

Department of Community Planning and Economic Development - Planning Division Report

Certificate of Nonconforming Use Request
BZZ-4174

Date: October 30, 2008

Applicant: Scot Pekarek

Address of Property: 1117 Spring Street NE

Contact Person and Phone: Scot Pekarek, (612)-600-8000

Planning Staff and Phone: Jacob Steen, (612) 673-2264

Date Application Deemed Complete: September 30, 2008

Publication Date: October 24, 2008

Public Hearing: October 30, 2008

Appeal Period Expiration: November 10, 2008

End of 60 Day Decision Period: December 1, 2008

Ward: 3 Neighborhood Organization: Beltrami Neighborhood Council

Existing Zoning: R1A Single-Family District

Proposed Request: Certificate of Nonconforming Use to legally establish a two-family dwelling at 1117 Spring Street NE in the R1A Single-Family District.

Zoning Code Section Authorizing the Request: Chapter 531 Nonconforming Uses and Structures; Section 531.30.

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.

Background and Analysis: The subject property, 1117 Spring Street NE, is in the R1A Single-Family District. Building records indicate that the principal structure on the subject property was built as a two family dwelling prior to 1897 (Appendix C).

The area within a 1000-foot radius is predominately R1A Single-Family District and R2B Two-Family District to the North and East, and I1 Light Industrial and I2 Medium Industrial Districts to the south

and west (Appendix B). The residential properties within a 100-foot radius include a mix of densities. These structures vary from single-family homes to an eight-unit residential structure (Appendix D).

From 1924, the first year the City of Minneapolis had a Zoning Code, to 1963, the property was zoned Multiple Dwelling. The Multiple Dwelling Zoning District would have allowed for a two-unit building. From 1963 to 1991 the property was zoned R3 Multiple-Family District. In 1991 the property was down zoned to R1A Single-Family District. When the 1991 zoning change took place the structure became a legal nonconforming use, as a two-family dwelling is not a permitted use in the R1A Single-Family District.

The subject property is a 2 story structure located on a 6,552 square foot lot. The gross square footage of the building is 2,161 square feet. The first and second floor each consists of a three bedroom unit (Appendix A10; A17-A20).

The applicant, Scot Pekarek, purchased the subject property from Wachovia /Avelo Mortgage, LLC on July 18, 2008 (See Timeline, page 3). Wachovia/Avelo Mortgage became the owner of the property when the previous owner (Shady Monsour) foreclosed on the property in a process that extended from April, 2007 to November, 2007. When Mr. Pekarek closed on the property it had been on the City of Minneapolis' Vacant Building Registry for approximately 15 months. Mr. Pekarek states that he purchased the property believing that it still had rights as a two-family dwelling (Appendix A1).

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 was considered a legally established nonconforming four-unit structure since 1991 when it was zoned R1A Single-Family District. On April 6, 2007, the property was placed on the City of Minneapolis's Vacant Building Registry (VBR). On April 13, 2007, the lender, Wachovia Mortgage, gave notice to foreclose on the property. The foreclosure proceedings continued until October 10, 2007, when a court granted the reduction of the redemption period from six months to five weeks. The lender was able to claim the property in November of 2007, and first listed the property with Epic Realty on December 28, 2007. The lender reduced the listing price of on January 28th, 2007; and again on March 27, 2007. On April 6, 2008, following a year of being placed on Minneapolis' Vacant Building Registry, the property would have effectively lost its nonconforming rights to a two-family dwelling (Appendices A21-A22).

Applicant's Rebuttal of Abandonment: After being informed that CPED-Planning had determined that the property had lost nonconforming rights to a two-family dwelling, the owner supplied

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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)

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.

The applicant provided information that the following activities took place between April 13, 2007 and July 18, 2008 in an effort to show that the property was not abandoned (Appendices A21-A22). CPED-Planning staff has included additional dates related to administrative actions and relevant activities by City of Minneapolis staff.

- 1. April 6, 2007*:** **The property was placed on the Vacant Building Registry (VBR) (Appendix A11)**
2. April 13, 2007 The lender, Wachovia Mortgage, filed a notice to foreclose on the property
3. May 18, 2007: The property advertised for a Sheriff's sale set for July 25, 2007
4. July 25, 2007: Sheriff's Sale (MN Statute allows the owner 6 months for redemption of the property)
5. September 11, 2007: The lender files a petition to reduce the owners redemption time from six months to five weeks
6. October 10, 2007: A court order directing a reduction of the redemption period from 6 months to five weeks is granted
7. November, 2007: Redemption period expires and lender assumes ownership of property
8. December 28, 2007: Property listed for \$124,900 by Epic Realty on behalf of lender
9. January 28, 2008: Listing price reduced to \$116,900
10. March 27, 2008: Listing price reduced to \$99,900
- 11. April 6 2008*:** **Following one year on City of Minneapolis' VBR, the property is deemed abandoned by CPED-Planning Staff**
12. June 27, 2008: Applicant entered into purchase agreement on the property
13. July 18, 2008: The applicant closes on the property and becomes owner

* Indicates date has been provided by CPED-Planning staff

In addition, the applicant believed that he had made a sufficient good faith effort to verify that the property was indeed a lawfully established nonconforming two-family dwelling. The applicant states that he became aware that the property had lost nonconforming rights to a duplex. The applicant also provided multiple sources that referenced the property as a two-family dwelling. These sources include the City of Minneapolis Property Information page, which shows two referenced dwelling units under Structure Information, and the Hennepin County Parcel Information page which identifies the property as a "residential two unit" (Appendix A9-A11).

Staff Analysis:

Rebuttal of Abandonment: CPED-Planning staff acknowledges that the current property owner could have exercised better due diligence in determining the status of the nonconforming rights for this property. However, staff believes that the information submitted by the applicant illustrates that the circumstances that led to the discontinued use of the property for more than one (1) year were beyond the former property owner's control. CPED-Planning recognizes that from April 13, 2007 to November, 2007, the property was in a foreclosure process that is dictated by Minnesota State Statutes, and the lender, Wachovia/Avelo Mortgage, made an attempt to expedite the process. Staff believes that the lender illustrated the intent to minimize the length of time that the use was discontinued by requesting a shortened redemption period, from six (6) months to five (5) weeks. The lender also illustrated their intent to sell the property quickly by dropping the price significantly in the first four (4) months it was listed.

CPED-Planning Staff also recognizes that the City of Minneapolis' earliest records of the property indicate that it was a two-family dwelling and has been since before 1897. The property has historically been used as a duplex and had rental licenses for two units until May, 2007. Staff acknowledges that converting the property to a single-family home would require significant structural alternations.

The 16 residential properties within a 100-foot radius include a mix of densities. These include; a single eight-unit structure, one four-unit structure, one three-unit structure, five two-family structures, and eight single-family structures (Appendix D). Therefore staff believes that to reestablish this property as a legal two-family dwelling would be in character with the surrounding neighborhood.

Findings:

1. The building records indicate that the subject property was built as a two-family dwelling prior to 1897.
2. The subject property's zoning from 1924 to 1991 allowed for a legal two-family dwelling.
3. The property was rezoned R1A Single-Family District in 1991 making the property a legally nonconforming use.
4. The subject property was placed on the City of Minneapolis's Vacant Building Registry (VBR) on April 6, 2007 and has remained on that list until the publication of this report.
5. From April 13, 2007 to November 2007 the property was involved in foreclosure proceedings mandated by MN State Statute.
6. The property lost its nonconforming rights as a two-family dwelling on April 6, 2006, following one year of discontinued inactivity.
7. The applicant has illustrated presenting clear and convincing evidence that discontinuance of the nonconforming use or structure for the specified period was due to circumstances beyond the (previous) property owner's control per Zoning Code Provision 531.40 (a) (2).

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 two-family dwelling at 1117 Spring Street NE in the R1A Single-Family District.

Attachments:

- Appendix A: Application (per applicant)
- Appendix B: Area Map (per city records)
- Appendix C: Building Index Card (per city records)
- Appendix D: 100 Feet Map with Dwelling Unit Counts (per city records)
- Appendix E: Water Utility Billing Records