

**Community Planning and Economic Development - Planning Division Report**  
Nonconforming Use Certificate  
BZZ-2417

**Date:** July 21, 2005

**Applicant:** Paul Heinen

**Address of Property:** 3118 4<sup>th</sup> Street SE

**Contact Person and Phone:** Paul Zisla – Moss & Barnett 612-347-0328

**Planning Staff and Phone:** Jim Voll 612-673-3887

**Date Application Deemed Complete:** June 20, 2005

**End of 60 Day Decision Period:** August 19, 2005

**Ward: 2      Neighborhood Organization:** PPERRIA

**Existing Zoning:** R1A Single-family District.

**Proposed Request:** To establish legal nonconforming rights for a triplex located in the R1A District.

**Zoning code section authorizing the request:** Chapter 531 Nonconforming Uses and Structures; Section 531.30.

**Background & Analysis:** The applicant is requesting a nonconforming use certificate for a triplex in the R1A District for property located at 3118 4<sup>th</sup> Street SE. This site was zoned R3 Multiple-family until 1991 when it was downzoned to R1A Single-family as a part of the R3 40 Acre Study. The structure on the property was constructed as a duplex in 1987 and the applicant claims it was converted to a triplex in 1989 before the property was downzoned to the R1A District. The applicant claims that because the R3 District allowed multiple-family dwellings that the triplex was legally established before the zoning was changed.

Staff research of City records shows that the site was zoned R3 when the structure was built. A building permit for a duplex was obtained in 1987 (see the attached permit B 551734). The applicant claims that the duplex was converted to a triplex in 1989, but staff can find no record of a building permit or any other City approval. In addition, the R3 district under the 1963 zoning code required 2,500 square feet of lot area per dwelling unit and allowed a maximum variance of 20 percent for lot area. The subject lot is 4,950 square feet, so even with a maximum variance of lot area there would not be enough lot area per dwelling unit to allow a triplex. A variance of lot area from 5,000 square feet to 4,950 was granted in 1987 (V-2652) to allow the construction of the duplex.

In 1991, the site was downzoned from the R3 Multiple-family district to the R1A single-family District as a part of the R3 40-Acre Study. The land use inventory field notes from the study show the site as a

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duplex (please see attached notes). Triplexes and duplexes are not allowed in the R1A District. Based on the evidence in City records, staff recognizes the legal nonconforming status of the duplex, but can find no evidence that would establish that a triplex was legally established at 3118 4<sup>th</sup> Street SE.

**Findings:**

1. A building permit for a duplex was issued in 1987 (B 551734).
2. The site was zoned R3 under the 1963 code.
3. While the R3 District did allow a triplex as a permitted use, the lot area of 3118 4<sup>th</sup> Street SE was too small, even with the maximum allowable lot area variance, to legally allow the construction of a triplex that would meet the lot area per dwelling unit requirements of the R3 District.
4. Staff can find no records and the applicant has not provided any evidence that a building permit was obtained to convert the duplex into a triplex.
5. The 1991 R3 40-acre study inventory lists the structure as a duplex.
6. The 1991 R3 40-Acre Study downzoned this site from the R3 Multiple-family District to the R1A Single-family District that does not allow duplexes or triplexes.
7. The use was not legally established before the site was rezoned to R1A, which is a zoning district that does not allow triplexes.

Due to the lack of sufficient information and facts provided by the applicant for legal rights to a triplex and due to the fact that City records support that it is a duplex, staff can find no nonconforming rights to a triplex. Staff does acknowledge that the site was legally established as a duplex.

**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 nonconforming use certificate to establish legal nonconforming rights for a triplex in the R1A District for property located at 3118 4<sup>th</sup> Street SE.