

Department of Community Planning and Economic Development
Nonconforming Use Certificate
BZZ 6082

Date: July 11, 2013

Applicant: Mazel Properties, LLC

Address of Property: 2924 Grand Avenue South

Contact Person and Phone: Dana Avery, (612) 871-4545

CPED Staff and Phone: Shanna Sether, (612) 673-2307

Date Application Deemed Complete: June 17, 2013

End of 60-Day Decision Period: August 16, 2013

Ward: 6 **Neighborhood Organization:** Whittier Alliance

Existing Zoning: R2B Two-Family District

Zoning Plate Number: 25

Proposed Use: Three-unit, multiple family residence

Nonconforming Use Certificate: to establish legal nonconforming rights to a three-unit, multiple family residence

Applicable Zoning Code Provision: Chapter 531 Nonconforming Uses and Structures; Specifically Section 531.30 and Chapter 546 Residence Districts

Background and Analysis: The subject property is approximately 40 feet by 128 feet (5,120 square feet) and the use of the property is a three-unit multiple family residence with a detached garage. The City of Minneapolis records indicate that the existing use is a two-family residence.

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned Light Industrial with E-Density, which would have had a lot area requirement of one dwelling per 400 square feet of lot area. A three-unit, multiple-family residence was a permitted use from 1924 to 1963. The property was rezoned to R3 Multiple-Family District with the adoption a new zoning code in 1963. The minimum lot area requirement per dwelling in the R3 District in 1963 was 2,500 square feet. The parcel would have required a minimum lot area of 7,500 square feet to allow for a three-unit building. The parcel is approximately 5,120 square feet of lot area. A three-unit, multiple family residence would not have been allowed, even with the maximum 20% variance allowed. In 1991, the R3 Rezoning Study rezoned the subject parcel to R2B Two-Family District and has been zoned R2B since. A three-unit, multiple family residence was a prohibited use in the R2B District.

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City records indicate that the legal use of the property is a two-family residence. The applicant is applying for a certificate of nonconforming use to legally establish nonconforming rights to a three-unit, multiple-family residence in an existing structure located in the R2B Two-Family District, per 531.30 of the zoning code:

531.30. Establishment of nonconforming rights; certificate of nonconforming use. Any person having a legal or equitable interest in a nonconforming property may apply for a certificate of nonconforming use by complying with the procedure set forth in this section. Upon issuance, a certificate of nonconforming use shall be evidence that the use or structure designated therein is a legal nonconforming use or structure at that time.

(4) *Determination by board of adjustment.* Following the public hearing, the board of adjustment shall determine whether the use or structure is a legal nonconforming use or structure. The burden of proof shall be on the applicant to establish the lawful nonconforming status of the use or structure and the lack of abandonment, change of use or loss under section 531.40. If the applicant does not establish the required facts, no certificate shall be issued. If the board of adjustment determines that the use or structure is a legal nonconforming use or structure, it shall direct the zoning administrator to issue a certificate of nonconforming use. The certificate shall state with particularity the type and intensity of specific use which is found to be legal. The decision of the board of adjustment may be appealed by any affected person as specified in Chapter 525, Administration and Enforcement.

Staff finds that the evidence submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.30(4), under which the applicant must bear the burden of proof to illustrate clear and convincing evidence that the use of the property was legally established as a three-unit, multiple family residence prior to 1963. The applicant has provided a tax records from 2013, floor plans, historical permits, and affidavits from the realtor indicating that the legal use of the property is a three-unit, multiple-family residence.

Staff has received a letter of support of the certificate of nonconforming use from Whittier Alliance. A copy of the letter is attached to the staff report. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

Findings:

- 1) The principal structure on the subject property was constructed in 1885 as a wood dwelling with a building permit (B3980).
- 2) The Sanborn Fire Insurance Maps from 1885-1889 and 1912-1951 indicates that the property was a two-story flat (apartment).
- 3) The zoning classification from 1924 to 1963 was Light Industrial Family with E-Density. A three-unit, multiple-family residence was a permitted use from 1924 to 1963.
- 4) The 1934 Building and Housing Survey indicated the building was used as a duplex. The upper unit is indicated to have been vacant since 1925.

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- 5) The subject property was rezoned in 1963 to R3 District; a three-unit, multiple family residence was not allowed at this property because the lot was insufficient in area.
- 6) The subject property was rezoned to R2B Two-Family District in 1991 in response to the R3 Rezoning Study. The present zoning classification is R2B Two-Family District. A three-unit, multiple-family residence is a prohibited use.
- 7) The current property owner purchased the property in 1999. The applicant has provided a signed letter dated May 28, 2013, from the relator who sold them the house stating that the property was a triplex.
- 8) A plumbing permit (BTPA 5026876) was issued December 10, 2001, to install 6 toilets, 6 bathtubs, 6 bathroom sinks, 3 sinks, 3 laundry tubs and 3 electric water heaters to Zev Oman, the current property owner. A three-unit, multiple-family residence is a prohibited use in 2001.
- 9) An electrical permit (BTEA 1041877) was issued March 7, 2002, for “New Tri-plex. 1 Service, 60 circuits” to Zev Oman, the current property owner. A three-unit, multiple-family residence is a prohibited use in 2002.
- 10) A mechanical permit (BTMA 4029304) was issued June 25, 2002, for a “3 Story Dwelling – 3 Furnace @ 100mbh each & 3 A/C’s” to Zev Oman, the current property owner. A three-unit, multiple-family residence is a prohibited use in 2002.
- 11) Rental licenses for two dwellings have been issued to the property from 2002 to 2012.
- 12) Hennepin County tax records indicate the current property type is a triplex and it is non-homestead.
- 13) The applicant has failed to present clear and convincing evidence that the use of the property is a legal nonconforming three-unit, multiple-family residence in an existing structure located at 2924 Grand Avenue South in the R2B Two-Family District.

Recommendation of the Department of Community Planning and Economic Development:

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt staff findings and **deny** the certificate of nonconforming use to establish legal nonconforming rights to a three-unit, multiple-family residence in an existing structure located at 2924 Grand Avenue South in the R2B Two-Family District.

Attachments:

1. Written descriptions and evidence submitted by the applicant
2. Letters to Council Member Lilligren and Whittier Alliance
3. Letter from Whittier Alliance
4. Zoning map
5. Site plan
6. Floor plans
7. Applicant’s evidence
8. Photos