

**Minneapolis Planning Department**  
350 South Fifth Street, Room 210  
Minneapolis, MN 55415-1385  
(612) 673-2597 Phone  
(612) 673-2728 Fax  
(612) 673-2157 TDD

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**MEMORANDUM**

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DATE: August 28, 2003

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

FROM: Carrie Flack, City Planner

SUBJECT: Appeal of the decision of the Zoning Board of Adjustment by Ira Kipp  
BZZ 1210 – 3712 Lake Street East

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Ira Kipp has filed an appeal of the decision of the Zoning Board of Adjustment for the above referenced property. On July 23, 2003 the Zoning Board of Adjustment denied the applicant's request for a nonconforming use certificate to establish legal nonconforming rights for 6 dwelling units and approved a nonconforming use certificate for 4 dwelling units located in the C1 District.

The appellant has indicated that this action is being appealed because the evidence provided to the Zoning Board of Adjustment supported and indicated that five units have existed in the building since before 1986. The appellant states that the submitted evidence for the five units was not discussed at the hearing. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

At the July 23, 2003 Zoning Board of Adjustment meeting, nine Board members were present. Six Board members voted to deny the requested nonconforming use certificate to establish legal nonconforming rights for 6 dwelling units and voted to approve a nonconforming use certificate to establish legal nonconforming rights for 4 dwelling units in the C1 District. Three Board members voted in opposition to the motion. The actions from the July 23, 2003 Zoning Board of Adjustment meeting and the Planning Department staff report are attached.

**HEARING AGENDA**

**Minutes**

**July 23, 2003**

**Minneapolis Board of Adjustment:**

Ms. Debra Bloom  
Mr. David Fields  
Mr. John Finlayson  
Mr. Paul Gates  
Ms. Tonia Johnson - Absent  
Ms. Marissa Lasky  
Mr. Barry Morgan – Absent  
Mr. Peter Rand  
Ms. Gail Von Bargaen

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m.**, on **Wednesday, July 23, 2003**, in **Room 317 City Hall**, Minneapolis, Minnesota, to consider requests for the following:

**1. 3712 East Lake Street (BZZ-1210, Ward 9)**

Ira Kipp has applied to establish legal nonconforming rights for a six-unit dwelling located in the C1 Neighborhood Commercial District located at 3712 Lake Street East.

**BOARD OF ADJUSTMENT ACTION:**

Mr. Rand motioned to adopt staff findings and **deny** the nonconforming use certificate to establish legal nonconforming rights for 6 dwelling units and **approve** the nonconforming use certificate to establish legal nonconforming rights for 4 dwelling units located in the C1 District. Ms. Von Bargaen seconded the motion.

**ROLL CALL VOTE:**

Yeas: Bloom, Fields, Finlayson, Gates, Rand, Von Bargaen

Nays: **Lasky, Morgan, Johnson**

Absent: None

The Board of Adjustment adopted the staff findings and **denied** the nonconforming use certificate to establish legal nonconforming rights for 6 dwelling units and **approved** the nonconforming use certificate to establish legal nonconforming rights for 4 dwelling units located in the C1 District.

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**HEARING Minutes & Testimony**

**APPEAL from July 23, 2003 – Board of Adjustment Meeting**  
**IRA KIPP (BZZ-1210)**

Staff (Carrie Flack) presented staff's report and recommendation for BZZ-1210 3712 East Lake Street.

**Bloom:** Any questions from the Board? If the applicant would like to make a statement you are invited to come up. Please state your name and address.

**TESTIMONY:**

**Applicant:** My name is **Ira Kipp** and I live in Saint Paul at 589 Cleveland Avenue South, apartment number #1. I have owned this building for over ten years and when I bought it, it was six units. I've got some pictures here (pictures were distributed to all board members). I bought it from an attorney and as far as I know, there has always been four units upstairs and two units downstairs. I didn't make any changes in the building and I didn't do any construction. As you see when you get the pictures, it is just the way it always has been. One of my tenants is here. As far as he knows, since 1986 there have been no changes in it and that was before I owned it. If I have to vacate half the building, which is what this would amount to, it would be a tremendous hardship. I cannot pay for the cost of the building if I have to vacate the whole first floor, which is what they are recommending. This is low cost housing and it has always been six units. That is the way it has been since 1986 anyway. Are there any questions I can answer for you?

**Bloom:** Does anyone on the Board have questions for the applicant?

**Gates:** Could you please explain to me, looking at the drawing submitted for the first floor plan, how the two units can be laid out so that the stairs in the hallway (the entry to the building) do not cut that unit in half? I am looking at the southern most unit.

**Ira Kipp:** You walk into the building right in the middle of it and there is a hallway that goes back to the entrance to one of the apartments that is on the right hand side and the mailboxes are there. Then on the left hand side there is a stairway going upstairs and below the stairway going upstairs there is a stairway going into a full basement.

**Gates:** So the unit on the south side has a living room, which would be on the west, and then a bath and kitchen. Is that the extent of the whole unit?

**Ira Kipp:** Yes, that is a little efficiency unit. The one on the other side is a great big unit.

**Gates:** Okay, so then on the east side of the building there is a bedroom labeled, and then to the south of that there is a kitchen, and on the corner there is a room indicated, but not labeled.

**Ira Kipp:** It can be a playroom for kids, a bedroom, or office.

**Gates:** So those rooms connect to one another without any hallway.

**Ira Kipp:** I didn't know what a doorway symbol was so I put a little squiggle line there to show there was a door was. It connects to the kitchen and to the front hallway too.

**Gates:** Thank you.

BOARD DISCUSSION

**Rand:** I move to accept the staff recommendation.

**Von Bargaen:** Seconded the motion.

**Bloom:** Any discussion on the motion.

**Gates:** Yes. I am having trouble finding much evidence to support six units on the property, on simply the applicant's testimony. I want to discuss or at least have a moment to examine the possibility of five units being legitimate on the property. I think when I came into this thing after reviewing it earlier, it seemed like the staff recommendation was pretty clear, and may in fact be quite proper, but I was just wondering if there was any comment about approving five units.

**Lasky:** From the testimony and from the lay out, I easily see five units. Otherwise what would be the function of the first floor, if there were only four units upstairs? Was it a retail space or something? I can see the validity of five units, the obvious efficiency is space added on. I don't have a problem with the five units, there is enough history to justify it and it is certainly laid out reasonably to be five units.

**Gates:** The evidence to support five would be solely the POLK directories documentation and testimony.

**Von Bargaen:** Did we hear anything about rental licensing for how many units, four or five?

**Carrie Flack:** The city records indicate that there have been four licenses issue for the property. However, there is an affidavit for the five units in addition to the POLK directory information, and testimony as verification.

**Bloom:** We have a motion on the floor.

**Lasky:** Let's take the worst presumption of it being four units. Is it still zoned to be commercial on the first floor?

**Carrie Flack:** Yes – It is a C1 district. It is a commercial district, so right now the property is zoned more for commercial uses and would allow for only one dwelling unit based on lot area.

**Lasky:** So if we granted four units, they could still put one commercial space or two commercial uses on the first floor and retain the four residential upstairs? Or would they have to go down to one residential unit?

**Carrie Flack:** No - The non-conforming rights are there as far as city records indicate for four units. They could do a commercial use on the first floor but they would have to remove the two units that are there to do a commercial use.

**Lasky:** And still retain the four upstairs?

**Carrie Flack:** Correct.

**Finlayson:** I think it is fairly obvious that this was originally constructed as a mixed-use building and I see no reason why that intention shouldn't carry forth.

**Bloom:** The applicant does want to say something else, but if there is nothing new to introduce, I think we will take the vote at this time.

**Ira Kipp:** I just wanted to say that the guy I bought it from, Mr. Brown has an affidavit here showing it was five units. It is not conducive for the first floor to be a commercial unit, because there is no parking except for two spaces up front and it is all built as residential inside.

**Bloom:** We have a motion on the floor. Call Roll please.

**Vote:**

- Bloom: Yes
- Fields: Yes
- Finlayson: Yes
- Gates: Yes
- Lasky: No
- Morgan: No
- Rand: Yes
- Von Bargaen: Yes
- Johnson: No

Motion: **Carried**  
**Staff Recommendation was approved.**