

Department of Community Planning and Economic Development - Planning Division Report

Variance Request
BZZ-4067

Date: June 12, 2008

Applicant: Eugene Olsen (property owner)

Address of Property: 445 Pierce Street NE

Contact Person and Phone: Eugene Olsen, (651) 283-1843

Planning Staff and Phone: Aaron Hanauer, (612) 673-2494

Date Application Deemed Complete: April 28, 2008

Publication Date: June 6, 2008

Public Hearing: June 12, 2008

Appeal Period Expiration: June 23, 2008

End of 60 Day Decision Period: June 27, 2008

Ward: 3 **Neighborhood Organization:** Beltrami Neighborhood Council

Existing Zoning: R1A/Single-Family District

Proposed Request: Certificate of Nonconforming Use to legally establish a two-unit building at 445 Pierce Street NE in the R1A/Single-Family District.

Zoning Code Section Authorizing the Request: Chapter 531 Nonconforming Uses and Structures; Section 531.30.

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, 445 Pierce Street NE, is located to the east of Interstate 35W and just south of Spring Street NE in the R1A Zoning District. The surrounding area consists of low-density residential in the R1A and R2B Zoning Districts (see Appendix A).

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The structure on the subject property was moved to 445 Pierce Street NE in 1916. The City of Minneapolis building index cards indicate that it was a duplex at that time (see Appendix D1). In addition, the floor plans submitted by the applicant indicate the structure was originally built as a duplex (see Appendix B29).

From 1924, the first year the City of Minneapolis had a Zoning Code, to 1963, the property was zoned Multiple Dwelling. The Multiple Dwelling Zoning District allowed for a duplex. Since 1963, the property has been zoned R1A. When the zoning change took place the structure became a legally nonconforming use since two-family structures are not a permitted use in the R1A Zoning District.

The subject property is 5,109 square feet. The structure on the property is a two story duplex that measures 2,238 square feet (including basement). Each unit has two bedrooms.

The applicant, Eugene Olsen, purchased the subject property from Aurora Bank on April 4, 2008. Aurora Bank became the outright owner when the mortgagor foreclosed on the property. Mr. Olsen states that he purchased the property with the understanding that the property had rights to a two-unit dwelling (see Appendix B). On April 7, 2008, Mr. Olsen came down to the City of Minneapolis Development Review office to pull permits to begin rehabilitation work. He was told at that time that this structure only has rights to one unit because it is Zoned R1A and it lost its nonconforming rights to a two-unit structure. He was also told at that time that if he wants to maintain two units he will have to apply for a Certificate of Nonconforming Use.

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, which is a nonconforming use to the R1A Zoning District, was considered to be discontinued for a period of one year on July 14, 2007. This is due to the property being placed on the City of Minneapolis's Vacant Building Registration (VBR) list one year earlier on July 14, 2006 (BCC 1000782). The property during that year of time (and up until today) was not taken off that list and therefore considered to be unoccupied.

Applicant's Rebuttal of Abandonment: Even though no one inhabited the property from July 14, 2006 to July 14, 2007, the property owner supplied information to rebut the presumption by CPED-Planning and Zoning that the property was abandoned during that year. This is a requirement per Minneapolis Zoning Code provision 531.40 (a)(2)

531.40 (a) (2) Rebuttal of abandonment. A property owner may rebut the presumption of abandonment only by presenting clear and convincing evidence that discontinuance of the

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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 applicant provides information that the following activities took place between July 14, 2006 and July 14, 2007 in order to show that the property was not abandoned (see Appendix B27 and B28 for applicant's submitted information). Note: The bullet points below the dates are supplied by staff. This information provides explanation of terms and additional information about the events.

1. April 12, 2006 - October 12, 2006: Subject property's redemption period of foreclosure.
 - The property went into foreclosure in April 2006 (see Appendix B27).
 - The redemption period of foreclosure is the period in which the mortgagor has the right to regain ownership of property after foreclosure. A mortgagor is a person or party who borrows money from a mortgagee to purchase property. The arrangement between a mortgagor and mortgagee is called a mortgage (source: answers.com).
2. October 10, 2006: This property was put on the Minneapolis Condemned and Boarded list (BCC 10000782)
 - A property can be put on this list for a variety of reasons. In this particular case the property was put on this list because it was boarded for at least 60 days. City ordinance allows any building to be boarded for 60 days without penalty. After 60 days, if the owner has not removed the boards or taken out a permit to rehab the building, the building may be placed on the Condemned and Boarded list (Chapter 249 list).
3. October 12, 2006: Sheriff's Sale:
 - A sheriff's sale is a sale of property by the sheriff (or their deputy) under authority of a court's writ of execution in order satisfy an unpaid obligation (source: www.princeton.edu).
4. October 13, 2006: Aurora assigned Lentz Team Association to manage the property to monitor and prevent break-ins while the property is on the market.
5. May 10, 2007 Aurora listed the property with Lentz Team Association to be the agent to sell the property
6. May 10, 2007: Rob Lentz, from Lentz Team Association, applied for a Code Compliance Certificate.
 - A Code Compliance Certificate is required to confirm that the building complies with the City of Minneapolis Building Code when a building has been condemned and boarded.
7. May 11, 2007 – July 11, 2007: Aurora Bank and Lentz Team Association reduced the selling price of the house 11 percent (see Appendix B28).

Staff Analysis: CPED believes that the failure of the previous property owner, Aurora Bank, to secure the nonconforming rights of the two-unit dwelling between July 14, 2006 and July 14, 2007 is not a circumstance beyond the applicant's control. The property has been zoned R1A/Single-Family District since 1963 and has been classified as a legal nonconforming use since that time. Further, CPED believes the current applicant's failure to do their due diligence in the purchasing of the subject property is something wholly within their control. A property owner is responsible for proper due diligence in the ownership, sale, and purchase of property which includes the knowledge of the nonconforming status of the property. Therefore, this could be considered a loss of nonconforming rights.

Even though the information provided by the applicant does not show that it was beyond the applicant's control to retain rights of the unit building between July 14, 2006 and July 14, 2007, CPED believes that the property owner, Aurora Bank, did not entirely abandon the property. The applicant provided evidence that Aurora Bank, during the period in question, actively tried to sell the property and inquired about removing the property from the City of Minneapolis Vacant Building (VBR) and the Condemned and Boarded (CONB) lists.

In addition to the efforts made by Aurora Bank, CPED recognizes that the combination of the following circumstances support the applicant's request to legally reestablish rights to two units at 445 Pierce Street NE. First, this structure was likely built as a duplex originally, and it has functioned as a two-unit building at this location for more than 80 years. Second, a two-unit structure that was built prior to 1995 is considered to be a low-density use by the City of Minneapolis Zoning Code (in the R2 and R2B Zoning Districts), and the City of Minneapolis Zoning Code recognizes the following zoning districts as low-density zoning districts: R1A (subject property's zoning) R1, R2, and R2B. Third, the applicant's intentions are to rehabilitate the existing structure (see Appendix B17-B24). The rehabilitation of this structure is consistent with the first goal listed in the City of Minneapolis Comprehensive Plan (see below):

1. Increase the city's population and tax base by developing and supporting housing choices citywide through preservation of existing housing and new construction.

Growth in the city's population and tax base is one of the key themes of The Minneapolis Plan. Increases in the number and type of housing units are essential to the city's continued prosperity. The Minneapolis Plan proposes that this growth occur according to two different scenarios: One is continued infill in residential areas, where single or small clusters of lots are available for redevelopment; the other scenario involves the identification of sites where major housing development could take place, designed for higher density housing to appeal to new and emerging housing markets, such as seniors and empty nesters of all income levels. Together, these scenarios for growth in housing choices are intended to respond to the wide variety of housing submarkets, by providing a variety of housing types and levels of affordability.

If this property does not retain rights to the second unit, there is high probability that the structure will again go into foreclosure and/or be torn down. Either of these alternatives is less favorable than the rehabilitation of the existing structure.

Findings:

1. The subject property was likely built as a duplex originally, and it was a duplex when it was moved to 445 Pierce Street NE in 1916 (E 12102).
2. The subject property's zoning from 1924 to 1963 allowed for a two-unit building.
3. The property was rezoned R1A/Single-Family District in 1963 making the property a legally nonconforming use.
4. The subject property was placed on the City of Minneapolis's Vacant Building Registration (VBR) on July 14, 2006 and remained on that list for over a year; therefore, the property lost rights to having two units.

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5. Applicant has demonstrated that even though no one lived at the subject property over the year that the property was on the VBR list, that attempts were made by the property owner (Aurora Bank) and their subcontractors to sell the property.
6. The combination of the structure being a two-unit building since 1916, the property maintaining a low-density use, and the intentions of the applicant to rehabilitate the property, which is consistent with the City of Minneapolis Comprehensive Plan, are facts in favor of granting approval of the Certificate of Nonconforming Use.

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 **approve** the Certificate of Nonconforming Use to legally establish two dwelling unit at 445 Pierce Street NE in the R1A Single-Family District.

Attachments:

- Appendix A: Zoning map
- Appendix B: Application
- Appendix C: Aerials
- Appendix D: Building Index Card