

Department of Community Planning and Economic Development – Planning Division
Nonconforming Use Certificate and Expansion of Nonconforming Use
BZZ-2243

Date: April 25, 2005

Applicant: Mary Dolejsi

Address of Property: 3305 James Avenue South

Project Name: Not applicable for this application

Contact Person and Phone: Mary Dolejsi, (612) 377-7500

Planning Staff and Phone: Hilary Watson, (612) 673-2639

Date Application Deemed Complete: March 9, 2005

End of 60-Day Decision Period: May 8, 2005

End of 120-Day Decision Period: Not applicable

Ward: 10 **Neighborhood Organization:** East Calhoun Community Organization

Existing Zoning: R4, Multiple-family District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 24

Legal Description: Not applicable for this application

Proposed Use: Office

Concurrent Review:

Nonconforming use certificate: to establish legal nonconforming rights for six individual offices in the R4 zoning district.

Expansion of a nonconforming use: to add one additional office in the building.

Applicable zoning code provisions: Chapter 531, Nonconforming uses and structures.

Background: The applicant purchased the property in question on June 1, 2004, with the intention of operating a psychology office out of the building. When the applicant purchased the property there were a total of six offices and one dwelling unit in the building. Once the applicant started making modifications to the building, both interior and exterior, it was brought to the applicant's attention that the building was zoned R4, Multiple-family District and that mixed-use buildings and/or offices were

not a permitted use in that zoning district. The applicant is applying for a certificate of nonconforming use to establish that legal nonconforming rights exist for six individual offices in the building. In addition, the applicant is proposing to convert the existing dwelling unit in the building to an office. Therefore, the applicant is also applying for an expansion of nonconforming use to add one additional office in the building.

The subject property is approximately 5,911 square feet in size and consists of a 2.5 story structure with a two car detached garage. The applicant is proposing several modifications to the interior of the building in order to create private offices. Exterior modifications to the building are also proposed including the removal of the exterior stairway on the north side of the building that leads from the third floor to the second floor and in its place install a drop-down fire escape for building code purposes. In addition, the applicant is proposing to remove the existing detached garage and construct a surface parking area that would be accessed off of the alley. There would be a total of five off-street parking spaces on the site. As it is configured today (six offices and one dwelling unit) the building has a parking requirement of five spaces. By converting the dwelling unit to office space the parking requirement goes down by one space.

Additionally, the applicant wishes to add a 15 square foot sign to the front of the building. In the residence and OR1 districts signs for office uses are allowed to have one non-illuminated, flat wall sign not exceeding eight square feet. The height of the sign cannot exceed 12 feet. The applicant will have to comply with these sign regulations as sign standards cannot be varied in the residential districts.

CERTIFICATE OF NONCONFORMING USE

Background: Under the 1963 Zoning Code the subject site was zoned B3S-1, Community Service District. In the B3S-1 zoning district, mixed-use buildings and office uses were allowed. On November 12, 1999, the subject site was rezoned to R4, Multiple-family District. Since the zoning of the site changed from a business district to a residential district, the applicant must provide evidence that the use of the property was legally established before the zoning of the subject site changed and that the use has been continuously operated in order to establish legal nonconforming rights.

The City's building permit records indicate that in 1909 a single-family dwelling was constructed on the site. In September of 1983 a building permit was issued to convert the single-family dwelling to a two-family dwelling. The city does reference two dwelling units on the subject property and has rental licenses for two dwelling units that were issued from 1991 to 2004. The City does not have any record that building permits were issued to convert the two-family dwelling to a mixed-use building or offices.

The applicant has submitted several affidavits in support of this application. One such affidavit is from the previous property owner Sharon Smith. In the affidavit it indicates that she operated her own office out of the subject site from 1986 until 2004 when she sold the property and that she also leased office space on both the first and second floors of the building from 1989 until 2004. The other affidavits that were provided are from previous and also current office lessees in the building that date back to October of 1999, November of 1999, September of 2000 and October of 2001. In addition, in 2004 and 2005 the taxes due on the property reflect the combination of residential and commercial uses on the property.

The Nonconforming Use Chapter of the Zoning Code recognizes that nonconforming uses exist in the city. This chapter provides policies and regulations to allow those uses to be maintained.

531.20. General prohibition; authority to continue. (a) Uses and structures. No structure or use, or part thereof, shall hereafter be erected, constructed, altered, enlarged, relocated, used or intensified in character or operation except in conformity with the provisions of this zoning ordinance. Legal nonconforming uses and structures shall be allowed to continue so long as they remain otherwise lawful, subject to the provisions of this chapter. Nonconforming uses and structures which were not lawfully in existence on the effective date of this ordinance shall be prohibited.

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.

Findings:

- In 1963, the subject site was zoned B3S-1, Community Service District.
- A building permit was issued in September of 1983 to convert the single-family dwelling to a two-family dwelling.
- Rental licenses for two dwelling units date from 1991 to 2004.
- The previous owner operated her office out of the building from 1986 until 2004.
- Affidavits from previous and also current office lessees show that the building has been occupied by multiple office tenants since at least October of 1999.
- On November 22, 1999, the subject site was rezoned to R4.
- In 2004, the current owner states the property was sold as a mixed-use building with offices and one residential unit.
- In 2004 and 2005 the taxes due on the property reflect the combination of residential and commercial uses on the property.

It is the Planning Division’s opinion that the applicant has provided evidence that nonconforming rights for six individual offices in the R4 zoning district exist.

EXPANSION OF NONCONFORMING USE

The Planning Commission may approve an application if it meets the following standards and all other applicable regulations in the 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):

1. **A rezoning of the property would be inappropriate.**

Offices are first allowed in the OR1, Neighborhood Office Residence District as a conditional use. The properties located to the north and east of the subject site are zoned C1, Neighborhood Commercial District. The property to the north contains a multiple-family residential building and the property to the east contains a salon-spa, restaurant and a parking lot. The properties located to the south and east of the subject site are zoned R4, Multiple-family District. The property to the south contains a single-family dwelling and the property to the west is a multiple-family residential building. Although OR1 zoning is used to buffer commercial properties from adjacent residential areas in this case it would not be reasonable to rezone the subject site to OR1 given the residential nature of the building to the north. If the subject site were rezoned OR1 a handful of commercial uses could be established on the site that are not allowed in the R4 zoning district.

2. The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

Converting the existing dwelling unit in the building to office space will not result in any major modifications to the exterior of the building. Therefore, the Planning Division that the expansion will be compatible with the surrounding properties.

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.

Converting the existing dwelling unit in the building to office space should not result in significant increases of adverse, off-street impacts such as traffic, noise, dust, odors or parking congestion. The applicant has indicated that it is her goal to have all seven of the offices occupied by individual psychologists. By nature, these types of offices are quiet and do not produce any type of dust or odors.

The parking requirement for an office is one space per 300 square feet of gross floor area over 4,000 square feet and the parking requirement for a dwelling unit is one space per dwelling unit. As it is configured today (six offices and one dwelling unit) the building has a parking requirement of five spaces. By converting the dwelling unit to office space the parking requirement goes down by one space. As proposed there will be a surface parking area accessed off of the alley that will accommodate up to five vehicles.

4. The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.

The expansion involves the removal of an exterior stairway located on the north side of the building that leads from the third floor to the second floor and in its place a drop-down fire escape would be installed for building code purposes. This proposed alteration to the building would improve the appearance of the neighborhood as it will bring the building closer in appearance to what it looked like when it was originally constructed. The applicant is also proposing to remove the existing detached garage and construct a surface parking area that would be accessed off of the alley. There would be a total of five off-street parking spaces on the site. The existing garage is in disrepair and needs to be removed. If screened properly as required by section 541.360 and 531.110 of the zoning code, the Planning Division believes that the parking area would improve the appearance 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 on the subject property than is allowed by the regulations of the district in which the property is located.

No dwelling units are being added to the site as a result of this expansion.

6. The enlargement, expansion, relocation, structural alteration or intensification will not be located in the Floodway District.

This site is not located in the Floodway District.

RECOMMENDATIONS

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the nonconforming use certificate to establish legal nonconforming rights for six individual offices in the R4 zoning district located at 3005 James Avenue South

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the expansion of a nonconforming use to add one additional office in the building located at 3005 James Avenue South subject to the following conditions:

1. The parking area shall be screened from the adjacent residential properties as required by section 541.360 and 531.110 of the zoning code.
2. Approval of the final site and landscaping plans by the Department of Community Planning and Economic Development – Planning Division.

Attachments:

1. Introduction and statement of proposed use

Department of Community Planning and Economic Development – Planning Division
BZZ-2243

2. Responses to the findings for a certificate of nonconforming use and an expansion of a nonconforming use
3. Affidavit from the previous property owner
4. Affidavits from previous and also current office lessees
5. Affidavit from the adjacent property owner to the south stating support for the project
6. March 9, 2005 letter to CM Niziolek
7. March 9, 2005 letter to the East Calhoun Community Organization
8. March 31, 2005 e-mail from the East Calhoun Community Organization stating support for the project
9. Zoning Map
10. Existing and proposed site plan and floor plans
11. Photographs of the site and surrounding area