



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

Date: September 28, 2006

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Board of Adjustment action denying variances for property located at 4601 33rd Avenue South (BZZ-3147) by Kathleen Geagan.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** the following variances: a variance to increase the maximum height of a wall in the required corner side yard setback from 3 ft. to allow for a portion of a wall that is 5 ft. and 6 ft. in height and a variance to reduce the side yard setback to allow for a patio in the required corner side yard setback at 4601 33rd Avenue South in the R1A Single-family District.

Previous Directives: N/A

Prepared or Submitted by: Molly McCartney, Senior Planner, 612-673-5811

Approved by: Jack Byers, Planning Supervisor, 612-673-2634

Presenters in Committee: Molly McCartney, Senior Planner

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Ward: 12

Neighborhood Notification: The applicant notified the Standish Ericsson Neighborhood

Association of the variance application as required by CPED – Planning. No correspondence from the neighborhood group has been received by staff.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: On September 8, 2006, the applicant was sent a letter by Planning staff extending the decision period to no later than November 18, 2006.

Other: Not applicable.

Background/Supporting Information Attached: Kathleen Geagan has filed an appeal of the decision of the Zoning Board of Adjustment denying the variances for a wall at 4601 33rd Avenue South. The Zoning Board of Adjustment voted 7-0 to deny the variances at the August 17, 2006, meeting. The applicant filed an appeal on August 28, 2006. The applicant's statement is included in the staff report.

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-3147

Date: August 17, 2006

Applicant: Kathleen Geagan

Address of Property: 4601 33rd Avenue South

Contact Person and Phone: Kathleen Geagan, 612-724-4452

Planning Staff and Phone: Molly McCartney, 612-673-5811

Date Application Deemed Complete: July 21, 2006

Public Hearing Date: August 17, 2006

Appeal Period Expiration: August 28, 2006

End of 60 Day Decision Period: September 19, 2006

Ward: 12 **Neighborhood Organization:** Standish Ericsson Neighborhood Association

Existing Zoning: R1A Single-family District

Proposed Use: A wall in the required corner side yard

Proposed Variance: A variance to increase the maximum height of a wall in the required corner side yard setback from 3 ft. to allow for a portion of a wall that is 5 ft. and 6 ft. in height and a side yard setback to allow for a patio in the required corner side yard setback at 4601 33rd Avenue South in the R1A Single-family District

Zoning code section authorizing the requested variance: 525.520 (5)(1)

Background: The subject site is a corner lot, measuring 40 ft. by 139 ft. (5,560 sq. ft.), that consists of a two-story, single-family dwelling. The applicant resides and operates a home day care at this location. The applicant is proposing to install a wall in the required corner side yard on the north side of the dwelling that will exceed the maximum height and will use this area between the wall and the dwelling as a patio to locate a grill.

The proposed wall is located along the side of the house at two different heights. The 5 ft. tall portion of the proposed wall has a 3 ft. solid wall with two feet of an open, wrought iron detail and three 5 ft. tall columns. The 6 ft. tall portion of the wall has a 5 ft. solid wall with 17 in. wrought iron details and one 6 ft. tall column. The maximum height of a wall or solid fence in the required corner side yard along the side of the house is 3 ft. This height can be increased when the wall or fence is at least 40 percent transparent. The portion of the wall that is 5 ft. tall is 28 percent transparent and the portion of the wall

that is 6 ft. tall is 18 percent transparent. The proposed fence is not eligible for an increase in height based on transparency. The site currently has two 6 ft. columns located in the rear of the house along the corner side yard setback, which meets the maximum wall height.

Staff considers the area that the grill will be located as a ground level patio, which needs a variance to be located in the required corner side yard because of its size. The patio is approximately 5 ft. 10 in. by 17 ft., which is the length of the proposed wall, and measures 99 sq. ft. in size. A ground level patio in the required corner side yard that measures 5 ft. and no more than 50 sq. ft. is a permitted obstruction and would not need the variance. The proposed-sized patio is not a permitted obstruction.

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.**

Fence height: The applicant is requesting a variance to increase the maximum permitted height of a wall in the required corner side yard from 3 ft. to 5 ft. and 6 ft. Without a variance, the maximum height of a solid wall in the required corner side yard is 3 ft. The applicant states that the fence height is proposed in order to provide privacy to this area from the public sidewalk. While privacy is a desired feature for this area, staff does not identify a hardship associated with meeting the height requirements of the ordinance.

Patio in required corner side yard: The zoning code permits a small sized patio in the required corner side yard, but not the size as proposed on the applicant's plan. The applicant is proposing to use this area for a patio in order to separate barbeque equipment from the play area in the backyard. Staff believes that a patio that meets the permitted obstruction regulations for a patio in this area is a reasonable use of the property.

- 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.**

Fence height and patio in required corner side yard: The property is a corner lot, which has a greater setback along the corner side yard than an interior lot. In some situations, a wall is allowed to be 6 ft. tall along an interior side yard. The applicant states that this proposed location was determined to be the best area for the patio because the small side yard on the south side of the house would not accommodate a patio and the current use of the backyard as a play area. However, the circumstances on which the variances are request have been created by the applicant since the backyard is used for a play area and due to the design and height of the wall and the patio size.

- 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.**

Fence height: The wall height requirement along a corner side yard is intended to provide a sense of privacy and still offer access to light and air and regulate visual impacts. The wall along the corner side

yard is limited to 3 ft. in order to reduce the mass of a solid wall or fence along the public sidewalk and height requirement also preserves views from inside the dwelling to the street. While there are no other similar walls in the surrounding area, the design of the proposed wall is in character with the subject dwelling and site. The brick of the wall and columns is similar to the brick on the dwelling and front porch and the wrought iron details of the wall will be similar to an exiting gate to the backyard.

Patio in required corner side yard: The patio in the required corner side yard is limited to a size smaller than the proposed patio. The proposed sized patio could result activity that may have conflict with the activity of the public sidewalk. Limiting the size of the patio to 5 ft. deep and no more than 50 sq. ft. in this area also restricts activity that may be more compatible in the backyard away from the public sidewalk.

- 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.**

Fence height and patio in required corner side yard: Granting the variances would likely have no impact on congestion of area streets or fire safety, nor would the proposed variance be detrimental to or public safety. By locating a patio so close to the public sidewalk, there may be conflicts between the private use of the patio and the public use of sidewalk.

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

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and deny the variance to increase the maximum height of a wall in the required corner side yard setback from 3 ft. to allow for a portion of a wall that is 5 ft. and 6 ft. in height and deny the side yard setback to allow for a patio in the required corner side yard setback at 4601 33rd Avenue South in the R1A Single-family District.

Board of Adjustment Hearing Testimony and Actions

Thursday, August 17, 2006
2:00 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. David Fields, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Matt Perry, Mr. Peter Rand

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

7. **4601 33rd Avenue South (BZZ-3147, Ward 12)**

Kathleen Geagan has filed a variance to increase the maximum height of a wall in the required corner side yard setback from 3 ft. to allow for a portion of a wall that is 5 ft. and 6 ft. in height and a side yard setback to allow for a patio in the required corner side yard setback at 4601 33rd Avenue South in the R1A Single-family District.

CPED Department Planning Division Recommendation by Ms. McCartney:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the variance to increase the maximum height of a wall in the required corner side yard setback from 3 ft. to allow for a portion of a wall that is 5 ft. and 6 ft. in height and **deny** the side yard setback to allow for a patio in the required corner side yard setback at 4601 33rd Avenue South in the R1A Single-family District.

TESTIMONY

Finlayson: Yes, Mr. Perry.

Perry: I have some really fundamental questions. I'm looking at this diagram. I can't follow what's going on, I'm embarrassed to say. From the house to the proposed brick wall is 29'6"? Am I reading that right? Or is that the length of the wall, I can't figure out what's going on here.

Molly McCartney (staff): Yes, the length of the house is 48' yes, the length of the proposed brick wall is correct 29 ½'.

Perry: What's the distance and if I may just ask a series of questions here so I can get these measurements down. What's the distance from the house to the proposed wall? I know it varies, I guess at the shortest.

Molly McCartney (staff): At this location right here is 5' 10" to the existing pillars, and so the house does jut in a little bit here, this is an addition that was put on. So I believe that the distance is 5' 10" and that the wall will follow that with those existing pillars.

Perry: Okay, and from the wall to the sidewalk?

Molly McCartney (staff): It looks like it is going to be placed along the sidewalk.

Perry: Right on the sidewalk?

Molly McCartney (staff): Yes, I believe that is where the pillars are. In this picture it will just follow this length.

Perry: All right, thank you for clarifying that diagram. Thank you Mr. Chair.

Finlayson: Any further questions?

Gates: Just following up on that.

Finlayson: Yes, Mr. Gates.

Gates: No survey required to verify they are not building into the right-of-way? Typically that lot line is back up there so...

Molly McCartney (staff): It is usually a foot or two on east/west streets. In this case I'm not sure. We would check that. The fence is not more than 6' so it doesn't require a permit for the building code for footings, yet it does have some zoning requirements. A lot of times we do check with Public Works and they routinely issue encroachment permits for fences or retaining walls located in the right-of-way. A lot of times we see landscaping that comes right up to the side walk in front of the yards when the property line is setback a couple of feet.

Finlayson: Any further questions? I see none. Thank you.
Is the applicant present? Name and address for the record please.

Applicant: Kathleen Geagan, 4601 33rd Avenue South. And I did the design, I'm sorry. We have lived at 4601 33rd Avenue South for 28 years and in the course of that time we have done an addition, remodeling, we have constantly done an improvement to our property. 22 of the 28 years I have done a day care business in my backyard, or my house, not my backyard. In the course of that time I have developed the backyard for a children's play area. Now as time has gone on, I would like to ... we would like to pursue a landscaping project in the front, as well as moving the barbeque to the side yard. If you look at a picture of the ...

Rand: When you use the word front, which side of the building? Just I want to know.

Kathleen Geagan: I'm sorry could you repeat that?

Rand: Front, which is the front?

Kathleen Geagan: I view that our house has actually three fronts.

Rand: You just said front, so I just wanted to know, which side.

Kathleen Geagan: Okay. I'm talking right now about the side of the house does that clarify it.

Gates: The 46th Street.

Kathleen Geagan: No, the front of the house is the...the side is 46th street, yes; the front...the official front is on 33rd Avenue.

Rand: I just want to be sure.

Kathleen Geagan: Does that straighten it out? Okay. What we're proposing to do is using the same material as we have in the front of the house on 33rd Avenue, the brick, creating a wall and the wall that we have submitted to the city...the wall itself is 5' high and it extends across what we call the towers, the area that does not have any windows. Then in order to ... not just have a wall there and to extend it out, halfway across the side bay windows we are doing an extension to that wall, a shorter piece, which would be 3' high. On the top of these walls and Molly showed you pictures of them...the higher wall has an antique widow's walk that is very decorative, very ornate that we are going to put on top of the higher wall. The shorter wall has three antique iron railings that are cast iron, they were apparently hand done, are going on the 3' wall. As was indicated, we live on 46th Street, the light rail is certainly a factor. In the 28 years we've been there our traffic pattern has increased from a city street which is relatively quiet to one that is much busier. By being able to create a certain level of privacy we feel that we can also have an area for our family to barbeque. We are not doing a patio that covers the full length of the wall. The intent was in the 3' area, we would have landscaping coming back from the front to the back maybe similar to a secret garden, something a little bit more involved than the flat grass that we currently have. So we were thinking in terms of the patio area being in the 10'10" that is the length of the blank wall that is on the side. I think it was pointed out that there are concerns about the sidewalk congestion, but there is a gate on the side between the pillars and the house that opens to the backyard, so that is where the foot traffic would go, rather than going around the wall or an intention that people would be congregating on the sidewalk. I think I've pretty much addressed it. We are really viewing it that it would add a lot of curb appeal to the house as well as it's just a highly traveled road and it would be attractive and also serve a function. I guess one other thing I wanted to mention was if we were in the middle of the block and we were talking about an interior side yard, we would qualify for a 6' wall. It is just because we are on the corner that it becomes a problem.

Finlayson: Thank you, does anyone have any questions? I see none at this time. Thank you. Anyone else to speak in favor? Anyone to speak against? I see no one, let's close the public portion of this item. Mr. Ditzler.

Ditzler: I can speak a little bit to the property because I used to live in the neighborhood not too long ago and have driven by it many, many times. For me I guess the issue is two fold. I think that the mass of the fence on the corner is too much. I think that the distance between the fence and the house to locate a barbeque and a grill there I think is too much and for me, again, I would like to hear my other board member's opinion of it, but it appears to be a little bit of a text book case of point #2, of granting the variances where the applicant seems to have created the lot hardship themselves by having the daycare in the backyard which obviously does serve an important community function and that she's had it for so long is great, but it seems it...I guess that is the cost of having the daycare in the backyard meaning that you can't...that you give up some patio space? It seems to be according to the law, and what we are supposed to base our findings on, that seems to be created by the applicant and there for should not be supported. I'll be interested to see what everyone else thinks about that.

Finlayson: Mr. Gates.

Gates: Yes I would agree with Mr. Ditzler and add that I think that the same purpose could be accomplished with a dense hedge along the sidewalk there with perhaps an open ornamental fence, still get some privacy. The patio area would perhaps not be paved with a hard surface, so you could have a grill there, yet it wouldn't require a permit or a variance. You could probably achieve your objective without having the variance. But that said, yeah, it's difficult to grant a variance when the reason why it is being requested is that the backyard is being used for a business, which again I concur is a great thing for the neighborhood, and yet it's an issue or it's a circumstance that is created by you and for that reason I don't think we're essentially allowed to grant a variance for that. So I concur.

Finlayson: Ms. Lasky.

Lasky: Inaudible.

Finlayson: I agree, the hardship was created by the applicant is fairly obvious and there are alternative means. Does somebody have a motion?

Perry: Mr. Chair.

Finlayson: Mr. Perry.

Perry: I've looked at the house, unlike my colleague Mr. Ditzler, I hadn't looked at the house until a couple of days ago, it is a beautiful house, beautiful brick entry, but I would have to agree with my colleagues that putting that so close to the sidewalk and at such a height really is a disservice to the character of the neighborhood and to pedestrians walking along there so I'm going to move that we adopt staff recommendation and deny the variance.

Gates: Second.

Finlayson: Please call the roll.

Ditzler: yes

Fields: yes

Finlayson: yes

Gates: yes

Lasky: yes

Perry: yes

Rand: yes

Pass.