



City of Tucson
Planning &
Development
Services

March 14, 2011

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Subject: ZA Determination – Consolidated Complaint of Violation/Request for Determination – Goodman Group Dwelling Development

Ladies and Gentlemen:

This is a Zoning Administrator's determination regarding the use of single-family dwellings in the R-1 zone.

Procedural History

On January 18, 2011, Ms. Minnette Burges, representing the Jefferson Park Neighborhood Association and Robert Schlanger and Joan C. Hall (hereafter referred to as Jefferson Park), filed a Complaint of Violation/Request for Determination, ('the Complaint') in part requesting a Zoning Administrator determination as to zoning compliance of the Goodman Group Dwelling Development (hereafter referred to as Goodman Development) in the Jefferson Park Neighborhood. The Goodman Development, as set forth in the Complaint, is not a single developed property but consists of thirteen (13) separately addressed properties. The various properties referenced in the Complaint include two groups of property: (1) those redeveloped and occupied, which include: 1100 E. Grant Road, 1250 E. Grant Road, 1740 N. Mountain, 1729 E. Edison, 1231 E. Hampton and (2) those that are not redeveloped and occupied and are under construction, vacant with building permit issued, vacant with no pending building permit, or subject to demolition which include: 1018 E. Lester, 1036 E. Waverly, 1431 E. Edison, 1615 E. Hampton, 1727 E. Edison, 1621 E. Hampton, 1702 E. Edison and 1708 E. Edison. Specifically, Jefferson Park alleges that the Goodman Development in the Jefferson Park Neighborhood does not comply

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with the R-1 zoning regulations pursuant to the City of Tucson Land Use Code (LUC) for single-family residential development because it is used for purposes not permitted under the R-1 zoning regulations.

Authority for Determination

Interpretations, as requested here, are issued pursuant to Section 1.2.1 of the Tucson Land Use Code which provides:

“Where questions occur concerning the content or application of the Land Use Code (LUC), the Zoning Administrator shall render a final decision and interpretation on the matter in accordance with the Zoning Compliance Review Procedure, Sec. 23A-31. In making a determination, the Zoning Administrator shall rely on the purpose of the section in question. Zoning Administrator interpretations can be appealed through a Board of Adjustment Appeal Procedure, Sec. 23A-61. Appeals must be filed within thirty (30) days of the date of decision. The Board of Adjustment, under extenuating circumstances, may extend the thirty (30) day appeal period.”¹

Particularly significant is the requirement that *“In making a determination, the Zoning Administrator shall rely on the purpose of the section in question.”*

The use challenged in this case is commonly called a “student mini-dorm”. As that name implies, the use does not easily fall within either the traditional definition of a single family residence or that of a dormitory.

The LUC does not attempt to address or define every possible use of properties within the City. The LUC is a general document that relies on common uses, as well as common current and past practices and specifically addresses that issue in Section 6.3.2.3 of the Tucson Land Use Code which provides:

“Where a specific use does not conform to the wording of any Land Use Class description or conforms to the wording of two (2) or more Land Use Class descriptions, the Zoning Administrator determines the most appropriate Land Use Class for that use. Such a determination is an administrative decision.”²

The task here is to make that determination regarding the Goodman Development.

Uses established in the LUC are defined based upon historical information, common sense and community. The LUC relies upon interpretation of such uses by the

¹ City of Tucson Land Use Code § 1.2.1

² City of Tucson Land Use Code § 6.3.2.3

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Zoning Administrator. The Zoning Administrator utilizes a combination of general knowledge, experience, education and the established purposes of the LUC to render an interpretation of uses that may not be well defined or not contemplated by the LUC. An appeal process is also provided by which those interpretations may be challenged. This is a long standing, common process utilized by many, if not most, zoning authorities.

Procedure

I have provided all documentation presented by Jefferson Park to Goodman Development in order to provide notice of the Complaint and allow Goodman Development to submit additional documentation and any response to the allegations in the Complaint. I received a response from Goodman Development which in turn was provided to Jefferson Park who then further responded. Additional information and documentation was collected from numerous sources and research conducted concerning commonly acceptable practices and definitions related to the Complaint. Both parties are represented by attorneys and I have consulted with the City Attorney's Office. Both parties have been given the opportunity to submit all possible information they have related to this issue.

It should be noted that the two groups of property are treated differently in this determination. The complaint addresses how the redeveloped buildings in the first group are in fact used. For the second group that has not been redeveloped and used, there cannot be a determination as to the prospective use of those properties. Determination of whether a particular structure complies with zoning and building codes is solely determined by the plans submitted and approved by the City and not by any possible or likely future use. It is presumed that the structure will be used in conformance with City zoning regulations. Under current building and land use regulations adopted by the Mayor and Council, the buildings are in full compliance with the rules and regulations. Therefore, this determination will address only the use of the first group of properties.

As required by the Land Use Code, particular reliance is placed on the purpose statement of the R-1 zone and additionally common practices and prior Zoning Administrator determinations previously issued and relied upon as well as the knowledge and experience gained through approximately thirty (30) years as a professional land use planner.

The relevant purpose statement for the R-1 zone provides:

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*"Purpose. This zone provides for urban, low density, single-family, residential development, together with schools, parks, and other public services necessary for a satisfactory urban residential environment."*³

Current and historical permitted uses in the R-1 zone include single-family residential, cultural, educational, religious, limited residential care facilities and neighborhood recreational uses. Multi-family development (duplexes, triplexes, etc.), apartments, fraternities, sororities, dormitories, hotels, motels, and other similar uses have not been allowed.

Relevant Facts

The facts of the case, as presented by the parties and determined through investigation, are summarized as follows. The Goodman Development properties are constructed and/or occupied multi-bedroom, multi-bath dwellings with a single common cooking facility. The properties are designed and marketed specifically for college students but not entirely occupied by, college students. The properties identified in the complaint are all located in the R-1 residential zone, previously identified as an urban, low density, single-family, residential development area. In some instances Goodman Developments may share common recreational facilities such as a swimming pool and/or activity area as well as common parking areas for separately addressed properties. The units are leased almost exclusively to college students, most of whom are presumably unrelated but for their attendance at a University. The lessees are granted exclusive use of a specific area of the dwelling, typically a bedroom suite with bath and closet, with joint access to the limited common areas (described as common kitchens, living rooms, porches, and limited balconies within the dwelling). Each bedroom suite is secured separately by individually keyed locks preventing entry from the common areas of the property by other tenants. Each tenant is required to sign a master lease. The lease requires that each tenant provide a co-signature from a parent or guardian and a security deposit. The financial obligation of each tenant is established based on a pro rata share of the total rental cost of the premises. Lease payments are made directly to the leasing agency by individual tenants. In most cases, a tenant is not responsible for payment of the entire rental fee each month, as based on the number of bedrooms or tenants within the entire dwelling. So long as the entire rental payment is received, an individual tenant is generally only obligated for his/her pro rata share of rent based upon his occupancy, but has no financial obligation for the unleased portion of the dwelling unit. Additional fees for items such as trash disposal and water are the

³ City of Tucson Land Use Code § 2.3.4.1

responsibility of each tenant on a pro rata basis. Individual tenants have the right, with permission of the landlord, to sublet or assign their portion of the dwelling.

Individual tenants have no right to use of 100 percent of the property, or to the use of any portion of the property exclusively occupied by another tenant. The possibility exists that one individual might lease the entire dwelling and then sub-lease rooms within the dwelling. However, there is customarily no single person or entity, other than the leasing agency, that is responsible for the entire dwelling unit. In common parlance, there is no 'head of household'.

The purpose statement for the R-1 zone provides for urban, low density, single-family, residential development. A key element in this purpose statement is the term "single-family". The question is whether a dwelling unit inhabited by a group of unrelated individuals with no 'head of household', where tenants have no legal ability to the use of the entire dwelling, no financial responsibility for the entire dwelling, and no legal, social or moral commitment to any other tenant occupying the dwelling considered a "single-family"?

In formulating this interpretation the following definitions have been used to identify common characteristics of a Single Family Residential Dwelling:

Family Dwelling: *"the occupancy (habitation) of a permanent structure or structures on a lot or parcel by one (1) or more individuals holding the dwelling unit under common property rights, living together as a single household, and using common cooking facilities."*⁴

Common property: *"...real property owned or occupied by 'tenants in common' who each have an 'undivided interest' in the entire property."*⁵

Household: *"a family living together in a dwelling unit, with common access to, and use of, all living, eating, kitchen, and storage areas within the dwelling unit."*⁶

Family": *"any number of individuals customarily living together as a single household and using common cooking facilities."*⁷

⁴ City of Tucson Land Use Code § 6.3.8.2.

⁵ Black's Law Dictionary (9th Ed. 2009)

⁶ City of Tucson Land Use Code § 6.2.8.

⁷ City of Tucson Land Use Code § 6.2.6.

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Customarily: "...usually, regularly, habitually, according to the custom, general practice, or usual order of things."⁸

Using these definitions, considering the express and implied intent of the LUC, land usage in the City of Tucson, and being informed by common sense the following factors are characteristic of a "single-family" residential dwelling:

- a. It is typically inhabited by an individual or group of individuals that are related in a manner that constitutes a "family".
- b. It is typically purchased or rented with the intent to have some degree of permanence as opposed to a fixed time period.
- c. The lease does not require all individual tenants or family members residing in the property to sign a lease, provide co-signors and accept joint and several liability for the terms of the lease.
- d. Rent payments are received from a single entity, not individually from multiple tenants of a dwelling.
- e. Occupants of the dwelling enjoy an equal and undivided use of the entire dwelling, without the reservation of discreet, secure, bedroom suites.
- f. The dwelling has a 'head of household' responsible for the entire dwelling.
- g. Individuals tenants or family members occupying the dwelling may not sublease a pro rata portion (i.e. a bedroom) of the premises.
- h. The dwelling is not designed and marketed, primarily, as housing for college students.

In contrast to these definitions, the LUC defines a "Group Dwelling" as: "*the residential occupancy (habitation) of a permanent structure or structures by one (1) or more individuals where the individual or group of individuals has the exclusive right of occupancy of a bedroom. Typical uses include: fraternities; sororities, convents; dormitories; rooming and boarding; boarding houses, not primarily for travelers; and apartments where individual bedrooms are separately leased.*"⁹

The common characteristics of a Goodman Development property are:

- a. Dwellings are occupied by multiple college students, typically unrelated in any manner other than their desire to reside near a university which they attend. Presumably tenancy may change based upon a tenant's continued college attendance.

⁸ *Behavioral Health Agency of Central Arizona v. City of Casa Grande*, 147 Ariz. 126, 129 (Ariz. App., 1995)

⁹ City of Tucson Land Use Code § 6.3.8.3.

- b. Rent is collected or received on an individual tenant basis.
- c. Individual tenants' pro rata interest in the lease may be reassigned or sublet.
- d. Individual tenants do not have common access to all parts of the dwelling.
- e. Individual bedroom suites with bath are provided for each tenant and are secured against entry by keyed locks, thus providing for exclusive occupancy of each discreet suite by an individual tenant.
- f. There is no "head-of-household" that is responsible for, or maintains control of, the entire dwelling.
- g. Tenants do not share a common property interest in the entirety of the dwelling.
- h. Tenants residing in the dwelling do not have a relationship other than as fellow university students and living in the dwelling and do not enjoy a 'family' relationship.
- i. Tenants residing in the dwelling have chosen to associate with each other based primarily upon financial and practical advantages offered by the dwelling as opposed to any affinity for their fellow tenants.
- j. Other than pro rata rental payments, there is no indication that tenants function as a family in that they: share cooking, cleaning and maintenance responsibilities; have moral or legal responsibilities to each other or act at the direction of a 'head of household'.
- k. Various properties share amenities such as parking and a swimming pool/recreation area much as would be provided by a subdivision or multifamily housing complex.
- l. The Goodman Development properties are generally larger and have more bedrooms than typical single family residences in the area and may not be easily marketable as single family residences.

Determination

After considering all the evidence available, particularly the points set out above, it is my determination that the Goodman Development, wherein occupancy is established and characterized by the factors appearing above, does not meet the intent or purpose of the R-1 zone. It is further determined that the Goodman Development is, in fact, being operated as group dwellings and therefore is not a permitted use in the R-1 zone.

This determination can be appealed through a Board of Adjustment Appeal Procedure, Sec. 23A-61. Appeals must be filed within thirty (30) days of the date of decision. The Board of Adjustment, under extenuating circumstances, may extend

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the thirty (30) day appeal period. Board of Adjustment information and applicable fees may be obtained by contacting Russlyn Wells at the Planning and Development Services Department at 837-4948.

Sincerely,



Craig L. Gross
Deputy Director/Zoning Administrator
Planning and Development Services Department
City of Tucson

CLG/tl

c: Honorable Mayor and Council
Michael Letcher, City Manager
Richard Miranda, Deputy City Manager
Sean McBride, Assistant City Manager
Michael Rankin, Esq., City Attorney
Thomas McMahon, Esq., Assistant City Attorney
Ernie Duarte, Director, Planning and Development Services Department
Albert Elias, Director, Housing and Community Development Department