

Department of Community Planning and Economic Development - Planning Division Report**Nonconforming Use Certificate Request
BZZ-2201****Date:** March 3, 2005**Applicant:** Steven M. Minn**Address of Property:** 600 Main Street Southeast**Contact Person and Phone:** Steven M. Minn, (952) 888-2001**Planning Staff and Phone:** Tanya Holmgren, (612) 673-5887**Date Application Deemed Complete:** February 7, 2005**End of 60 Day Decision Period:** April 8, 2005**Ward: 2 Neighborhood Organization:** Marcy Holmes Neighborhood Association**Existing Zoning:** I2, Medium Industrial District**Proposed Request:** To establish legal nonconforming rights for a parking lot located 600 Main Street Southeast.**Zoning code section authorizing the request:** 525.110 (3); 531

Background: The applicant is seeking to establish legal nonconforming rights for a principal parking lot located in the I2 District. The subject property is a triangular shaped parcel directly south of the Stone Arch apartments south of Main Street Southeast. The property presently consists of a paved parking lot. The Zoning Ordinance allows principal parking lots in the I2 District as a conditional use. The parking lot was recently paved and is being used as a principal use on the property. The principal parking lot does not have a conditional use permit and has not received site plan review either as required by Table 530-1.

The City Planning Commission reviewed the Stone Arch Apartments development as a Conditional Use Permit. The approved site plans did not include the subject triangular parcel, 600 Main Street Southeast. Therefore, the property has not received any prior land use reviews or approvals for its use as a principal parking lot. Therefore, the applicant is seeking a nonconforming use certificate to establish legal nonconforming rights for a principal parking lot to be used as a parking facility in the I2 District.

The applicant states that improvements were made to an existing parking lot that has been continuously used for over 40 years and that the parking lot predates the 1963 zoning code. The applicant also states that due to the existence of this parking lot, no further land use review of the

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parking lot is required, including a conditional use permit. Based on this history, the applicant believes a nonconforming use certificate is appropriate for the property.

The previous property owner states that the property consisted of business uses as well as employee parking and outdoor storage of tractor trailers associated with the business use. The previous property owner states that one or more vehicles were parked on site daily. Pictures of the building that was previously standing are provided.

Under the 1963 Zoning Code the subject site was zoned M2-3 Limited Manufacturing District which, allowed for industrial uses. Therefore, the lot was conforming in 1963 with a warehouse business as the principal use of the property and parking as an accessory use to the warehouse business.

The 1963 Zoning Code also permitted parking lots in the Manufacturing Districts. The code required the paving of parking areas including asphalt, concrete, brick, cement pavers, or similar materials installed and maintained per industry standards (542.320 (3)) and a compliance deadline of November 1993 was later established. After that date, parking areas and parking lots that were not properly surfaced became unlawful. In the 1999 Zoning Code Section 520.140 (b) existing uses made conditional must be lawfully established to be deemed a legal conditional use. The Zoning Administrator has determined that this parking lot was not properly surfaced in November 1993 or in 1999. Thus, the parking lot is not deemed to have a conditional use permit nor any nonconforming rights as a parking lot since the parking lot was never lawfully established. It also appears that the lot has had periods exceeding one year in duration where no parking occurred at this location. Under 525.370 this would constitute a discontinuance of any nonconforming rights.

The property was purchased in April of 2002 by the current owner and the existing principal structure was demolished in August of 2002 according to pictures submitted by the applicant. Therefore, the applicant must submit evidence to show that the property has continuously consisted of a parking lot as a principal use on the property prior to 1993 in order to establish legal nonconforming rights.

Property History: City building permit records indicate a work shed was constructed on the property in October 1911. In June 1923 a warehouse was constructed on the property establishing an early industrial use of the property. Subsequent warehouse buildings were erected in 1939 and 1940 with an office.

On September 15, 2004, the applicant was sent a violation letter by the Housing Department regarding dirt on the sidewalk due to illegal parking on the grassy portion of the subject site, 600 Main St. SE. The violation instructs the property owner to discontinue this parking and to properly locate and pave the parking according to the zoning code. The applicant also received a violation for weeds exceeding 8 in. in height.

On October 29, 2004, the applicant was sent a letter regarding the presence of construction vehicles parked on a property across Main Street from the approved Stone Arch Apartments. In this letter, the applicant is informed that in order to use this property for parking the applicant should receive City approvals for the development of the property into a parking lot. The applicant was also informed that any work prior to these approvals will result in further enforcement action by the Zoning Department.

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On November 8, 2004, an erosion control permit (BESE 1002950) was issued by the Inspections Department. Prior to the time of the permit issuance the applicant had worked with the Public Works Department and did construct the site according to their requirements. The permits were issued after construction on the site began. However, erosion control permits are issued by the Public Works Department and the Inspections Department and do not reflect zoning approvals of land use. The erosion control permit does not substitute for or approve required land use applications, nor does it grant rights to construction on a site that has not been approved by the Zoning Office.

On December 9, 2004, the applicant was sent a letter as a follow-up to the initial inspection by Zoning Enforcement. At this time the parking lot had been paved and no City approvals had been obtained including a conditional use permit which is required for a parking facility in the industrial districts. Further, as indicated in Table 530-1 of the zoning code, parking facilities of 10 spaces or more are subject to site plan review when they are the principal use of the property in question, even if such parking is accessory to a use on another site. The Zoning Administrator has determined that the applicant must submit an application for a conditional use permit or confirm any possible grandfather rights for the parking at 600 Main Street Southeast.

Analysis: The applicant is requesting a nonconforming use certificate for a principal parking lot located in the I2 District. Staff found evidence that indicates that the property had been used with warehousing as the principal use and parking as an accessory use. Staff believes that the legal nonconforming rights for the parking lot as a principal use were not ever established on this property. Staff could not find evidence that proves the use was ever legally established. The applicant did provide evidence that the property had been used for the parking of vehicles in the past. However, the number of spaces that were provided, the location of those parking spaces, and the use of those parking spaces were different than the current situation. Pictures of the property indicate that there was a principal warehouse building on the property and parking was immediately surrounding the building as an accessory use to the business. The pictures do not show the entire lot used for the sole purpose of parking. Staff does not argue that nonconforming rights may exist for parking spaces associated and accessory to the previous industrial use. The Nonconforming Use Chapter of the Zoning Code recognizes that nonconforming uses exist in the city. This chapter provides policies and regulations to allow those uses to be maintained and provides policies and regulations for the discontinuance of nonconforming uses.

531.20. General prohibition; authority to continue. (a) Uses and structures. No structure or use, or part thereof, shall hereafter be erected, constructed, altered, enlarged, relocated, used or intensified in character or operation except in conformity with the provisions of this zoning ordinance. Legal nonconforming uses and structures shall be allowed to continue so long as they remain otherwise lawful, subject to the provisions of this chapter. Nonconforming uses and structures which were not lawfully in existence on the effective date of this ordinance shall be prohibited.

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.

An increased amount of parking spaces provided on site has resulted from the alteration or paving of the property. Therefore, staff believes that any portions of the property previously nonconforming as to accessory parking have been altered or enlarged, and the use intensified.

Findings:

1. The property was established when a warehouse was constructed on the property in 1923
2. In 1940, the site was improved with a warehouse with an office.
3. In 1947, the photos provided show a warehouse building with one vehicle parked in front of it.
4. In 1963, the subject site was zoned M2-3 Limited Manufacturing District.
5. In 1963, the property was conforming as a warehouse business as the principal use of the property with parking as an accessory use to the warehouse business.
6. In 1970, the photo shows parking and outdoor storage of commercial vehicles accessory to the warehouse.
7. The 1963 Zoning Code required the paving of parking lots and established a deadline of November 1993 for compliance. After that date parking lots not property surfaced/paved were considered unlawful.
8. Evidence was not submitted to show paving of the parking lot in accordance with 542.320 (3) of the 1963 Zoning Code including asphalt, concrete, brick, cement pavers, or similar materials installed. Therefore a parking lot was not legally established on this property prior to November 1993.
9. The 1999 Zoning Code Section 520.140 (b) states that existing uses made conditional must be lawfully established to be deemed a legal conditional use.
10. In April 2002, the property is sold to the current owners.
11. In August 2002, the principal warehouse building was demolished.
12. In September 2004, the applicant was sent a violation letter from Housing regarding illegal parking.
13. In October 2004, the applicant was sent a violation letter regarding the illegal parking of construction vehicles and the need for appropriate land use approvals.
14. In November 2004, an erosion control permit (BESE 1002950) was issued by the Inspections Department after construction of the paved parking lot had begun.

Due to the lack of sufficient information and facts provided by the applicant, staff has not determined that the parking lot on the subject property was lawfully established. Without this establishment of non-conforming rights, the applicant is required to obtain a conditional use permit and site plan review approval to establish the parking lot as a permitted use as a parking facility in the I2 District.

Recommendation of the CPED Department Planning Division:

The City Planning Department recommends that the Board of Adjustment adopt the above findings and **deny** the nonconforming use certificate to establish legal nonconforming rights for a parking lot located in the I2 district.