

Department of Permitting & Inspections

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TO: Development Review Board
FROM: Scott Gustin
DATE: June 15, 2021
RE: 21-0922LL; 68-70 Conger Avenue
21-0923LL; 78-80 Harrison Avenue

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL-W Ward: 5S

Owner/Appellant: Michele Bushey

Request: Appeals of administrative zoning denials of lot line adjustment between two properties (68-70 Conger Ave and 78-80 Harrison Ave).

Overview:

The applicants are seeking approval of a boundary line adjustment between two properties under the same ownership. As two properties are involved in the boundary line adjustment two applications are entailed. Both were denied and both have been appealed. Given the necessary relationship between the two properties for the requested boundary line adjustment, this appeal handles them concurrently.

Recommendation: Uphold administrative zoning denial based on the following findings:

I. Findings:

The two properties are located in the Lakeside neighborhood and share a mutual boundary along their side and rear. Both properties are developed with homes. Interestingly, a detached garage was approved for 68-70 Conger Ave in 1981 but was constructed on the 78-80 Harrison Ave property. The applications note that both properties were under shared ownership even then. The zoning permit for the garage pre-dated the requirement for follow up inspection and a certificate of occupancy. The owners are looking to sell the properties and want to adjust the shared boundary so that the garage is included in the Conger Ave property and not the Harrison Ave property. Adjusting boundary lines in established neighborhoods such as this one is often complicated. The requested boundary line adjustment in this case is no exception.

The zoning applications for the requested boundary line adjustment were filed April 21, 2021 following several consultations between zoning staff and the applicants. Both properties are nonconforming as to lot size at less than 6,000 sf. The minimum lot size for single family homes in this RL-W district is 6,000 sf, and the minimum lot size for duplexes is 10,000 sf. Both homes appear to be duplexes. Both properties are also nonconforming as to lot coverage, as both exceed

the 35% standard lot coverage limit. Any lot line adjustment would need to avoid increasing any nonconformity. Anything other than an even swap could not be permitted. As proposed, nonconformities as to lot size and lot coverage would increase on the Harrison Avenue property. As a result, the zoning applications were denied April 28, 2021 for the following reasons:

78-80 Harrison Avenue (21-0923LL):

1. This property is presently nonconforming as to lot size (5,760 sf whereas 6,000 is the minimum lot size in the W-RL zone, wherein the property is located). The proposed lot line adjustment would make the lot even smaller (4,959 sf). The lot line adjustment would increase the degree of nonconformity.
2. Lot coverage data is not specified in the survey plat; however, current LIDAR data indicates ~3,173 sf lot coverage (55.1%). Up to 35% lot coverage is allowed in the W-RL zone. An additional 10% lot coverage is allowed for open air amenities such as walkways and open porches. This property is nonconforming as to lot coverage. The lot line adjustment would increase the degree of nonconformity with a resultant lot coverage of 64%.
3. Sec. 5.3.6, *Nonconforming Lots*, prohibits alterations to a nonconforming lot if the dimensional requirements and standards of the underlying zoning district are not met. As noted above, dimensional requirements and standards as to minimum lot size and lot coverage will not be met. As a result, the zoning application cannot be approved.

68-70 Conger Avenue (21-0922LL):

1. This property is presently nonconforming as to lot size (5,150 sf whereas 6,000 is the minimum lot size in the W-RL zone, wherein the property is located). The proposed lot line adjustment would make the lot larger (5,950 sf) and less nonconforming. However, the lot line adjustment would make the other property involved in this lot line adjustment (78-80 Harrison Ave) smaller and more nonconforming than it already is (see zoning denial 21-0923LL).
2. Lot coverage data is not specified in the survey plat; however, current LIDAR data indicates ~2,757 sf lot coverage (53.5%). Up to 35% lot coverage is allowed in the W-RL zone. An additional 10% lot coverage is allowed for open air amenities such as walkways and open porches. The lot line adjustment would decrease the percentage of lot coverage (46.3%) and lessen the degree of nonconformity. However, the lot line adjustment would make the other property involved in this lot line adjustment (78-80 Harrison Ave) smaller and increase the degree of its nonconforming lot coverage (see zoning denial 21-0923LL).
3. Sec. 5.3.6, *Nonconforming Lots*, prohibits alterations to a nonconforming lot if the dimensional requirements and standards of the underlying zoning district are not met. As noted above, this lot line adjustment will necessitate increases in the degree of nonconformity as to dimensional requirements and standards for the other property (78-80 Harrison Ave). As a result, the zoning application cannot be approved.

Essentially, the proposed lot line adjustment increases the degree of nonconforming lot size and lot coverage on the Harrison Avenue property. As the adjustment on one lot necessarily affects the other lot, the two lot line adjustment applications were denied.

Appeals of these two zoning denials were filed May 5, 2021, within the 15-day appeal period. The appeals request that the boundary line adjustment be approved and refer to Sec. 5.2.1, *Existing Small Lots* as the basis for approving a substandard lot size.

Sec. 5.2.1, *Existing Small Lots*, is a provision based in state statute that enables development of existing lots (as of April 26, 1973) that are smaller than the required minimum size, provided they are at least 4,000 sf and have a minimum width and depth dimension of 40.’ The two lots at issue here are both “existing small lots” – that is, they are both less than the required minimum lot size (but more than 4,000 sf with sufficient width and depth) and pre-date April 26, 1973. As existing small lots, they may be developed for the purposes permitted in the RL-W zone. In other words, they may be developed / redeveloped for residential use subject to standards applicable in the RL-W zone. Only the standard minimum lot size does not apply. Sec. 5.2.1 does not enable further reduction in lot size for existing small lots. Such would be the case for the Harrison Ave property if the proposed boundary line adjustment were to be approved.

The proposed lot line adjustment results in increased degree of nonconformity as to lot size and lot coverage. Sec. 5.2.1, *Existing Small Lots*, enables development of substandard lots but does not enable further reduction in size for such lots. The proposed lot line adjustments cannot be approved.

II. Recommended Motion:

Uphold the zoning application denials of 21-0922LL & 21-0923LL.