



## Request for City Council Committee Action from the Department of Community Planning & Economic Development—Planning Division

Date: October 22, 2009

To: Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

Referral to: Zoning & Planning Committee

**Subject:** Kevin and Valerie Holler have submitted an appeal of the decision of the City Planning Commission denying an application for a certificate of non-conforming use and a change of non-conforming use for property at 4420 Humboldt Avenue N. The change of non-conforming use application is to allow for the establishment of a contractor's office in an existing building.

**Recommendation:** The following action was taken by the Planning Commission on September 28, 2009 (BZZ-4345):

**10. Kevin Holler (BZZ-4345, Ward: 4), 4420 Humboldt Ave N (aka 1423 45<sup>th</sup> Ave N) ([Kimberly Holien](#)).**

**A. Nonconforming Use:** Application by Kevin Holler for a certificate of non-conforming use for an existing commercial building at 4420 Humboldt Ave N.

**Action:** The City Planning Commission adopted the findings and **denied** the nonconforming use certificate to establish legal nonconforming rights for a contractor's office for the property at 4420 Humboldt Ave N.

**B. Nonconforming Use Change:** Application by Kevin Holler for a change of non-conforming use from a minor auto repair facility to a contractor's office for an existing commercial building at 4420 Humboldt Ave N.

**Action:** The City Planning Commission adopted the findings and **denied** the application for a change of nonconforming use from major auto repair to a contractor's office for the property at 4420 Humboldt Ave N.

**Ward:** 4

Prepared by: Kimberly Holien, City Planner (612-673-2402)  
Approved by: Jason Wittenberg, Planning Supervisor  
Presenters in Committee: Kimberly Holien, City Planner

**Financial Impact**

- No financial impact

**Community Impact**

- Neighborhood Notification: The Webber-Camden Neighborhood Organization was notified of the application on August 31, 2009.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On September 29, 2009, staff sent a letter to the applicant extending the 60 day decision period to no later than January 1, 2010.

**Supporting Information**

The statement submitted by the appellant states that the history of the property includes a continued commercial use with no abandonment for approximately 82 years. The appellants have stated that they rebut the presumption of abandonment.

The appellant's complete statement of the actions and reasons for the appeal are attached.

**Community Planning and Economic Development - Planning Division Report**  
Certificate of a Nonconforming Use and Change of Nonconforming Use  
BZZ-4345

**Date:** September 28, 2009

**Applicant:** Kevin and Valerie Holler

**Address of Property:** 4420 Humboldt Avenue N

**Contact Person and Phone:** Kevin Holler (612) 270-4572

**Planning Staff and Phone:** Kimberly Holien (612) 673-2402

**Date Application Deemed Complete:** September 3, 2009

**End of 60 Day Decision Period:** November 2, 2009

**Ward:** 4      **Neighborhood Organization:** Webber-Camden

**Existing Zoning:** C2, Neighborhood Corridor Commercial District; R4, Multiple Family District

**Proposed Zoning:** Not applicable for this application.

**Zoning Plate Number:** 2

**Existing Use:** Contractor's office.

**Proposed Use:** Contractor's Office

**Concurrent Review:**

- **Nonconforming Use Certificate:** A nonconforming use certificate to establish legal nonconforming rights to a contractor's office.
- **Change of a nonconforming use:** From the previous legally established use of major auto repair to a contractor's office.

**Applicable Code Provisions:** Chapter 531, Nonconforming Uses and Structures.

**Background:** Kevin and Valerie Holler have applied for a nonconforming use certificate and a change of nonconforming use to legally establish a contractor's office within an existing building at 4420 Humboldt Avenue N. The subject site contains split zoning, with both R4 and C2 zoning designations on the site. The majority of the site is zoned R4. Therefore, the more restrictive provisions of the R4 district apply to the entire site. The subject building in which the contractor's office is located was constructed in 1927. The parcel also contains a duplex with addresses at 1423 and 1425 45<sup>th</sup> Avenue N.

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The site was originally three parcels. The parcel containing the commercial building was combined with the residentially zoned parcels under common ownership in 1974 at the request of the City Assessor's office. The portion of the parcel containing the commercial building has been zoned for commercial purposes since 1924. In 1963 the zoning on the property was changed from commercial to B3S-2. Garages for storage, repair and servicing of motor vehicles were permitted conditional uses in the B3S District. No conditional use permit was ever applied for and the use became legally non-conforming with the adoption of the 1963 Zoning Code. In 1999 the site was rezoned once again from B3S-2 to C2. The previous major auto repair use is not permitted use in the C2 District or the R4 District. Thus, this use remained nonconforming

The commercial portion of the site contained an auto repair use from 1927 to 2002. In 2002 the property was purchased by Kevin and Valerie Holler and converted to a contractor's office. No change of non-conforming use application was submitted to the city when this new use was established. Contractor's offices are permitted by conditional use permit in the C2 District. However, as stated above, the R4 zoning is the predominant zoning on the site and therefore the provisions of this district apply. Contractor's offices are not permitted in the R4 District.

The property is adjacent to a site zoned C2 to the south, Victory Memorial Parkway to the north and residential uses to the east and west. As of writing this staff report, staff has not received any official correspondence from the neighborhood. Staff will forward comments, if any are received, at the City Planning Commission meeting.

**Loss of Nonconforming Rights:** For a nonconforming use to retain its legal nonconforming rights the use of the property cannot be discontinued for a period of a year or more per Minneapolis Zoning Code Provision 531.40 (a)(1) Loss of nonconforming rights:

531.40. Loss of nonconforming rights. (a) Discontinuance (1) In general. If a nonconforming use or structure is discontinued for a continuous period of more than one (1) year, it shall be deemed to be abandoned and may not thereafter be reestablished or resumed. Any subsequent use of the land or structure shall conform to the requirements of the district in which it is located.

The subject property was legally established as a major auto repair use in 1927. This use became non-conforming in 1963 with the adoption of the 1963 Zoning Code. In 1974 three lots were combined to create a situation where R4 zoning became the predominant zoning district on the site. The auto repair use was maintained as a legal nonconforming use on the site from 1963 to 2002 when it was converted to a contractor's office. However, the last business license for an auto repair use was issued in 1994. The use was converted to a contractor's office without receiving the proper approvals for a change of non-conforming use. At that time, the legal nonconforming use was discontinued and that discontinuance has exceeded a period of one year.

The applicant provided information on the history of the use of the property back to 1962 when the previous major auto repair use was last legal. CPED-Planning staff has included additional dates related to licenses and other relevant activities:

- 1) The building was constructed in 1927 and P&H Garage was operated on the site.

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- 2) From 1962-1964 the use was Lorentzen Auto Service. In 1963 the auto repair use became nonconforming with the adoption of the new zoning code.
- 3) In 1965 the building occupied by Humboldt Auto Body. Humboldt Auto Body operated on the site from 1965-1977.
- 4) In 1974 the lots at 4420 Humboldt Avenue N and 1423 45<sup>th</sup> Avenue N were combined. At that time a split zoning situation was created and the R4 zoning became the predominant zoning on the site. As such, any commercial use at 4420 Humboldt Avenue N would be nonconforming.
- 5) In 1978 the building was occupied by Northland Auto Body. Northland Auto Body operated on the site from 1978-1982.
- 6) In 1983 the building was occupied by Auto Body Services. Auto Body Services operated on the site from 1983 to 1993.
- 7) In 1994 the building was again occupied by Northland Auto Body. Northland Auto Body operated on the site from 1994-1995.
- 8) The last license for a motor vehicle repair garage was issued in 1994.
- 9) In 1996 the building was occupied again by Auto Body Services. Auto Body Services operated on the site from 1996-1998, presumably without a proper business license.
- 10) In 1999 the building was occupied by Humboldt Auto Frame. Humboldt Auto Frame operated on the site until approximately November of 2001. Again, this was presumably without a proper business license.
- 11) In September of 2002 the property was purchased by the applicant and converted from major auto repair to a contractor's office. This conversion was done without first obtaining City approvals for a change of nonconforming use.
- 12) In January 2009 the current property owner was cited for outdoor storage and at that time it was determined that the business activity currently being conducted on the site required land use approvals.

The Department of Community Planning and Economic Development – Planning Division believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.30, under which the applicant must bear the burden of proof to establish the lawful nonconforming status of the use or structure and the lack of abandonment, change of use or loss. The last legal nonconforming use on the property was minor auto repair. This auto repair use was discontinued for a period of more than one year beginning in 2002 when it was converted a contractor's office. No change of nonconforming use application was submitted at that time and the non-conforming rights were lost.

**Findings:**

- 1) The building was constructed in 1927 and P&H Garage began operating on the site.
- 2) From 1962 to November of 2001 the building at 4420 Humboldt Avenue N contained a major auto repair use.
- 3) In 1974 the lots at 4420 Humboldt Avenue N and 1423 45<sup>th</sup> Avenue N were combined. At that time a split zoning situation was created and the R4 zoning became the predominant zoning on the site. As such, any commercial use at 4420 Humboldt Avenue N would be nonconforming.
- 4) The last license for a motor vehicle repair garage was issued in 1994.

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- 5) In September of 2002 the property was purchased by the applicant and converted from major auto repair to a contractor's office. This conversion was done without first obtaining City approvals for a change of nonconforming use.
- 6) It can be concluded that by September of 2003 the major auto repair use has been abandoned for a period exceeding one year.
- 7) The applicant has failed to present clear and convincing evidence that discontinuance of the nonconforming use or structure for the specified period was due to circumstances beyond the property owner's control per Zoning Code Provision 531.40 (a) (2).

As of writing this staff report, staff has not received any correspondence from the Webber-Camden Neighborhood Organization. Staff will forward comments, if any are received, at the City Planning Commission meeting.

**Findings As Required By The Minneapolis Zoning Code (change of nonconforming use from a major auto repair use to a contractor's office):**

**The Community Planning and Economic Development Planning Division has analyzed the application and makes the following findings:**

**The Planning Commission may approve a proposed change in use if the use meets the following standards as specified in section 531.80 of the Zoning Code:**

**(1) The proposed use is compatible with adjacent property and the neighborhood.**

The site is bordered by a residential use on the same parcel to the north. The site is also bordered by residential uses to the east and across Humboldt Avenue N to the west. It is bordered by a large parcel zoned C2 to the south. This parcel was previously occupied by a grocery store and is currently vacant. The subject building has contained commercial uses since 1927. The proposed contractor's office use will be located entirely within the building. In that regard, the proposed use is compatible with adjacent property in the neighborhood.

**(2) The proposed use is less intense than the existing, nonconforming use.**

**(a) Hours of operation:** According to the applicant, the hours of operation for the previous auto repair use are not known. The hours of operation for the proposed contractor's office would be by appointment only, not to exceed the hours permitted in the C2 District. The allowed hours of operation in the C2 District are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. The proposed hours will not increase the intensity of the commercial building.

**(b) Signage:** The previous auto repair use had a 3' x 3' sign on the west elevation, facing Humboldt Avenue N. No signage has been proposed for the new use. The application materials state that any future signage for contractor's office use will comply with the signage requirements for the C2 district. Chapter 543 of the Zoning Ordinance states the following regarding new signs for non-conforming uses:

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*Newly established signs located on nonconforming uses shall be limited to one non-illuminated, flat wall identification sign, not to exceed sixteen (16) square feet in area and fourteen (14) feet in height. In addition, on a corner lot, two (2) such signs per building, except as otherwise allowed in the manner provided for in Chapter 531, Nonconforming Uses and Structures, governing expansion or alteration of legal nonconforming uses and structures.*

**(c) Traffic generation and safety:** It is expected that the previous auto repair uses on the site allowed customers to drive to the site for service, generating some traffic. The proposed contractor's office will not have established hours of operation and therefore is expected to generate minimal traffic to the site. The nature of a contractor's office is a use that provides building construction or property maintenance services. With the proposed contractor's office, nearly all of the business is conducted off-site. There is only one employee associated with the use. In that regard, the amount of traffic generated is not expected to have a negative impact on surrounding properties and staff has no concerns about safety.

**(d) Off-street parking and loading:** There are no legal off-street parking or loading spaces located on the site for the commercial use. The residential use on the north portion of the property has adequate off-street parking in the form of two surface parking stalls. The site plan prepared by the applicant shows three parallel parking stalls on the west side of the contractor's office building, adjacent to Humboldt Avenue N. The space between the building and the public right-of-way is only 14.2 feet in width. Parallel parking stalls require a width of 8.5 feet and a drive aisle width of 12 feet. While it is possible to park vehicles in the noted location, these are not legal parking stalls due to the lack of a proper drive aisle. In the event that the Planning Commission finds the use non-conforming rights per the request nonconforming use certificate, these nonconforming rights would also apply to parking. There is no bicycle parking requirement for contractor's office and none has been provided.

The City has several documented violations about parking and inoperable vehicles being located on the site under the previous auto repair user. No such complaints have been received since the applicant established the contractor's office use in 2002. Therefore it can be concluded that the proposed contractor's office would be less intense than the minor auto repair use as it relates to parking and loading.

**(e) Nature of business operations:** The nature of business operations from auto repair to a contractor's office will change. The contractor's office will be performed entirely within an enclosed building and no outdoor storage will occur. The contractor's office use is one that will not generate noise, dust or other nuisances. The use is not open to the general public and therefore will generate little traffic.

Staff did note materials being stored outside, to the rear of the building, when conducting a recent site visit. In the event that the City Planning Commission approves the proposed applications, staff recommends that all materials be moved inside as a condition of approval.

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**(f) Number of employees:** The previous auto repair use had approximately two employees. The proposed contractor's office has only one employee who also owns the business. The number of employees proposed will be less intense than the previous use.

**(g) Building Bulk:** The existing commercial building has a footprint that is approximately 1,508 square feet in area. The existing house on the parcel has a footprint that is 1,926 square feet in area. The lot is 17,729 square feet in area, for a floor area ratio of .19. The maximum floor area ratio in the R4 District, the predominant zoning district on the site, is 1.5. No exterior modifications or additions are proposed as part of the application and the building will continue to comply with the maximum FAR for the district.

**(h) Aesthetic impacts on surrounding property:** The applicant resurfaced the exterior of the building with brick per a permit issued in January of 2009. Landscaping has also been recently installed in the boulevard in front of the building. No exterior modifications are proposed at this time. The aesthetic impact on the surrounding property has been improved with the work recently performed on the site. As stated above, in the event that the applications are approved, no outdoor storage would be permitted on site.

**(i) Noise, odor, heat, glare and vibration:** The nature of the previous major auto repair use implies that it would have generated some noise and vibration. The proposed contractor's office will be located completely within the building with the condition of approval above, and most of the work will be performed off-site. As such, no noise, odor, heat, glare or vibration is expected to be generated from the proposed use. In that regard, the contractor's office is less intense than the previous major auto repair use.

Based on the above analysis, the proposed contractor's office should not be more intense than the previous auto repair use. However, based on the findings for the nonconforming use certificate, staff does not believe that the applicant has rights to a commercial use. In that regard, staff recommends denial of the application for a change of non-conforming due to the fact that rights to any commercial uses on the property have been lost.

**Recommendation of the Community Planning and Economic Development Department – Planning Division:**

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the nonconforming use certificate to establish legal nonconforming rights for a contractor's office for the property at 4420 Humboldt Avenue N.

**Recommendation of the Community Planning and Economic Development Department – Planning Division:**

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for a change of nonconforming use from major auto repair to a contractor's office for the property at 4420 Humboldt Avenue N.

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**Attachments:**

1. Written descriptions and findings submitted by the applicant
2. Zoning map.
3. Site plans and floor plan.
4. Photos.

**Excerpt from the  
CITY PLANNING COMMISSION MINUTES  
Minneapolis Community Planning & Economic Development (CPED)  
Planning Division**

250 South Fourth Street, Room 300  
Minneapolis, MN 55415-1385  
(612) 673-2597 Phone  
(612) 673-2526 Fax  
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**MEMORANDUM**

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DATE: October 14, 2009

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of September 28, 2009

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The following actions were taken by the Planning Commission on September 28, 2009. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Commissioners present: President Motzenbecker, Bates, Cohen, Gorecki, Huynh, Luepke-Pier and Tucker – 7

Not present: Nordyke and Schiff

Committee Clerk: Lisa Baldwin (612) 673-3710

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**10. Kevin Holler (BZZ-4345, Ward: 4), 4420 Humboldt Ave N (aka 1423 45<sup>th</sup> Ave N) ([Kimberly Holien](#)).**

[Staff report](#)

**A. Nonconforming Use:** Application by Kevin Holler for a certificate of nonconforming use for an existing commercial building at 4420 Humboldt Ave N.

**Action:** The City Planning Commission adopted the findings and **denied** the nonconforming use certificate to establish legal nonconforming rights for a contractor's office for the property at 4420 Humboldt Ave N.

**B. Nonconforming Use Change:** Application by Kevin Holler for a change of nonconforming use from a minor auto repair facility to a contractor's office for an existing commercial building at 4420 Humboldt Ave N.

**Action:** The City Planning Commission adopted the findings and **denied** the application for a change of nonconforming use from major auto repair to a contractor's office for the property at 4420 Humboldt Ave N.

Staff Holien presented the staff report.

**Commissioner Luepke-Pier:** Given that its lost its nonconforming rights, what could this building possibly be allowed to be on the site given that it has two principal structures and one of them is a duplex and its zoned R4 and C2?

**Staff Holien:** Given that scenario, with the current lot layout with the lot line as it is right now and the two principal uses and the split zoning, this building would have to be converted to some sort of accessory structure to serve the principal use.

**Commissioner Luepke-Pier:** Like a garage or a shed.

**Staff Holien:** Right.

**Commissioner Luepke-Pier:** Would they have the option of splitting the lot to become two separate lots in order to accomplish this...to not have it convert to the R4 being the dominant zoning?

**Staff Holien:** A minor subdivision would be possible to create a situation like this with the lot line here where the commercial building would be on a separate lot, however, there would still be a split zoning situation on this commercial building if it were subdivided that way. With the split zoning that way, the R4 would still be the predominant zoning on the site so the building would have to be converted to some sort of residential use.

**President Motzenbecker:** Was there a zoning change explored? It seems like that would fit with what you're talking about. With the subdivision and changing the zoning, it seems like this would kind of be taken care of.

**Staff Holien:** The applicant did submit an application for a minor subdivision that actually shows a lot line like this and an application for a rezoning on this piece from R4 to C2, however, the rezoning from residential to commercial requires signatures from neighboring property owners and the applicant was not able to submit a complete application with those requirements.

**Commissioner Tucker:** Do you happen to know the history of how these three parcels got put together? Why the city assessor asked for that?

**Staff Holien:** I do not know why the city assessor asked for that, that was some time ago. I had a conversation with Hennepin County and that's the only information they were able to provide

us is that the lot combination was done at the request of the city assessor, which apparently that was fairly typical at that time.

**Commissioner Tucker:** Was it split zoning at the time? Did they create the split zoning by putting those...

**Staff Holien:** It was created at that time.

**Commissioner Tucker:** How would these applications change if the portion zoned C2 were its own parcel?

**Staff Holien:** If it were its own parcel, the application would be for a conditional use permit for a contractor's office.

**Commissioner Tucker:** What applications would needed had the owner come forward in 2002 and made this application so it was more timely?

**Staff Holien:** A change of nonconforming use application, which is what's before you now.

**Commissioner Tucker:** So in a way we're looking at what we would've looked at in 2002, but now the nonconforming use for the auto has disappeared.

**Staff Holien:** That's correct.

**Commissioner Bates:** I think Commissioner Tucker just asked this but I'm going to ask it again in a different way. Correct me if I'm wrong, right now if this application had come to the Planning Commission in 2002/2003 without the year time period intervening it, I assume at that point because its less intense use that we could speculate that staff might have approved or suggest we approve the application.

**Staff Holien:** If the only application were for the change of nonconforming use and we had the history for the certificate of nonconforming use, yes. I think it's safe to say that per the findings in the staff report for this application as well, the contractor's office would be less intense than the major auto repair use.

**Commissioner Bates:** So essentially we're here not necessarily because there's anything real being changed right now in that specific neighborhood, it's just because the technicality of the loss of the nonconforming use, correct?

**Staff Holien:** Yes. This matter was brought to the City's attention via some zoning inspection violations. The issue at this point is that the staff finds that the site does not have rights to a nonconforming use.

**Commissioner Bates:** I have a legal question. Is it a loss of a nonconforming use or can it be taken away? Is it just lost after that year period or...

**Staff Holien:** Yes. After any vacancy of more than a year, any nonconforming use is considered abandoned and the rights are lost.

**Commissioner Bates:** Did you talk to the applicant to understand why they didn't apply for the change at that point?

**Staff Holien:** The applicant is here and they'd be more apt to answer that question.

**Commissioner Cohen:** I note that there's going to be a public library constructed at 44<sup>th</sup> Ave N, is it adjacent to this property? What will the impact be if this application were approved? What would the impact on that library be?

**Staff Holien:** I'm not aware of any current plans for a library so in terms of layout of the site and real specific implications of how this use would impact that use, really they are two completely separate issues.

**Commissioner Cohen:** Separate issues? If it did impact the use of the library, that wouldn't be a separate issue would it?

**Staff Holien:** The City hasn't seen any plans for a library on the adjacent property at this point so in terms of traffic circulation or anything like that, any parking issues on the site, that's not something that's before us today.

**Commissioner Luepke-Pier:** On the existing site plan, where exactly does the C2 end in relation to this existing building and the R4 start to the east?

**Staff Holien:** It's really just on the other side of the building wall.

**Commissioner Luepke-Pier:** If they wanted to just parcel that one little land we'd be looking at setback variances and that kind of thing or what would the options be there?

**Staff Holien:** The issue with the subdivision that way is that it wouldn't meet our subdivision regulations in that it would create some irregular lot lines and it would create a reverse corner lot situation for the property to the north.

**Commissioner Gorecki:** This is for Mr. Wittenberg, can you talk a little about precedent here and what has been done or not done in the past?

**Staff Wittenberg:** Are you referring to precedent in terms of actions on similar types of applications?

**Commissioner Gorecki:** That and what type of position does this body and the city as a whole put themselves in if we are looking at a pretty set one year period of time and that change is not made within that period of time, what proverbial can of worms here do we set not only for this body but for the city as a whole if we are to overturn the staff recommendation of denial? Where do we find ourselves at that point in time if you can help me think through that a little bit.

**Staff Wittenberg:** I guess the advice that we've heard from the City Attorney's office is that on this type of application that we really should be playing it by the book and not having a lot of consideration about what we'd like to see take place on the property in question and that certainly we can't have different standards from one nonconforming use certificate application to another.

If we're looking at straight forward one year abandonment for one case, we need to look at the same criteria for the next case.

**Commissioner Luepke-Pier:** I have a question for you too. I'm looking at this thinking that this is the most unique situation that I have probably seen with the zoning and the uses and number of different buildings on this parcel and even the shape is absurd and I'm wondering if there is anything we can consider doing. I understand that we don't want to just say the one year's not important here because then the next million cases we hear we're going to hear the same thing. It seems to me that in looking at the structure itself, it's not something that would be suitable for residential use, especially since it used to be an auto garage. Who would want to live where who knows how many gallons of oil have been dumped? Another accessory structure, it already has a garage and I can't imagine anybody needing...I can't imagine what would be going on if you actually rented out this duplex with that size of a garage. I'm looking at this as somebody who lives in this area of the city and it seems to me that this is the ultimate conundrum of the lot. If it was a variance I would say it's such a unique situation that it would deserve granting it, but in this case, what can we do other than maybe ask them to get 60 signatures? Is there anything?

**Staff Wittenberg:** You're exactly right, the situations do pose a conundrum. It's an example of why creating nonconformities is a really serious thing for property owners, but essentially, Ms. Holien did lay out what the two options are, the option in front of you or the option to subdivide and rezone the property and the signature requirement that, when going from residential to commercial district which would be required here, is something that's in the state statute for cities of the first class like Minneapolis so it's something our hands are tied on. It's not something we can have an exemption from. Under state law, if the applicant isn't able to obtain those signatures, we can't proceed with the rezoning.

**President Motzenbecker:** If this gets denied, understanding the applicant should have come here in 2002 so that's there issue, but at the same time, it's a successful business which looks like a very nicely kept business and this is denied and effectively kind of placing them out of business, what is the procedure after this that they would go through to? Gather more signatures or do they have a number of months to rectify this?

**Staff Holien:** Essentially, they could attempt to apply for the rezoning again and get the required number of signatures otherwise additional applications for a future use of the property could be submitted, I believe, once we deny it. They could also submit an application for a rebuttal of abandonment which would go to the Board of Adjustment kind of rehashing the whole issue of whether or not that commercial building has been vacant for more than a year from the date of the previously established nonconforming use vacating the property.

**Staff Wittenberg:** I think the applicant's opportunity to rebut abandonment would probably be part of the process right now as part of this nonconforming use certificate. There is a provision in the ordinance that suggests that if there has been a vacancy of one year or more that the burden of proof is on the applicant to show that that took place due to some kind of circumstances that were beyond the control of the property owner at that time during the vacancy. In terms of the timing, I guess we would have to work with our Zoning Enforcement to decide if there is an immediate requirement to desist business activity at the property or if there is some sort of reasonable period of time that the Zoning Enforcement section would have for the business to end.

**Commissioner Bates:** In Mr. Wittenberg's response to Commissioner Gorecki, I just wanted a little bit more information. There really must be some sort of history around nonconforming use abandonment issues and there seems...I just feel like I would like to understand a little bit more if there have been any precedents and, if not, what that is. I understand the City Attorney's saying to play it by the book, but that is the attorney's job to say that. I would like to ask back, are there any precedents and what does that mean?

**Staff Wittenberg:** I think the idea of precedent may not be a relevant one in this type of situation just because every situation is going to be so unique based on the evidence submitted in the case in front of you based on whatever records the applicant can submit in terms of polk directories that would show a continued occupancy, whether they were obtaining any permits with the intent of keeping a use going which I understand isn't the case in this situation. Other than that, I don't really know what to say in terms of a precedent.

**Commissioner Bates:** What I have here and what I'm weighing in my mind...

**President Motzenbecker:** I don't want to debate this now. Just questions now, we can get into that during our portion. I want to allow public testimony. Hold that thought, we'll come back to it. Any other questions for staff? Seeing none, I will open the public hearing.

**Susan Breedlove** (2215 Dupont Ave N) [not on sign-in sheet]: I volunteer fulltime and work fulltime at Patrick Henry as a retiree so I have a lot of interest in this building. One thing that we do try to do is encourage entrepreneurship and we have a family here that have been entrepreneurs for some time. Also, we like to increase the tax base in our neighborhood. There's a lot of support of neighbors. I'm not talking about institutions or people that represent an institution in the neighborhood but I'm talking about individual neighbors. The quality of the property, it's a very well kept building. This building couldn't be used for accessory use, I believe one of the commissioners had brought that up, also, certainly not residential use as Commissioner Luepke-Pier suggested. I also think that the individuals are victims of a history of the past of split zoning, the impact on the livelihood of their family and the repercussions on other people who feel like they don't have control over what's happening in their lives and the statement by the staff saying they were not aware of a proposed library. Everybody on the north side knows that that's been in progress. Maybe it's not down in writing, but we know about what's happening. I would like to propose that the Holler's be allowed to continue and work out whatever needs to be worked out in terms of what needs to be done with this zoning. Thank you.

**Kevin Holler Jr** [not on sign-in sheet]: Would you please approve our certificate of nonconforming use for 4420 Humboldt Ave N? My dad has been working there since 2002 and he didn't know that he was breaking the law and it's a nice place and I like to play there sometimes. I might be able to live there someday.

**Kevin Holler** (4111 Washburn Ave N) [not on sign-in sheet]: That site is a very unusual property, most people recognize that right away. I apologize for a lack of knowledge and insight into how a person is supposed to do the nonconforming use. When I purchased this property and the nature of the way I conducted my business, I don't have the public come to me, I use it as a staging ground, a place to build glass block window panels to install in homes. It basically was a storage garage for me. When I bought it, it was in disarray. I have totally rebuilt the outside of it. I am still working on that. I recently started to excavate the south wall. I wouldn't be standing in front of you had I known in 2002 what I was supposed to do. I see the predicament I am in. I also

see that this is very unusual, but there's a lot more to the story. Two Hennepin County commissioners covet my property. They have bought all the surrounding property other than the residential portions that everyone who, went I went to to get the rezoning, I had eight signatures of all of my neighbors. I needed to go to the land acquisition person and talk to her for Hennepin County. She would not sign because she said they might want my property. Of course they want it. They've been calling to try to purchase it for over a year. I told them it is not for sale. There is issues with Hennepin County. They don't maintain their property. I own the duplex. Next to that duplex there is a rental property that they got in foreclosure that nobody could bid on. The second story of that property, they keep the windows open. I've called the City of Minneapolis, probably 15 or 20 times in the past six months and I've asked them if someone can send an inspector out to close those windows. I don't want animals flying in there or living there. If you call there today and ask if there's any complaints about that property they'll say there isn't. Less than a week ago I built a trench on the south wall. I've been down to Zoning twice to ask, to make sure. I do construction for a living so I kind of know. I wanted to make sure I didn't need a permit so I asked twice if I needed a permit to put in a brick fence to surround my property with. They told me no, gave me the regulations. I got another form today because the inspectors have been out there three times; twice, two emergency inspectors showed up because somebody is driving by my property and looking at it with a fine piece of eyeglass to see exactly what I'm up to now. That's the nature of what we have right there. There are some other comments that I would like to make. Our intention is, we have a plan for that property. We plan on selling our home when the market comes around a little bit and moving over to the duplex, remodeling it and probably doing some additional add-ons or however we want to finish it off. That's our plan for the future. Also, the inside of the structure in that garage is where I would build a glass block showroom [tape ended]...what happened three years ago is that I made a large purchase of brick and put them behind my building and then somebody complained about it. You couldn't even see them because they were behind a privacy fence at the time, but someone complained. The inspectors, when I went downtown one time, one of the inspectors asked me about them and I told them yes. He said I can't legally store them there. I said that they're not for my work, they're for the site. He gave me so long to move them. It was in the winter and he said I had to have them gone by April 1. The next day, I decided my plan couldn't wait and I had to get going on it so I went and pulled a permit to veneer the shop. I pulled a permit, I built a shelter, I started working on my project. Less than a week later I came inside my shelter and there was a stop work order in there. I called downtown to find out what that was about and they said...

**President Motzenbecker:** I think we're getting a little off track here. I get the point that you feel there is a little extra scrutiny occurring on your site. You're trying to improve the property nicely and want to run a successful business. I'd like to ask before we're finished, I want to go back to this signature issue because it seems there are oodles are neighborhood support. How many signatures do you need if you were to change zoning?

**Kevin Holler:** If there would have been one more property that would have not been owned by the county...

**President Motzenbecker:** How many signatures?

**Kevin Holler:** I needed two-thirds. Total was 11.

**President Motzenbecker:** Is 11 the two-thirds number? Ok.

**Kevin Holler:** All the people around me signed it, basically, and even one person who made a bad investment, he signed it.

**President Motzenbecker:** We're curious why we weren't able to get them with all the support it sounds like you had. Sounds like you did have it except for the lynchpin piece that wasn't being signed over.

**Kevin Holler:** There also was a condemnation order on my property. My wife and I went in front of the county commissioners twice. The other commissioners saw that this was an abuse of eminent domain. They rescinded that condemnation order about six weeks ago roughly.

**President Motzenbecker:** I don't want to drag this out. We can go into all these issues over and over but it's getting a little beyond our point so I want to allow you a chance to conclude and I want to see if there is anyone else who wanted to speak or if commissioners had some questions for you.

**Commissioner Bates:** I just want to be clear, he needed 11 signatures and he got 10?

**President Motzenbecker:** No, he got eight or nine.

**Staff Holien:** At the time the signatures were sent to the City Attorney's office there were five valid signatures. I don't know if additional signatures were obtained after that was submitted to the City Attorney's office, but of the five valid, there were 11 total needed so he needed six additional signatures at that time.

**Commissioner Bates:** Out of how many potential signatures?

**President Motzenbecker:** Eleven.

**Commissioner Bates:** So you got five people out of 18 to sign.

**President Motzenbecker:** That were valid.

**Kevin Holler:** It goes by plots. Actually, there were six people who signed that owned and there were three properties owned by the county so six, nine, you do the math. That's how they do it, they look at plots.

**Roberta Englund** [not on sign-in sheet]: I'm the Executive Director of the Webber-Camden neighborhood organization. With the staff report that came forward to you, the letter from the organization was not included, I assume you have it now.

**President Motzenbecker:** We got it this afternoon, yes.

**Roberta Englund:** Had the question of use come forward in 2002 in a legal and appropriate manner, you would have heard from the association then, as you are hearing from them now, that they would have asked you to deny. The building in question was a problem for the community, for the neighborhood and immediate neighbors surrounding it for many years. Whether it was the service station of its original creation, to the auto repair that followed it, to the abandonment or apparent abandonment of the property after the Holler's acquisition, it was never a contributing

factor to the community and it certainly does not in its current situation contribute to the intent of the neighborhood to support the R4 district in the Minneapolis Plan for increased housing and to support the community corridor that 44<sup>th</sup> Ave is. It is difficult to address the situation related to the library. Since the improvements to the Holler property, including the brick façade and the gardens, came after Hennepin County announced their intent to begin to inquire and build. I would prefer not to have you or anyone else consider that the present state of the property which would have objected to in terms of its appearance, but for its use, we object now as we would have objected then. We don't believe that whatever accident may have happened, whatever intent for use of land and purpose occurred when this split zoning came into existence was in the best interest of the community and we don't believe that there is any reason to perpetrate that by allowing a nonconforming use now. We ask that you support the staff recommendation and deny. Thank you.

**Carmen Johnson** [not on sign-in sheet]: I have been friends of the Holler's a long time and I have been to the property and they have done a tremendous job of cleaning that area up and he runs his business out of there and he's done that for seven years now and I'm asking that you continue to let him do that.

**Marvin Patsner** (?) [not on sign-in sheet]: I've been associated with the Holler's for ten years now, I've worked for them. They have a wonderful piece of property there and I wish that you would please give him a certificate of nonconforming. Thank you.

**Lucia Smith** (4100 Washburn Ave N): I'm a neighbor of the Holler's and I'm kind of astounded at the conversation. I'm hearing that this is a unique...or many of these situations are unique and should be treated as unique requests. I assume that as a unique request this could be approved. I'm hearing, too, that we're considering whether to put a small businessman out of business and I think at this time in this community that would be a very sad thing. Someone who lives and works in north Minneapolis I think is a great happening and I'm glad of it. Clearly something went a little wrong in 2002. I work at a cancer institute and if someone came to us with a malignant melanoma in 2009, we deal with that. We don't tell them that they should have had a little mole removed in 2002 and maybe this wouldn't have happened. I think it does need to be dealt with now. It also strikes me as some kind of...I'm not a conspiracy theorist, but there's something else going on. I've seen a couple plans for Hennepin County Library or Minneapolis Library, which I think would be wonderful in that area and the area that I've seen that's designated for the library building and its parking is at quite a distance on that block from the Holler's building that we're discussing. I don't think that the entire area would be necessary for the library and I'm confused about what role the Hennepin County board has in the whole situation. I would hope that you would go ahead and support this existence of what appears to be a healthy small business in Minneapolis, in north Minneapolis, that has been run by a north Minneapolis family. Thank you.

**Valerie Holler** [not on sign-in sheet]: One of the things I did want to mention because I think there's confusion about the signatures, the initial thing that we did try to apply for was a conditional use permit, then a split zoning and the fact of the matter is that we have had every human's signature that lives or owned property there. It just so happened that Hennepin County owned a really humungous parcel and then they also owned another parcel and so their number added up to a big chunk and so to help you get that visual...Kevin's building is this building here and our R4 is right there. Hennepin County owned this and all of this. The people on the corner signed anything we asked them, they love us. So did the couple next door, Tiffany and Steve, and

so did the owner or that and so do the people who live there now and so does the lady on the alley and now the barbers also. When we're talking about what the community wants, what's best for them, these are the people that live across the street. That's the signature piece. Those people were the ones that were required to sign. The diagram that went out from our property went out to these homes, it didn't even hit the barber shop, and then it hit Hennepin County's property. Hennepin County had us. We didn't pursue that because they told us they weren't going to sign. I just wanted to share with you some work that I had done. Initially we thought that the planners were going to suggest approval so this kind of caught us all off guard. I'm sorry if I get a shaky voice, I'm nervous and this is emotional for me. Wednesday evening I read the email that the city planners were going to suggest it be denied. I said I have to do something, I couldn't just let that happen. I went to talk to people in the neighborhood. I work Thursday and Friday, so over the weekend...the ones that are dark are green, this is us right here, these are the people here and here and all these people around here we could find home I went down this street, I went to Hamilton Manor, I asked people what they thought. This is just the close by people and those people signed this petition. I have an affidavit, I didn't make copies, I only had 30 minutes over lunch today. These are all people who...I didn't count them because I didn't have time, but there's this page and this page and this page and predominately they are people who live in north Minneapolis, a couple of people that I work with that are also vested in the community. These are the kids they teach, they care about what happens in their environment. All of this just since Friday afternoon and I didn't do this during work time, I did it before school or after school or at my lunch time. Then I went out on Saturday and Sunday and I talked to people. One of the big questions that people ask us is what's going on with the boarded up stuff. Inevitably, it turns into a conversation about Hennepin County and I know that that's not what this is all about, however, Hennepin County does have plans to put a library there. They're going to putting some information out to the community that's been long awaited. I have gone to the Webber-Camden neighborhood organization four times. Every time I have been to those committee meetings I've been shunned and no one has ever asked me a single question. I'm a biology teacher and I'm a firm believer in free flow of information. I think it's been a little unfair to the people in the community, they don't know what's going on, they don't know anything about this situation. Anytime I show...I showed people the pictures and I brought this little map around. What this petition is, I should read it, it says: Whereas Kevin Holler has been operating his business, Holler Glass Block, at 4420 Humboldt Ave N for over seven years, and whereas Kevin Holler's sole means of employment is tied to his operation at 4420 Humboldt Ave, whereas Kevin Holler has maintained and improved his property in the struggling north side community fraught with foreclosures and whereas we consider Kevin Holler and his business to be an asset and beneficial to the north Minneapolis community, we the undersigned call on the Minneapolis City Planning Commission to approve and grant the nonconforming use certificate to establish legal nonconforming rights for a contractor's office for the C2 property at 4420 Humboldt Ave N so that Kevin Holler can continue as a gainfully employed north side resident. The property is zoned C2 property and as you have already figured out, if he doesn't get a conditional use permit...or not a conditional use permit, a nonconforming use permit...the community, the people that live in the area, that's what they want. When I had gone to the Webber-Camden neighborhood organizations I was willing to talk about this, but no one was willing to talk to me. I tried really hard. I had gone to four of those meetings. The people who have signed are the people who live across the street from where we are. I know you've seen pictures of what the property looks like today. Ms. Englund had referred to the property having been a problem, I want to show you a picture of what it used to look like. This picture is from 2002 and it looks pretty shabby because it was. It's unfair to say we have not improved our property. We re-roofed the duplex about four years ago. Kevin has been working on different things, it's not always

apparent. These are pictures from 2002. The building has always been used, it hasn't been abandoned. There has always been activity going on in there. In fact, when we purchased the building there was activity going on at that time. The person's we purchased it from, sadly, the father had died but the son...

**President Motzenbecker:** We're not going to go into all that. I think we get your point. I think you've made a good point and we see your signatures and we would ask you to please submit those to the clerk. It'd be prudent for us to have those submitted to the record today.

**Valerie Holler:** There's one more comment I wanted to make and it was regarding the purpose of the Minneapolis zoning ordinance altogether. All the points on there to promote and protect the public health, safety, aesthetics, economic viability and general welfare of the city, allowing us to have that certificate of nonconforming use meets that. To encourage the most appropriate use of the land throughout the city, the most appropriate use for that particular piece of property is to have it be a contractor's office, it's very appropriate for that. To protect the character and stability of residential, commercial and industrial areas within the city, to promote the orderly and beneficial development of those areas, it does that. To provide adequate light, air, privacy and convenience of access to property, we do those things. To protect and conserve the value of land, buildings and other improvements throughout the city, if that C2 is relegated to R4, that decreases the value. To prevent the overcrowding of land and the undue concentration of population...my husband mentioned we plan to live there, we also plan, it's R4, we happen to be very friendly people and we intend to have multi-family. We'll live there and the future of that property would be small little efficiency units along with us. To provide for the safe and efficient circulation of all modes of transportation, we don't really affect the transportation there. It's good, it doesn't congest anything, he doesn't have excessive parking, he does by appointment only. It would be a contractor's office and he's mostly working outside of his shop. To preserve and increase the amenities of the city, well we consider ourselves amenities. It's probably talking about physical things. To provide for the administration of this title including the powers and duties of officials and bodies charged with such administration. All of these things, these are the overriding goals, the whole purpose of the zoning and the planning is to make a city that works well and that's what we're trying to do.

**President Motzenbecker:** Thank you. We do understand that. Now I will close the public hearing.

**Commissioner Cohen:** This is a tough one, but based on the findings of an abandonment and Mr. Wittenberg's advice that we play by the rules regarding nonconforming use, I reluctantly move denial as per the staff recommendation (Tucker seconded).

**Commissioner Luepke-Pier:** I have question for staff regarding the signature range, what are the rules in terms of where they had to get signatures from versus where they did get signatures from. Is it a certain radius around it or just adjacent properties or what?

**Staff Holien:** I have the map in the file here. The one thing that's different between the property owners within 350 feet for noticing versus the property owners that are required to submit signatures for a rezoning application is - this here shows the lots so you'll see there aren't very many lots around the property. This is the mailing labels for the public hearing notice, but the signatures for the rezoning go by the underlying platted lots. So for example, this is one parcel

but it actually has approximately six underlying platted lots so that has more weight in terms of the required signatures whereas a lot across the street here is only one.

**Commissioner Luepke-Pier:** It has to be within 350 to be a signature that counts?

**President Motzenbecker:** It's 100 feet, 350 is for...

**Staff Holien:** This is for the mailing labels. The circle for the signatures comes here.

**Commissioner Luepke-Pier:** The first submittal of signatures...

**Staff Holien:** It hits this first row of lots here and then comes around and just nicks this parcel here also and includes these.

**Commissioner Luepke-Pier:** Who owns the parcel, like the empty space to the north, is that just nothing, city owned, county owned?

**Staff Holien:** That's the parkway.

**Commissioner Huynh:** I will also be speaking in support of staff's recommendation. I think that although this is a unique situation with a unique site and as Commissioner Luepke-Pier mentioned, you have a lot of elements that are playing for the uniqueness of the site, however, there are legal issues that the city has to work with in terms of setting a precedent as was raised in the discussion earlier. I think the issue that raised a concern for me was what if projects that follow the rule in terms of getting signatures are not able to obtain them, then is the city obligated then to award a certificate of nonconforming use just because a rezoning wasn't able to be obtained. In that nature, I will be supporting staff recommendation.

**Commissioner Luepke-Pier:** I'm all for playing by the rules and I don't want to set a dangerous precedent and I'm very much a believer in after the year of abandonment of use you lose your nonconforming rights, I'm not opposed to that concept because I strongly believe in it and I think people should be responsible for things, but I see this as such an incredibly unique circumstance that I cannot support the motion. I don't know any way around it, I don't know any way that you can justify it, but it just seems to me that it seems wrong on so many levels that I don't know to explain it except to say that I feel like they're throwing darts and the dartboard is actually behind them. I don't even know what direction to point them in so I know I'm going to be on the losing end of this vote and I totally acknowledge and accept that but it seems to me as though the circumstances are just beyond me to even describe.

**President Motzenbecker:** I think this is a very difficult issue. It's a perfect storm. Whether it's the applicant's fault or not that they didn't know about what they needed to do in 2002, who can say? We're not here to comment on that. What needed to get done didn't get done, it's water under the bridge, but now it's affecting you. Also, there's the thing we're weighing that they got all the signatures they needed except for the Hennepin County signatures, which puts it into a whole other court beyond us. We can't really focus on it and while it may be difficult and painful for us to make a decision, it's a decision that is beyond our scope and realm and that would open up a legal can of worms that I would not want to be a part of. Plus, as was mentioned by staff, the abandonment issue, there was difficulty proving that gap. With that, I think it is tough, but I'm going to see where the commission falls.

**Commissioner Bates:** I will be abstaining from the vote because I do not feel as if we have been given any alternatives from staff regarding possibilities about the implications for the legal precedent or those sorts of things that I think are persuading my fellow commissioners to support staff's recommendation. I think it's crucial in these situations...we are put on this body to make decisions, weighing these sorts of things, weighing the health of the community and understanding the particulars, that's the point of weighing the regulations as well as weighing the personal realities here. Again, I appeal to staff for an alternative to think ourselves out of this legal conundrum which threatens to really disrupt a family that has obviously bonded well with a number of neighbors.

**Commissioner Tucker:** As mentioned a couple of times now, this is quite the conundrum with a very difficult land ownership parcel division or non-division and I think out of testimony why it might be possible to make findings for item B if one were to change the nonconforming use but it's a little hard to put together the findings for the certificate of nonconforming use in the first place and that's sort of where we're stuck. For that reason, because I cannot imagine the findings that we would have to write down, that I support the staff recommendation to deny.

**President Motzenbecker:** All those in favor of the motion to go with staff recommendation and deny item A, the nonconforming use application? Opposed?

The motion carried 3-2, 1 abstention.

**Commissioner Tucker:** I will continue recommending staff denial of the nonconforming use change, item B (Huynh seconded).

**President Motzenbecker:** Moved and seconded, any further discussion? All those in favor? Opposed?

The motion carried 3-1, 2 abstentions.