

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-3948

Date: March 25, 2008

Applicant: Mahmoud Abdel-Karem

Address of Property: 2324 Lyndale Avenue North

Contact Person and Phone: Mahmoud Abdel-Karem, 612-366-1273

Planning Staff and Phone: Molly McCartney, 612-673-5811

Date Application Deemed Complete: February 19, 2008

Publication Date: March 19, 2008

Hearing Date: March 25, 2008

Appeal Period Expiration: April 7, 2008

End of 60 Day Decision Period: April 19, 2008

Ward: 3 Neighborhood Organization: Hawthorne Area Community Council

Existing Zoning: R2B, Two-family District

Proposed Use: Re-establish legal rights to a retail use (grocery store)

Proposed Request: Mahmoud Abdel-Karem has applied for a Certificate of Nonconforming Use to legally establish the rights to a grocery store at 2324 Lyndale Avenue North in the in the R2B Two-family District.

Zoning code section authorizing the request: Chapter 531 Nonconforming Uses and Structures; Section 531.30.

Background and Analysis: The applicant is applying for Certificate of Nonconforming Use in order to rebut the presumption of abandonment of a retail space (grocery store) located in a commercial structure located in the R2B Two-family District.

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

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resumed. Any subsequent use of the land or structure shall conform to the requirements of the district in which it is located.

(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.

The subject property is a single-story, commercial, storefront structure that has a zoning classification of R2B Two-family Residence. Commercial uses are limited in the R2B District and retail or food related uses are not permitted. This site has operated as a convenience store in the past; however, due to a discontinuance of a period of more than one year, the property has lost the nonconforming rights to the retail use. The applicant is trying to re-establish the rights to a retail space (grocery store) with this application.

The site has had a legal grocery/convenience store in the past, however, a business license was revoked in November 2006. As a result of business licensing violations and police activities, the City Council, through the Public Safety and Regulatory Service (PS&RS) Committee revoked the business license of a store called Wafanas in November 2006. The business closed, and no further activity has been noticed at the store prior to the applicant applying for business license in January 2008. Business licensing staff notified zoning staff at that time. The business had been closed more than one year and no regulatory activities, such as business licensing or building permits were attempted until January 2008, more than 16 months after the store had been closed.

The applicant bought the property in July 2007 and has now applied for a Certificate of Nonconforming Use to rebut abandonment. County records indicate the current applicant bought the building in July 2007, which would have been less than one year from the license revocation. However, there appears to be no action on the site that would deem the nonconforming use active, such as a building permit or new business license application until January 2008, almost 6 months after the sale of the building. In the applicant's submitted materials for this application, there is not reason given for the lapse in time. The applicant's full statement is attached to the report.

Staff finds that the applicant has not demonstrated that the loss of nonconforming rights was beyond their control. The applicant was in possession of the property prior to the time period when the nonconforming rights expired. Action with the city prior to November 2007 could have prevented the loss of nonconforming rights.

Findings:

1. The subject property is a single-story, commercial, storefront structure that has a zoning classification of R2B Two-family Residence.
2. The site has had a legal grocery/convenience store in the past, however, a business license was revoked by the City in November 2006. As a result of business licensing violations and police activities, the City Council, through the Public Safety and Regulatory Service (PS&RS) Committee revoked the business license of a store called Wafanas in November 2006.

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3. No further activity has been noticed at the store prior to the applicant applying for business license in January 2008, more than 16 months after the use have been discontinued.
4. County records indicate the current applicant bought the building in July 2007, less than one year from the license revocation.
5. There was no action on the site that would deem the nonconforming use active, such as a building permits or new business license applications until January 2008, six months after the sale of the building.
6. Staff finds that the applicant has not demonstrated that the loss of nonconforming rights was beyond their control. The applicant was in possession of the property prior to the time period when the nonconforming rights expired.

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

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 the rights to a grocery store at 2324 Lyndale Avenue North in the in the R2B Two-family District.