



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: August 11, 2005

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Molly McCartney, City Planner

Presenter in Committee: Molly McCartney, City Planner

Approved by: Jason Wittenberg, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by Karen Marty, on behalf of Joe Welp.

BZZ-2364 – 421 6th Street Southeast – Karen Marty, on behalf of Joe Welp has appealed the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming Use for a property located at 421 6th Street Southeast in the R2B, Two-family District.

RECOMMENDATION: The Zoning Board of Adjustment adopted the staff recommendation and denied the appeal of the decision of the Zoning Administrator.

Previous Directives: N/A

Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.

Community Impact

Other: See attached.

Background/Supporting Information

Karen Marty, on behalf of Joe Welp, has filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment denying the appeal of the decision of the Zoning Administrator that the

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expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming use. The Zoning Administrator has determined that remodeling or finishing previously uninhabitable space, such as an attic or basement, is considered an expansion. The subject site is a nonconforming use because it has seven dwelling units and one rooming unit in the R2B Two-family District, which allows at a maximum, a two-family dwelling. The below excerpt from the Zoning Code, Chapter 531 Nonconforming Use and Structures, prohibits nonconforming uses or structures from being altered or intensified without Planning Commission approval.

531.50. Expansion or alteration of nonconforming uses and structures.

(b) Structure (conforming or nonconforming) containing a legal nonconforming use. Structures containing one (1) or more legal nonconforming uses shall not be moved to a new location on the zoning lot, expanded, enlarged or structurally altered in any way, nor shall such use be intensified, except that the city planning commission may permit the relocation, expansion, enlargement, structural alteration or intensification of such use or structure or any accessory structure, if it makes the following findings, and the relocation, expansion, enlargement, structural alteration or intensification meets all other applicable regulations of this zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot)

At the July 7, 2005, Zoning Board of Adjustment meeting, six (6) Zoning Board of Adjustment members were present. Six (6) members voted to adopt the staff recommendation and deny the appeal of the decision of the Zoning Administrator. The original staff report and the actions from the July 7, 2005 Board of Adjustment meeting are attached.

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Board of Adjustment

HEARING ACTIONS/MINUTES

Thursday, July 7, 2005
2:00 p.m., **Room 317 City Hall**

Board Membership: Ms. Debra Bloom, Mr. David Fields, Mr. John Finlayson, Mr. Daniel Flo, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Barry Morgan, Mr. Peter Rand

Committee Clerk: Michelle Howard

Board Members Absent: Mr. Barry Morgan

The meeting was called to order at 2:03 p.m.

The Minutes were approved for meeting held on: June 16, 2005

The Consent Agenda was approved for the following items: 6, 7, 10, 11 and 12

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m.**, on **Thursday, July 7, 2005**, in **Room 317 City Hall**, Minneapolis, Minnesota, and considered requests for the following items:

5. 421 – 6th Street Southeast (BZZ-2364, Ward 5)

Karen Marty, on behalf of Joe Welp, has appealed the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming Use in the R2B District for a property located at 421 6th Street SE.

Ms. Bloom moved to adopt staff recommendation and deny the variance application. Mr. Gates seconded the motion. Motion passed.

The motion **denied** the appeal of the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming Use in the R2B District for a property located at 421 6th Street SE.

Roll Call Vote:

Yeas: Bloom, Fields, Finlayson, Flo, Gates, Lasky

Nays: None

Recused: None

Absent: Morgan, Rand

Board of Adjustment Hearing Testimony and Actions

Thursday, July 7, 2005
2:00 p.m., **Room 317 City Hall**

Board Membership: Ms. Debra Bloom, Mr. David Fields, Mr. John Finlayson, Mr. Daniel Flo, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Barry Morgan, Mr. Peter Rand

Board Members Absent: Mr. Barry Morgan

Committee Clerk: Michelle Howard

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

5. 421 – 6th Street Southeast (BZZ-2364, Ward 5)

Karen Marty, on behalf of Joe Welp, has appealed the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming Use for a property located at 421 6th Street Southeast in the R2B, Two-family District.

CPED Department Planning Division Recommendation by Ms. McCartney:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the appeal of the decision of the Zoning Administrator.

TESTIMONY

Staff presented their report and recommendation to the Board of Adjustment.

Finlayson: Question, the applicant indicates that there is seven dwelling units and one room unit, what does the city recognize.

Staff: The city recognizes the seven dwelling units and one rooming unit. I believe that the proposed floor plan is for just seven rooming units.

Finlayson: What the Zoning Administrator decision about is the attic and basement?

Staff: It is the previously uninhabitable attic and basement. The plans that were submitted in October to get a building permit was to increase the height of the third floor. So that it would be up to code per bedroom.

Finlayson: Thank you. Any other questions. I see none. Thank you! Is the applicant present?

My name is **Joseph Welp** and I am the owner and live at 421 – 6th Street Southeast, in the building that we are talking about. I would just like to resolve this matter.

I am **Karen Marty, I am Joe's attorney**. He has asked me to be what I call it, is a translator. Translate city into language that he understands, he has had some difficulty in understanding what is required. Last fall, before I was involved, there was a request to add dormers to the building, that was an expansion to the building, there is absolutely no question in my mind, I was not involved with that application. I think it was appropriate to file a request for an expansion, that was denied and the dormers were not put in. The request at this point, is to recognize the language of the ordinance, there is no expansion of the building going on, there is no need to get permission for an expansion. Let me walk you through this real easily, if you go to the staff report page 2 where the ordinance is, at the bottom of that page it says; structures containing a legal nonconforming

use. Structures containing one or more legal nonconforming uses shall not be moved to a new location on a zoning lot, expanded, enlarged or structurally altered in any way. That's the structures, nor shall such use be intensified except with permission. Okay we have a structure, but the structure is not being moved to a new location on the lot, expanded, enlarged or structurally altered in any way. Nothing like that has been done to the building. The use may not be intensified, we recognize that, and in fact the use is not being intensified, it is being decreased, the rooming unit is being eliminated and then there will be seven dwelling units and no rooming unit. There is no need to get the permit for expansion of a nonconforming use, that is why we are here. There is another ordinance that comes into play, that I will just mention real quickly, and that is one that talks about legal nonconforming residential uses in the residence districts. That is section 531. 20, and it says that this Chapter shall not prevent a legal nonconforming residential use in a residence district (that is what we have), from reducing the number of dwelling units or rooming units on the subject property. It is pretty much that simple.

We are trying to eliminate the rooming unit, the inside of the building is being reconfigured perhaps, that is the word we want to use, but there is no structural alterations of the building going on and therefore there is no need for the expansion permit. Any questions?

Finlayson: Anyone else to speak in favor? Anyone to speak against? I see no one. Close the public portion of this item. Please? One.

Mr. Chair and Members of the Board, I am **Tom Johnson** and my family and I live at 425 – 6th Street Southeast, which is immediately adjacent to the property. I am here in support of the Zoning Administrator's determination as I understand it and I hope you do too. Straight forward determination is that when you have a residential structure, that was grandfathered in as a nonconforming use at a time that it was livable space, living space was on the first and second floors that it is an enlargement and expansion and structural alteration of that building to expand the living space onto the third floor and basement. That is what is happening. It seems straight forward to me. At one time Mr. Welp, recognized that and saw it, the expansion of a nonconforming use and was denied by the Planning Commission and rather than appealing that decision to the City Council, he came back to the city and said he didn't need it after all. Let me say, that if a determination is made here to over rule the Zoning Administrator, in which I urge you not to do, it would have a pretty profound effect on our neighborhood in Southeast Minneapolis. There are a number of other residences that have been grandfathered in as a nonconforming use with either dwelling units or rooming units or some combination that would be allowed to expand without having to come to the Planning Commission into the basement and onto the third floor, which would have a very significant impact. I have some pictures that I have taken and will leave with you, because I would like you to ask yourself, whether or not you would want to live on the third floor or basement of this house, given the egresses that have been provided for those two floors, you have to understand that this has already happened. We live next door to it, people are living on the third floor and living in the basement. You should also know that at the time Mr. Welp bought the property, lumber started to arrive. I went over to him one morning before going to work and said; Look this property is grandfathered in as a nonconforming use, there is a cap on the number of units, you can not expand that. I think he said, He wasn't going to expand the number of units. Well, before you do anything, you better check with the city. Well, no one checked, Mr. Welp did not check. He went ahead without a building permit, made all of the changes, first floor, third floor, basement with people now living there. And it is after that fact, that Mr. Welp is before the city saying, look make legal what I did illegal, which would be inappropriate. Let me conclude by saying, that we have been in our home for twenty years, and for seventeen of those years 421 was owned by another party and this is not a building that is going to make it onto the cover of "House Beautiful", it won't. But those first 17 years this was a well maintained home, a long-term residence, very little turn over, no issues around over occupancy, parking, maintenance, it has only been in the last three years. We are here regarding one thing – to intensify the building so there are more tenants and more income. Thank you.

Finlayson: Do you want to start the pictures over here? Questions? I see none at this moment. If you are done, is there anyone else to speak?

Hello, I am **Donna Sherlock** and I live at 420 – 6th Street Southeast with my husband and we are of a condo association that includes two single family homes and two town houses, I am the secretary of that association, so I not only speaking on behalf of my husband and myself, but for the condo association, in which I have lived for over eight years. Our neighborhood as you are aware and our block is a mix of owner occupied and rental housing. The rental is primarily University of Minnesota (U of M) students. I think that the mix of housing is really important to keep the neighborhood healthy and viable having a significant percentage of owner occupied housing along with some rental. Because we know from areas of southeast closer to the University what happens when you get an over representation of student housing and it starts to get very run down. So right now already this block has I think an over representation of rental housing. There is a lot of rental units, but most of them are quite well maintained. I fear that if we upset the balance that we currently have, we

will begin to loose owner occupied housing. I would agree with Tom that it is reminiscent of the situation that you started with today, where this appears to be an effort to increase the number of people that can be in the building. We already have some problems with noise. The noise is not too bad, but there is a serious parking problem. We regularly have people – there cars sticking out into our driveways, because there is not enough parking in the area. The property at 421 was not built as an apartment building, it was either at one time a single family home or duplex. It certainly wasn't intended to be a tenement and I would have to say it is the shabbiest dwelling on the block. It is not maintained to the standard of the block. So, if it were up to me, I would, if I had the power to do this, I would ask that the city consider un-grandfathering some of those properties where you can put so many people into what was once a very nice house. But, I am not asking for that today, but I certainly don't want to see any kind of expansion. Thank you!

Finlayson: Thank you. Anyone else?

Jo Radzwill, 507 – 2nd Avenue Southeast, I wanted to ask if you had received anything from the Marcy-Holmes Neighborhood Association today. It was my understanding that they were going to send something today.

Staff: I was expected a fax or email by noon today. I had talked with Melissa Bean, Staff person of Marcy-Holmes and we had a couple conversations regarding the property, she said there would be people here from the neighborhood.

Jo Radzwill: I am here from the neighborhood, but can not speak from my official capacity, again I would say that I support the Zoning Administrator, I do not like to see an illegal use come legal. I support the Zoning Administrator.

Finlayson: Anyone else to speak? I see no one. Close the public portion. Ms. Bloom?

Bloom: If I could I would like to move Staff Recommendations.

Gates: Second.

Finlayson: Is there further discussion? Ms. Lasky?

Lasky: I am in support of the Zoning Administrator's decision. *Could not hear on tape anymore of Ms. Lasky's voice/comments.*

Gates: As we heard earlier today, a rooming unit doesn't mean that only one person can live in that unit. So, if we have a larger unit then we have the possibility of more people. So, I don't see how we can look at this any other way than an expansion of a nonconforming use and so obviously I support the motion.

Finlayson: Mr. Flo?

Flo: As our chair is fond of saying we have a narrow scope and purpose in an appeal like this. And I think the appellant is asking us to make a policy determination as to the meaning of expand, enlarge and intensify. I support the denial of the appeal, because I do not think this is the right place for this appeal.

Finlayson: Please call the roll.

Roll Call Vote:

Yeas: Bloom, Fields, Finlayson, Flo, Gates, Lasky

Nays: None

Recused: None

Absent: Morgan, Rand

Ms. Bloom moved to adopt staff recommendation and deny the variance application. Mr. Gates seconded the motion. Motion passed.

The motion **denied** the appeal of the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming Use in the R2B District for a property located at 421 6th Street SE.

Department of Community Planning and Economic Development – Planning Division Report

Appeal of the Decision of the Zoning Administrator
BZZ-2364

Date: July 7, 2005

Appellant: Karen Marty, on behalf of Joe Welp

Address of Property: 421 6th Street Southeast

Contact Person and Phone: Karen Marty, (952) 921-5859

Planning Staff and Phone: Molly McCartney, (612) 673-5811

Date Application Deemed Complete: May 12, 2005

End of 60 Day Decision Period: July 11, 2005

End of 120 Day Decision Period: September 9, 2005. (Extension letter sent June 17, 2005)

Ward: 2 **Neighborhood Organization:** Marcy Holmes Neighborhood Association

Existing Zoning: R2B, Two-family District

Appeal of the decision of the Zoning Administrator: Karen Marty, on behalf of Joe Welp has appealed the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming Use for a property located at 421 6th Street Southeast in the R2B, Two-family District.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis: The appellant has appealed the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires an Expansion of Nonconforming Use application for a property located at 421 6th Street Southeast in the R2B, Two-family District.

The appellant states recent improvements have reduced the number of units, from seven dwelling units and one rooming unit to seven dwelling units, and that the building has not been expanded or structurally altered. The appellant states that the portions of the building that are being utilized are irrelevant, since the nonconformity stems from the number of units. The appellant also states that reducing the number of units is permissible for a nonconforming use.

City records indicate that the property at 421 6th Street Southeast is a nonconforming use because it has more units than allowed in the R2B District. The property has seven dwelling units and one rooming unit, more than the maximum 2 dwelling units allowed in the R2B District.

An inspection of the property on October, 7, 2003, by the Housing Inspections Division, revealed that the third floor bedrooms did not meet the minimum height requirement for bedrooms per the building code. After the Fire Department assumed responsibility for inspections of all High Occupancy Dwellings, a letter on August 4, 2004, was sent to Joe Welp requesting that the proper permits be obtained for the habitable use of the attic and basement. No building permits were ever obtained for the construction work required to finish the attic or basement. In October 2004, a prospective buyer, Brian Spilley, applied for an Expansion of Nonconforming Use to allow for the construction of a shed dormer on the third floor to enlarge the third story to allow for the minimum height for bedrooms. Notwithstanding staff recommendation, the Planning Commission denied the application for expansion of nonconforming rights on October 25, 2004.

Staff has determined based on inspections by Housing Inspections Division and the Fire Department, application material from the Expansion of Nonconforming Use application, and submitted floor plans that the conversion to habitable space of the attic and basement requires an expansion of nonconforming use. The below excerpt from the Zoning Code, Chapter 531, Nonconforming Use and Structures, specifically prohibited nonconforming uses or structures from being altered or intensified without Planning Commission approval.

531.50 (b) Structure (conforming or nonconforming) containing a legal nonconforming use. Structures containing one (1) or more legal nonconforming uses shall not be moved to a new location on the zoning lot, expanded, enlarged or structurally altered in any way, nor shall such use be intensified, except that the city planning commission may permit the relocation, expansion, enlargement, structural alteration or intensification of such use or structure or any accessory structure, if it makes the following findings, and the relocation, expansion, enlargement, structural alteration or intensification meets all other applicable regulations of this zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

- (1) A rezoning of the property would be inappropriate.
- (2) The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

- (3) The enlargement, expansion, relocation, structural alteration or intensification will not result in significant increases of adverse off-site impacts such as traffic, noise, dust, odors and parking congestion.
- (4) The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.
- (5) In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will not result in the creation or presence of more dwelling units or rooming units on the subject property than is allowed by the regulations of the district in which the property is located.
- (6) The enlargement, expansion, relocation, structural alteration or intensification will not be located in the floodway district.

Planning staff has determined that remodeling or finishing previously uninhabitable space, such as an attic or basement, is considered an expansion. The subject site is a nonconforming use and the expansion into the attic and basement requires an Expansion of Nonconforming Use. The property owners had previously given consent for a potential buyer to apply for such an application, which was denied by the Planning Commission.

Based on the inspections done by Housing Inspections and the Fire Department, the previous unsuccessful application for Expansion of Nonconforming Rights, and the Zoning code requirements for expansion of a nonconforming use, Planning staff agrees that the Zoning Administrator has correctly interpreted the zoning code.

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

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the appeal of the decision of the Zoning Administrator.