

Department of Community Planning and Economic Development – Planning Division
Nonconforming Use Certificate
BZZ-4653

Date: February 11, 2010

Applicant: Jonah Bridger

Address of Property: 2510 – 4th Street North

Project Name: Serenity Suites

Contact Person and Phone: Jonah Bridger, (612) 454-8664

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

Date Application Deemed Complete: January 15, 2010

End of 60-Day Decision Period: March 16, 2010

Ward: 3 **Neighborhood Organization:** Hawthorne Area Community Council

Existing Zoning: R2B Two-Family Residence District

Zoning Plate Number: 8

Legal Description: Not applicable for this application

Proposed Use: A eleven-unit multiple-family dwelling

Nonconforming Use Certificate: to establish legal nonconforming rights to an eleven unit multiple-family dwelling

Applicable Zoning Code Provision: Chapter 531 Nonconforming Uses and Structures; Specifically Section 531.30 and Chapter 546 Residence District

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 is approximately 86 ft. by 157 ft. (13,502 sq. ft.) and is an existing building that had historically been occupied by an 11 dwelling units in the R2B Two-Family District. The subject property originally was constructed as a storefront

commercial building with a dwelling. The original building was wrecked in 1962, in order to allow for the construction of the existing structure to be built.

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned Multiple Family. An eleven-unit multiple-family dwelling was a permitted use at the time of the building's construction in 1962. The property was rezoned to R5 Multiple Family Residence District in 1963 with the adoption of the new zoning ordinance. In 1991, the property was down-zoned to R2B Two-Family District through the city-wide R3 Rezoning Study, at which time the structure became a legal nonconforming use. A multiple family dwelling with eleven dwelling units is prohibited in the R2B Two-Family District. The property shall retain its legal nonconforming rights to the use under the condition that the use is not discontinued for a continuous period of more than one (1) year per section 531.40 (a)(1) of the zoning code:

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.

Urban Choice, LLC, purchased the subject property July 11, 2000, and maintained the use with an active rental license for 11 dwelling units. On June 30, 2006, the property was placarded and the owner was notified of that the rental license was being revoked due to reported illegal conduct on the premises related to weapons and child endangerment. The owner was given a deadline of July 17, 2006, to appeal the revocation action. The owner did not pursue an appeal of the revocation action. On November 30, 2006, the rental license was revoked and the building was vacated.

On September 24, 2007, Urban Choice, LLC, signed a quit claim deed to Imperial Capital Bank relinquishing ownership of the property. According to the applicant, Imperial Capital Bank immediately listed the property for sale and hired a property manager to inspect and maintain the property.

On December 1, 2007, following one year of discontinued use, the property was deemed to have lost its nonconforming rights to an eleven unit multiple family dwelling. The building is presently vacant and boarded. The applicant has submitted a timeline of activity (attached) for the property from July 2007 through December 2009.

The applicant has stated that the previous owners did not intend to abandon the apartment use. Rather, the building has remained vacant because Imperial Capital Bank was unable to rent and manage the apartments itself. Further, the applicant states, that due to rental license revocation, it could not be reoccupied until significant changes were made. The bankruptcy of the previous owner, the intervening foreclosure left the building unoccupied for an unexpectedly long time. Despite these circumstances, the applicant contends that the owners have continued to pay taxes; the building has been regularly inspected and secured and there has been actively marketed with numerous real estate showings to potential buyers.

The area within a 1000-foot radius, on the west side of Interstate 94 is entirely zoned R2B Two-Family District. The properties on the east side of Interstate 94 are predominately zoned industrial. The residential properties within a 350-foot radius include 47 conforming single-family dwellings and duplexes and five nonconforming multiple-family dwellings ranging in density from three units to 64 units.

The applicant is applying for a certificate of nonconforming use to legally establish an 11-unit multiple-family dwelling in the R2B District by rebutting abandonment per 531.40 (a) (2) of the zoning code:

531.40. Loss of nonconforming rights. (a) Discontinuance. (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.

Staff believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.40 (a)(2), under which the applicant must bear the burden of proof to illustrate clear and convincing evidence that the circumstances leading to the discontinued use were beyond the control of the property owner. The applicants did not provide any documentation to establish that the previous property owners made any attempt to remedy the issues leading to the rental license revocation, appeal the license revocation or make the necessary improvements between November 30, 2006, and December 1, 2007, which was required to maintain legal nonconforming rights to an eleven-unit multiple family dwelling at the subject property. The City of Minneapolis has not issued building permits of any kind for this property since the rental license was revoked in November of 2006.

Findings:

- 1) Building records indicate that a Certificate of Occupancy was issued for subject property as an eleven-unit multiple-family residence in August 31, 1966.
- 2) The zoning classification from 1924 to 1963 was Multiple Family; an 11-unit multiple-family dwelling is a permitted use.
- 3) The subject property was rezoned in 1963 to R5 Multiple-Family District; an 11-unit multiple-family dwelling is a permitted use.
- 4) The subject property was rezoned to in 1991 to R2B Two-Family District; an 11-unit multiple-family dwelling is a prohibited use. The existing use becomes a legal nonconforming use.
- 5) The rental license for the subject property was revoked on November 30, 2006, and the property was vacated.
- 6) From November 30, 2006, to December 1, 2007, the nonconforming use of the property as an eleven-unit multiple-family residence was discontinued and legal nonconforming rights were lost. The building remains vacant as of the writing of this report.
- 7) The applicant has failed to present 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 per Zoning Code Provision 531.40 (a) (2).

As of writing this staff report, staff has not received any correspondence from the Hawthorne Area Community Council. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

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 an eleven-unit multiple-family dwelling at 2510 4th Street North in the R2B Two-Family Residence District.

Attachments:

- 1) Statement of proposed use and description of project provided by the applicant
- 2) Timeline provided by the applicant
- 3) Affidavit from previous owner
- 4) Property tax statement (2007)
- 5) Copy of e-mail sent to Hawthorne Area Community Council, MPD 4th Precinct and CM Hofstede
- 6) Zoning map
- 7) Certificate of Occupancy Card (August 31, 1966)
- 8) Building Permit Index Card (1962-1974)
- 9) Building Permit Index Sheet (1974-1991)
- 10) Permit List (1991-Present)
- 11) Rental License Record
- 12) Site plan
- 13) Elevations
- 14) Floor plans
- 15) Photographs