

## Community Planning and Economic Development - Planning Division Report

Variance Request  
BZZ-2139

**Date:** January 6, 2005

**Applicant:** Chad and Lindsay Laurich

**Address of Property:** 3027 46<sup>th</sup> Avenue South

**Contact Person and Phone:** Lindsay Laurich, (319) 339-7495

**Planning Staff and Phone:** Tanya Holmgren, (612) 673-5887

**Date Application Deemed Complete:** December 10, 2004

**End of 60 Day Decision Period:** February 8, 2004

**End of 120 Day Decision Period:** April 9, 2005

**Ward:** 12      **Neighborhood Organization:** Longfellow Community Council

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

**Proposed Request:** To establish legal nonconforming rights for a two-family dwelling located in the R1A district.

**Zoning code section authorizing the request:** 525.110 (3); 531

**Background:** The applicant is seeking to establish legal nonconforming rights for a two-family dwelling located in the R1A district. The subject property is approximately 40 ft. x 124 ft. (4,960 sq. ft.) and consists of a duplex with two garages. The current Zoning Ordinance allows for single-family dwellings in the R1A district. Two-family dwellings are not permitted in the R1A districts. Therefore, the applicant is applying for a nonconforming use certificate to establish rights for a two-family dwelling located in the R1A district.

Upon review of city building permits, a single-family dwelling was constructed on the property in May, 1916. In June of 1967 a 22 by 22 ft. detached garage was constructed on the property. In May of 1998, a 9.5 by 20 ft. garage was also constructed on the site. The square footage of these garages is not in question since they were legally established. According to city records, permits were not issued to add the additional kitchen and subsequent seconding dwelling unit.

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A previous property owner states that the dwelling was being used as a duplex at the time of sale in October 2002 and states that he used it as a duplex for two years until the sale to the Laurich's in July 2004.

Under the 1963 Zoning Code, the subject site was zoned R1A, Single-family District. The 1963 R1A district did not allow for duplexes. The existing single-family dwelling was converted to duplex in the 1990's. Therefore, the lot would have been conforming in 1963 as a single-family dwelling and non-conforming at the point of construction without a permit. The property was purchased in 2002 by the previous owner and in 2004 by the current owner, according to their statements, as a two-family dwelling. Current city records do not list this property as a two-family dwelling, only as a single-family dwelling. Additionally, no rental licenses exist on this property prior to 2004. The applicant must submit evidence to show that the property has continuously consisted of a two-family dwelling in order to establish legal nonconforming rights for a duplex.

**Analysis:** The applicant is requesting a nonconforming use certificate for a two-family dwelling located in the R1A district. Staff found evidence that indicates that the property was constructed as and has been used as a single-family. Staff believes that the legal nonconforming rights for the mixed-use building were not established on this property. Staff could not find evidence that proves the use was ever legally established. The applicant did provide evidence that the property has been used for approximately 10 years as a non-conforming duplex. However, the use was not legally established, no permits were obtained, no rental license was obtained, and no rental agreements were provided. The Nonconforming Use Chapter of the Zoning Code recognizes that nonconforming uses exist in the city. This chapter provides policies and regulations to allow those uses to be maintained.

531.20. General prohibition; authority to continue. (a) Uses and structures. No structure or use, or part thereof, shall hereafter be erected, constructed, altered, enlarged, relocated, used or intensified in character or operation except in conformity with the provisions of this zoning ordinance. Legal nonconforming uses and structures shall be allowed to continue so long as they remain otherwise lawful, subject to the provisions of this chapter. Nonconforming uses and structures which were not lawfully in existence on the effective date of this ordinance shall be prohibited.

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.

**Findings:**

1. The property was established when a single-family dwelling was constructed on the lot in 1916.
2. The first Zoning Code was adopted in 1924.
3. In 1963, the subject site was zoned R1A, Single-family District.
4. In 1967, a 22 by 22 ft. detached garage was constructed on the property.
5. In 1998, a 9.5 by 20 ft. detached garage was constructed on the property.

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6. In 2002, the Truth-In-Sale of Housing Disclosure Report states the property was sold as a single-family dwelling.
7. In 2002, the previous owner states the property was sold as a duplex.
8. In 2004, the Truth-In-Sale of Housing Disclosure Report states the property was sold as a single-family dwelling.
9. In 2004, the current owner states the property was sold as a duplex.

**Recommendation of the CPED Department Planning Division:**

The City Planning Department recommends that the Board of Adjustment adopt the above findings and **deny** the nonconforming use certificate to establish legal nonconforming rights for a two-family dwelling located in the R1A district