



Memo

File #: 432-21

Agenda Date: 9/21/2021

TO: Mayor and City Council

FROM: James V. Capparelli, City Manager

SUBJECT:

An Ordinance Approving a Variation of Use to Allow the Continuation of an Existing Rental Unit above a Garage (a Two-unit) in a R-2 (Single-Family Residential) Zoning District, Located at 429 Buell Avenue (ZBA 2021-43)

BACKGROUND:

The property owner, Kamar Tiller, of 429 Buell Avenue requests approval of a Variation of Use to allow the continuation of an existing rental unit in the upper-level of a detached garage located on the property. The address for the garage unit historically has been 426 Division Street. The current property owner found out that he did not have proper zoning for a second housing unit on the property when he tried to refinance his home in the spring of 2021. He purchased the property in 2018 believing that he could rent out the apartment above the garage, which currently has a tenant.

Polk Street Directories show a residence at 426 Division Street from 1954 onwards. The 1968 Zoning map shows this property and surrounding neighborhood zoned as R-5 (Multiple Family Residence) district. Portions of this neighborhood were reclassified in the 1990s to R-2 (Single-family Residential) zoning. The owner at that time, did not apply to retain the property's zoning status for an accessory dwelling unit; although it is believed that this owner continued to rent out the unit for almost three decades. A circa 2000 Plat of Survey for the property also shows the garage as having a second story apartment.

The entrance to the apartment unit at 426 Division Street faces Division Street. The 700 square foot apartment unit has one bedroom, one bathroom, kitchen, living room and laundry room. There is parking for two cars adjacent to the garage with the apartment unit at 426 Division Street. This parking is in addition to the four-bay garage and concrete parking area along Nicholson Street for the property owner's use.

The apartment unit is an accessory dwelling unit since it is accessory to the principal single-family home in terms of size and ownership. Staff recommends a condition of approval that the property owner must reside in the principal residence of 429 Buell in order to maintain an apartment unit on the property. The Division of Neighborhood Services inspected the property in August 2021 and has no concerns with the continuation of the existing apartment unit at this location. Since the principal house is owner-occupied, the apartment unit will not be enrolled at this time in the City's Rental

Inspection Program under the program's current enrollment requirements.

ZONING BOARD OF APPEALS PUBLIC HEARING:

The Zoning Board of Appeals held a public hearing on this matter at their August 19, 2021 meeting. Mr. Kamar Tiller, property owner, represented the petition. A discussion regarding the zoning history of the property and history of the accessory dwelling unit took place. Mr. Barry McCue spoke in opposition to this petition on behalf of the Cathedral Area Preservation Association. No one else appeared in opposition to or in support of the petition. Staff did not receive any written public comments regarding this petition. Meeting minutes are attached.

RECOMMENDATION OF THE ZONING BOARD OF APPEALS:

Jim Riggs moved that the Zoning Board of Appeals recommend the City Council approve the Variation of Use request to allow the continuation of a rental unit in a garage at 426 Division Street (on the property of 429 Buell Avenue), subject to the following conditions:

1. That a minimum of two off-street parking spaces shall remain in the future;
2. That use of the property shall not be expanded in the future;
3. That the property shall meet the City's water meter and valve requirements, which may require a separate water service external shut-off valve and meter for each unit;
4. That the owner of record must reside in the principal house at 429 Buell Avenue for a minimum of six months of each calendar year in order for the accessory apartment unit to remain and be rented out. Should the owner of record not reside in the principal house at 429 Buell Avenue for a minimum of six months of each calendar year, the Variation of Use for the apartment unit at 426 Division Street shall be automatically revoked;
5. Should the property be declared a public nuisance by the City Council, the Variation of Use shall be automatically revoked.

Brigette Roehr seconded the motion, which passed with four (4) aye votes. Voting aye were: Hennessy, Riggs, Roehr and McShane. Voting nay was Colette Safford.

RECOMMENDATION:

The Administration concurs with the Zoning Board of Appeals and recommends the Mayor and City Council approve the Variation of Use request to allow the continuation of a rental unit above a garage at 426 Division Street (on the property of 429 Buell Avenue) subject to the above conditions.