

Department of Community Planning and Economic Development – Planning Division Report**Nonconforming Use Certificate
BZZ-1850****Date:** August 5, 2004**Applicant:** Lee Switzenberg and Todd Oberg**Address of Property:** 1816 Colfax Avenue South**Date Application Deemed Complete:** July 8, 2004**End of 60 Day Decision Period:** September 6, 04 **End of 120 Day Decision Period:** November 5, 04**Contact Person and Phone:** Paige Fitzgerald, Attorney, 952-404-2100**Planning Staff and Phone:** Carrie Flack, 651-673-3239**Ward:** 7 **Neighborhood Organization:** Lowry Hill**Existing Zoning:** R2B, Two-family District**Proposed Request:** To establish legal nonconforming rights to allow a triplex**Zoning code section authorizing the request:** 525.110 (3); 531

Background: The applicant is seeking to establish nonconforming rights to maintain a triplex in District R2B, Two-family District. The subject property is 50 ft. x 135 ft. (6,750 sq. ft.) and consists of a three story dwelling structure with a dwelling unit on each floor and a detached garage that is shared with the adjacent property that provides 2 garage spaces for the property. The applicants purchased the property in December 2003 as a triplex and live in one unit and rent the remaining two units. Current city records indicate the property is referenced for only two dwelling units. Therefore, the nonconforming use certificate is necessary to maintain the third unit.

The dwelling was constructed in 1893 prior to the adoption of the first Zoning Code in 1924. Therefore, when the dwelling was constructed, zoning was not in place to regulate density. Under the 1924 Zoning Code the property was zoned C2 ½ Multiple District which allowed for duplexes with a minimum lot area of 2,400 sq. ft. per unit and structures with a maximum height of 2 ½ stories. Under the 1963 Zoning Code, the subject site was zoned R2B, Two-family District which allows for duplexes on lots with 5,000 sq. ft. if the duplex existed before 1995 and 10,000 sq. ft. if the duplex was established after 1995. Therefore, the lot became nonconforming as to the use in 1924 when the first zoning code was adopted and the property was zoned C2 ½. The applicant must submit evidence to show that the property has consisted of three dwelling units prior to 1924 in order to establish nonconforming rights for three dwelling units on the property.

Analysis: The applicant is requesting a nonconforming use certificate to maintain three dwelling units in District R2B.

The applicant has provided a significant amount of information that indicates that the property has been consistently used as a triplex since at least 1928. This information includes census information, building permit information and affidavits from the previous property owner who has testified that the property has been used as a triplex since before they bought the property in 1955. In addition, the applicant has received an inspection from the city confirming that the dwelling units are all original to the original design and construction of the dwelling. An affidavit from an architect reaffirms this.

Although no paper documentation has been submitted showing the use of this dwelling as a triplex prior to 1924, staff believes that the significant amount evidence indicates that use of the property was legally established prior to 1924 when the property became legally nonconforming. The applicant will be required to comply with current building code requirements for a triplex.

Findings:

1. In 1893 the three story dwelling was constructed.
2. An inspection from the city and an affidavit from an architect confirm that the dwelling was originally constructed with three dwelling units.
3. In 1924 the first Zoning Ordinance zoned the property C2½ which allowed for a two and a half story duplex.
4. In 1963 the subject site was zoned R2B, Two-family District and the property remains zoned R2B under the 1999 Zoning Ordinance.
5. Evidence submitted indicates that three dwelling units were established in 1893 and have been continuously used since that time.
6. The property became legally nonconforming as to use under the 1924 Zoning Ordinance and remains legally nonconforming.

Recommendation of the Department of Community Planning and Economic Development:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the above findings and **approve** the nonconforming use certificate to establish legal nonconforming rights for three dwelling units in a single structure for property located at 1816 Colfax Avenue South.