examiner or schedules a closed record hearing (ACC18.66.170A). The council chose to schedule a closed record hearing in this case. After conducting a closed record hearing, the council could either affirm, reject, modify the Hearing Examiner's recommendations or take whatever action it deemed appropriate pursuant to law. The following paragraphs outline the Hearing Examiner Findings of Fact and recommendations and the Council Finding of Fact, after the closed door session.

2. Section 18.64.040 of the Auburn City Code (ACC) states ...conditional use permits may only be approved if findings of fact are drawn to support the following ACC18.64.040 (A) through (F):

ACC 18.64.040(A): *The use will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service area, utilities, screening and buffering, signs, yards and other opera spaces, height, bulk, and location of structures, location of proposed open space uses, hours*

and manner of operation, and noise, lights, dust, odor, fumes, and vibration.

Hearing Examiner response: The primary permitted use in the R2 zone is a single-family dwelling. See ACC 18.14.020(A). The minimum lot size for the R2 zone is 6,000 square feet. See ACC 18.14.040(A). Consequently, the impacts of the proposed triplex must be compared to the potential to construct three separate single-family homes in the same location. Further, it must be recognized that there are no limits to the size of the homes that could be built on three separate lots and, therefore, no guarantees that the homes that would be built at this location would be of compatible scale to those in the surrounding area. Given the modulated design of the project and vegetative screening from adjoining uses, there is nothing to suggest that the proposed triplex would be more injurious, economically or otherwise, to property improvements in the surrounding area than would be permitted outright. In fact, single-family homes that would not be subject to size, design or screening restrictions could create a much more significantly adverse aesthetic impact than the triplex proposal.

Council findings: The proposed triplex has greater impacts than other permitted uses in the area because one large building creates the appearance of greater "bulk," creates less "yard and other open space" between buildings, and the *location of the structures* is not fitting with the majority of housing in the neighborhood as single family units (ACC18.64.040). The area is mostly single story single family.

ACC 18.64.040(B): The proposal is in accordance with the goals, policies and objectives of the Comprehensive Plan.

Hearing Examiner response-- As noted in the staff report, the project is consistent with Auburn Comprehensive Plan Policies LU-12 and LU-14 in that the project adds to the mix of housing types and is under the six-unit-per-acre density cap recommended by Policy LU-14.

Council findings-- Although the Hearing Examiner found that the proposal met the goals of the Comprehensive Plan, the council found that the proposal does not meet Comprehensive Plan Goals 1, 4, 7, and 8. The proposal would not enhance community quality and would detract from community character as it would have a greater impact than other permitted uses in the area. The proposal would not fit with the established surrounding single family residential neighborhood according to Comprehensive Plan goals, as follows:

Goal 1. Planning Approach

To manage growth in a manner which enhances, rather than detracts from community quality and values by actively coordinating land use type and intensity with City facility and service provision and development. (Page 2-2 ACP).

Council findings: The multifamily triplex detracts from community quality of the single family neighborhood. The neighborhood has seen little transition or redevelopment and maintains a high quality of "Old Auburn," as supported by testimony of more than 20 adjacent neighbors.

Goal 4. Community character

To maintain and enhance Auburn's character as a family community, while managing potential economic opportunities in a manner that provides necessary employment and fiscal support for needed services, and while recognizing the need to provide human services and opportunities for housing to a wide array of household types and sizes. (Page 2-9 ACP)

Council findings: The council finds that the City is experiencing an increasing change to multifamily. The multifamily triplex does not maintain and enhance "Auburn's character as a family community" (CP Goal 4, Objective 4.1, Policy GP29).¹

Goal 7. Residential development

To emphasize housing development at single family densities, in order to reestablish a mix of housing types appropriate for a family oriented community, while recognizing the need and desire for both lower density and higher density housing appropriately located to meet the housing needs of all members of the community. (Page 3-14 ACP)

Council findings: The council disagrees with the Hearing Examiner's findings in that Goal 7 has not been met. THIS residential development does not promote the *..preservation ...of adequate housing for the city's residents by encouraging a balanced mix of housing types (LU-12)*. In this case the council desires to maintain the single family nature of the use because of the increasing multifamily development.²

Goal 8. Neighborhood quality

¹ NOTE: Based upon information reported at various City Council and Council Committee meetings, 309 multifamily units were permitted in the City of Auburn between 2001 to 2005 versus 211 single family during the same time period.

² See footnote # 1.

To maintain and protect all viable and stable residential neighborhoods. (Page 3-20 ACP)

Council Findings. This neighborhood is one of the more stable residential neighborhoods in the city and its cohesive single family residential character should be maintained with few exceptions. *The council finds that "this single family detached residential neighborhood(s) should be protected from intrusion by non-residential or multi-family. (Policy LU39d)*

ACC 18.64.040(C): *The proposal complies with all requirements of this title.*

Hearing Examiner response-- As noted previously, the proposal satisfies the R2 criteria for multiple-family dwelling by exceeding 18,000 square feet in area for a triplex. The proposal also meets the off-street parking requirement of ACC 18.52.020(A)(3) by providing two parking stalls per each three-bedroom triplex dwelling unit. There is nothing within the record to suggest noncompliance with any other requirements of the City's Zoning Code.

Council finding— No Findings were made.

ACC 18.64.040(D): *The proposal can be constructed and maintained so as to be harmonious and appropriate in design, character and appearance with the existing or intended character of the general vicinity.*

Hearing Examiner response--The criterion above is the most relevant and difficult to apply to the subject property. It is unlikely that there would be any neighborhood in the City of Auburn where a triplex would be more out of place than the one in this application. As noted in the Findings of Fact, if the applicant were just proposing an unmitigated box-like triplex, there would be no question that the proposal would not be harmonious or appropriate in design, character and appearance with the surrounding neighborhood. It is likely that if the size of the triplex was compared to the size of the surrounding homes and also that the percentage of lot coverage were compared that a person could objectively conclude that the triplex is not harmonious in scale with the surrounding community. However, when the actual design of the project is taken into account as well as the mitigation as discussed in the Findings of Fact, the project is acceptably harmonious with the surrounding community. In arriving at this conclusion, it must be recognized that the City is severely limited in its discretion to impose code criteria such as "harmonious" and "appropriate." The Washington State Supreme Court has invalidated design regulations as being unconstitutionally vague due to design criteria such as "interesting" and

"harmonious." See *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993). As noted by the *Anderson* court:

The statute which either forbids or requires the doing of an act in terms so vague that men [and women] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

70 Wn. App., at 75.

In applying this constitutional standard to the design requirements of the City of Issaquah, the Court was critical of the fact that "in attempting to interpret and apply this code, the Commissioners charged with that task were left with only their own individual, subjective 'feelings' about the 'image of Issaquah' and as to whether this project was 'compatible' or 'interesting.'" Given the *Anderson* Decision, the City of Auburn must be very careful how it applies vague standards such as "harmonious" and "appropriate." If it applies these terms too broadly, to the point where the determination is based on the feelings of the decision-maker, the interpretation (and application) will be struck down as unconstitutional. Consequently, even though many, if not all, residents of the surrounding neighborhood may "feel" that the project as designed and mitigated is still not compatible with their neighborhood, it is likely that others (such as the applicant) may reasonably conclude to the contrary. The fact of the matter is that the R2 zoning district does authorize triplexes within single-family homes. If a triplex is reasonably mitigated to the extent that it is arguably compatible with surrounding uses, the City does not have much latitude to find noncompliance with the criterion above.

Council findings-- This project is not harmonious with the character of the general vicinity. The scale of the project is not consistent with surrounding development. In the immediate vicinity the majority of homes are single story and the proposal involves two story townhome units. Therefore, the bulk of the structure is out of character with the neighborhood. In addition, council disagrees with the Hearing Examiner's blanket finding that the "R2 zoning authorizes triplexes within single-family zones" because triplexes are clearly only permissible when and if all of the requirements of ACC18.64.040 are met – and not all have been met in this case. The council also disagrees that all factors can be mitigated, e.g. as a combined structure (bulk), with an overall footprint of ~6,000 square feet compared to 2,000 for each individual unit would be out of proportion with the current neighborhood's "harmony and character." Even the Hearing Examiner's findings state, "It is unlikely that there would be any neighborhood in the city of Auburn where a triplex would be more out of place than the one in this application...".

ACC 18.64.040(E): *The proposal will not adversely affect the public infrastructure.*

Hearing Examiner response--As noted in the Findings of Fact, the project will be served by adequate traffic and stormwater infrastructure. Traffic and stormwater infrastructure will not be adversely affected by the project. There is no evidence in the Record to suggest that other public infrastructure would be adversely affected by the project.

Council findings—No Findings were made.

ACC 18.64.040(F): *The proposal will not cause or create a public nuisance.*

Hearing Examiner response--As noted in the staff report, the proposal involves a residential use in a residential zone that expressly authorizes triplexes through a conditional use permitting process. Given these factors, the proposal will not cause or create a public nuisance.

Council findings—No Findings were made.

IN CONCLUSION, for denial of the proposal, it is only necessary that the City Council find that at least one of the necessary findings of fact for CUPs is not supported. The City Council finds that necessary findings of fact for the CUP are not supported by this project.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. Denial. A Conditional Use Permit for the proposed project is hereby DENIED based upon the above Findings of Fact and Conclusions.

Section 2. Severability. The provisions of this resolution are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this resolution, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder

of this resolution, or the validity of its application to other persons or circumstances.

Section 3. Recording. Upon the passage, and approval of this Resolution, the City Clerk of the City of Auburn shall cause this Resolution to be recorded in the office of the King County Recorder.

Section 4. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 5. Effective Date. This Resolution shall take effect and be in force upon passage and signatures hereon.

PASSED this 19th day of February, 2008.

ATTEST:

PETER B. LEWIS
MAYOR

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:



Daniel B. Heid
City Attorney