

**Department of Community Planning and Economic Development – Planning Division Report**

Variance Request  
BZZ-3775

**Date:** October 25, 2007

**Applicant:** Carlos Recalde, on behalf of Juan Francisco Fernandez

**Address of Property:** 3033 Park Avenue

**Contact Person and Phone:** Carlos Recalde, 612-492-6686

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

**Date Application Deemed Complete:** September 6, 2007

**Appeal Period Expiration:** November 5, 2007

**End of 60 Day Decision Period:** November 5, 2007

**Date of 60-day letter extension sent:** October 11, 2007

**Ward:** 8      **Neighborhood Organization:** Central

**Existing Zoning:** R2B Single-family District

**Proposed Use:** Third dwelling unit

**Proposed Request:** Certificate of Nonconforming Use to legally establish a third dwelling unit at 3033 Park Avenue in the R2B Two-family 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 three-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

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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 three-unit multiple family dwelling. The property has been legally established in the past as a three unit structure, however, City records indicate that the property was abandoned, or the use of a three unit structure, was discontinued for more than one year.

The property was built in 1900, originally as a single-family dwelling (B46607). City records indicate that in the 1960's and 1970's, the property included one dwelling unit and four tenement units (Building Index Card 3033 Park Avenue). The property was then converted to a four unit building when the zoning was R5 Multiple Family District (B386432). In the early 1980's, the property was rezoned to R2B as part of the 29<sup>th</sup> Street Corridor Rezoning Study; at that time the property become nonconforming four unit structure. In 2000, the number of rental licenses decreased from four to three dwelling units.

City records indicate that the property has been vacant for more than one year. The property was placed on the Vacant and Boarded Registration List in June of 2006 after it had been vacant for more than 60 days (RFS 06-0497269). Other City records indicate that the property may have been vacant since December 2005, when records indicate that the utilities had been discontinued (RFS 05-0475807). Prior to the property being vacant, the third unit was a legally established and rental licenses had been obtained up until May 2006.

Loss of nonconforming rights can happen when a property has been abandoned for more than one year [531.40 (a)(1)]. The property owner has supplied the following information to rebut the presumption by the Planning office that the property was abandoned for more than one year.

The current property owner, Juan Francisco Fernandez, bought the property in May 2007 and has begun a process with the City of Minneapolis to bring the entire building up to current building and housing code status. Mr. Fernandex has supplied informaiton about the sale of the property, including activities and pending sales during the winter of 2006-2207, and spring of 2007. After purchasising the property, Mr. Fernandez applied for a code compliance inspection on May 17<sup>th</sup>, 2007 and that inspection did take place (BCC 1000787). A code compliance inspection can be obtained by propety owners for a City inspector to visit the property and comply the list of nessecary work orders. Since that time, Mr. Fernandez has been working with the City to obtain rental licenses and to legally estbalish the thrid dwelling unit.

City records are not entirely clear on the date of abandonment. Placing a propety on the Vacant and Board Registration list is a conclusive date, however, in reality, properties are likely to have been adbanded by the proeperty owner prior to this City action. Also, what acitivities, or lack thereof, consistutes abandonment can also be rebutted by an applicant. The Planning office concluded that Mr. Fernandez needed to obtain a Certificate of Nonfonroming Use because the date of abandoment may or may not have been greater than one year prior to Mr. Fernandez purchase of the property. In addition, the acitivy of the prior owner indicates that the property was actively marketed and not nessecarily abandoned. Since purchasing the proeperty, Mr. Fernandez has undertaken the nessecary steps to ensure the property is to be used for habitation and at that time, the property would not have been abandoned.

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**Findings:**

1. A building permit was issued for the construction of a single family dwelling in 1900(B 46607).
2. The property was converted to a dwelling unit and four tenement units (B386432) and the zoning was R5 Multiple Family District.
3. The property was downzoned in the 29<sup>th</sup> Street Corridor Rezoning Study in 1982 to R2B and the property was recognized as a nonconforming four-unit multiple family dwelling.
4. The property was legally converted to a three-unit building in 1997 (B641301 and RLIC 500237).
5. City records indicates the previous owner ceased renting the property and that abandonment of the property happened in the spring of 2006 when the property was placed on the Vacant and Board Registration list in June 2006.
6. The applicant purchased the property in May, 2007 and began code compliance work in May 2007 (BCC-1000787) which signifies a continuation of use of the property.
7. The subject property has been legally established as a nonconforming use since the downzoning in 1982 and has been abandoned for more than one year.

City records and the information provided by the applicant support the continued use of the legal nonconforming three-unit multiple family dwelling. Staff acknowledges that the establishment has nonconforming rights to a three-unit multiple family dwelling at 3033 Park 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 third dwelling unit at 3033 Park Avenue in the R2B Two-family District.

**Attachments:**

City records:

- Building Permit Index Card for 3033 Park Avenue
- Certificate of Occupancy, B386432
- Rental License information, 2000
- Utilities Discontinuance Notice, RFS 05-0475807
- Vacant and Board Registration Letter, RFS 06-0497269
- Code Compliance permit, BCC 1000787