


## Department of Planning and Zoning

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**TO:** Development Review Board  
**FROM:** Scott Gustin   
**DATE:** June 6, 2017  
**RE:** 17-1119CU; 135 Hayward Street

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**Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Zone: RL                      Ward: 5S

Owner/Representative: Andrew & Daniel Rowan / Michael Rainville

**Request:** Extend retention of nonconforming use (residential triplex) after destruction by fire.

### **Applicable Regulations:**

Article 5 (Citywide General Regulations)

### **Overview:**

The applicant is seeking to extend retention of the nonconforming triplex use following loss of the structure to fire in April 2016. The Development Review Board determined in October 2016, by way of appeal, that the structure was a triplex at the time it burned. The triplex is a nonconforming use in this Residential Low Density zone. Retention of nonconformity is limited to 1 year unless an extension is sought and granted.

**Recommendation:** **Time extension approval**, as per, and subject to, the following findings and conditions below:

### **I. Findings**

#### **Article 5: Citywide General Regulations**

#### **Sec. 5.2.4, Nonconforming Uses**

##### *(b) Discontinuance*

*A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer. Provided, however, a period not in excess of two (2) years shall be the applicable standard for the re-establishment of discontinued uses in the Enterprise-Light Manufacturing (E-LM) district.*

*An extension to this time limit may be granted by the DRB after a public hearing and on the basis of documented evidence of a continuous good faith effort to re-establish the nonconforming use. Such evidence shall include but not be limited to application(s) to the DRB, bid documents, records of expenditures, newspaper advertisements, and/or real estate listings. Any request for such an extension shall be submitted in writing prior to the expiration of the one (1) or two (2) year time limit as specified above.*

*Any extension approved by the DRB shall be made in writing and shall specify the date after which no nonconforming use will be permitted upon the subject property.*

The subject nonconformity burned April 21, 2016. In July 2016, the applicants sought a determination as to the recognized use of the structure. In October 2016, the applicants prevailed in an appeal of an adverse administrative determination regarding the use of the structure at the time it burned. The Development Review Board determined that the structure was a triplex at the time of the fire. As noted previously, the triplex use in the RL zone is a nonconformity.

The applicants submitted their request to extend retention of the nonconformity April 20, 2017 – within one year of the fire as required.

The applicants have submitted documents relative to construction bids, building design, and insurance matters, primarily between June and December 2016. The single insurance document is dated May 25, 2017. The narrative provided by the applicants summarizes the request for extension and cites insurance as the primary matter causing delay.

Insofar as the applicants have documented efforts to rebuild on the property in the year since the fire, and given that the request to extend was submitted within one year of the fire, an extension may be granted. The extension should be limited to one additional year.

## **II. Conditions of Approval:**

1. The nonconforming triplex status is extended for a period of one (1) year. Nonconformity as a triplex will expire April 21, 2017 or when the site is developed with a conforming use, whichever is sooner. No additional extensions will be granted.