



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

Date: December 15, 2005

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Molly McCartney, City Planner

Presenter in Committee: Molly McCartney, City Planner

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

Subject: Appeal of the decision of the Zoning Board of Adjustment by Corey Ramsey.

BZZ-2679 – 500 Prospect Avenue South – Janet Lederle, on behalf of Susan and Darrel Shaffer, has filed an appeal of the decision of the Zoning Board of Adjustment denying a variance to reduce the required interior side yard setback from 6 ft. to 1 ft. to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue South in the R1 Single-family District.

RECOMMENDATION: Notwithstanding the staff recommendation, the Zoning Board of Adjustment denied the variance to reduce the required interior side yard setback from 6 ft. to 1 ft. to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue South in the R1 Single-family District. The staff recommendation was to allow for a 3 ft. setback, not the original request of a 1 ft. setback.

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.

End of 60/120 Day Decision Period: On December 2, 2005, staff sent a letter to the applicant extending the 60 day decision period to no later than February 8, 2006.

Background/Supporting Information

Janet Lederle, on behalf of Susan and Darrel Shaffer, has filed an appeal of the decision of the Zoning Board of Adjustment denying a variance to reduce the required interior side yard setback from 6 ft. to 1 ft. to allow for a two story addition that includes an attached garage. The application was originally heard at the November 3, 2005, Zoning Board of Adjustment meeting. The staff recommendation was to allow for a 3 ft. setback instead of the required 1 ft.

The appellant has stated the decision of the Zoning Board of Adjustment is being appealed because the property is a reverse corner lot and that the zoning code prevent the construction of an attached or detached two car garage. The appellant has submitted a revised proposal that meets staff original recommendation of a 3 ft. setback. The interior dimensions of the garage would be 19 ft. instead of the original 22 ft. The appellant's complete statement and revised drawings are attached to this report.

At the November 3, 2005, Zoning Board of Adjustment meeting, six (6) Zoning Board of Adjustment members were present. Three (3) members voted to deny the variance application. The motion resulted in a tie vote and did not pass. Three (3) members voted to adopt staff recommendation. The motion did not pass and resulted in a default denial of the variance. The original staff report and the actions from the November 3, 2005, Zoning Board of Adjustment meeting are attached.

Board of Adjustment

HEARING ACTIONS/MINUTES

Thursday, November 3, 2005
2:00 p.m., Room 317 City Hall

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

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

9. 500 Prospect Avenue (BZZ-2679, Ward 12)

Janet Lederle, on behalf of Susan and Darrel Schaffer, has filed a variance to reduce the required interior side yard setback from 6 ft. to 1 ft. to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue in the R1 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 **approve** a variance to reduce the required interior side yard setback from 6 ft. to **3 ft.** to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue in the R1 Single-family District, subject to the following conditions:

1. That the first floor of the addition include a minimum of 5 percent windows, as required by 535.90 (c) of the zoning code, and
2. That the Planning Division review and approve the final site and elevation plans that measure to an architectural or engineering scale.

TESTIMONY

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

Finlayson: Any questions for staff? I see none. Is the applicant present?
Name and address please.

My name is **Janet Lederle** and I work with a Design Group and I am with the architecture firm that the client is working with. The client is here, but I am here to speak about this proposal. To clarify, this is a reverse corner lot and we requested a one-foot setback on the interior side to the north of the property and that was in order to allow a 22 foot garage with a three foot doorway along that same side of the house. I am going to put a larger plan up. So that this shows the existing house which is here and the heavy black out line actually shows the build able portion of the lot with the six foot setback to the north and a 5 foot setback to the adjacent

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property to the west. The outline here is the proposed garage and this is where the portion is that we are asking for a variance on. Part of what we looked at and what we could do as far as a detached garage or an attached garage, and with the zoning code as it stands right now, does not allow for a two car attached garage in either case. The other thing about this diagram is what could be built on this property without any variances actually occupies more of the site and would intrude on neighbors property as significantly or more so than what we are asking for.

Perry: Excuse me, you stated that the zoning code does not allow for a two car attached garage – what do you mean by that?

Janet Lederle: The distance from the dwelling to the property line at present is 26 feet, 6 inches.

Perry: I see.

Janet Lederle: So, with the 6 foot setback it would not be possible. So, what we are asking for is the one foot setback after having received feedback from the city, we went back and reevaluated our design, trying to tighten it up as much as possible and what we are saying is that we can do the two foot setback. With the two foot setback, lets us have a minimal two car garage so the garage has been under just 21 feet wide with just a single 16 foot garage door and then a doorway in. The other problem with an attached garage that we are dealing with is that we have a single entrance at the front of the house, so we need to provide another entrance/exit from the house. If the garage is attached directly to the house, then there is no way for us to have a door out of that garage except to the north or to the west, which are on the interior side lots. Then at that point we need a 15 foot setback for a doorway. So, our proposal and this drawing actually shows it tightened up to the two foot setback – our proposal is calling for a door here, which is a three foot door with a 16 foot wide garage door, single garage door. This would help alleviate the problem that we have with trying to provide another exit from the house. The issue that we run into then with a two foot setback or anything under a three, is that this north wall is closer than three feet from the property line, so zoning requires us to have windows in the building and building code does not allow it. I did speak with the building officials and we understand that with a two foot setback we would have to have one hour rated wall and we are willing to do that. We also request that we get a two foot setback with no windows, but are willing to work with both building code officials and the neighbors to say we could put a fire rated window assembly in that wall if that would make it more amenable. One other thing I would like to just briefly discuss is that what we are asking for is not really, no different than what the other properties along this street allow or already enjoy. This is Harriet Avenue and Prospect, so our property is the black one right here on the corner and all of the lots here have very deep lots so they have the possibility of placing a garage on the rear of their lots. Each one of these houses have a distance between them, separated by a single car drive or less. So what we are asking for is no more than what anyone else has. If I look at the houses along this street it will illustrate the width between the houses at this point, moving down the street, these are the images and distance between the homes. Many of these are less than what we are asking for or requesting. So in conclusion we are asking for a two foot minimum setback with no windows, but would work with building officials and

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neighbors. We are also attempting in our design to make this something that is keeping with the character and esthetic to the existing house as well as with the neighborhood.

Finlayson: Any questions? I see none at this moment. I have a question for staff. The design standards do not allow a variance on the window issue?

Staff (Molly McCartney): No the section of the code where the window requirement is there is no variances, it has to be met. I am not a building official and I can not speak to the window assembly that is fire-rated, we can make that a condition, but staff is still recommending that a three foot distance. Windows are required and the amount of windows they would need to provide is 13 square feet. That would be 5% of that building wall.

Finlayson: Thank you. Ms. Bloom?

Bloom: I had such difficulties with this last one that I am going to start out with my comments.

Finlayson: We have not closed the public portion of this item.

Bloom: Sorry. I guess I had a question regarding the ability of the neighbor to put a fence up. If this house is one foot away from the property line what is the ability of the neighbor to install a six foot fence?

Staff (Molly McCartney): The neighbor would not be able to install a six foot fence if the house was closer than 5 feet to the property line. The site plan shows where the driveway is. So, the neighbor could have a six foot fence at the back of the house (going back), but maximum height would be four feet.

Bloom: Fences are on my mind.

Finlayson: Any other questions of staff? Anyone else to speak in favor?

Janet Lederle: I do have a letter from a neighbor who was unable to attend, who is in support. I could read it or submit it to the Board.

Finlayson: What is the address?

Janet Lederle: The address of the neighbor in support is 5112 Harriet Avenue South.

Finlayson: Thank you. If you could give it to staff, I would appreciate it.

Staff (Molly McCartney): It is in your packet already.

Finlayson: Anyone else to speak in favor? Anyone to speak against? Please. name and address for the record please.

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Neil Peterson, 5036 Harriet Avenue. We live at the house just north of this property. I submitted comments yesterday in my opposition to this variance. I strongly oppose this variance requested. We have lived there at 5036 Harriet for 40 years, we bought this home for the many windows, we have 7 windows on the south side of the house and the sunlight just streams in, in the open space by the house. The current plans include a massive 34 foot long garage just 3.3, 3 feet, 3 inches from our driveway. With a deck above the garage facing our bedroom windows on the second story of our house. This variance lowers our property value, degrades the integrity of the open space on the south side of our house. The sunlight that we get for the house and the garden space for vegetables. Four families have lived at 500 Prospect over the past 40 years and all have made improvements without degrading the open space for the neighbors on the north side of the property. Susan Schaffer showed me an alternate plan, I believe the designer showed that what she told me would not require a variance. Other alternatives should also be considered for a mutually agreeable plan. Large scale renovations within the city should be examined carefully to maintain the character of the space around the adjacent properties. I believe that the current plans are esthetically unsuitable for the size of the lot.

Finlayson: Thank you. Anyone else to speak against?

Good afternoon, my name is **Christine Hoover** and I live at 510 Prospect. So, this corner house, the Petersons house to the north and my house to the west. I would like to comment on the site plans that we have seen, is that the drawing of my house is incorrect, there is a large addition on the back of my house. I would be the last to say that you should not buy a house in the city that you intend to add on, since I moved where I lived on Pillsbury Avenue for 17 years to 510 Prospect to add on for my mother. It took me 1 ½ years to find a lot in this part of south Minneapolis that was build able without a variance. Having been President of the Kingfield Association and presided over a large number of variances and discussions, I understand that they get personal and they should not be. The variance is for the property and not the people who want it. I think we all of us like the Schaffer's very much and we really want any discussion not to be taken personally by them. I think that the plan as proposed does crowd the Peterson's house too much and creates something of a tunnel along that driveway. Which is the east outlet for my house otherwise it is all house all the way across. Because of the nature of my addition, there is really no west either and my lot is lower than the house on the corner so, we sort of in a hole as it is. For us the issue is crowding and more important issue is the crowding of the Peterson's house and my understanding from Mrs. Schaffer is that the room above the garage would be the family room. In my house the family room is the only loud room in the house. So, I like staff's suggestion of setting it back farther, I wish it were possible to set the second story back still farther. Then that may address the Peterson's concerns about light and noise better. Thank you for your time.

Finlayson: Thank you. Anyone else to speak?

Staff (Molly McCartney): I failed to mention that the second story addition is set back to the 6 foot setback, so it does step back. It doesn't really show that clearly on the drawings, so let me point that out. This portion is a door with windows and is setback, so there is stepping down.

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Bloom: can I just ask a quick question? What is the overhang on that side? Is it a one foot, maybe the architect can confirm that. Is it a one foot overhang? Two foot overhang for soffit and fascia?

Staff (Molly McCartney): With the one foot set back they would only be allowed a 6 inch overhang if they met a greater setback the overhang - permitted obstructions are two foot with a minimum of one foot.

Bloom: So we are talking one foot to the wall of the house with a 6 inch overhang?

Staff (Molly McCartney): I am sorry, the overhang would have to be a one foot.

Bloom: The setback we are talking about, what is being requested, from the property line to the building is one foot?

Staff (Molly McCartney): I believe so, yes.

Finlayson: Thank you. Anyone else to speak against? You have already had your turn. Close the public portion of this item. I would say that if we were dealing with a pre-existing condition it would be quite one thing, but this is new construction and is a blank slate. Board comment.

Gates: First of all, a point for possible clarification, the second floor sets back to six feet, but the roof above that carries on above as if that wall were going on up at the one or two foot setback line. In terms of the shading on the northern property, it doesn't matter if that second floor, family room wall were setback, 6 feet, 8 feet, 12 feet, if the roof were staying out at the line the roof was shown, the setback in terms of shading is not an issue at all. It is still shading the neighbor as if it were sitting a foot or two feet back from the property line. I think that not being able to have a two car garage is not a hardship in south Minneapolis. Most of south Minneapolis does not have two car garages. So, I do not support the variance.

Lasky: I think they have minimized the garage door to as small as they can. I do think a two car garage is very desirable bordering on hardship, not having one. I do not see this as new construction because it is an addition, not a new home on an empty lot. My only question is if you are going to that three foot or any number, is the service door eliminated?

Janet Lederle: If we go to the 3 foot, there is no door available. So, that door would have to come out of the north to the west side. If we were at the two foot, we can have that other exit out of the house.

Lasky: For clarification, wouldn't you still be entering from the garage to the house, but the service door would be in the garage? Would that be correct?

Janet Lederle: Which is not an acceptable exit. To exit into the garage. You need another door out of the garage other than the garage door itself.

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Lasky: But you have the ability to do that in another part of the property – correct?

Janet Lederle: We do not. The east is the fireplace wall and the living room. Then to the south is the existing entrance. To the west, would come out on the other neighbors yard where there is a retaining wall and a drop in elevation. To the north is the other neighbor that we are discussing at the moment. There is no other opportunity.

Perry: I would just like to add that I agree with Mr. Gates, that I do not believe that not having a two car garage is not a hardship. Certainly desirable, but not a hardship. So, I would not be in favor of this variance either.

Finlayson: Is there a motion in that?

Gates: I move to deny.

Perry: Second.

Finlayson: Please call the roll.

Bloom: No

Ditzler: No

Finlayson: Yes

Gates: Yes

Lasky: No

Perry: Yes

Tie Vote: 3 – Yes, 3 – No

Ditzler: I have a question for the Board. Do we believe/accept hardship here, because it is a reversed corner lot? I guess I am a little confused, because since the time that I have been here we have granted variances very similar to this, in the past three months, I don't know how many times, but I am just wondering what is it about this particular file that makes it a problem?

Finlayson: It is too close.

Ditzler: Staff is recommending three feet, so three feet is too close?

Bloom: If I can discuss the hardship on this one. I do believe that there is some issues with a fence adjacent, but I also believe that a two car garage is a hardship. There is no other way to do a two car garage on this lot. I know that the house where it is today, is a reversed corner lot and is not the makings or doings of the owner, that house is situated the way it is today. As far as putting in a two car garage with the market, with the ability to exit, whatever the case may be, I think there is some hardship for a variance on that side yard. To be able to put in an attached garage, because right now they have a single car and can not do a two car any other way. That is what we are charged to look at. What is the hardship, what can you do, and that

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is what staff's recommendations are reflecting. I think there is a reasonableness. I don't think that one foot is reasonable. I think three foot because of building codes, the ability to maintain fences to maintain the house, the eaves, whatever you want to call it, I think three feet is a reasonable variance for the ability to build a two car garage on your house, on your existing house that has been there for a very long time. So, that is why I voted against the motion, and I would like to move to approve the staff recommendations, I think I know where it will go but, I would like to move that.

Ditzler: I second that motion.

Perry: I greatly respect my colleagues opinion, but I have to say again, that there are many, many homes in the City of Minneapolis that have one car garages and I have to draw the distinction between desirable and it certainly is desirable and a hardship. I can not see this as a hardship. So, I will not support that motion.

Lasky: 10 years on the Board and we have been granting two car garages, left right, up and down. I would like to minimize this but still give the applicant a garage.

Finlayson: Please call the roll.

Bloom: Yes
Ditzler: Yes
Finlayson: No
Gates: No
Lasky: Yes
Perry: No

Tie Vote: 3 – Yes, 3 – No

Lasky: Can I make another suggestion. The concerns are the hardship to the neighbor, could we send this back for a continuance and see if they can work out something that would be more amenable to not be as much hardship to the neighbor?

Staff (Molly McCartney): I think since that you have voted to deny staff recommendation and voted to recommend staff recommendation in effect that is a "no", a denial. The Board members that have voted against it need to state their reasons. I am not sure if we can continue it now that we have already made the votes, the decision.

Finlayson: It constitutes a denial.

Staff (Molly McCartney): So the Board members that voted to deny it could state your reasons for that. That would be our protocol.

Finlayson: It is too close.

Gates: Clear lack of a true hardship.

Perry: Lack of a clear hardship.

Staff (Molly McCartney): Thank you.

9. 500 Prospect Avenue (BZZ-2679, Ward 12)

Janet Lederle, on behalf of Susan and Darrel Schaffer, has filed a variance to reduce the required interior side yard setback from 6 ft. to 1 ft. to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue in the R1 Single-family District.

Mr. Gates moved to deny the variance application. Mr. Perry seconded the motion. Motion did not pass, resulted in a tie vote (motion did not pass).

Roll Call Vote:

Yeas: Finlayson, Gates, Perry

Nays: Bloom, Ditzler, Lasky

Recused: None

Absent: Fields, Flo, Rand

Ms. Bloom moved to adopt staff recommendation. Mr. Ditzler seconded the motion. Motion did not pass, resulted in a tie vote (motion did not pass).

Roll Call Vote:

Yeas: Bloom, Ditzler, Lasky

Nays: Finlayson, Gates, Perry

Recused: None

Absent: Fields, Flo, Rand

The motions resulted in a **default denial** of the variance to reduce the required interior side yard setback from 6 ft. to 1 ft. to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue in the R1 Single-family District.

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Department of Community Planning and Economic Development – Planning Division Report

Variance Request
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Date: November 3, 2005

Applicant: Janet Lederle, on behalf of Susan & Darell Schaffer

Address of Property: 500 Prospect Avenue

Date Application Deemed Complete: October 11, 2005

End of 60 Day Decision Period: December 10, 2005

Appeal Period Expiration: November 14, 2005

Contact Person and Phone: Janet Lederle, 612-339-5093

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

Ward: 11 **Neighborhood Organization:** Tangletown

Existing Zoning: R1 Single-family District

Proposed Use: Construct two story addition that includes an attached garage

Proposed Variance: A variance to reduce the required interior side yard setback from 6 ft. to 1 ft. to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue in the R1 Single-family District.

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

Background: The subject site is a reverse corner lot that is approximately 81 ft. by 85 ft. (7,102 sq. ft.) and consists of a single family dwelling with a detached garage. The applicants are proposing to construct a two story addition that includes a two-stall attached garage. The first floor of the proposed addition will be set back 1 ft. from the north property line while the second story of the addition will be set back 6 ft. from the property line. The existing single-stall detached garage is set back 4 ft. 6 in. from the north property line and 6 ft. from the subject dwelling.

The proposed first floor of the addition does not have any windows and would not be allowed, per the Building Code, to have openings (windows or doors) on a structure that is closer than 3 ft. to the property line (*Section 302.1 2000 IRC*). However, the zoning code requires that not less than five (5) percent of the walls on each floor of single and two-family dwellings shall be windows (*535.90 (c)*). To meet this provision of the zoning code the garage would have to have 13 sq. ft. of windows. There is no variance for this requirement of the zoning code

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The adjacent property to the north is a single-family dwelling with a detached garage. Directly north of the property line is an eight ft. wide driveway and the dwelling setback approximately 10 ft. from the property line. The proposed addition first floor of the addition would be 11 ft. and the second story would be 16 ft. from the adjacent dwelling.

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.

The applicant has requested a variance to reduce the interior side yard setback from 6 ft. to 1 ft. to allow for the construction of a two-story addition to a single-family dwelling that includes an attached garage on the first story. While the applicant could build a detached garage of similar size in the northwest corner of the property, any additional living space that is added by way of an addition could increase the building footprint and subsequently affect the setbacks needed for a detached garage. In addition, a larger detached garage would require a variance because it can not meet zoning code requirement that a detached garage be located entirely to the rear of the dwelling (537.80). Staff believes the addition is a reasonable use of the property and recognizes the hardship on the property created by the location of the unique size and configuration of the property, as well as the location of the subject dwelling, but believes that the addition should be set back 3 ft. from the property line to allow for windows to be located on the north side of the attached garage which would comply with the zoning code window requirement of 5 percent.

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 conditions upon which the setback variance is requested are unique to the parcel of land due to the unique size and configuration of the property, as well as the location of the subject dwelling. The property is a reverse corner lot with dimensions of 81 ft. by 85 ft. With the house located in the northwest corner of the property, there is little room to locate an addition or detached garage that complies with the required setbacks. Even a larger detached garage would require a variance because it can not meet zoning code requirement that a detached garage be located entirely to the rear of the dwelling (537.80). These circumstances have not been created by the applicant.

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

Staff believes that granting the variance will be keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality if the first floor addition is built at least 3 ft. set back from the north interior property line. In order to meet the zoning requirement of 5

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percent windows on the side of the building, the addition would have to be constructed at least 3 ft. from the property line. The adjacent property to the north has a driveway along the shared property line and the dwelling is located approximately 10 ft from the shared property line. Increasing the setback to 3 ft. will also allow for more green space between the adjacent driveway and proposed addition.

- 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.**

Granting the side yard setback variance for 3 ft. would likely have no impact on the congestion of area streets or fire safety, nor would the proposed addition to the existing dwelling 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 **approve** a variance to reduce the required interior side yard setback from 6 ft. to **3 ft.** to allow for a two story addition that includes an attached garage for a property located at 500 Prospect Avenue in the R1 Single-family District, subject to the following conditions:

1. That the first floor of the addition include a minimum of 5 percent windows, as required by 535.90 (c) of the zoning code, and
2. That the Planning Division review and approve the final site and elevation plans that measure to an architectural or engineering scale.