

**Minneapolis Zoning Board of Adjustment Meeting
July 11, 2013, Room 317 City Hall**

Date of Z&P Meeting: August 22, 2013

ITEM SUMMARY

Description: Item #4, BZZ #6082

Certificate of Nonconforming Use: Dana Avery on behalf of Maze Properties, LLC, has applied for a 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.

Action: The Board of Adjustment adopted staff findings and **denied** 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.

Aye: Cahill, Ditzler, Johannessen, Ogiba, Sandberg, Thompson

Nay: Finlayson

Motion was Approved

TRANSCRIPTION

Staff Sether presented the staff report.

Chair Perry: Thank you very much for your presentation. Are there questions of staff?

Commissioner Cahill: To clarify, we need to establish there is an uninterrupted use of a triplex from 1963 to present day?

Staff Sether: The board is charged with identifying first that the use was legally established and the period in which this use would have last been allowed was 1963.

Commissioner Cahill: From the staff findings, my understanding is you were able to determine it was used as a duplex in 1934, correct?

Staff Sether: That is correct.

Commissioner Cahill: Do we have any information to the contrary after that that it changed to a triplex use?

Staff Sether: Staff was not able to identify any building permits or records indicating a three unit multiple family residence until permits were pulled between the years 2001-2002. Those permits are

listed and would be the plumbing, electrical and mechanical permits that indicated a triplex. Those are the only permits on records that indicate a three unit building.

Commissioner Cahill: So basically there's no information between that 1934 and this 1999 sale.

Staff Sether: Staff does have all of the permit records, however, none of the permits issued were to allow for the conversion from a two unit to a three unit building.

Commissioner Sandberg: Your finding number 12 is that Hennepin County tax records indicate the current property type is triplex. How far back do those Hennepin County tax records go?

Staff Sether: The applicant has provided for the years 2012 and 2013 and a copy of those are here.

Commissioner Sandberg: Are there any other records available to staff to investigate prior years?

Staff Sether: Staff did not obtain any additional tax records. That burden of proof is placed on the applicant. Staff met with the applicant on a few occasions and indicated that would be additional information that would help support the application for the certificate of nonconforming use, but they only provided the years 2012 and 2013.

Commissioner Ditzler: We have permits here that are issued by the city that indicate that indicate that these permits are being issued on a building that's a triplex, however, the building is not really a triplex. I'm wondering what the disconnect or correlation is between the permit office and rental licensing. I'm assuming the communication is nothing.

Staff Sether: I will say that the City of Minneapolis has access to the same land management system. The information about the land use is in the land management system so it would be upon review. The reviewers for permits including electrical, plumbing and mechanical...all of which had been pulled that indicate the use was either to convert or to legalize a third dwelling, none of which had been reviewed by a City Planner or someone in the Zoning office. All those permits would be issued over the counter.

Commissioner Ditzler: My question is, is there an explanation of how a plumbing or electrical permit for a triplex can get issued for a building that is not a triplex? How is that possible?

Staff Sether: The reviewers for those particular permits are not charged with identifying the land use to ensure that what is being permitted is for an allowed use in that district.

Commissioner Ditzler: It appears that there was something done to the property around 2002 since there's a very large jump in value according to Hennepin County between 2002-2003. I'm assuming that coincides with these mechanical upgrades. Can you speak to that at all?

Staff Sether: There was one additional permit in addition to what we have identified that indicate the use as a triplex. That was for a reroof. When staff did the analysis and review and the historical information for this particular property, all information indicated this was a two story dwelling. The present height of the structure is a three and a half story structure. Staff was not able to identify any construction permits with exception of a reroof and that was done around 2001-2002.

Chair Perry: This board has a responsibility to first establish that there was a legally established triplex use prior to 1963. Staff is contending that is not the case. Is that true or false?

Staff Sether: That is true.

Chair Perry: Can you highlight again for us where that is not true?

Staff Sether: The original construction permit was to allow for a single family dwelling in 1885. In 1934, the building and housing survey indicated the use was a duplex. The rental license records indicate a two family dwelling. There are no permit records that indicate that the use was converted from two to three units. The Sanborn Fire Insurance maps also indicate that the land use was two units and I can give you a little background if you have questions about the Sanborn Fire Insurance map.

Chair Perry: I don't. I think that answers that question. I'm not familiar with the R3 rezoning study. Could you give a quick overview?

Staff Sether: It was the City's analysis citywide of the R3 zoning classification and whether or not it was actually meeting the city policy for a medium density district. It was determined that with the lot area requirement of 2500 square feet of lot area per dwelling unit, that it was ineffective, in short. Many properties that were presently zoned R3 in 1991 were rezoned to a different classification, many of which were converted from R3 to the R2B district which was more consistent with policy and existing land use.

Chair Perry: The reason I asked that question is there seems like through that R3 rezoning study there was a more intense and rigorous study of properties that would be affected and that's why you're calling it out in one of these findings, indicating that after 1963 there is evidence that this was still a duplex.

Staff Sether: Precisely. In fact, all land uses that were identified to become nonconforming with the conversion of the zoning classification from, for example R3 to R2B which would be consistent with this property, each one of the properties to become nonconforming were identified as part of the rezoning study. This property was not indicated to become a nonconforming use, which further explains the fact that it most certainly was identified by the City at the time as a two family dwelling or duplex.

Chair Perry opened the public hearing.

Kristi Oman (100 West Franklin Ave): To clarify some of the questions, when I contacted Hennepin County they said they go back ten years and they show it as a triplex from ten years ago. When my husband and I bought this property in 1999, as you can see the letter from the realtor who was the selling agent, they verified it was a triplex. We put about \$200,000 into extensively remodeling it. It was always a three story unit. The third floor was always another unit. I just wish someone would have said "hey, wait a second. Don't spend \$200,000" because essentially now I have to kick out a tenant and they aren't going to have a place to live because the City allowed me to go forward and we pulled permits and did everything that we thought we needed to do. As far as the rental license, my brother from 2001 has lived there so I only needed two rental licenses because it was homesteaded if you look at the tax records. I never would have applied for the third license because it was homesteaded. He always lived on the first floor. This just came up when an inspector came in to do the annual inspection and we had no idea that it was zoned as a duplex.

Chair Perry: Ok. Do you have any other testimony to speak to? As you heard, we as a board have to look at the legal establishment as a triplex prior to 1963 and whether you have clear and compelling evidence that that happened and then uninterrupted use as triplex from that point going forward until today. Is there any other evidence that you'd like to present in regards to either of those two things?

Kristi Oman: No. I couldn't find anything from 1963.

Chair Perry: Are there any questions of Ms. Oman?

Commissioner Ditzler: So as long as you have owned it your brother has been there?

Kristi Oman: After we remodeled it in about 2001.

Commissioner Ditzler: He lived there...

Kristi Oman: Up until a couple years ago. He doesn't live there currently. I rent it out as three units now. I think that's what triggered this is that the third unit for the rental license came up.

Commissioner Ditzler: Was he one of the owners or did you do the family exempt?

Kristi Oman: We did the family and I had to bring down his birth certificate and it was a big ordeal that took about six months to get approved.

Commissioner Ditzler: You also said that when you purchased the property you verified that it was a triplex; can you speak to what steps were taken to verify it was a triplex.

Kristi Oman: With Hennepin County I verified it was a triplex. The realtor has it listed as a triplex.

Chair Perry: Any other questions of Ms. Oman. I see none. Anyone else here to speak to this application? I see nobody. Anyone here who would like to speak against this application? I see nobody. Let's close the public hearing. Board comment.

Commissioner Sandberg: I believe this building is a triplex and probably has been a triplex since before Ms. Oman purchased it. It appears to be in good condition and it has been invested in. I think the best thing for the City and for the property is for it to continue to be used as a triplex. Unfortunately, this board, I don't think, can make that decision just because it should happen; we need to have evidence that indeed it was established as a triplex before the time when the zoning changed and I don't think that that evidence exists so consequently I don't believe we can make the decision that I would like to make.

Commissioner Ditzler: I would agree with Mr. Sandberg. I think staff nor the applicant has been able to provide evidence that it was legally established as a triplex. I think, unfortunately, that the applicant when they purchased the property attempted to do some due diligence to find out the accurate use of the property and unfortunately Hennepin County does not regulate that use, the city of Minneapolis does. Unfortunately, the incorrect place was checked or that it's not concurrent, which happens often. I would concur with Mr. Sandberg that while I believe the best use of this property is probably a triplex, but we are not the board that can make that determination. I would support staff's recommendation in this case.

Commissioner Cahill: I think the frustration that sometimes happens is that we see the City giving out permits for three units even though it's established for a duplex and that's mixed signals. That's problematic and frustrating for us, but I don't think there's evidence to support that. I'm not saying there aren't remedies that exist, it's just not a remedy that can be provided by this board.

Commissioner Finlayson: I would disagree. The year 1963 is getting to be a long time ago. The problem with it is that people have moved, people have died, they're no longer available. The applicant bought what physically appears to be a triplex. It's laid out like one, it has the appearance of one from the street and I don't quite understand how the current owner is to be held responsible for what happened prior to when they bought it. It appears that they have operated it as a triplex even though one unit wasn't rented, it was occupied by a family member. Part of our function here is to give relief and in this particular case I think relief is due. I'm hearing comments to the contrary, but the practical side of this is that this is a triplex in every way. I cannot support staff recommendation. Thank you.

Chair Perry: I want to provide a clarification. The staff is not responsible for providing the clear and compelling evidence. If they come across it I'm sure they would have shared it with us, but it is really the applicant who is seeking a certificate of nonconforming use – it is their responsibility to find the clear and compelling evidence and present it to us. Are there any other board comments?

Commissioner Ditzler: I will move staff recommendation (Commissioner Cahill seconded).

Aye: Cahill, Ditzler, Johannessen, Ogiba, Sandberg, Thompson

Nay: Finlayson

Motion was Approved