



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

Date: November 8, 2007

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** a variance for property located at 5112 Vincent Avenue South (BZZ-3791) by John and Patricia Brogen.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** a variance to increase the height of a single-family dwelling to three stories to allow for a rear dormer addition at 5112 Vincent 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: 13

Neighborhood Notification: The Fulton Neighborhood Association was notified on September 20, 2007.

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 October 30, 2007, 2007, the applicant was sent a letter by Planning staff extending the decision period to no later than January 3, 2008.

Other: Not applicable.

Background/Supporting Information Attached: John and Patricia Brogen have filed an appeal of the decision of the Zoning Board of Adjustment denying the variance at 5112 Vincent Avenue South. The Zoning Board of Adjustment voted 5-1 to **deny** the variances on October 11, 2007. The applicant's appeal statement is included in the staff report.

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-3791

Date: October 11, 2007

Applicant: John and Patricia Brogen

Address of Property: 5112 Vincent Avenue South

Contact Person and Phone: John and Patricia Brogen, 612-492-6686

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

Date Application Deemed Complete: September 19, 2007

Appeal Period Expiration: October 22, 2007

End of 60 Day Decision Period: November 18, 2007

Ward: 13 **Neighborhood Organization:** Fulton Neighborhood Association

Existing Zoning: R1A Single-family District

Proposed Use: Construction of a rear, third story dormer.

Proposed Variance: A variance to increase the height of a single-family dwelling to three stories to allow for a rear dormer addition at 5112 Vincent Avenue South in the R1A Single-family District.

Zoning code section authorizing the requested variance: 525.520 (4)

Background: The subject property is an existing single family dwelling on an interior lot that measures 40 ft. by 128 ft. (5,120 sq. ft.) along Vincent Avenue South. The applicants were cited by city inspectors for unpermitted construction work that including an addition to a rear dormer. The home is a 2.5 story home with front and rear shed dormers. The construction work that was cited by the inspector included an addition on the rear dormer. The addition to the rear dormer increases the height of the dormer so that the pitch of the dormer is about the same height as the peak of the roof. This dormer addition was also shed style with a pitch of 1/12, which is almost a flat roof.

Upon review of the new dormer construction, Planning staff determined that the dormer addition did not meet the definition of a half story and the dormer addition creates a third story in the rear of the house. The construction meets some of the tests of half stories, such as the floor area of the half story is less than half of the floor area of the floor below and the main roof is a gable or hip roof. However, the staff practice for measuring half stories with dormers is that a dormer must be half the length of the primary roof. In this case, the primary roof is 28 ft. wide and the dormer is 14 ft. 4 in. wide, more than half the length of the roof. The intent of these measurements is to gauge the true nature of height of the home. The construction work that the applicants have undertaken involves an interior remodel of the home to include living space on the third story. The proposed work is within

the footprint of the house and the footprint is not expanded. The height of the peak of the house is 29 ft., and the dormer extends from the peak with a roof slope of 1/12, so that the dormer would fall under the 30 ft. height limit for single-family homes.

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.

Strict adherence to the setback requirements in the zoning code prevents a third story addition to a single family dwelling. The property can be used in a similar manner to other houses and the ordinance is not caused undue hardship on the property. The applicants state that obtaining addition living spaces is a reasonable use of the property and that redesigning the roof would include increasing the overall height of the home.

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.**

The circumstances of the variance have been created by the applicants, mostly due to the construction being started without a building permit. The applicant states that the design of the addition was to retain a 2.5 story home and that the dormer is a similar height to the subject home and others in the surrounding area. However, staff does not find that there are unique circumstances that prevent the applicants from adhering to the zoning code

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.**

Granting the variance will not be keeping with the spirit and intent of the ordinance. The height of single-family homes is limited to 2.5 stories to minimize the visual impact of residential buildings and for new construction to be similar to existing residential neighborhood character. In this case, the third story dormer increases the visual impact to the rear properties of the surrounding homes that has negative impacts, such as loss of privacy.

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.**

The proposed variance would likely have no impact on congestion of area streets or fire safety. Public welfare may be compromised with the potential loss of privacy caused by the

additional habitable space of the third floor. The construction work was conducted without building permit approval, which ensures construction projects meet minimum zoning code standards as well as the minimum safety standards of the building code. Public safety is endangered when construction work is undertaken without these necessary city approvals.

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 height of a single-family dwelling to three stories to allow for a rear dormer addition at 5112 Vincent Avenue South in the R1A Single-family District.

Board of Adjustment Hearing Testimony and Actions

Thursday, October 11, 2007
4:30 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Matt Perry, and Mr. Peter Rand

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

5. **5112 Vincent Avenue South (BZZ-3791, Ward 13):**

John and Patricia Brogen have filed for a variance to increase the height of a single-family dwelling to 3 stories to allow for a rear dormer addition at 5112 Vincent Avenue South in the R1A Single-family District.

Mr. Finlayson moved and Mr. Perry seconded the motion to **adopt** staff recommendation and **deny** the variance to increase the height of a single-family dwelling to three stories to allow for a rear dormer addition at 5112 Vincent Avenue South in the R1A Single-Family District.

Roll Call Vote:

Yeas: Ditzler, Finlayson, Luepke Pier, Perry and Rand

Nays: Lasky

Recused: None

Absent: None

TESTIMONY

Mr. Gates: Thank you Ms. McCartney.

Mr. Perry: Yes, thank you Mr. Chair. Based on the definition of dormer, you're saying this is four inches too wide. It looks like, so, this is more of a curiosity question. If this dormer as it's being designed now were on the front of the house, would the height that it has as long as it was four inches narrower, it would be okay?

Ms. McCartney (staff): If it was four inches narrower, or met the 50% or less width, yes, technically it would not have triggered a variance.

Mr. Perry: Fascinating, thank you.

Ms. McCartney (staff): Just another piece, Chair Gates and Board Member Perry, there is no definition for dormer in the code as well as this interpretation that we have consistently used in the planning office of the 50%. It's also not in the code that you can do a dormer on a half story, so, it's the zoning ordinance and we have to make interpretations from time to time to be able to do our work, so.

Mr. Perry: Okay, that actually helps out. Thank you for that.

Ms. McCartney (staff): A half-story has the definition, but ...

Mr. Perry: Yes, okay.

Ms. McCartney (staff): The half-story revolves around the roof pitch and then the square footage.

Mr. Perry: Thank you for that clarification.

Mr. Ditzler: Molly, but according to the staff report here, the square footage exceeds what would be allowable to be considered a half-story.

Mr. Gates: I don't think so. 391 isn't it?

Mr. Ditzler: It was 803.

Molly McCartney (staff): I don't believe so...

Mr. Ditzler: The total square footage of the second floor is 803.

Mr. Gates: I thought I read that the area was 391. I don't know if that was in the applicant's statement or staffs.

Ms. McCartney (staff): Another thing to clarify, the very first three pages are my staff report, the applicant was very thorough and got a look at some other staff reports, so you may see something that looks really similar to a staff report, but it's actually the applicants submittal, which starts about four or five pages into your packet.

Mr. Ditzler: Okay.

Ms. McCartney (staff): I don't know if that clarifies anything?

Mr. Gates: Would it be true that staff believes that the size of the addition is in compliance, it is less than half of...

Ms. McCartney (staff): Yes, it is.

Mr. Ditzler: So it is less than half?

Ms. McCartney (staff): Yes.

Mr. Gates: Any further questions for Ms. McCartney. I see none. Thank you Ms. McCartney. Is the applicant here?

Applicant: Chair Gates as a preparatory matter can I...may I approach with some additional materials just to follow along?

Mr. Gates: Sure, why don't you submit to the clerk please? I believe it will be a challenge for us to go through all this thoroughly and listen to you at the same time, so perhaps you can quickly guide us through the whole thing.

Applicant: I certainly will and actually...hopefully, I'll be able to help you look at most of it. Chair Gates and Members of the Board, I appreciate your time today. My name is John Brogen, I live at 5112 Vincent Avenue South, and with me is my wife, Patricia Brogen. I think the elephant in the room, and the first thing that I'd just like to get out of the way is a sincere apology, which is that we proceeded with this project without first obtaining the requisite variances and also getting the building permits. I obviously know that that was a terrible decision and I can only say that we have suffered, both obviously financially as-well-as it's been a very embarrassing incident and just the process of getting to this point before we did a ... and the threat of having to actually tear work down is obviously punishment as it is, but I understand that's where we stand, and I hope that you'll accept my apology and consider the variance on its own merits as opposed to looking at that other issue which obviously has tainted it somewhat. Really there are two points that I'd like to make today. I'm not going to actually go through all of this, because I think Molly did, but as I understand it, what we are dealing with is a third story by the narrowest of margins, and that is under the definition of what is ... what is a half-story, it's a story under a gable or hip-roof, which Ms. McCartney concedes it is and that it contains habitable floor area including floor area under dormers not exceeding 50%. We meet both of those tasks, the question is whether we actually would meet the definition of what is a dormer, and in fact, there is no definition of dormer in the code and it is only based on staff recommendation which is not contained in the code. So in that sense, what we're dealing with is not something which would be obvious other than based on a staff interpretation and actually finding out what their view of dormer is. But even under that definition, we would meet the...we are only four inches more than what would be required, now this shows a picture of the property. This is as it was before the construction occurred, and if you look at the face of the dormer, the dormer is 14 feet 4 inches wide. The face of the building below, which you can see just below the roofline, is 28 feet across, and that's what forms the, at least one measuring stick for how wide the dormer is allowed to be, the 14 feet. Now, we didn't create this dormer, it was built with the house in 1914. It's an existing condition that we dealt with on the house, and what we had to deal with in going ahead and attempting to perform a minor remodel to get some additional space in the house. The roof line itself is 33 feet 1 inch across. So, depending on...based on the definitions actually used in the staff report that Ms. McCartney uses of 33 feet 1 inch actually the dormer is ... the language that's used in the staff report is that ... is that staff's practice for measuring half-stories with dormers is that a dormer must be half the length of the primary roof. Now the primary roof is 33 feet 1 inch. As I would understand that, the meaning of primary roof, it actually is less than half of the width of the roof. Now I got a clarification from Ms. McCartney later in the day, because I sent her an email, and she suggested that, no, actually, staff practice is that it's based on the face of the building, but I think that it goes to show that there is a great deal of ambiguity as to how staff actually...what staff practice is and how staff measures this particular ... how this metric occurs.

Mr. Gates: If we applied your criteria though, wouldn't the ... being consistent, wouldn't the width of the dormer roof exceed 16 feet 6 ½ inches?

Mr. Brogen: If it did, we could cut back the eaves of the roof and that would actually be acceptable. So, esthetically is it...is it the optimal choice, no, it's not, but if it met that definition ... there are other design arounds that would fall within that. But my point really is not to get to that but to discuss, if we are going ahead and saying all right, a variance is required, what ...you know, let's look at the factors and what is really required. You know what the factors are, we've been discussing them all day, obviously, as I'm sure you do frequently, and the two major questions are, first of all, is this a reasonable use of the property? Adding a small addition of space by increasing the height of the existing dormer is a reasonable use of the property. In fact two of the uncontested matters that were approved earlier today, in fact, that was the justification as a reasonable use of the property. This is an older home, it was built in 1914, it has a small bathroom, several small

bedrooms, and in order to stay in the City to keep the City vital, we need to be able to improve these properties, but try to do it in a way that minimizes the impact on the neighborhood and minimizes the impact on the property. The overall goal, as I understand it, of preventing third stories is to not create monster houses, and this in fact is not a monster house, it would be less than 2000 square feet with the addition, and in fact, was attempting to eliminate the risk ... or the possibility of actually tearing down the house and building something new, which would be unsightly. It was an architect designed addition, with this in mind, trying to maintain the character that is the symmetricality of the front of the house, but not to make that visual impact which is large in the front of the house, but only in the rear of the house. As far as the undue hardship is concerned, I'd like to jump down to point three, which is that the width of the existing dormer was 14 feet 4 inches, that was not a circumstance that was created by us. We can obviously cut four inches off of this dormer and keep it actually as it is. I don't think that's an optimal solution. It ends up making an uneven stacked dormer on top of the existing dormer. It would not be in keeping with the character of the neighborhood, it would not be pleasant for the neighbors to look at and frankly it's a very modest amount. It's four inches, it's only to maintain the existing roof line and wall line, and if we wanted to build just a 14 foot dormer on top of it we can do it, it's just going to look terrible. So the hardship is the pre-existing condition of the 14 foot 4 inches, and the fact that really the small lot prevents us moving into the side yard...it would...expanding the foot print into the back would really over build the lot, these are very small city lots with neighbors close by. I've also included in tab six of your book, we've received comments from all of the neighbors indicating that they don't object to this and they understand that it would be four inches over what is required and from their perspective and my comments with them they saw no particular reason why there was any difference between those four inches, and actually were very favorable toward the addition, liked the fact that it would be in keeping in the neighborhood that it actually would match the sort of design of the house and not be just a bump out in the back. I know that precedent is sort of a limited value, but in the last two years of all the instances that I could find in which there was a request for a variance from a two and a half to three stories, the board did in fact grant those and find that there was the requisite hardship and or unique circumstances, and that was at both 3911 Upton and at 2401 Aldrich. I've included those opinions and the Boards' decisions at tabs two through five. The critical limitation in all of those decisions seems to be that the importance of the square footage being less than half, and in fact, we are less than half. It is in fact 391 feet in the attic level, it's 803 feet is the number, but it is given in the report of exactly what it is, but it is less than half of the total square area and that's including the stairs, the bookshelves, areas that the knee wall which would be less than five feet, etc. So we tried to use the most the strictest measure possible. As to the other issues, the privacy concern...there is no substantial difference having a 14 foot dormer and 14 foot 4 inch dormer in terms of the impact on privacy, and, again, the neighbors didn't have any problem with the bulk. The City has conceded that there is no impact on congestion or public safety; I don't believe that's an issue before you today. I think it really comes down to this is a modest request in the sense that we are asking for four inches. We can have the 14 feet and it's probably not the greatest hardship to loose four inches, but it certainly would adversely affect the character of the neighborhood and make the addition look very awkward and awkward for the neighbors and I think obviously less pleasant for us as well. I hope you will consider that in making your decision and I thank you.

Mr. Gates: Thank you. Are there questions for the applicant?

Ms. Luepke Pier: I just noted in your written thing and also in your presentation you mentioned that it was architect designed, and I'm just curious which architect designed this?

Mr. Brogen: It was Locus Architecture, and it was (inaudible), and in fact based on my discussions with him, he had no knowledge of the way that the staff uses the definition of what is ... what is the

width of a dormer, and that it's been applied inconsistently in the past... Therefore, very difficult ... and it was his view that obviously the design that he did and he's very familiar with the code ... that it was not a problem as far as the zoning ordinance was concerned.

Mr. Perry: Yes ... you beg the question by including in your packet two letters that...actually two letters of opposition, which I think probably would be ones that if there were people here to speak in opposition would be brought up, certainly in your neighborhood, which has dealt with this and was ... actually inspired the in fill housing text amendment which was approved this year.

Mr. Brogen: So what I'd like to do is ... in the interest of full disclosure, I put those in there because I certainly didn't want to hide the ball ... that there were people who had written in. However, I think if you read the emails, the way that it's written it...the way that the variance is written ... in the way it was sent to the neighbors, it suggests that we are going ... that we are adding a third story and I think that's often misleading to people, they think that really we're bulking up the size of the house when this is not really on a par with adding a third story. I've also, if you can look on your monitors, created a map, and those two ... the two letters that were received were the one on Washburn Avenue and then the one further north on Vincent Avenue, and those were the two that were concerned about the variance. They are in fact no where near the property, have no visual sight of the property. From the front of the property you can't actually see the expansion, you would actually have to drive down the alley, and there is no ... I attempted to view from every angle whether you could actually see the variance from either of these properties and that was not possible. Whereas, the yellow markers indicate the four individuals who are my adjacent neighbors who had no problem with the additional four inches.

Mr. Gates: Any further questions for the applicant? I see none, thank you very much.

Ms. Lasky: If you used an architect to design this, where was he thinking that you didn't need to pull a permit?

Mr. Brogen: To be honest, the architect was involved ... kind of designed the project ... the project went on hold for a brief period of time and then we proceeded with the project without then pulling the permit. So that was actually our fault, not the architect's fault. But, I did repeatedly ask for his assurances that this would be in fact up to code, meet all the zoning ordinances, everything, and he assured me that that was the case.

Ms. Lasky: He should have given you much better professional advice and I fault him.

Mr. Brogen: So, it was bone headed again it goes back to my first comment which was, I mean, clearly it was a mistake.

Mr. Gates: All right, is there anyone else here to speak in favor of the application. I see no one and I see, I believe, no one else; so we will close public hearing and take Board comment.

Mr. Finlayson: Yeah, I move to adopt the staff's proposal do deny ... and I must say, I mean the four inches is enough, but the other reason is the aesthetics of this. Shed dormers can be esthetically very pleasing and as this house was originally designed, front and back, it was esthetically pleasing. I view this addition to the back as a great pustule, it's just gross. People have been ruining houses in Minneapolis for years by changing these lines like this a 12-1 pitch - that's going to invite water trouble. Again, that's not the reason, it's the four inches, but ... this is really unattractive. Everyone who faces this house in the rear is going to have to look at it for ... to the end of time. This just shouldn't be done, that roof line should be restored.

Mr. Gates: That is a motion?

Mr. Finlayson: That is a motion.

Mr. Gates: Is there a second?

Mr. Perry: I'll second the motion. I'd like to make a couple of points. One point and ask staff a question, just a clarification. The two letters that were included in the applicant's packet are within the 350 feet, I just checked that on our map, so I just want to have that in the record. And I would like to ask a question of staff just to clarify if I may, there's not only the issue of the third floor, but the...I think also there is this finding that it's not in keeping in the spirit and intent of the ordinance that is coming into play, so there is sort of this, I don't want to call it an aesthetic, but fitting in with the character of the neighborhood that is being brought to bear as part of the staff's recommendation. Is that the correct characterization?

Ms. McCartney (staff): Chair Gates and Board Member Perry, yes, the third finding that speaks to the spirit and intent of the ordinance and how it affects the surrounding area is usually the most creative finding that we have and a lot of times when there is a building addition or new construction we address things like material and roof pitch and if it encroaches on neighbors or what have you, so it really can be used in a variety of ways and this is the ... how staff has made the findings in this situation; talking about the visual impact and the privacy issues.

Mr. Perry: Okay.

Ms. McCartney (staff): It's not to say that it couldn't be elaborated on and additional findings be made, but...

Mr. Perry: Great, so I'm going to second the motion and I will second it with this comment ... that I think that when I looked at it – not as an architect just as a resident like the applicant I found it did not fit into the rest of the neighborhood and so I would have, if staff hadn't, I would have brought that up as an issue. I would also like to say, I think it has already been mentioned by one of our Board Members that because some of these things are complicated you can't have every detail put in the zoning code. It's just not possible. While you're not being penalized for not pulling a permit, it certainly would have avoided a lot of heart ache that you have gone through and may yet go through if you had pulled a permit so you would get the proper guidance from the City in going through with this project. Thank you Mr. Chair.

Ms. Lasky: I will not be supporting the motion, because I just don't think two inches on each side is enough to make these people go through hell. But I think the design is not note worthy, it is not in keeping with the architecture of the home and I would have tendered the motion to have the design be dealt with by staff. It is, I wouldn't say a pustule, but it is not in keeping with the architecture of the home particularly, the third portion is simply not even in keeping with the original portion. So I will not be supporting the motion.

Mr. Gates: Thank you Ms. Lasky.

Mr. Rand: I have a staff question? If I had designed it as an architect, and I had been insightful enough to know about this...these four inches, if I had made the design two inches narrower on each side, but then decided to have some down lighting, so I would have cantilevered it out a foot, or two feet above the existing wall on the second floor, would that have broken any rules?

Ms. McCartney (staff): That scenario seems to fit in with how we would still define it as a half story. We really look at the width of the dormer in relation to the width of the building. Not necessarily the depth, but yes, that scenario seems to ...

Mr. Rand: Thank you.

Mr. Gates: Any further comment? We have a motion and a second.

Mr. Perry: I would just like to emphasize something quickly, that again, my second is based on the fact that I do not believe that the variance meets the test of fitting in with the character of the neighborhood and I'd like my colleagues to consider that in their vote.

Mr. Ditzler: (inaudible)

Mr. Gates: Motion to deny the variance, please call the roll.

Ditzler: Yes

Finlayson: Yes

Lasky: No

Luepke Pier: Yes

Perry: Yes

Rand: Yes

Mr. Gates: Let me just say briefly that there seems to be an increasing tendency on the Board to make judgments about some projects based upon their esthetics. As an architect myself, I'm not sure that I'm fully comfortable with that point of view, but in this case I'm struck by the fact that the 50% rule that staff applies is not codified, it's something which staff has developed and rightfully so, it seems that staff does need to draw a line at some point, however, in this case because that line is so close to the existing dormer size and because the applicant really had no choice, they inherited that dormer width, they would have no choice but to make a very odd reduction of a couple inches on each side, which would be quite bizarre. It would seem to me that there would be some grounds for a variance in this case, but in any case, the Board has seen fit otherwise, so...you can talk to staff about your options at this point.