

**ZONING COMMITTEE
RECOMMENDATION
October 24, 2007**

Rezoning Petition No. 2007-122

Property Owner:	Three of Diamonds, LLC
Petitioner:	Scott & Lisa Yarbrough and Walt & Helen Peery
Location:	Approximately .46 acres located on the north side of Hermitage Court between Hermitage Road and Providence Road.
Center, Corridor or Wedge:	Wedge
Request:	R-22 MF (HD-O), multi-family residential to R-5 (HD-O), single family residential within the Hermitage Court Historic District
Action:	The Zoning Committee unanimously recommended DENIAL of this petition.
Vote:	Yeas: Howard, Johnson, Lipton, Loflin, Randolph, Rosenburgh, and Sheild
	Nays: None
	Absent: None

Summary of Petition

This petition proposes to rezone approximately .46 acres from R-22 MF to R-5 in order to provide zoning consistency within the Hermitage Court Historic District. This is a conventional, third party rezoning request. The existing multi-family structure on the property will become non-conforming as a result of this petition.

Zoning Committee Discussion/Rationale

Keith MacVean reviewed the petition noting that it is a conventional third party down zoning. A quadraplex is located on the property and the current zoning allows up to ten units on the site. The request is consistent with the Central District Plan which recognizes the single-family character of the neighborhood. Hermitage Court was established as a historic district in 2006 and a rezoning was denied on the northwest corner of the intersection of Hermitage and Providence. Historically, much of the area was zoned multi-family but developed for single family. Over time, corrective rezonings have occurred to match the land use and the zoning. The subject property has never been developed as single family and is part of the reason it is still zoned

multi-family. The property owner and the petitioners have been meeting to see if they could come to a compromise. Apparently, negotiations broke down over the rear yard setback. The petitioners wanted a 45-foot rear yard and the property owner wanted a 35-foot rear yard.

Mr. MacVean clarified the following points for the Committee:

- The current zoning is R-5.
- The landowner offered a compromise that the property be rezoned to R-12 MF with deed restrictions that would restrict the site to a quadraplex, observe the 40-foot setback 15-foot side yards, 35-foot rear yard and 40-foot height.
- The property across the street is zoned R-6 MF (CD) and is restricted to the four units currently located on it.
- If the property is zoned R-5, the existing quadraplex will become a non-conforming use.
- The City Council's policy is to avoid, through the corrective rezoning process, creating as many non-conforming situations as possible.
- Staff has worked with both the petitioner and the property owner.
- Staff is supportive of a compromise to R-12 MF (CD) but has not talked to the petitioner about it. A compromise would eliminate the non-conformance issues, however, it would be inconsistent with the Central District Plan but more consistent than the current R-22 MF zoning.
- The height limitation in R-5 is 40-feet with height increases permitted in proportion with an increase in the side setbacks. The maximum height is based on the size of the property.
- The property owners to the east and west of the property are part of the main applicants. Staff has not heard from the people to the north on Dartmouth.
- City Council has the option to rezone the property to anything between R-5 and R-22 MF. They cannot impose conditions on the property without the property owner submitting a conditional application and going through a new public hearing.
- The property can be rezoned to R-12 MF and deed restrictions entered with the adjacent property owners. However, the deed restrictions have to be enforced by the adjacent property owners and not the city.
- The Zoning Committee can recommend a zoning category and recommend additional restrictions. The two mechanisms to enforce the restrictions are through conditional zoning or deed restrictions.
- Any development on the site must go through Historic District approval which will look at the mass and scale of the development. There is no prohibition from a zoning perspective on the size of the structure.

The Zoning Committee suspended the rules to ask the applicants the following questions:

- Question: Would a deferral allow the neighborhood and the property owner to come to a compromise? Dick Stever spoke for the applicant and said that there is a possibility that they will meet with the property owner next week. A compromise may come out of that meeting and they will put that in front of the City Council. He stated that he did not think that should interfere with the Zoning Committee's decision and that they should go ahead and make their decision.

The Zoning Committee suspended the rules to ask the property owner the following questions:

- Question: The property owner indicated he found out about the rezoning through the Business Journal. Was the property owner notified of the rezoning? Bailey Patrick, representing the property owners, stated that there are several owners of the property and the notice went to one of the owners. He failed to forward the notice to the other owners. So technically the owners were notified.
- Question: What would you like to see different from where we are now? Mr. Patrick replied that they had not been successful negotiation with the petitioners. They made a proposal and the offer is still open. The owners agree that R-22 MF is not appropriate but the Zoning Ordinance does not have a category less than R-12 MF that would not create a nonconforming use. The only thing that was outstanding in the negotiations was the rear yard setback. If the Zoning Committee would recommend R-12 MF and the neighborhood accepts the property owner's proposal they are willing to put deed restrictions on the property to limit the height to 40-feet and the number of units to four (4).

Statement of Consistency

Upon a motion made by Commissioner Rosenburgh and seconded by Commissioner Sheild the Zoning Committee unanimously found this petition to be consistent with the Central District Plan but not reasonable and in the public interest in terms of City Council's policy on the creation of nonconforming uses.

The Committee discussed the type of recommendation they can send to City Council and on what the Council can vote. Staff explained that the Committee can recommend R-12 MF and conditions, however, the Council cannot impose the conditions, but they can take them into consideration. The discussion continued. Staff was again asked for clarification. Mr. MacVean stated that the Zoning Committee can make a recommendation and state the specific items they feel should be a part of it. The City Council does not have a mechanism to impose the conditions; they have to vote the petition up or down. It does send a signal to Council that says here is what the Zoning Committee felt and if there is a way to get to that point through the deed restrictions or a conditional plan then the Council knows that is your direction. It quantifies how the Zoning Committee felt and under what circumstances the recommendation was made.

The rules were suspended to ask the petitioners and the property owners if a recommendation for R-12 MF with conditions were made, would it facilitate the negotiation process between them. Mr. Stever said that he could not speak for the adjacent property owners but that it makes sense for the Committee to make some recommendations as opposed to voting it up or down. The Committee voted a year ago to recommend denial of the rezoning at Providence and Hermitage and the Council upheld that denial. If the Committee is going to make a recommendation, then do so and the adjoining neighbors will respond accordingly.

Bailey Patrick said that if the Zoning Committee votes R-12 MF today, the property owners will still agree to a 40-foot height, 35-foot rear yard 15-foot side yards, and 4 units through deed restrictions. They will not pull everything off the table.

Vote

Upon a motion made by Commissioner Rosenburgh and seconded by Commissioner Randolph the Zoning Committee voted unanimously to recommend DENIAL of this petition.

The Zoning Committee discussed adding a motion or statement of explanation. It was decided not to do so and allow the petitioner and the property owner to continue to work to resolve the issues prior to the City Council decision.

Staff Opinion

Staff agrees that a change to the R-12 MF zoning would be more consistent with the Central District Plan than the current R-22 MF zoning. This would also avoid creating a non-conforming use and protect the adjoining property owners from a 10-unit building. The existing quadraplex is part of the neighborhood and allowing a new quadraplex to be built in the future, subject to HDC approval, would not be inconsistent with the established pattern of the street.