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

**Date:** July 23, 2009

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

**Referral to:** Zoning & Planning Committee

**Subject:** Joseph Spangler has filed an appeal of the decision of the Zoning Board of Adjustment approving a nonconforming use certificate to establish legal nonconforming rights to a seven unit multiple family dwelling at 2908 16th Avenue South in the R2B Two Family Residence District.

**Recommendation:** The following action was taken by the Board of Adjustment on June 11, 2009 (BZZ-4370):

**6. 2908 16th Avenue South (BZZ-4370, Ward 9)**

Kelly S. Hadac, on behalf of IB Property Holdings LLC, has applied for a nonconforming use certificate to establish legal nonconforming rights to a seven unit multiple family dwelling at 2908 16th Avenue South in the R2B Two Family Residence District.

**ACTIONS:** Notwithstanding staff recommendation, Mr. Ditzler moved and Ms. Lasky seconded a motion to **approve** the nonconforming use certificate to establish legal nonconforming rights to a seven unit multiple family dwelling at 2908 16th Avenue South in the R2B Two Family Residence District.

**Roll Call Vote: Yeas:** Ditzler, Finlayson, Lasky, Manning. **Nays:** Koch and Sandberg. **Abstentions:** None

**Ward: 9**

**Previous Directives:** n/a

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| Prepared by: Aly Pennucci, City Planner (612-673-5342)<br>Approved by: Jason Wittenberg, Planning Supervisor<br>Presenters in Committee: Aly Pennucci, City Planner |

**Financial Impact**

- No financial impact

**Community Impact**

- Neighborhood Notification: The East Phillips Improvement Coalition was notified of this application.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On July 6, 2009, the applicant was sent a letter by Planning staff extending the decision period to no later than September 4, 2009.

**Supporting Information**

Joseph Spangler has filed an appeal of the decision of the Board of Adjustment approving a nonconforming use certificate to establish legal nonconforming rights to a seven unit multiple family dwelling at 2908 16th Avenue South in the R2B Two Family Residence District. At its meeting on June 11, 2009, the Zoning Board of Adjustment voted 4-2 to approve the application.

The appellant has stated that the decision of the Board of Adjustment is being appealed for the following reasons. First, they assert that the Board of Adjustment did not properly apply the regulations of the Zoning Code related to nonconforming uses and structures. Second, they believe that an application to rezone the subject site may be preferable from the neighborhoods standpoint. The appellants' complete statement of the actions and reasons for the appeal are attached. Due to technical difficulties with the recording equipment at the June 11, 2009 Board of Adjustment meeting a taped recording or transcription of the proceedings are not available.

Attachments:

a) Appellant statement of appeal
b) June 11, 2009 ZBOA actions
c) June 11, 2009 CPED-staff report with attachments
d) Correspondence received after the June 11, 2009 CPED-staff report was published

**Department of Community Planning and Economic Development – Planning Division**
Nonconforming Use Certificate
BZZ-4370

**Date:** June 11, 2009

**Applicant:** Kelly S. Hadac, on behalf of IB Property Holdings LLC

**Address of Property:** 2908 16th Ave South

**Project Name:** N/A

**Contact Person and Phone:** Kelly S. Hadac, (651) 251-8384

**Planning Staff and Phone:** Aly Pennucci, (612) 673-5342

**Date Application Deemed Complete:** May 8, 2009

**End of 60-Day Decision Period:** July 6, 2009

**Ward:** 9 **Neighborhood Organization:** East Phillips Improvement Coalition

**Existing Zoning:** R2B Two-Family Residence District.

**Zoning Plate Number:** 26

**Legal Description:** Not applicable for this application

**Proposed Use:** A seven unit multiple family dwelling

**Nonconforming Use Certificate:** A nonconforming use certificate to establish legal nonconforming rights to a seven unit multiple family dwelling at 2908 16th Avenue South in the R2B Two Family Residence District.

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

> 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.

**Background and Analysis**: The subject property, 2908 16th Avenue S, is in the R2B Two-Family District. Building records indicate that the principal structure on the subject property was built as a seven unit multiple family dwelling in 1963. The lot area is 6,667 square feet and the gross floor area of the structure is 4,896 square feet.

The area within a 1000-foot radius is predominately lower density R2B Two-Family District with Commercial Districts along Lake Street to the south, a few higher density parcels to the north and an Office Residence District to the west. The residential properties within a 100-foot radius include a mix of densities and nonconforming uses. These structures vary from single-family homes and duplexes to nonconforming multi family dwellings.

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned Light Industrial District. A seven unit multiple family dwelling was a permitted use in the Light Industrial District. From 1963 to 1982 the property was zoned M1-2 Light Manufacturing District, which prohibited dwelling units below the second floor, rendering the first floor dwelling units nonconforming. In 1982, the property was down-zoned to R2B Two-Family District, at which time the structure became a legal nonconforming use since a multiple family dwelling with seven dwelling units is not permitted in the R2B Two-Family District.

Philip Owens purchased the subject property in November of 1996. At that time, the property was operated as a seven unit multiple family dwelling. In April 2008 Bayview Loan Servicing, LLC foreclosed on the subject property. In October of 2008, following the redemption period for the foreclosure, IB Property Holdings, a subsidiary of Bayview Loan Servicing, took ownership of the property.

The applicant's representative notes in the statement submitted rebutting abandonment that the property has been actively marketed for sale since October 2008.

**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 has been considered a legally established seven unit multiple-family dwelling since 1982 when it was down-zoned to the R2B Multiple-Family District. The property was identified as a problem property by the City of Minneapolis' Problem Properties Unit in May 2006. Following multiple police incidents and housing violations between January 2006 and May 2006, the rental license revocation process was initiated by the Department of Regulatory Services-Minneapolis Housing Inspections Services Division. Following a hearing

held by the Rental Dwelling License Board of Appeals on July 11, 2006, the Minneapolis City Council revoked the rental license held by Phillip R. Owens for the subject property. The owner was order to vacate and board the property. The tenants were given notice to vacate the premises by October 10, 2006.

On October 10, 2007, following one year of discontinued use, the property was deemed to have lost its nonconforming rights to a seven unit multiple family dwelling. The building was subsequently foreclosed upon in April 2008. On October 16, 2008, following the foreclosure redemption period, IB Property Holdings took ownership of the property, at which time the lender began marketing the property.

After being informed that the Department of Community Planning and Economic Development – Planning Division had determined that the property had lost nonconforming rights to a seven unit multiple family dwelling, the owner supplied information to rebut the presumption by the Department of Community Planning and Economic Development – Planning Division that the property had been abandoned. This is a requirement per Minneapolis Zoning Code provision 531.40 (a)(2).

> 531.40. Loss of nonconforming rights. (a) Discontinuance. (2) Rebuttal of abandonment. A property owner may rebut the presumption of abandonment only by presenting 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. The property owner shall bear the burden of proof.

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 531.40 (a)(2), under which the applicant must bear the burden of proof to illustrate clear and convincing evidence that the circumstances leading to the discontinued use were beyond the control of the property owner. The applicants did not provide any documentation to establish that the property owner made any attempt to remedy the issues leading to the rental license revocation between October 10, 2006 and October 10, 2007, which was required to maintain legal nonconforming rights to a seven unit multiple family dwelling at 2908 16th Avenue S. The subject property lost nonconforming rights to a seven unit multiple-family residence a year prior to the end of the foreclosure redemption period. The City of Minneapolis has not issued building permits of any kind for this property since the rental license was revoked in September of 2006.

**Findings:**

1) Building records indicate that a Certificate of Occupancy was issued for subject property as a seven unit multiple family residence in 1963.
2) The subject property's zoning from 1924 to 1963 allowed for a legal seven unit multiple family residence.
3) The subject property was rezoned in 1963 to M1-2 Light Manufacturing District, which prohibited dwelling units below the second floor, rendering the first floor dwelling units nonconforming.

4) The property was down-zoned to R2B Two-Family District in 1982, at which time the structure became a legal nonconforming use.
5) The rental license for the subject property was revoked on September 1, 2006, and the property was vacated and boarded on October 10, 2006.
6) From October 10, 2006 to October 10, 2007, the nonconforming use of the property as a seven unit multiple family residence was discontinued and legal nonconforming rights were lost.
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 East Phillips Improvement Coalition. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

## RECOMMENDATION

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the nonconforming use certificate:**

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the nonconforming use certificate to establish legal nonconforming rights to a seven unit multiple family dwelling at 2908 16th Avenue South in the R2B Two Family Residence District.

**Attachments:**

1) Written descriptions and findings submitted by the applicant
2) Copy of e-mail sent to neighborhood organizations and CM
3) Zoning map
4) Site plan
5) Floor plans
6) Photographs
7) Oblique aerials