MINUTES OF THE ZONING COMMITTEE
Thursday, May 24, 2018 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Baker, DeJoy, Eckman, Edgerton, Fredson, Lindeke, and Reveal
EXCUSED: Ochs
STAFF: Josh Williams, Cherie Englund, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

Brett Ripley - 18-050-373 - reestablishment of a nonconforming use as a 4-family dwelling at 1685 Taylor Ave., between Aldine and Charlotte.

Josh Williams presented the staff report with a recommendation for approval of a permit for reestablishment of nonconforming use of the house as a 2-family dwelling, and denial of the application for reestablishment of nonconforming use of the house as a 4-family dwelling. He said District 11 recommended approval, there were 6 letters in support, and no letters in opposition.

Mr. Williams explained that the property has never been zoned to allow more than two dwelling units. It never could have had legal nonconforming status for more than two units, and legal nonconforming use can be reestablished only for what was legal before. In response to a question by Commissioner Reveal, he said there was a gap in the use and legal nonconforming status is lost if it is discontinued for more than one year.

Mr. Torstenson noted the citation in staff report finding 6 of Zoning Code § 62.102, which lays out the criteria for a use to be legally nonconforming.

In response to a question by Chair Edgerton, Mr. Williams said that the applicant is requesting a permit for reestablishment of nonconforming use of the house as a 4-family dwelling. He went over staff report findings 7 and 8, and said there is no evidence that use of the house for 3 or 4 units could ever have been a legal nonconforming use under the requirements of the Zoning Code. However, when Mr. Ripley purchased the house in 2012 a DSI inspector told him it was eligible for a certificate of occupancy as a 3-family dwelling. It got a certificate of occupancy for 4 units in 1982, and was used as a 4-plex for 20 years. Prior to Mr. Ripley's purchase of the house it was completely vacant for more than one year when it was in probate after the death of the owner.

In response to a question by Commissioner Baker, Mr. Williams and Chair Edgerton discussed the Planning Commission denial of previous applications by Mr. Ripley for reestablishment of nonconforming use of the house as a 4-family dwelling in 2013 and 2014.

In response to a question by Commissioner Reveal about accessory dwelling units, Mr. Torstenson said that an accessory dwelling unit is allowed for a single-family home.

In response to a question by Commissioner Eckman, Mr. Williams said the property is zoned R4 one-family residential, which just allows a 1-family dwelling. A 4-family dwelling is not permitted in the R4 district.

Chair Edgerton recalled a previous nonconforming use permit application that was denied because the applicant could not prove the nonconforming use had been in continuous existence for at least ten years prior to the application, which was not discretionary.

Mr. Williams said the requirements for establishment of legal nonconforming status in Zoning Code § 62.109(a) include at least ten years of continuous existence prior to the date of the application. That's different than the application in this case, which is for reestablishment of legal nonconforming use under the requirements in § 62.109(e). A key factor in this application is that it has to have been a legal nonconforming use at some time. The Department of Safety and Inspections issued a certificate of occupancy from 1982 to 2006 for a 4-family dwelling, and then it was used as a 3-family dwelling, but the property was never zoned to allow for more than two dwelling units and there were no permits for conversion to more than two dwelling units.

The applicant, Brett Ripley, 1679 Hubbard Ave., said he owns a 4-plex and thought it was zoned as a nonconforming 3-plex. He said that prior to his purchase of the house, the former owner used two of the units as a single unit and that is when the house was designated as a 3-plex. He said they applied for a nonconforming use permit after purchasing the house and were surprised they couldn't get it back to 4 units despite getting neighborhood signatures and paying the fee. The permit was denied because of the requirement that the house can't reasonably or economically be used for a conforming purpose. Since then, they have contemplated remodeling from 4 units to 3, but it would be costly because of the way that the house is currently laid out. Reducing the house to 2 or 3 units would take quality affordable housing off of the market, his renters would lose their homes, and income from the units is important to him. During a previous fire inspection, the units were determined to be safe and up to code. He said they are baffled by the difficulty of this process for what seems to be a simple request.

In response to a question by Commissioner Lindeke about why he didn't file an appeal to City Council after the 2014 denial by the Planning Commission, Mr. Ripley said he was discouraged and didn't see a favorable outcome at that time.

Commissioner DeJoy asked if he had clear evidence that the house was ever a legal nonconforming 4-family dwelling. Mr. Ripley said he found the certificate of occupancy from the early 80s. Mr. Williams noted staff report finding 1 regarding what records show about the history of use and occupancy of the house.

Chair Edgerton noted that in 1975 there were 4 phone numbers, one listed to each resident, suggesting that there were 4 dwelling units. Commissioner DeJoy said that was a city directory listing, not an official document.

Brian Alton, 951 Grand Ave., representing the applicant, said the staff report from the first application lists the same 5 required findings. It said findings 2 through 5 were met and finding 1 was not met, which was the basis for denial. He said they have evidence that the house cannot be used reasonably or economically as a 3-family dwelling. He noted a determination made in the Danmark LLC application in February 2018 that a large 3-story structure could not be reasonably or economically used for a conforming purpose. He noted a similar issue today in the Geneet Kidane application, that the house cannot be reasonably and economically converted to a single-family dwelling because of the layout of the house as an up-down duplex and its long history as a 2-unit structure.

In response to a question by Commissioner Baker, Mr. Alton noted finding 1 in the February 7, 2014 Planning Commission resolution states that the required finding that the structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose was not met, and that it could be used as a 3-family dwelling.

Commissioner Reveal said that she would like to see language in the truth in sale form to state the legal allowable use and zoning for the property.

Mr. Alton said that the city has determined several times that the house is a legal triplex: in 2012 by Zoning Administrator Wendy Lane; in 2014 by the Planning Commission; and in 2017 by the Legislative Hearing Officer and Fire Inspector, A.J. Neis. Mr. Alton said that before Mr. Ripley purchased the property, he was told by the Department of Safety and Inspections that the house was a triplex. He said that from 1922 to 1975 a duplex was permitted in a "B" residence zoning district, in 1955 there was evidence the house was converted to flats, and in 1959 there was a building permit application for an exterior staircase for duplex. Zoning Code § 62.106(m) allows a legal nonconforming 2-family residential use to be expanded. It was expanded to a 4-family dwelling and was a legal nonconforming 4-family dwelling from 1975 to 2006. It may have lost that legal nonconforming 4-family status when it was vacated after the death of the previous owner, but the code provides for reestablishment of a legal nonconforming use.

No one spoke in opposition and the public hearing was closed.

In response to a question by Chair Edgerton about discretion in this decision, Mr. Torstenson said the decision needs to be made based on the requirements in Zoning Code § 62.109(e).

Mr. Williams said a key question is what constitutes clear and convincing evidence that it was ever a legal nonconforming 4-family dwelling.

Commissioner DeJoy asked how the Department of Safety and Inspections could issue a certificate of occupancy if it isn't a legal nonconforming use. Mr. Williams said the inspector may have focused on fire safety rather than zoning compliance.

Commissioner Eckman said that more affordable housing is needed near Hamline University, and she thinks the cost to convert the house to fewer units would be a financial hardship.

Commissioner Lindeke said there are a lot of planning reasons to make 4-plexes legal throughout the city, he finds the city directory from 1975 to be clear and convincing evidence that this was a 4-family dwelling at that time, and he will vote against the staff recommendation.

Chair Edgerton noted the findings required in order to permit reestablishment of more units, which would need to be different than two of the findings in the staff report.

Mr. Warner said the committee would need to make findings that are factually based that would support the decision. He noted staff report finding 8(1) that the house was legally converted to a duplex, but there were no building permits and it was not legally converted to a 3- or 4-family dwelling.

Commissioner Fredson said staff recommends approval of reestablishment of a legal nonconforming 2-family dwelling and denial of the application for a 4-family dwelling, and asked why not allow a 3-family dwelling.

Mr. Williams said that when the property went vacant it lost its legal nonconforming status, and the R4 one-family residential zoning district only allows a 1-family dwelling. A standard for reestablishing a legal nonconforming use is that it must have been legal at some time in the first place. In this case, there is no evidence that the house was ever legal as more than a duplex.

Commissioner Fredson asked to what extent to factor in the certificate of occupancy for a three-family dwelling issued by the Department of Safety and Inspections. Chair Edgerton said that at one time it had a certificate of occupancy for four units.

Commissioner DeJoy said that a certificate of occupancy can be for other reasons, such as safety. Mr. Warner noted that the zoning code says a certificate of occupancy presumes zoning compliance, but a fire inspector doesn't have authority to rezone property. He said the commission must be cognizant of the purpose and intent of the zoning code, and that this is a single-family zoning district. If that's the wrong district, it can be rezoned.

Commissioner DeJoy moved approval of the reestablishment of legal nonconforming use as a 2-family dwelling and denial of the reestablishment of legal nonconforming use as a 4-family dwelling. Commissioner Reveal seconded the motion.

Commissioner Baker asked if the Zoning Administrator agreed at any time that it was more than a 2-family dwelling and how factor that in, because the Zoning Administrator must uphold the zoning code.

Mr. Williams said that information and notes in certificate of occupancy files and letters to the property owner, there was discussion and evidence that the house was constructed as a one-family dwelling and remodeled to function as a 4-family dwelling. The units are in the basement, first and second floors, and the attic. The previous owner used the first and second floor units as a single unit, and there was a DSI order to make that one unit by removing one of the kitchens and any locking doors between them. The Zoning Administrator said it would also be fine to eliminate the basement unit as an alternative to combining the first and second floor units, allowing 3 dwelling units.

Commissioner Reveal asked if the Zoning Administrator put this in writing. Commissioner Baker said that if it is in writing, he could agree with a 3-family dwelling.

Chair Edgerton said that he would reopen the public hearing for Mr. Alton to clarify where this information is located.

Mr. Alton said his testimony referenced a Zoning Administrator determination that this is a three-family dwelling, and the basis for this is found on page 4 of the stamp activity detail included with the staff report in the zoning packet. The comment is on August 20, 2012, by A.J. Neis that he contacted the Zoning Administrator and she was okay with the basement unit as the one to be removed, and that he advised the owner that it is okay to remove the basement unit and allow occupancy of floors 1, 2, and 3. Mr. Alton noted that on page 2 of the same report, on July 26, 2011, "zoning has determined that since use is nonconforming, property cannot be reverted to 4 units again as the new PM requested. They further confirmed that conversion was not proper under permit for conversion from 4 units to 3 and that there was no approval for second kitchen to remain."

Mr. Williams said that on page 2 of the stamp report, it suggests they were viewing this as a legal 3-family dwelling, and this is where staff drew that finding from.

Chair Edgerton closed the public hearing.

Commissioner Reveal proposed a friendly amendment to amend findings 8(1) and 8(2) to state that based on findings of the previous Zoning Administrator and other building officials the findings are met for a 2- or 3-family dwelling but not as a 4-family dwelling, and to approve reestablishment of legal nonconforming use of the house as a 2- or 3-family dwelling but not as a 4-family dwelling. Commissioner DeJoy did not accept the amendment.

Commissioner Reveal said they could approve the staff recommendation and make another motion to approve a 3-family dwelling.

The motion passed by a vote of 7-0-0.

Adopted Yeas - 7 Nays - 0 Abstained - 0

Commissioner Reveal made another motion to approve a permit for reestablishment of nonconforming use of the house as a 3-family dwelling based on her previously stated rationale. Commissioner Fredson seconded the motion.

Mr. Williams suggested a minor change to finding 6 and remove the entire last sentence, which Commissioner Reveal accepted.

Mr. Warner noted finding 5 language about eligibility to be a 3-family dwelling subject to "compliance with the previous order." He doesn't know what the previous order was, but he is concerned about the life and safety of the occupants.

Commissioner Reveal said they can add a condition that it will comply with all safety requirements.

Mr. Williams said the prior order involved separation of the first and second floor units and several minor deficiencies. A condition could be a new Certificate of Occupancy inspection.

Commissioner Lindeke said that an appeal to the City Council could result in a different outcome.

The motion passed by a vote of 7-0-0.

Adopted Yeas - 7 Nays - 0 Abstained - 0

Drafted by:	Submitted by:	Approved by:
Cherie Englund Recording Secretary	Josh Williams City Planner	Dan Edgerton Chair