

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board

From: Ryan Morrison, CFM, Associate Planner

Date: February 21, 2017

RE: 17-0253CA; 201 South Prospect Street

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.

File: ZP17-0253CA

Location: 201 South Prospect Street

Zone: RL **Ward:** 6S

Date application accepted: January 11, 2017

Applicant/ Owner: Bing Enterprises LTD

Parking District: Neighborhood

Request: Appeal of an administrative denial to replace 2 windows with 2 egress windows.

Overview:

Under Zoning Permit 17-0253CA, the owner of 201 South Prospect Street requested to replace two windows in the building's attic with egress windows to meet life safety codes. The permit request was administratively denied because there had never been a permit to convert the attic into habitable space, and because there is insufficient parking in the shared parking area to meet the requirements for these two units, and the ten units of 205 South Prospect Street.

Note that the zoning permit application specifically states "egress" windows, whereas the appeal document refers to both ventilation and egress requirements. Note also that under the appeal, the appellant requests a 1-space parking waiver for 201 South Prospect Street. This request is outside the scope of this appeal and cannot be entertained. A request for a parking waiver must be submitted under separate zoning application to the Development Review Board.

Recommendation: Uphold zoning permit denial based on the following findings.

I. Findings:

Timeline:

- **August 29, 2016** – Application ZP17-0253CA submitted.
- **September 6, 2016** – Application ZP17-0253CA deemed complete.

- **September 13, 2016** – Additional information requested. Correspondence continued for over three months to address zoning requests.
- **December 28, 2016** – Restarted review after a final site plan was submitted.
- **December 28, 2016** – Decision of Denial for ZP17-0253CA. Below are the reasons for denial issued with ZP17-0253CA.

Reasons for Denial:

1. Section 8.1.7 Non-Conforming Residential Structure

Where additions or conversions to existing residential structures within a Neighborhood or Shared Use Parking District add living space but do not add dwelling units, and such sites do not currently meet the parking standards of Sec. 8.1.8, one (1) parking space shall be provided for each additional room. Single detached dwellings shall be exempt from this requirement.

There are no zoning permits on file to create habitable space in the attic of the 201 South Prospect Street duplex. The requested windows are intended to provide egress from this unpermitted finished space.

Table 8.1.8-1 Minimum Off-Street Parking Requirements

	Neighborhood Districts
RESIDENTIAL USES	Per Dwelling Unit except as noted
Multi-unit attached dwelling units, studio units or 1-bedroom dwelling unit.	2
Single Family detached and Duplex	2

The property is located in the Neighborhood Parking District and shares a parking lot with 205 S. Prospect Street, which contains 10 units. In accordance with the table above, the shared parking area for 201 and 205 S. Prospect Street requires a minimum of 24 spaces. The site plan shows a total of 23 spaces. The shared parking area does not meet the minimum parking requirement. The application cannot be approved.

- **January 11, 2017** – Appeal of administrative decision of ZP17-0253CA submitted. Filed within the 15 day appeal period.

Appellant’s Arguments & City Responses:

Appellant’s arguments are in *italics*, the city responses are not.

1. *When Bing Enterprises purchased the property at 201 South Prospect Street in 1991, the realtor listing, property inspector and the appraiser all noted that the building includes two units and contains 6 bedrooms, and that there is no attic for the building due to the fact that the third floor is finished into bedrooms. The property inspector specifically noted that “there is no attic for the building due to the fact that the third floor is finished into bedrooms.”*

As noted on the earliest Assessor’s property record from at least 1981, the structure was originally built as an 8 room single family residence in 1968. That record also noted that there was no finished attic. The table below lists each Assessor’s record on file, the dwelling unit count, and whether the attic was finished or not.

Assessor’s Record Date	# of Dwelling Units	Finished Attic	# of Bedrooms
February, 1981	1	No	not noted
June, 1985	1	No	4
April, 1986	2	Yes	4
February, 1994	2	Yes	4
May, 1994	2	Yes	4
May, 2005	2	No	6
July, 2005	2	Yes	6
September, 2005	2	Yes	6

As the table shows, sometime between 1985 and 1986, a second dwelling unit was created, and the attic was seemingly finished. Sometime between 1994 and 2005, two bedrooms were apparently added to bring the total bedroom count to 6. There are no zoning permits on file for these changes.

It is important to note that even if the Assessor’s office notes a certain number of bedrooms, or even dwelling units in this matter, it does not mean that these numbers were approved by Planning and Zoning. The same applies to realtor listings, property inspectors, and appraisers, who all tend to report on what they observe, and not necessarily what zoning permit history there is.

2. *For the last 25 years, Bing Enterprises has continued to use the third floor as bedrooms, and has paid its property taxes based on the property containing 6 bedrooms.*

See response to #1 above. The fact that the property owners have paid taxes based on the property containing 6 bedrooms holds no merit in the fact that the additional finished space (2 bedrooms) in the attic that seemingly appeared sometime between 1994 and 2006 never obtained Zoning Permit approval. More importantly, this assertion is seemingly a request for a 15-year statute of limitations determination of an unenforceable violation relative to the finished attic space. Such request is outside the scope of this appeal and cannot be entertained. It is understood that the Zoning Administrator issued a 15-year determination for the duplex use in

2007. That determination made no reference whatsoever to the finished attic space. If the appellants wish to seek a 15-year determination relative to the attic space, they may do so separately.

3. *The property owners responded to a City request by eliminating one of two parking spaces in the front of the property in order to create additional green space.*

The subject property shares a parking lot with neighboring 205 South Prospect Street, which is also owned by Bing Enterprises LTD. Both properties are located in the Neighborhood Parking District where a minimum of 2 parking spaces per dwelling unit is required. With 205 South Prospect Street containing 10 units and the subject duplex, the total number of required parking spaces is 24. The current site plan identifies 23 parking spaces – one short of compliance. The appellant asserts that in 2003 the City asked Bing Enterprises to eliminate one of two tandem parking spaces in the front of the property to create additional green space. However, the removal of one of these spaces was a result of a zoning violation notice sent to the property owner on March 27, 2003 for the unpermitted parking area expansion (attached). The subsequent appeal was withdrawn after the appellant agreed to remove the front yard parking – except for the 1 remaining space found to be in existence at least since the 1978 orthophotos.

4. *In 2007, the City denied a zoning permit application (ZP06-370CA) to remove a derelict carport on the basis of insufficient parking for 12 apartment units. However, Ken Lerner, then Interim Director of Planning & Zoning, wrote the applicant to recognize and acknowledge that there are two units at the property and ten units at 205 South Prospect Street, despite knowing that these units were served by 23 parking spaces, rather than 24.*

In a letter dated April 6, 2007, Zoning Administrator Ken Lerner responded to a request that the “City recognize the 2 units at 201 South Prospect Street and the 10 units at 205 South Prospect Street, even though they do not have zoning approval for that number of units.” Mr. Lerner responded that “Based upon the representations of the former Code Director and Planning Director and based upon the current evidence in city department files, the City does not intend to pursue zoning enforcement against the unpermitted units at 201 and 205 South Prospect Street. However, be advised that all units must be found to comply with minimum housing requirements, and this correspondence makes no determination or implication whatsoever regarding these important safety standards. Please note that if some evidence or circumstance changed that would make it our ministerial duty to enforce, then we would have to reevaluate this decision.”

As noted above, this determination cites the duplex use at 201 South Prospect Street. It makes no reference at all to finished attic space. There is no zoning permit allowing the attic (or third floor) to be converted to habitable area.

Sec. 8.1.7 – Non-Conforming Residential Structure states “Where additions or conversions to existing residential structures within a Neighborhood or Shared Use Parking District add living space but do not add dwelling units, and such sites do not currently meet the parking standards of Sec. 8.1.8, one (1) parking space shall be provided for each additional room.” The shared parking area between 201 and 205 South Prospect Street does not contain the minimum required

parking. The requested windows are sought only because they are seemingly required for egress and/or ventilation for the unpermitted finished space.

5. *Bing Enterprises seeks to comply with minimum housing requirements by replacing the third floor bedroom windows.*

See above. The applicant is seeking to install windows for finished space (two bedrooms) that never obtained Planning and Zoning approval.

6. *The City's stated reason for denying Zoning Permit #17-0253CA is due to the lack of a 24th parking space in the shared parking area, however, this minor deviation from the parking requirements was created in part by the City.*

The removal of all but 1 front yard parking space was in response to a zoning violation notice issued on March 27, 2003 for "increasing parking area without an approved zoning permit." The property owner agreed to remove front yard parking except for 1 remaining space in order to close the zoning violation.

7. *Replacement of two existing windows with egress windows will not increase the number of units at the property and will not increase the demand for the parking at the property.*

Staff agrees with this statement. However, the request is being driven solely by unpermitted finished space. Approval of windows for egress and/or ventilation for unpermitted finished space is premature and plainly sidesteps the obvious problem of unpermitted finished space.

8. *The City granted Zoning Permit #17-0255CA on September 7, 2016 to replace a window at 205 South Prospect Street.*

Zoning Permit #17-0255CA was approved for a ground-floor window at 205 South Prospect Street. Unlike the finished attic space, there is no reason to believe the ground floor living space may be unpermitted.

9. *The appellant is requesting a parking waiver for one space to ensure parking conformance for all 12 dwelling units at the property and at 205 South Prospect Street.*

As noted above, in accordance with Sec. 8.1.15 – Waivers from Parking Requirements / Parking Management Plans, the applicant may certainly submit a new zoning permit application requesting not only a parking waiver for one space, but also to convert the attic to habitable space. Such a request would require DRB approval. Sec. 8.1.15 contains a list of items necessary for a parking management plan.

Summary:

The subject property has a history of expanded and changing use without zoning approval – the duplex use, front yard parking, and finished attic space. Until or unless the finished attic space receives zoning approval, the requested egress windows should not be approved. The City would be remiss to approve the windows without addressing the driving factor: the unpermitted

finished space. Approval of the windows and the finished attic space is attainable under the zoning code and would move the property towards greater compliance rather than continued violation.

II. Recommended Motion:

Uphold the denial of zoning application 17-0253CA.