

Department of Community Planning and Economic Development - Planning Division
Expansion of a Legal Nonconforming Use
BZZ-3958

Date: March 17, 2008

Applicant: Jaret Giesbrecht

Address of Property: 1058/1060 25th Avenue Southeast

Project Name: Basement finish of nonconforming duplex

Contact Person and Phone: Jaret Giesbrecht, 612-209-0403

Planning Staff and Phone: Brad Ellis, 612-673-3239

Date Application Deemed Complete: February 20, 2008

End of the 60 Day Review Period: April 21, 2008

Ward: 01 **Neighborhood Organizations:** Southeast Como Improvement Association

Existing Zoning: R1A Single-Family District

Proposed Use: A basement finish and egress windows in the basement of an existing duplex, including two additional bedrooms per dwelling unit

Applicable zoning code provisions: Chapter 531, Nonconforming Uses and Structures

Background: Jaret Giesbrecht has finished the basement of his legal nonconforming two-family dwelling in the R1A Single Family District. Per City records, the structure was built in 1967 as a duplex, and it has maintained those duplex rights since the property was rezoned from R2B Two Family District to R1A Single Family District as part of the Como 40 Acre Study in 1987. The lot is a reverse corner lot, with a front yard facing Talmage Avenue Southeast and a front yard facing 25th Avenue Southeast.

The applicant has finished the basement of each unit of his existing nonconforming duplex, including four new egress windows, two to the north side and two to the south side of the structure. The egress window wells on the north side of the structure do not appear to be at least two feet from the property line as required by Table 535-1 of the zoning code. The applicant is planning to verify the distance to the property line, but has not yet done so at the time of the writing of this report. If the egress window wells are closer than two feet to the property line, the applicant would be required to get a variance as well. The applicant has most recently added stairs to the basement. No permits have been pulled for any of the work. The applicant has stated that much of the work was initiated by the previous owner, and he was finishing off the work by adding stairs to each unit, and was not aware permits were

required. Unpermitted work in the basement per unit includes two bedrooms, two egress windows, one bathroom, and stairs. The floor plans submitted by the applicant indicate four bedrooms for each unit.

The installation of egress window wells along with the other improvements has made the basement level habitable. Creating habitable space in a basement level of a nonconforming use is an expansion of a nonconforming use under Section 531.50(b) of the zoning code and therefore requires authorization from the City Planning Commission.

At the time of writing this staff report, staff has been contacted by the neighborhood organization, but has not received any correspondence from them or from neighbors. Staff will provide additional comments, if any, at the City Planning Commission meeting.

Findings As Required By The Minneapolis Zoning Code:

The Community Planning and Economic Development Planning Division has analyzed the application and makes the following findings:

The Planning Commission may approve an application if it meets the following standards and all other applicable regulations in the zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

1. A rezoning of the property would be inappropriate.

It would be inappropriate to rezone the property at 1058 25th Avenue Southeast. The property is neither on a community or commercial corridor, nor is it in a neighborhood node. The property is surrounded by R1A Single Family District zoning which was rezoned from R2B to R1A in 1987 as part of the Como 40 Acre Rezoning Study.

2. The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

The expansion into the basement is compatible with adjacent property and the neighborhood since it will not modify any of the existing setbacks or change the look of the structure. However, the egress window wells on the north side of the structure do not appear to meet the required two feet from the property line. If the egress window wells are closer than two feet to the property line, the applicant would be required to get a variance as well. The applicant will verify the distance to the property line, but has not yet done so at the time of the writing of this report.

3. The enlargement, expansion, relocation, structural alteration or intensification will not result in significant increases of adverse off-site impacts such as traffic, noise, dust, odors and parking congestion.

The increase in habitable floor area may result in an increase in traffic, parking congestion, and noise, since it makes it possible for more people to live in the structure. The property does have the two off-street parking spaces required for a two family dwelling; however, the units are for-rent and

it is likely that the property will be used primarily to house students from the University of Minnesota. Staff generally recommends student housing have at least 0.5 parking spaces per bedroom, and if the habitable floor area is expanded there would be four bedrooms in each unit. The existing parking spaces are in a nonconforming location (the front yard facing Talmage Avenue Southeast), making it difficult to accommodate and additional off-street parking. The expansion should not result in increases in dust or odors.

4. The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.

The changes to the use are only internal to the structure and would not likely affect the appearance of the neighborhood. The Como Area 40 Acre Rezoning Study conducted in 1987 down-zoned the property to prohibit new multi-family dwellings to stabilize the area for primarily single-family dwellings. The expansion of this property could have an impact on the lower density intended by the R1A Single Family district, since increasing the habitable area would likely increase the number of inhabitants occupying each dwelling. The maximum occupancy of a dwelling unit in the R1A Single Family District is three unrelated persons. Current floor plans show four bedrooms, which would put each dwelling over the maximum occupancy of unrelated persons unless two of the bedrooms would be occupied by related individuals.

5. In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will not result in the creation or presence of more dwelling units or rooming units on the subject property than is allowed by the regulations of the district in which the property is located.

No additional dwelling units are proposed. The addition of the stairways by the applicant has improved the floorplan to allow for greater flow between floors in each unit. Although the number of dwelling units would not increase, each dwelling now has four bedrooms. While the City does not limit the number of bedrooms in a dwelling unit, occupancy in the R1A District is limited to three unrelated persons. Given the likelihood that the units will be rented to university students, staff is concerned that the proposed expansion of a nonconforming use would result in overoccupied dwelling units.

6. The enlargement, expansion, relocation, structural alteration or intensification will not be located in the floodway district.

The property is not located in the floodway district.

RECOMMENDATION:

Recommendation of the Community Planning and Economic Development Department – Planning Division for the expansion of a legal nonconforming use:

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for an expansion of a

**Department of Community Planning and Economic Development – Planning Division
BZZ - 3958**

nonconforming use to expand the habitable area in the existing basement of a legal nonconforming two-family dwelling located in the R1A District at 1058/1060 25th Avenue Southeast.

Attachments:

- 1) Statement of use and findings from the applicant
- 2) Zoning map
- 3) Floor plans
- 4) Site plan
- 5) Photos