

**Minneapolis Planning Department**

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**MEMORANDUM**

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DATE: October 2, 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 Daniel Busse  
BZZ 1274 – 1314 Broadway and 758 Buchanan

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Daniel Busse 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 to deny the requested nonconforming use certificate to establish legal nonconforming rights for a duplex dwelling located in the R1A District on a zoning lot where nonconforming rights exist for an existing duplex dwelling at 758 Buchanan Street Northeast.

The appellant has stated that the decision is being appealed because the vote was very close and the discussion at the hearing was divided. In addition, the appellant believes that he acted in good faith when researching and purchasing the property with both duplexes. The appellant believes that the value of the property will be significantly reduced if the nonconforming rights are not established. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

At the August 27, 2003 Zoning Board of Adjustment meeting seven Board members were present. Three members voted to deny the nonconforming use certificate to establish legal nonconforming rights for a duplex dwelling located in the R1A District on a zoning lot where nonconforming rights exist for an existing duplex dwelling at 758 Buchanan Street Northeast, two members voted to grant the nonconforming use certificate, and two members abstained from the vote. The actions from the August 27, 2003 Zoning Board of Adjustment meeting and the Planning Department staff report are attached.

# HEARING AGENDA

## **Minneapolis Board of Adjustment:**

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

The Board of Adjustment of the City of Minneapolis will meet at **2:00 p.m.**, on **Wednesday, August 27, 2003**, in **Room 220 City Hall**, Minneapolis, Minnesota, to consider request for the following:

### **2. 1314 Broadway Street Northeast (BZZ-1274, Ward 1)**

Daniel Busse has applied for a nonconforming use certificate to establish legal nonconforming rights for a duplex dwelling (1314 Broadway) located in the R1A District on a zoning lot where nonconforming rights exist for an existing duplex dwelling at 758 Buchanan Street Northeast.

### **BOARD OF ADJUSTMENT ACTION:**

Mr. Rand motioned to adopt staff findings and **deny** the nonconforming use certificate. Ms. Bloom seconded the motion.

### **Roll Call Vote:**

Yeas: Bloom, Rand, VonBargaen  
Nays: Finlayson, Johnson  
Abstain: Fields, Lasky  
Absent: Gates and Morgan

The Board of Adjustment adopted the staff findings and **denied** the nonconforming use certificate to establish legal nonconforming rights for a duplex dwelling at 1314 Broadway Street in the R1A District on a zoning lot where nonconforming rights exist for an existing duplex dwelling at 758 Buchanan Street Northeast.

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### **TESTIMONY**

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

**Daniel Busse:** I am applying for the non-conforming use certificate for 1314 Broadway Street Northeast. I just purchased the building in the fall of 2000. When I purchased the building it was being used as two duplexes on the one lot. Basically, this all started about 2 ½ years ago when a housing inspector came out and wrote up the front building, 758 Buchanan, as being illegally used as a duplex and gave me a letter to convert it back to a single family. After about one year of arguing with him and having them dig in the records, a lady by the name of Michelle Bliss found out that yes it was

grandfathered as a duplex (758 Buchanan). At that point she thought that 1314 Broadway should not be used as a duplex, but that wasn't part of the original letter. It was actually the front building (758 Buchanan) that was written up for being used as a duplex. Only in researching the uses of the front building and finding a mistake on the front building did they discover well wait a second we are wrong about the front building, but the back building (1314 Broadway) is a problem. So then they gave me a write up for that and I started this whole process again. I do have a copy of the appraisal. When the appraiser went to appraise the property when I was purchasing it, he called the city and talked to Ed who worked in the zoning office, but has since retired. It says right here in the appraisal according to Ed with the City of Minneapolis, subject zoning is R1A but the subject is considered to have a legal non-conforming use. If the property was destroyed it could not be rebuilt as its current use. The subject's present legal and nonconforming use is acceptable to the city. The nonconforming and grandfather rights will continue and will remain with the property as it changes ownership. This has been considered and is reflected in the appraised value. I purchased it to purchase two duplexes on one lot. It has taken approximately two years with city research to finally figure out what I need. And I may perhaps be wrong on this, but obviously there was enough confusion on the property. When I go back to the POLK records, all the way back to 1930, the building was used originally as a grocery store and an apartment. The grocery store was in one area and an apartment in the other area. At some point, it was also used as an office and a grocery store as well as an electrical company and an office for an accountant. It was a lot of mixed uses. It was a pickle factory in the late 50's or early 60's. At one point I did find that it was being used as a single family in the mid 60's, but in the 70's it went back to multiple uses again. The POLK Directories from mid 70's showed it was an apartment upstairs and a business downstairs. My problem is basically the value of the property I purchased will go down significantly from what I believed I was buying at the time. And the fact that not only did an appraiser, a licensed appraiser, determined that it was okay, the city was saying it was okay. There is a lot of confusion concerning the property. If you look in your packet you will see originally, they sent me a letter on May 19<sup>th</sup>, the zoning code violation at 758 Buchanan, telling me to get a nonconforming use certificate for 758 Buchanan from Andy Carlson, Zoning Inspector. Then June 5<sup>th</sup>, he wrote me a letter saying, it has been brought to my attention that letter dated May 19<sup>th</sup>, incorrectly identified the structure with the existing zoning violation, the structure located at 1314 Broadway is the structure being used as a two family dwelling according to city records. Even zoning and housing inspectors were confused as to what this building actually is. I am not going to lie to you, the nonconforming rights for being continuously used as a duplex all the way back to 1924, I can't prove that. I can prove that since 1930 the building was used as for whatever anybody wanted to use it for. I wasn't even alive when these things were going on. People were using it as residence, single family, duplex, office, grocery store, pickle factory, electrical shop, the building has been used for probably 20-25 different uses over the years. It was my belief that I applied for this with best of intentions, believing that I had been sold a duplex, believing that I had been using it as a duplex and seeing that it was rental licensed with the city. Not just me, but the former owner before me. Everyone has been paying the city licensing fees for two units on the buildings since 1991. I guess my question is why for twelve years of registering it as a duplex did they have to hound me now? If I would have been aware of this before I bought it, it may have changed my plan to purchase the property. So, I guess that is basically it. I know it is a big confusing packet. I just found out on the 1996 rezoning myself today. I do believe that when the former owner went to have it rezoned it was his thought possibly to either have it be used as two duplexes or maybe they told him he couldn't, so they applied for single family. I don't know what the thoughts were at that time. I can only testify that regardless of what happened in 1996 he was still renting and licensing it in 1997, 1998 and 1999 as a duplex. And at the time I purchased it he was living in one half and renting out the other half. I guess he used it as a business for a while and before that I think he was using it as a residence and business.

**Lasky:** Do you have pictures of the property?

**Busse:** Yes, I have some pictures. They didn't include them in the packet. They also didn't include in your packet the POLK Directories that I looked up on micro-film. I spent hours and hours and hours.

**Board Members:** We have those. If you have any more please pass them around. The pictures are not very good.

**Busse:** It is a confusing property, let's face it, you can't build two houses on one lot anymore, but they have been there since before I was born and before anyone in here was born. So, obviously it is an extremely nonconforming use property. I have had extreme troubles financing the property, in fact I am paying 13.9% interest right now to the mortgage company that holds the mortgage on it and it is extremely hard to refinance. It's not me – it's the property, it's the fact that everyone is afraid of it because it is zoned R1A, and they know if they both burn down, basically I wouldn't be able to make my payment. So, I know that you are not suppose to consider the financial hardship of the applicant, but I have had \$1,641.00 per month principal interest only payment, not to mention taxes and insurance. I don't know if you are allowed to consider the financial hardship that it would cause me to have the value of the property brought down and decrease the revenue.

**Finlayson:** If they burned, you would have insurance. I have a question for you, according to this sketch the house next to you looks like a single family?

**Busse:** The house south of me is a single family, but the next one over from that – 750 is a duplex, 746 I believe also is a duplex. Most of the houses on that side of the block are duplexes, even though it is a R1A block. I would say more than half are duplexes and the one directly behind me is some type of large apartment structure. Directly to your left, 759, is two lots. But, I don't know how they did that with zoning, because it is partially in C1 and partially in R1A, but it is a double lot. 759 is a large housing structure, a multi building unit.

**Lasky:** Can you tell me how this lays out? I am having trouble seeing the duplexes.

**Busse:** There is a one bedroom studio upstairs. From the front of the building you cannot tell there is an upstairs. In the back of the building there is windows that face out back. It slopes in the front of the house but arches in the back, like a dormer.

**Finlayson:** It looks like it functions as a split.

**Lasky:** How many square feet upstairs and down? Do you know?

**Busse:** 33 x 26, that is the downstairs. The upstairs is significantly smaller. Also notice that the reason the neighbors don't complain about it, is because like I said, 754 is single family, 750 is a duplex, 746, 742, 7(?) are duplexes. There might be a single family sandwiched in there somewhere, but most of them are duplexes, possibly grand-fathered in.

**Rand:** Are we going to take more testimony?

**Finlayson:** Do you have anything to add?

**Busse:** No – unless you guys have any other questions, I am not over occupying the building right now, upstairs is a single man living in the efficiency, a one person type of apartment. So it's not like we are talking about two five-bedroom units. The difference between breaking it up and turning it back into single family versus being able to rent the efficiency would not be quite a bit.

**Rand:** You keep talking about this, the building as a single. You bought a piece of property that also includes the property that faces Broadway. And the property that faces Broadway, you also operate as a duplex. Either you do or you don't, yes or no?

**Busse:** I operate them both as duplexes.

**Rand:** And therefore you have two properties being occupied as duplexes.

**Busse:** 758 Buchanan - The top one is two bedrooms up and two bedrooms down, and that was the one they originally made the mistake of writing up. And then the city admitted we made a mistake you're right that one was a duplex. But in discovering that, they then wrote up the back one for being used as a duplex. And that is the one in your diagram. There are no diagrams of the front one other than the outside of the structure. They already gave it the nonconforming rights.

**Lasky:** I have a staff question. If he gets the legal nonconforming rights and the building burned down, is he then under the current zoning or is his zoning a spot zoned for that block?

**Flack:** If the building burned down he can build back to what the R1A District allows, which is a single family dwelling on one lot with a minimum lot area of 5,000 square feet.

**Busse:** That is why the mortgage company has so much trouble with it. Because if both burned down, I would have to come back to you guys just to build a single family to get a variance, because that lot size is for a single family.

**Lasky:** Is he substandard size for single family dwelling?

**Flack:** Yes – the lot is 4,078.

**Busse:** It doesn't appear to really be that way, because this is a corner lot with all those easements on the edges. If you take a tape measure and measure it you get more than 32.5.

**Finlayson:** Thank you. Anyone else to speak in favor? Anyone to speak against? Close the public portion of the hearing.

**Rand:** I vote to adopt the staff recommendations. This is no different than the one we had last time. I would say it is worse.

**Fields:** I seconded it.

**Finlayson:** Discussion.

**Bloom:** The one we had two weeks ago, is clear in my mind. It was two structures on one lot and they could not establish that it had been continuously used as a duplex. That is what the issues were, there was no way to establish that it was continuously used as a duplex. The discussion and information in the packet indicate this one has not been continuously used as a duplex either, so from strictly that stand point, I have to support this. But what I am really concerned about is that there is a lot of good faith that happened throughout. The appraiser called the gentleman that bought the property/lot. The appraiser appraised it, called the city asked what it was zoned, found it was a duplex. My understanding from the discussion is that there are two units, two duplexes on the site and that is what the appraiser asked the city and the city said yes there was. That was not evident in the last discussion. Their licensing and everything else was in good faith. And that is where I am struggling right now. I could not vote for staff recommendations.

**Finlayson:** It depends upon on how you view it I think. The staff recommendation in regards to continuous use and every staff person that has come before us over the past few years have always been sent back to the existence of the code. Making the current owner responsible for the actions of people long gone, or long out of the interest of the property, having no control over them. What strikes me is when someone has owned the property and has changed the use themselves, then that is a different issue. At least it is for me.

**Lasky:** I can't agree more. I am so distraught with these where you pick continued use and the same situation where you have to prove the continued use for the past 35 years. Twelve years in my mind is plenty of time to prove continued use. The testimony that you have it has two uses, whether they have been duplexes, living quarters, but two uses. I am so bothered by this. If we support the staff's recommendation, I want to do the ultimate no-no and recommend an appeal, because clearly like so many, the city licensed them and you can't have it both ways. License the property and then take away the ability to have it as a duplex? I want to do it that way.

**Johnson:** I am also having a problem with this one. The city did license this property as duplexes on the property and now coming back saying no we don't want to do this. I can't support a motion to accept staff recommendations, I really can't.

**Fields:** I seconded to support staff recommendation. Technically speaking, the staff in the report has provided evidence for me to support the recommendation. But, I am almost on the verge of fury because this has come before us time and time again. The inconsistency about how the city deals with its clients from Inspections to Licensing to Zoning. And I am not going on record because I will get slapped around if I say appeal and I am not one to say that. This is not our venue. If I can express very strongly to get it on the record, that I hope this is taken care of in a more rational manner on a higher level than this, because I very much disagree with how these properties have been treated.

**Finlayson:** Ms. Bloom would you take the chair for a moment.

**Bloom:** Certainly.

**Finlayson:** They might have acted in good faith. The appraiser called Ed Vernig. Ed told him what was what and everyone operated on that basis since then. If we follow this particular line of reasoning, that he is accountable for everything that has happened since 1924, essentially accommodating an uncompensated taking of private property. I cannot stomach that and I suggest that we grant the request.

**Fields:** I will withdraw my second on the motion, I am being convinced.

**Bloom:** I just want to take a step back if I could. My issue is comparing last weeks with this weeks and I am just looking at the issue out here. Last weeks the purchaser knew that there was an issue out there. And last weeks I had no problem with our recommendations. This week is a good faith discussion and the questions were asked and there was no controversy about the nonconforming use of this site when the purchaser bought it. It is really a difficult discussion.

**Lasky:** I clearly feel that I would like to grant him these rights. But on one hand I want to deny the recommendation and go to council with a friendly recommendation, because I don't believe it belongs here for us to change these things. From that standpoint I am uncomfortable both ways and I don't want to precedent it on this level. I want to get other feedback on this. I am very concerned about it. I want this to pass but I don't necessarily want it to pass right here.

**Von Bargaen:** This has come up many times in the past here and I think it is my pet peeve that licensing doesn't look into the records to see what in fact they are licensing is legal and that bothers me. Mr. Gates is not here today to say that this is not the forum, which I think he would say. Because there is an argument for someone who buys something in good faith and puts out money relying on the information, he has a legal case. But is this the forum to give him that kind of relief, I don't know.

**Lasky:** I don't think you should have to go back 35 years to prove the use. It's bordering on ridiculous.

**Bloom:** If I could just to get a vote going. I am going to second Peter's motions for the reasons that I stated before. And if we could have the clerk call the roll.

**Finlayson:** Any further discussion before we do that?

**Lasky:** Can we add a friendly recommendation or can we do anything or just do nothing?

**Finlayson:** You can do what you wish to do.

**Bloom:** I don't want to touch a condition.

**Finlayson:** Let's call roll.

**Flack:** Can I address an issue brought up now or later? We have had discussions with Inspections because they are the ones that discover the nonconforming uses when they go through the licensing and then forward them to us to process. The issue has come up why the provisional licenses get issued year after year when possibly they don't have the nonconforming rights. The answer to that thus far, has been that the actual licenses are issued when they meet actual official building codes. Now in the granting of, say in this particular case, the granting of the four units, Mr. Busse may be required to come in and meet a certain building code standard that has not been met in the past, which is part of why the provisional license gets granted. It's not an actual official license. And that is something we are investigating with them to figure out why after all these years these are coming forward to us to try and do the research on them and have the burden of proof put on the applicant. I wish I could tell you we are in a place where we have resolved that but we are not, but it is coming forward.

**Lasky:** Our concern was also the timeframe of the 35 years. Why isn't it twelve or fifteen or twenty years?

**Flack:** The timeframe is based on when the use was actually a legal conforming use.

**Busse:** As for why licensing issued the rental licenses on it, what happened was when the first inspector came and wrote it up and said it was not supposed to be used as a duplex, he also told the tenants that it was not legal. This is 758 Buchanan, the one that is correctly being used as a duplex. He told the tenants that it wasn't, Chad Patrick. The tenant's were told by their lawyer that they could turn around and sue for all their back rent. So they turned around and sued me for the back rent. Their own Legal Aid attorney at the University of Minnesota admitted to me herself that every time she called the city she got a different answer as to whether or not that building was a duplex or wasn't a duplex. Licensing looked it up in their computer and issued it a duplex for rental licensing because their computer said it was. When you give them an address they type it up and then they will say single family, or they will reference how many dwelling units. Originally their computer was saying this was two units. Only after somebody dug back through micro-film or whatever, did somebody decide to change it back to one unit. But originally there was more than one answer as to what this unit was when the whole question came up. That is why there was so much research done, because even the front one at 758 Buchanan I was told repeatedly over and over again by Chad Patrick this is not a duplex, not a duplex. Finally, magically, a 1924 building permit that you have in your packet was found and it said "Altered (ALT) to duplex in 1924. Then they said oops – sorry we were wrong, it was a duplex. Meanwhile I settled out of court with the tenants because I didn't know whether I got sold a bill of goods when I bought the place or not. So you can't give me a straight answer, the city gives me a different answer every time I call. So I am just going to settle this case. Later on of course they found out that I was right, but I had no idea of knowing whether I was right or not. It's like they said before, it's called good faith. I didn't know, I honestly didn't know. I was thinking to myself, what if I bought two duplexes and it turns out the front one is a single family and the back one is a duplex, and then of course now the whole thing got reversed. The front one is and the back one isn't, but regardless when you call and check on this property, I got so many different answers and I got bounced around to so many different people. That's all I have to say, I just wanted to make that point clear. I do appreciate the hearing and that you guys understand my hardship because this has been a couple of years of not knowing what is up with this building.

**Lasky:** Just so the Board understands this process. I have had a similar situation in which I was sued for all back utilities for a year and I had the tenants abandon me because they were told by a Housing Inspector it was not a duplex. Fortunately, I was able to prove back to 35 years that it was. But I had to pay that and they are gone and done and I had to pay that in conciliation court.

**Busse:** He told them it was not a duplex and told their lawyer it was not a duplex. I didn't have the building record for 1924. By the time Michelle sent the packet and cleared that, I had already settled out of court, because the problem was the packet didn't come to me before the court date. Anyway, even if I wouldn't have settled out of court, I would have probably lost. They had a Housing Inspector report saying that this was not a duplex.

**Rand:** It was not in 1924?

**Busse:** This is not the one we are talking about at 1314 Broadway, this is the one in front that later was permitted.

**Lasky:** I think clearly the problem is this 35 years business is going to come up over and over again and it's going to be a problem.

**Busse:** That is why I dug back.

**Finlayson:** The hardship is the city's misfeasance. Is the discussion over and can we vote on this? Please call the roll. The motion is to uphold the staff recommendation.

Bloom – Yes

Fields – I protest and abstain

Finlayson – No

Johnson – No

Lasky – I protest and abstain

Rand – Yes

Von Bargaen – Yes

**Motion Carries**

**Finlayson:** Everyone who abstained must understand that they voted for the majority.

# Minneapolis City Planning Department Report

## Nonconforming Use Certificate

BZZ-1274

**Date:** August 27, 2003

**Applicant:** Daniel Busse

**Address of Property:** 1314 Broadway Street NE

**Date Application Deemed Complete:** August 5, 2003

**End of 60 Day Decision Period:** October 4, 2003

**Contact Person and Phone:** Dan Busse, 651-642-8894

**Planning Staff and Phone:** Carrie Flack, 651-673-3239

**Ward:** 1      **Neighborhood Organization:** Beltrami Neighborhood Council

**Existing Zoning:** R1A, Single-family District

**Proposed Request:** To establish legal nonconforming rights for a duplex dwelling located in the R1A District on a zoning lot where nonconforming rights exist for an existing duplex dwelling at 758 Buchanan Street Northeast.

**Zoning code section authorizing the request:** 525.110 (3); 531

Background: **The applicant is seeking to establish nonconforming rights for a duplex dwelling in the R1A, Single-family District where there is an existing duplex dwelling on the property (758 Buchanan). The applicant is proposing to maintain all 4 units on the property. The subject property is 32.5 ft. x 125.5 ft. (4,078.75 sq. ft.).**

**City building permit records indicate that 758 Buchanan Street Northeast has been on the subject site since 1905 and that 1314 Broadway Street Northeast has been located on the property since at least 1913. In 1924, the city adopted its first Zoning Code. At that time, the property was zoned Multiple Dwelling District which allowed for residential uses and allowed two principal residential structures on one lot. City records also indicate that the property may have been zoned Commercial although it is unclear when that occurred. It appears that the Buchanan dwelling was used as a residence and the Broadway building use varied from a store to a residence.**

**City building permit records indicate that in 1962 1314 Broadway Street Northeast was converted from a dwelling and store to a single family dwelling.**

**In 1963 the property was zoned B3S-2, Community Service District which allowed for residential uses and community commercial uses. The B3S-2 District required 1,500 square feet of lot area**

per dwelling. Under the 1963 Zoning Code, the property became nonconforming as to lot area, two principal structures on one zoning lot, and yard requirements.

In 1996 an application was filed to rezone the property from the B3S-2 District to R4, Residential District. The staff report indicated that the property use consisted of three dwelling units. 758 Buchanan was being used as a duplex (two dwelling units) and 1314 Broadway was being used as single unit dwelling. The report also noted that the property was nonconforming as to lot area, two principal structures on one zoning lot, and yard requirements. The Zoning and Planning Committee of the City Council recommended to rezone the property from the B3S-2 District to the R1A District and directed the Zoning Administrator to issue a nonconforming use certificate for the property. Ordinance 96-Or-098 passed September 13, 1996.

**Analysis:** The applicant is requesting a nonconforming use certificate to allow 1314 Broadway Street Northeast to be occupied as a duplex for a total of 4 dwelling units on the property.

The applicant has submitted copies of the POLK Directories that show the property being used as a grocery store, a residence, and office. City records also indicate that provisional rental licenses were issued for two units at 1314 Broadway since 1991. However, the issuance of provisional licenses does not indicate that the property was legally conforming as to zoning. In addition, it appears that in September 1996, a nonconforming use certificate was granted for the property to allow two principal structures on one zoning lot and to allow three dwelling units on a 4,078 square ft. lot, less than the required 4,500 square feet of lot area for three dwelling units.

**Findings:**

1. The two principal residential structures were lawfully established prior to the adoption of the city's first Zoning Code in 1924.
2. The property became nonconforming in 1963 when the Zoning Code first prohibited two principal residential structures on a lot and required 1,500 square feet of lot area per dwelling unit. The property also became nonconforming as to the yard requirements. It remains nonconforming under the 1999 Zoning Code.
3. In 1962, a building permit was issued to convert 1314 Broadway from a dwelling and store to a single family dwelling.
4. In September 1996, the property was rezoned from B3S-2, Community Service District to R1A, Single-family District.
5. In September 1996, the property was issued a nonconforming use certificate to allow two principal residential structures on one zoning lot and three dwelling units on a 4,078 square ft. lot, less than the required 4,500 square feet of lot area for three dwelling units.
6. Although there is evidence that the property has been used as a duplex, there is insufficient evidence in the record to find that the duplex was legally established.

**Recommendation of the Minneapolis City Planning Department:**

The City Planning Department recommends that the Board of Adjustment adopt the above findings and deny the nonconforming use certificate to establish legal nonconforming rights for a duplex dwelling at 1314 Broadway Street in the R1A District.