

Department of Community Planning and Economic Development - Planning Division Report

Certificate of Nonconforming Use Request
BZZ-4152

Date: September 18, 2008

Applicant: Lance Redfield

Address of Property: 3117 16th Avenue South

Contact Person and Phone: Lance Redfield, (612) 805-9342

Planning Staff and Phone: Jacob Steen, (612) 673-2264

Date Application Deemed Complete: August 14, 2008

Publication Date: September 12, 2008

Public Hearing: September 18, 2008

Appeal Period Expiration: September 28, 2008

End of 60 Day Decision Period: November 17, 2008

Ward: 8 Neighborhood Organization: Powderhorn Park Neighborhood Association

Existing Zoning: R2B Two-Family District

Proposed Request: Certificate of Nonconforming Use to legally establish a four unit building at 3117 16th Avenue South in the R2B Two-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, 3117 16th Avenue South, is in the R2B Two-Family District. Building records indicate that the principal structure on the subject property was built as a single-family house in 1909 and converted into a four-unit structure in 1966 (Appendix C). The area within a 1000-foot radius is predominately R2B Two-Family District. The residential properties within a 100-foot radius are a mix of approximately half single family structures and half two or three family dwellings (Appendix D).

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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. From 1963 to 1975 the property was zoned R5 Multiple Family District, which allowed for the lawful conversion from a single family dwelling to a four family dwelling in 1966. In 1975 the property was down zoned to R2B Two-family District. When the 1975 zoning change took place the structure became a legal nonconforming use as four family structures are not a permitted use in the R2B Two-Family District.

The subject property is a 2.5 story structure located on a 5,143 square foot lot. The gross square footage of the building is 4,533 square feet. The first floor consists of a three bedroom unit; the second floor consists of a two bedroom unit, as well as an efficiency unit; and the third floor houses a two bedroom unit (Appendix E, F).

The applicant, Lance Redfield, purchased the subject property from SunTrust Mortgage, Inc. on May 27, 2008. SunTrust became the outright owner when the former owner (John Sines) foreclosed on the property in the Winter of 2005. When Mr. Redfield bought the property it had been on the City of Minneapolis' Vacant Building Registry for more than four years. Mr. Redfield states that he purchased the property believing that it had been "grandfathered" as a four-unit structure despite changes to the zoning classification that would have made it a nonconforming use (Appendix A).

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 was considered a legally established nonconforming four-unit structure since 1975 when it was zoned R2B Two-Family District. On February 10, 2004 the property was condemned and was placed on the City of Minneapolis's Vacant Building Registration (VBR) on February 11, 2004. A Code Compliance Inspection was completed on May 19, 2004 (BCC 1000535). On June 14, 2004 the property owner paid the \$2,000 Code Compliance deposit that was to be held by the City until the property received the necessary repairs to meet the current building codes. At that time, the property owner began extensive renovations to the property. The property changed ownership in December of 2004 but renovation continued until June of 2005. During the Winter of 2005 the property entered the foreclosure process and a Code Compliance deposit was forfeited on November 3, 2005 due to a lack of activity on open permits. On November 3, 2005 the property had not yet received a certificate of Code Compliance that would have allowed it to be removed from the Vacant Building Registry. Considering the activity that took place prior to November 3, 2005 regarding the effort to remove the property from the VBR, CPED-Planning considers this date to be the effective date of vacancy. Therefore effective date on which the property lost its rights to a nonconforming four-unit structure would be November 3, 2006, following one year of continuous abandonment.

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Applicant's Rebuttal of Abandonment: Although the property has been condemned and boarded since February 10, 2004 and had not been removed from the condemned and boarded list at the date of this report, 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 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 provided information that the following activities took place between July 8, 2003 and May 27, 2008 in an effort to show that the property was not abandoned. CPED-Planning staff has included additional activity related to building permits and administrative actions by City of Minneapolis staff.

1. July 8, 2003: Property was sold for \$245,000 to Timberwolf Properties/Eric Lind
2. February 10, 2004: The property was put on the Minneapolis Condemned and Boarded list
 - 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.
3. February 11, 2004: The property was placed on the Vacant Building Registry
4. May 19, 2004: The property received a Code Compliance Inspection and received a Code Compliance Report (BCC 1000535).
 - Note: A Code Compliance Report include a list of all housing and building code violations that must be resolved before a Certificate of Occupancy can be issued.
5. June 14, 2004: The property owner Timberwolf Properties/Eric Lind paid the Code Compliance deposit of \$2,000
 - Note: This deposit is held by the City until the property owner makes the necessary repairs to bring the building into compliance with housing and building codes.
6. June 14, 2004 – June 17, 2005: Multiple permits were pulled for Code Compliance repairs
7. December 3, 2004: Property was sold for \$399,000 to John Sines
8. Winter 2005: Property entered into foreclosure
 - Note: The actual date that foreclosure proceedings occurred is unknown.
9. **November 3, 2005: The Code Compliance deposit was forfeited because the owner had let their permit approvals expire.**
10. January 14, 2006: Water was turned off to the property at the owner's request (Appendix G)
11. June 27, 2006: Code Compliance report was reissued
 - Note: This Code Compliance report was a reissue of the May 19, 2004 orders and the property did not receive an additional Code Compliance Inspection at this time.
12. June 29, 2006: The property was listed on the Multiple Listing Service (MLS) by The Realty House (Appendix A)
13. **November 3, 2006: The property loses nonconforming rights to a four-unit structure**

following a year of inactivity since forfeiting the Code Compliance deposit.

14. May 27, 2008: The property was purchased by applicant Lance Redfield for \$174,500

In addition, the applicant believed that he had made a sufficient good faith effort to verify that the property was indeed a lawfully established nonconforming four-unit structure. The applicant states that he checked multiple sources that all confirmed this belief. These sources include the Code Compliance report which describe the proposed property use as a “4 unit dwelling,” and the City of Minneapolis Property Information page, which shows four referenced dwelling units under Structure Information. The applicant also shows that the property was listed for sale as having four dwelling units (Appendix A).

Mr. Redfield has also provided confirmation that the property has four separate gas meters and four separate electric meters (Appendix A11 & A12). Additionally, Minneapolis Utility Billing staff has confirmed that the property has four separate accounts for water billing (Appendix G).

Staff Analysis:

Rebuttal of Abandonment: CPED – Planning believes that the information submitted by the applicant does not clearly illustrate that it was beyond the former property owner’s control to retain rights to four units for this property. CPED-Planning recognizes that, following the condemnation and boarding of the property in February of 2004, a considerable effort was made to rehabilitate the structure per Code Compliance Orders. Despite these efforts, the property fell into foreclosure during 2005 and it was not until June 2006 that the owner SunTrust Mortgage, Inc. listed the property for sale. CPED-Planning has determined that November 3, 2006 was the effective date of the loss of rights for a four unit dwelling, following a year of discontinued use. From the time at which this property lost nonconforming rights to the time that the applicant purchased the property, a period of approximately 19 months, SunTrust Mortgage took no action to remove the property from the VBR list or make Code Compliance repairs.

In addition, CPED – Planning 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 research in the ownership, sale, and purchase of property which includes the knowledge of the nonconforming status of the property. The property has been continuously on the VBR for more than four years which should certainly raise questions as to the legal status of such a use. This property has been zoned R2B/Two-Family District since 1975 and has been classified as a legal nonconforming use since that time.

Of the 18 properties within a 100 foot radius of the subject property all are zoned R2B Two-Family Residential. Nine (9) of the properties in this radius are single family dwellings, six (6) are two family dwellings, and two (2) are two family dwellings. There is also an institutional use to the northeast of the property that has no dwelling units.

Findings:

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1. The building records indicate that the subject property was built as a single-family dwelling in 1909.
2. The building records indicate that the subject property was legally converted into a four-unit structure in 1966 and was used continuously as a four-unit structure until 2003.
3. The subject property's zoning from 1924 to 1975 allowed for a four-unit building.
4. The property was rezoned R2B/Two-Family District in 1975 making the property a legally nonconforming use.
5. The subject property was placed on the City of Minneapolis's Vacant Building Registry (VBR) on February 11, 2003 and has remained on that list until the publication of this report.
6. From June 2004 to June 2005 the property owner made a significant effort to rehabilitate the structure and remove it from the Vacant Building Registry (VBR).
7. The property lost its nonconforming rights as a four unit dwelling on November 3, 2006, following one year of continuous inactivity.
8. Neither the applicant (Mr. Redfield) nor the previous owner (SunTrust Mortgage) provided clear and convincing evidence that that it was beyond their control to retain rights to four units between November 3, 2006 and May 27, 2008 per Zoning Code Provision 531.40 (a) (2).

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 a four dwelling building at 3117 16th Avenue South in the R2B Two-Family District.

Attachments:

- Appendix A: Application (per applicant)
- Appendix B: Area Map (per city records)
- Appendix C: Building Index Card (per city records)
- Appendix D: 100 Feet Map with Dwelling Unit Counts (per city records)
- Appendix E: Minneapolis PropertyInfo
- Appendix F: Floor Plans (per applicant)
- Appendix G: Water Utility Billing Records
- Appendix H: Correspondence from concerned parties