

Department of Community Planning and Economic Development – Planning Division
Certificate of Nonconforming Use
BZZ-5575

Date: July 26, 2012

Applicants: David Klopp and Esme Murphy

Addresses of Property: 3715 Cedar Lake Road South

Project Name: Certificate of Nonconforming Use for a two-family dwelling

Contact Person and Phone: David Klopp, 612-922-7364

Planning Staff and Phone: Brad Ellis, (612) 673-3239

Date Application Deemed Complete: June 20, 2012

End of 60-Day Decision Period: August 19, 2012

Ward: 07 **Neighborhood Organization:** Bryn Mawr Neighborhood Association

Existing Zoning: R1 Single Family District and SH Shoreland Overlay District

Zoning Plate Number: 17

Legal Description: Not applicable for this application

Proposed Use: Two-family dwelling

Certificate of Nonconforming Use: to establish a legal nonconforming two-family dwelling in an existing residential structure

Applicable zoning code provisions: Chapter 531, Nonconforming Uses and Structures,

Background and analysis: The subject property is an approximately 8,160 square foot lot that contains an existing structure. City building permit records indicate that the structure was originally constructed as a single-family home in 1952 at 1016 Cedar Lake Road South and was moved to the subject property in 1961. Building permit records indicate a foundation permit for a single-family home to be moved from 1016 Cedar Lake Road South to 3715 Cedar Lake Road South.

From 1924, the first year the City of Minneapolis had a codified zoning ordinance, to 1963, the property was zoned “Commercial,” the “C” density district, and was in the two-and-a-half story height district. When the structure was moved on to the lot in 1961, a two-family dwelling would have been allowed as-of-right. In 1963, there was a comprehensive overhaul of the zoning code, and 3715 Cedar Lake Road South was rezoned to the R1 Single Family District, in which two-family dwellings are not allowed.

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The property has retained the R1 zoning to the present time. City records indicate the structure on the lot is, and was originally constructed as, a single family dwelling; the applicant is asserting the structure has been a two-family dwelling since it was moved on to the lot.

The applicant is applying for a certificate of nonconforming use to legally establish a two-family dwelling in the R1 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.

The applicant has provided a statement describing the relevant facts and reason for the request, floor plans, copies of leases, and other relevant information.

The applicant is asserting that the property has two addresses, 3713 and 3715 Cedar Lake Road South. The original building index card does show an original address of 3713-3715 Cedar Lake Road South. Staff could not find why the building card would indicate two addresses; there is no record of an earlier structure. All records, including that same building card, indicate the structure is a single-family dwelling. The City has referenced the property only as 3715 Cedar Lake Road since the 1980s. Both Hennepin County and the City Assessor's office show this to be a single family home.

The applicant is also asserting that the original building permit was for a single-story building, with a second story built on top later to create a second dwelling unit on top of the original living space. Staff notes that the permit does indicate a one story single family dwelling. However, there has never been a permit for a second story addition. It is possible that the foundation permit is the first floor and the one story moved from 1016 Cedar Lake Road South is the second floor – this has been seen before in an earlier application (BZZ-5549) at 3736 Zenith Avenue South, and there is no separate basement level per the floorplans submitted by the applicant.

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The applicant has submitted a copy of the original 1963 zoning plate. The applicant has stated that the shaded properties in red are meant to indicate two-family dwellings. Staff research indicates that the properties shaded red are lots that were vacant at that time. The two-family dwellings called out by the applicant were lawfully established, often through rezonings.

The property did not have a rental license until 2005. In 2005, the City of Minneapolis Regulatory Services Department – Housing Division issued a provisional rental license for two units. The property was inspected in 2011, at which time it was found to have more dwelling units than were lawfully established. Housing issued orders to correct the situation – either lawfully establish a two-family dwelling or remove one of the units. The applicants have submitted this nonconforming use application in an attempt to remedy the situation.

The subject property was also subject to a land use application for a fence height variance in 1989 (V-3036). In the staff report the use of the property was noted as a single-family dwelling.

As of the time of the writing of this report, staff has received one comment. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

Findings:

- 1) A building permit was pulled in December of 1960 for a foundation for a new single family dwelling to be moved on to the lot. Permit records also indicate that the structure was built as a single family at its original location of 1016 Cedar Lake Road South. There are no building permits to convert the structure to a two-family dwelling.
- 2) This site was rezoned from Commercial to the R1 Single Family District in May of 1963 when the City Council adopted the new zoning code. The property remained R1 with the adoption of the new zoning code in November of 1999. Two-family dwellings are not allowed in the R1 Single Family District.
- 3) The index card shows “1D^x” in the upper right hand corner. When the City converted from the typed paper index cards to a new system in the early 1970s, all original permit cards were marked with the number of dwelling units on the property. 1D^x indicates one dwelling unit.
- 4) Since the structure was established on the property in 1961, there have been several land use applications indicating the use on the property was a single-family dwelling and not a two-family dwelling. For past planning applications, there is a cover sheet indicating the uses in the immediate area of the application. Attached are several land use applications indicating that the use at 3715 Cedar Lake Road was “F” which means single-family dwelling.
- 5) In 1989, the applicant applied for a fence height variance (V-3036) for this property. The report for the variance indicates that the then-present use of the property was a single family dwelling.
- 6) Both City Assessor and Hennepin County tax records indicate this is a single family dwelling.

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 two-family dwelling prior to 1963 and not discontinued for a period in excess of one (1) calendar year.

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RECOMMENDATION:

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the Certificate of Nonconforming Use:

The Community Planning and Economic Development Department - Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the certificate of nonconforming use to establish a two-family dwelling for the property located at 3715 Cedar Lake Road South in the R1 Single Family District and SH Shoreland Overlay District.

Attachments:

1. Statement of proposed use and description of project provided by the applicant
2. Letters to neighborhood organization and councilmember
3. Rental history provided by the applicant
4. Affidavits
5. Copies of leases
6. Zoning plate 17 from 1963
7. Zoning plate 17 from 2012
8. Public comment
9. Zoning map
10. Site plans
11. Floor plans
12. Building Permit Index Card for 3713-3715 Cedar Lake Road South (1960-1974)
13. Building permit B373148 (foundation) and CP 45857 (permission to move)
14. Building Permit Index Card for 3715 Cedar Lake Road South (1974-1992)
15. Building permit B454958 (garage addition)
16. Building Permit Index Card for 1016 Cedar Lake Road South
17. Building permit B326379 (original construction of structure at 1016 Cedar Lake Road South)
18. Photographs
19. Cover sheets of C-1551, V-880, and V-3674
20. V-3036, variance application for fence height at 3715 Cedar Lake Road South
21. Hennepin county tax information from 08/26/11 and 07/11/12
22. Housing orders RFS 11-0861431