

Department of Community Planning and Economic Development – Planning Division
Nonconforming Use Certificate
BZZ-4934

Date: September 16, 2010

Applicant: Marlin Frank

Address of Property: 3104 45th Avenue South

Project Name: 3104 45th Avenue South Nonconforming Use Certificate

Contact Person and Phone: Marlin Frank, (651) 492-1706

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

Date Application Deemed Complete: September 23, 2010

End of 60-Day Decision Period: October 22, 2010

Ward: 12 **Neighborhood Organization:** Longfellow Community Council

Existing Zoning: R1A Single-Family Residence District

Zoning Plate Number: 28

Legal Description: Not applicable for this application

Proposed Use: A two-family dwelling

Nonconforming Use Certificate: to establish legal nonconforming rights to a two-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 120 ft. by 117 ft. (14,040 sq. ft.). The first building permit on the property was to allow for a 28 ft. by 42 ft. brick and stucco single-family dwelling with a 20 ft. by 22 ft. detached garage in 1922. The building permit was issued to the property owner, Dr. Carl J. Lund.

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 in 1922 through 1963. The property was rezoned to R1A Single-Family Residence District in 1963 with the adoption of the new zoning ordinance. The property

has been continuously zoned R1A Single-Family District since 1963. A two-family dwelling is a prohibited use in the R1A District.

City records indicate that the legal use of the property is a single-family dwelling. The applicant is applying for a certificate of nonconforming use to legally establish a two-family dwelling in the R1A 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.

(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 two-family dwelling prior to 1963 and not discontinued for a period in excess of one (1) calendar year. The applicant has provided a copy of the 1930 United States Federal Census form and an online article referencing a previous property owner.

Findings:

- 1) City records indicate that a building permit was issued for a 28 ft. by 42 ft. brick and stucco dwelling and 20 ft. by 22 ft. stucco private garage on August 31, 1922.
- 2) The zoning classification from 1924 to 1963 was Residence; a two-family dwelling is a permitted use.
- 3) The applicant has provided a copy of the 1930 United States Federal Census showing Carl Lind, Betty Lind, Carl Lind Jr. and Eileen Cofy as residing at 3104 45th Avenue South. Eilene Cofy is listed as a “servant.”
- 4) The Building and Housing Survey conducted in 1934 indicated the use of the property was a single-family dwelling with a doctor’s office.

- 5) Polk Directory records indicate Carl Lind Jr. is the property owner from 1933 through 1954. Only one dwelling unit is listed in the directory.
- 6) Polk Directory records indicate that Melva Lind, sister of Carl Lind Jr., is the property owner from 1954 through 1993.¹ She is listed as the dean and later the president of Gustavus Adolphus College.
- 7) The subject property was rezoned in 1963 to R1A Single-Family District; a two-family dwelling is a prohibited use.
- 8) The applicant has failed to present clear and convincing evidence that the structure was converted to a two-family dwelling at the time when use would have been permitted, between 1922 and 1963, or shown that the use was not discontinued for more than one year between 1963 and 2010.

As of writing this staff report, staff has not received any correspondence from the Longfellow Community Council. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

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 two-family dwelling for the property located at 3104 45th Avenue South in the R1A Single-Family District.

Attachments:

- 1) Statement of proposed use and description of project provided by the applicant
- 2) Timeline provided by the applicant
- 3) Copy of e-mail sent to Longfellow Community Council and CM Colvin-Roy
- 4) Zoning map
- 5) Building Permit Index Card (1962-1974)
- 6) 1934 Building and Housing Survey
- 7) Permit List (1991-Present)
- 8) Site plan
- 9) Floor plans
- 10) Photographs

¹ The City of Minneapolis has retained copies of the Polk Directories through 1993.