



## Request for City Council Committee Action from the Department of Community Planning & Economic Development - Planning Division

**Date:** July 29, 2010

**To:** Council Member Gary Schiff, Chair, Zoning & Planning Committee and  
Members of the Committee

**Referral to:** Zoning & Planning Committee

**Subject:**

Name of Appellant: Jerry Nordenstrom  
Property Address: 1122 Lincoln Street NE  
Ward #: 1

Appeal of Board of Adjustment action denying a variance to reduce the required lot width from 40 ft. to 33 ft. (17.5%) and denying a variance to reduce the required lot area from 5,000 sq. ft. to 3,729 sq. ft. (25.42%) to re-establish an originally platted lot line to allow for the construction of a new house at 1122 Lincoln Street NE.

**Recommendation:**

Notwithstanding staff recommendations, the Board of Adjustment **denied** the variance to reduce the required lot width from 40 feet to 33 feet (17.5%) to allow for the re-establishment of a platted lot for the construction of a new single-family dwelling located at 1122 Lincoln Street NE in the R2B Two-Family District based on the following findings:

1. Circumstances are not unique and are created by the applicant's desire to split the lot.

Notwithstanding staff recommendations, the Board of Adjustment **denied** the to reduce the required lot area from 5,000 sq. ft. to 3,729 sq. ft. (25.42%) to allow for the reestablishment of a platted lot for the construction of a single-family dwelling for the property located at 1122 Lincoln Street NE in the R2B Two-Family District based on the following findings:

1. Circumstances are not unique and are created by the applicant's desire to split the lot.

**Previous Directives:** N/A

Prepared by: Chris Vrchota, City Planner, 612-673-5467 Approved by: Jack Byers, Planning Supervisor, 612-673-2634 Presenters in Committee: Chris Vrchota, City Planner
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**Financial Impact**

- No financial impact

**Community Impact**

- Neighborhood Notification:
- End of 60-120-day decision period: July 11, 2010 (60-day)/September 9, 2010 (120-day)

**Background/Supporting Information**

The Applicant submitted applications for variances to the lot area and lot width requirements to allow for the re-establishment of the originally platted lot lines. The parcels were combined at an unknown point in the past, likely around 1972 when the house on lot 6 was demolished.

At their July 1, 2010 meeting, the Zoning Board of Adjustment denied both variance requests, finding that the Applicant was creating the need for the variances by seeking to re-divide a now conforming lot.

**Supporting Material**

- A. Appellant statement of appeal and additional information submitted by Appellant
- B. July 1, 2010 Board of Adjustment Meeting Minutes and Actions
- C. July 1, 2010 Board of Adjustment Staff Report with Attachments
- D. E-mail from Neighborhood Organization

## Community Planning and Economic Development - Planning Division Report

Variance Request  
BZZ-4787

**Date:** July 1, 2010

**Applicant:** Jerry Nordenstrom

**Address of Property:** 1122 Lincoln Street NE

**Contact Person and Phone:** Jerry Nordenstrom, 612-807-0745

**Planning Staff and Phone:** Chris Vrchota, (612) 673-5467

**Date Application Deemed Complete:** May 22, 2010

**End of 60 Day Decision Period:** July 11, 2010

**Ward:** 1      **Neighborhood:** Northeast Park

**Existing Zoning:** R2B/Two-Family Residential

**Proposed Use:** New Single-Family Dwelling with Detached Garage

**Proposed Variances:**

- Variance to reduce the required lot width from 40 ft. to 33 ft. (17.5%)
- Variance to reduce the required lot area from 5,000 sq. ft. to 3,729 sq. ft. (25.42%)

**Zoning code section authorizing the requested variances:** 525.520 (2) (2)

**Background:** The subject property consists of two combined platted lots (Lot 6 and Lot 7) that combined measures 66 feet x 133 feet, totaling 7,458 square feet. The Applicant is proposing to re-establish the two original platted lots to allow for the construction of a new single-family dwelling. They are proposing to divide the lot evenly into two parcels measuring 33x113, as originally platted. When the property line is re-established, neither parcel would not meet the 40 ft. lot width requirement or 5,000 sq. ft. lot area requirement. Thus the Applicant is required to obtain a variance to reduce the minimum lot width from 40 feet to 33 feet and a variance to reduce the minimum lot area from 5,000 square feet to 3,729 square feet to allow for the re-establishment of a platted lot. The Zoning Ordinance allows variances of the minimum lot area or minimum lot width up to 30%. The Applicant is requesting a 17.5% variance to the lot width and a 25.4% variance to the lot area.

**Findings Required by the Minneapolis Zoning Code:**

- 1. The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

**Lot width:** The Applicant is seeking a variance to reduce the required lot width from 40 feet to 33 feet, a reduction of 17.5%. The Applicant states they are re-establishing an original platted line and that the lots are the original platted lots. Strict adherence to the regulations would not allow for the reestablishment of platted lots and would not allow for the future construction of a new single-family dwelling on Lot 6. A single-family dwelling is a reasonable use of the property.

**Lot area:** The Applicant is seeking a variance to reduce the required lot area from 5,000 square feet to 3,729 square feet, a reduction of (25.4%), to reestablish two platted lots (Lots 6 & 7). The applicant states that they are re-establishing an original platted line and that the lots are the original platted sizes. Strict adherence to the regulations would not allow for the re-establishment of the platted lot to allow for the existing single-family dwelling on Lot 7 and the future construction of a new single-family dwelling on Lot 6, which are both reasonable uses of property in the R2B district. Staff believes that the new lot is consistent with the adjacent platted lots on the block and surrounding streets.

- 2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

**Lot width:** The conditions upon which the variance is requested are unique to the parcel of land and were created by the applicant. The Applicant is seeking to re-establish a lot line between two previously combined lots. Both lots were originally platted at 33 feet in width. The applicant would need to acquire an additional 14 of land (7 feet per lot) to allow for the existing single family dwelling on Lot 7 and the future construction of a new single-family dwelling on Lot 6 without a variance. It would be difficult to acquire additional property without affecting the adjacent properties. The original platting of the property that established the lot size is not a circumstance created by the Applicant.

**Lot area:** The conditions upon which the variance is requested are unique to the parcel of land and were created by the applicant. The Applicant is seeking to re-establish a lot line between two previously combined lots. Both lots are 3,729 square feet in area and were originally platted that size. The property is zoned R2B two-family district. The Applicant would need to acquire an additional 2,542 square feet of land (1,271 square feet per lot) to allow for the existing single family dwelling on Lot 7 and the future construction of a new single-family dwelling on Lot 6 without a variance. It would be difficult to acquire additional property without affecting the adjacent properties, because the lots are all similar in size. The original platting of the property that established the lot size is not a circumstance created by the Applicant.

- 3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

**Lot width:** Staff believes that granting the variance is in keeping with the spirit and intent of the ordinance, as the property is being returned to the original platted size that is consistent with other platted lots in the area. Staff believes that granting the variance will not alter the essential character of the surrounding neighborhood or be injurious to the use or enjoyment of other property in the vicinity. Staff does believe that the proposed house, a small, single story design, is not in keeping with the essentially character of the locality. The predominant development style in the neighborhood is two-story dwellings.

**Lot area:** Staff believes that granting the variance is in keeping with the spirit and intent of the ordinance, as the property is being returned to the original platted size that is consistent with other platted lots in the area. Staff believes that granting the variance will not alter the essential character of the surrounding neighborhood or be injurious to the use or enjoyment of other property in the vicinity. Staff does believe that the proposed house, a small, single story design, is not in keeping with the essentially character of the locality. The predominant development style in the neighborhood is two-story dwellings.

- 4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

**Lot area:** Granting the lot area variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed variance be detrimental to the public welfare or public safety.

**Lot width:** Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed reestablishment of the platted lot be detrimental to the public welfare or public safety.

#### **Recommendation of the CPED Department Planning Division:**

The CPED Department Planning Division recommends that the Board of Adjustment adopt the findings above and **approve** the variance to reduce the required lot width from 40 feet to 33 feet (17.5%) to allow for the re-establishment of a platted lot for the construction of a new single-family dwelling located at 1122 Lincoln Street NE in the R2B Two-Family District subject to the following conditions:

1. The applicant shall apply and receive approval for administrative site plan review.
2. CPED-Planning review and approve the final site plan, building plans, and elevations.
3. The Applicant shall obtain all necessary permits and approvals prior to construction.
4. The applicant shall submit confirmation from Hennepin County that 2 separate PID numbers have been created prior to the issuance of a building permit.

The CPED Department Planning Division recommends that the Board of Adjustment adopt the findings above and **approve** the variance to reduce the required lot area from 5,000 square feet to 3,729 square feet (25.4%) to allow for the re-establishment of a platted lot for the construction of a single-family dwelling for the property located at 1122 Lincoln Street NE in the R2B Two-Family District subject to the following conditions:

1. The applicant shall apply and receive approval for administrative site plan review.
2. CPED-Planning review and approve the final site plan, building plans, and elevations.
3. The Applicant shall obtain all necessary permits and approvals prior to construction.
4. The Applicant shall submit confirmation from Hennepin County that 2 separate PID numbers have been created prior to the issuance of a building permit.

**Attachments:**

Appendix A: Statement of proposed use and variance findings- Submitted by Applicant

Appendix B: Letters to neighborhood organization and Council member- Submitted by Applicant

Appendix C: Zoning map

Appendix D: Survey, Site Plan, Building Plans and Elevations- Submitted by Applicant

Appendix E: Photographs- Submitted by Applicant

Appendix F: Public Comment

## **Minutes of July 15, 2010 Board of Adjustment 1122 Lincoln Street NE (BZZ-4787)**

**Matt Perry:** Agenda item number 2, 1122 Lincoln Street NE is being recommended for consent. Is there anyone here to speak against this item?

**Matt Ditzler:** Mr. Chair, I have a couple of questions for staff on this item.

**Matt Perry:** Sure. Why don't we do that now. Thank you Mr. Vrchota.

**Matt Ditzler:** Mr. Vrchota a couple of quick questions for you. Regarding this item, the Applicant. Did the Applicant combine the lots before and now they're asking them to be separated? I'm sorry, I wasn't able to get that from the report.

**Chris Vrchota:** Chair Perry, Board Member Ditzler the Applicant did not combine the lots. They were combined at some point in the past. I was unable to determine that exact date. Lot 6, what is presumably the vacant part of the lot, in the past had a single-family house on it that was torn down in 1972. So I'd suspect that it was some time not long after that that the lots were combined.

**Matt Ditzler:** Okay, question number two, just bear with me for a moment here. It's regarding the proximity of the egress window wells to the lot line. I guess number one, what does the Code stipulate is the minimum requirement to the edge of an egress window well and the lot line?

**Chris Vrchota:** Chair Perry, Board Member Ditzler the Code allows egress window wells that are, I think it's 16 square feet or less. It's either 12 or 16 square feet or less in area to be 2 feet from the property line.

**Matt Ditzler:** And the average – okay.

**Matt Perry:** If you want, if you think further discussion or investigation is in order (unintelligible, several people speaking at once.)

**Matt Ditzler:** I'm sorry Mr. Perry I think I'd like to pull this item. I think I'd like to have it heard.

**Matt Perry:** Alright. We will discuss item number 2. Thank you Mr. Vrchota.

**Matt Perry:** Item number two, Mr. Vrchota.

**Chris Vrchota:** Mr. Perry, members of the Board of Adjustments. The subject property is located here along Lincoln Street NE, mid-block. The property is zoned R2-B and is located in the Northeast Park Neighborhood. Presently the property consists of two previously combined originally platted lots which combine to measure 66 feet by 133 feet totally 7,457 square feet. The Applicant is proposing to reestablish the originally platted lot line to allow for the construction of a new single-family dwelling on the south lot, which is Lot 6, as shown here. The Applicant is requesting two variances. First to reduce the minimum lot width from 40 feet to 33 feet, which is a reduction of 17.5%. The second variance is to reduce the minimum lot area from 5,000 square feet to 3,729 square feet, for a reduction of 25.4%. The Zoning Ordinance allows variances to both of these standards of up to 30%. Regarding the four required findings, the first being that the property can not be put to reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of the Zoning Ordinance would cause undue hardship. Regarding lot width, again the Applicant is looking to reestablish an originally platted lot line reestablishing the lots at a width of 33 feet, which is 7 feet smaller than the current zoning requirement of 40 feet. A reduction of 17.5%. Strict adherence to the regulations would not allow for the reestablishment of the originally platted lot and would not allow for new construction on Lot 6. Regarding lot area again the Applicant is seeking a variance to reduce the minimum lot area from 5,000 square feet to 3,729 square feet which is a reduction of 25.4%. And again this variance would allow for the reestablishment of an originally platted lot line. The strict adherence to the regulations would not allow for this reestablishment or for new construction on Lot 6. Finding 2 is that there are circumstances unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use of the property exists under the terms of the Ordinance. Both lots were originally platted at 33 feet, taking a look at the Zoning Map that is the pattern development on the block. The Applicant was not responsible for the original platting of the properties. To establish two fully conforming lots the Applicant would need to acquire an additional 14 feet of property with 7 feet for each lot. This would be difficult, if not impossible, to do without affecting other lots in the area. The same is true for the lot area variance. Both lots were originally platted at 3,729 square feet. The Applicant need to acquire an additional 2,542 square feet of additional property, 1,271 square feet per lot to establish two lots that meet the current Zoning Code requirements. Again the original platting of the lots was not a circumstance created by the Applicant. The third finding is that the granting of the variance will be in keeping with the spirit and intent of the Ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the area. The variance would be in keeping with the spirit and intent of the Ordinance as the property would be returned its originally platted size, which is consistent with the other lots on the block. The block does feature narrow lots, although two-story development is the norm on the street face. While the design for the proposed house is not in keeping with the character locality, the lot width and area requirement variances are. It's important here to keep in mind that these items look specifically at the variance being requested not the design proposal. The fourth

finding is that the proposed variance will not substantially increase the congestion of public streets or increase the danger of fire, or be detrimental to public welfare or endanger public safety. In this case the construction of a new single-family dwelling doesn't meet setback requirements would not have an impact on public safety or congestion. So CPED Planning's recommendation is that the Board of Adjustment approve the variance to reduce the required lot width from 40 feet to 33 feet, a reduction of 17.5%, to allow for the reestablishment of platted lot line for the construction of a new single-family dwelling on the property at 1122 Lincoln Street NE in the R2B Zoning District subject to the following conditions: That the Applicant shall apply and receive approval for administrative site plan review; CPED Planning review and approve the final site plan, building plans and elevations; that the Applicant shall obtain all necessary permits and approvals prior to construction; and that Applicant shall submit confirmation from Hennepin County that two separate parcel identification numbers have been created prior to the issuance of the building permit. CPED Planning also recommends the Board of Adjustment adopt the findings and approve the variance to reduce the lot area from 5,000 square feet to 3,729 square feet, a reduction of 25.4% to allow for the reestablishment of a platted lot for the construction of a new single-family dwelling for the property located at 1122 Lincoln Street NE in the R2B District subject to the same conditions as the first approval. That concludes my formal presentation. I can answer questions you might have, and the Applicant is here. To clarify the question that Board Member Ditzler had before. Egress window wells up to 16 square feet in size can go within 2 feet of the side lot line.

**Matt Perry:** Alright. Thank you for your presentation. Mr. Ditzler.

**Matt Ditzler:** Thank you for that presentation, you answered one of my questions, to come back to one of the questions to discuss with my fellow Board members when we get to that point. Sometimes when we are presented with new construction variances we are also presented with staff's tally of points. I see that absent from this presentation and I will talk to my Board members about that when we get to that point, but can you comment on that?

**Chris Vrchota:** Sure, Chair Perry, Board Member Ditzler, according to the preliminary application that the Applicant submitted they believe that they've achieved 19 points for this project. Staff's not able to verify that with the elevation drawings that have been submitted due to the fact that not enough detail is provided to determine if the window requirements are met, and so if neither of those is met it would drop it down to 13 points, but as of now it's not possible to make a 100% certain determination on that. The requirement that they go through the site plan review process would address that. Obviously if they don't meet the points they cannot build.

**Matt Ditzler:** The one question I have is that I don't mean to harp on the egress windows but if the minimum setback, or the minimum distance between the edge of the egress window well and the lot line is two feet, if the egress window is 16 square feet or less do you, what does the Code say regarding the size of the well? What is the required size of the well from the edge of the house out?

**Chris Vrchota:** Chair Perry, Board Member Ditzler, that's actually a Building Code requirement not a Zoning Code requirement. I'm not 100% certain what that is.

(Unintelligible several people speaking at once.)

**Matt Perry:** Ms. Sether can you shed some light on that?

**Shanna Sether:** Yes, it is a Building Code requirement. The minimum depth for an egress window well is three feet. So 5 foot distance from the wall of the structure to the property line would allow for a sufficient area for an egress window without triggering an additional variance.

**Matt Ditzler:** Thank you. Thank you Mr. Vrchota.

**Matt Perry:** Mr. Koch.

**Chris Koch:** Well, to be clear, we are, the Applicant didn't need to submit any sort of house plan to get this variance right? We're just deciding whether we should make the lot smaller correct? So it has nothing to do with the actual house plan submitted, is that true?

**Chris Vrchota:** Chair Perry, Board member Koch, that is correct. No aspect of the proposed house would require any sort of variance. This is dealing strictly with the reestablishment of the lot line and size of the lots.

**Chris Koch:** So were we to grant this and something popped up in the house that said, oh, geez the front porch is too big or too small, or something like that, it would require either a change in the plan or another variance application, correct?

**Chris Vrchota:** Correct.

**Chris Koch:** Okay, thanks.

**Matt Perry:** Thank you Mr. Koch. Mr. Cahill.

**Sean Cahill:** Mr. Vrchota just a quick question. Does the Applicant currently own both Lot 6 and Lot 7?

**Chris Vrchota:** Chair Perry, Board member Cahill, technically they are one zoning lot right now. It's not possible to have separate ownership. This process would need to be approved and separate tax IDs established to do that. As far as the ownership of the lot, I believe that the Applicant does own it, but I'm 100% positive.

**Matt Perry:** We can have the Applicant speak to that. Any other questions of staff? Just to be clear, a house can be built with a minimum of 22 feet width and meet all the zoning, fire and building codes, is that correct?

**Chris Vrchota:** That's correct Chair Perry.

**Matt Perry:** Thank you. I think I prompted another question perhaps. Mr. Manning.

**Bruce Manning:** Thank you Mr. Chair. Mr. Vrchota, I realize that the house as issue is, as your conversation with Mr. Koch demonstrated is not the issue here, but I am curious to know if with a lot size this small, if staff has reached an conclusions on coverage, lot coverage, but the building structure and the out buildings? In other words, is this lot big enough to put a house typical for the neighborhood on it without needing additional variances for lot size? Am I creating future applications for variances or be told well I approve the small lot.

**Chris Vrchota:** Chair Perry, Board member Manning, the subject property would be 3,729 square feet, lot coverage is allowed to be 50% of that, which would be – you're making me do math on the spot here. A little under 1,400 square feet. The footprint for the house is .

**Bruce Manning:** Do you mean 1,900 square feet? 50%?

**Chris Vrchota:** Yes, thank you. My apologies. See what happens when you make me do math on the spot? The proposed house is 22 feet by 52 feet which, if you let me use my phone for a calculator I can give you some solid answers. I apologize for not having this prepared.

**Matt Perry:** You may.

**Chris Vrchota:** I'm sure the Board is probably doing the math faster than I am right now. The footprint for the house is 1,044 square feet. The garage is 20 by 12, there shouldn't be a problem meeting the lot coverage requirements here.

**Bruce Manning:** Thank you.

**Matt Perry:** Mr. Keobounpheng.

**Souliyah Keobounpheng:** Thank you Chair. Mr. Vrchota could you clarify that the lots as they exist now is 66 feet by 133 feet? And then by potentially severing them in half would be 33 feet by 133? There is a potential typo 33 feet by 113 which is the correct number.

**Chris Vrchota:** That is correct. Chair, Board Member Keobounpheng that is correct. It is 113 not 133 that is a typo.

**Matt Perry:** Everybody got that? I'll take that as a yes.

**Souliyah Keobounpheng:** Thank you Mr. Vrchota.

**Matt Perry:** Thanks for pointing that out. Any further questions of staff? Alright. Thank you. Is the Applicant present? Would you like to testify? If you want to come up to the microphone so that we can have this on public record please. If you could state your name and address for the record.

**Jerry Nordenstrom:** Jerry Nordenstrom 4843 Grand Avenue NE.

**Matt Perry:** Thank you sir.

**Jerry Nordenstrom:** The only thing you question about – it is owned by one. 6 and 7 because it is single PIN right now. So that's what. I don't know if there's any other questions you have.

**Matt Perry:** Any other questions to Applicant? Mr. Manning.

**Bruce Manning:** Hi Mr. Nordenstrom. Thank you for speaking to us today. Can you very briefly tell me the relationship between Golden Gopher Properties, LLC and Community First Development, LLC?

**Jerry Nordenstrom:** Yeah, they're owned by the same person.

**Bruce Manning:** And Community First Development, is it non-proper (sic) building ...

**Jerry Nordenstrom:** What?

**Bruce Manning:** Is it a non-profit development?

**Jerry Nordenstrom:** No.

**Matt Perry:** You have another question Mr. Manning?

**Bruce Manning:** Thought I did, but I don't. Yet.

**Matt Perry:** While he's looking, does anybody else have any questions of the Applicant? You can have him come back up if you'd like. We might have you come back up again.

**Jerry Nordenstrom:** One thing I do want to say is that there were some questions raised, you know, when this started and somebody raised a question about the plan. You know, obviously it has to go through the whole zoning – we have to meet a lot of different things that aren't required on this variance.

**Matt Perry:** Sure.

**Jerry Nordenstrom:** Yeah, that we're looking at, trying to do some things to accommodate some of the questions that were raised. But everything does meet, or will meet all the necessary zoning for windows and we are not imposing more space as far as impervious space than what the ratio allows. It's quite a bit under as a matter of fact. So the house fits very well – it will fit very well on that property.

**Matt Perry:** Alright. Thanks, I think Mr. Manning has that question now.

**Bruce Manning:** Thank you sir. Did you receive a copy of the Northeast Park Neighborhood Association's letter to Mr. Vrchota dated June 16<sup>th</sup>?

**Jerry Nordenstrom:** Yes.

**Bruce Manning:** In that letter Mr. ...

**Jerry Nordenstrom:** Well wait a minute, excuse me. I don't believe we got that. I asked Brian for a copy of it, but I never did get it.

**Bruce Manning:** Well I'm going to ask you about it and just a sentence in there and I'm sure Mr. Vrchota has a copy if you need to see it, in order to answer the question. Mr. Steele reports on behalf of NEPNA and I don't know if this is a mistaken impression or if it's a just general statement that doesn't apply to your project. He writes in the last paragraph: We would like to avoid the one size fits all approach that non-profit builders have taken in the past and to be the result even from our own guidelines. I guess I had the impression that he thinks you're a non-profit builder.

**Jerry Nordenstrom:** I've been to a couple of Board, or neighborhood group meetings up there and have spoken to Mr. Steele several times. We absolutely didn't say that, and it was the other way. I mean, we are absolutely a for profit – doesn't always work that way, but I mean we are a for profit group.

**Matt Perry:** Thank you.

**Jerry Nordenstrom:** Okay.

**Matt Perry:** Alright. Thank you sir for your testimony. Is there anyone else to speak in favor of this application? I see no one. Is there anyone to speak against? Alright, if you would step forward and give your name and address and what I would ask both Applicants and speaking against and for applications, if somebody has already made the point you don't need to remake the point in detail. You can just say I agree with the previous speaker's point. If you do that we could move things along pretty quickly and still respect your interest in making testimony and respect the fact that you've come down to do so. And if again, if you could state your name and address for the record I'd appreciate it.

**Chelsea Lein:** My name is Chelsea Lein and my address is 1227 Buchanan Street NE. I live on the next block.

**Matt Perry:** Thank you.

**Carol Lein:** My name is Carol Lein. I live at 1227 Buchanan Street NE and I live 2 blocks away.

**Chelsea Lein:** We are neighborhood residents but we also have unique experiences property because this property was owned by my grandfather for 50-odd years. He obtained the side lot in the '70s after the apartment that was previously existing there burned down. Sorry, it was a duplex, not an apartment building. My grandfather had the foresight that it was so uncomfortable to have those two dwellings so close to one another that he purchased that lot to prevent another house from being built there. The house on 1122 Lincoln Street NE does not have very much of a back yard and so the side lot existed as both a garden and the yard for the property at 1122. Our concerns are that there is a lack of yard space. The way the, the house used to belong to my grandfather, I don't know who owns it now, but the way that the garage is oriented it would be very difficult to move a car in there if there is another property taking up the space and if there is a garage going to be there. The lack of yard space also concerns us because it is unlikely to attract families to the neighborhood. As I stated, we are members of the neighborhood and we would like to see families in there. We would not like to see it turned into another rental property with slum lords and people that are just going to really bring down the integrity of our neighborhood. We're also concerned because there is another empty lot on the other side of my grandfather's house which is not part of this lot and there was a demolition project that was executed that caused foundation problems to my grandfather's property prior to us selling it, and we believe this is because the houses are just so close to one another. So worry that building excavation would further cause problems to the foundations of the houses on either side of the proposed property. We also wonder if you guys are going to approve the house being put on this lot are you going to then go to the lot next door and also put another very small house? We just also, in flipping through the Agenda, the aesthetic of the house really just doesn't seem to match with the neighborhood also, so we have some concerns about that. I also just wanted to comment briefly on Mr. Vrchota's assessment that it will not affect congestion on this street. I really disagree with that just because it's a very narrow street, Lincoln Street, and parking is banned all times of the year on half of the street. There are a lot of rental properties on that block and so I just imagine that it's going to become very congested and spill over into the next block where we live.

**Matt Perry:** Alright. Thank You.

**Carol Lien:** She made most of points. I just wanted to note that the house at I believe it's 1116, the one on the other side of the lot has been vacant for about a year and a half. It's been for sale and just empty, so you know there's already houses out there. And so until we start filling these do we really need to construct another house that may sit

vacant for a while? And then the biggest thing too was disturbing the integrity of the foundation of both houses because prior to my selling 1122 Lincoln, the house was tilted due to the house on the other side when the City took it down.

**Matt Perry:** Alright. Thank you. I want to address the question for folks in the audience and that you brought up with respect to this Board making a decision today about this particular property influencing our decisions in properties, even on that block. We look at variances. We're not a policy body. We look at each variance on its own. We don't look forward, we don't look backwards, we look at the variance in front of us. So the decision we make today is not be influential on what decide if a variance came before on another lot, on that street or anywhere else for that matter. Mr. Koch?

**Chris Koch:** You mentioned about getting into the garage at 1122, does the current driveway cross what would be the new ...?

**Chelsea Lien:** Correct, it does. It extends all the way through the sidewalk.

**Chris Koch:** So that's a side loaded garage door essentially.

**Chelsea Lien:** Correct.

**Chris Koch:** Okay, thank you.

**Matt Perry:** Alright. Thanks for your testimony. Thanks for coming down.

**Chelsea Lien:** Can I just make one last comment?

**Matt Perry:** Absolutely.

**Carol Lien:** If they were to take down the house at 1122 Lincoln and use the three lots to make two houses that would make sense.

**Chelsea Lien:** We would like to see new houses in the neighborhood. That would be nice, it's just this one seems to be kind of full of problems.

**Matt Perry:** Alright. Thanks for sharing your comments, and again, thanks for coming down. Sir you wanted to testify? And again if folks have already made the points you can just say I agree with those and ...

**Jerome Caron:** My name is Jerome Caron. I live at 1130 Lincoln. I've had that address for 62 years and we've had a very unique situation on that block. Meaning that we were one of the very few – that alley – we don't actually have any alley in that, on that block. It's an easement for the power company. We were never afforded –we were taxed, but we were never afforded the availability to have a nice concrete alley like the rest of the people around that neighborhood. We were taxed twice and it was never put in. And the only one in that neighborhood that has the full value of their full lot is one down on the

corner on the 1300 block of Lincoln. They put their garage right on the property line that's why the alley goes like this and everybody set it back. Now on our alley I – my father tried to buy the house next doors so he could tear it down cause he would've wanted to tear mine down and build a new one but we weren't allowed to. Not only did they increase the property line from 40, but they said 45 feet. Allowing 66 feet being our frontage. Now ...

**Matt Perry:** If I may sir, how does that relate to the two variances before us here?

**Jerome Caron:** Well, if you're putting a very small house on a very small lot.

**Matt Perry:** Okay.

**Jerome Caron:** And uh ...

**Matt Perry:** And you're objecting to that for that reason alone?

**Jerome Caron:** Yes. It's – you can up but you can't go out, the accessibility to the lot because there is an easement across that property to gain access to the garage because it faces south. It doesn't face the alley. My garage had to be set back into my yard in order to gain access to it. And even out street on 12<sup>th</sup> Avenue is not a legal street. It's only 33 feet wide because there was a house there that burned down and they made a street through it. So we have a very unique, very unique situation on that block and we've – that one house to the south of this property in question here has been empty for quite a long time. These are old houses. Mr. Nordenstrom did a very nice job of rehabbing Mr. Lien's house. He did a wonderful job, I'll say that. But the house itself, the property for landscaping you'd have to take down two of the big trees that are there and again it's our parking problem and our alley is not – it's a dirt alley and there's no parking across the street. And there's only parking on one side and eventually I assume that if you grant the variances necessary that would set them up for the house next door – me – to build a house right there on that same property.

**Matt Perry:** As I pointed out, that's actually not the case sir. But I appreciate your sharing that comment. Is there anything else that you'd – concerns you'd like to raise about the two variances in question before we move on?

**Jerome Caron:** Well I think the biggest concern here is the traffic or the neighborhood itself being – the parking, the off street parking. I've tried to purchase the property across the street to make a parking lot for the whole neighborhood. Plowing, because of that fact that we do not have parking on both sides of the street.

**Matt Perry:** Okay. Mr. Koch did you .... Okay thank you for coming down and sharing your comments with us and your concerns. Is anybody else here to speak against this variance? I see no one. Let's close the public hearing. Board comment? Mr. Manning.

**Bruce Manning:** I'm afraid I need some education from my fellow Board members or I may have a question for Mr. Vrchota which is what the current legal status of the alleys that exist throughout the City are. I'm a little concerned that this is simply a power company easement and not an actual public right of way access to the garages on this street because if that easement were to go away or if it's only in favor of the power company and not residents there's no way to get to this garage, perhaps any of the garages on this block and we'd be plopping a house down on the wide part of the lot where one would presumably put a driveway if (unintelligible). I'm feeling a little bewildered and I don't know if that's something for Board ...

**Matt Perry:** Let's see if staff can answer that, but I'd also like to make sure that we stay focused on the four findings and I'm not sure the easement comes into play on those four findings.

**Bruce Manning:** I guess can tie it up, which is that the smaller lot is not going to have the space a sufficiently wide home and a driveway if the only way to access is from the public street, not from the power companies dirt alley easement. So that's how the questions relate to what's before us.

**Matt Perry:** Okay, thank you. Mr. Vrchota.

**Chris Vrchota:** Chair Perry, members of the Board I personally am not able to give you a definitive answer on the legal status of that.

**Matt Perry:** Mr. Cahill?

**Sean Cahill:** Thank you Mr. Chair. I'm just going to be forthright just say I'm going to ask that we deny this variance. And based simply, I don't believe there's any undue hardship here. Unfortunately, I know I'm harping on the Supreme Court's ruling here but unfortunately it's still law and it simply states that a municipality does not have the authority to grant variance unless an Applicant can show that her property cannot be put to reasonable use without the variance. In this case I see that yes it's a larger plot and yes I do believe it's a good idea but at the time it certainly can be used as is. If it wants to be expanded we'll have to require additional plots. In other words I do believe the Applicant can use the property in its current state. In addition maybe just as a warning to the Applicant and this is not going into my consideration today, as that we don't take the future into consideration but if any variances were asked about the late of split properties if we do adopt this variance is I would believe that you'd fail the second factor which is that you'd then create basically a - your own need for a variance. At which point I'd find that you created the problem and I'd have to deny the variance because you created that issue and you have an interest in the property. Essentially what I'm trying to say is that if you came forward with another variance to build on that smaller plot I would deny that variance because you made the problem yourself. Thank you.

**Matt Perry:** Thank you Mr. Cahill. What I would like to do is say that Mr. Cahill's comments are Mr. Cahill's comments. They're not reflective of the Board or future

actions by this Board and I'd like that to be noted. And sir, I'm sorry, who asked to speak? The public hearing is closed so we've got to move on with that. Mr. Ditzler?

**Matt Ditzler:** Thank you Mr. Perry. I'm going to need some help from my fellow Board members on this one. This one's a little bit more difficult. It's difficult for me because I think if this were an Applicant that had purchased this lot as it is and not had requested to split it, but if they had purchased this lot as it was and wanted to build on it we give variances to build on substandard lots all the time. Thank you to Mr. Vrchota who also pointed out, and that I need to remember, I just wanted to state for our discussion here that as with all variances, even though we are submitted with plans, those variances are not tied to those specific plans. Those plans are usually a framework and an idea many times as to what could be there if this variance is approved. But in most cases the Applicant just has to get the plans approved and if they change and meet building code they can do that. The variance isn't tied to the plans and so thank you Mr. Vrchota for clarifying that because while I'm not in favor of the plans as they're submitted, it's really not what the issue is. So if it was a substandard lot we need to provide that Applicant the ability to build on it but my problem right now is that it's a split. And it's one lot as it is and I'm having a hard time finding a hardship – finding a hardship to split it. Or finding that the Applicant has not created the problem by splitting it.

**Matt Perry:** Or perhaps another way, if I may interject tying Mr. Cahill's comments, some of his comments to yours, is that the property can be reasonably used as it is.

**Matt Ditzler:** That is correct. Thank you Chair Perry.

**Matt Perry:** Mr. Koch?

**Chris Koch:** That and we're – in granting one variance then we're kind of creating the problem for the other one. So ...

**Matt Perry:** I don't follow that logic.

**Chris Koch:** Because we are reducing the lot area by saying yeah, go ahead and split it and then we need to – because we split it we need to reduce the required lot area from 5,000 to 3,729 square feet, right?

**Matt Perry:** Well actually the variance is a reduction of – once the variances would be granted then the Applicant could split the lot. I think that's the question. The variances themselves, one is not causing the other to be required. We would grant the variances they're not dependent upon each other necessarily. One does not influence the other. But they're being requested so that the Applicant can then go ahead and do a lot split.

**Chris Koch:** Right.

**Matt Perry:** Mr. Finlayson?

**John Finlayson:** Quite simply I'm just not in favor of creating substandard lots.

**Matt Perry:** Thank you Mr. Finlayson. Other Board member comments? Mr. Koch?

**Chris Koch:** This is hard because I am in favor of increasing density in the City. It's a greener way to live, it's I think it's better for neighborhoods to have, I mean I hate to say it – more people, but given that this is ordinarily I would be for this. I'm just not feeling the love here. There's a lot about this that maybe I can't articulate it well enough but I'm not in favor of it in particular.

**Matt Perry:** Alright. Mr. Manning and then Mr. Sandberg.

**Bruce Manning:** I would only respond to those concerned about giving variances to create substandard lots is that the lot was originally platted this way. Now, it was platted a long time ago when our land use habits have changed and maybe it wouldn't be platted this way if it were to be platted again because of the minimum lot widths, but nobody's mentioned that fact in considering just how and why the newly platted lot would be substandard.

**Matt Perry:** Alright. Thank you Mr. Manning. Mr. Sandberg?

**Dick Sandberg:** Thank you Mr. Chair, I have to say that I appreciate my fellow Board members discussion here because I was prepared to go with staff's recommendation until I heard some of this discussion and I guess the staff recommendation based on the fact that property was used for a single-family house in the past was leading me to that conclusion that making it a reasonable use of that platted property. But the fact that it is now owned as a combined lot I think has swayed my decision to thinking against that recommendation.

**Matt Perry:** Other Board comment? Mr. Ditzler?

**Matt Ditzler:** Just a tack on to Mr. Manning's comments, which is an item that I am struggling with as well, but just a mix of a couple of things here to make it extra confusing. It almost seems to me a little bit like you can't put the analogy on the nonconforming use. It was a substandard lot at one time and it was combined together and now is a conforming lot and now it seems to me that the Applicant is asking to split it off. I know the two aren't related or connected and it's not the same thing, but it kind of feels like the same thing to me.

**Matt Perry:** Alright. I'll just remind my colleagues on the Board that in order to not adopt staff finding we need to find for – we need to indicate at least one of the four findings for each of the variances are not found for in our opinion. Mr. Cahill?

**Sean Cahill:** Mr. Chair I'd move that we'd make the finding that while the measurements and all the, for lack of a better term, math behind the staff's report is correct, however, that we find that it is not a reasonable, or that there is not a – I'm trying to figure how to work this correctly – that there is no undue hardship currently caused by

the property as is therefore it fails the first prong of the test and I would ask that we deny the variance.

**Matt Perry:** And just to note, there are actually two variances that are being requested by the Applicant.

**Sean Cahill:** I make the motion that we adopt the same findings for both.

**Matt Perry:** Okay.

**Dick Sandberg:** I'll second that motion.

**Matt Perry:** And there's a second. Mr. Manning.

**Bruce Manning:** I don't think I can support that motion as phrased. I believe that the correct result is to overturn the staff recommendation here, but I cannot support the reasons advanced by Mr. Cahill or at least as a matter of preference I would prefer to find that the circumstances were in fact created by the Applicant's desire to split the lot and that is true for both lot width and lot area. And that is the reason for which I would support overturning staff. So as the motion's currently phrased I will not be supporting.

**Matt Perry:** Well, you maybe could – you don't need to limit yourself to one finding.

**Bruce Manning:** I agree, but I've – I affirmatively do not wish to support a finding that is based on a determination of the property can be reasonably used. I don't quite get – know what to make of the Supreme Court's recent decision and I don't want to wade into that and I don't have to here.

**Matt Perry:** So noted. Thanks for pointing that out to me, I jumped to a conclusion that was not... (end of tape)

**Matt Ditzler:** Would the maker of the motion be opposed to adding Mr. Manning's finding and withdrawing his own if we vote on a motion to deny and it's not supported are we able to vote on another motion denying a second time?

**Matt Perry:** Sure, we are.

**Matt Ditzler:** Okay.

**Matt Perry:** Okay. But Mr. Cahill would you ...

**Sean Cahill:** I'd accept the amendment.

**Matt Perry:** I'm sorry, I forgot who seconded that.

**Dick Sandberg:** I did Mr. Chair and I'll accept the revision as well.

**Matt Perry:** Thank you. Any further discussion?

**Bruce Manning:** Can I just make clear what it is that - the motion now is to overturn staff recommendation, deny the variance as to lot width and lot area because the Board has found that this variance is a circumstance created by the desire for the – by the Applicant to split the lot. In other words, we disagree with staff on the second finding.

**Matt Perry:** As well as ...

**Bruce Manning:** Is it that period, or is it ...

**Matt Perry:** No, as well as – no, I'll let the motion maker speak to that.

**Sean Cahill:** My understanding was we are simply voting on the Applicant has created the circumstances, we're going to hold the question of undue hardship for a second motion.

**Matt Perry:** Oh, okay.

**Sean Cahill:** So under the amendment we're simply voting that the Applicant has created the circumstances.

**Matt Perry:** Thanks for bringing that up, that does clarify it. Does everyone know what the motion is and the finding associated with it? Alright. Will the clerk please call the roll?

**Clerk:** Mr. Cahill?

**Sean Cahill:** Yes

**Clerk:** Mr. Ditzler?

**Matt Ditzler:** Yes.

**Clerk:** Mr. Finlayson?

**John Finlayson:** Aye

**Clerk:** Mr. Koch?

**Chris Koch:** No.

**Clerk:** Mr. Keobounpheng?

**Souliyah Keobounpheng:** Yes

**Clerk:** Mr. Manning?

**Bruce Manning:** Yes.

**Clerk:** Mr. Sandberg?

**Dick Sandberg:** Yes.

**Clerk:** The motion passes.

**Matt Perry:** Alright. That means that the variance requests as requested are denied. You can see the staff about what your options are after the hearing. We're done with this item.