

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-3874

Date: November 29, 2007

Applicant: James G. Hynes

Address of Property: 2901 James Avenue South

Contact Person and Phone: James G. Hynes, 952-933-3926

Planning Staff and Phone: Molly McCartney, 612-673-5811

Date Application Deemed Complete: November 5, 2007

Publication Date: November 21, 2007

Hearing Date: November 29, 2007

Appeal Period Expiration: December 10, 2007

End of 60 Day Decision Period: January 4, 2008

Ward: 10 **Neighborhood Organization:** East Isles Residents Association

Existing Zoning: R6 Multiple-family District, SH Shoreland Overlay District

Proposed Use: Retail use in the basement

Proposed Request: Certificate of Nonconforming Use to legally establish a retail (food related) use at 2901 James Avenue South in the R6 Multi-family District and SH Shoreland Overlay District.

Zoning code section authorizing the request: Chapter 531 Nonconforming Uses and Structures; Section 531.30.

Background and Analysis: The applicant is applying for Certificate of Nonconforming Use in order to rebut the presumption of abandonment of a retail space (food related) located in the garden-level, or basement of an apartment building.

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

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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 R6 and SH and the applicant is trying to re-establish the rights to a retail space (food related) located in the garden-level, or basement of an apartment. The retail use has been legally established in the past; however, City records indicate the retail use may have been discontinued for more than one year.

City records for the basement retail use are not completely clear; permits and licenses have been issued at different addresses over the last 30 years for this use. The building was originally built at 2901 James Avenue South. City records are not clear about the basement retail space at that time. The apartment building addresses as 2901 James Avenue South, however, according to City licensing records, the address for the basement retail space has also been 1625 Lagoon Avenue, which is an establishment address for the land parcel of 1619 Lagoon Avenue. City licensing records indicate that a small neighborhood grocery existed in this space until 1985. The use changes to a pizza store, named "No Name Pizza" in 1985. There are a series of business licenses issued for the space from 1991 to 2001. The most recent use that was licensed for the retail space is a sandwich store. These appear to not have included in-store serving or seating.

In 1998, a Change of Nonconforming Use was applied for a catering business. This land use application was applied for after a business license was granted by the City. The Change of Nonconforming Use was denied by the City Planning Commission; however, the catering business appears to have operated for one year.

The applicant and property owner has submitted a list of businesses that operated in this space since the last business license was granted in 2001. These uses are food-related, which would have required the business owner to obtain a business license from the City. While it is in the interest of the property owner to be aware of the City's requirements for the food-related tenants, it is the business owner's responsibility to obtain the necessary licenses. The owner has supplied pictures and a floor plan of the basement space that shows a commercial kitchen with commercial kitchen equipment.

Findings:

1. A building permit was issued for the construction of a 13-unit apartment building in 1914 (B-108510).
2. The property was zoned for high density residential and commercial use in the 1924 Minneapolis Zoning Code.
3. The property has been zoned R6 Multiple-family Residential since 1963.
4. City records are unclear when the non-conforming retail use was established, but the applicant has provided information that a grocery store was operating at the location when in 1975.

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5. The property has received licenses for food-related uses, including food-manufacturing for a pizza shop, sandwich store, and catering business. These uses did not include in-store serving or seating.
6. City records indicate that the last business license for this site was obtained in 2001. Subsequent business owners did not obtain business licenses for the food-related uses.
7. The basement uses has not ceased to be a food-related use, even though business owners did not obtain necessary City licenses for the use.
8. The basement site continues to have a commercial kitchen with related equipment.

City records and the information provided by the applicant supports the continued use of the nonconforming retail (food-related) use. Staff acknowledges that the establishment of a neighborhood-serving retail (food related) use has nonconforming rights at 2901 James Avenue South (also known as 1625 Lagoon Avenue).

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 **approve** the Certificate of Nonconforming Use to legally establish a retail (food related) use at 2901 James Avenue South in the R6 Multi-family District and SH Shoreland Overlay District.

Attachments:

City records:

Business Licensing for 1619 and 1625 Lagoon Avenue, 1993-2001

Building permits for 2901 James Avenue S, 1995

City Planning Commission Actions, 9/14/1998