

city of saint paul
planning commission resolution
file number
date

WHEREAS Brett Ripley, File # 18-050-373, has applied for a reestablishment of a legal nonconforming use as a 4-family dwelling under the provisions of § 62.102, § 62.106(h), and § 62.109(e) of the Saint Paul Legislative Code, on property located at 1685 Taylor Ave., Parcel Identification Number (PIN) 28.29.23.41.0037, legally described as Lot 9 and W 37 ft. Lot 10, Block 3, College Place Taylor's Division; and

WHEREAS, the Zoning Committee of the Planning Commission, on May 24, 2018, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The original building permit for the house at 1685 Taylor Avenue shows that it was constructed in 1897 as a one-family dwelling. The 1930 census shows that it was a one-family dwelling with owner occupants, John and Minnie Gebhard, and their son. The 1940 census shows that it was a one-family dwelling with a 74-year old owner occupant, Minnie Gebhard. City directories as recent as 1948 list only one resident in the house. In 1949 and again in 1965, city directories listed four apparently unrelated individuals residing at 1685 Taylor, with no indication of the number of units. A 1975 city directory listed four apparently unrelated individuals residing at the address, along with a phone number for each, suggesting that there were four units in the structure at that time. A Sanborn Insurance map covering the years 1929-1955 shows that the house was a one-family dwelling in 1929 and that it had been converted to flats by 1955, very likely between 1949 and 1955.
2. The property was zoned "B" Residence, which allowed one- and two-family dwellings, from 1922 to 1975. The property was rezoned R4 one-family residential when the City adopted a new zoning code in 1975. The property has never been zoned to allow more than two dwelling units.
3. Department of Safety and Inspections (DSI) records show that the house received a Certificate of Occupancy (C of O) for four dwelling units in 1982, which appears to have remained in place until 2006, even though the property has never been zoned to allow more than two dwelling units and there is no evidence of building permits to convert the house to three or four units.
4. Both the applicant and City records (a C of O) indicate that the previous property owner

moved by _____

seconded by _____

in favor _____

against _____

began using the first and second floor as one living unit around 2006, and continued to rent the third floor unit and the basement dwelling unit. By 2011, all units were vacant. The structure was registered as a Category II vacant building in 2012. At that time, a DSI inspector confirmed that the first and second floors were still designed as two separate dwelling units (a locking door separating the units, and each having a fully functioning kitchen), and DSI Zoning ordered that the locking door be removed and one kitchen be removed by removing all cabinets and capping gas, water and drain lines inside the walls, and disconnecting them at the source if feasible. Compliance with these orders was to be required prior to issuance of a C of O for the property, a condition of sale for a Category II vacant building. The responsible party at the time (the executor of the previous owner's estate) appealed the order. It does not appear that the appeal was granted, but DSI Zoning agreed to removal of the basement unit in lieu of the required alternations to the first and second floor units.

5. On or about August 20, 2012, a DSI inspector met with the executor and Brett Ripley (the applicant) at the property and informed them that the structure was eligible for a C of O as a three-family dwelling, provided compliance with the previous order and that a fire separation between the first and second floors was established. According to City records, the sale of the home to the applicant was scheduled to close on August 29, 2012, and a new Certificate of Occupancy was issued in January 2013.
6. Zoning Code § 62.102 states: *"A use or structure will be presumed legally nonconforming if it can be demonstrated by clear and convincing evidence that prior to October 25, 1975, the use or structure was established, converted, or expanded and occupied pursuant to building permits issued by the city; if the use or structure was allowed in its location at the time it was established; or if it can be demonstrated by clear and convincing evidence that the particular use or structure has been in existence continuously since December 13, 1956. The burden of proof shall be on the property owner. ...the planning commission may approve permits granting legal nonconforming status to uses or structures that do not meet these standards as set forth in section 62.109(a) and (b)".* Based upon clear and convincing evidence that use of the house at 1685 Taylor Avenue as a two-family dwelling was established under the old "B" Residence zoning that allowed a two-family dwelling at this location, use of the house as a two-family dwelling can be presumed to have had legal nonconforming status under the current R4 one-family residential zoning.
7. Zoning Code § 62.106(h) states: *"When a legal nonconforming use is discontinued or ceases to exist for a continuous period of more than one (1) year, the building, or building and land in combination shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be reestablished at the number of units for which it was originally constructed provided that it has not been physically converted to a fewer number of units".* It appears that the house at 1685 Taylor, which was originally constructed as a one-family dwelling and is located in the R4 one-family residential zoning district, lost its legal nonconforming status as a two-family dwelling when it was vacant from 2011-2013. Zoning Code § 62.106(h) provides that the legal nonconforming use may be reestablished as set forth in § 62.109(e).
8. Zoning Code § 62.109(e) states: *When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:*

- (1) *The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose.* This finding is met for reestablishment of legal nonconforming use of the house as a 2-family dwelling or (based on findings of previous zoning administrators and other City building officials) as a 3-family dwelling, but not as a 4-family dwelling. While the house was originally constructed as a one-family dwelling, which it was designed for, it is a relatively large house that was legally converted to a two-family dwelling several decades ago, and it would not be reasonable or economical to require conversion back to a one-family dwelling now. It appears that the house could reasonably and economically be used as a 2-family or 3-family dwelling.
- (2) *The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use.* This finding is met for reestablishment of legal nonconforming use of the house as a two-family dwelling or (based on findings of previous zoning administrators and other City building officials) as a 3-family dwelling, but not as a 4-family dwelling. Based upon clear and convincing evidence that use of the house as a two-family dwelling was established under the old "B" Residence zoning that allowed a two-family dwelling at this location, use of the house as a two-family dwelling can be presumed to have had legal nonconforming status in the current R4 one-family residential zoning district under the requirements for this in Zoning Code § 62.102. Use of the house as a two-family dwelling is equally appropriate to the R4 one-family residential district as the previous legal nonconforming use of the house as a two-family dwelling. Use of the house as a 3-family dwelling is equally appropriate to the R4 one-family residential district as the previous use of the house as a 3-family dwelling that a City inspector told the applicant in 2012 was eligible for a C of O, and for which a C of O was issued in 2013.
- (3) *The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.* This finding is met. The structure has been used for up to four units with no indication that it was detrimental to the existing character of development in the immediate neighborhood or that it endangered the public health, safety, or general welfare.
- (4) *The proposed use is consistent with the comprehensive plan.* This finding is met. This property is located in an area that the Comprehensive Plan gives a future land use designation of "Established Neighborhood", described as a "*predominantly residential area with a range of housing types. Single family houses and duplexes predominate, although there may be smaller scale multifamily housing scattered within these neighborhoods*". The Hamline Midway Community Plan advocates for "*the development of alternatives to single family housing throughout the neighborhood*".
- (5) *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use.* This finding is met. The petition was found sufficient on April 6, 2018: 16 parcels eligible; 11 parcels required; 11 parcels signed.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, based on the findings above, that the application of Brett Ripley for reestablishment of a legal nonconforming use of the house at 1685 Taylor Avenue is hereby denied for a 4-family dwelling, and approved for a 2- or 3-family dwelling subject to the following condition:

1. A fire C of O inspection shall be scheduled within one year from the date of approval.