

LOGAN LAW OFFICES

ATTORNEYS AT LAW

JAMES R. LOGAN, IV

A PROFESSIONAL LIMITED LIABILITY COMPANY

650 POYDRAS STREET, SUITE 2708
NEW ORLEANS, LOUISIANA 70130

TELEPHONE
504-291-9905
TELEFAX
504-522-5406

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VIA EMAIL ONLY
CPCinfo@nola.gov

Board of Zoning Adjustments
1300 Perdido St.
New Orleans, LA 70112

Re: **BZA Appeal, Permit #22-28038-RNVN**
1225 Fern St.
Our File No. 900.1503

Dear Members of the Board:

I respectfully submit an appeal of Permit #22-28038-RNVN, issued January 19, 2023, for 1225 Fern Street (Ex. A, Building Permit) and present the following in support.

NATURE OF SUBJECT PROPERTY AND SURROUNDING NEIGHBORHOOD CONTEXT

The subject property located at 1225 Fern St. is approximately 100+ years old, a traditional New Orleans, Victorian style house originally built as a single family dwelling, which at some point was converted into separate apartment units. (Ex. B, Sanborn Map.) The house was bought by Riverlake N.O. Properties, LLC in August 1996; on Nov. 30, 2021 it was sold to The Copy Lawyer, LLC (Ramesh Reddy) (Ex. C, Orleans Assessor Report).

When Mr. Reddy bought the house, the MLS sale listing described it as follows:

Cash cow rental property on huge lot near Tulane & Loyola universities. Big side yard and rear yard with lots of parking. *5 units with a mix of 1 and 2 bed apartments.* 6 electric meters, 5 gas meters, 1 water meter. Zoned HURD2.

(Ex. D, MLS sales listing) (italics added).

Residential leases for the various apartments confirm their use as only one or two bedroom units (the leases were submitted to the City by Mr. Reddy in connection with his seeking a zoning verification for the building). Especially noteworthy to the issue of existing bedrooms is that the Riverlake leases expressly limit the number of occupants to only those persons designated in the leases as residents. Thus, a lease for Apt. #1 (the building's first floor, front unit), dated Nov. 15,

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2021, was just for one person. (Ex. E, Apt. #1 lease.) Similarly, a lease for Apt. #5 (a larger, first floor back unit), dated July 3, 2021, was for two tenants only. (Ex. F, Apt. #5 lease.)

The same bedroom per unit layout is replicated in the upstairs apartments. Three leases for Apt. #2 (the building's second floor, front unit), dated Feb. 6, 2020, Feb. 1, 2022, and May 27, 2022, have either one person or a couple as the designated tenants. (Ex. G, Apt. #2 leases.) In turn, a lease for Apt. #3 (a larger back unit on the second floor), dated June 24, 2021, was a rental to just one person. (Ex. H, Apt. #3 lease.)

Moreover, the building's apartments were marketed as either one or two bedroom units. For instance, an MLS lease listing for the first floor, front unit (Apt. #1), dated Sept. 14, 2021, described it as a *"Cute 1 bedroom Carrollton apartment with a lovely front porch, a huge living room, and spacious bedroom all with historic wood floor - its so NOLA!"* (Ex. I, Apt. #1 MLS rental listing) (italics added).

A Zillow rental listing from May 2020 described Apt. #3 (the second floor, back unit) as a *"two bedroom, two bathroom upper unit ... located close to the corner of Plum and Fern streets. The apartment offers hardwood floors, high ceilings, mantels, a furnished kitchen, access to a large shared yard and balcony/patio, on-site laundry. The water utility is paid."* (Ex. J, Apt. #3 Zillow rental listing) (italics added).

As noted below, there were no plans or detailed sketches submitted to the City by the developer showing the overall existing layout of the units before the proposed renovation work with a detailed description of the use of each room. But in connection with a request for zoning verification, two blank plans (without any details on individual room uses) were submitted, one labeled "1225 Fern First Floor" and the second labeled "1225 Fern Second Floor." (Ex. K, Layout Plan.)

I am the owner of and reside with my family in the house directly across the street from 1225 Fern. As noted, 1225 Fern St. is a multi-unit building, but except for one double rental at 1209-11 Fern, all other houses fronting on the 1200 block of Fern St. are single family, owner occupied homes, not all of which have off-street parking. Parking on the street is the norm and it's quite crowded already.

The City's HDLC recognizes that in the historic Carrollton neighborhood, *"Residents largely rely on on-street parking, although some homes have shallow front yards."* (Ex.M, HDLC Historic Carrollton Brochure.) The CZO The CZO also notes that, "The development pattern of Historic Urban Neighborhoods is characterized by a higher density and pedestrian scale environment with *limited accommodation for the automobile.*" CZO Art. 11, Purpose of Historic Urban Neighborhoods (emphasis added).

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In recognition of these burdens to the historic neighborhood, in October 2022 the City Council “reestablished the *University Area Off-Street Parking Interim Zoning District* (IZD), the intent of which is to require off-street vehicular parking for any increase in the number of existing bedrooms....”

QUESTIONS CONCERNING MISSING AND/OR LACK OF REQUIRED INFORMATION AND DOCUMENTATION IN THE PERMIT FILE

The print summary page contained in the permit file (Ex. L, Print Summary Page) lists certain information and documents that are needed for proper permit processing. For instance:

- Under the permit intake section, the applicant is asked to “Please identify the use of all of the rooms. Please provide a detailed sketch that outlines the floor plan of the structure to be renovated with each room labeled and indications of what work is to be done.”

The status of this request is noted simply as “resolved,” but the information identifying the use of all of the rooms, including the detailed sketch with each room labeled, is missing, and there is not any written documentation in the file explaining how it was resolved by S&P.

- Under the zoning section, it’s noted that “This property is located within the University Area Off-street Parking Overlay District,” and the applicant is asked to “Please verify compliance with <http://czo.nola.gov/Article-18#18-30> –.”

The status of this request is noted simply as “resolved,” but any information from the applicant verifying compliance with the Overlay District requirements is missing, and there is not any written documentation in the file explaining how it was resolved by S&P.

- Again, under zoning, the applicant is asked to “Please clarify the total # of dwelling units (apts) on this site. Your request indicates that there may be more units than what is permitted in this zoning district. Please provide a sketch indicating the layout of all units on the site with description of the use of each room.”

Again, the status of this request is noted simply as “resolved,” but the clarifying information regarding the total number of units, including the sketch indicating unit layout with a description of the use of each room, is missing, and there is not any written documentation in the file explaining how it was resolved by S&P.

As delineated above, at various decision points while the permit application was under processing, S&P staff determined that questions were “resolved” but apparently without any of the actual information or documentation initially requested; similarly, it approved the permit but it did not document in the permit file record the basis upon which that approval was given.

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Additionally, a change in the number of apartments suggests construction activity beyond what's allowed under a renovation or non-structural permit. As noted earlier, at the time the subject property was sold to the developer it was reported to have five individual units or apartments (Ex. D, MLS listing), but then later the number of units in the building was dropped to four. So query: what happened to the fifth unit? How did the building lose a full one-fifth of its apartments without any construction more substantial than simple renovation being done? Magic?

Moreover, having lived across the street for 20-plus years and knowing some of the former tenants, I can personally attest to the fact that there was an exterior door located on the downstairs, rear of the house on the left side, which is not depicted on any of the plans (either prior existing or new proposed). Clearly, some amount of unknown construction activity was (or is being) done to reconfigure the building's units from five to four, which necessarily suggests work done without proper city permitting.

THE PROPOSED PLANS TO RECONFIGURE THE BUILDING FROM A 5 UNIT WITH 8 BEDROOMS TO A 4 UNIT WITH 11 BEDROOMS ARE BASED ON NON-PERMITTED USES IN AN HU-RD2 DISTRICT AND ARE IN VIOLATION OF APPLICABLE CODES

The property's zoning classification is HU-RD2, Historic Urban Two-Family Residential District. The HU-RD2 Two-Family Residential District is intended to provide for two-family development on smaller lots in older, densely populated urban sections of the City mixed with detached single-family dwellings. CZO 11.1.C. However, only certain designated uses are allowed within an HU-RD2 district, CZO 11.2 & Table 11.1; absence of a use from the table "indicates that use is not permitted within that zoning district." An Established Multi-Family Dwelling is a permitted use within an HU-RD2 district, and the property received a zoning verification that it qualified as an Established Multi-Family Dwelling with four units.

However, it cannot be shown that each of the four units themselves qualify as a legally permissible "dwelling unit." CZO 26.6 defines a Dwelling Unit as "A room, or group of rooms, providing complete, independent living facilities, including permanent provisions for living, sleeping, eating, cooking and sanitation for one or more persons." Each of the permanent component elements set forth in the definition are required, they are not optional. And in common parlance a "permanent provision for living" necessarily means a living room; ditto, sleeping means bedrooms, eating means dining room, cooking means kitchen, and sanitation means bathroom.

The City's Municipal Code defines Habitable Space as "Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage, or utility spaces, and similar areas are not considered habitable spaces." Sec. 26-150. The Code also prescribes minimum conditions and standards for light, ventilation and space for occupying a structure. Section 26-188 provides that these provisions control not only light and ventilation but also "shall govern the minimum conditions and standards for ... space for occupying a structure" and that "the

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owner of the structure shall provide and maintain ... space conditions in compliance with the requirements contained herein."

Additionally, the Code is clear that rooms designated as one thing can't be used as something else; kitchens can't be used "for sleeping purposes" (i.e., as bedrooms) Sec. 26-198, and to prevent against "overcrowding" Section 26-199 sets out minimum area requirements for living and dining rooms based on occupant numbers and also prescribes using living room and dining room spaces in determining minimum occupancy areas for sleeping areas (bedrooms).

In short, the developer's proposed plans here seek to increase the overall number of bedrooms (both the total for the building as a whole and within each separate apartment) by asking S&P to put blinders on. That is, he emphasizes just the definition of existing "bedrooms" provided in the Oct. 6, 2022 IZD, to the exclusion of all other provisions of the City's zoning and municipal building codes. But the real question here is not what may (or may not) count as a Bedroom, rather the focus needs to be on what constitutes a Dwelling Unit. In other words, if a proposed Dwelling Unit doesn't contain all the legally required component parts, if something is missing or left out, it can't properly be considered for purposes of an Established Multi-Family Dwelling, and thus is not a legally permitted use within an HU-RD2 zoning district.

In simplest terms, if an apartment does not contain a living room, then by definition it cannot be a Dwelling Unit. Turning to the developer's proposed plans (Ex. N, Proposed Plans), it can easily be seen that most of the units (at least three) do not have living rooms. For instance, the first floor, front apartment has two bedrooms, a kitchen and a bath, but not a living room. Likewise, the second floor, rear apartment has three bedrooms, a kitchen and two baths, but not a living room. The building's largest unit, the first floor, back apartment, also falls short, as it has four bedrooms, a kitchen and three baths, but no living room. At a minimum all these apartments cannot be considered Dwelling Units, and their purported use as such is in clear violation of the underlying HU-RD2 zoning and thus constitute an illegal use.

FAILURE TO SATISFY THE 2022 IZD

On October 6, 2022 the New Orleans City Council enacted the University Area Off-Street Parking Interim Zoning District ("2022 IZD"), which provides that "any increase in the number of existing 'bedrooms' in a dwelling or dwelling unit ... shall require one off-street parking space for each additional bedroom."

To the extent that "any" new bedrooms are added to the building or any of its dwelling units, then one off-street parking space needs to be supplied for each additional bedroom. Based on comparisons between the prior existing layout and the new proposed plans the following changes can be discerned: the two front apartments (downstairs and upstairs) were each one bedroom units, and so the proposed plans to change them to two bedroom units (for an increase of two additional bedrooms) means two off-street parking spaces are required. The two back

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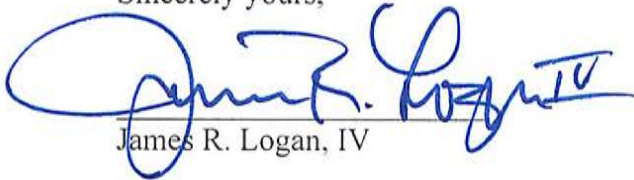
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apartments were each two bedroom units, and so the plans to change the upper back unit to three bedrooms and the lower back units to four bedrooms (for an increase of another three additional bedrooms) equates to three more off-street parking spaces being needed. Bottom line: for the total number of additional bedrooms per the proposed plans, five off-street parking spaces are required to comply with the 2022 IZD.

CONCLUSION

I appreciate your attention to the foregoing and ask that you void the subject permit for failing to comply with applicable law. I also reserve all rights to supplement this appeal based on other ongoing S&P reviews and/or record requests which may reveal additional pertinent information or documents not yet known.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "James R. Logan, IV". The signature is stylized with large loops and a prominent "L".

James R. Logan, IV