



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

Date: October 14, 2004

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Carrie Flack, Senior City Planner

Presenter in Committee: Carrie Flack, Senior City Planner

Approved by Neil Anderson, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by August Foss.

BZZ 1930 – 636 22nd Avenue NE – August and Patricia Foss have applied for a variance to increase the maximum permitted floor area for detached accessory structures from 1,000 sq. ft. to 1,560 sq. ft. and a variance to increase the maximum permitted height of a detached accessory structure from 12 ft. to 16 ft. where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling to allow for the construction of a 832 sq. ft. detached accessory structure.

RECOMMENDATION: The Board of Adjustment adopted the staff recommendation and denied both variances.

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

August Foss 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 denying his requested variance to increase the maximum permitted height of a detached accessory structure from 12 ft. to 16 ft. where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling to allow for the construction of a 832 sq. ft. detached accessory structure.

The appellant has appealed the decision of the Board stating that the proposed building will have no negative impact on the community and that the approval of the variances will not have a dramatic effect on the surrounding neighbors. The appellant's complete statement for the appeal is attached.

At the September 15, 2004 Zoning Board of Adjustment meeting, six (6) Board members were present. All six (6) members voted to adopt staff recommendation and deny the variances. The September 15, 2004 Zoning Board of Adjustment minutes and the Planning Division staff report are attached.

**Department of Community Planning and Economic Development – Planning Division
Report**

Variance Request
BZZ-1930

Date: September 15, 2004

Applicant: August and Patricia Foss

Address of Property: 636 22nd Avenue NE

Date Application Deemed Complete: August 18, 2004

End of 60 Day Decision Period: October 17, 2004

End of 120 Day Decision Period: December 16, 2004

Appeal Period Expiration: September 27, 2004

Contact Person and Phone: August and Patricia Foss, 612-781-1094

Planning Staff and Phone: Carrie Flack, 612-673-3239

Ward: 3**Neighborhood Organization:** Holland

Existing Zoning: R2B District, Two-family District

Proposed Use: Construction of a detached accessory structure.

Proposed Variance: A variance to increase the maximum permitted floor area for detached accessory structures from 1,000 sq. ft. to 1,560 sq. ft. and a variance to increase the maximum permitted height of a detached accessory structure from 12 ft. to 16 ft. where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling to allow for the construction of a 832 sq. ft. detached accessory structure on property located at 636 22nd Avenue NE.

Zoning code section authorizing the requested variance: 525.520 (8) (8)

Background: The subject site is approximately 11,569 sq. ft. and consists of a 2-story single family dwelling with a 26 ft. x 28 ft. (728 sq. ft.) detached accessory structure. The applicant is proposing to construct a second detached accessory structure on the property. The new detached accessory structure will be 32 ft. x 26 ft. (832 sq. ft.) bringing the total amount of detached accessory structure floor area on the property to 1,560 sq. ft. In addition, a parking pad approximately 20 ft. x 20 ft. exists between the existing detached accessory structure and the new detached accessory structure. The parking pad does not count towards the total amount of accessory structure floor area unless a roof is constructed over the slab of concrete. The applicant has stated that the existing detached accessory structure is used for storage. The applicant would like to utilize the new detached accessory structure as a garage.

The proposed height of the new detached garage is 20 ft. The roof pitch of the principal dwelling and the existing detached accessory structure is a shed roof with a 4/12 pitch. The new detached garage is proposed to have a hip roof with a 4/12 pitch. The maximum allowable height for a detached accessory structure is 12 ft. when the roof pitch does not match the principal dwelling or 16 ft. if a variance is obtained. The maximum allowable height of a detached accessory structure with a matching roof pitch is also 16 ft. The zoning ordinance does not allow for a

detached accessory structure to be over 16 ft. in height. Therefore, a variance cannot be obtained for a detached accessory structure over 16 ft. in height. The maximum height the detached garage can be with a variance is 16 ft. when the roof pitches do not match or 16 ft. without a variance if the roof pitches do match.

In addition, the plans submitted by the applicant show a new dwelling unit above the new detached garage. The subject property is zoned R2B and is over 10,000 sq. ft. in size which allows for a second dwelling unit on the property. However, a second dwelling unit is not permitted in a separate detached structure. This creates two principal structures on a property and is prohibited in the zoning ordinance. There are no variances that allow for the second dwelling unit above a detached garage. Therefore, the applicant will not be able to construct this portion of the project. A second dwelling unit may be added to the existing principal structure on the property however.

The applicant began construction of the project in March 2004 and was sited by Inspections to obtain building permits on March 3, 2004. On March 10, 2004 the applicant met with Zoning staff to begin the variance process. The permit history for the property is attached.

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.

Maximum permitted floor area: The applicant is seeking a variance to increase the maximum permitted floor area for detached accessory structures from 1,000 sq. ft. to 1,560 sq. ft. to allow for the construction of a second detached accessory structure on the property that is 32 ft. x 26 ft. (832 sq. ft.). A 728 sq. ft. detached accessory was previously constructed on the property. The zoning ordinance would allow for an additional 272 sq. ft. of accessory structure floor area on the property. The applicant has stated that the existing detached accessory structure is used for storage. The applicant would like to utilize the new detached accessory structure as a garage. Strict adherence to the regulations would not allow for the second detached accessory structure. The ordinance allows for a total of 1,000 sq. ft. of accessory structure floor area, which has been deemed a reasonable amount of accessory structure floor area by the City Council. Based on the existing detached accessory structure, staff believes that the proposed second structure is unreasonable and that reasonable use of the property exists without the new detached accessory structure.

Maximum permitted height: The applicant is requesting a variance to increase the maximum permitted height of a detached garage from 12 ft. to 16 ft. where the proposed roof pitch of the detached garage does not match the roof pitch of the principal dwelling. The applicant has stated that although the roof types are different they are maintaining the same pitch. Strict adherence to the regulations does not allow for the proposed hip roof at a maximum height of 16 ft. The desire to construct a roof pitch that does not match the principal dwelling is not considered a hardship and does not prevent 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.**

Maximum permitted floor area: The conditions upon which the variance is requested are not unique to the parcel. The zoning ordinance recognizes that larger lots can accommodate a larger amount of accessory structure floor area. However, the ordinance caps the total amount of accessory structure floor area at 1,000 sq. ft. to avoid constructing excessively large amounts of accessory structure space within the city limits. The property already consists of a detached accessory structure that is large enough to be used as a garage (728 sq. ft.) with two existing garage doors. An additional 272 sq. ft. of accessory structure floor area can be added to the property in compliance with the ordinance to accommodate storage on the property. Staff can find no circumstance that is unique to the parcel of land to exceed the ordinance

requirement. The circumstances on which the second accessory structure is being requested have been created by the applicant.

Maximum permitted height: The circumstances upon which the variance is requested are not unique to the parcel of land. The house and existing detached accessory structure consist of a shed roof with a 4/12 roof pitch. The new detached accessory structure consists of a hip roof with a 4/12 pitch. The desire to construct a roof pitch that does not match the principal dwelling is not a unique circumstance of the parcel of land but is a design issue that has been proposed by the applicant. Staff believes that the applicant has created this circumstance.

- 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.**

Maximum permitted floor area: Granting the variance will alter the essential character of the surrounding neighborhood and will not be in keeping with the spirit and intent of the ordinance. The ordinance does allow for larger properties within the city to accommodate larger amounts of accessory structure floor area. The subject property already consists of a detached accessory structure that is significant in size (728 sq. ft.) with two garage doors. Staff could find no other properties in the surrounding area that consist of two detached accessory structures. The area consists of several other large properties. Staff believes that the second structure will establish a precedent in the neighborhood that is uncharacteristic.

Maximum permitted height: Granting the variance will alter the essential character of the surrounding area and will not be in keeping with the spirit and intent of the ordinance. The intent of the ordinance allows for an increase in height when the roof pitch of an accessory structure matches the roof pitch of the dwelling. The purpose of this requirement is to allow for the construction of an accessory structure that matches a dwelling with a steep roof pitch. Staff believes that the proposed design of the garage is not exceptional and would not be dramatically impacted by incorporating a shed roof with a 4/12 pitch to match the dwelling and existing detached accessory structure.

- 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.**

Maximum permitted floor area: Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed structure be detrimental to the public welfare or endanger the public safety.

Maximum permitted height: Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed structure be detrimental to the public welfare or endanger the public safety.

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 permitted floor area for detached accessory structures from 1,000 sq. ft. to 1,560 sq. ft. and **deny** the variance to increase the maximum permitted height of a detached accessory structure from 12 ft. to 16 ft. where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling to allow for the construction of a 832 sq. ft. detached accessory structure on property located at 636 22nd Avenue NE.

**Board of Adjustment
Hearing Testimony and Actions**

Wednesday, September 15, 2004
2:00 p.m., Room 220 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: Ms. Debra Bloom, Mr. Barry Morgan

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m.**, on **Wednesday, September 15, 2004**, in **Room 220 City Hall**, Minneapolis, Minnesota, and considered requests for the following items:

4. 636 – 22nd Avenue Northeast (BZZ-1930, Ward 3)

August and Patricia Foss have applied for a variance to increase the maximum permitted floor area for detached accessory structures from 1,000 sq. ft. to 1,560 sq. ft. and a variance to increase the maximum permitted height of a detached accessory structure from 12 ft. to 16 ft. where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling to allow for the construction of a 832 sq. ft. detached accessory structure on property located at 636 22nd Avenue NE in District R2B, Two-family District.

Mr. Rand moved to adopt staff recommendation. Mr. Gates seconded the motion. Motion passed.

TESTIMONY

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

Finlayson: Is the applicant present? Would you care to make a statement? Please step forward. State your name and address for the record, please.

My name is **Patricia Foss** and I live at 636 – 22nd Avenue Northeast, Minneapolis, Minnesota. We purchased the property approximately 9 years ago and it was in very ill repair. We have done nothing but improve the site, the reason we cannot use the existing shed for a garage, is because it does not have enough rebar in the floor and the cement is not adequate in depth for driving on. We use that strictly for storage of our lawn mower and my husband has his workshop on one side with his workshop tools. I store my gardening tools in there and the other is miscellaneous storage for our children as they come and go from college.

The reason we are asking for a second floor on the garage, is because our basement in the existing house is about one-fourth of the home, the other quarter is not very tall. It is actually concrete and is about 4 feet and the other half is a crawl space. To expand the basement of the

home to accommodate moving our business downstairs was in the order of \$30-40,000 dollars because they would have to raise the building and completely remove all the existing basement and put in cement block walls and pour a new floor. So that is why it was so expensive to do. We only had one estimate for that however.

The reason we want to expand where our business is in our home is because my mother-in-law is no longer capable of going to the second floor to go to bed, and currently when she comes to visit we have to take a twin bed down to the first floor and she resides in the living room while she stays. She is 85 and goes to visit all of her children at certain times of the year, and she comes to visit us during the summer and visits her daughter in Seattle after she visits us and then she goes to Tacoma, Washington to visit her son and during the winter she stays with her son in California.

We feel that this is a vast improvement to the structure that was there, we received a notice from our insurance company saying we had to either rebuild the existing garage or remove it and rebuild it, because it was in disrepair. The northwest corner of the structure was crumbling and the east side was deteriorating from the roof down. There had been an expansion put on the north side, where it was attached to the garage was also deteriorating and crumbling.

When we purchase our property it was commercial and residential zoning. We did not find out that the zoning has been changed until we went to ask for a permit to build on our property and the reason that my husband did not go and get a building permit before we started building was because we could not complete the project in the required time, 18 months. We also had a cash flow problem and could only complete the concrete until we received additional money by refinancing our home. We had no intention of completing the project without getting a permit for the electrical and the plumbing and the second floor addition. We wanted to make sure that the windows were according to code, the roof structure was according to code and the floor going from the second floor to the first floor and the stairs were adequate. The door going into the stairway up to the second floor was within code.

I believe that we are not asking for something so exorbitant and something so out of reach for the City of Minneapolis. Our property is surrounded by a street, a vacant lot and an apartment building. The vacant lot is a double lot. The apartment building has 16 units and we have a letter from Mr. Sylvester indicating that he will have no reason not to be in agreement with us in putting up this structure. Does anyone have any questions of me?

Finlayson: So, I understand the chronology, there was an existing garage when you purchase the house?

Patricia Foss: Yes.

Finlayson: It was in disrepair, so you tore it down and put up what is now a storage area.

Patricia Foss: No. There was a small shed and there was a garage. We removed the shed, because it was literally falling down when we moved there. We put up the shed to expand the storage, because our children, we have six children and they move from apartment to apartment,

college to home and they had no place to store things. And also my husband does woodworking and that was built then. The garage was existing when we moved in and two years ago, the insurance company said that we needed to replace the roof and replace the southeast side of the building because it was coming down/falling down. The roof had a chimney of sorts and the best that we could figure is that they had a heating something or another in there, and the chimney went up and had never been properly installed, so we had water, and it was costly to repair. Does that answer your question?

Finlayson: Yes. Mr. Rand.

Rand: No.

Finlayson: Board comment?

Rand: I move to approve staff recommendation.

Finlayson: Is there a second.

Lasky: Not yet. My opinion is that this is R2B and I see an oversized garage and I could even possibly exceed the 1,000 square feet for the lack of the basement area. It is 4 feet and not really large enough. I could do that. My problem is that I cannot do two separate garages and a parking pad, and obviously a living unit above the garage. So, the living unit, unless someone explains this to me, you cannot have it over the garage. It is a second unit on your lot and that is not going to work. We have done some over the garage, where they have been office spaces, this is clearly a living unit, maybe we can work with that a little bit. But there is too many garages, too much parking pad, too much stuff, and there is not a hardship for attaching into the building. If you look at the ADA requirements, then it has to be the first floor or attached to the house. I don't know if anyone remembers the swimming pool and kitchen attached to the ground floor. So, the second story does not mean anything.

Patricia Foss: The second story is for our business. Our business is in our home and that is where my mother-in-law would stay.

Rand: Then add onto your house.

Lasky: In other words we have to find a hardship to why you cannot add this onto your house; you're not up to the lot line, you're not on one, you're on two. If you could put a second unit onto your house and make it a duplex and you came to me and my opinion was to have an oversized garage, I would probably grant that, but that is my opinion. But you do not have a second living unit attached to you house, you are not a duplex. You are trying to put another living unit on your lot. There is too much garage space to begin with, so you are not complying.

Patricia Foss: The other building is not a garage. It is storage. And we cannot use it for a garage, because the flooring is not adequate.

Rand and Lasky: We understand that.

Lasky: It is not meeting any of these guidelines. I am trying to find some compromise. But what you are asking for does not meet any of the guidelines, so I am trying to find hardship. Hardship was if you were in a wheel chair and needed a first floor accessory structure, then we would have a reason to grant it. But this is a second floor accessory for office space, so it is not meeting that hardship. The lot is large enough to be added onto the house, so you are not meeting that hardship. So, I am trying to find something. Make something of this and make it work – but you will not get all of it.

Finlayson: I don't know how it is possible to fix this the way that it sits.

Rand: It is a little tough.

Lasky: My opinion would be to remove the older shed/garage and make the garage larger and then have conditions on this upper part for storage or office. It would clearly prohibit a kitchen, which would be a really good start.

Flack (staff): They cannot get a permit for that. You don't have to condition that.

Lasky: So the only way you draw it, it's prohibited all over the place. There are all kinds of prohibitions to what you are doing. You can't have a kitchen, you can't have a living structure, you are creating a duplex on an R2B, but it is not attached, so it is not a duplex anymore. So, it is two homes on one lot, you can't have that.

Finlayson: We have denied several of those in the last year.

Rand: In your desire to control costs, you haven't. You need to get somebody to lead you through the process and give you something useable, because you haven't figured it out. You should have someone do this for you.

Lasky: The best thing is to have somebody talk to you before you started building, anything would have saved you lots of money and helped you with solutions, would have worked out really well for you. And you would have been within the guidelines or ask for a small variance. This is so far away from what we can grant.

Gates: I think I do have a question of the applicant actually, or maybe of staff. In one or two of the photos, seeing this white flat roofed structure on the side of the house, what is that?

Rand: Refer to the pages please.

Gates: The pages are not numbered. Last sheet.

Lasky, Fields, Rand: That is a fence.

Gates: No. It is this?

Lasky: Oh – what is that? Can we ask you to come up here and tell us what this is right here?

Patricia Foss: That is the structure that goes around the above ground pool.

Gates: So, there are three accessory structures on the site.

Lasky: Pools count as an accessory structure.

Flack (staff): You have to show it because on the site plan I assumed it was part of the fence. I did not realize that there was a pool in there. You have to let us know everything so we can take that into consideration. It does count. Can you tell me how big it is?

Patricia Foss: No, I cannot tell you how big it is.

Rand: You need to have guidance on this. How it is unique. All of these things you have done at will compound the problem.

Lasky: If you would have pulled a permit right off the bat someone would have said you could not do these things before you started.

Patricia Foss: So, we can't have a garage?

Lasky: Yes. But you can't be doing the numerous things that you are doing. You have a structure that you will need to remove if you want this garage. You have a second floor that is a housing unit that you cannot have at all as a housing unit. You may be able to get it for the office space. I see some justification for the hardship, because your basement is substandard, but you cannot configure it the way you are configuring it.

Finlayson: I cannot possibly image us being able to do anything with this. There is a motion on the floor, would someone second it.

Gates: Second.

Lasky: Would our other option be continue it?

Finlayson: No, this cannot be fixed for that. This will have to be re-noticed.

Flack (staff): There is more accessory structure, so we have to re-notice.

Patricia Foss: Can you explain this to me?

Lasky: She is saying because she did not know about the pool, that she needs to re-notice the neighborhood about that, this part of the variance process. They are going to deny it. So, wait until it is done and staff or someone will help explain this to you, they are going to deny it.

Finlayson: Please call the roll.

Roll Call Vote:

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

Nays: None

Recused: None

Absent: Bloom, Morgan

The Motion **denied** the variance to increase the maximum permitted floor area for detached accessory structures from 1,000 sq. ft. to 1,560 sq. ft. and **denied** the variance to increase the maximum permitted height of a detached accessory structure from 12 ft. to 16 ft. where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling to allow for the construction of a 832 sq. ft. detached accessory structure on property located at 636 22nd Avenue NE.