

Department of Community Planning and Economic Development – Planning Division
Nonconforming Use Certificate
BZZ-5356

Date: November 17, 2011

Applicant: Bruce Leng

Address of Property: 3300 Girard Avenue South

Project Name: 3300 Girard Avenue South Nonconforming Use Certificate

Contact Person and Phone: Bruce Leng, (612) 333-6600

Planning Staff and Phone: Shanna Sether, (612) 673-2307

Date Application Deemed Complete: October 17, 2011

End of 60-Day Decision Period: December 16, 2011

Ward: 10 **Neighborhood Organization:** CARAG

Existing Zoning: R5 Multiple Family District

Zoning Plate Number: 24

Legal Description: Not applicable for this application

Proposed Use: 21 dwelling units

Nonconforming Use Certificate: to establish legal nonconforming rights to an existing 21st dwelling unit in a multiple-family dwelling

Applicable Zoning Code Provision: Chapter 531 Nonconforming Uses and Structures; Specifically Section 531.30 and Chapter 546 Residence District

Background and Analysis: The subject property is approximately 63 feet by 128 feet (8,069 square feet). The first building permit on the property was to allow for a 42 foot by 109 foot brick apartment building with 19 dwelling units in 1922. In 1941, a building permit was issued for alterations, which staff has concluded was to allow for a 20th dwelling unit located in the basement of the existing building.

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned Multiple District with an “E” density. The density allowed at that time was 400 square feet of lot area per dwelling unit. Based on the size of the lot, the maximum density allowed would have been 20 dwelling units. The property was rezoned to R5 Multiple-family

District in 1963 with the adoption of the new zoning ordinance. The property has been continuously zoned R5 Multiple-family District since 1963. The density required in the R5 District from 1963 to 2009 was 900 square feet per dwelling, which would have allowed for a maximum of 9 dwelling units. Since 2009, the minimum lot area per dwelling in the R5 District has been 700 square feet per dwelling, which would allow for a maximum of 11 dwelling units.

The Fire Inspections Department inspected the subject property on March 30, 2011. The Inspector identified the illegal dwelling unit and orders were issued to revert the building back to the legal use or make an application to the City of Minneapolis to allow for the 21st dwelling unit.

City records indicate that the legal use of the property is a multiple-family dwelling with 20 dwelling units. The applicant is applying for a certificate of nonconforming use to legally establish an existing 21st dwelling unit in the basement of the existing multiple-family dwelling in the R5 District per 531.30 of the zoning code:

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.

(4) *Determination by board of adjustment.* Following the public hearing, the board of adjustment shall determine whether the use or structure is a legal nonconforming use or structure. The burden of proof shall be on the applicant to establish the lawful nonconforming status of the use or structure and the lack of abandonment, change of use or loss under section 531.40. If the applicant does not establish the required facts, no certificate shall be issued. If the board of adjustment determines that the use or structure is a legal nonconforming use or structure, it shall direct the zoning administrator to issue a certificate of nonconforming use. The certificate shall state with particularity the type and intensity of specific use which is found to be legal. The decision of the board of adjustment may be appealed by any affected person as specified in Chapter 525, Administration and Enforcement.

Staff believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.30(4), under which the applicant must bear the burden of proof to illustrate clear and convincing evidence that the use of the property was legally established as a 21-unit multiple-family dwelling prior to 1924 and not discontinued for a period in excess of one (1) calendar year. The applicant has provided a statement describing the relevant facts and reason for the request, floor plans, a cable agreement for unit 21 from 1985, an electrical permit from 1999 for 21 units, rental licenses between 2005-2006 and 2008-2011 and photographs of the dwelling unit in question.

Findings:

- 1) City records indicate that a building permit was issued for a 42 foot by 109 foot brick apartment building with 19 dwelling units in 1922.
- 2) The zoning classification from 1924 to 1963 was Multiple District with “E” Density allowing up to 20 dwelling units; 21 dwelling units in a multiple-family dwelling is not a permitted use.
- 3) The Building and Housing Survey conducted in 1934 indicated the use of the property was a multiple-family structure with 19 dwelling units. Six units were on floors 1-3 and the caretaker’s unit was listed in the basement.
- 4) Polk Directory records indicate 19 units in 1940.
- 5) A building permit was issued for “Alterations” in 1941.
- 6) Polk Directory records indicate 20 residents in 1944, 1950, 1965-66, 1970, 1975, 1980, 1985, and 1990-1993.
- 7) The subject property was rezoned in 1963 to R5 Multiple-family District; 21 dwelling units is a prohibited use based on the density.
- 8) The applicant has provided rental licenses from 2005-2006 and 2008-2011 all for 20 dwelling units.
- 9) The property is presently zoned R5 Multiple-family District; 21 dwelling units is a prohibited use based on the density.
- 10) The applicant has failed to present clear and convincing evidence that the structure was converted to allow for 21 dwelling units in an existing multiple-family structure at the time when such a use would have been permitted, between 1922 and 1924.

As of writing this staff report, staff has not received any correspondence from Calhoun Area Residents Action Group. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

RECOMMENDATION

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the nonconforming use certificate:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the nonconforming use certificate to establish legal nonconforming rights to a 21st dwelling unit in an existing multiple-family dwelling located at 3300 Girard Avenue South in the R5 Multiple-family District.

Attachments:

- 1) Statement of proposed use and description of project provided by the applicant
- 2) Timeline provided by the applicant
- 3) Cable contract from 1985
- 4) Electrical contract from 1999
- 5) Rental Licenses (2005-2006) and (2008-2011)
- 6) Copy of e-mail sent to CARAG and CM Tuthill
- 7) Zoning map
- 8) Building Permit Index Card (1922-1974)
- 9) Building Permit (B156485) from 1922
- 10) 1934 Building and Housing Survey
- 11) Site plan
- 12) Floor plans
- 13) Photographs