

Community Planning and Economic Development - Planning Division Report

Variance Request
BZZ-2005

Date: November 4, 2004

Applicant: Paul Joseph Provost & George Michael Lowhigh

Address of Property: 210 32nd Street West

Date Application Deemed Complete: October 1, 2004

End of 60 Day Decision Period: November 28, 2004

End of 120 Day Decision Period: January 27, 2005

Contact Person and Phone: George Michael Lowhigh, (612) 220-1524

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

Ward: 10 **Neighborhood Organization:** Lyndale Neighborhood Association

Existing Zoning: R5, Multiple-family District

Proposed Request: To establish legal nonconforming rights for a mixed-use building to allow for a salon located in the R5 District.

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

Background: The applicant is seeking to establish nonconforming rights for a mixed-use building to allow for a salon located in the R5 District. The subject property is approximately 36 ft. x 83 ft. (2,970 sq. ft.). The current Zoning Ordinance allows for a single-family dwelling established before 1995 or for the establishment of a new duplex in the R5 district, because the lot area is less than 5,000 sq. ft. Commercial uses such as grocery stores, art studios, and salons are not permitted in the residential districts. Therefore, the applicant is applying for a nonconforming use certificate to establish rights for a mixed-use building to allow for a salon located in the R5 District.

The single-family dwelling was built in 1886. A 14 ft. by 42 ft. storefront commercial space was constructed on the lot in 1896 to allow for a grocery store, prior to the first Zoning code in 1924. According to city records, permits have been pulled citing both the residential and commercial portions of the property.

Under the 1963 Zoning Code, the subject site was zoned R5, Multiple-family District. The R5 district did not allow for grocery stores or any mixed-use building. Therefore, the lot would have been non-

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conforming in 1963. The property was purchased in 2002 as a single-family dwelling and commercial use. The applicants used the commercial space as a home office and began remodeling the space for a salon, without obtaining city permits for the conversion. Current city records do not list this property as a single-family dwelling and a commercial use, only as a single-family dwelling. The applicant must submit evidence to show that the property has continuously consisted of a single-family dwelling and commercial use in order to establish legal nonconforming rights for a mixed-use building.

Analysis: The applicant is requesting a nonconforming use certificate for a mixed-use building to allow for a salon located in the R5 District. Staff found evidence that indicates that the property was constructed as and has been used as a single-family dwelling and commercial use, which would establish legal nonconforming rights for a mixed-use structure in the R5 district. Staff believes that the legal nonconforming rights for the mixed-use building were not lost on this property. Staff could not find evidence that proves the use was discontinued for one year. 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.

531.40 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 1886.
2. In 1896, a 14 ft. by 42 ft. storefront commercial space was constructed on the lot to allow for a grocery store.
3. The first Zoning Code was adopted in 1924.
4. In 1931, the front of the dwelling and storefront were repaired and plaster and lath permits were issued.
5. In 1958, a permit for a neon sign was issued.
6. In 1963, the subject site was zoned R5, Multiple-family District.
7. In 1980, the commercial space was used as a music studio.
8. In 1981, the commercial space was used as a wellness center.
9. In 1992, the commercial space was used as an artist studio.
10. In 1999, a permit for reroofing the house and not the storefront was pulled.
11. In 2002, the commercial space was sold and used as a separate home office.
12. In 2004, the commercial space was remodeled into a salon.
13. Chapter 531.40 Loss of nonconforming rights (a) Discontinuance. States that when 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.

Recommendation of the CPED Department Planning Division:

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The City Planning Department recommends that the Board of Adjustment adopt the above findings and **approve** the nonconforming use certificate to establish legal nonconforming rights for a mixed use building to allow for a salon located in the R5 District