

## ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** Halima Duale **FILE #** 17-212-449
  2. **APPLICANT:** Halima Duale **HEARING DATE:** December 21, 2017
  3. **TYPE OF APPLICATION:** Nonconforming Use Permit - Reestablishment
  4. **LOCATION:** 1508 Van Buren Ave, between Simpson and Asbury
  5. **PIN & LEGAL DESCRIPTION:** 34.29.23.22.0106; Hamline Syndicate Add No1, Lot 8, Block 5
  6. **PLANNING DISTRICT:** 11
  7. **ZONING CODE REFERENCE:** §62.109(e) **PRESENT ZONING:** R4
  8. **STAFF REPORT DATE:** December 13, 2017 **BY:** Josh Williams
  9. **DATE RECEIVED:** November 8, 2017 **60-DAY DEADLINE FOR ACTION:** January 7, 2018
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- A. **PURPOSE:** Reestablishment of nonconforming use as a duplex.
- B. **PARCEL SIZE:** 5246 sq. ft. (43' x 122')
- C. **EXISTING LAND USE:** R-Single Family Dwelling
- D. **SURROUNDING LAND USE:**
  - North: Residential (R4)
  - East: Residential (R4)
  - South: Residential (R4)
  - West: Residential (R4)
- E. **ZONING CODE CITATION:** §62.109(e) lists the conditions under which the Planning Commission may grant a permit to reestablish a nonconforming use.
- F. **PARKING:** Zoning Code § 63.207 requires a minimum of 3 off-street parking spaces for a duplex. The property currently has no off-street parking. The applicant has stated that she intends to create a paved parking area in the rear of the property. The area is sufficient to provide three, non-stacked parking spaces.
- G. **HISTORY/DISCUSSION:** The subject property was in use as a triplex as long ago as 1954. As of 2006, the property was vacant, and was bank-owned. A Department of Safety and Inspections team inspection (involving inspectors from multiple areas of responsibility) of the property found numerous deficiencies in 2008, and the building was classified as a Category 2 vacant building. The applicant purchased the property in 2010, and converted the property to single family (conforming) use. This allowed the applicant to pull permits and conduct repairs to the property.
- H. **DISTRICT COUNCIL RECOMMENDATION:** The District 11 Council had not provided a recommendation as of the writing of this report.
- I. **FINDINGS:**
  1. The property is located in an R4 single-family zoning district. The subject property had previously been in use as legally nonconforming triplex. In 2010, the applicant purchased the subject property, as a vacant, Category 2 building. Because the building had been vacant, it had lost legal nonconforming status as a triplex. Under Ch. 33 of the legislative code, purchasers of Category 2 vacant buildings must prove financial wherewithal (in the form of a performance bond or deposit of a sufficient sum with the Department of Safety and Inspections, DSI) to bring the building into code compliance, and get approval from DSI of a schedule for completing all necessary repairs, not exceed one year from the date of the last Certificate of Occupancy inspection. It was not financially feasible for the applicant to meet these requirements within the allowed timeframe. As an alternative, the applicant signed an affidavit of residential use, converting the structure to a single-family use in compliance with the zoning code. Owner-occupied single-family units do not require a Certificate of Occupancy. In October, 2012, the property was inspected by DSI staff, and determined to be

in code compliance, allowing the applicant to occupy the property as a single-family residence. Since that time, the applicant has continued to make improvements to the property, and is now seeking to reestablish legal nonconforming use of the property as a duplex.

2. The subject structure is currently configured for single-family use. An open door way connects the kitchen of the residential unit accessed via the front door with the area of the structure which is proposed to be established as a second unit. The area proposed to be established as a second unit does not currently have a bathroom or kitchen. Sealing of the opening connecting the proposed units and installation of a kitchen and bathroom in the second unit should be required conditions of approval.
3. Section 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 structure was previously a triplex, but uninhabitable due to disrepair. Since the time of purchase, the applicant has made substantial repairs and investment in the property. These investments brought a previously neglected property back to a livable condition, and were made in part to restore the previous use of the property as a duplex, with rental income from a second unit helping the applicant to maintain ownership of the property.
  - (2) *The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use.* This finding is met. The property was previously in use as a triplex, and the applicant is seeking to establish a duplex.
  - (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. Establishment of the proposed use will allow the applicant to continue making investments in the property. Although it is zoned R4 single-family, legally non-conforming duplexes are a common in the surrounding area. Provided permits are pulled for all work to convert the property to a duplex, and that the property is inspected by appropriate DSI staff and a certified to be building and fire code compliant before the second unit is occupied, the finding can be met.
  - (4) *The proposed use is consistent with the comprehensive plan.* This finding is met. Policy H1.2 of the Saint Paul Comprehensive Plan is to "Meet market demand for transit-oriented housing" and Policy H1.3 is to "Revitalize the City by developing land-efficient housing." The proposed use is consistent with both policies. The Hamline Midway Community Plan includes policy H1 which calls for the neighborhood to "Encourage the maintenance and improvement of existing housing stock" and policy H2 which calls for the neighborhood to help "Maintain sustainable rental opportunities." The proposed use is consistent with both policies.
  - (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 November 3, 2017: 17 parcels eligible; 12 parcels required; 13 parcels signed.
4. In 2009, the Planning Commission adopted guidance for staff in evaluating applications for conversion of single-family properties to duplexes or triplexes. The guidelines state that staff shall recommend denial unless the following guidelines are met:
  - A. *Lot size of at least 5,000 square feet with a lot frontage of 40 feet.* The lot is 43 feet wide and has an area of approximately 5,246 square feet.

- B. *Gross living area, after completion of duplex conversion, of at least 1,500 square feet. Neither unit shall be smaller than 500 square feet. The net livable area (stairs and hallways excluded) of the proposed second unit is approximately 1,000 square feet, on a foot print of approximately 500 square feet. The footprint of the structure as a whole is approximately 2900 square feet.*
  - C. *Three off-street parking spaces (non-stacked) are preferred; two spaces are the required minimum. The property currently has no off-street parking, but the rear yard has enough spaces to accommodate at least three spaces. The applicant has expressed the intent to construct a paved parking area in the rear yard; the construction on the property within 2 years of a paved parking area of sufficient size to accommodate 3 parked vehicles should be a condition of approval.*
  - D. *All remodeling work for the duplex is on the inside of the structure unless the plans for exterior changes are approved by the Planning Commission as part of the application for reestablishment of nonconforming use as a duplex. The structure has exterior access via an existing side door as well as emergency egress windows in both bedrooms. No exterior modifications to the structure are required or proposed.*
  - E. *For purposes of protecting the welfare and safety of the occupants of any structure that has been converted into a duplex without the necessary permits, a code compliance inspection shall be conducted and the necessary permits obtained to bring the entire structure into conformance with building and fire code standards; or the property owner must, as a condition of approval, make the necessary improvements to obtain the necessary permits and bring the entire structure into building and fire code compliance within the time specified in the resolution. Based on the permit history, there is no evidence that the applicant or another party has performed unpermitted repairs or alterations to the structure. However, prior to being acquired by the applicant, the property was previously in substantial disrepair, and the most recent Certificate of Occupancy inspection (2010) showed a number of outstanding repairs needed. A building and fire code inspection, and correction of any identified deficiencies as determined by appropriate DSI staff and on a schedule approved by DSI staff, should be a condition of approval.*
- J. **STAFF RECOMMENDATION:** Based on the findings above, staff recommends approval of the Reestablishment of nonconforming use as a duplex, subject to the following conditions:
1. The current opening between the existing (front) and proposed (rear) units shall be permanently eliminated, and a code-compliant bathroom and kitchen be installed in the proposed rear unit no later than one year from the date of approval of the reestablishment of nonconforming use as a duplex by the Planning Commission. Required permits must be pulled for all construction and installation.
  2. A paved parking area of sufficient space to accommodate at least three parked vehicles shall be constructed in the rear yard of the property no longer than two years from the date of approval of the reestablishment of nonconforming use as a duplex by the Planning Commission.
  3. ~~The applicant shall arrange a building and fire code compliance inspection by appropriate DSI staff of the entire property no later than three months from the time the permits required to meet Condition 1 above are finalized.~~
  4. ~~Any deficiencies identified during the inspection required in Condition 3 above shall be corrected as determined by and on a schedule approved by appropriate DSI staff.~~