Department of Community Planning and Economic Development – Planning Division
Nonconforming Use Certificate
BZZ-5172

Date: June 30, 2011

Applicant: Sara James

Address of Property: 505 8th Avenue Southeast

Project Name: 505 8th Avenue SE Nonconforming Use Certificate

Contact Person and Phone: Sara James, (612) 331-1136

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

Date Application Deemed Complete: May 20, 2011

End of 60-Day Decision Period: July 18, 2011

Ward: 3 **Neighborhood Organization:** Marcy-Holmes Neighborhood Association

Existing Zoning: R2B Two-Family Residence District and UA University Area Overlay District

Zoning Plate Number: 15

Legal Description: Not applicable for this application

Proposed Use: A three unit multiple-family dwelling

Nonconforming Use Certificate: to establish legal nonconforming rights to a three unit multiple-family dwelling

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

Background and Analysis: The subject property is approximately 40 ft. by 99 ft. (3,960 sq. ft.). The principal structure on the subject property was constructed prior to 1890 in the Town of St. Anthony. The City of Minneapolis does not have records of the original construction. Abstract history from Hennepin County shows that the likely construction date was near 1849. According to the 5th Street Historic District Local Designation, the Town of St. Anthony and the City of Minneapolis merged in 1873. The first building permits on the property were to add plumbing and baths to the structure in 1890. In 1911, a building permit was issued for a 7 ft. by 10 ft. addition, new front porch and repairs to the existing building. In 1927, the detached garage received a permit. In 1936, a building permit was issued to "reside and alter existing dwelling."

None of the permits or the permit record indicates what the legal use of the property was constructed or converted to.

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned Residence District. A two-family dwelling was a permitted use at the time of the building's construction through 1963; however, a three-unit multiple-family dwelling was a prohibited use. The property was rezoned to R3 Multiple-Family Residence District in 1963 with the adoption of the new zoning ordinance. A three-unit, multiple family dwelling would be a permitted use of the property if the lot was at least 7,500 sq. ft. in area; the subject property is approximately 3,960 sq. ft. The Marcy-Holmes 40-Acre Rezoning Study was conducted in 1986. The property was rezoned from R3 Multiple-Family District to R2B Two-Family District. The property has been continuously zoned R2B Two-Family District since 1987. A three-unit multiple-family dwelling is a prohibited use in the R2 District.

Staff has not received correspondence from the Marcy-Holmes Neighborhood Association. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

City records indicate that the legal use of the property is a two-family dwelling. The applicant is applying for a certificate of nonconforming use to legally establish a three-unit multiple-family dwelling in the R2 District per 531.30 of the zoning code:

> **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.
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> (4) *Determination by board of adjustment.* Following the public hearing, the board of adjustment shall determine whether the use or structure is a legal nonconforming use or structure. The burden of proof shall be on the applicant to establish the lawful nonconforming status of the use or structure and the lack of abandonment, change of use or loss under section 531.40. If the applicant does not establish the required facts, no certificate shall be issued. If the board of adjustment determines that the use or structure is a legal nonconforming use or structure, it shall direct the zoning administrator to issue a certificate of nonconforming use. The certificate shall state with particularity the type and intensity of specific use which is found to be legal. The decision of the board of adjustment may be appealed by any affected person as specified in Chapter 525, Administration and Enforcement.

Staff believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.30(4), under which the applicant must bear the burden of proof to illustrate clear and convincing evidence that the use of the property was legally established as a three-unit multiple-family dwelling prior to 1924 and not discontinued for a period in excess of one (1) calendar year. The applicant has provided a statement describing the

relevant facts and reason for the request, floor plans, certificates of rent paid for tax years 1991-2010, rental history, tax statements from Hennepin County, Abstract history of the property ownership, historical permits, Neighborhood Revitalization Program documents, property appraisal from 2000, pictures showing three electrical boxes and three water heaters and four affidavits from previous tenants, a neighbor and the mail carrier.

Findings:

1) The principal structure on the subject property was constructed prior to 1890 in the Town of St. Anthony. The City of Minneapolis does not have records of the original construction of the principal structure.
2) The Town of St. Anthony and the City of Minneapolis merged in 1873.
3) The first building permits on the property were to add plumbing and baths to the structure in 1890.
4) In 1911, a building permit (B93460) was issued for a 7 ft. by 10 ft. addition, new front porch and repairs to the existing building.
5) The zoning classification from 1924 to 1963 was Residence; a three-unit multiple-family dwelling is a prohibited use.
6) In 1927, an 18 ft. by 10 ft. detached garage received a permit (B208059).
7) The Building and Housing Survey recorded on December 26, 1933, indicated the use of the property was a two-family dwelling.
8) In 1936, a building permit (B243975) was issued to "reside and alter existing dwelling."
9) The subject property was rezoned in 1963 to R3 Two-Family District; a three-unit multiple-family dwelling is not allowed on a lot smaller than 7,500 sq. ft.
10) The Marcy-Holmes 40-Acre Rezoning Study is adopted October 24, 1986. The zoning classification is changed from R3 Multiple Family District to R2B Two-Family District.
11) A building permit (B550544) is issued to re-roof the existing building. City records indicate that the property is registered as having three dwelling units.
12) The property owner received rental licenses for two dwelling units from 1991-1999 while homesteading the property; the ordinance requiring rental licenses beginning in 1991, was adopted in September of 1990 per section 244.1810 of the housing maintenance code.
13) The property owner purchased the property in 2000 as a three-unit, multiple-family dwelling
14) According to Hennepin County, the property is homesteaded and taxed as a triplex.
15) The applicant has failed to present clear and convincing evidence that the structure was converted to a three-unit multiple-family dwelling at the time when use would have been permitted, prior to 1924, and the use was not discontinued.

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 three-unit multiple-

family dwelling for the property located at 505 8th Avenue SE in the R2B Two-Family District and UA University Area Overlay District.

Attachments:

1) Statement of proposed use and description of project provided by the applicant
2) Copy of e-mail sent to Marcy-Holmes Neighborhood Association and CM Hofstede
3) Documentation provided by the applicant
4) Zoning map
5) Fifth Street Historic District Local Designation Study (1976)
6) Building Permit Index Card (1908-1974)
7) Building Permit Index Card (1974-1992)
8) Copy of building permit (B93460) from 1911
9) Copy of building permit (B208059) from 1927
10) 1934 Building and Housing Survey
11) Copy of building permit (B243975) from 1936
12) Site plan
13) Floor plans
14) Photographs