

## Community Planning and Economic Development - Planning Division Report

Appeal of the Decision of the Zoning Administrator  
BZZ-2323

**Date:** June 2<sup>nd</sup>, 2005

**Applicant:** Jim Eischens, property owner

**Address of Property:** 628 4<sup>th</sup> Street SE

**Contact Person and Phone:** Patrick Burns, applicant's attorney, (952) 582-2990

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

**Date Application Deemed Complete:** April 27<sup>th</sup>, 2005

**End of 60 Day Decision Period:** June 26<sup>th</sup>, 2005

**Ward: 2**      **Neighborhood Organization:** Marcy-Holmes Neighborhood Association

**Existing Zoning:** R5-Multiple Family Residential District

**Appeal of the decision of the Zoning Administrator:** Jim Eischens has filed an appeal of the decision of the Zoning Administrator determining the use of two dwelling units with two shared baths and eight rooming units located at 628 4<sup>th</sup> Street Southeast in the R5 district.

**525.170. Appeals of decisions of the zoning administrator.** All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

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**Background and Analysis:** The applicant is appealing the decision of the Zoning Administrator determining the use of two dwelling units with two shared baths and eight rooming units located at 628 4<sup>th</sup> Street Southeast in the R5 district. The subject property is approximately 66 ft. x 122.5 ft. (8,052 sq. ft.) and is referenced and registered as having 2 dwelling units, 2 shared bath units and 8 rooming units. The current Zoning Ordinance allows for up to 8 dwelling units based on the density in the R5 district. The rooming units are allowed and regulated per Chapter 244 of the Minneapolis code of Ordinances, Housing Maintenance Code.

A *dwelling unit* is defined in the Zoning Ordinance as one or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with a single complete kitchen facility, sleeping area and bathroom provided within the unit for the exclusive use of a single household.

A *shared bath unit* is defined in the Housing Maintenance Code is defined as a dwelling unit which does not contain a water closet and a hand lavatory and a bathtub or shower for the exclusive use of the occupants of the unit.

And a *rooming unit* as defined by the Housing Maintenance Code is any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking of meals.

The actual use of the building was determined by Staff in the Housing Division of Regulatory Services to be 5 dwelling units on December 14<sup>th</sup>, 2004. The applicant has not provided any evidence to the contrary or provided any information stating how the property is being used. The Zoning Administrator has determined that the applicant would be required to obtain a Conditional Use Permit to allow for a change of use to five dwelling units. Any use containing five dwelling units or more, new or additional, requires a conditional use permit. For example, if someone obtains a conditional use permit for a new apartment building with 19 dwelling units, they cannot build an additional 20<sup>th</sup> unit. The addition of the 20<sup>th</sup> dwelling unit would require a new conditional use permit. A parking variance would not be required, however, because there is sufficient parking on-site and there are grandfather rights to four parking spaces.

According to the history, the building was built as a single family dwelling in 1886. In 1931, a building permit was issued to convert space to sleeping rooms on the third floor. Then in 1982, building permit #B518790 established the use in this building to be 2 dwelling units, 2 shared bath units and 8 rooming units.

When this use was established in 1982, it would have been subject to the 1963 Zoning Code and the subject site was also zoned R5 – Multiple Family Residential District. The B1-3 district would have also allowed up to 8 dwelling units based on the density in the district and the lot area. A conditional use permit would not have been required at this time to convert the structure up to 8 dwelling units. The 1963 Zoning Ordinance required a conditional use permit for dwellings of 10 units or more.

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**Findings:**

1. The property was built as a single family dwelling in 1886.
2. In 1931, a permit was issued to add sleeping rooms on the 3<sup>rd</sup> floor.
3. In 1934, the Building and Housing survey indicated that there were 14 rooming units.
4. In 1963, the property was zoned R5 – Multiple Family Residential District and would have allowed up to 8 dwelling units.
5. In 1982, a permit was issued to alter the structure to 2 dwelling units, 2 shared bath units and 8 rooming units to legalize the existing use.
6. In 1999, the property was zoned R5 – Multiple Family Residential District and would have allowed up to 8 dwelling units.
7. Buildings with five or more units require a conditional use permit. Adding any number of dwelling units to an existing building with five or more units requires a conditional use permit

**Recommendation of the CPED Department Planning Division:**

The Department of Community Planning and Economic Development Planning Division recommends **denial** of the appeal of the decision of the Zoning Administrator.