

Department of Community Planning and Economic Development - Planning Division Report**Certificate of Nonconforming Use Request**

BZZ-4277

Date: February, 19 2009**Applicant:** Kelly Hadac on behalf of IB Holdings**Address of Property:** 2426 Plymouth Avenue North**Contact Person and Phone:** Kelly Hadac, (651)-251-8384**Planning Staff and Phone:** Jacob Steen, (612) 673-2264**Date Application Deemed Complete:** January 7, 2009**Publication Date:** February 13, 2009**Public Hearing:** February 19, 2009**Appeal Period Expiration:** March 2, 2009**End of 60 Day Decision Period:** March 9,2009**Ward: 5 Neighborhood Organization:** Northside Residents Redevelopment Council**Existing Zoning:** R1A Single-Family District**Proposed Request:** Certificate of nonconforming use to legally establish a mixed-use building with four dwelling units and a commercial tenant space at 2426 Plymouth Avenue North in the R1A Single Family District.**Zoning Code Section Authorizing the Request:** Chapter 531 Nonconforming Uses and Structures; Section 531.30; 531.40 (a) (2) Rebuttal of abandonment;

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.

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 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.

Background: The subject property, 2426 Plymouth Avenue North, is zoned R1A Single-Family District. Building records indicate that the principal structure on the subject property was built in 1921

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as a brick, two-story, mixed-use building with two dwelling units on the second floor and a retail tenant space on the first floor in 1921. A third dwelling unit was added to the second floor in 1955, and fourth dwelling unit was added to the first floor in 1956. The lot area is 5,163 square feet and the gross floor area of the structure is 5,712 square feet (Appendices A, C).

The area within a 1000-foot radius is predominately lower density R1A Single-Family District and R2B Two-Family Districts, with a few higher density parcels along Plymouth Avenue and Office Residence Districts to the east (Appendix B). The residential properties within a 100-foot radius include a mix of densities and nonconforming uses. These structures vary from single-family homes to nonconforming office and retail uses (Appendix D).

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned Commercial District. The Commercial District permitted a mixed-use building with two dwelling units, as well as the two additional units added in 1955 and 1956. From 1963 to 1976 the property was zoned B3C-2 Community Commercial District, which prohibited dwelling units below the second floor, rendering the first floor dwelling unit nonconforming. In 1976 the property was down-zoned to R1A Single-Family District, at which time the structure became a legal nonconforming use since a mixed-use building with four dwelling units and a commercial tenant space is not permitted in the R1A Single-Family District.

The property was purchased by William Sanigular in December of 2003. At that time the property was operated as a four unit dwelling with a grocery store on the lower level. In May 2007 Bayview Loan Servicing, LLC foreclosed on the subject property. In November of 2007, following the redemption period for the foreclosure, IB Property Holdings, a subsidiary of Bayview Loan Servicing, took ownership of the property.

The applicant's representative states that the property has been actively marketed since November, 2007 and has had multiple interested parties in purchasing the property but no buyers (Appendix A).

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 has been considered to be a legally established mixed-use structure with four dwelling units and a commercial tenant space since 1976 when it was down-zoned to the R1A Single-Family District.

The property was first identified as a problem property by the City of Minneapolis' Problem Properties Unit (PPU) in January, 2007. Following inspections by the Fire Department in early 2007, the property

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was condemned for lack of maintenance on May 9, 2007. The building was subsequently foreclosed upon on May 11, 2007. To avoid condemnation, the property owners filed for a temporary restraining order against the City; however, their motion was dismissed and the court ordered that the property be vacated June 1, 2007 (Appendix E). On November 11, 2007, following the foreclosure redemption period, IB Property Holdings took ownership of the property, at which time the lender began marketing the property. On June 1, 2008, following one year of a discontinued use, the property was deemed to have lost its nonconforming rights to a mixed-use building with four dwelling units and a retail tenant space.

Applicant's Rebuttal of Abandonment: After being informed that CPED-Planning had determined that the property had lost nonconforming rights to a mixed-use building with four dwelling units and a commercial tenant space, the owner supplied information to rebut the presumption by CPED-Planning that the property had been abandoned. This is a requirement per Minneapolis Zoning Code provision 531.40 (a)(2).

The applicant provided information to help establish the following timeline from December 2003 to November 21, 2008, in an effort to show that the property was not abandoned (Appendix A). CPED-Planning staff has included additional dates related to administrative actions and relevant activities by City of Minneapolis staff.

1. December, 2003: William Sanigular purchases the property with a Mortgage from Bayview Loan Servicing, LLC
2. January, 2007*: The City of Minneapolis PPU identifies the property as a "problem property"
3. January 31, 2007*: Fire Inspector issues numerous orders due May 9, 2007
4. May 9, 2007*: Property was re-inspected by Fire Department and a notice to condemn is issued
5. May 11, 2007: Lender begins foreclosure proceedings
- 6. June 1, 2007*: The property is vacated per a court order following condemnation**
7. November 11, 2007: IB Holdings takes ownership of the property following redemption period
- 8. June 1 2008*: Following one year of discontinued use since condemnation, the property is deemed abandoned by CPED-Planning**
9. November 21, 2008*: Director's orders are issued to demolish the structure
10. January 7, 2009*: CPED-Planning deems Rebuttal of Abandonment application complete

* Indicates date has been provided by CPED-Planning staff

The applicant has also included the following statement in their application:

"Bayview hereby rebuts the presumption of abandonment based upon the fact that the vacancy of the building is due to circumstances beyond its control. Since Applicant took title to the property on November 11, 2007, it has been actively marketing the property for sale. Unfortunately, due to the weakening commercial real estate market, the property has not yet been sold. The parties who did show an interest in purchasing the property declined once they discovered that the property can no longer be used as a commercial property." (Appendix A)

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To clarify the applicant's statement, the use of the property as a mixed-used structure with four dwelling units and a commercial tenant space was a nonconforming. Therefore a land use application for an expansion or change of nonconforming use would have been required of any new commercial tenant.

Staff Analysis: CPED-Planning Staff believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.40 (a)(2), under which the applicant must bear the burden of proof to illustrate clear and convincing evidence that the circumstances leading to the discontinued use were beyond the control of the property.

CPED-Planning recognizes that following the court ordered vacation of the premises on June 1, 2007 there was a period of nearly five and a half months that the property was involved in the foreclosure process. However, from November 11, 2007 to June 1, 2008, the date on which the property was considered to have lost its rights, the property was under the control of the applicant. During this time the property was condemned and was subject to numerous open orders that had been issued by the Fire Department. While under the ownership of the applicant there was no effort was made to address the outstanding structural issues. The City of Minneapolis has not issued building permits of any kind for this property since it was condemned in January of 2007.

CPED-Planning Staff acknowledges the unique nature of current market conditions as stated in the submitted application. However, the applicant did not submit a completed application to CPED Planning until January 6, 2009, seven months after the property had been deemed abandoned and nonconforming rights had been lost.

Findings:

1. Building records indicate that the subject property was built as a mixed-use building with two dwelling units and a retail tenant space in 1921.
2. Building records indicate that two additional dwelling units were established legally in 1955 and 1956.
3. The subject property's zoning from 1924 to 1963 allowed for a legal mixed-use building with four dwelling units and a retail space.
4. The property was rezoned R1A Single-Family District in 1976 making the property a legally established nonconforming use.
5. The subject property was condemned and ordered vacant via a court order on June 1, 2007
6. From June 1, 2007 to June 1, 2008 the nonconforming use of the property as a mixed-use building with four dwelling units and a grocery store was discontinued.
7. The applicant has failed to present clear and convincing evidence that discontinuance of the nonconforming use or structure for the specified period was due to circumstances beyond the property owner's control per Zoning Code Provision 531.40 (a) (2).

Recommendation of the Department of Community Planning and Economic Development Planning Division:

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The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the Certificate of nonconforming use to legally establish a mixed-use building with four dwelling units and a commercial tenant space at 2426 Plymouth Avenue North in the R1A Single Family District.

Attachments:

- Appendix A: Application (per applicant)
- Appendix B: Area Map (per city records)
- Appendix C: Building Index Cards and Historic Permits (per city records)
- Appendix D: 100 Feet Map with Dwelling Unit Counts (per city records)
- Appendix E: Documents Regarding Fire Department Orders and Condemnation (per city records)
- Appendix F: Statement Provided by Problem Properties Unit Inspector (per city records)
- Appendix G: Public Comments