

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

Variance Request  
BZZ-4058

**Date:** July 17, 2008

**Applicant:** Song Seak (representative of property owner)

**Address of Property:** 3749 4<sup>th</sup> Avenue South

**Contact Person and Phone:** Song Seak, (651) 387-9399

**Planning Staff and Phone:** Aaron Hanauer, (612) 673-2494

**Date Application Deemed Complete:** May 14, 2008

**Publication Date:** July 11, 2008

**Public Hearing:** July 17, 2008

**Appeal Period Expiration:** July 28, 2008

**End of 120 Day Decision Period:** September 11, 2008

**Ward:** 8      **Neighborhood Organization:** Central Area Neighborhood Development Organization

**Existing Zoning:** R1A, Single-Family District

**Proposed Request:** Certificate of Nonconforming Use to legally establish a two-unit building at 3749 4<sup>th</sup> Avenue South 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, 3749 4<sup>th</sup> Avenue South, is located to the north of 38th Street East the R1A/Single-Family Zoning District. Building records indicate that the structure on the subject property was built as a single-family house in 1888 and converted into a duplex in 1922 (see Appendix D).

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The area within an 800-foot radius is predominately R1A/Single-Family District. The residential properties within a 100-foot radius are all single-family structures (see Appendix E1). A node of commercial property is located directly to the south and west of the subject property (see Appendix A).

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 allowed for a two-unit building. Since 1963, the property has been zoned R1A. When the zoning change took place the structure became a legally nonconforming use since two-family structures are not a permitted use in the R1A Zoning District.

The subject property is a 1.5 story structure located on a 5,225 square foot lot. The gross square footage of the building's 1<sup>st</sup> and 2<sup>nd</sup> floors is 1,792 square feet. The basement adds an additional 1,288 square feet of space; 600 finished living space. The building has been divided into two, side-by-side units with each unit having three bedrooms (see: Appendix B51-53).

The applicant, Song Seak, purchased the subject property from US Bank on April 22, 2008. US Bank became the outright owner when the former owner foreclosed on the property. Mr. Seak states that he purchased the property with the understanding that the property had rights to a two-unit dwelling (see Appendix B1, B2, and B60). Shortly after this date, Mr. Seak came down to the City of Minneapolis Development Review office to pull permits to begin rehabilitation work. He was told at that time that this structure only had rights to one unit because it is Zoned R1A and it lost its nonconforming rights to a two-unit structure. He was also told that if he wants to maintain two units he will have to apply for a Certificate of Nonconforming Use.

**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, which is a nonconforming use to the R1A Zoning District, was considered to be discontinued for a period of one year on December 1, 2007. This is due to the property being placed on the City of Minneapolis's Vacant Building Registration (VBR) list one year earlier on December 1, 2006 (BCC 1000824). The property during that year of time (and up until today) was not taken off that list and therefore is considered to be unoccupied.

**Applicant's Rebuttal of Abandonment:** Even though no one inhabited the property from December 1, 2006 to December 1, 2007, the property owner supplied information to rebut the presumption by CPED-Planning that the property was abandoned during that year. 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

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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 provides information that the following activities took place between December 1, 2006 and December 1, 2007 in order to show that the property was not abandoned.

1. December 1, 2006: This property was put on the Minneapolis Condemned and Boarded list (BCC 10000782)
  - Note: A property can be put on this list for a variety of reasons. In this particular case the property was put on this list because it was boarded for at least 60 days. City ordinance allows any building to be boarded for 60 days without penalty. After 60 days, if the owner has not removed the boards or taken out a permit to rehab the building, the building may be placed on the Condemned and Boarded list.
2. July 5, 2007: US Bank assigned a selling agent to manage and sell the property (see Appendix B57-58).
3. August 6, 2007 – December 5, 2007: US Bank reduced the selling price of the house 20 percent (see Appendix B54-B55).

In addition to the information the applicant submitted to rebut abandonment, the applicant and the selling agent provided information to make their case that in good faith and honesty they believed the house had rights to two units. The applicant shows that the property was listed for sale as having two units (see Appendix B16-B17). And the selling agent provided a letter stating he thought this property had rights to two units when he was showing the property to prospective buyers (see Appendix B59).

Also, Mr. Seak in the application states that it is his intention to improve the property (see Appendix B2). However, a detailed work plan was not submitted as part of the application.

**Staff Analysis:**

**Rebuttal of Abandonment:** CPED-Planning believes that the information submitted by the applicant does not clearly and convincingly show that it was beyond the property owner's control to retain rights to two units between December 1, 2006 and December 1, 2007. CPED-Planning recognizes that the property was in foreclosure during this time period. However, the previous property owner, US Bank, could have taken action to remove the property from the VBR list and secure the nonconforming rights of the two-unit dwelling. The applicant did not submit information that shows an effort was made by US Bank to remove the property from the Vacant and Boarded list.

In addition, CPED believes the current applicant's failure to do their due diligence in the purchasing of the subject property is something wholly within their control. A property owner is responsible for proper due diligence in the ownership, sale, and purchase of property which includes the knowledge of the nonconforming status of the property. This property has been zoned R1A/Single-Family District since 1963 and has been classified as a legal nonconforming use since that time.

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**Additional:** Even though the information provided by the applicant does not show that it was beyond their control or the previous owner's control to retain rights of the two-unit building between December 1, 2006 and December 1, 2007, CPED-Planning recognizes that the previous owner did not entirely abandon the property. The applicant provided evidence that US Bank during the period in question actively tried to sell the property. In addition, CPED-Planning recognizes that this property has been a duplex for more than 80 years and a two-unit dwelling is considered a low-density residential use.

However, CPED-Planning also recognizes that it is feasible for this property, which was once a single-family dwelling, to be reconverted into a single-family dwelling. Also, CPED-Planning recognizes that all the residential structures within a 100-foot radius are single-family dwellings and the conversion of this property back into a single-family house will be consistent with these residential uses (see Appendix E).

**Findings:**

1. The building records indicate that the subject property was built as a single-family dwelling in 1888.
2. The building records indicate that the subject property was converted into a duplex in 1922 and remained a duplex until 2006.
3. The subject property's zoning from 1924 to 1963 allowed for a two-unit building.
4. The property was rezoned R1A/Single-Family District in 1963 making the property a legally nonconforming use.
5. The subject property was placed on the City of Minneapolis's Vacant Building Registration (VBR) on December 1, 2006 and remained on that list for over a year; therefore, the property lost rights to having two units.
6. The applicant (Mr. Seak) or the previous owner (U.S. Bank) did not provide clear and convincing evidence that that it was beyond their control to retain rights to two units between December 1, 2006 and December 1, 2007 per Zoning Code Provision 531.40 (a) (2).
7. The subject property was in foreclosure during the year that it was considered to be abandoned.
8. Applicant demonstrated that even though no one lived at the subject property over the year that the property was on the VBR list, attempts were made by the previous property owner (US Bank) and listing agents to sell the property during that time period.
9. The residential properties within a 100 foot radius of the subject property are zoned R1A and are single-family houses.

**Recommendation of the Department of Community Planning and Economic Development Planning Division:**

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The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the Certificate of Nonconforming Use to legally establish two dwelling unit at 3749 4<sup>th</sup> Avenue South in the R1A Single-Family District.

**Attachments:**

Appendix A: Zoning map

Appendix B: Application

Appendix C: Aerials

Appendix D: Building Index Card

Appendix E: 100 Foot Radius-Single-Family and Two-Family Uses