

**Community Planning and Economic Development - Planning Division Report**  
Certificate of a Nonconforming Use and Change of Nonconforming Use  
BZZ-4345

**Date:** September 28, 2009

**Applicant:** Kevin and Valerie Holler

**Address of Property:** 4420 Humboldt Avenue N

**Contact Person and Phone:** Kevin Holler (612) 270-4572

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

**Date Application Deemed Complete:** September 3, 2009

**End of 60 Day Decision Period:** November 2, 2009

**Ward:** 4      **Neighborhood Organization:** Webber-Camden

**Existing Zoning:** C2, Neighborhood Corridor Commercial District; R4, Multiple Family District

**Proposed Zoning:** Not applicable for this application.

**Zoning Plate Number:** 2

**Existing Use:** Contractor's office.

**Proposed Use:** Contractor's Office

**Concurrent Review:**

- **Nonconforming Use Certificate:** A nonconforming use certificate to establish legal nonconforming rights to a contractor's office.
- **Change of a nonconforming use:** From the previous legally established use of major auto repair to a contractor's office.

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

**Background:** Kevin and Valerie Holler have applied for a nonconforming use certificate and a change of nonconforming use to legally establish a contractor's office within an existing building at 4420 Humboldt Avenue N. The subject site contains split zoning, with both R4 and C2 zoning designations on the site. The majority of the site is zoned R4. Therefore, the more restrictive provisions of the R4 district apply to the entire site. The subject building in which the contractor's office is located was constructed in 1927. The parcel also contains a duplex with addresses at 1423 and 1425 45<sup>th</sup> Avenue N.

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The site was originally three parcels. The parcel containing the commercial building was combined with the residentially zoned parcels under common ownership in 1974 at the request of the City Assessor's office. The portion of the parcel containing the commercial building has been zoned for commercial purposes since 1924. In 1963 the zoning on the property was changed from commercial to B3S-2. Garages for storage, repair and servicing of motor vehicles were permitted conditional uses in the B3S District. No conditional use permit was ever applied for and the use became legally non-conforming with the adoption of the 1963 Zoning Code. In 1999 the site was rezoned once again from B3S-2 to C2. The previous major auto repair use is not permitted use in the C2 District or the R4 District. Thus, this use remained nonconforming

The commercial portion of the site contained an auto repair use from 1927 to 2002. In 2002 the property was purchased by Kevin and Valerie Holler and converted to a contractor's office. No change of non-conforming use application was submitted to the city when this new use was established. Contractor's offices are permitted by conditional use permit in the C2 District. However, as stated above, the R4 zoning is the predominant zoning on the site and therefore the provisions of this district apply. Contractor's offices are not permitted in the R4 District.

The property is adjacent to a site zoned C2 to the south, Victory Memorial Parkway to the north and residential uses to the east and west. As of writing this staff report, staff has not received any official correspondence from the neighborhood. Staff will forward comments, if any are received, at the City Planning Commission meeting.

**Loss of Nonconforming Rights:** For a nonconforming use to retain its legal nonconforming rights the use of the property cannot be discontinued for a period of a year or more per Minneapolis Zoning Code Provision 531.40 (a)(1) Loss of nonconforming rights:

531.40. Loss of nonconforming rights. (a) Discontinuance (1) In general. If a nonconforming use or structure is discontinued for a continuous period of more than one (1) year, it shall be deemed to be abandoned and may not thereafter be reestablished or resumed. Any subsequent use of the land or structure shall conform to the requirements of the district in which it is located.

The subject property was legally established as a major auto repair use in 1927. This use became non-conforming in 1963 with the adoption of the 1963 Zoning Code. In 1974 three lots were combined to create a situation where R4 zoning became the predominant zoning district on the site. The auto repair use was maintained as a legal nonconforming use on the site from 1963 to 2002 when it was converted to a contractor's office. However, the last business license for an auto repair use was issued in 1994. The use was converted to a contractor's office without receiving the proper approvals for a change of non-conforming use. At that time, the legal nonconforming use was discontinued and that discontinuance has exceeded a period of one year.

The applicant provided information on the history of the use of the property back to 1962 when the previous major auto repair use was last legal. CPED-Planning staff has included additional dates related to licenses and other relevant activities:

- 1) The building was constructed in 1927 and P&H Garage was operated on the site.

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- 2) From 1962-1964 the use was Lorentzen Auto Service. In 1963 the auto repair use became nonconforming with the adoption of the new zoning code.
- 3) In 1965 the building occupied by Humboldt Auto Body. Humboldt Auto Body operated on the site from 1965-1977.
- 4) In 1974 the lots at 4420 Humboldt Avenue N and 1423 45<sup>th</sup> Avenue N were combined. At that time a split zoning situation was created and the R4 zoning became the predominant zoning on the site. As such, any commercial use at 4420 Humboldt Avenue N would be nonconforming.
- 5) In 1978 the building was occupied by Northland Auto Body. Northland Auto Body operated on the site from 1978-1982.
- 6) In 1983 the building was occupied by Auto Body Services. Auto Body Services operated on the site from 1983 to 1993.
- 7) In 1994 the building was again occupied by Northland Auto Body. Northland Auto Body operated on the site from 1994-1995.
- 8) The last license for a motor vehicle repair garage was issued in 1994.
- 9) In 1996 the building was occupied again by Auto Body Services. Auto Body Services operated on the site from 1996-1998, presumably without a proper business license.
- 10) In 1999 the building was occupied by Humboldt Auto Frame. Humboldt Auto Frame operated on the site until approximately November of 2001. Again, this was presumably without a proper business license.
- 11) In September of 2002 the property was purchased by the applicant and converted from major auto repair to a contractor's office. This conversion was done without first obtaining City approvals for a change of nonconforming use.
- 12) In January 2009 the current property owner was cited for outdoor storage and at that time it was determined that the business activity currently being conducted on the site required land use approvals.

The Department of Community Planning and Economic Development – Planning Division believes that the information submitted by the applicant does not meet the standards of Minneapolis Zoning Code provision 531.30, under which the applicant must bear the burden of proof to establish the lawful nonconforming status of the use or structure and the lack of abandonment, change of use or loss. The last legal nonconforming use on the property was minor auto repair. This auto repair use was discontinued for a period of more than one year beginning in 2002 when it was converted a contractor's office. No change of nonconforming use application was submitted at that time and the non-conforming rights were lost.

**Findings:**

- 1) The building was constructed in 1927 and P&H Garage began operating on the site.
- 2) From 1962 to November of 2001 the building at 4420 Humboldt Avenue N contained a major auto repair use.
- 3) In 1974 the lots at 4420 Humboldt Avenue N and 1423 45<sup>th</sup> Avenue N were combined. At that time a split zoning situation was created and the R4 zoning became the predominant zoning on the site. As such, any commercial use at 4420 Humboldt Avenue N would be nonconforming.
- 4) The last license for a motor vehicle repair garage was issued in 1994.

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- 5) In September of 2002 the property was purchased by the applicant and converted from major auto repair to a contractor's office. This conversion was done without first obtaining City approvals for a change of nonconforming use.
- 6) It can be concluded that by September of 2003 the major auto repair use has been abandoned for a period exceeding one year.
- 7) The applicant has failed to present clear and convincing evidence that discontinuance of the nonconforming use or structure for the specified period was due to circumstances beyond the property owner's control per Zoning Code Provision 531.40 (a) (2).

As of writing this staff report, staff has not received any correspondence from the Webber-Camden Neighborhood Organization. Staff will forward comments, if any are received, at the City Planning Commission meeting.

**Findings As Required By The Minneapolis Zoning Code (change of nonconforming use from a major auto repair use to a contractor's office):**

**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 a residential use on the same parcel to the north. The site is also bordered by residential uses to the east and across Humboldt Avenue N to the west. It is bordered by a large parcel zoned C2 to the south. This parcel was previously occupied by a grocery store and is currently vacant. The subject building has contained commercial uses since 1927. The proposed contractor's office use will be located entirely within the 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 auto repair use are not known. The hours of operation for the proposed contractor's office would be by appointment only, not to exceed the hours permitted in the C2 District. The allowed hours of operation in the C2 District are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. The proposed hours will not increase the intensity of the commercial building.

**(b) Signage:** The previous auto repair use had a 3' x 3' sign on the west elevation, facing Humboldt Avenue N. No signage has been proposed for the new use. The application materials state that any future signage for contractor's office use will comply with the signage requirements for the C2 district. Chapter 543 of the Zoning Ordinance states the following regarding new signs for non-conforming uses:

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*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:** It is expected that the previous auto repair uses on the site allowed customers to drive to the site for service, generating some traffic. The proposed contractor's office will not have established hours of operation and therefore is expected to generate minimal traffic to the site. The nature of a contractor's office is a use that provides building construction or property maintenance services. With the proposed contractor's office, nearly all of the business is conducted off-site. There is only one employee associated with the use. 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:** There are no legal off-street parking or loading spaces located on the site for the commercial use. The residential use on the north portion of the property has adequate off-street parking in the form of two surface parking stalls. The site plan prepared by the applicant shows three parallel parking stalls on the west side of the contractor's office building, adjacent to Humboldt Avenue N. The space between the building and the public right-of-way is only 14.2 feet in width. Parallel parking stalls require a width of 8.5 feet and a drive aisle width of 12 feet. While it is possible to park vehicles in the noted location, these are not legal parking stalls due to the lack of a proper drive aisle. In the event that the Planning Commission finds the use non-conforming rights per the request nonconforming use certificate, these nonconforming rights would also apply to parking. There is no bicycle parking requirement for contractor's office and none has been provided.

The City has several documented violations about parking and inoperable vehicles being located on the site under the previous auto repair user. No such complaints have been received since the applicant established the contractor's office use in 2002. Therefore it can be concluded that the proposed contractor's office would be less intense than the minor auto repair use as it relates to parking and loading.

**(e) Nature of business operations:** The nature of business operations from auto repair to a contractor's office will change. The contractor's office will be performed entirely within an enclosed building and no outdoor storage will occur. The contractor's office use is one that will not generate noise, dust or other nuisances. The use is not open to the general public and therefore will generate little traffic.

Staff did note materials being stored outside, to the rear of the building, when conducting a recent site visit. In the event that the City Planning Commission approves the proposed applications, staff recommends that all materials be moved inside as a condition of approval.

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**(f) Number of employees:** The previous auto repair use had approximately two employees. The proposed contractor's office has only one employee who also owns the business. The number of employees proposed will be less intense than the previous use.

**(g) Building Bulk:** The existing commercial building has a footprint that is approximately 1,508 square feet in area. The existing house on the parcel has a footprint that is 1,926 square feet in area. The lot is 17,729 square feet in area, for a floor area ratio of .19. The maximum floor area ratio in the R4 District, the predominant zoning district on the site, is 1.5. 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:** The applicant resurfaced the exterior of the building with brick per a permit issued in January of 2009. Landscaping has also been recently installed in the boulevard in front of the building. No exterior modifications are proposed at this time. The aesthetic impact on the surrounding property has been improved with the work recently performed on the site. As stated above, in the event that the applications are approved, no outdoor storage would be permitted on site.

**(i) Noise, odor, heat, glare and vibration:** The nature of the previous major auto repair use implies that it would have generated some noise and vibration. The proposed contractor's office will be located completely within the building with the condition of approval above, and most of the work will be performed off-site. As such, no noise, odor, heat, glare or vibration is expected to be generated from the proposed use. In that regard, the contractor's office is less intense than the previous major auto repair use.

Based on the above analysis, the proposed contractor's office should not be more intense than the previous auto repair use. However, based on the findings for the nonconforming use certificate, staff does not believe that the applicant has rights to a commercial use. In that regard, staff recommends denial of the application for a change of non-conforming due to the fact that rights to any commercial uses on the property have been lost.

**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 **deny** the nonconforming use certificate to establish legal nonconforming rights for a contractor's office for the property at 4420 Humboldt Avenue N.

**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 **deny** the application for a change of nonconforming use from major auto repair to a contractor's office for the property at 4420 Humboldt Avenue N.

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**Attachments:**

1. Written descriptions and findings submitted by the applicant
2. Zoning map.
3. Site plans and floor plan.
4. Photos.