

city of saint paul
planning commission resolution
file number
date

WHEREAS, Moises Romo , File # 16-016-050, has applied for a reestablishment of nonconforming use as a triplex under the provisions of § 62.109(e) of the Saint Paul Legislative Code, on property located at 419 Sherburne Ave, Parcel Identification Number (PIN) 36.29.23.24.0072, legally described as Smiths Sub Of Stinsns Div, Lot 36, Blk 16; and

WHEREAS, the Zoning Committee of the Planning Commission, on March 24 and May 5, 2016, 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 Planning Commission has adopted duplex and triplex conversion guidelines, which state that for applications for nonconforming use permits for triplexes in residential districts, staff will recommend denial unless the following guidelines are met:
 - (a) *Lot size of at least 6,000 square feet (5000 SF for a duplex) with a lot width or front footage of 50 feet (40 feet for a duplex).* This guideline is met for a duplex but not for a triplex. The lot area is 5,260 square feet (including half the width of the adjoining alley) and 40 feet wide, similar to other lots with duplexes and triplexes in the area.
 - (b) *Gross living area, after completion of triplex conversion, of at least 2,100 square feet. No unit shall be smaller than 500 square feet.* This guideline is met. According to Ramsey county property records, the finished floor area of the structure is 2,575 sq. feet. According to floor plans submitted by the applicant the smallest (the 3rd floor unit) is larger than 500 sq. feet. Under section R305.1 of the 2015 Minnesota State Building Code, habitable space shall have a minimum ceiling height of at least 7 feet. For rooms with sloped ceilings, at least 50% of the required floor area of the room shall have a ceiling height of at least 7 feet and no portion of the required floor area may have a ceiling height of less than 5 feet. The third floor unit has 435 sq. feet of floor area with at least 7 foot high ceilings and 621 sq. feet of floor area with at least 5 foot high ceilings.
 - (c) *Four off-street parking spaces (non-stacked) are preferred; three spaces are the required minimum.* This guideline is met. The site has a parking pad off of the alley that has space for 3 parking spaces meeting the 4 foot side setback requirement, and the applicant has submitted a photo showing 4 cars parked along the alley.

moved by _____

seconded by _____

in favor _____

against _____

- (d) *All remodeling work for the triplex is on the inside of the structure unless the plans for exterior changes are approved by the Planning Commission or Board of Appeals. This guideline is met. No exterior changes are proposed.*
 - (e) *For the purpose of protecting the welfare and safety of the occupants of any structure that has been converted into a triplex 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 the 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. This guideline will be met as a condition of approval.*
2. 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:*
- (a) *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 originally built as a single family home in 1885. It is a large house, with about 2500 sq. feet of finished floor area. It appears to have been converted to a duplex in 1912, with identical first and second floors laid out as a typical up-down duplex. It is unclear when a third unit was later added in the attic. The structure had a Certificate of Occupancy for three units most of the time from 1981 to 2010. On May 25, 2010, the former owner submitted a residential use affidavit to the Zoning Administrator stating his intention to convert the house back to a one-family dwelling, and took out a building permit to make necessary code compliance repairs for certification of only the first floor for occupancy as a one-family dwelling, with the second and third floors to remain vacant. The building permit valuation to convert was \$12,500. The house has been used again as a triplex since it was sold in August of 2013. Converting the property back to a one-family dwelling would, at a minimum, require the property owner to remove two kitchens and remove any locks between the units. Because the building has been structured as a duplex, with identical first and second floor layouts for over a century, and because of the relatively large size of the first and second floor units, it cannot reasonably or economically be used as a one-family dwelling.*
 - (b) *The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use. This finding is met. A triplex would be the same use as the previous legal nonconforming use.*
 - (c) *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 immediate area has a mix of one, two, and three unit dwellings. The property has adequate off street parking on the parcel.*
 - (d) *The proposed use is consistent with the comprehensive plan. This finding is met. The Housing Chapter of the Comprehensive Plan supports an increase in housing choice (strategy H1.1) across the city to support economically diverse neighborhoods. The District 7 plan calls for "increasing the level of home ownership and rental property for people with a variety of income levels and housing needs (H6, p.4). Strategy 3.1 of the housing chapter of the comprehensive plan calls for the preservation of private affordable housing.*

(e) *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 March 7, 2015: 18 parcels eligible; 12 parcels required; 12 parcels signed.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application for a reestablishment of nonconforming use as a triplex at 419 Sherburne Ave is hereby approved subject to the following conditions:

1. The owner must apply for a certificate of occupancy by May 20, 2016.
2. The property must receive a certificate of occupancy by January 1, 2017.

ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** Moises Romo **FILE #** 16-016-050
 2. **APPLICANT:** Moises Romo **HEARING DATE:** March 24 & May 5, 2016
 3. **TYPE OF APPLICATION:** Nonconforming Use Permit - Reestablishment
 4. **LOCATION:** 419 Sherburne Ave, between Arundel and Western
 5. **PIN & LEGAL DESCRIPTION:** 36.29.23.24.0072; Smiths Sub of Stinsns Div, Lot 36, Blk 16
 6. **PLANNING DISTRICT:** 7
 7. **ZONING CODE REFERENCE:** § 62.109(e) **PRESENT ZONING:** R4
 8. **STAFF REPORT DATE:** March 17, 2016, updated 4-26-15 **BY:** Tony Johnson
 9. **DATE RECEIVED:** March 7, 2016 **60-DAY DEADLINE FOR ACTION:** May 6 13, 2016
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- A. **PURPOSE:** Reestablishment of nonconforming use as a triplex
- B. **PARCEL SIZE:** 5000 sq. ft. (40 ft. X 125 ft.), 13 ft. wide alley at rear
- C. **EXISTING LAND USE:** R-Single Family Dwelling
- D. **SURROUNDING LAND USE:** One- and two-family dwellings
- 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:** 1.5 off-street spaces/unit required (fractional space up to and including ½ round down) = 1 space for 1 unit, 3 spaces for 2 units, and 4 spaces for 3 units. Three parking spaces (8½ to 9 ft. wide) meeting the 4 ft. side setback requirement would fit off of the alley on this 40 ft. wide lot. The applicant submitted a photo showing 4 cars parked along the alley.

- G. **HISTORY/DISCUSSION:** The building was originally constructed as a single family dwelling in 1885. Based on historic Sanborn insurance maps, it appears that the house was converted to a duplex in 1912. Between 1922 and 1975 it was in the "C" residence zoning district, which allowed all residential uses. When the City adopted a new zoning code in 1975, it was rezoned to RT1 two-family residential. In RT1 a minimum lot area of 6000 sq. feet and a minimum lot width of 50 feet are required for a duplex, so the duplex became legally nonconforming as to lot area and lot width in 1975. The area was rezoned from RT1 to R4 one-family residential as part of a neighborhood zoning study in 1996, making the duplex legally nonconforming as to use.

It is unclear exactly when the duplex was converted to a triplex. The Polk City Directory showed 419 Sherburne as 2 units in 1955 and as "vacant upper, vacant lower" in 1965. It just shows one unit and one name in 1975, 1976 and 1981, and two resident names in 1985-1986. The house had a Certificate of Occupancy (C of O) for 3 units most of the time between 1981 and 2010. The Polk Directory shows 3 apartments and 2 names in 1991, but just one resident name in 1996. The Coles Directory shows 3 apartments and one name in 1996.

After a fire the property was on the vacant building list in 1999. The property was issued a new certificate of occupancy in 2001 for three units. The property was put back on the vacant building list in 2008. A code compliance report was done for the building on April 7, 2010, listing a number of deficiencies that needed to be corrected. On May 25, 2010, the former property owner, Kyle Colbert, submitted a residential use affidavit stating his intention to convert the triplex to a one-family dwelling and was issued a building permit to make the necessary code compliance repairs. The building was inspected and received final approval for the repairs and conversion back to a one-family dwelling, with only the first floor certified for occupancy, on November 11, 2010.

On May 14, 2013, the Dept. of Safety and Inspections (DSI) Fire Safety Division received a complaint that the property was being illegally converted back to a triplex. An inspection was conducted on May 22, 2013, which resulted in the Fire Safety Division revoking the C of O and putting the property back on the vacant building list as a category 2 vacant building. The former owner appealed this order and was given eight weeks to make the necessary repairs to have the building's C of O reinstated. On August 1, 2013, the property was reinspected and the first floor of the building was given a new Certificate of Occupancy 1 unit. On August 26, 2013 the property was sold to Moises Romo.

At the March 24, 2016, public hearing on his application to reestablish legal nonconforming use of the house as a triplex, Moises Romo said the house was set up as a triplex when he bought it; that each of the three units had a separate utility meter, entrance and bathroom; and that he simply reinstalled kitchen faucets and appliances that had been removed. He has lived in the third floor apartment and rented out the apartments on the first and second floors since 2013. When the applicant recently attempted to refinance his house, he learned that his triplex was legally considered a single family dwelling, resulting in the application for reestablishment of nonconforming use.

On April 7, 2016, the Zoning Committee reopened the public hearing and continued it to May 5, 2016, at the request of the applicant and the Frogtown Neighborhood Association to provide time for a neighborhood meeting on this case.

H. **DISTRICT COUNCIL RECOMMENDATION:** The District 7 Frogtown Neighborhood Association submitted a March 24 letter in support and an April 6 letter in support of the applicant's request to reopen the public hearing and continue it to May so the Frogtown Neighborhood Association could host a neighborhood discussion on this case prior to a Zoning Committee recommendation.

I. **FINDINGS:**

1. Section 62.106 (d) states: *When a nonconforming use changes to a use permitted in the district in which the property is located, a nonconforming use may not thereafter be resumed. When a nonconforming use changes to a use first permitted in a more restrictive district, nonconforming uses first permitted in less restrictive districts shall not thereafter be resumed.* A residential use affidavit was submitted to the zoning administrator on May 25, 2010 stating the owner's intention to convert the house to a single family dwelling. On November 11, 2010, the building was inspected and received final approval for necessary code compliance repairs for certification of only the first floor for occupancy as and conversion to a single family dwelling, with the second and third floors to remain vacant. Therefore, ~~under section 62.106 (d), the house cannot now legally be converted back to triplex.~~
2. The Planning Commission has adopted duplex and triplex conversion guidelines, which state that for applications for nonconforming use permits for triplexes (and duplexes) in residential districts, staff will recommend denial unless the following guidelines are met:
 - (a) Lot size of at least 6,000 square feet (5000 SF for a duplex) with a lot width or front footage of 50 feet (40 feet for a duplex). This guideline is not met for the reestablishment of a triplex. The property is 5,000 square feet with a 40 foot frontage width. The Planning Commission's Duplex Conversion Guidelines for a lot size of at least 5,000 square feet and a lot width of 40 square ft. This guideline is met for the reestablishment of a duplex.
 - (b) Gross living area, after completion of triplex conversion, of at least 2,100 square feet (1500 SF for a duplex). No unit shall be smaller than 500 square feet. This guideline is met. According to Ramsey county property records, the finished floor area of the structure is 2,575 sq. ft. According to floor plans submitted by the applicant the smallest (the 3rd floor unit) is larger than 500 sq. feet. Under section R305.1 of the 2015 Minnesota State Building Code, habitable space shall have a minimum ceiling height of at least 7 ft.

For rooms with sloped ceilings, at least 50 percent of the required floor area of the room shall have a ceiling height of at least 7 feet and no portion of the required floor area may have a ceiling height of less than 5 feet. The third floor unit has 435 sq. ft. of floor area with at least 7 ft high ceilings and 621 sq. ft. of floor area with at least 5 ft. ceilings.

- (c) Four off-street parking spaces (non-stacked) are preferred; three spaces are the required minimum. This guideline is met. The site has a parking pad off of the alley that has space for 3 parking spaces meeting the 4 foot side setback requirement, and the applicant has submitted a photo showing 4 cars parked along the alley with 4 off-street parking spaces.
- (d) All remodeling work for the triplex is on the inside of the structure unless the plans for exterior changes are approved by the Planning Commission or Board of Appeals. This guideline is met. No exterior changes are proposed.
- (e) For the purpose of protecting the welfare and safety of the occupants of any structure that has been converted into a triplex 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 the 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. This guideline could be met. The 2013 certificate of occupancy only certified the first floor unit. If the planning commission approves the reestablishment of a nonconforming triplex, a new certificate of occupancy would need to be obtained for the whole building. If the planning commission approves the reestablishment of a duplex the building would have to be inspected for code compliance. The property would not need a certificate of occupancy if it is an owner occupied duplex. However, the Fire Safety Division of DSI has requested that the applicant take a Landlord 101 class as a condition of approval for the reestablishment of either a duplex or a triplex.
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 for a duplex, but not for a triplex. The structure was originally built as a single family home in 1885. It is a large house, with about 2500 sq. feet of finished floor area. It appears to have been converted to a duplex in 1912, with identical first and second floors laid out as a typical up-down duplex. It is unclear when a third unit was later added in the attic. The structure had a Certificate of Occupancy for three units most of the time from 1981 to 2010. On May 25, 2010, the former owner submitted a residential use affidavit to the Zoning Administrator stating his intention to convert the house back to a one-family dwelling, and took out a building permit to make necessary code compliance repairs for certification of only the first floor for occupancy as convert the house to a one-family dwelling, with the second and third floors to remain vacant. The building permit valuation to convert the house to a one-family dwelling and bring it up to code was \$12,500. It appears that The house has been used again as a triplex since it was sold in August of 2013. Converting the property back to a one-family dwelling would, at a minimum, require the property owner to remove two kitchens and remove any locks between the units. Because the building has been structured as a duplex, with identical first and second floor layouts for over a century, and because of the relatively large size of the first and second floor units, it cannot reasonably or economically be used as a one-family dwelling. The third floor unit is

much smaller and could reasonably and economically be used as part of the second floor unit.

- (2) The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use. This finding is met for both a duplex and triplex, which would be the same use as the previous legal nonconforming uses.
- (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 for both a duplex and triplex. The immediate area has a mix of one, two, and three unit dwellings. The property has adequate off street parking on the parcel.
- (4) The proposed use is consistent with the comprehensive plan. This finding is met for both a duplex and triplex. The Housing Chapter of the Comprehensive Plan supports an increase in housing choice (strategy H1.1) across the city to support economically diverse neighborhoods. The District 7 plan calls for "increasing the level of home ownership and rental property for people with a variety of income levels and housing needs (H6, p.4). At the March 24th public hearing, the applicant stated that the two rental units in his triplex are priced at 40% below market rate. Strategy 3.1 of the housing chapter of the comprehensive plan calls for the preservation of private affordable housing.
- (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 March 7, 2015: 18 parcels eligible; 12 parcels required; 12 parcels signed.

J. **STAFF RECOMMENDATION:** Based on the findings 1, 2(a), and 3(1) above, staff recommends denial of reestablishment of nonconforming use as a triplex and approval of reestablishment of nonconforming use as a duplex at 419 Sherburne Avenue subject to the following conditions:

- 1) The applicant must submit plans to convert the property to a two-family dwelling and the property must be inspected for code compliance by July 1, 2016.
- 2) Conversion of the entire structure to a duplex, for use of the entire structure as a duplex, and all code compliance work must be completed by January 1, 2017.
- 3) The applicant must take the Landlord 101 class at the Department of Safety and Inspections by January 1, 2017.



Frogtown Neighborhood Association (District 7)

685 Minnehaha Avenue West • Saint Paul, MN • 55104
Tel: 651-789-7481 • Fax: 651-789-7482 • www.frogtownmn.org

March 21, 2016

RE: 419 Sherburne nonconforming use request

Dear Mr. Romo,

I want to thank you for notifying the Frogtown Neighborhood Association (FNA) about your desire to create a triplex at the property you now own and inhabit.

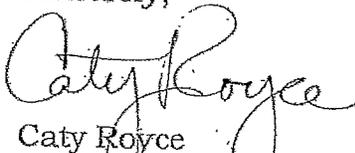
FNA has historically supported owner occupied dwellings and the fact that you live in the building and intend to continue living there would be a BIG plus for any plans you are asking the city to support.

As we have stated FNA would like discuss your project at length with you and the neighbors that are supporting your project at our April Frogtown Forum. We can do that even if the Planning Commission decides to authorize the nonconforming use request.

The staff report lays out important information that we believe support your project: the primary fact being that denying the request would force you lose your home and is an economic hardship for you, secondly, the structure has historically been used as a duplex/triplex, since 1912!!!! Therefore for most if it's life the building has existed as something more than a single family home.

I look forward to our continued collaboration and wish you luck with the Planning Commission.

Sincerely,


Caty Royce
Executive Director



Moses in Frogtown: Triplex - YOYO (Youth Ministry)

1 message

Rachel Beaudry <morracb@gmail.com>

To: Moises Romo <moyromo1@gmail.com>

Wed, May 4, 2016 at 10:07 PM

To whom this may concern,

We are writing to you to share a little bit about the impact of Moses Romo living in the Frogtown area and in particular, living in his triplex off of Sherburne Avenue.

Fall of 2013, my husband and I felt drawn to start a program for youth in Frogtown. We had family and friends volunteer from time to time in the area and there was talk of how crime was on the rise and there was a deep need for hope and restoration. Being new to the area, we spent 5-6 months networking, meeting neighbors... and truthfully, gathering and praying for wisdom on how to start something in the area for the youth.

We wanted to give up. We had plenty of ideas, but being Caucasian and not from Frogtown, we wanted to be respectful and careful of how we went about launching a youth ministry. We knew that hosting a large event would draw attention, but not necessarily build trust and strong enough relationships to be sustainable in a launch. My father actually introduced my husband and I to Moses Spring of 2014. We were yet to have "officially" launched the YOYO (You're Only Young Once) program with kids.

I had heard of Moses quite a bit from my father and others we came into contact with around the neighborhood. People had spoke of Moses like this "heroic character". We were told all the kids would wait for him to come home each day from work, they would flock him and follow him to the local church where they would join in learning how to play instruments and by hanging around Moses, they would stay out of trouble. I had high expectations for meeting this "Moses" guy.

I will say, Moses was nothing short of the rumors we heard. He truly was the "rocketship" that launched our youth ministry. From being in a place of considering giving up, to shortly after meeting Moses, having 10-15 and now 25 kids coming weekly to YOYO. He began coming weekly and with him came his followers. The neighborhood kids look up to Moses. Because of their adoration and trust of him, they soon began to trust us as well.

Moses is a hot commodity in the neighborhood. Kids are proud to know him. When his car is spotted outside you can bet they will come find him and his time becomes theirs. Moses loves the kids like a big brother. He encourages them all to have faith based values, to work hard and do well in school. He is one of the most humble guys we know. He doesn't give himself half the credit he deserves.

He has truly impacted his neighborhood and will continue to. In fact, more Moses' are needed in the area. He is an inspiration, a quiet leader and youth are attracted to his gentle and compassionate spirit. Parents have a great trust for Moses and he naturally brings a sense of community and togetherness to the area.

His triplex just so happens to be in the middle of the neighborhood that most of the YOYO youth live. The youth that come to YOYO have very difficult situations at home. Most coming from fatherless families, having seen and/or experienced abuse and feeling some form of neglect as well as drug and alcohol exposure. The kids share stories of fear, anger, depression, hopelessness and anxiety. Moses brings love, forgiveness, joy, hope, peace and purpose to an area and community that deeply needs it.

We are writing this with the hopes that grace would be offered for his home to still be considered a triplex, allowing him to continue to reside in the area- as he is the 3rd tenant of the property.

Thank you!

Rachel (& Jake) Beaudry

To: Whom it may concern

0. Tseeblee, Lee, who live in
423 Sherburne Ave.
St. Paul, MN 55103

I live her almost 26 years
the house next to me it was
triplex, because I had seen
3 families live in that house
before.

if you have a my question
please write a letter to
me at the address above

Tseeblee Lee
April 30, 2016

ZF# 16-016-050
-M. Romo

From: Ed Davis [mailto:ed@edwardgdavis.com]
Sent: Friday, March 18, 2016 11:08 AM
To: caty@frogtownmn.org; sam@frogtownmn.org; Langer, Samantha (CI-StPaul)
Cc: Bostrom, Dan (CI-StPaul); Thao, Dai (CI-StPaul); #CI-StPaul_Ward5
Subject: Re-establishment of Non-conforming Use

To Whom It May Concern:

I am writing to express concerns about the rezoning of a non-conforming use at 416 Sherburne Avenue.

First, this property and neighborhood was NOT designed to have a triplexes. Given it is a non-conforming and the additions on the second & third floor do not match the house, I strongly suspect that

the work was done without permits or with the intention of creating more space for the existing duplex units. The on-street parking and alley parking does not support three families.

Second, assuming the individual purchased the property and is now asking for the re-zoning, the commission should not grant it based on the untrue expectations of the property investor to get a triplex in a duplex neighborhood. The buyer should have done additional research before purchasing the property.

In summary, the area and property were zoned as duplex because of the negatives externalities that the area cannot absorb. Please do not approve the rezoning.

Sincerely,

Ed Davis
612 412-4421
1169 Lane Place
St Paul
55106