



## **ADDENDUM - Report to the Plan Commission**

10/19/2009

**Legistar I.D. #13256 & #13259**

**430 S. Thornton Avenue & 1144-48 Jenifer Street**

**Building Relocation & (PUD) Zoning Map Amendment**

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At its meeting of June 1, 2009, the Plan Commission referred this item in order for the applicant to provide a solar impact study and to meet with the neighborhood association to present and discuss the most current version of the plans. The applicant has completed these tasks and has also received initial Urban Design Commission approval for the revised plans. The plans are substantially similar to those previously provided to the Plan Commission. The changes are noted below, under the "Urban Design Commission Meeting" heading.

As a clarification, there are two separate rezoning proposals before the Plan Commission. The balance of this Addendum primarily pertains to the proposal for 430 South Thornton Avenue. The rezoning request for 1144-1148 Jenifer Street would allow the house at 430 South Thornton Avenue to be relocated to the Jenifer Street location. Please see the original Report to the Plan Commission (attached) for additional project information.

### **Solar Impact Study**

The attached "solar impact study" was provided to staff on August 10, 2009. This study was commissioned by the applicant at the direction of the Plan Commission in response to concerns raised by the home owner at 421 Cantwell Court. In summary, that neighbor raised concerns regarding the height of the proposed facility and its potential impacts on his existing solar energy systems.

This study concludes that the potential shading from the proposed building on the solar systems on 421 Cantwell Court is "not significant." That study notes this property is already "slightly constricted" and identifies several other factors that impact the solar systems in question. These include existing vegetation, southeastern (not southern) orientation of the solar panels, and the fact that panels are installed flat onto the roof's surface.

The Assistant City Attorney previously noted that disputes regarding the potential compromising of solar systems must be resolved between the property owners. She indicated that it was not appropriate for the Commission to place conditions on the rezoning regarding the solar systems.

### **Neighborhood Meeting**

The applicant participated in a neighborhood meeting on September 8, 2009. At that meeting, the applicant presented the revised plans and answered questions from those in attendance. Items discussed at the meeting included the lack of progress on the ongoing renovations, maintenance of those properties, status of City building code enforcement, status of project financing, and questions related to the design of the proposed building.

### **Urban Design Commission Meeting**

The applicant received initial approval of the revised plans for both project sites on September 16, 2009. The reports of the Urban Design Commission are attached. These revisions included reconfiguring the garage to limit exposure on the side and front yards and narrowing the building by two feet to allow more space between the existing and new building on the project site. The Jenifer Street site plan has been revised to shorten the driveway and eliminate an off-site parking stall.

## **Ongoing Considerations**

### Scale, Mass, and Character of the Proposed Building

Building scale, mass, and character are key considerations in both the PUD approval criteria and the Comprehensive Plan's recommendation for multi-family buildings in this area. In the previous staff report, (attached) the Planning Division concluded these proposals potentially met the applicable review standards, though questions were raised regarding the compatibility of the proposed building's bulk and mass with the surrounding area. Many of these questions remain. While the UDC has granted initial approval, the vote was not unanimous and individual member comments vary significantly. Comments provided by the neighborhood association board and nearby residents reflect a variety of opinions on the scale and mass of the proposed building. Planning Division staff believes the existing two-unit building at 430 South Thornton Avenue provides more appropriate transition between the larger Jenifer Street-facing buildings and the smaller single-family residences to the north on Cantwell Court when compared to the proposed structure.

### Building Inspection Orders

The three buildings facing Jenifer Street continue to be vacant, and renovations started remain unfinished. Multiple orders from City Building Inspection have been issued. Due to lack of compliance with some of the orders, these cases were referred to the City Attorney's office. Hearings for these items are ongoing. Building Inspection staff inspected the properties on October 15, 2009, noting that the violations had not been successfully addressed.

### Proof of Financing and Project Implementation

Proof of financing remains a significant question on this proposal, especially considering the unresolved Building Inspection orders and that little visible progress has been made towards the completion of the aforementioned renovations.

Section 28.07(6)(g)3 of the zoning ordinance states, in part, that the specific implementation plan shall include supporting documentation, including proof of financing capability. The Commission has approved Specific Implementation Plans, for many approvals, conditioned upon proof of financing being provided. Such a condition was recommended in the original staff report on this project.

Staff have significant questions about the ability of the applicant to secure financing to complete the unfinished renovations and to successfully complete the larger redevelopment project, if approved. To address these questions, staff requested that further financing information be provided prior to the Plan Commission meeting, though at the time of report writing, nothing has been received. Some members of the Commission raised similar concerns during the previous deliberations on this proposal.

The proof of financing requirement is closely linked to the applicant's ability to implement the proposals. Section 28.07(6)(f)4 provides the standard related to implementation stating that planned unit developments "shall include suitable assurances that each phase could be completed in a manner which would not result in an adverse effect upon the community, should the project terminate at that point." The applicant's ability to meet this standard remains a critical question for staff. As noted above, many of the building orders have yet to be resolved.

From a land use approvals standpoint, the renovations begun could be finished without approval of this rezoning. Planning Division staff previously recommended a condition requiring that the exterior renovations (complete with siding, doors, and windows) be completed and that the site seeding and

grading occur prior to the applicant completing and recording this PUD. Under that condition, the applicant would not be able to relocate the house and start new construction until such a time as that those exterior improvements are made. The Urban Design Commission has since recommended a more restrictive condition requiring the Jenifer-Street facing buildings obtain occupancy permits prior to relocation of the home at 430 Cantwell Court. While progress could have been made toward completing the renovations, it appears little progress has occurred.

## **Conclusion**

The Plan Commission previously referred this item to allow the applicant to provide a solar impact study and to meet with the neighborhood association to present and discuss the revised plans. The applicant has completed these items.

The solar study commissioned by the applicant finds that the potential shading from the proposed building on the solar systems on 421 Cantwell Court is "not significant." The study indicates that this property is already "slightly constricted" for solar access due to existing constraints.

The applicant also participated in a neighborhood meeting and the Marquette Neighborhood Association (MNA) Board has provided a new formal response. That response, dated October 2, 2009 is attached and notes their expectations to complete the underway renovations prior to relocation of the 430 South Thornton Avenue residence and the start of construction of the proposed building.

The Urban Design Commission has granted initial approval of the revised proposals. The Landmarks Commission previously issued a certificate of appropriateness for the relocation of the existing two-unit residence onto 1144-48 Jenifer Street, a property within the Third Lake Ridge Historic District. The Landmarks Commission did not provide an opinion on the proposed building for Cantwell Court, as it is outside the historic district boundary.

Close consideration should be given to the approval standards including PUD Standard 1a ("Character and Intensity of Land Use") and PUD Standard 4 ("Implementation Schedule"). In making its recommendation to the Council, the Plan Commission would also need to find that the adoption of these rezoning proposals are in the public interest and are not solely for the interest of the applicant. This would be in addition to finding the removal (demolition) and PUD standards are met.

Staff's ongoing questions relate to implementation and design. Regarding implementation, no visible progress has been made toward completing the ongoing exterior renovations since the previous public hearing. This, considered with the continued non-compliance (according to the Building Inspection Division) with building inspection notices, heightens implementation concerns. The Marquette Neighborhood Association Board and the UDC have both recommended any approval be subject to more restrictive phasing requirements. While these recommendations could be provided as a condition of approval, questions remain as to whether the implementation standard can be met at this time.

Considering the design of this project, the revised plans for Thornton Avenue better reflect the scale of the surrounding area, compared to the original plans, though staff believes that the existing two-unit building still provides a more appropriately-scaled transition between the larger buildings facing Jenifer Street and the smaller single-family residences to the north. Staff believe it may be possible for the Plan Commission to find the proposed building meets the standards regarding compatibility with existing scale given the recommendation from the Urban Design Commission.

At this time, the Planning Division cannot definitively conclude that the standards for demolitions, zoning map amendments, and planned unit developments are met. Should the Commission concur,

staff would support a recommendation to **place these requests on file without prejudice**. The continued existence of the outstanding orders on the property and continuing questions about the ability to complete the implementation of the project once approved are major concerns. This recommendation would allow the applicant to return with new rezoning applications upon completion of the renovations of the buildings facing Jenifer Street. Staff prefer this alternative to approving the project with the many previously-recommended conditions, including those related to phasing, implementation, and financing. Should the Commission not be able to find the compatibility and character standards are met, then staff would recommend this item be placed on file.