

CITY OF ALBUQUERQUE LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT

Project: #1007308

Property Description/Address: Request for conditional use to allow for 2nd kitchen as mother-in-law quarters for property at 4209 Delamar Avenue, NE. (Lot 12, block 3.)

Date submitted: July 6, 2008

Submitted by: Marsha Kellogg, Facilitator

Meeting date/time: July 3, 2008, 6:38 p.m.

Meeting location: Fire Station #19, 3520 San Andres, NE

Facilitator: Marsha Kellogg,

Co-facilitator: Joan March

Parties: *(Please see list with individual names and affiliations at the end of the report.)*

Applicant: Chris Anderson

Neighborhood Association: Hodgin Neighborhood Association

Background/Meeting Summary:

The applicant, Chris Anderson, and his partner are applying to the City of Albuquerque's Zoning Hearing Examiner for a conditional use to allow for a second kitchen within a mother-in-law quarters in the property at 4209 Delamar Avenue, NE. The objective of the applicant's request for conditional use is to bring the house into compliance with current zoning, which is single family residence, and to be able to rent or sell the property with a mother-in-law quarters. Currently, the property has two separate rental units; two people reside in each apartment. The applicant is requesting that the neighbors and the neighborhood association bear with him and allow for the tenants to continue living there while he makes some structural changes and improvements to the home to bring it into compliance. These improvements include double French doors across a five foot opening that had been walled off to provide access to the mother-in-law quarters from the house. Also, the applicant will do some remodeling of the kitchens and bathrooms.

The applicant had requested to talk with the Hodgin Neighborhood Association board a couple of weeks prior to this meeting. At that time, explained President, Mary Lou Spells, the next board meeting agenda was quite full, it was being held at a private residence, and several board members felt a mediated meeting was advisable.

Both the neighbors and the applicant agreed that the history of this case has created significant distrust among the immediate neighbors, association members and the applicant. The house was out of compliance even before the applicant purchased it four years ago. The applicant filed a zone change request approximately one and a half years ago. At this time a meeting with the city was held behind closed doors. Notes on this discussion were not taken or made available to the neighbors. This started the issue off

on the wrong foot. The application was deferred by the city and then the application was withdrawn altogether. Since then, the neighborhood association has followed-up with the city a few times requesting that the zoning officer enforce the regulation, however neighbors feel the city has been slow to do so. The applicant said the city has given them time to come into compliance. The neighbors are unclear how or when the single-family dwelling regulation will get enforced by the city, and are skeptical that the applicant will comply with it.

The neighbors and applicant also agreed that the property was sold to Mr. Anderson in a non-compliant state (it already had 3 rental units) and that the City of Albuquerque should have addressed the problem at that point. Chris acknowledged that he and his partner bought the home ignorant of the zoning issue; the realtor/owner from whom they purchased the home told them that the three apartments had been grandfathered, allowing for the rental units in a neighborhood zoned for single family dwellings.

The neighbors' principle issues with the application are the following:

House features facilitate multi-family use: Approving the conditional use, and therefore the second kitchen, facilitates using the property as a two-family dwelling. Other features of the property also facilitate this, such as more than one washer/dryer hook-up, and the wall in the backyard that divides the property.

While the applicant has already removed a third kitchen, he would like to leave the two remaining kitchens, specifically the one in the mother-in-law quarters. He feels the property will rent or sell better with a kitchen in that area. He does not know yet if they will keep the wall that divides the yard. Only one washer/dryer hook-up is planned for the house.

Impacts on neighbors of a multi-family dwelling: The neighbors want this property returned to a single-family dwelling to eliminate the negative impacts this multi-family dwelling has already had on the neighborhood, including too many cars in the driveway and on the street along with pranks by youths living in the dwelling such as scaling electric poles and neighbors walls. They feel it is difficult to manage the potential negative impacts of more than one family living there.

The applicant understands the negative impacts of multiple families and feels he has already taken steps to decrease them. He said he too wants to return this property to a single-family residence however feels because of the layout of the house it will rent or sell better with a mother-in-law apartment.

Timeline: The neighbors are frustrated by the amount of time this property has already been used illegally and would like to see a clear timeline for the improvements the applicant is making and compliance with the single-family residence zoning. They are also requesting that a timeline of the history of the previous application made by the applicant for this property be included in this case when heard by the zoning hearing officer. They do not want to "start all over completely".

The applicant said he expects to have the house brought into compliance by the end of this year, if not sooner.

Confidence that the single-family residence code will be enforced: Neighbors were unsatisfied with the applicant's reassurances that the residence will convert to a single-family and that the mother-in-law apartment will not end up being a sublet unit. The neighbors also are unclear how and when the applicant or the city will enforce single-family residence if the condition is approved. They specifically are asking the City of Albuquerque:

- At what point will the city enforce that this residence be used as a single family home?
- If the application for the conditional use for a second kitchen is approved, how would the city enforce that it's actually being used as mother-in-law quarters?
- Where there is a second kitchen, how is the mother-in-law quarters enforced over time if the condition stays with the property? Whose responsibility is it to enforce? The owner? The city? The neighborhood association?

They also felt the applicant's rationale that the mother-in-law space will enhance rental opportunity is based on speculation.

The applicant proposed the following: 1) a copy of the lease of the property would be provided to the neighborhood association, 2) the property will be converted to single-family residence by the end of this year, if not sooner, and 3) he will not allow the mother-in-law quarters to be sublet.

Outcome:

Areas of Agreement/Action Items:

- All parties want this property returned to single-family residence.
- The history of this property and case has fostered distrust.
- City of Albuquerque bears some responsibility for allowing this illegal use to continue as long as it has.

Unresolved Issues & Concerns:

- At what point will the city enforce that this residence be used as a single family home?
- If the application for the conditional use for a second kitchen is approved, how would the city enforce that it's actually being used as mother-in-law quarters?
- Where there's a second kitchen, how is the mother-in-law quarters enforced over time if the condition stays with the property? Whose responsibility is it to enforce? The owner? The city? The neighborhood association?
- The neighbors request that a timeline of the history of the previous application made by the applicant for this property be included in this case when heard by the zoning hearing officer.

Meeting Specifics:

1) Applicant Presentation

- a. Applicant doesn't live in the neighborhood, but owns the property
- b. He understands the concern that a second kitchen will make it easier for a second family to live there
- c. It's been mandated that he has to turn it into a single family dwelling
- d. Not sure if he'll rent or sell
- e. Wants a single-family dwelling with mother-in-law quarters;
 - i. There's a need in this day and age where people have aging parents.
- f. It's a big house ~ 2800-3000 sq.ft.
- g. Garage was used as something else before he bought it and he doesn't wish to turn it back into a garage—too extensive repair
- h. Will put a 5 foot door in the existing opening—put in a double French door so there's access from the house to the quarters
 - i. Remodeling in the kitchen and bathrooms—upgrade; put in some tile
- j. Where porch was, previous owner added on walls, extended the roof, put a porch on, created a little apartment of about 600-700 sq ft.
- k. End result—will rent it as a single family dwelling with the mother-in-law quarters.
- l. Took out the kitchen that was in the front and opened that up (garage apartment)
- m. People now renting the house and the garage as one unit.
- n. Wants time to get things done—doesn't have an exact time frame because he has a full time job and needs to make the payments. Is asking the Hodgkin NA board to let them do it.
 - i. Wants to keep the current four tenants (two in each apartment) through construction so they can afford to make the house payments.

2) Case History

- a. The NA first found out about this application a couple of weeks ago. Had a board meeting scheduled on Tuesday night; Chris called wanting to talk at it. Decided because the meeting was in someone's home and had a tight agenda, wanted a separate, mediated meeting tonight.
- b. When Chris found out the home was for sale, was it advertised as a 3 apt home?
 - i. Yes, that's why applicant bought it. Told it was "grandfathered."
- c. The issue has been around for 2 years and it is regretful it got off on the wrong foot. No notes were taken at the meeting that was held approximately Feb. 20, 2007.
- d. Deferred by the City since last February, NA asked why can something continue to be deferred?
- e. City advised applicant could withdraw his application. NA asked Chris and Glenn (his partner) to withdraw the application and come back in with some other application. Not sure if anything beyond that was done in writing to Chris. City may have made a mistake by not following up with Chris and Glenn.

- f. Within a month the NA President went down to meet with Zoning enforcement officer—the applicant didn't get their application approved so single family home should be enforced. The zoning enforcement officer agreed they would enforce within a month,. She went back six weeks later (approximately 1st of the year) the ZHE said they would enforce but will give them a month. Then she asked again after; things got fuzzy. She was told they asked for a second kitchen. No one knew what was going on with the city, which was in "slow gear." Neighbors feel city not doing their jobs even though the NA was lobbying for enforcement.
- g. Two years of multiple rents. Neighbors say Chris is making money because the city isn't doing what it's supposed to do.
- h. House history – originally was 1100 sq ft; same original plan as neighbor's house. Now, with a couple of additions, approximately 2800 sq ft.;
 - i. There used to be a patio door and behind that a pool room and another bedroom. Several additions were made by Mr. Patton (original owner). Also a bathroom was added. Next owner added another room behind the pool room.
 - ii. The lack of patio doors makes it 3 apartments. When the patio doors are put back in, it will turn it back, mostly to how it was.
- i. Neighbor: How long have you owned the house?
 - i. Applicant: Four years.
- j. Neighbor: How many families have you rented to?
 - i. Applicant: Three at the most at one time. If there were more in there, I did not know about them.

3) Current tenants

- a. Neighbor: How many renters at present?
 - i. Applicant: The back is rented to a woman and her mother and a couple in the front house/garage;
- b. Neighbor: How many families are there?
 - i. Applicant: Two for now and want to keep it, despite that it is single family zoning. Just 2 people in each unit; no kids.
 - ii. Six or seven cars were parked in the street, but not now.
- c. Neighbors' main concern is that it's currently a single family, but there are two families in there now.
 - i. Families had friends living with them years ago. Only had one kitchen. More concerned, not about the relationship, but the number of people for the facility. How many bedrooms, bathrooms.
 - ii. I can see the utility of a second kitchen.
- d. One neighbor sees from the front someone living in the garage and he doesn't see construction activity.
 - i. People can live anywhere they want in that portion of the house.
 - ii. Couple is in the garage area because it's bigger than the master bedroom. Haven't cut the door.
- e. Neighbor: What about the people in the back?
 - i. Applicant: Eventually, they'll be evicted.
- f. Neighbor: When is the last time you were in the house?

- i. Applicant: A couple of weeks ago.
- g. Neighbor: If you've been renting to three families and now to two families, how could one family afford it and provide an income that will enable you to pay the mortgage? Triple the rent? Double the rent? Can't ask extra tenant to leave, because he can't afford it.
 - i. Applicant: He'll increase the rent as the house will be fixed up and renters will live in the entire house.

4) Current zoning

- a. Neighbor: When the zoning board made its decision, it had to be a single family dwelling?
 - i. Applicant: Yes, but we're working toward it. We need time.
- b. Neighbor: Have you received written notification by Zoning board?
 - i. Applicant: No, he talked to several people.
- c. Neighbor: What was the ruling of the zoning hearing?
 - i. Applicant: To turn into a single family dwelling.
- d. Neighbors concerned that it's in a single family neighborhood.
 - i. Why do you think there's a zoning law for single family homes? Could have a single family in 5000 sq ft. It's still single family zoned—doesn't matter how big the house is.
 - ii. I could put a partition in my house and have 2 families.
- e. Code provides that through rewarding of a conditional use, it's legal to have a second kitchen in a single family home.

5) House features

- a. Neighbors skeptical that another kitchen put in there won't mean another family living there.
- b. Neighbor: Why do you need a kitchen?
 - i. Applicant: An older person might like to have the option of having a kitchen—if they don't have it, might lose out on a renter.
- c. Neighbor: What does the current second kitchen have right now?
 - i. Applicant: Refrigerator, cook top, microwave, sink, cupboards, shelves
- d. Neighbor: Does the construction require a building permit?
 - i. Applicant: No, not for floor tile. We're not doing walls. If we need a permit, we'll get one.
- e. Neighbor: When the drapes are open in the dining room area, could see the cut outs for a washer and dryer—is there another washer and dryer for the other family?
 - i. Applicant: Initially, a hole was cut so they could have it in the house, rather than the garage area, but now it will be in the garage. There will be only one washer and dryer.
- f. Neighbor: Besides access to pool room area—the yard is divided—will it be made one?
 - i. Applicant: Whatever works, we haven't gotten that far yet. Haven't even thought about that.
- g. Are we here to discuss if applicant needs the second kitchen?
 - i. If there's only one kitchen, wouldn't be able to have 2 families

- ii. The neighborhood is opposed to having this kind of dwelling in the neighborhood—do not need a second kitchen.
 - iii. Applicant explained that if they choose to sell it, it will sell better with a second kitchen.
 - h. Neighbor: Why wouldn't a single family buy it?
 - i. Applicant: It's not set up well—floor plan wise—for a regular single family. But it's my choice as to how to construct it.
 - i. A couple neighbors feel this is a speculative project. Second kitchen could be helpful, but we're dealing with someone we don't trust and is speculating that he'll rent to someone who wants the mother-in-law quarters.
 - j. Neighbor suggests that if Chris wants to turn it into a single family, the way to do it is to put in the doors, get rid of back yard partition and get rid of the second kitchen.
 - k. Right now he doesn't have a mother-in-law moving into these quarters. City code would provide for an existing family moving in and get the conditional use if and when the tenant has a mother-in-law.
 - l. Neighbor: How many rooms in the mother-in-law unit?
 - i. Applicant: Two, but when they put the French doors in, it will take away one of the rooms.
- 6) Multi-family impacts
 - a. Neighbors don't want multiple families and lots of cars.
 - b. Historically there have been three families on the property; kids were running amok and climbed the power pole to get on the roof; in neighbors yards; can't control people when there are so many families.
 - i. Applicant agrees
- 7) Timeline
 - a. Neighbor: Is it legal to be renting it now?
 - i. Applicant: We're working toward it. We didn't get a time frame from the City.
 - b. Neighbor: Do you have something that gives a date/time frame?
 - i. Applicant: No
 - c. Neighbor: Proposed end date for construction?
 - i. Applicant: End of year, maybe?
 - d. It's a concern and frustration of the neighborhood that there's no end date.
 - i. Applicant reassures that by the end of year (or before) it will be a single family dwelling with one family.
- 8) Confidence applicant will comply
 - a. This history has created distrust in the applicant and the city.
 - b. Neighbors heard the applicant wouldn't let the investigators in.
 - i. Applicant explains tenants were leery and didn't let them in. But eventually everything got done.
 - c. Neighbors request that besides having an existing mother-in-law come in, it needs to be verifiable. Displaying the lease, may not do that. There should be other ways to determine if the two groups of people are related, as opposed to two sets of close friends.
 - d. Single family shouldn't be allowed to sublet.

- i. Applicant won't allow that.
- e. Neighbors feel the baseline is the law and it says single family residence.
- f. Applicant says not trying to skirt the law. We will turn it into a single family dwelling, but it may not be on neighbors' timetable.
- g. Neighbor: Can we have evidence that there will be only one family living there at some point?
 - i. Applicant can provide a copy of the lease.
- h. Neighbors need timely reassurance. Have no confidence it will be done. The applicant is not providing direct answers.
 - i. Applicant says trying to build trust with the neighbors. Wants a single family dwelling.
- i. Neighbor: There were 13 cars at the property at one point. What prevents this from happening again?
 - i. Applicant: Understands where the neighbors are coming from. He's given his word that it won't happen again. It's in the past and he's changed that. City has allowed this to happen.

9) Enforcement

- a. Neighbors ask at what point will the city enforce that this is a single family home?
- b. Neighbors want to know if the applicant is able to get a conditional use for a second kitchen, how would the city enforce that it's actually being used as mother-in-law quarters?
 - i. The second kitchen must be incidental and that there not be two independent units, e.g. no wall between. If use is approved, zoning hearing examiner has to record the action with the county clerk with signed acceptance by owner.
- c. If we don't force the city to do what they're supposed to, they won't do it.
- d. If the city isn't going to do anything, what's the motivation for Chris to do anything?
- e. Roberto made mistake from the start and then we showed up at the City to say house should be a single residence. Did Roberto say, "go ahead" to Chris?
- f. Agree with Mary Lou that the city is not doing their job. If they're not, we have to lean on Chris.
- g. Question for zoning officer: Where there's a second kitchen, how is this enforced over time if it "runs with the land"? Whose responsibility is it to enforce? The owner? The city? The neighborhood association?
 - i. Applicant feels it's not up to the neighbors or neighborhood association to decide if the applicant can have a mother-in-law quarters or how they'll do the construction.
- h. Can we have a different hearing officer?
 - i. No
- i. Neighbors want to know from the city, if this part of home ownership is so murky, will there be restrictions on who can buy it when Chris and Glenn try to sell? Will there be restrictions on who moves in?

Application Hearing Details:

Hearing Date: July 15, 2008, Zoning Hearing Examiner Public Hearing (#29 on agenda; arrive after 1:30 pm)

Hearing Location: Plaza del Sol Basement Hearing room, 600 Second Street, NW. Can check web site prior to meeting, too confirm location.
<http://www.cabq.gov/planning/examiner/agenda.html>

City Contact: Send additional comments to Lucinda Montoya, Admin Assistant, 924-3918 prior to July 15th meeting.

Names & Affiliations of Attendees:

<u>Name</u>	<u>Affiliation</u>
Mary Lou Spells	Hodgin Neighborhood Association
Helen Lowry	Hodgin Neighborhood Association
Cathy Intemann	Hodgin Neighborhood Association
Nancy Matthews	Hodgin Neighborhood Association
Marilyn Kincaid	Hodgin Neighborhood Association
Walt Kincaid	Hodgin Neighborhood Association
Ed Sanchez	Hodgin Neighborhood Association
Carole A. Sanchez	Hodgin Neighborhood Association
Chris Anderson	Owner and applicant of property