Department of Community Planning and Economic Development - Planning Division Report

Appeal of the Decision of the Zoning Administrator
BZZ-2364

Date: July 7, 2005

Appellant: Karen Marty, on behalf of Joe Welp

Address of Property: 421 6th Street Southeast

Contact Person and Phone: Karen Marty, (952) 921-5859

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

Date Application Deemed Complete: May 12, 2005

End of 60 Day Decision Period: July 11, 2005

End of 120 Day Decision Period: September 9, 2005. (Extension letter sent June 17, 2005)

Ward: 2 **Neighborhood Organization:** Marcy Holmes Neighborhood Association

Existing Zoning: R2B, Two-family District

Appeal of the decision of the Zoning Administrator: Karen Marty, on behalf of Joe Welp has appealed the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling units and one rooming unit requires the Expansion of Nonconforming Use for a property located at 421 6th Street Southeast in the R2B, Two-family District.

> **525.170. Appeals of decisions of the zoning administrator.** All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis: The appellant has appealed the decision of the Zoning Administrator that the expansion of habitable space into the attic and basement of a residential structure with seven dwelling

units and one rooming unit requires an Expansion of Nonconforming Use application for a property located at 421 6th Street Southeast in the R2B, Two-family District.

The appellant states recent improvements have reduced the number of units, from seven dwelling units and one rooming unit to seven dwelling units, and that the building has not been expanded or structurally altered. The appellant states that the portions of the building that are being utilized are irrelevant, since the nonconformity stems from the number of units. The appellant also states that reducing the number of units is permissible for a nonconforming use.

City records indicate that the property at 421 6th Street Southeast is a nonconforming use because it has more units than allowed in the R2B District. The property has seven dwelling units and one rooming unit, more than the maximum 2 dwelling units allowed in the R2B District.

An inspection of the property on October, 7, 2003, by the Housing Inspections Division, revealed that the third floor bedrooms did not meet the minimum height requirement for bedrooms per the building code. After the Fire Department assumed responsibility for inspections of all High Occupancy Dwellings, a letter on August 4, 2004, was sent to Joe Welp requesting that the proper permits be obtained for the habitable use of the attic and basement. No building permits were ever obtained for the construction work required to finish the attic or basement. In October 2004, a prospective buyer, Brian Spilley, applied for an Expansion of Nonconforming Use to allow for the construction of a shed dormer on the third floor to enlarge the third story to allow for the minimum height for bedrooms. Notwithstanding staff recommendation, the Planning Commission denied the application for expansion of nonconforming rights on October 25, 2004.

Staff has determined based on inspections by Housing Inspections Division and the Fire Department, application material from the Expansion of Nonconforming Use application, and submitted floor plans that the conversion to habitable space of the attic and basement requires an expansion of nonconforming use. The below excerpt from the Zoning Code, Chapter 531, Nonconforming Use and Structures, specifically prohibited nonconforming uses or structures from being altered or intensified without Planning Commission approval.

> 531.50 (b) Structure (conforming or nonconforming) containing a legal nonconforming use. Structures containing one (1) or more legal nonconforming uses shall not be moved to a new location on the zoning lot, expanded, enlarged or structurally altered in any way, nor shall such use be intensified, except that the city planning commission may permit the relocation, expansion, enlargement, structural alteration or intensification of such use or structure or any accessory structure, if it makes the following findings, and the relocation, expansion, enlargement, structural alteration or intensification meets all other applicable regulations of this 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):
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> (1) A rezoning of the property would be inappropriate.
> (2) The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

(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.
(4) The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.
(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.
(6) The enlargement, expansion, relocation, structural alteration or intensification will not be located in the floodway district.

Planning staff has determined that remodeling or finishing previously uninhabitable space, such as an attic or basement, is considered an expansion. The subject site is a nonconforming use and the expansion into the attic and basement requires an Expansion of Nonconforming Use. The property owners had previously given consent for a potential buyer to apply for such an application, which was denied by the Planning Commission.

Based on the inspections done by Housing Inspections and the Fire Department, the previous unsuccessful application for Expansion of Nonconforming Rights, and the Zoning code requirements for expansion of a nonconforming use, Planning staff agrees that the Zoning Administrator has correctly interpreted the zoning code.

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 findings above and **deny** the appeal of the decision of the Zoning Administrator.