

Department of Community Planning and Economic Development – Planning Division

Certificate of Nonconforming Use
BZZ-3926

Applicant: Chris Read, on behalf of SEB, LLC and Gallop Solutions, Inc

Address of Property: 2732 Bloomington Avenue South

Contact Person and Phone: Chris Read, (651) 484-5100

Planning Staff and Phone: Brian Schaffer, (612) 673-2670

Date Application Deemed Complete: February 5, 2008

Publication of Staff Report: February 29, 2008

Public Hearing: March 6, 2008

Appeal Period Expiration: March 17, 2008

End of 60 Day Decision Period: April 5, 2008

Ward: 9 **Neighborhood Organization:** Midtown Phillips

Existing Zoning: R2B Two-Family District

Proposed Request: Certificate of Nonconforming Use to legally establish a four unit multiple family dwelling at 2732 Bloomington Avenue South in the R2B Two Family District.

Background and Analysis: The applicant is applying for Certificate of Nonconforming Use to legally establish a four unit multiple family dwelling at 2732 Bloomington Avenue South 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 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.

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The property is currently zoned R2B and the applicant is trying to re-establish the rights to a four-unit multiple family dwelling. The structure was built in 1886 as a single family dwelling (B7751) and converted to a duplex in 1935 (B2400087). In 1962 the structure was converted to a multiple family dwelling (B377459) with rooming units. Records indicate that in 1970 the City recognized the structure as having four dwelling units. Current city records indicate the structure has four dwelling units.

The property is currently zoned R2B Two Family District. It has been zoned R2B Two Family District since 1963. Prior to 1963, the property was zoned Commercial Density E under the 1924 zoning ordinance. The Commercial Density E zoning district would have allowed for a four-unit multiple family structure.

The property was condemned for being boarded (CONB) on September 7, 2006 and was placed on the City of Minneapolis's Vacant Building Registration (VBR) on September 18, 2006. A Code Compliance Inspection of the property was done on December 19, 2006. On October 31, 2005 two rental licenses were issued for the subject property, a comment on the permit indicates that there were two units that were owner occupied. The rental licenses expired on October 31, 2006 and the licenses were never renewed.

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. If the use of the property is discontinued for a year or more the nonconforming rights are lost. For residential properties staff considers the *use* of the property to be the occupancy of the property, active rental licenses, or rental license exemptions.

In this situation the rental license expired on October 31, 2006. In addition to the expired rental licenses, the property was condemned for being boarded on September 7, 2006 which demonstrated the lack of inhabitants or the *use* of the property. City records do not indicate that an application to renew the rental licenses or for rental licenses exemptions occurred between October 31, 2006 and October 31, 2007. There was only one permit issued for the property during this time, it was a code compliance inspection. The code compliance inspection that occurred on December 19, 2006 does not constitute the use of the property. The applicant has not provided any evidence that demonstrates the use of the property during this time. The nonconforming rights were lost as of October 31, 2007.

The applicant indicates that the subject property fell into foreclosure and title was reverted back to the lien holder, Inter Bank FSB, during the third quarter of 2006. In his statement, the applicant indicates that the property was put up for sale in October of 2006, however the MLS Data provided by the applicant indicates the property was listed for sale on February 23, 2007. The property was taken off the market on December 14, 2007 when the applicant entered into a contract to purchase the property. The applicant is arguing that the previous owner's foreclosure proceedings and the length of time the property was on the market are circumstance beyond the current owner's control.

Staff believes the failure of the previous property owner, Inter Bank FSB, to secure the nonconforming rights for the four-unit dwelling is not a circumstance beyond the applicant's control. The property has been zoned R2B Two Family District since 1963 and has been classified as a legal nonconforming use since that time. Staff further 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

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responsible for proper due diligence in the ownership, sale, and purchase of property which includes the knowledge of the nonconforming status of the property.

Findings:

1. The property was built as a single family dwelling and later converted into a duplex with two rooming units and was later recognized by the City of Minneapolis as a four-unit multiple family dwelling.
2. The property has been zoned R2B Two-Family District since the adoption of the 1963 Zoning Ordinance.
3. The property was recognized as a legal nonconforming four-unit multiple family dwelling.
4. City records indicate that the most recent rental licenses for the property were issued on October 31, 2005 and expired October 31, 2006.
5. The applicant has not provided evidence to show that the property was used between October 31, 2006 and October 31, 2007.
6. The nonconforming rights to the four dwelling units expired October 31, 2007.
7. The property was listed on the MLS on February 23, 2007. A purchase agreement was signed December 19, 2007 and the property sold on January 7, 2008.
8. The failure of the current property owner, Gallop Solutions Inc and SEB LLC, to secure the nonconforming rights for the four-unit dwelling is not a circumstance beyond the applicant's control. The property owner is responsible for proper due diligence in the ownership, sale, and purchase of property.

City records and the information provided by the applicant do not support the continued use of the legal nonconforming four-unit multiple family dwelling. Staff does not acknowledge that the property has nonconforming rights to a four-unit multiple family dwelling at 2732 Bloomington Avenue South.

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 four dwelling units at 2732 Bloomington Avenue South in the R2B Two-family District.

Attachments

1. Applicant statement
2. Map of Area
3. Chapter 531.30 & 531.40 of the Zoning Ordinance: Certificate of nonconforming use.
4. MLS Listing of the subject property
5. Floor plans of the structure
6. Pictures of the property