ZONING COMMITTEE STAFF REPORT

1. FILE NAME: Jerry Walczak

FILE # 15-002-935

2. APPLICANT: Jerry Walczak

HEARING DATE: February 5, 2015

3. TYPE OF APPLICATION: Nonconforming Use Permit - Reestablishment

4. LOCATION: 1438 Edmund Ave, between Pascal and Albert

5. PIN & LEGAL DESCRIPTION: 342923240149; Syndicate No 5 Addition, Lot 10, Block 21

6. PLANNING DISTRICT: 11

7. **ZONING CODE REFERENCE:** § 62.106(i), §62.109(e)

PRESENT ZONING: R4

8. STAFF REPORT DATE: January 29, 2015

BY: Josh Williams

9. DATE RECEIVED: January 13, 2015

60-DAY DEADLINE FOR ACTION: March 14, 2015

A. PURPOSE: Reestablishment of nonconforming use to construct a new duplex

B. PARCEL SIZE: 4960 sq. ft.

C. **EXISTING LAND USE:** R-Duplex (demolished September 2014)

D. SURROUNDING LAND USE:

North: Residential (R4)

East: Residential (R4)

South: Residential (R4)

West: Residential (R4)

- E. **ZONING CODE CITATION:** § 62.106(i) provides for continuance of legal nonconforming status for a limited time after a structure is destroyed by fire. §62.109(e) lists the conditions under which the Planning Commission may grant a permit to reestablish a nonconforming use. § 63.110 lists building design standards, including a requirement for new principal residential buildings that above grade window and door openings shall comprise at least 10% of the total area of all exterior walls.
- F. HISTORY/DISCUSSION: There is no zoning history for the property. A fire in December 2013 made the structure uninhabitable, and the City designated is as a Category 3 vacant building on December 5, 2013. A second fire occurred in March of 2014. The structure was demolished in September of 2014. The Zoning Administrator has determined that per §62.106(i), because no building permit for repair or replacement of the structure was applied for within 180 days of the Category 3 designation, a duplex cannot be reconstructed on the R4-zoned property unless the Planning Commission approves the reestablishment of a non-conforming use. The applicant has stated that a settlement with his insurance company was not reached until July 2014, and that this among other reasons prevented him from applying for a building permit within 180 days of the Category 3 designation.
- G. **DISTRICT COUNCIL RECOMMENDATION:** The District 11 Council has not made a recommendation on this application.

H. FINDINGS:

- 1. Zoning Code § 62.106(i) states that "when a structure containing a nonconforming use is removed or destroyed by any means, including by fire or other peril, to the extent of more than fifty (50) percent of its estimated market value as indicated by the records of the county assessor at the time of destruction, and no building permit for repair or replacement of the structure has been applied for within one hundred eighty (180) days of the time of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this code." A fire in December 2013 made the structure uninhabitable, and the City designated is as a Category 3 vacant building on December 5, 2013.
- 2. 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. The applicant purchased the structure as a duplex and lived it for ten years until it was rendered uninhabitable by a fire in December 2013, after which he made reasonable efforts to pursue reconstruction of the duplex. Prohibiting replacement of the demolished structure with a duplex would be unreasonable and would cause the applicant undue economic hardship.
- (2) The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use. This finding can be met. The proposed use is the same as the previous legal nonconforming use. The previous structure was generally similar in mass and design to the principal structures on surrounding lots, primarily a mix of bungalows and other one and a half story single family homes. A requirement that the new principal structure be similar in mass and design to surrounding principal structures should be a condition of approval.
- (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 can be met. The immediate neighborhood is characterized by predominately single-family homes, with three other duplexes on Edmund between Pascal and Albert. Most surrounding principal structures are bungalows or other one and a half story single family homes. A requirement that the new principal structure be similar in mass and design to surrounding principal structures should be a condition of approval.
- (4) The proposed use is consistent with the comprehensive plan. This finding is met. One of the major strategies of the Housing Chapter of the Saint Paul Comprehensive Plan is to [B]uild upon Saint Paul's Strengths in the Evolving Metropolitan Housing Market. Policy H1.1 is to [I]ncrease housing choices across the City to support economically diverse neighborhoods. Policy H1.3 is to [R]evitalize the City by developing land-efficient housing. The applicant is seeking to reestablish a use that supports these goals by providing smaller, more affordable units and makes efficient use of a relatively small parcel to provide multiple units.
- (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 January 13, 2015: 19 parcels eligible; 13 parcels required; 13 parcels signed.
- I. STAFF RECOMMENDATION: Based on the findings above, staff recommends approval of the application of Jerry Walczak for reestablishment of nonconforming use to construct a new duplex at 1438 Edmund, subject to the following conditions:
 - 1. The new principal structure shall in compliance with the applicable building design standards listed in § 63.110 of the Zoning Code.
 - 2. The height of eaves on the east and west facades of the new principal structure shall be lowered by two and a half feet, to approximately 16' 2" above present grade, and the pitch of the roof changed to 12:8.
 - 3. Final building plans shall reflect conditions 1 and 2 above and shall be approved by the Zoning Administrator.

Applicant's Signature // Onw

K:cmartine/ped/forms/nonconforming use permit Revised 1/3/07

NONCONFORMING USE PERMIT APPLICATION
Department of Planning and Economic Development
Zoning Section
1400 City Hall Annex

Zoning Office Use Only File #: <u>/5 -002 93</u>5

	Fourth Street ul, MN 55102-1634 6-6589 3429 23 24 0149
APPLICANT	Name TERRY WALCZAK Address 1300 Northwest Parkway \$ 213 City New Brightonst. MN Zip 551/2 Daytime Phone Name of Owner (if different) N/A
	Contact Person (if different) Phone 651-308-7779
PROPERTY LOCATION	Address/Location 1438 EDMIND AVE. ST. PAUL MIN 55104 Legal Description LOT 10, BLock 21, SYNDICATE NO. 5 ADDITION, RAMSEV CO. 9 MN Current Zoning (attach additional sheet finecessary)
	T: Application is hereby made for a Nonconforming Use Permit under provisions of Chapter 62, Section 109 of the Zoning Code:
The permit is for:	Change from one nonconforming use to another (para. c) Re-establishment of a nonconforming use vacant for more than one year (para. e) Establishment of legal nonconforming use status for use in existence at least 10 years (para. a) Enlargement of a nonconforming use (para. d)
Present/Past Use	SIFORMATION: Supply the information that is applicable to your type of permit. DUPLEX TO DUPLEY DUPLEY sheets if necessary
,	CK 1025
Attachments as	required Site Plan Consent Petition Affidavit

Jerry Walczak

1438 Edmund

St. Paul, MN

Hardship letter:

To whom it may concern,

I have owned and lived at the above property for 10 years. I bought this home because of the location and most of all the ability to own & occupy a rental home to help pay my mortgage.

Sadly I have lost almost everything with my house fire in December 2013 and another one in March 2014. I have been displaced and trying to figure out how I can rebuild my home. It has been a long and frustrating process with insurance company and investigators determining the cause and amount to be paid out to me to replace my home. The Insurance Company finally settled on the cost for replacement July 2014, (7 months after the first fire and 4 months after second fire).

I started in July with an architect/builder to design and price out new home. I designed the footprint a little smaller to save cost and mostly to allow larger setbacks. I hired a certified surveyor and got that done in 2 weeks (record time) for demolition permit. Continued to work on building plans and pricing and finish material selections for a few months while I was working on a demolition permit. Permit was issued September 3, 2014. House was demoed immediately. I settled on plans and pricing in October and applied for a building permit. I feel very fast time frame.

I was contacted by Wendy in the zoning dept stating that the home could not be rebuilt as a duplex. Apparently we needed to start home sometime before April or May in order for duplex to be rebuilt. Wendy also stated that the house was larger than original home. The home was not designed bigger footprint than original home it was actually smaller. This was a complete shock to me hearing I was supposed to have started home 3 months after original fire in December 2013 in order to rebuild my duplex home. Time frame City allowed me was impossible and I was not informed properly of the circumstances. Not to mention the insurance company would not allow home to be disturbed until investigation was final in June and check was not issued until July. I applied and obtained a demolition permit months before and I was never told about expired time frame to rebuild my home as a duplex.

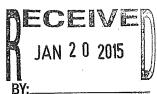
I have worked diligently to rebuild my home to fit within the neighboring properties and sacrificed footprint size and feel the time frame to rebuild a non conforming structure is not reasonable to accomplish. Had I known I would have addressed this with the city and asked for an extension due to the complex situation with the multiple fires and lengthy investigation of claims adjuster and insurance company. I could not do any home designing until 6 months after fire, once insurance finally settled my

Date: 1/20/15

claim. I am very confused on what I needed to do differently. I am getting mixed timeframes as it states below it shows 1 year reestablishment....

I now have had pay money write a letter and explain to my neighbors my hardship with little understanding of why I am even required to get people to sign and agree with me to rebuilt my home as the same use as I had bought it and lived in for 10 years. This home will be an improvement to the neighborhood, safer and more energy efficient.

Reestablishment of nonconforming use:



City Plan tech Paul Dubruiel is requiring me to submit a response to your Reestablishment of nonconforming use:

When a nonconforming use of a structure is discontinued or ceases to exist for a continuous period of more than one year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

This does not apply to 1438 Edmund due to the fact that the home existed 4 months ago. Home was demolished in September 2014. The first Fire was December 2013 and second fire was in March 2014. New home Building permit was applied in October 2014 less than a year from original fire.

 The structure, or structure and land in combination, cannot reasonably be or economically used for a conforming purpose;

Response:

For me the answer is No.

My home was purchased as a duplex and other homes close to property are also duplexes. To rebuild home and not have the ability to rent out the upper level becomes a financial strain for me to afford to pay my mortgage. The home is less valuable as a single family home. My equity would be much less. I payed my loan down for 10 years and barley made It thru financial collapse of 2008. If I build a smaller home the minimal cost savings still would be a financial strain and not conform to neighboring properties and home would be less valuable and I would loose equity I have been struggling to keep for 10 years.

2) The proposed use is equally appropriate or more appropriate to the district than the previous nonconforming use;

Response:

Proposed was appropriate when I purchased it 10 years ago and will be even more appropriate with new structure that will now meet current building codes, safety standards and an improvement to the neighborhood.

Neighborhood has a combination of single family and duplex homes. See attached pictures of 5 duplexes close to my home. Proposed footprint is less than previous home similar size to neighboring homes. See attached picture showing home footprint sizes. Home was a duplex and still would be a duplex if fire had not destroyed.

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;

Response:

Absolutely not.

Neighborhood has a combination of single family and duplex homes. See attached pictures of 5 duplexes close to my home. Proposed footprint is less than previous home similar size to neighboring homes. See attached picture showing home footprint sizes.

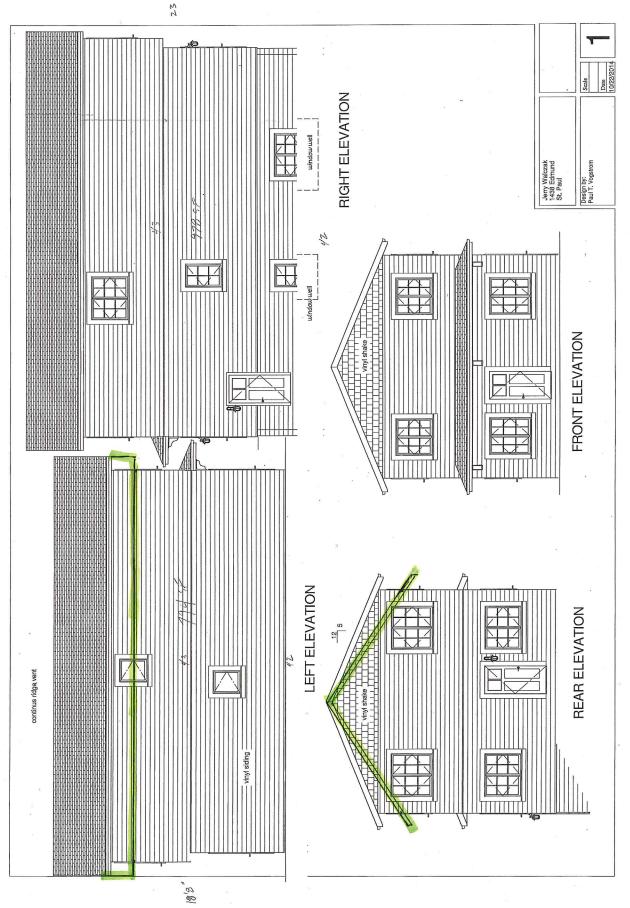
<u>Proposed structure will meet current building codes, safety standards and an improvement to the neighborhood.</u>

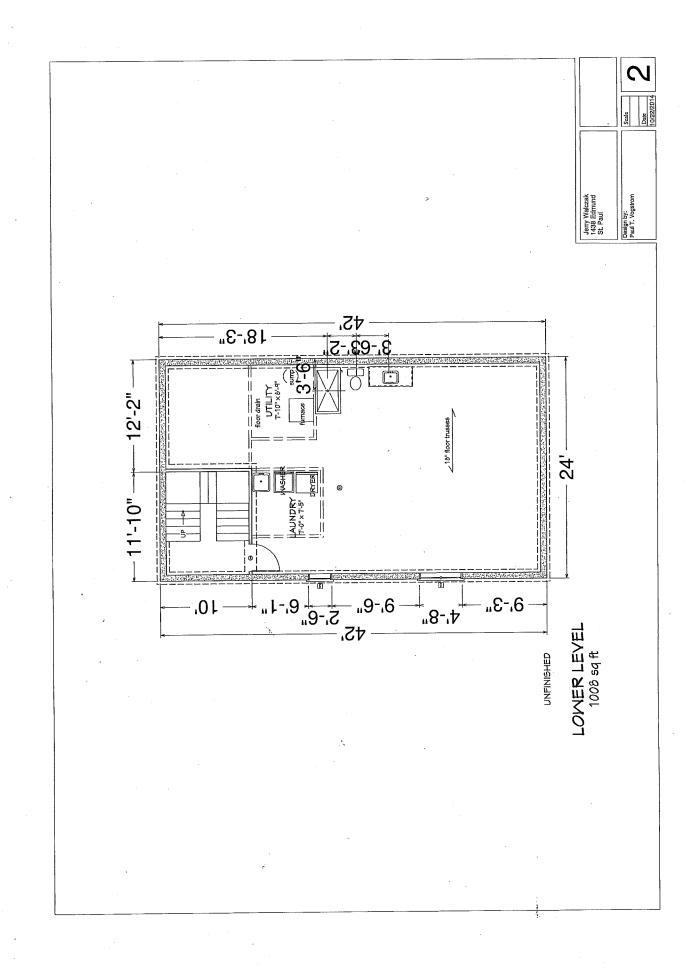
- 4) The proposed use is consistent with the comprehensive plan; and
- 5) A notarized petition of at least two thirds of the owners of the described real estate within 100 feet has been submitted stating their support for the support

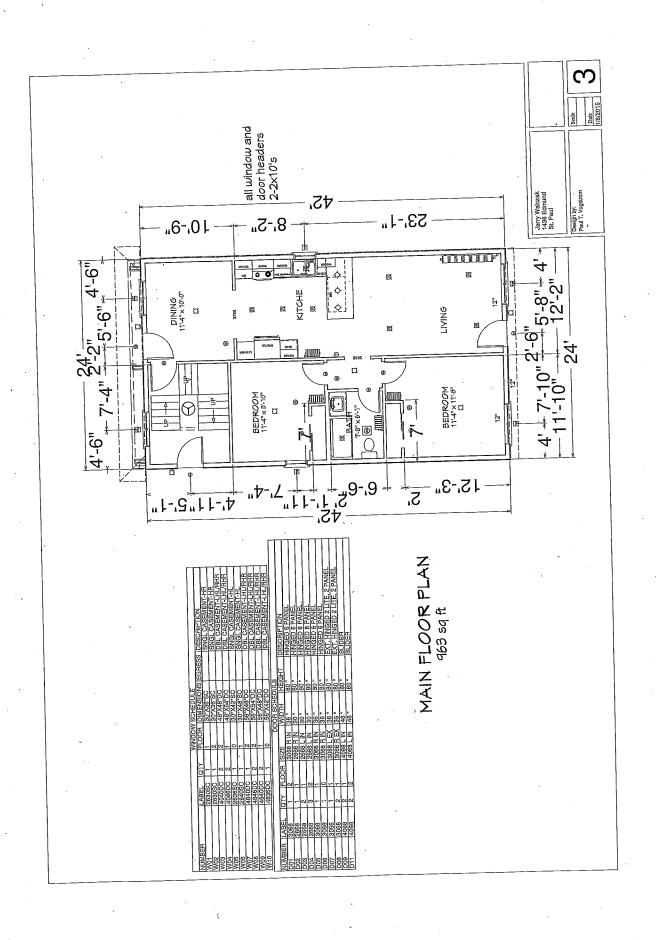
Response:

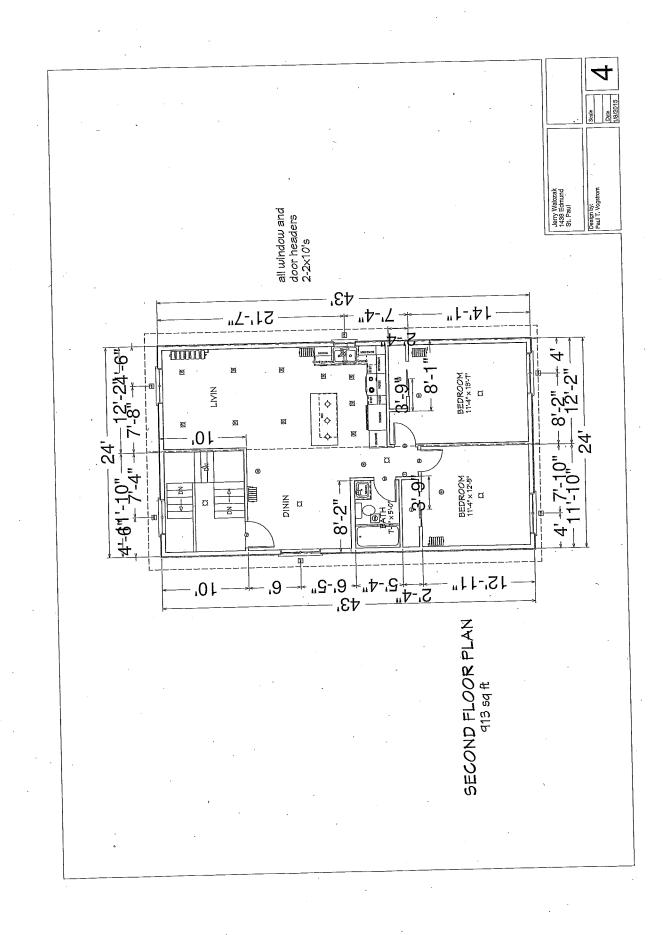
4) and 5) Submitted to city previously

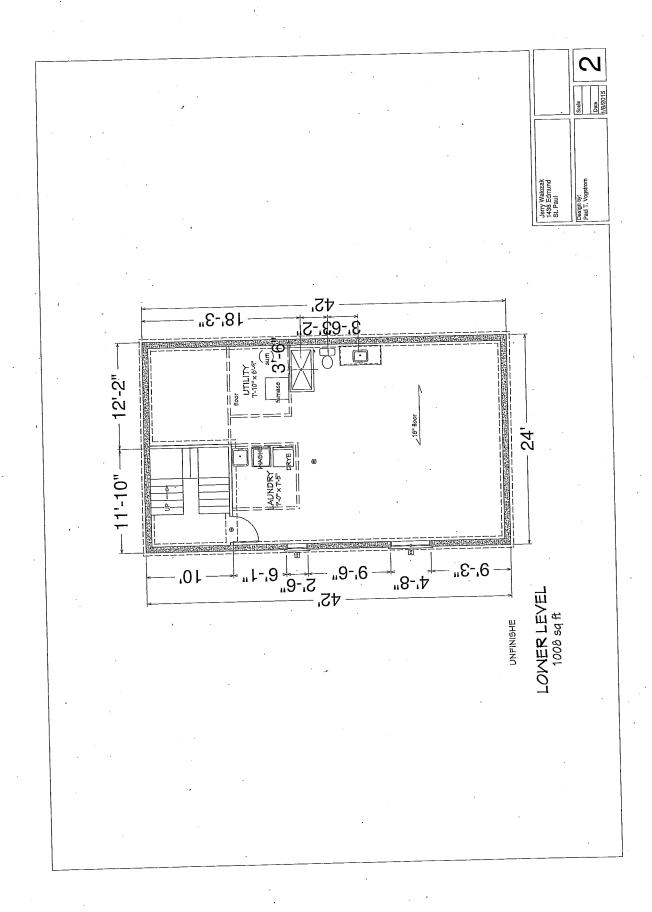
Regards, Jerry Walczak











ZONING PETITION SUFFICIENCY CHECK SHEET

REZONING

SCIF

NCUP

FIRST SUBMITTED	RESUBMITTED
1-8-1	1 12-18
DATE PETITION SUBMITTED: 1-8-15	date petition resubmitted: $1-13-15$
DATE OFFICIALLY RECEIVED:	DATE OFFICIALLY RECEIVED: 1-13-15
PARCELS ELIGIBLE: 19	PARCELS ELIGIBLE:
PARCELS REQUIRED: 13	parcels required: <u>13</u>
PARCELS SIGNED: 12	PARCELS SIGNED: 13

FAUL . BU DUBRU IEL CCI, STPAUL, MN CITY OF SAINT PAUL

. US

CONSENT OF ADJOINING PROPERTY OWNERS FOR A CONDITIONAL USE PERMIT

		r	***	3.00
	acknowledge that we have be	en presented with the follow	in 100 feet of the subject ving:	property,
2 08	A copy of the application of	JERRY WALC		
		OME DUPLEX		
	located at: 1438 EDI	MUND AVE, ST. P.	AUL MN. 55/04	<i></i> ,
٠ .		(address of	property)	
	documentation.		nt site plans, diagrams, or othe	
	We consent to the approva his/her representative.	l of this application as it w	as explained to us by the app	licant or
	ADDRESS OR P.I.N.	RECORD OWNER	STATURE	DATE/
Got 1 1	440 COMMUNO ALE VI	MICHARI MIRARY		12/0/14
GBW-	144/0 Edmund Ave	LONALD JOHNSON	12/00	12/06/14
Got 21	430 EDMAND	acas Malanu	Mushar	12/0/14
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6077	1450 Edmund		11000	12/6/14
GOT 8	142 + Charles Ave.	0	Children Esti	17/10/17
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-10	1455 Charles	Brian Googiss	1001	10/14
SOT II	1443 Charles	FC Streepel	G- Choebel	12/6/19
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1.7	3 200		# V	ing aligible

NOTE: All information on the upper portion of this application must be completed prior to obtaining eligible signatures on this petition.

9/08

CITY OF SAINT PAUL

CONSENT OF ADJOINING PROPERTY OWNERS FOR A CONDITIONAL USE PERMIT

We, the undersigned, ov acknowledge that we have	been presen	ted with the fo	llowing:		e subject	property,				
A copy of the application of JERRY WALCZAK,										
		(name o	f applicant)			*				
to establish a Home/DUPLEX										
(proposed use)										
located at: 1438 EDMUND AVE. ST. PAUL MN. 55/04,										
(address of property)										
requiring a conditional use documentation.					§ 00 00					
We consent to the appro- his/her representative.	val of this a	pplication as	it was expla	ined to us l	by the appl	icant or				
ADDRESS OR P.I.N.	RECO	RD OWNER		SIGNATU	RE	DATE				
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NOTE: All information on the upper portion of this application <u>must</u> be completed prior to obtaining eligible signatures on this petition.

CITY OF SAINT PAUL

AFFIDAVIT OF PETITIONER FOR A CONDITIONAL USE PERMIT OR A NONCONFORMING USE PERMIT

STATE OF MINNESOTA)

:SS

COUNTY OF RAMSEY)

The petitioner, TERRY WALCZAK, being first duly sworn, deposes and states that the consent petitioner is informed and believes the parties described on the consent petition are owners of the parcels of real estate described immediately before each name; each of the parties described on the consent petition is an owner of property within 100 feet of the subject property described in the petition; the consent petition contains signatures of owners of at least two-thirds (2/3) of all eligible properties within 100 feet of the subject property described in the petition; and the consent petition was signed by each said owner and the signatures are the true and correct signatures of each and all of the parties so described.

1300/VORTWEST PARKWAY 213 NEWBRIGHTON MN 551/2

651-208 7779 TELEPHONE NUMBER

Subscribed and sworn to before me this

g day of January, 2015.

NOTARY PUBLIC

SAMANTHA A. LANGER
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES 01/31/2019



CITY OF SAINT PAUL Christopher B. Coleman, Mayor 375 Jackson Street, Suite 220 Saint Paul, Minnesota 55101-1806 Telephone: 651-266-8989 Facsimile: 651-266-9124 Web: www.stpaul.gov/dsi

November 20, 2014

Mr. Jerry Walczak 1300 NW Parkway, # 213 New Brighton, MN 55112

RE: Building Permit for 1438 Edmund Avenue, Saint Paul, MN

Dear Mr. Walczak:

The purpose of this letter is to inform you that the building permit you and your contractor applied for on October 31, 2014 (permit #14-342609) to construct a new duplex at 1438 Edmund cannot be approved based on the provisions of the Saint Paul Zoning Code.

The property at 1438 Edmund Ave. is located in the R4 one-family residential zoning district. The building that previously occupied this lot was used as a duplex and was a legal nonconforming use, since duplexes are not permitted in the R4 district. A fire in December 2013 made the building uninhabitable, and it was classified as a Category 3 vacant building by the City on December 5, 2013.

Chapter 62 of the City of Saint Paul's Zoning Code (based on Minnesota Statutes Sec. 462.357 subd. 1e) regulates legal nonconforming uses. Specifically, Ch. 62.106(i) states:

When a structure containing a nonconforming use is removed or destroyed by any means, including by fire or other peril, to the extent of more than fifty (50) percent of its estimated market value as indicated in the records of the county assessor at the time of the destruction, and no building permit for repair or replacement of the structure has been applied for within one hundred eighty (180) days of the time of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this code.

The Ramsey County Assessor's 2013 estimated market value of the building was \$112,600. Subsequent classification of the building as a Category 3 vacant building indicates that the fire damage was extensive enough to make the building uninhabitable and that the cost of repair exceeded 50% of the estimated market value, or \$56,300. Using the date of December 5, 2013, as the date of the building's destruction, a building permit for the repair or replacement of the duplex should have been submitted to the Department of Safety and Inspections (DSI) no later than June 3, 2014. No permit application was received in our office by that date. Instead, a permit for the demolition of the building was issued by DSI on September 8, 2014, and a subsequent inspection indicates that the building has been removed. Therefore, it is the determination of this office that the nonconforming use has expired, and the lot at 1438 Edmund must now be used in conformance with the zoning code.

Typically, this would be a single family home, but the complete list of conforming uses can be found in the residential use table of the Zoning Code, Sec. <u>66.221</u>.

If you can provide documentation showing that the fire caused less than \$56,300 of damage, you may fall under Sec. 62.106(a) of the Zoning Code, which permits continuance of the nonconforming use "...through repair, replacement, restoration, maintenance, and improvement of structures, unless the nonconformity is discontinued for a period of more than one (1) year." In which case, a building permit for a new duplex structure that maintains the previous building's footprint and cubic content could be approved. However, the plans submitted with the building permit application of October 31, 2014, show a different building footprint and increased cubic content, and the permit cannot be approved based on Sec. 62.106(f):

A nonconforming use shall not be moved to a new location on the zoning lot or expanded in any way, including increased cubic content, unless the planning commission approves a permit for the expansion or relocation as set forth in section 62.109(d).

Information on Planning Commission permits for expansion of a nonconforming use can be found online at http://www.stpaul.gov/index.aspx?NID=1899. A copy of Sec. 62.109(d) is attached.

To summarize, residential reuse of the now-vacant lot at 1438 Edmund is limited to a one-family residential structure unless you can provide documentation that the fire damage did not exceed 50% of the assessor's estimated market value (\$56,300) and you are issued an expansion of nonconforming use permit by the Saint Paul Planning Commission.

This decision may be appealed to the Board of Zoning Appeals within 10 days. There is a filing fee of \$520.00. Information on the appeal process may be found at http://www.stpaul.gov/index.aspx?NID=1870.

Yours truly,

Wendy Lane

Zoning Administrator

Enc.

Google

To see all the details that are visible on the screen, use the *Print* link next to the map.

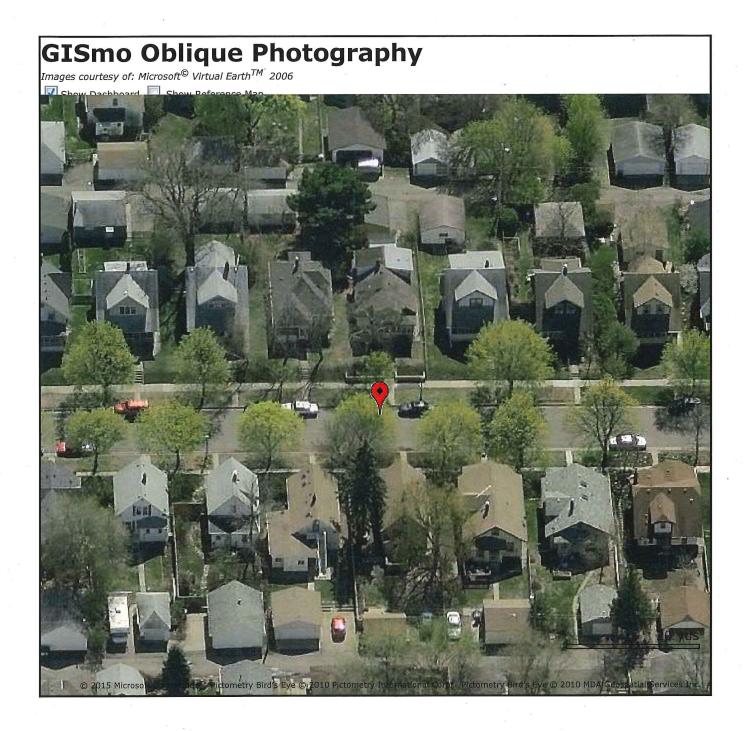


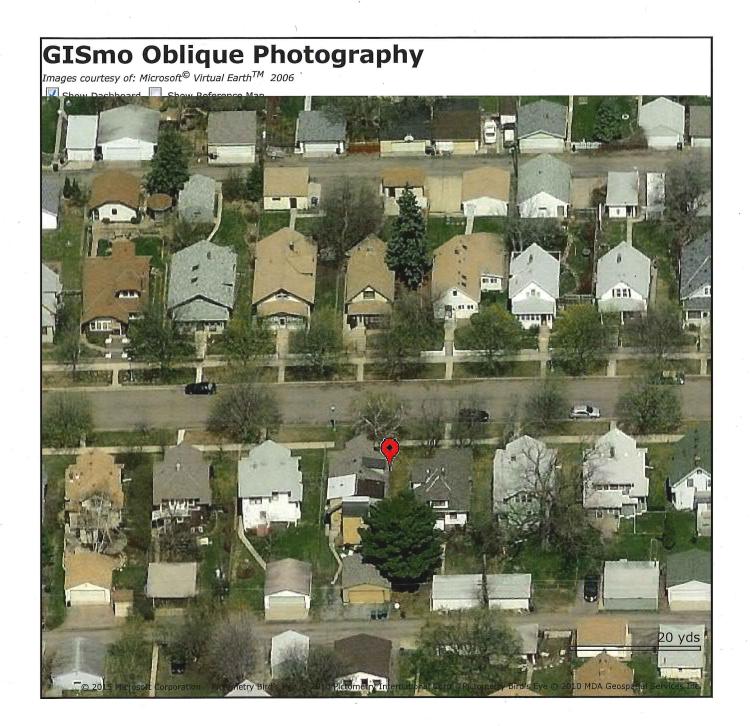


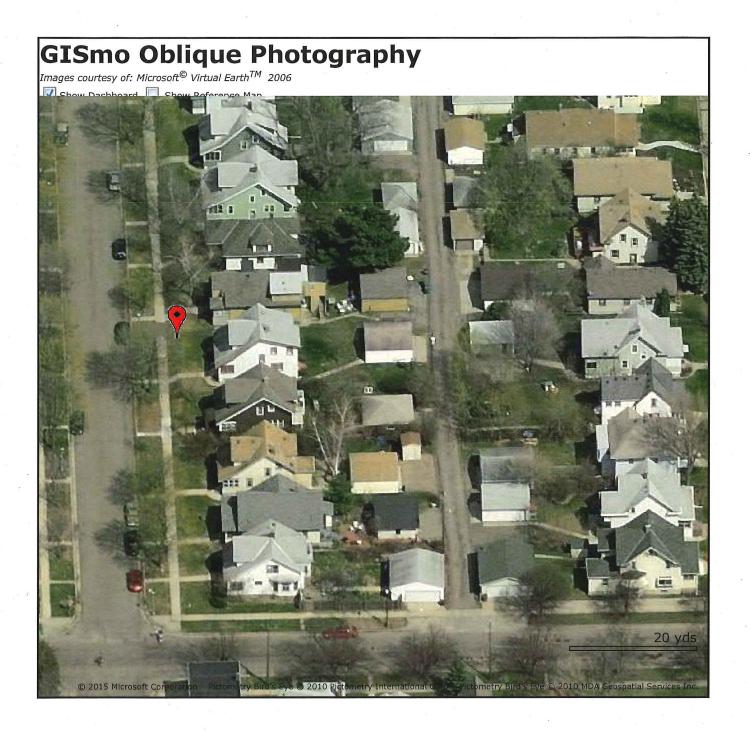
IRIS Picture Printout

Location: MN ~ Ramsey County, Minnesota
Description: 01/01/1996 - Street View - PropertyKey
Address: 1438 EDMUND AVE ST PAUL

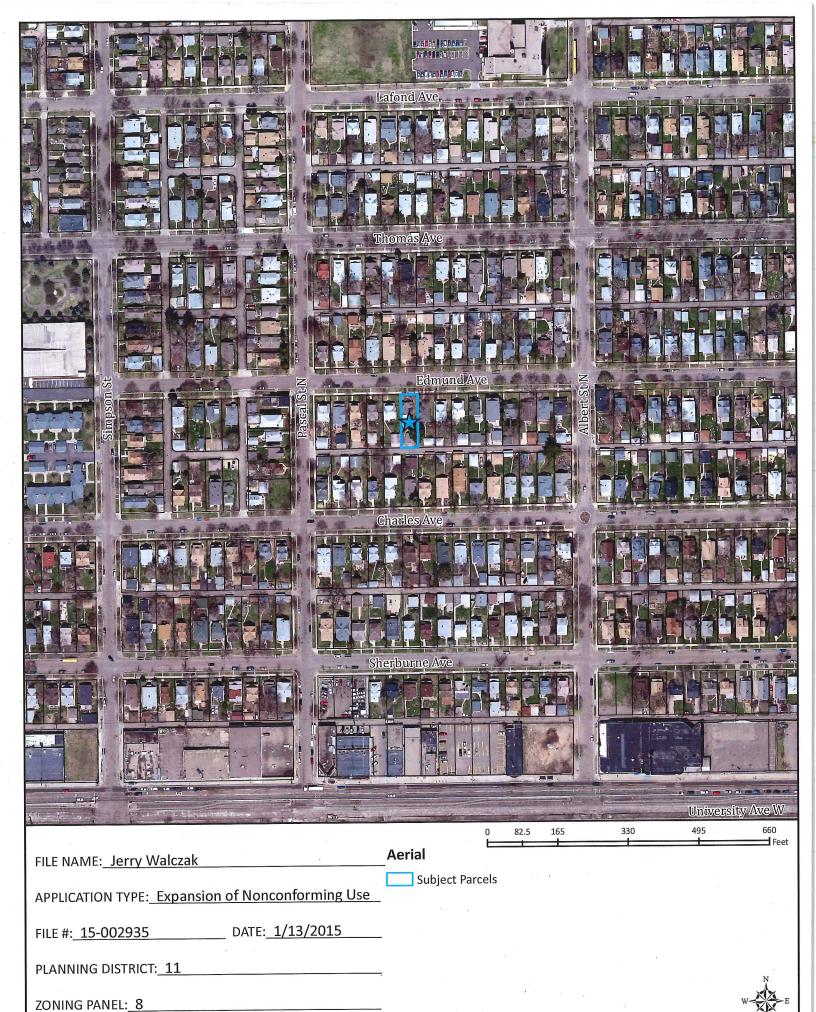












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Saint Paul Department of Planning and Economic Development and Ramsey County

