



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

Date: June 8, 2006

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Board of Adjustment action approving a nonconforming use certificate to establish legal, nonconforming rights to allow a triplex in the R2B Two-Family District for the property located at 2409 Colfax Avenue South (BZZ-2945).

Recommendation: Notwithstanding staff recommendation, the Board of Adjustment approved the nonconforming use certificate to establish legal nonconforming rights for a triplex in the R2B District for property located at 2409 Colfax Avenue South, based on the findings that the evidence showing a triplex through building permit record, water bill records, letters from the neighbors showing continuous use and the letter from G&P Property Services verifying that the radiators and fire place in the basement indicate use of a triplex.

Previous Directives: N/A

Prepared or Submitted by: Shanna Sether, City Planner, 612-673-2307

Approved by: Jack Byers, Planning Supervisor, 612-673-2634

Presenters in Committee: Shanna Sether, City Planner

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Ward: 10

Neighborhood Notification: Lowry Hill East Neighborhood Association was notified of this application by e-mail sent on March 28, 2006.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: On May 16, 2006, the applicant was provided a letter extending the decision period to no later than August 4, 2006.

Other: Not applicable.

Background/Supporting Information Attached: Steve Leventhal applied for a nonconforming use certificate to establish legal nonconforming rights to allow for a triplex in the R2B Two-Family District for the property located at 2409 Colfax Avenue South. The Board of Adjustment approved the nonconforming use certificate on May 4, 2006, based on the findings that the evidence confirms the use as a legal triplex through building permit record, water bill records, letters from the neighbors showing continuous use and the letter from G&P Property Services verifying that the radiators and fire place in the basement indicate use of a triplex. The Board voted 6-1 to approve the nonconforming use certificate. Lowry Hill East Neighborhood Association filed an appeal of the decision of the Board of Adjustment on May 15, 2006.

**Community Planning and Economic Development - Planning Division
Report**

Nonconforming Use Certificate

BZZ-2945

Date: May 4, 2006

Applicant: Steve Leventhal

Address of Property: 2409 Colfax Avenue

Contact Person and Phone: Steve Leventhal, 612-859-0999

Planning Staff and Phone: Shanna Sether, 612-673-2307

Date Application Deemed Complete: April 6, 2006

Public Hearing: May 4, 2006

Appeal Period Expiration: May 15, 2006

End of 60 Day Decision Period: June 5, 2006

Ward: 10 **Neighborhood Organization:** Lowry Hill East Neighborhood
Association

Existing Zoning: R2B Two-Family District

Proposed Request: To establish legal nonconforming rights for a triplex located in the R2B District.

Zoning code section authorizing the request: Chapter 531 Nonconforming Uses and Structures; Section 531.30.

Background & Analysis: The applicant is requesting a nonconforming use certificate to establish legal nonconforming rights for a triplex in the R2B District for property located at 2409 Colfax Avenue South. This site was zoned R6 Multiple-family until 1975 when it was downzoned to R2B Two-family as a part of the "Model Cities" 40 Acre Study. The structure on the property was constructed as a single family dwelling in 1893 and the applicant claims was converted to a triplex during the 1960's, prior to the downzoning from the R6 District to the R2B District. The applicant has provided a written statement from G&P Property Services, who inspected the property and determined that the premises were converted to a 3 unit property sometime in the early 1960's (see the attached letter).

Staff research of City records shows that a single family dwelling was constructed in 1893, prior to density requirements and the first Zoning Ordinance in 1923. A building permit was issued to "convert single family dwelling to a duplex; provide 2 means of egress from 2nd floor apt & bath & toilet in each apt." in 1961 (see the attached permit B 375112). The applicant claims that the duplex was converted to a triplex in the early 1960's, but staff can find no record of a building permit showing the conversion. However, staff did find a plumbing permit to add a water closet, tub, basin and sink in 1963, which may or may not be associated to the previous building permit issued in 1961.

In 1975, the site was downzoned from the R6 Multiple-family district to the R2B Two-Family District as a part of the "Model Cities" 40-Acre Study. Triplexes are not an allowed use in the R2BDistrict. Based on the evidence in City records, staff recognizes the legal nonconforming status of the duplex, but can find no concrete evidence showing the conversion from a duplex to a triplex that would legally establish rights to a triplex at 2409 Colfax Avenue South.

Findings:

1. A building permit was issued for the construction of a framed dwelling in 1893 (B 29951).
2. The first Zoning Ordinance was adopted in 1923.
3. A building permit was issued for the conversion of a single family dwelling to a duplex in 1961 (B 375112). Inspection of this permit was conducted on August 27, 1965.
4. The site was zoned R6 under the 1963 code.
5. Triplexes are a permitted use in the R6 District.

6. Staff can find no records and the applicant has not provided any evidence that a building permit was obtained to convert the duplex into a triplex.
7. The 40-acre study inventory lists the structure as a duplex.
8. The 1975 "Model Cities" 40-Acre Study downzoned this site from the R6 Multiple-family District to the R2B Two-family District that prohibits triplexes.
9. The use was not legally established before the site was rezoned to R2B, which prohibits triplexes.

Due to the lack of sufficient information and facts provided by the applicant for legal rights to a triplex and due to the fact that City records support that it is a duplex, staff can find no nonconforming rights to a triplex. Staff does acknowledge that the site was legally established as a duplex.

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 above findings and **deny** the nonconforming use certificate to establish legal nonconforming rights for a triplex in the R2B District for property located at 2409 Colfax Avenue South.

**Board of Adjustment
Hearing Testimony and Actions**

Thursday, May 4, 2006
2:00 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. David Fields, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Matt Perry, Mr. Peter Rand

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

2. **2409 Colfax Avenue South (BZZ-2945, 10th Ward)**

Steve Leventhal has applied for a non-conforming use certificate to establish legal nonconforming rights for a triplex located at 2409 Colfax Avenue South in the R2B Two-Family District.

CPED Department Planning Division Recommendation by Shanna Sether:

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 for a triplex in the R2B District for property located at 2409 Colfax Avenue South.

TESTIMONY

Shanna Sether (staff): Item #2 is a request for a non-conforming use certificate. I believe we have a representative from the neighborhood group who would like to request a continuance. Would you like to hear from the neighborhood group at this time or would you like to hear the presentation?

Finlayson: Why the continuance?

Shanna Sether (staff): I believe they are requesting a continuance; it is my understanding that the applicant attended the neighborhood group meeting to discuss the proposal for the non-conforming use certificate and the neighborhood group is requesting additional time because they were not able to address all of the issues related to the application at the previous meeting.

Finlayson: I think we should hear it.

Shanna Sether (staff): Okay.

Finlayson: The neighborhoods should all be aware that the State has imposed a shorter clock than we have had in the past and the neighborhoods have to be able to step up and meet the clock as we all do. Please continue.

Shanna Sether (staff): Thank you. Item number two is a non-conforming use certificate for the property located at 2409 Colfax Avenue. The applicant is requesting to establish legal non-conforming rights for a triplex in the R2B- Two Family Residential District. The site was previously zoned R6-Multiple Family District until 1975. It was then down zoned as part of a 40 acre re-zoning study labeled "Model Cities", and that zoning classification changed to R2B. The structure on the property was originally constructed as a single family home in 1893 and the applicant is claiming that it was converted to a triplex during the early 1960s at a time that it would have been able to have been legally established as a triplex. The applicant has provided a written statement, which you will find in your packet from G and P Property Service, indicating that the property was converted to a triplex during the early 1960s when it would have been legally established. Staff researched the city records and found the original building permit from 1893. That was prior to the density requirements with the first zoning ordinance established in 1923. That permit was to construct a single family dwelling. In 1961 there was a building permit issued to convert the single family dwelling to a duplex. Staff could not find any record of a building permit that specifically stated conversion from duplex to triplex. However, staff did find a plumbing permit to add a water closet, basin, tub and sink in 1963, which in affect, is a kitchen and bathroom. There are three items required to establish a dwelling unit. That's living space, or habitable space, like a living room; something that could be used for a sleeping room; kitchen and a bathroom. In 1975, like I previously mentioned, the site was down zoned to R6.

Staff is recommending denial of this application, due to a lack of sufficient information and facts and not a specific building permit indicating the legal conversion from a duplex to a triplex.

I would like to answer any questions.

Ditzler: Just so I'm clear. This letter is from G and P Property Services?

Shanna Sether (staff): Correct.

Ditzler: This is something that the applicant submitted as well?

Shanna Sether (staff): Yes. This was part of the information submitted with the application.

Ditzler: It doesn't address anything that has to do with zoning or permits; it just talks about the mechanical features of the current structure?

Shanna Sether (Staff): That is correct. Mr. Gates?

Gates: Question, Do we not still have the standard that the applicant has to show that the property, the unit in question, has been occupied continuously from the point at which it became nonconforming?

Shanna Sether (staff): We do have that requirement as well, and I believe that the applicant has letters that he will be providing to the Board of Adjustments today from previous renters or current renters from the past 30 years.

Finlayson: Are there any reverse directory data showing three occupants?

Shanna Sether (staff): I made a trip to the archives library and spent quite a bit of time there. The phone records were very inconsistent. I did every 5 year search and there were times where there was one name listed, three names listed, two names listed. Staff again didn't feel as though that was consistent enough information to provide the recommendation for granting the non-conforming use certificate because it didn't show exactly consistency back to 1975.

Finlayson: But there were some years where there were three?

Shanna Sether (staff): Yes.

Finlayson: Okay. Any further questions? Thank you.

Shanna Sether (staff): Thank you.

Finlayson: Is the applicant present?

Applicant: Yes.

Finlayson: Would you care to make a statement?

Applicant: Yes.

Finlayson: Okay. Name and address for the record please.

Applicant: Steve Leventhal, 11209 Federally Road West.

Steve Leventhal: I guess what I want to reiterate is I believe that this unit was already there pre-1975 and it has been rented out since then. As you have in your packets, in 1963 there was a plumbing permit pulled for the kitchen and bathroom. I think the unit was already there that's why there was never an application to build that unit. If you look at pictures that I have that are in your file, there's pictures of radiators and a picture of a fireplace. It's pretty hard to build a fireplace after the structure is already built so I believe, and G and P Property believed, that the fireplace has been there for a while. If you look at the radiators that are in three of the rooms there pretty old and they have been there definitely pre-1975. Even in 1961 when they converted the second floor into another unit they didn't build a fireplace in there, because obviously it's pretty hard to build a fireplace after the fact. It's a pretty clear picture of the fireplace in the basement here. So what I'm guessing is even maybe in the early 1900's there was some form of unit there and in 1963 they got the plumbing permit to build that bathroom and the sink. Also in the records there's an inspection in 1965 that they did after the duplex was converted and there's no comments from the inspector whether there was an illegal unit in the basement or not. In 1965 the unit was already built and the upstairs unit was already converted, so they probably would have noticed something down there if there was an issue.

I have letters from two of my neighbors, one to the north and one to the south. Can I pass those out?

Finlayson: please. Start at one end if you would. Either one will do.

Steve Leventhal: I think the letter that's more important is the letter, that's from 2415 Colfax. Bill's lived there 30 years and I talked to him about, and he wrote it in the letter that as long as he has lived there he's always known it to be a triplex. He's lived right next door. I think he would have noticed that. I guess my feeling is the law says if the unit is there before 1975 then it's okay for it to still be there and I think with the plumbing permit in the early 1960's, with the radiators and fireplaces, and Bill saying that as far as he's known for 30 years it's always been a triplex.

I do have a lease from when I bought the building. That's the farthest I could go back. I couldn't locate the current owner. She was elderly when I bought the property. So the oldest lease I have goes back to 1992 and that was when I bought it, in the early 1990's. I kind of inherited this lease. I know that the owner used to rent it out to a church group who was in the neighborhood who helped out different people who needed affordable housing. So I know that she rented it for years before that. This is the only lease that I have because this resident was there when I bought it.

Any questions?

Ditzler: Can you tell me how the units are laid out in the property. Is the third unit in the basement?

Steve Leventhal: The third unit is in the basement, the main floor is one unit and the second and third floor is another unit.

Ditzler: Okay.

Steve Leventhal: I did have an inspector from the City of Minneapolis come in and look at the unit and she was really surprised. She said you have the ceiling height; you have egress windows in the bedroom and in the living room. Because I asked her as far as she was concerned were there any requirements that I was going to run into and she said it seemed like from her perspective all the rules that she would have it passed, with over seven feet egress and all that.

Ditzler: How long had the woman lived there lived that you purchased it from? Do you know?

Steve Leventhal: I don't know that.

Finlayson: Mr. Gates.

Gates: So again the law requires that you be able to show continuous use as a three unit building. What records do you have to substantiate that?

Steve Leventhal: The only ones that I have is my neighbor next door, that has said as far as he has known people have always lived as a triplex and the phone records, even though they're sketchy, I think in the 1960's and 1970's not everybody might have had a phone, and it seems to me that if all of the units were full, why wouldn't I have rented it out, and when I bought it from Fran.

Gates: Do you have the phone records to show us? At least what you could find?

Steve Leventhal: I don't have the phone records, no.

Gates: Where are they? I don't see them.

Finlayson: I believe staff discovered phone records.

Steve Leventhal: Right.

Gates: I thought we were going to see them. I would like to make my own assessment. Thank you very much.

Shanna Sether (staff): I'm sorry they didn't make it to copy. The Polk County records are here in the archives and I didn't have a copier available.

Finlayson: Any other questions?

Shanna Sether (staff): And Mr. Gates, they were not necessarily consistent throughout to prove that there were necessarily three occupants or three phone records consistently from 1975.

Gates: Okay, but during my time on the Board, substantiating continuous use has been one of the central requirements.

Finlayson: Well that's a requirement the City has stated. Personally I disagree with it.

Gates: Well, we can have our personal disagreements. But it is law, correct?

Shanna Sether (staff): In non-conformity if there is discontinuance of use for one year or more, there is a loss of non-conforming rights.

A Board Member: Do you feel that that was the case in this situation then based on the research that you did? This is a question to staff?

Shanna Sether (staff): I'm sorry, could you please repeat that?

A Board Member: Do you feel that based on the phone records and the other research that you did that that discontinuity of one year was present?

Shanna Sether (staff): We could not find information to either substantiate the loss of non-conforming rights through discontinuance or the granting of non-conforming rights. So either way.

A Board Member: Okay, thank you/

Finlayson: Have you continually used it as a triplex?

Steve Leventhal: I think so yes. I tried to do some research. Calling the phone company and talking to as many neighbors as I could and there is no way to really prove that, going back to the 1960's.

Rand: The question was have YOU operated it?

Steve Leventhal: Oh, Oh yeah.

A Board Member: Do you have leases with you to show that you have had three units in there since 1992?

Steve Leventhal: I don't have leases with me, but I have rented it out since 1992. I have one tenant that has been there for the last 12 years.

A Board Member: Mr. Chair, just out of curiosity, what activated this?

Finlayson: Yes, that was a question that has been floating around in my head too.

Steve Leventhal: Sure. One of my friends had a four unit building that he bought and there was a unit in the basement and he was telling me that he tried to get it to be a legal five unit and he went through this process and it passed. So, he asked me what the deal was with my unit and I called the City. The City of Minneapolis, like my water bill, they consider it a triplex, I have a copy of that also, they consider it three units. But the City called it a duplex. When I bought it they called a triplex. I guess I never thought about it until my friend went through this with his building and suggested I should check and make sure that mine's a real triplex. I want to do what's right. I'm on the housing board of appeals and I go through this a lot and I want to do the right thing and if the water company is billing me for three units and the law said before 1975 they considered it a third unit I figured I better have someone say yes or no so I can move forward because I don't want to rent it out if it's illegal to rent it out.

Finlayson: Any further questions? None at this time. Thank you. Is anyone else here to speak in favor? Is anyone here to speak against? Name and address please?

Opposing Party: My name is Caroline Griepentrog and I work for the Lowry ____ Neighborhood Association and the reason that we were asking for the continuance on this item is because the

applicant did attend the March Board meeting and at that meeting the board asked the applicant to return to the April Zoning and Planning Committee Meeting with letters of support from the adjacent neighbors as well as more information on the parking situation at the property and when I contacted the applicant to see if he would be able to attend the April meeting he said that he was not ready to attend that meeting but that he would be willing to attend the May meeting and unfortunately we then received a letter that this would be coming before you today and our next Zoning and Planning meeting is next Wednesday and then May 10th and the Board meeting is the following Wednesday and so if it were to be continued to the agenda on the 18th, we would be able to take a formal position on the item. Just explaining the reasoning for that.

Finlayson: Thank You. Anyone else to speak against?

Opposing Party: My name is Meg Tutehill, I live at 2420 Bryant Avenue South which is down the alley from this property. We have owned this property where I live for 37 years. I also own a business on 25th and Hennepin so I spend a great deal of my time in my neighborhood. A couple of things come to mind on this property. Number one, when it was purchased in 1992 he knew he was purchasing a piece of property that was zoned R2B. Right then and there the flags should have gone up and he would have known that the triplex wasn't legal.

Finlayson: How do you know that he knew?

Meg Tutehill: Well, because when I look at listings in my neighborhood it states the zoning on it as to what it's zoned and then it's your job to find out what that zoning is and what it means. The other thing is that we have eight blocks in our neighborhood that are R2B the rest of our neighborhood is R5 and mainly R6. 87% of our property in our neighborhood is multiple dwelling the few eight blocks that we have we're very protective of and we do not want to see anything out of compliance to the R2B zoning on those eight blocks. The zoning variance the gentleman is asking for also does not fit with the comprehensive plan of the neighborhood that we have spent two-and-a-half years working on and that was one of the things the neighbors had asked to have brought forward to you. So it is very important to us to keep the little bit of R2B that we have left intact for the neighborhood since so much of it is rental. Thank you very much.

Finlayson: Thank you. Anyone else to speak against? I see no one. We'll close the public portion of this item. Board comment? Ms. Lasky.

Lasky: Can I make a motion?

Finlayson: Sure.

Lasky: I make a motion to grant the variance and I'm going to give you my reasons why. The two neighbors on either side I think are good testimony; I think they're as good as getting the phone records. The other two things that are most significant for me are that you don't haul in those radiators if you're going to be putting in this type of unit after the fact. Those are more than likely

existing to the building also including the fireplace. You don't put a fireplace in a basement. That is the reason why I will say that these are pre-existing.

Finlayson: Is there a second?

A Board member: Second.

Finlayson: Further comment? Mr. Gates?

Gates: It seems to me that the applicant is making a pretty good faith effort here to comply with the law having brought this case before us on his own. The record is sketchy at best. All the evidence that we have suggests that the unit has been there for quite some time prior to 1975 and there are no phone records or directories or anything which would say that the unit has not been used the building has not been used as a three unit building for the period of time that we need to substantiate so we seemingly can not hold that against the applicant so there is a fair amount of doubt on both sides but I'm granting the benefit of my doubt to the applicant in this case and will support the motion.

A Board Member: I'm in agreement.

Ditzler: I'm in agreement as well. Though I'm still not entirely convinced that the basement wasn't finished off by one of the previous owners who wanted to help out people from their congregation who were in a housing problem, doesn't mean it was used continuously, doesn't mean it was legal if it was used. But I'm inclined to agree with Mr. Gates here, due to your good faith effort, and it seems to be sketchy either way, and the fact that City has been charging you for three units of water this whole time too is definitely in your favor. So I will be supporting the motion as well.

Finlayson: Please call a roll.

Ditzler: Yes

Fields: Yes

Finlayson: Yes

Gates: Yes

Lasky: Yes

Perry: Yes

Rand: No

