

**Department of Community Planning and Economic Development – Planning Division**  
**Nonconforming Use Certificate**  
**BZZ-5157**

**Date:** June 9, 2011

**Applicant:** Moss & Barnett

**Address of Property:** 1521 West 27<sup>th</sup> Street

**Project Name:** 1521 West 27<sup>th</sup> Street Nonconforming Use Certificate

**Contact Person and Phone:** Paul Zisla, (612) 877-5328

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

**Date Application Deemed Complete:** May 9, 2011

**End of 60-Day Decision Period:** July 7, 2011

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

**Existing Zoning:** R2 Two-Family Residence District and SH Shoreland Overlay District

**Zoning Plate Number:** 24

**Legal Description:** Not applicable for this application

**Proposed Use:** A four unit multiple-family dwelling

**Nonconforming Use Certificate:** to establish legal nonconforming rights to a four unit multiple-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 88 ft. by 150 ft. (13,230 sq. ft.). The first building permit on the property was to allow for a 38 ft. by 31 ft. brick veneer and plaster veneer single-family dwelling with a 14 ft. by 18 ft. brick veneer garage in 1908. In 1959, a building permit was issued to add a rear addition and stairway to the third floor in order to convert the existing building to a two-family dwelling.

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; however, a four-unit multiple-family

dwelling was a prohibited use. The property was rezoned to R2 Two-Family Residence District in 1963 with the adoption of the new zoning ordinance. The property has been continuously zoned R2 Two-Family District since 1963. A four-unit multiple-family dwelling is a prohibited use in the R2 District.

The applicant made an application for a certificate of nonconforming use to legally establish all four dwelling units in the R2 District on December 10, 2010. The applicant withdrew their application on February 17, 2011, prior to the Board of Adjustment public hearing, to pursue a rezoning application instead. The applicant petitioned to rezone the property from R2 Two-Family District to R3 Multiple Family District to allow for the legal conversion of a two-family to a four-unit, multiple family dwelling. Staff and the City Planning Commission recommended approval of the rezoning, however, after meeting with the neighborhood group, the applicant decided to withdraw their application for the rezoning to again apply for the certificate of nonconforming use.

Staff has received a letter of support for the certificate of nonconforming use from the East Isles Residence Association. Staff will forward additional comments, if any are received, at the City Planning Commission meeting.

City records indicate that the legal use of the property is a two-family dwelling. The applicant is applying for a certificate of nonconforming use to legally establish a four-unit multiple-family dwelling in the R2 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 four-unit multiple-family dwelling prior to 1924 and not discontinued for a period in excess of one (1) calendar year. The applicant has provided a statement describing the relevant facts and reason for the request, floor plans, list of the tenants by name from the time the applicant moved into the structure (1969) and photographs of the stoves from the which date back to the 1940's and 1950's.

**Findings:**

- 1) City records indicate that a building permit was issued for a 38 ft. by 31 ft. brick veneer and plaster veneer single-family dwelling with a 14 ft. by 18 ft. brick veneer garage in November 17, 1908.
- 2) The zoning classification from 1924 to 1963 was Residence; a four-unit multiple-family dwelling is a prohibited use.
- 3) The Building and Housing Survey conducted in 1934 indicated the use of the property was a single-family dwelling.
- 4) Polk Directory records indicate Albert Lyman is the property owner from 1917 through 1929. Only one dwelling unit is listed in the directory.
- 5) Hennepin County records indicate that Albert Lyman passed away on September 30, 1930.
- 6) Polk Directory records indicate that Lillian Lyman, is the property owner in 1930 and widowed.
- 7) Polk Directory records indicate that Donald Lyman, son of Albert and Lillian Lyman, is the property owner from 1932 through 1948.
- 8) Polk Directory records indicate that Raymond and Dorothy Powers are the property owners from 1956 through 1962.
- 9) On September 9, 1959, a building permit was issued to add a rear addition and stairway to the third floor in order to convert the existing building to a two-family dwelling. The property owner listed on the building permit is Raymond Powers.
- 10) Polk Directory records indicate that there are two listed residents with different phone numbers in 1962; one for Raymond Powers and the other for Robert Dale.
- 11) The subject property was rezoned in 1963 to R2 Two-Family District; a four-unit multiple-family dwelling is a prohibited use.
- 12) Polk Directory records indicate that four residences were present in the structure as early as 1964.
- 13) The property owner purchased the property in 1969 as a four-unit, multiple-family dwelling.
- 14) The property owner received rental licenses for three dwelling units from 1991-1993 while homesteading the property; the ordinance requiring rental licenses beginning in 1991, was adopted in September of 1990 per section 244.1810 of the housing maintenance code.
- 15) A building permit was issued in April of 1995 to install a wall and door per Housing Inspections orders.
- 16) The property owner received rental licenses for one dwelling unit from 1995-2010.
- 17) According to Hennepin County, the property is homesteaded and taxed as a triplex.
- 18) The applicant has failed to present clear and convincing evidence that the structure was converted to a four-unit multiple-family dwelling at the time when use would have been permitted, between 1908 and 1924, and the use was not discontinued.

## **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 four-unit multiple-family dwelling for the property located at 1521 27<sup>th</sup> Street West in the R2 Two-Family District and SH Shoreland Overlay District.

#### **Attachments:**

- 1) Statement of proposed use and description of project provided by the applicant
- 2) Timeline provided by the applicant
- 3) List of tenants from 1969 to 2010 provided by the applicant
- 4) Copy of e-mail sent to East Isles Residents Association and CM Tuthill
- 5) Letter of support from the East Isles Residents Association
- 6) Letters of support from neighbors
- 7) Zoning map
- 8) Building Permit Index Card (1908-1974)
- 9) Building Permit Index Card (1974-1992)
- 10) 1934 Building and Housing Survey
- 11) Polk Directory information (1917-1993)<sup>1</sup>
- 12) Copy of rental licensing records from 1991-1993
- 13) Copy of building permit (B 617856) from 1994
- 14) Copy of Hennepin County Property Information
- 15) Site plan
- 16) Floor plans
- 17) Photographs

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<sup>1</sup> The City of Minneapolis has retained copies of the Polk Directories through 1993.