

Department of Community Planning and Economic Development – Planning Division**Certificate of Nonconforming Use
BZZ-3912**

Applicant: Leroy Smithrud

Address of Property: 2400 Dupont Avenue North

Contact Person and Phone: Leroy Smithrud , (763) 535-0663

Planning Staff and Phone: Brian Schaffer, (612) 673-2670

Date Application Deemed Complete: December 14, 2007

Publication of Staff Report: January 18, 2008

Public Hearing: February 7, 2008

Appeal Period Expiration: February 19, 2008

End of 60 Day Decision Period: February 12, 2008

Ward: 3 Neighborhood Organization: Hawthorne Area Community Council

Existing Zoning: R2B Two-Family District

Proposed Request: Certificate of Nonconforming Use to legally establish 10 dwelling units at 2400 Dupont Avenue North in the R2B Two-family District.

Background and Analysis: The applicant is applying for Certificate of Nonconforming Use in order to rebut the presumption of abandonment of a ten-unit multiple family dwelling.

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.

(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.

The property is currently zoned R2B and the applicant is trying to re-establish the rights to a ten-unit multiple family dwelling. The property was built in 1963 as a ten-unit multiple family structure

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(B381766). In August of 1962 a Special Council Permit was issued for a rezoning of the subject site to the Multiple Dwelling E Density 2.5 Story Height District, which allowed for the construction of the ten-unit apartment building. It appears that a year later, when a new zoning ordinance was adopted, that the property was rezoned again, to R2B Two-Family District. This made the ten-unit multiple family structure a nonconforming use as the maximum density allowed is two units. City records indicate that the property was abandoned, or the use of a ten-unit structure, was discontinued for more than one year resulting in the loss of the rights to the ten dwelling units.

The property was placed on the Vacant and Boarded Registry List on January 23, 2004 after it had been vacant for more than 60 days. (RFS 04-0313591). On January 23, 2004 the rental licenses were closed. City records indicate the property owner was sent Letters of Intent to Condemn for being boarded three times since 2004 and the structure has also been boarded by the Minneapolis Police Department in May of 2005 after finding people inside the vacant structure.

The property owner, Mr. Smithrud, has had many unfortunate circumstances regarding his health during his ownership of the building. In July of 2003, Mr. Smithrud fell from a ladder while performing work on the property; he broke his pelvis, legs, back and suffered internal injuries. The applicant is arguing that due to these injuries and other medical complications (listed below) he has not been able to actively use the property. He states that these medical conditions are circumstance beyond his control and are the reasons for not actively renting out the property.

The following is a timeline based on significant City actions on the property and the information Mr. Smithrud provided staff.

Items in **BOLD** indicate information obtained from applicant's hospital records

- 5/9/2003 – Letter of Intent to Condemn from Regulatory Services- Housing Inspections for Lack of Maintenance, Resolved 11/5/2004
- 7/17/2003 – **Mr. Smithrud falls off roof.**
Breaks legs, pelvis, back and has other internal injuries.
Is required to wear back brace for 3 months
- 7/25/2003 - **Mr. Smithrud is discharged from hospital to care facility**
- 9/8/2003 - Rental License for 10 units is renewed for one year
- 1/23/2004 - Property is placed on Vacant and Boarded Registration List
Rental Licenses closed.
- 8/16/2004 – Non-permitted work violation for plumbing, electrical, mechanical, and building. Permits never issued
- 12/3/2004 – **Mr. Smithrud falls, breaks ankle. Admitted to hospital**
- 12/9/2004 - **Mr. Smithrud is discharged from hospital.**

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12/29/2004 – Mr. Smithrud is admitted to hospital for ankle surgery
12/31/2004 - Mr. Smithrud is discharged from hospital to care facility

5/24/2005 – Minneapolis Police Department boards property after finding kids playing in the vacant building

8/3/2005 – Letter of Intent to Condemn for being Boarded

10/3/2005 – Boards removed from structure

1/5/2007 – Letter of Intent to Condemn for being Boarded

6/5/2007 – Boards removed from structure

6/6/2007- Director's Orders to demolish property sent

7/6/2007 – Property found open to trespass due to broken windows

7/18/2007 – Property boarded by City of Minneapolis

8/17/2007 – Mr. Smithrud is admitted to hospital for prostate cancer surgery

8/23/2007 – Mr. Smithrud is discharged from hospital

8/29/2007 – Property Inspected by Fire Department- Violation issued regarding

“Dangerous accumulations of rubbish, waste paper, boxes, shavings or other highly combustible materials shall be removed” from basement and first floor

The applicant has provided staff with signed statements by individuals who have maintained the landscaping and exterior of the property and who have removed the snow during the winter. Hennepin County records also indicate that the property taxes are paid on the property. The applicant argues that the acts of property maintenance and paying of taxes constitute the use of the property and not abandonment.

Staff typically identifies the use of a property as being active if the building is occupied, listed for sale or rent, or has active building permits for improvements. The applicant has not provided staff with any information to show when, if ever, the applicant had marketed the units for rent or the property for sale since 2004. The applicant has provided only anecdotal evidence of the property being for sale in 2007. Even in the applicant provided documentation the property would have been vacant for three years.

Staff believes that while the landscaping of the property has been maintained, the use of the property as a ten-unit multiple family dwelling has been discontinued since 2004 and has lost the nonconforming rights to the ten dwelling units.

Findings:

1. A building permit was issued for the construction of a ten unit building in 1963 (B381766) based on a special council permit issued in 1963 rezoning the property to Multiple Dwelling E Density 2.5 Story Height District.

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2. The property was rezoned to the R2B Two-Family District with the adoption of the 1963 Zoning Ordinance.
3. The property was recognized as a legal nonconforming ten-unit multiple family dwelling.
4. City records indicate that the property owner ceased renting the property and that abandonment of the property happened in January 23, 2004 when the property was placed on the Vacant and Board Registration and the Rental Licenses closed.
5. The applicant has not provided evidence to show that the use was not operated for a continuous period of less than one year.
6. Mr. Smithrud's medical problems do not justify the discontinued use of the structure for nearly four years.
7. The property taxes are current and paid on the property for a multiple family dwelling.

City records and the information provided by the applicant do not support the continued use of the legal nonconforming ten-unit multiple family dwelling. Staff does not acknowledge that the property has nonconforming rights to a ten-unit multiple family dwelling at 2400 Dupont Avenue North.

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

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 ten dwelling units at 2400 Dupont Avenue North in the R2B Two-family District.

Attachments

1. Applicant statement
2. Map of Area & Site Plan
3. Chapter 531.30 & 531.40 of the Zoning Ordinance: Certificate of nonconforming use.
4. Pictures of the property
5. Signed statements from property maintainers
6. Statement from applicant's physical therapist
7. Building Permit and Special Council Permit for the construction of the structure
8. May 2003 Letter of Intent to Condemn
9. January 2004 Vacant Building Registration
10. July 2005 Notice of Confirmation of Hearing RE: Boarding of property in May 2005
11. August 2005 Letter of Intent to Condemn for being boarded
12. December 2006 Letter regarding the building being Open to Trespass
13. January 2007 Letter of Intent to Condemn for being boarded
14. July 2007 Letter regarding the building being Open to Trespass
15. August 2007 Minneapolis Fire Department letter regarding Fire Code Violation
16. Letter submitted from Rick Gullickson of Exit Realty