

**ZONING COMMITTEE
RECOMMENDATION
April 25, 2007**

Rezoning Petition No. 2007-002

Property Owner: Various

Petitioner: Charlotte Mecklenburg Planning Commission

Location: **Area A:** Both sides of Brookside Avenue generally between Park Road and Springdale Avenue.

Area B: Both sides of Park Road, generally between Magnolia Avenue and ideal Way.

Request: R-22 MF, multi-family residential to R-8, single family residential

Action: The Zoning Committee vote resulted in a 3-3 tie which by their rules results with no recommendation and a **ONE-MONTH DEFERRAL**.

Vote: Yeas: Chiu, Randolph, and Simmons

Nays: Carter, Ratcliffe, and Sheild

Absent: Loflin

Summary of Petition

This petition proposes to rezone approximately 50 parcels from R-22 MF to R-8 as a part of the implementation of the *Dilworth Streetscape and Land Use Plan* adopted in June of last year.

Background

The *Dilworth Streetscape and Land Use Plan* indicates the R-22 MF zoning allows higher density than the R-4 recommended in the 1993 *Central District Plan*. The higher density is intended to allow flexibility for preservation of existing structures or redevelopment. However, this may be achieved in a manner more compatible with the surrounding single-family homes with the proposed R-8 district. Within the R-8 duplex, triplex and quadraplex units are permitted if all development standards are met.

There are two quadraplex units and ten duplex units in Area A and six quadraplex units in Area B. All of the quadraplex units are currently non-conforming in terms of lot size. These properties will remain non-conforming. No additional non-conforming will result with the approval of this petition.

Zoning Committee Discussion/Rationale

Keith reviewed the petition noting that it is a corrective rezoning that is part of the *Dilworth Streetscape and Land Use Plan*. The area is broken into two sites: area “A” and area “B.” Staff is asking to remove the four lots in area “B” at the corner of Magnolia and Park. The property owners will be filing a petition to rezone to R-22 MF (CD) restricting the redevelopment of the triplexes. Staff also talked to Mr. Bahmanyar concerning his property at the northwest corner of Springdale and Brookside, also being a portion of area “A.” He is in the building permitting process and has been working on it since 2004. Some work has been done on the site and he has engineering and driveway permits. He does not have zoning approval because a variance is required. Staff has agreed to remove his property from the rezoning. If no progress is made within one year, staff will re-file the corrective rezoning petition for R-8 zoning. The attached map shows the area “A” parcels and the area “B” parcels, as well as the 5 parcels referenced above.

Mr. MacVean noted that staff also met with Mr. Ralph Fortune who also wants to be excluded from the rezoning. His lot is currently zoned R-22 MF and is located at 2029 Springdale Avenue also being a portion of area “A.” He does not have any specific plans for his property at this time.

The Commissioners discussed the notification process of the plan amendment and the corrective rezonings. Several Commissioners noted the issue that continues to come up on corrective rezonings is when multiple properties are assembled in a manner such that the owner of one property cannot file a valid protest petition. Mr. MacVean stated that the rezoning areas were broken into two areas so that it would be easier for a valid protest petition to be submitted. One Commissioner asked why Mr. Fortune’s property could not be broken out so he can file a valid protest. Mr. MacVean stated that it would require staff to file a new petition for that property alone and that is not our typical direction as with 50 properties, there would be 50 rezoning applications. One Commissioner stated that he believed each property owner should be allowed to have a separate petition on their property so that that property owner can file a protest petition and require the higher number of votes on City Council. Another Commissioner noted that the state statute that amended the protest petition provision did not permit every property owner to be able to file a protest petition.

A discussion ensued concerning the process related to corrective rezonings. One Commissioner noted that his concern related to treating everyone the same and with fairness. What makes Mr. Fortune’s property different such that staff is not willing to withdraw his property from the rezoning? Is it something he did or failed to do that makes his situation different from the other two? Mr. MacVean responded that staff and the four-quadruplex property owners have come to an agreement on a conditional rezoning request. Mr. Bahmanyar has expended a great deal of time and effort in the building permitting process. Mr. Fortune is not in the building permitting process and when staff met with him last Friday, he did not express an interest in a conditional plan. He has a house on the property and felt that at some point in time he may have an interest in redeveloping the property. Mr. MacVean stated that Mr. Fortune said he just wanted to be removed from the petition. One Commissioner asked if it was “too little, too late” and whether the meeting between Mr. Fortune and staff was five days ago. Mr. MacVean responded that it was.

Another Commissioner stated that he felt that for Mr. Fortune, who owned the property across the Brookside Street from Mr. Bahmanyar, things have fundamentally changed and there is now a piece of property that will not be under the same circumstances as was assumed it would be during the area plan process. That Commissioner felt that Mr. Fortune should have a chance to respond to that change. Another Commissioner asked when the *Dilworth Streetscape and Land Use Plan* was adopted and staff responded June 2006 and discussed the zoning in the immediate area surrounding the subject properties. One Commissioner noted that if this far into the process someone comes to staff the Friday before the Zoning Committee meeting and say “I am not real crazy about this and I would like to pull my property out” without having more substantive plans then she (the Commissioner) is comfortable with the position staff has taken not remove the property, since that Commissioner felt that the property owner had ample notice and opportunity to provide his input.

Statement of Consistency

Upon a motion made by Carter and seconded by Sheild the Zoning Committee unanimously found this petition to be consistent with the *Dilworth Streetscape and Land Use Plan*.

Vote

Upon a motion made by Simmons and seconded by Randolph to recommend approval of this petition with the modifications noted by staff (to withdraw the 4 parcels to be re-zoned in future, as well as Mr. Bahmanyar’s property, but not to withdraw Mr. Fortune’s property).

A substitute motion was made by Ratcliffe and seconded by Sheild to recommend approval of this petition with the modifications noted by staff and to add the removal of Ralph Fortunes property.

The Commissioners discussed the substitute motion. One Commissioner stated that he believed that any one property owner should have the right to file a protest petition with respect to his property. The fact that state law does not provide for that option and that the city can bundle multiple properties together do not make this outcome right. The Commissioner felt that Mr. Fortune should have the right to file a protest petition for his property and to present arguments before the City Council why he does not want his property downzoned.

Another Commissioner stated that if Mr. Bahmanyar’s property is removed then the petition has been changed for the adjoining properties and they do not have the public opportunity to speak out. Does that mean that the person that was not heard from - next to Mr. Fortune - should also be given an opportunity to be heard because the request has changed and they may have R-22MF next to them? Two Commissioners noted by that rationale, every owner of property beside Mr. Bahmanyar’s should have the right to pull their properties, and then every owner of property beside anyone who pulled their properties would be able to do so. When does that end? That would mean that staff would practically have to file 50 separate petitions. One Commissioner noted that she was comfortable that the staff attempted to organize the parcels in a way that made sense without trying to make the filing of protest petitions too difficult. She felt that the staff had tried in good faith to make an appropriate balance. Another Commissioner noted that staff has not heard from the other owners but did hear from Mr. Fortune and that cannot be disregarded.

Another Commissioner stated that Mr. Fortune had plenty of opportunities to discuss his property but did not do so until last Friday. Staff pointed out that another difference is that the other four lots have quadplexes which will be legally non-conforming, as where Mr. Fortune has a single-family home that blends in with the neighborhood and his redevelopment will be out of character.

Upon a call for the question, the Zoning Committee voted on the substitute motion. The vote resulted in a 3-3 tie. The Zoning Committee then voted on the original motion which also resulted in a 3-3 tie. As per the Zoning Committee's rules of procedure, this petition will be reconsidered at the May Zoning Committee meeting.

Staff Opinion

Staff recommends approval of the petition with the removal of the four properties at the northwest corner of Magnolia and Park because those property owners plan to submit a conditional rezoning petition. The properties are currently developed with four attached dwelling units on each lot. The existing structures do not meet the yard requirements of the existing R-22 MF zoning district. In rezoning the properties to R-22 MF (CD) and limiting the uses to a maximum of three attached units per lot, the yard requirements of the R-22 MF district will be met. In addition, the property owners will be assured of the redevelopment potential of the properties and the neighborhood will see a reduction in the number of units.

Staff also recommends approval of the petition with the removal of Mr. Bahmanyar's property because Mr. Bahmanyar has been working with City staff since 2004, has received engineering and driveway permits, and is working on obtaining zoning approval. In addition, some site work has been completed and approved.

Staff does not recommend the removal of Mr. Fortune's property as he does not have definite plans for development and is not in the building permitting process.

Since more than 30-days have passed since the public hearing on this petition, City Council can vote on this petition if so desired.