

Department of Community Planning and Economic Development - Planning Division Report

Variance Request
BZZ-2084

Date: December 16, 2004

Applicant: Jesus Panora

Address of Property: 2545-2547 Harriet Avenue South

Contact Person and Phone: Jesus Panora, (612) 870-9958

Planning Staff and Phone: Tanya Holmgren, (612) 673-5887

Date Application Deemed Complete: November 9, 2004

End of 60 Day Decision Period: January 8, 2005

End of 120 Day Decision Period: March 9, 2005

Ward: 6 **Neighborhood Organization:** Whittier Alliance

Existing Zoning: R2B, Two-family District

Proposed Use: A conversion of an open front porch to an enclosed porch on an existing duplex.

Proposed Variance: A variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow an existing open porch to be enclosed.

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

Background: The subject property is approximately 45 ft. by 90 ft. (4,050 sq. ft.). The property consists of an existing three-story duplex dwelling with an existing two-story 7 ft. deep open front porch addition that runs the width of the dwelling. The existing dwelling is located approximately 14 ft. from the west front property line, the existing open front porch is located approximately 6 ft. from the front property line, which is located about 14 ft. in front of the district setback and approximately 6 ft. in front of the established front yard setback along Harriet Avenue South. The R2B district requires a 20 ft. minimum front yard setback. Therefore, the applicant is applying for a variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow an existing open porch to be enclosed.

The applicant has enclosed the existing open porch with vinyl siding and without a permit. As a result of enclosing the porch without a permit, the newly constructed façade does not meet the required 15 percent windows along a public street. There is no variance to this requirement, so the structure would have to be altered to meet the window requirement.

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.**

Front yard setback: The applicant is seeking a variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. The existing open porch projects 7 ft. from the front façade of the dwelling. Strict adherence to the regulations would not allow for the proposed enclosed porch. Staff believes that an open porch in front of the dwelling allows reasonable use of the property in compliance with the regulations. Staff does recognize the existing open porch does exceed the front setback, however it is an existing circumstance and if the porch remained unaltered, would not require a variance. It is the fact the applicant enclosed the porch that has caused the need for the variance. Additionally, the current porch enclosure does not meet the code requiring 15 percent of the front façade of a two-family dwelling to be constructed of windows.

- 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.**

Front yard setback: The conditions upon which the setback variance is requested are not unique to the parcel of land and were created by the applicant. The applicant has enclosed a porch on the front of an existing single-family dwelling that is 6 ft. from the front property line. Staff does recognize the existing dwelling exceeds the front setback, however the location of the dwelling is an existing circumstance and if the porch remained unaltered, would not require a variance. It is the fact the applicant has enclosed the porch that has caused the need for the variance. Staff believes this is a circumstance created by the applicant. Crime prevention through environmental design promotes front porches to encourage pedestrian activity and provide ‘eyes on the street’ as a neighborhood safety strategy. Therefore, staff would support an open porch to provide room for pedestrian use.

- 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.**

Front yard setback: Staff believes that granting the setback variance will alter the essential character of the surrounding neighborhood and could be injurious to the use or enjoyment of other property in the vicinity. As previously mentioned, the existing dwelling is already encroaching in the established setback. The applicant has enclosed an existing open porch on the front of a two-family dwelling. The newly enclosed porch was enclosed with vinyl siding, and an almost solid metal door. The existing open porch was almost entirely open on the first level with few posts. The existing porch is already dissimilar to the homes in the area and to their

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setbacks, but due to the open nature of the existing porch it was less intrusive on neighboring properties. Staff believes that maintaining the two-story open porch is compatible with the design of the dwelling and will provide for pedestrian activity contributing to the vitality and safety of the neighborhood than a vinyl enclosed porch on the first story and an open wood porch on the second story attached to a wood-sided dwelling. Staff is concerned that enclosing the front porch will increase the dwellings disconnect with the area. Additionally, the current porch enclosure does not meet the code requiring 15 percent of the front façade of a two-family dwelling to be constructed of windows. No variance exists for this code requirement. The intent of the open porches allowed in the front yard and the window requirement is to The enclosed porch does not meet the intent of the ordinance. Staff believes the existing open porch is consistent with the area and meets the intent of the ordinance.

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.**

Front yard setback: Granting the setback variance would likely have no impact on the congestion of area streets or fire safety, nor would the variance be detrimental to the public welfare or endanger the public safety, but it would be inconsistent with other properties in the vicinity.

Recommendation of the Department of Community Planning and Economic Development:

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 reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow an existing open porch to be enclosed.



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: January 20, 2005

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Tanya Holmgren, Zoning Specialist

Presenter in Committee: Tanya Holmgren, Zoning Specialist

Approved by: Jason Wittenberg, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by Jesus Panora.

BZZ-2084 – 2547 Harriet Avenue South – Jesus Panora has applied for a variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow for an existing open porch to be enclosed in the R2B District at 2547 Harriet Avenue South.

RECOMMENDATION: The Zoning Board of Adjustment adopted staff recommendation and denied the variance application.

Previous Directives: N/A

Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.

Community Impact

Other: See attached.

Background/Supporting Information

Jesus Panora has filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment to deny the

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requested variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow for an existing open porch to be enclosed.

According to the appellant, the Board of Adjustment's action to deny the variance is being appealed because they were overly restrictive. The appellant claims the porch was enclosed to prevent criminal activity and to prevent the accumulation of ice and snow. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

Planning Division staff recommended denial of the variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow for an existing open porch to be enclosed. Staff felt that enclosing a porch 6 ft. from the front property line was not consistent with the surrounding neighborhood. Staff did not believe the enclosed porch was consistent with the dwelling. The appellant enclosed the porch with materials that were not consistent with the dwelling and windows that did not meet the requirement of 15 percent of the front façade of a dwelling must be constructed of windows. This is a requirement of the code that cannot receive a variance.

At the December 16, 2004 Zoning Board of Adjustment meeting, eight (8) Zoning Board of Adjustment members were present. All eight (8) members voted to adopt the staff recommendation and denied the variance. The December 16, 2004 Board of Adjustment minutes and the Planning Division staff report are attached.

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Board of Adjustment
Hearing Testimony and Actions

Thursday, December 16, 2004
2:00 p.m., Room 317 City Hall

Board Membership: Ms. Debra Bloom, Mr. David Fields, Mr. John Finlayson, Mr. Daniel Flo, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Barry Morgan, Mr. Peter Rand

Board Members Absent: None

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m.**, on **Thursday, December 16, 2004**, in **Room 317 City Hall**, Minneapolis, Minnesota, and considered the request for the following items:

1. 2547 Harriet Avenue South (BZZ-2084, Ward 6)

Jesus Panora has applied for a variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow for an existing open porch to be enclosed in the R2B District at 2547 Harriet Avenue South.

CPED Department Planning Division Recommendation by Ms. Holmgren:

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 reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow for an existing open porch to be enclosed.

TESTIMONY

Staff presented their report and recommendation to the Board of Adjustment.

Michael Hagar on behalf of Jesus Panora, Jesus asks for a continuance and in the alternative a variance. He would like the opportunity to conform the home with the vinyl siding, so that is compliant and he would also like the opportunity to bring the windows up to 15%. He used his model from the place across the street, so he was not aware that it was out of compliance. The claims that this somehow has impact on crime on the street are not founded. You have at least two apartment buildings that are right off the sidewalk on that street, you have foot traffic on that street and his of eleven structures on that block, his was the two remaining that do not have enclosed porches, leaving his home to be targeted for a burglary. It was after a burglary, that his home invites crime, that he had put up his enclosure around that porch. This does not reduce crime to restore the open porch. Furthermore, he has six children ages 1 ½ to 14 years old who are in that home and subjected to that kind of danger, the enclosed porch protects them. He would like the opportunity for a continuance to bring it up to code for the windows and vinyl, he feels that a variance ought to be applied in this instance to provide the enclosure. This is a porch that was added in 1908, in a 1907 home, and he built the enclosure last year in response to the burglary. Also those steps when snow and ice accumulate on them and can lead to

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danger to the people stepping down, his tenants and his children. He does keep the sidewalk clean and however, there are times with Minnesota winters where he will not necessarily be able to get to his porch, and it does cause a danger problem. I don't think the issue has any impact on this, as to this structure.

Finlayson: For the record could you please give your address?

Michael Hagar: My address is 301 South Fourth Avenue in Minneapolis.

Finlayson: Does anyone have any questions? I see none. Anyone else to speak on this matter? In favor?

My name is **Luis Carr** and I live at 1616 East 25th Street in Minneapolis. When this whole project started, I just want to make a record of some information given that we read on the Whittier letter head. Full public disclosure was not met by me, speaking on behalf of the applicant. I was contacted several months ago by Miriam, so I stepped in and tried to help him. We went to Zoning and told them what was going on. I tried to contact the Inspector that sited Mr. Panora for the enclosed porch. At Zoning, we were told on the original land use application, that they filled out, that he only needed a two foot variance. So then after, since he could not hire an architect, we went and did the scaled drawings that you have before you using city directions on how you measure the street from the middle of the Avenue to on the property lines. That is when we discovered it was going to be a variance of more than two feet, but the original land use application, I don't know if you get a copy of it or these people have it in their office, clearly states in the handwriting of the Zoning Specialist that it was only a two feet variance. There was no misdirection on this or misleading anyone. As for me not fully disclosing, I was notified after I was done with that project helping Mr. Panora with all the paperwork, that he was not going to show up at the Whittier Neighborhood because he had to work. So then, I called Miriam, this lady down here at Whittier and told her, he is not going to show up and there will be no explanation why he built that porch without a permit. She said you are making a presentation, I said no, I was just going to speak as to the variance and the language of the application, and not getting into the permit end. We did not do this and I think if anyone missed anybody, I think they missed at their own group of people that attend those meetings in a frequent manner and they should have put on their agenda that this porch had been enclosed without a permit. I am just working on a referral that was made to me by Whittier. I just wanted to clear that up, there is no misleading or trying to deceive anybody as the letter refers. I would ask you to consider the fact that this home was built in 1907 and zoning records show that. In 1908 the porch was added and at that time there was some fault by the city here as well because along 26th Avenue originally those lots were plotted from North to South, and along the years as they developed that corner they made them from West to East. That is why the porch is the way it is right now. That is all that I have to say. Thank you.

Good Afternoon, My name is **Miriam Bean** and I am the Neighborhood Development Manager for the Whittier Alliance. Jesus Panora came to our community issues meeting and also had Luis speak on his behalf because he was unable to attend. The information that was given to the Whittier Alliance, was it was going to be a two foot set back. At the presentation, that is what was talked about. When it went to the Board, the Board voted to deny the request for the variance based on the fact that it was more than a

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two foot set-back and there are several issues with the construction of the enclosed porch at that time that is questionable. The enclosure of the porch brings that building very, very close visually to the street. Without the porch it is still very close to the street, but creates an encroachment on the street. The quality of work is not up to code, possibly, I cannot speak to that, but possibly. The vinyl siding is loose and flapping, the vinyl siding does not match the balance of the building, so the quality of the work is in question. We would not support the enclosure just because it does create a visual encroachment on the street and much more so than the other homes along that area that do have enclosed porches. It is not a credit to the neighborhood or the block, so I guess for multiple reasons, but primarily the variance is in question and is way to close to the street. And the Whittier Board did not support the variance.

Finlayson: Anyone else? Anyone else to speak? Okay, as long as it is new material.

Michael Hagar: I just wanted to direct your attention to the photograph for above that block to other structures that go up the street. And we would request a conditional variance, conditioned on his bringing the siding up to whatever standards required, it is vinyl siding to enclose the entire house and the windows.

Luis Carr: Board Members have you seen this here is the picture. Originally when we went to look at the place to do a scaled drawing, originally these were three large lots running South to North, and someone as the years past, they were divided to have these three houses there. Originally the layout was changed by the city and that is why this porch ended up being closer to the sidewalk. We discovered that when we did all of those drawings, so just to say that.

Finlayson: Let's close the public portion of this item.

Rand: I move to accept the staff recommendations.

Finlayson: I would comment if ever there was a demonstration of why Zoning Codes are necessary, this demonstrates it.

Bloom: I second the motion. Part of our charge and part of our discussion is to establish hardship, a reason why this lot, this house is different than any other house for a variance. I cannot see a hardship in having an enclosed porch. All the issues and concerns could be applied to any house on that block, almost any area of the city and we consistently have been supportive of open porches instead of enclosed porches. That is why I seconded that motion.

Lasky: I will of course concur. I am trying to look at if this had been presented in a different fashion, not vinyl siding, but siding that matched the building. Had the porch looked like a porch, which would be predominantly glass, would have less weight, I might have been willing to approve it. But, this looks like a living space, the windows are unattractive, the building is more unattractive as a result, I think it is a hardship on the neighborhood and is depressing.

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Gates: If I could speak briefly to the request of the continuance. This construction work has been done illegally and for this Board to continue this item, so that more illegal construction can be done to bring it up to the standard which you propose, just does not follow a logic that we would use to grant a continuance here. It would be more illegal work being done and it is likely to sway my opinion that this is not a credit to the neighborhood in any case, so I am going to support the motion.

Finlayson: Please call the roll.

Roll Call Vote:

Yeas: Bloom, Fields, Finlayson, Flo, Gates, Lasky, Morgan, Rand

Nays: None

Recused: None

Absent: None

Mr. Rand moved to adopt staff recommendation and **deny** the variance. Ms. Bloom seconded the motion. The motion passed.

The Motion **denied** the variance to reduce the required front yard setback along Harriet Avenue South from 20 ft. to 6 ft. to allow for an existing open porch to be enclosed.