



**MEMORANDUM**

**DATE:** February 14, 2017  
**TO:** Zoning Board of Appeals  
**FROM:** Planning Division  
**SUBJECT:** Report of Findings  
Case No. 17-03-09 – 303 E. Kenilworth Ave. (25-22-352-016)

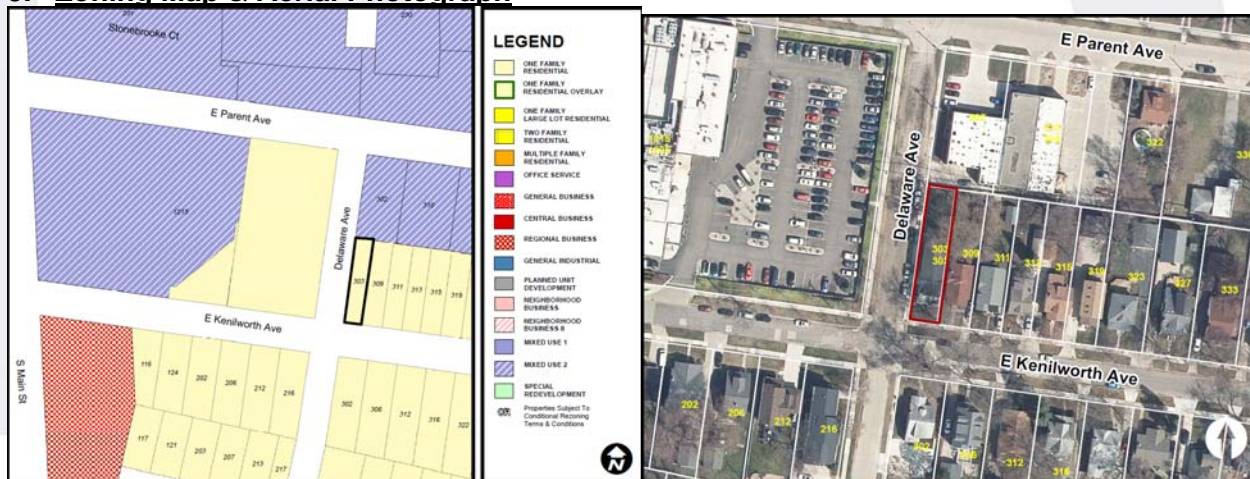
**1. Requested Variances**

- (a) Use Variance
- (b) waive 14 of the minimum required 16 off-street parking spaces
- (c) waive 22,536 sq. ft. from the minimum required 27,000 sq. ft. of lot area
- (d) waive 5.6 ft. from the minimum required 25 ft. south front yard setback to the structure
- (f) waive 21 ft. from the minimum required 25 ft. east side yard setback to the structure
- (e) waive 21 ft. from the minimum required 25 ft. west side yard setback to the structure
- (g) waive 25 ft. from the minimum required 25 ft. west side yard setback measured to the porch and steps
- (h) waive 100 sq. ft. of the minimum required 600 sq. ft. of floor area related to four, 2-bedroom dwelling units
- (i) waive 92 sq. ft. of the minimum required 450 sq. ft. of floor area related to four, 1-bedroom dwelling units

**2. Purpose**

To demolish a non-conforming six unit multiple family structure and permit construct a non-conforming, two-story, eight unit multiple family structure in the One-Family Residential zoning district.

**3. Zoning Map & Aerial Photograph**



**4. Variances to Chapter 770 Zoning**

*ARTICLE IV Zone Regulations & General Provisions*

§ 770-34 One-Family Residential: (B) Permitted Uses & (C) Special Land Uses, neither of which permits multiple-family dwellings or structures.

*ARTICLE IV Zone Regulations & General Provisions*

§ 770-107 Table of Off-Street Parking Requirements:

residential dwellings, one-, two-, and multiple family      2 parking spaces per dwelling unit

§ 770-37 Multiple-Family Residential

(D) Area and Bulk Regulations. (3) Multiple-family dwellings shall be subject to the following:

(a) lot size. Multiple-family dwellings shall provide 9,000 square feet for the first two units and 3,000 square feet for each additional unit.

§ 770-21 Application of Zoning District Regulations: (C) Application of Setback Regulations; (5)(A) Terraces, patios, decks and similar structures that are unroofed, without wells or other continuous enclosure and located six inches or more above grade ... if located in the side yard, all required setbacks for the principal structure shall apply.

§ 770-37 Multiple-Family Residential: (D) Area & Bulk Regulations;

(3)(c) Setbacks: All buildings shall be setback from the front, side and rear property lines no less than 25 feet or a setback....

§ 770-23 Minimum Floor Area of Dwelling Units

C. Multiple-Family Residential Zone

# of bedrooms	minimum living space (sq. ft.)
efficiency	250 sq. ft.
1-bedroom unit	450 sq. ft.
2-bedroom unit	600 sq. ft.
3-bedroom unit	750 sq. ft.

**5. Petitioner & Owner**

Krieger Klatt Architects, Inc., Petitioner & T & J Investments, LLC, Owner

**6. Findings**

The subject property is located on the northeast corner of E. Kenilworth Ave. and Delaware Ave. The property is zoned one-family residential and contains a non-conforming, six unit multiple family structure. Multiple family dwellings are neither a permitted nor a special land use in the one-family residential zoning district. The existing use does not conform to the ordinance requirements. However, it does maintain a rental license for six residential dwelling units. The property is able to continue to operate as a legal, non-conforming use within the one-family residential zoning district so long as it maintains said rental license. Once the non-conforming use is removed, any new use must conform to current ordinance requirements.

The petitioner proposes to demolish the structure and build a new two-story, eight unit multiple-family structure. *Therefore, the petitioner is seeking a Use Variance to construct a*

*non-conforming, two-story, eight unit multiple family structure at a site zoned one-family residential.*

The proposed site plan indicates a parking area accessed via a 30 ft. wide drive along Delaware Ave. The zoning ordinance requires two (2) off-street parking spaces per dwelling unit. Therefore, the proposal requires a total of sixteen (16) off-street parking spaces. The site plan is able to accommodate one van-accessible parking space and one standard parking space; for a total of two (2) dedicated off-street parking spaces. *Therefore, the petitioner is seeking a variance to waive 14 of the minimum required 16 off-street parking spaces.*

The planning division of the community development department applies the bulk and area standards in the multiple-family residential zoning district to the proposal. As such, the proposal would need to meet the minimum lot area required for eight dwelling units in the multiple-family residential zoning district. The site contains 4,464 sq. ft. of lot area. The proposal requires a minimum lot area of 27,000 sq. ft. *Therefore, the petitioner is seeking a variance to waive 22,536 sq. ft. from the minimum required 27,000 sq. ft. of lot area.*

The proposed structure would maintain a 19.4 ft. south front yard setback along E. Kenilworth Ave., a 4 ft. east side yard setback, a 4 ft. west side yard setback along Delaware Ave., and a 30 ft. north rear yard setback. Additionally, the petitioner proposes to construct porches and stairs within the west side yard setback. The porches and stairs provide access each dwelling unit. The porches and steps have no setback from the west property line. The zoning ordinance requires minimum 25 ft. setback on all sides. *Therefore, the petitioner is seeking the following variances: to waive 5.6 ft. from the minimum required 25 ft. south front yard setback to the structure; waive 21 ft. from the minimum required 25 ft. east side yard setback to the structure, waive 21 ft. from the minimum required 25 ft. west side yard setback to the structure, and waive 25 ft. from the minimum required 25 ft. west side yard setback measured to the porch and steps.*

Lastly, the zoning ordinance requires that dwelling units be no less than a certain square footage dependent upon the type. Units with one (1) bedroom require no less than 450 sq. ft. of floor space. A unit with two (2) bedrooms requires no less than 600 sq. ft. of floor space. The petitioner's proposal notes four, 1-bedroom units at 358 sq. ft. & four, 2-bedrooms at 500 sq. ft. *Therefore, the petitioner is seeking a variance waive 100 sq. ft. of the minimum required 600 sq. ft. of floor area related to four, 2-bedroom dwelling units. Additionally, the petitioner is seeking a variance to waive 92 sq. ft. of floor area related to four, 1-bedroom dwelling units.*

## **7. Decision**

According to § 770-124 (E) of the Zoning Ordinance, Upon an appeal, the Board is authorized to grant variance from the strict provisions of this chapter, whereby unique, extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting a variance, the Board may attach thereto such conditions reasonable in furtherance of the purpose of this chapter. Further, in granting a variance, the Board shall state the grounds upon which it justifies the grant of a variance as outline below. When granting any variance, the Board must ensure that the spirit of this chapter is observed, public safety secured, and natural resources protected. The Board shall determine that the variance approval, either as proposed by the applicant or as otherwise determined by the Board based upon the record, is the minimum relief necessary in order to achieve substantial justice. The

Board shall not have the power to consider an appeal of any decision concerning a special land use or planned unit development, unless specifically authorized to do so by the Planning Commission.

(1) Use Variances

The applicant must present evidence to show that if this chapter is applied strictly, unnecessary hardship to the application will result, and that all five of the following requirements are met:

- (a) The the property could not be reasonably used for the purposes permitted in that zone;
- (b) That the appeal results from unique circumstances peculiar to the property and not in general neighborhood conditions;
- (c) That the use requested by the variance would not alter the essential character of the area;
- (d) The that alleged hardship has not been created by any person presently having an interest in the property; and
- (e) That the use will preserve a substantial property right possessed by other property owners in the same zone.

(2) NonUse Variances

The applicant must present evidence to show that if this chapter is applied strictly, practical difficulties will result to the applicant and that all four of the following requirements are met:

- (a) That this chapter's restrictions unreasonably prevent the owner from using the property for a permitted purpose;
- (b) That the variance would do substantial justice to the applicant as well as to other property owners in the district, and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be more consistent with justice to other property owners;
- (c) That the plight of the landowner is due to the unique circumstances of the property; and
- (d) That the alleged hardship has not been created by any person presently having an interest in the property.

cc: T&J Investments

Krieger Klatt Architects

***It is recommended that the petitioner or a representative attend the March 9, 2017 Zoning Board of Appeals meeting. The meeting starts at 7:00 p.m. in the City Commission Chambers on the 3rd floor of City Hall.***