

**President's Report October 2007
A Call For Action!**

by Bill Bednar

A matter greatly important to the future of our neighborhood has come up. The project pictured below is 306 West 34th Street. If it is allowed to continue, the result will be a large, lot-filling duplex in violation of our NUNA NCCD ordinance. Your Executive Committee is requesting the membership's approval for NUNA to file suit against the City and the developer to keep this from happening.

The duplex-to-be is located within District 1-A of the Residential District of the NCCD. When the ordinance was being drawn up, the neighborhood carved District 1-A out of the Residential District expressly to encourage two-family structures (houses with garage apartments) along West 34th and 35th. These were permitted to be built on the existing 48 foot fronts, as opposed to the 50 foot fronts required for both two-family and duplex uses elsewhere in the Residential District. That exception to the 50-foot front requirement was deliberately not extended to duplexes.

**NOTICE: Change of Date for Next
Neighborhood Meeting**

Tuesday, October 9, 2007
7 p.m.

First English Lutheran Church at
30th and Whitis Streets

Agenda:

Guest Speaker- Paul Tomasovic and Jonathan
Josephson from Code Enforcement
Topic: How and what to report to 311
(Code Enforcement)

Discussion/vote on potential lawsuit against
the City

Treasurer's Report
Committee Reports



Over a year ago, the developer approached our NUNA Neighborhood Planning Team (NPT) with a proposal to raze the lots at 306 and 308 West 34th and build a pair of large, two-story duplexes, one on each lot. (Each lot previously had a small, non-conforming duplex.) Since each lot had only a 48 foot frontage, new duplexes could not be built without a variance from the 50-foot NCCD requirement. The NPT would not agree to the variance because it would have been contrary to the careful planning of the NCCD ordinance and would have resulted in structures incompatible with the residential character of the area. Rather than continuing to work with the NPT, the developer broke contact and

Is This Really A "Remodel?"

applied for the variance. NUNA opposed the variance, and

(continued on next page..)

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the Board of Adjustment denied it. That should have been the end of the matter.

Then, late last July, the developer applied for a permit to build a large, two-story duplex on the lot at 306 West 34th Street. Notwithstanding that the lot is still only 48 feet wide, the City staff approved it! How could this happen? Because the developer presented it as a “remodeling” of the old non-conforming duplex, and the City staff went along with it.

We believe the project should be deemed new construction, which would be subject to the 50-foot frontage requirement. The problem is that neither the land development code nor the building code defines “remodeling.” In the absence of a standard, the City staff appear to use an unwritten rule of thumb that if the developer leaves 80 linear feet of wall standing, the project will qualify as a “remodel.” In this case, that seems plainly unreasonable. The roof, beams, and rafters are gone. The standing walls have been stripped to the studs with the windows, plumbing, and wiring ripped out. There is nothing of any substance left to “remodel.” The new structure will add a story, nearly double the footprint, and use new construction, wiring and plumbing throughout.

There are other problems. The remaining studs stand on 2 x 4 plates, many of which are rotted. The slab was poured back in 1960, before the building code required engineered slabs. It does not appear to have been designed to support a two-story building, and there are cracks large enough to stick a table knife into. One of these cracks runs the entire width of the slab. The “remodel” not only looks like a pretext to get around the NCCD frontage requirement, but it looks to be an unsafe construction gambit as well.

The NPT met with the City staff in mid-August to object to issuance of the building permit. We received the unsatisfactory “remodel” explanation and a suggestion to go amend our NCCD ordinance to define “remodel” differently. That latter solution is, of course, no help in regard to the work in progress at 306 West 34th.

Having received no satisfaction from the City, the NPT next consulted with Mark Perlmutter, who is the attorney who successfully represented the Heritage neighborhood just to our west in its lawsuit against Buckingham Square. He believes we have a good prospect of winning a lawsuit against the City and the developer based on the apparent subterfuge of the “remodel.” Our theory would be that the permit never should have been issued and that the construction should be stopped.

This is where the neighborhood comes in. NUNA needs two things in order to proceed. First, we need your formal approval, which will give Mr. Perlmutter the authority he needs to file suit. Second, we need the necessary funds. Your Executive Committee believes that the litigation funds should be raised by private

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underwriting. We do not believe NUNA operating funds should be used for this purpose. We will discuss the costs for the lawsuit at the neighborhood meeting on October 9.

Litigation is never something that should be undertaken lightly. But a few years ago, **this neighborhood invested much money and effort in an NCCD ordinance** to protect and preserve the “single family character” of this neighborhood. That effort and expense will have been wasted if the City’s loose and biased permitting process continues to ignore NCCD requirements. Today we have a “remodeling” fiasco. There are many other non-conforming old duplexes on less than 50 foot frontages throughout NUNA that would be “eligible” for “remodeling” under the same loophole unless it is closed. Tomorrow, it may well be some other distortion of our ordinance for the benefit of absentee owners eager to charge confiscatory rents to as many students as can be crammed into the biggest box they can build.

We need to send a clear message to the

City and to developers that we will defend our neighborhood and that our NCCD ordinance must be taken seriously. Your Executive Committee, after much thought and debate, believes that suing for an injunction against this “remodeling” subterfuge will send that message effectively, and we urge your support.

We will be ready with a resolution for you to approve at the October 9 meeting. Please come, be loud, and stay late, but give us your approval to do this!

Bill Bednar
476-1135
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Definitions

Neighborhood Conservation Combining District (NCCD)

The purpose of a neighborhood conservation (NC) combining district is to preserve neighborhoods with distinctive architectural styles that were substantially built out at least 30 years before the date an application for an NC combining district classification is filed. (25-2-2173)

NCCD modifies use and site development regulations of a base district located in the NCCD in accordance with a neighborhood plan. (25-2-371)

In addition to the information required by the Administrative criteria Manual, a neighborhood plan must include an architectural survey of structures in the proposed NCCD that identifies the predominate architectural and urban design characteristics in the area and the characteristics that distinguish the area from other parts of the city. [25-2-373(D)]

Neighborhood Plan Combining District (NPCD)

The purpose of a neighborhood plan (NP) combining district is to allow infill development by implementing a neighborhood plan that has been adopted by the Council as an amendment to the comprehensive plan. (25-2-176)

NPT Report

By Mary Ingle

The NUNA Planning Team (NPT) meets the second Wednesday of every month to discuss issues of zoning, permits, and other related matters. Neighbors who are embarking on construction projects or redevelopment of their property in NUNA should present their plans to the NPT, particularly if they have any questions about the regulations in the NCCD ordinance which govern our neighborhood. If you are interested in being on the agenda at one of our meetings, please contact the Chair, Mary Ingle at 320-8449. These meetings are open to anyone in the neighborhood; if you are interested in attending one of our meetings please make arrangements with the Chair. We encourage neighborhood participation! Remember that the more focused eyes and ears we have on the street, the better chance we have of surviving (intact) as a neighborhood. Get involved today!



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P R O P E R T I E S

**A Successful Cleanup of Hemphill Park;
Thank You to the Angels of the Park!**

Over the Labor Day weekend, Jim Creswell, Roger Binkley, and Mark Feist organized a cleanup of Hemphill Park with a group of generous neighbors. The event was a success! **A special thank you** to Christie and Roger Binkley, Jim Creswell, Rick Iverson, Carol LeClair and Jim Miller, Brian Lanes, and Clark Burnham. We are all enjoying the benefits of the beautified and cleaned park today. As a result of this work, these neighbors have decided that the park probably needs to be cleaned every month. Since the Parks Department has not been helpful here, the burden of the park cleanup falls on the shoulders of the neighborhood. If anyone who participated in this cleanup was not mentioned, please contact Gnome de Plume (the newsletter editor) 320-8449. You will be mentioned in the next issue. Thank you all so much for your hard work.



**Join Your Neighborhood Association
Today**

It is never too late to renew or establish your membership with NUNA. We need your support in the form of a check for \$10 per individual or \$20 per family. This money helps pay for the newsletter, for the annual usage fees of the church and AGE building, and for other memberships and expenses our organization encounters. (Also, you must be a current member in order to vote at the next meeting).

Please send your dues to:

Charles Hibbetts
110 W 33rd Street
Austin, TX 78705.

Important phone numbers and e-mail:

Officer Vargas 974-5801
ricardovargas@ci.austin.tx.us

City of Austin Information: 974-2000 or 311



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