

Community Planning and Economic Development - Planning Division Report
Change of a Nonconforming Use
BZZ-4619

Date: November 30, 2009

Applicant: D&B 2401, LLC

Address of Property: 2401 Dupont Avenue S

Contact Person and Phone: Jon Hornig (612) 874-4400

Planning Staff and Phone: Kimberly Holien (612) 673-2402

Date Application Deemed Complete: November 3, 2009

End of 60 Day Decision Period: January 2, 2010

Ward: 10 **Neighborhood Organization:** Lowry Hill East Neighborhood Association

Existing Zoning: R2B Two-family District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 18

Proposed Request:

- Change of nonconforming use from a grocery store to a retail use.

Concurrent Review:

Change of nonconforming use: from a grocery store to retail in the R2B Two-family District.

Applicable Code Provisions: Chapter 531, Nonconforming Uses and Structures.

Background: Jon Hornig, on behalf of D&B 2401, LLC has submitted change of a nonconforming use application a commercial tenant space in an existing building at 2401 Dupont Avenue S. The previous legal nonconforming use in the space was a grocery store. The request at this time is for a change of nonconforming use to a retail use. Specifically, the use would be a wedding dress shop. This tenant space is 2,300 square feet in area and is located on the first floor of the building. An additional commercial space and one residential unit are also located on the first floor. The second floor of the building contains 4 residential units.

The applicant received approval from the City Planning Commission on August 24, 2009 for a change of non-conforming use to convert this tenant space from a grocery store to a coffee shop. That application was appealed and the appeal was denied by the City Council on October 2, 2009. The

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applicant was not able to secure a lease for a coffee shop after receiving City approvals and is now requesting to convert the tenant space to a retail use.

The subject building was constructed in 1901. The property's first zoning classification, per the 1924 Zoning Ordinance, was commercial. The 1934 land survey listed the building as a mixed use building with a grocery store and a tailoring business on the first floor. Being that the property was zoned commercial in the 1924 code, the grocery store use and tailor use noted in the 1934 land survey were permitted. In the 1963 Zoning Ordinance the property was zoned R6, making any commercial uses within the building legally non-conforming. The site has been zoned R2B since 1975. The subject commercial tenant space was occupied by a grocery store since at least 1991.

As of the writing of this report, staff has not received any correspondence from the neighborhood group. Any comments received from the neighborhood will be forwarded to the Planning Commission.

Findings As Required By The Minneapolis Zoning Code (change of nonconforming use from a grocery store to retail):

The Community Planning and Economic Development Planning Division has analyzed the application and makes the following findings:

The Planning Commission may approve a proposed change in use if the use meets the following standards as specified in section 531.80 of the Zoning Code:

(1) The proposed use is compatible with adjacent property and the neighborhood.

The site is bordered by residential uses to the south and east, across 24th Street W to the north and across Dupont Ave S to the west. There is a mixed-use commercial building on the northwest corner of the intersection of Dupont Avenue and 24th Street including a restaurant use and automobile repair. The subject building has contained commercial uses on the first floor since at least 1934. The proposed retail use will be entirely within an enclosed building. In that regard, the proposed use is compatible with adjacent property in the neighborhood.

(2) The proposed use is less intense than the existing, nonconforming use.

(a) Hours of operation: According to the applicant, the hours of operation for the previous grocery store use were 7:00 a.m. to 10:00 p.m. Monday through Sunday. The proposed hours of the retail use are Monday, Wednesday and Friday from 6:00 p.m. to 8:00 p.m., 9:00 a.m. to 5:00 p.m. and Sunday 12:00 noon to 4:00 p.m. These hours are less intense than the hours of operation of the previous nonconforming use and will not increase the intensity of commercial space. The hours are also within the parameters allowed for the R2B district.

(b) Signage: The applicant has indicated that the previous grocery store use had wall signs fronting on Dupont Avenue S and 24th Street. No signage has been proposed for the new use. The application materials state that any future signage for the coffee shop use will comply with

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the signage requirements for the R2B district. Chapter 543 of the Zoning Ordinance states the following regarding new signs for non-conforming uses:

Newly established signs located on nonconforming uses shall be limited to one non-illuminated, flat wall identification sign, not to exceed sixteen (16) square feet in area and fourteen (14) feet in height. In addition, on a corner lot, two (2) such signs per building, except as otherwise allowed in the manner provided for in Chapter 531, Nonconforming Uses and Structures, governing expansion or alteration of legal nonconforming uses and structures.

(c) Traffic generation and safety: The proposed retail use is expected to have similar traffic impacts to those of the previous grocery store use. Due to the limited hours of operation, the amount of traffic generated should be minimal. The site has adequate off-street vehicle parking and bicycle parking will be provided. The site is in a pedestrian oriented area and bus service is available one block from the site, at the corner of Hennepin Avenue and 24th Street W. In that regard, the amount of traffic generated is not expected to have a negative impact on surrounding properties and staff has no concerns about safety.

(d) Off-street parking and loading: The vehicle parking requirement for the previous grocery store was 4 spaces. The vehicle parking requirement for the retail use is one space per 500 square feet of gross floor in excess of 4,000 square feet plus, or a minimum of 4 spaces. For the 2,300 square foot space, the retail use requires 4 parking stalls. The existing residential units require one space per dwelling unit, or 5 spaces. The other commercial tenant space, which contains a tattoo/body piercing parlor, is less than 1,000 square feet in area, therefore exempt from the parking requirement. The total vehicle parking requirement for the site is 9 spaces. The site has 18 vehicle parking spaces, satisfying the minimum requirement. The parking requirement for the retail use is identical to that of the previous use, thus not increasing the intensity of the space.

The minimum bicycle parking requirement for the retail use is 3 spaces. The previous grocery store use was established prior to the adoption of the bicycle parking requirement, therefore not subject to this provision. However, had this use been subject to the bicycle parking standards, it would have also required 3 spaces. The site plan illustrates bicycle parking on the south side of the building, between the building and the parking lot. A minimum of three spaces must be provided in this location for the retail use.

Section 541.360 of the zoning code requires that all parking lots of four or more spaces be subject to the landscaping, screening and curbing requirements of Chapter 530, Site Plan Review. Section 530.170 requires all parking and loading facilities fronting along a public street to provide a landscaped yard at least 7 feet wide with plantings at least 3 feet in height and 60 percent opaque. Chapter 530 also requires all parking and loading abutting or across an alley from a residential use to provide a landscaped yard at least 7 feet in width along the property line. Screening that is at least 95 percent opaque is also required within this landscaped yard.

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In this case, the parking lot fronts on a public street to the west and abuts residential uses to the south and east. A landscaped yard exists between the parking lot and the residential properties to the south and west. However, it is less than 7 feet wide. As a condition of approval, a 7 foot landscaped yard with the required screening shall be required between the parking lot and the residential property to the south. Given the location of the building, a landscaped yard of 5 feet may be appropriate on the east side of the parking lot.

There is no landscaped yard between the parking lot and Dupont Avenue S. Staff recommends that, as a condition of approval, a landscaped yard at least 7 feet wide with plantings at least 3 feet in height and 60 percent opaque shall be provided in this location. The parking area is designed in a manner that allows for this landscaped yard to be provided without losing any parking stalls.

(e) Nature of business operations: The previous use was a grocery store that at times in the past also included a deli that functioned as an accessory use. The grocery store is classified as retail sales and services. The retail wedding dress shop is classified as “general retail sales and service.” The nature of the proposed use is expected to be similar to that of the previous use, and the proposed use is not expected to have a detrimental impact on the surrounding area.

(f) Number of employees: According to the applicant, the previous grocery store use had two employees. The proposed retail use will have a minimum of one employee who will also own the business. The statement submitted by the applicant notes that additional employees may be working at the business as necessary.

(g) Building Bulk: The existing building has a footprint that is approximately 4,100 square feet in area. The lot is 11,937 square feet in area, for a floor area ratio of .34. The maximum floor area ratio in the R2B District is 0.5. No exterior modifications or additions are proposed as part of the application and the building will continue to comply with the maximum FAR for the district.

(h) Aesthetic impacts on surrounding property: Since purchasing the property in 2007 the applicant has pulled several building permits to renovate the property. These permits include plumbing, mechanical work, re-roofing, new windows, a concrete basement and other structural improvements. The vestibule to the rear of the building has also been replaced. The applicant is not proposing any additional aesthetic changes to the property at this time.

As stated above, staff is recommending that the applicant provide a landscaped yard 7 feet in width along with screening at least 95 percent opaque between the property and the residential use to the south. These site improvements should mitigate any impact that the proposed use may have on the adjacent property.

(i) Noise, odor, heat, glare and vibration: The proposed use, as with the previous use, is not expected to generate noise, odor, heat, glare or vibration.

Based on the above analysis, the proposed coffee shop use should not be more intense than the previous grocery store use, with the attached conditions of approval.

Recommendation of the Community Planning and Economic Development Department – Planning Division:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the change of nonconforming use from a grocery store to a retail use in the R2B Two-family Residence District for the property at 2401 Dupont Avenue S, subject to the following conditions:

1. The applicant shall provide a landscaped yard 7 feet in width along with screening at least 95 percent opaque between the property and the residential use to the south, in accordance with Section 530.170 of the Zoning Ordinance. The applicant shall provide a landscaped yard at least 5 feet in width between the parking lot and the property to the east.
2. A landscaped yard at least 7 feet wide with plantings at least 3 feet in height and 60 percent opaque shall be provided between the parking lot and Dupont Avenue S, in accordance with Section 530.170 of the Zoning Ordinance.

Attachments:

1. Statement from applicant.
2. Zoning map.
3. Site plans and floor plan.
4. Photos.