



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

Date: July 31, 2008

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 to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. to allow for a new two-family dwelling (duplex) at 1120 8th Street Southeast in the R2B Two-family District by Nathaniel Hobbs, on behalf of Tim Harmsen.

Recommendation: Notwithstanding the staff recommendation, the Board of Adjustment **denied** a variance to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. to allow for a new two-family dwelling (duplex) at 1120 8th Street Southeast in the R2B Two-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: 3

Neighborhood Notification: The Marcy Homes Neighborhood Association was notified on June 5, 2008.

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 July 15, 2008, the applicant was sent a letter by Planning staff extending the decision period to no later than October 3, 2008.

Other: Not applicable.

Background/Supporting Information Attached: Nathaniel Hobbs, on behalf of Tim Harmsen, has filed an appeal of the decision of the Zoning Board of Adjustment **denying** the variance at 1120 8th Street Southeast. Notwithstanding the staff recommendation, the Zoning Board of Adjustment voted 5-2 to deny the variances on June 26, 2008. The applicant's appeal statement is included in the staff report.

Attachments:

1. Application for Appeal from the Decision of the Board of Adjustment, pages 3-24
2. Actions from the Board of Adjustment, June 26, 2008, pages 25-27
3. Minutes from the Board of Adjustment, June 26, 2008, pages 28-48
4. Variance staff report, BZZ-4087, 1120 8th Street Southeast, pages 49-88
5. Information submitted at the Board of Adjustment, June 26, 2008, by Marcy Holmes Neighborhood Association, pages 89-100

Minneapolis Zoning Board of Adjustment
ACTIONS

Thursday, June 26, 2008
4:30 p.m., **Room 317** City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch,
Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Bruce Manning and Mr. Matt Perry, Mr. Dick Sandberg

Committee Clerk: Cindy Phillips

Board Members Absent: Mr. Ditzler

The meeting was called to order at 4:30 p.m.

The Minutes approved for the meeting held on June 12, 2008

The Consent Agenda was approved for the following item(s): #2 and #6

Item(s) recommended for continuance: Item #5 was continued one cycle until the July 17th meeting.

PUBLIC HEARING

1 **1120 8th Street Southeast (BZZ-4087, Ward 3):**

Patrick Burns, on behalf of Tim Harmsen, has applied for a variance to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. to allow for a new two-family dwelling (duplex) at 1120 8th Street Southeast in the R2B Two-Family District.

CPED Department Planning Division Recommendation by Ms. McCartney:

Notwithstanding staff recommendation Mr. Perry moved and Mr. Koch seconded the motion to **deny** the variance to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. to allow for a new two-family dwelling (duplex) in the R2B Two-family District citing that it does not fit in with the character of the neighborhood and that the character of the neighborhood is not primarily duplexes on similarly sized lots.

Roll Call Vote:

Yeas: Finlayson, Koch, Luepke Pier, Perry and Sandberg

Nays: Lasky and Manning

Recused:

Absent: Ditzler

**Board of Adjustment
Hearing Testimony and Actions**

Thursday, June 26th, 2008
4:30 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Bruce Manning, Mr. Matt Perry, Mr. Dick Sandberg

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

1 **1120 8th Street Southeast (BZZ-4087, Ward 3):**

Patrick Burns, on behalf of Tim Harmsen, has applied for a variance to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. to allow for a new two-family dwelling (duplex) at 1120 8th Street Southeast in the R2B Two-Family District.

CPED Department Planning Division Recommendation by Ms. McCartney:

Notwithstanding staff recommendation Mr. Perry moved and Mr. Koch seconded the motion to **deny** the variance to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. to allow for a new two-family dwelling (duplex) in the R2B Two-family District citing that it does not fit in with the character of the neighborhood and that the character of the neighborhood is not primarily duplexes on similarly sized lots.

Roll Call Vote:

Yeas: Finlayson, Koch, Luepke Pier, Perry and Sandberg

Nays: Lasky and Manning

Recused:

Absent: Ditzler

TESTIMONY

Mr. Gates: Thank you Ms. McCartney.

Ms. Luepke Pier: Well, I have two questions, the first of which is, on the site plan I only see three parking spaces. Do you have an updated one that shows the six?

Ms. McCartney (staff): I do, I am going to find it right now, thank you.

Ms. Luepke Pier: Well, while you are looking I'll just ask my second question. In regard to the fact that it's a front and back duplex, but it is not on a corner lot, is there any sort of difficulty with that situation since it is mid block? That one of the addresses is completely to the rear and doesn't have a front entrance facing the street. Or is that not a concern?

Ms. McCartney (staff): So, this is the first floor – floor plan and what you are saying, that there is an entrance on the front and the rear, typically the zoning code requires that an entrance be on the front of the house and that duplexes and triplexes sometimes have unique configurations in order to get that done.

Ms. Luepke Pier: Is it allowed?

Ms. McCartney (staff): Generally because there is an entrance on the front that's allowed there is egress from all the bedrooms so it would meet that other code for needing to leave in case of emergency.

Mr. Gates: I believe sometimes the fire department has some thoughts about that as well, but that's not our issue here, so.

Ms. McCartney (staff): I'm sorry Board, I apologize for not having the site plan that I wished to have in front of me. This is probably what is in your staff report, let me just see if I can make this work at all. The first proposal for the parking has one, two, three spaces in the rear, with a handicapped space having that larger clearance. The most recent proposal has the six parking spots located on the west boundary of the property of the rear of the property so that cars pulling in would face the parking lot of the apartment building to the west and not the back of the single family and duplexes to the east. I'm not drawing this correctly or to scale, but generally that is the way that they are configured. I did check for impervious surface. We are still within the maximum impervious surface as well as building lot coverage. So I apologize that the parking lot is not correct.

Mr. Gates: Okay, thank you Ms. McCartney.

Mr. Sandberg: My question is, I noticed in the packet a reference to the Neighborhood Master Plan; does the Neighborhood Master Plan play a role in your findings or recommendations?

Ms. McCartney (staff): That's a good question Chair Gates and Board Member Sandberg, there is one letter that was included in your larger packet from a resident, there are two other letters that were received by today, or by early afternoon that are included in your addendum and I think a number of them address the Marcy Holmes Master Plan which is adopted by the City Council. Generally zoning variances, we don't reference other policies, documents, or other regulatory documents besides the zoning code. In other land use applications such as conditional use permits or re-zonings, those applications require some sort of statement or addressing what the Comprehensive Plan or Small Area Plans say about that development or that site. In situations like a variance, it has not been staff practice to consider Comprehensive Plans or Small Area Plans which does not necessarily serve everyone's interest, I know that.

Mr. Gates: All right, thank you.

Mr. Manning: Molly, I'm confident that you covered this earlier, could you just walk me through the 30-34-55 percentage item again. 30 percent would have been allowed, they are seeking 34 percent. Does 525.520 2(b) apply here?

Ms. McCartney (staff): Chair Gates and Board Member Manning, the section, 525.520 is a chapter in the Zoning Ordinance that talks about administration and enforcement and it discusses the role of Commissions and Boards like yourself as well the different types of applications, variances, and other land use applications. There is a section for authorized variances, and these are the types of variances we are allowed to review or we allow people to apply for. The lot area variance, generally in all other districts and for all other developments, you are only allowed to apply for a variance up to 30 percent, so for example...

Mr. Manning: I've caught up now,

Ms. McCartney (staff): Okay in the R2B district for a new duplex you can ask for greater. So if you are starting with the premises of a 10,000 square foot lot, you could try to apply or try to build a duplex on...down to a 4500 square foot lot.

Mr. Perry: Do you...if you could do this quickly, if you can't you can just skip it. I'd like to know where any single family homes are located on the ... within 100 feet.

Ms. McCartney (staff): Again, this is the map in your packet. This is the subject site, directly adjacent to the east are three single family homes. They all have lot areas that are smaller than what the reduction would allow up to the 55 percent. That's one of the issues that I thought about too, was, well, if you know we allow this, do the rest ... are they all susceptible? But they are actually much smaller than what you could even apply for. These two lots on the corner are 2520 square feet, so they are much smaller than the standard size that we would even require for a new single family house, although they are lots of record and could be redeveloped. 721 12th is technically, actually would meet that requirement. It is 4800 square feet, so it's a little greater than the 4500 that would be needed to even apply for it. The other single family house that is within 100 feet is on the 7th Street SE block and that lot has almost 10,000 square feet. It has 9972 square feet. There are other single family homes in the area on this block just outside that 100 foot buffer, there's a single family home here, these are all single family homes at least according to city records, I don't know if they are currently used as student rental housing, and as you get further into the interior of that neighborhood, really 8th Street and 11th Avenue are very busy streets and those areas are consistently zoned a little higher than the R2B. The interior of Marcy Holmes has lower density of R2B for the most part.

Mr. Perry: Thank you.

Mr. Gates: Ms. McCartney, this section 525.520 2(b) is a fairly recent modification to the code correct? Several years back?

Ms. McCartney (staff): The update to that to allow for that variance was done in 1995. There was a section in the code...

Mr. Gates: 95?

Ms. McCartney (staff): I believe so, there's...

Mr. Gates: No, I think it's more recent than that isn't it? I think it was during my tenure on the Board.

Ms. McCartney (staff): There is provisions in the zoning code that allow for existing duplex...lots with existing duplexes as of January 1st, 1995 are allowed to be rebuilt or can be re-developed. Their minimum requirement is 5000 square feet. Any duplex that's built after 1995 has higher requirement of 10,000 square feet. I believe that's when that authorized variance was introduced. There has been, about two and a half years ago there was a zoning code text amendment proposed to again reduce the minimum lot area for R2B; which did not make the light of day with Council. It went through the City Planning Commission process and the Council did not act on it. I don't know if that may help.

Mr. Gates: Okay, thanks very much. No final questions? Thank you very much. Is the applicant here?

Nathan Hobbs: I brought a map here to show...

Mr. Gates: All right, if you could speak from the microphone that would... all though we're not very well able to see that, I think you are going to have to elevate it.

Nathan Hobbs: I also have some color photographs for the Board Members of the photographs that are included in the packet if you would like to see those.

Mr. Koch: Who are you?

Nathan Hobbs: Nathan Hobbs, an attorney in the office of Patrick Burns.

Mr. Gates: And your address is?

Nathan Hobbs: 8401 Wayzata Boulevard, Suite 300. Also here is Stanley Masioner; he is the builder in this project. He is in the red shirt to my left here. Most of the applicable law has already been covered very well by Ms. McCartney, what I wanted to restrict my comments to and of course I'll take any questions you have, has to do with some of the concerns that have been raised by the neighborhood. The Harmsens who are developing this property currently, they've been renting properties in the Dinky Town area since 1987 and they are absolutely model landlords. They have reinvested millions of dollars back into the community and when they build projects like this one, they don't just build to the minimum standards, they want to make it someplace that actually improves the neighborhood, which is why in the pictures you can see that the properties that they develop include stone siding as well as as many of the additional amenities and architectural features as possible to improve the character of the neighborhood and not just meet and fit in with it. Two of the concerns in particular that I wanted to address, were that #1, the letter in the packet raises the issue that this is perhaps the first time that there...since the new plans had been passed and the 40 acre study had originally been addressed by the City, and the Marcy Holmes Neighborhood that a single family home would be torn down and then re-developed as a duplex. Although I can't speak to whether that quite was true, I can state that this is not an issue where if you deny the variance that that single family home can be there, because of the mistake in granting of the application in the first place. That single family home has already been demolished. There is in fact a hole where the previous home existed. So it's not a question of whether to build something new there, it's a question of what new to build there. And in fact the, as Ms. McCartney has stated, the plans have been, to some degree, have embedded 18 points on the scale, and in fact this particular duplex is ... will fit in very well and address the concerns of the City and the neighborhood as well as possible. The other concern has to do with the claim that the neighborhood is prone to over occupancy. The Harmsens are absolutely committed to staying within the R2B zoning requirements of no more than three unrelated people. To my knowledge, they have never been cited by the City Inspections, nor cited by the Rental Housing Board for any over-occupancy issues. They will not rent to more than three unrelated allowed under R2B and I want to assure the Board in the strongest possible terms that the Harmsens are mindful of the concerns of the neighborhood and the City and are fully committed to working within the restrictions that the City were to allow. If you have any questions, I'd be more than happy to address them at this time.

Mr. Gates: Thank you very much.

Ms. Luepke Pier: I actually was just wondering if you are aware of what they do intend to charge since they've built similar homes in the vicinity or even if they're going to complete this one, what they plan to charge per unit for each of these, just out of curiosity, are you aware of that or are the owners here?

Mr. Hobbs: I have...I don't know, and I don't believe that Mr. Masioner knows either as...how much they are planning on charging for rent?

Mr. Gates: With all due respect, I don't really think this pertains to our concern here.

Mr. Hobbs: I honestly don't know, and I won't guess.

Mr. Gates: Further questions?

Mr. Koch: Yeah, there are some claims that the Harmsens just aren't good neighbors when it comes to shoveling snow or mowing grass anything like that, because they're not here to answer, can you answer that claim? Because it's a pretty big factor in my decision.

Mr. Hobbs: Well, to my knowledge, like I said, I don't know of anytime that they have been cited for that. As a standard part of the leasing arrangements with their renters, the shoveling of the snow and the mowing of the grass is typically up to the tenants and that's a factor in charging reduced rent. So, there have been ... I am aware personally of some issues between the Harmsens and their tenants on that, but as far as I'm concerned, that should be less of a concern here as far as...

Mr. Gates: Yes, I would agree, we are here not so much to look at maintenance issues, but to look at the land use issue.

Mr. Koch: But the fact that there are tenant issues and we are essentially saying "hey, it's okay to have more tenants, to me that is a serious issue, and something worth considering.

Mr. Gates: That would seem to be an issue whether or not it's a single family home or a duplex, snow is snow and land is land and grass is grass, so whether you've got two people on site or six, I'm not sure that has much bearing, so. Are there any final questions? I see none, thanks very much.

Mr. Hobbs: Thank you.

Mr. Gates: Is there anyone else here to speak in favor of the application?

Daniel Overpriller: 1129 8th Street SE. I am the owner of that home and that home is zoned R5 and directly to the northeast of that lot and so, it is in and I can attest that 8th Street is very busy ...

Mr. Gates: Would you put the map back up Ms. McCartney, so we...

Mr. Overpriller: 1129, it's across the street...

Ms. Lasky: Just point to it on the map if you would please.

Mr. Overpriller: Yes, definitely, it would be right here on this corner. I can also attest that the Harmsens are in fact very good landlords and they do take care of the snow and the removal

of...or the grass clippings as well, they do have a service that takes care of that. In fact, just being a landlord and building, making improving the Dinky Town Area and Marcy Holmes Neighborhood is very important to everybody, obviously being a landlord in that area and the Harmsens are doing a great deal or service to the area by improving it, because the fact of the matter is, a lot of these homes were built a long time ago and are kind of run down due to the fact that the wear and tear of being in the rental market for such a long time. So when you look at it from a neighborhood perspective, it does actually improve the neighborhood as a whole by ... with new building products, it makes for a safer community all the way around. New doors, new windows, fire retardant products being used, so I actually would support the idea of having a new duplex because on my side of the street duplex, duplex, duplex, all the way down when you are looking across the street from the Harmsens new proposed variance.

Mr. Gates: All right, we appreciate you coming down, thank you.

Mr. Perry: I have a question. Did you participate in...you're a stake holder clearly, did you participate in this 40 acre study?

Mr. Overpriller: I did not. I was aware of this meeting by the letter that was sent out because I'm 350 feet within the ...

Mr. Perry: So, you don't even know of the 40 acre study that was done?

Mr. Overpriller: I was not aware of the 40 acre...I think I know where you're going with this and I do briefly read something about it, but I don't have a comment for it.

Mr. Perry: Sure, thanks.

Mr. Gates: Thanks very much. Anyone else here to speak in favor of the application? Anyone to speak in opposition?

Melissa Bean: Hi, good afternoon, my name is Melissa Bean, and I live at 516 6th Avenue SE in the Marcy Holmes Neighborhood. I'm a 19... I've lived there for 19 years and I'm also executive director of the Marcy Holmes Neighborhood Association. The clerk is passing around a packet that is the position of the Board of the Marcy Holmes Neighborhood Association and I'll just go quickly through it with you. First of all, contrary to what the attorney has asserted, the Marcy Holmes Neighborhood Association office was never contacted by the property owner about this project. The first we heard about it was May 5th 2008 in the BZZ application report and I put a copy of that report in your packet. It lists 1120 8th Street SE. There is no planner, there is no plan there is no owner. This is very unusual, so we tried to find out as best we could if there was more information about the project and we were pretty much left with nothing. In frustration, on May 22nd I sent an email to Council Member Diane Hofstede and to CPED director, Mike Christiansen and a copy of that is also enclosed. Another thing in the packet is the original applicant worksheet that is, I might say, undated and filled out by Contractor Stanley Masioner and on the front page is a box asking the applicant for the date that the letter or email was sent to the neighborhood contact group and that has been left blank, so that's the more proof that we were not contacted. It's not unusual for us not to be contacted by the Harmsens about their plans. I would like you to know, shockingly, that this is the seventh house on 8th Street SE that the Harmsens have bulldozed in the last year. They get by with this by the administrative review process where the neighborhood does not have to be contacted, the neighborhood is not consulted and if we were we would not have approved of the projects that have gone in and you talk about parking, ample parking at this proposed site across the street there are six triplexes in the R5 zone that were permitted by administrative review that

will have a total of 90 tenants, probably students, and 18 parking places. That's what we get with administrative review, and frankly, we're fed up. I would also like to point out on my second page, that the reason we're here was because there was an error from the staff and our basic point is ... we don't know about all these other extended variances that are allowed in a newer zoning code, we have a big fat book in our office with the zoning code. To us it says in an R2B district to have a duplex you need to have 10,000 square feet, and our position is the variance being requested is too much, and even though there are duplexes and we love our duplexes in our neighborhood, this could set a precedent that we do not want to see repeated in our neighborhood. The error...there were other errors in the application process and there's another page in here that shows the application worksheet for the variance that was submitted by Patrick Burns and on page nine of that it shows that the building being proposed is three stories with three dwelling units. Do we have to live with that now? How many errors are going to be made in this process? The City has really failed us and we implore you to respect the neighborhood and the law and to turn down this request for a variance. On the very last page of our letter we have a long standing policy of what the Marcy Holmes Neighborhood Association thinks about and how they would look favorably on grant requests for variances and conditional use permits and this request does not meet any of our standards.

Mr. Gates: All right, I'll simply say that whether or not there has been an error by staff, we would still be hearing an application for a zoning variance.

Ms. Bean: And we would like you to think of it as without the staff error you're looking at a variance request, the lot size is too small.

Mr. Gates: Right, questions?

Mr. Perry: Thank you, I'm still curious about this small area plan that...was there one done, and can you tell me more about that?

Ms. Bean: As part of our Master Plan?

Mr. Perry: Yes.

Ms. Bean: There are small sections called supplemental plans, supplement plans, is that one, there is the 1415th Avenue, there's one at 35W...

Mr. Perry: Okay, and the Master Plan was done when?

Ms. Bean: December 2003.

Mr. Perry: Okay, were property owners of these duplexes involved in creating that Master Plan?

Ms. Bean: Yes, property owners were involved, property owners were notified, so whoever shows up then...

Mr. Perry: Folks who own duplexes or triplexes were invited? And did they participate?

Ms. Bean: Yes.

Mr. Perry: Okay.

Mr. Koch: I have a question, is the applicant's variance valid given that the neighborhood group was not contacted? Is that a condition that must be satisfied before this Board is even allowed to hear a variance application?

Mr. Gates: My understanding is that the applicant had given testimony or a statement that they had contacted the neighborhood. Is that incorrect Ms. McCartney or...

Ms. McCartney (staff): Chair Gates and Board Member Koch, the original site plan review application, be it administrative does have a requirement for notification. Staff was given a letter with a date and an address of that notification from the property owners to the neighborhood group. Typically we allow emails or letters; emails are sometimes a little more verifiable than a letter. The variance application also has requirement for notification, and I believe that actually was done by email and I believe everyone did receive that; I was copied on those, so there's that. The administrative approval for the house that was done in May and then the variance application that was done in June that was noticed properly for this meeting.

Mr. Gates: And staff typically does not take the next step of verifying that the neighborhood board actually received ...

Ms. McCartney (staff): We require that they give us the copy of the letter email, we do the land use report of the BZZ report and then sometimes we have additional communications with neighborhood groups.

Mr. Gates: But staff's behavior in this case was consistent with every other application. You don't go to the neighborhood group and say did you get the letter that I have in front of me.

Ms. McCartney (staff): That is not a routine duty of the administrative or the land use applications yes.

Mr. Gates: Okay, thank you.

Mr. Finlayson: I have a question for Ms. McCartney, does staff feel that Neighborhood Plans accepted by the City Council trump code?

Ms. McCartney (staff): Chair Gates and Board Member Finlayson, there is many situations where the zoning code is the last tool to be updated. The Comprehensive Plan today which was adopted by zoning and planning has some of the most currently in use policies. Small Area Plans or Neighborhood Master Plans pinpoint down to the neighborhood level of land use changes and proposals that a comprehensive City wide document does not. The zoning code typically is updated on a case by case basis or through re-zonings such as was done in the 80's and Marcy Holmes in the 40 acre study that was referenced in the letter. In the variance application and with the Board of Adjustment work we typically don't use the Comprehensive Plan to address many of our variance findings. We have the four findings that are required by our ordinance and that's typically what we rely on. That information is acceptable to discuss and talk about I think and I think there is case law that speaks more to comprehensive plans and zoning codes.

Mr. Finlayson: Thank you very much, I appreciate that.

Mr. Gates: And in this case, follow up on that, does the new Comp Plan suggest modification to the current zoning code with respect to this site?

Ms. McCartney (staff): Chair Gates, the update to the Minneapolis Plan the land use policies follow the same general direction. There are no major re-zonings, there were some refinement of what our future land use designations are considered, but as far as this specific site, I don't believe that there are many changes. It's designated as a neighborhood corridor, recognized as having some of the higher density on it.

Mr. Gates: All right.

Mr. Byers: Mr. Chair and Board Members if I could just summarize and clarify. The Comprehensive Plan and plans that are adopted through the Planning Commission and the City Council, in some cases, Neighborhood Master Plans in this case the Neighborhood Master Plan, those are accepted as policy and staff uses them in our review and analysis and we take them into consideration and we note them in the findings, but it is the zoning code that regulates. We do not regulate based on any plans, those of neighborhoods or those of our own. The regulation is the ordinance.

Mr. Gates: Thank you Mr. Byers.

Mr. Perry: Yes, I'm still pursuing this Master Plan, if you could, could you just explain what the intent ... how it addresses this particular area. There's some talk about balance and so forth, I'm not really...we don't have the Master Plan in front of us, the Neighborhood Master Plan, so...

Ms. Bean: I wonder if I might defer to Gordon Keptner who really worked a lot on that plan. My understanding is the Master Plan wants to preserve the R2B cors which is...our neighborhood is on two sides of 35W, and density at the edges where there are public transportation, etc., where it is zoned which is in the R5 zones.

Mr. Perry: Okay, thank you.

Ms. Bean: Is that enough or do you want to talk more?

Mr. Gates: Well, we'll maybe hear more about it next.

Mr. Manning: Ms. Bean thank you for coming, and I'm going to invite you at the outset to pass on this question and I won't hold it against you at all, I feel comfortable asking it because of your deep experience in neighborhood activities and if you want to pass it to someone else or just duck it entirely, it's outside the norm of the questions we typically ask, but I'm looking at a property where the owner leveled it believing he had the right to do so and he had the right to put something else up. If I'm unable to separate myself from that history, which I think admittedly is based on a City mistake, do you have any guidance for me in how I should be balancing the home owners' expectations as against the neighborhood's desires that you've talked about. And again, I invite you to ... you're not here to answer these questions necessarily for me, but I'm ...find myself a little stuck admittedly by the awkward chain of events that brought about ...

Ms. Bean: We have an awful lot of absentee landlords and they, I don't want to say skirt the law, but they try their best to undermine the wishes of the neighborhood in general, I don't have anything against duplexes. There are a lot of duplexes in the neighborhood, but this sets precedence. This says to other owners, "oh, well, this guy got...was able to tear down a single family house, put in a duplex, and fill it with college kids. I think that is the part that really bothers us the most in this instance. Our standard is there are laws on the books, let's stick with the laws,

and let's not set a precedent where the zoning code goes out the window. If you're going to allow a 55 percent variance, why even have a zoning code... that's ridiculous.

Mr. Gates: Well, but in fact that is a part of the code and so the code seems to be encouraging the process to allow for duplexes on much smaller lots if the surrounding properties, the surrounding neighborhood might suggest that a duplex would be appropriate.

Ms. Bean: I'd like to say one thing.

Mr. Gates: So, I just want to urge the Board to do it's best to put aside the issue of the staff error and to put aside issues of absentee landlords or snow removal and really look at whether or not a duplex is a reasonable use of this property given the surrounding property uses. So I'll take one more statement from you.

Ms. Bean: I'm sorry, I just want to say the properties across the street that Mr. Harmsen has recently developed in the R5 zone which are the triplexes with five bedrooms each has already started a trend in the neighborhood and we just about a week ago another building ... a nice home... former a lovely home next to Marcy Park was knocked down by a different owner to do the same thing, so this is happening, this is completely changing the look, the feel, the atmosphere of our neighborhood and as I said, we're not being consulted and that's very frustrating for us.

Mr. Gates: All right, we hear you. Thank you for coming down.

Gordon Keptner: My name is Gordon Keptner, I live at 1225 7th Street SE in Marcy Holmes and I'm here because I received a 350 foot notice. I'd like to talk to the actual specific requirements within the rules for a variance and especially the undo hardship issue, as pointed out by the applicant's attorney, there are three elements to that, reasonableness, unique circumstances and essential character of the locality. Regarding the unique circumstances issue, the applicant's statement of issues on page three says the second factor, unique circumstances requires that the applicant's plight is one not created by them. It goes on to state the circumstances including the errors of the CPED generating this variance request are unique to the property and were not created by the Harmsens. We strongly disagree. The May 28th building permit application worksheet which is signed by the applicant's authorized representative, Mr. Masioner was materially defective and proves to be the root cause of the situation before us. It provided no information on the existing building, which is required on the application form. It omitted the fact that a single family home is on the property, that's where the problem starts. They also failed to notify the Marcy Holmes Neighborhood Association which would have clearly raised the alarm, so why is this so crucial? Again referring to the applicant's statement of issues, page four in the second paragraph, "a thorough review of the code would have prevented the problem from developing. On page four the last paragraph "but for those approvals," meaning the CPED approval, they would not have demolished the former structure, so if the applicant provides a materially defective application and conceals information that is clearly known to the applicant, namely that there is a single family house on the property; this clearly creates the problem that we have here, further in a June 11th email from Molly McCartney to Melissa Bean, Ms. McCartney acknowledges she didn't know there was a single family house on the property. That is because the applicant failed to disclose this vital fact.

Mr. Gates: Sir, I'm hearing you, but I'm not following how the fact that there might have been an error affects the issue at hand. If the applicant wanted to make ... to build a duplex there, a variance would be required at some point in the process. It was caught later than it is typically caught, but it has been caught none the less. I'm trying to encourage the Board to put aside the

fact that the project is underway, and look at this in a clean fashion and really focus on the issue at hand which is the use of the property for a duplex. So, unless you have a very concise statement to the contrary, which would convince me that it is relevant to actually talk about the error, I want to talk about the use of the property.

Ms. Luepke Pier: ...

Mr. Keptner: Is it not the case that you are required to apply these tests of undo hardship? And if you are and the test is not met, namely the unique circumstances test that was not created by any doing of the applicant, then...

Mr. Gates: And so you could speak to the issue of hardship. I don't believe that the issue of an error has to do with hardship in this case. The applicant is not alleging that the error has created hardship for them and the Board is not considering that in that fashion.

Mr. Keptner: It requires a burden on the applicant to state fully the conditions of the situation. And to omit a vital fact which actually turns out to be the cause of the problem means that the applicant clearly hasn't meet the test of being clean with respect to notifying the appropriate authorities. I mean there is an obligation to be truthful and to fully disclose. If they don't meet ... the error starts with their lack of truthfulness and their inaccurate statement. I can understand why the CPED staff proceeded the way they did, because the applicant failed to disclose and it's on the form.

Mr. Gates: Sir, this is not a court of law...

Mr. Keptner: No,

Mr. Gates: There are quasi-judicial implications to our actions here...

Mr. Keptner: There certainly are.

Mr. Gates: But we are certainly not here to judge the applicant's integrity or the error of the process that they have gone through, we're here to look at land use.

Mr. Keptner: I don't want...I'm sorry, I'm trying; I don't want to be argumentative. The form says...

Mr. Gates: I want to take one brief question from the Board.

Ms. Luepke Pier: It is my interpretation based on what, and you can correct me if I'm wrong, are you stating that what you're proposing is that they made an error and that #2 is what you are...

Mr. Gates: If you can hold off on questions to the applicant until he's finished, if you have a question for me I'll take that, but otherwise...

Ms. Luepke Pier: My question here is ... I think he is trying to rebut our finding #2 that we are required to find, in saying that that is in fact a circumstance that was created by the applicant, so I think that that is what the argument is that he was trying to make.

Mr. Gates: All right, go ahead.

Mr. Keptner: Well, it's already been mentioned that on the applicant's statement of issues, they speak to putting a duplex on the property, but on the worksheet that they filled out for this variance

application on page nine, signed by the attorney, it states they want a triplex. So, it's a little hard to know whether we're discussing a triplex or a duplex. Which counts, the document that was filled out, the application or the verbal statements?

Mr. Gates: Well, this Board, we are looking at an application for a duplex.

Mr. Keptner: From the form or from the words.

Mr. Gates: From the application

Mr. Keptner: Is that the application form or is that the statement?

Mr. Gates: The Board is here to review the application; we're acting upon the application, so.

Mr. Keptner: Okay, so in my judgment, the denial of the variance can be justified on the grounds that it fails the undo hardship test ... unique circumstances. I would also like to speak to the staff's report which we just received this afternoon, I'd like to comment about the interpretation of the 525.520 provision, it's highlighted to point out that to vary the lot area or width requirements up to 55 percent for newly constructed two family dwellings, located in the R2B district provided the surrounding properties that are primarily two family dwellings developed on lots of similar size. It then states there is no definition of primarily or surrounding, but they do in fact imply a definition in the way they do the arithmetic. When I do the arithmetic I look first of all at just the R2B properties because this street is a transition street. It's R2B on one side; it's R5 on the other. This was a consequence of both the 40 acre study and is supported by the Master Plan, and the whole idea which you asked about is the balance concept. Two thirds of this neighborhood is devoted to R5. We're trying to preserve one third of it as R2B to preserve the historic character, to preserve the historic houses and to provide a place in this very desirable area for people to have single family homes. But there is a tremendous amount of property available for higher density R5 development to meet the demands for rental property. So, I would assert that the way you do the arithmetic is you count only the properties in the R2B of which two are duplexes and nine are not and since it says specifically duplexes, I have a difficult time understanding how two duplexes out of 11 meets this requirement and if it doesn't, then they don't have the 55 percent rule working for them. Even if you were to consider the R5 properties of which there are an additional two duplexes, you now have a total of four out of 16. How does one say that four out of 16 constitutes primarily duplexes? It's a peculiar concept in arithmetic that I don't understand and I'm certain that in a court of law plain meaning of the word would not support such a definition. So, on the basis that that arithmetic is simply not correct, I would argue again that it doesn't meet the requirement to get the 55 percent kick up. Thank you.

Mr. Gates: And to your point, I understand. I think staff often finds itself in the position of having to interpret the code, because the code is necessarily general in nature and from my experience; they are applying the same mathematics here that they do on other applications of this type. We can all quibble with how they do the ... how they come about that particular method, but from my experience, this is consistent with how it's been done in the past, so...

Mr. Keptner: So primarily two family dwellings does not mean two family dwellings, it means whatever the staff thinks it means. That's the words of your ordinance. There is nothing in it that says subject to interpretation by the staff. Primarily two family dwellings and if they're saying that two out of 11 is primarily two family dwellings or four out of 16 is primarily two family dwellings, I would suggest that the plain meaning of that word has been abused.

Mr. Gates: Okay, thank you. Is there anyone else here to speak in opposition?

Mr. Manning: Mr. Chair, I'm sorry, I had one quick question. Mr. Keptner, can you walk me through the 4/16th, I followed you on the 2/11th, but if you wouldn't mind turning to table one in the staff's report, I can follow you...

Mr. Keptner: On R2B there are 11 properties, two are duplexes. In R5 there are five properties and 2 are duplexes.

Mr. Manning: Okay, you're looking at 715 12th Ave SE.

Mr. Keptner: I just counted the units. There is a total of four duplexes. Counting R2B and R5. So that's four out of 16. If you limit it to R2B only two of the duplexes are there, so that's two out of 11.

Mr. Manning: Thank you sir.

Mr. Gates: Further questions? All right, thank you. Anyone else here to speak in opposition?

Diane Hofstede: Good afternoon Board Members and Chair Gates, I'm Diane Hofstede, the Council member for the third ward in which this property resides. I think what you've heard this afternoon, the complexity that surrounds this particular application. It's complex in a number of areas. What I'd like to just state is that reasonable use of this property is as a single family home and that certainly fits within the parameters of the existing foundation that has been, that is in the ground and that is, as you may want to consider an option for this particular property. A question was also asked about Mr. Harmsens and their history, and I have some of their history regarding their properties and if...with your permission I can review some of that with you.

Mr. Gates: You know, again, I don't really think it's relevant to the issue at hand here with all due respect.

Council Member Hofstede: All right, well, I have it if you should ever like to look at it, we've done a lot of research indicating over 500 different encounters with the City of Minneapolis, and so if you need that information, thank you.

Mr. Gates: Thank you very much, are there questions for the Council Member?

Ms. Lasky: Mine's more of a comment than a question, because presuming that the property is still owned by Harmsens, there's going to be a single family built or a duplex built, they are still going to own the property, so, we don't escape that ownership, so I don't want to hear about it because it's not going to change ownership.

Council Member Hofstede: That's correct.

Mr. Gates: All right, thanks again Council Member. Any further testimony in opposition to the application? I see none, let's close the public hearing on this item and take comment from the Board.

Mr. Perry: I am going to ask my fellow Board Members to consider this Master Plan; although we haven't had time...we don't even have it. But I think we have a sense of what it was trying to accomplish, and I think that is important to recognize and respect when property owners get together and they make a decision of how they would like to see their area especially if it is

approved by the council, and the reason I bring that up is I do not think that the staff finding for the fitting in with the character, the essential character of the locality or injurious to the use or enjoyment of other properties in the vicinity. I don't agree with staff on that for that reason. And in fact there are five single family homes or there were until one was torn down and I find that's almost a third, I don't know how staff does the arithmetic for primary, but I don't find that to be primary so I'll take exception to that and again as I'm saying, I'm just giving this out as thought to consider.

Mr. Gates: Mr. Perry, if you recommend that we consider the Neighborhood Plan, what are your thoughts about the comp plan? I asked the question before about how the new Comp Plan looked at this particular area and whether or not that would suggest that there be a change to the zoning and the response was that it didn't suggest that there be a change, so, am I correct that we might have a little bit of a disagreement between the Neighborhood Plan and the Comp Plan?

Mr. Perry: I'll let that, if I could just answer it from my perspective of working on such things, I'd like to hear staff as well, but I think Neighborhood Plans that are approved are just a greater detail looking at the specifics of that area. The finest...the Comp Plan gets down to neighborhood, commercial nodes and zoning around that, so I don't think they get down to the kind of level that a Neighborhood Master Plan would. Certainly looking at any of the ones that I've been involved in, that's not the case.

Mr. Gates: Okay, thank you.

Ms. McCartney (staff): Chair Gates and Board Member Perry, I think Board Member Perry does have it right; the Comprehensive Plan is a general overview of the land use, of existing land use. This Comprehensive Plan we have the first time future land use map included and as staff we do look at the small area plans, or the Neighborhood Plans to drill down a little bit more to look at specifics. That said, the University of Minnesota is designated as one of the three activity centers in the City. I might be wrong on the number of activity centers, but it is an area of growth, so that's another thing to consider while this specific site might or might not be the activity center, there is that development pressure as well that is part of being a neighbor to a large University such as the U of M. I hope that gets to something.

Mr. Gates: All right, thank you Ms. McCartney.

Mr. Finlayson: Well, I really don't care about, when you get into zoning issues, really the primary thing to me is what does the code say and I'm just going to go literal on this, it says provided the surrounding properties are primarily two family dwellings developed on lots of similar size and we've got four out of 14 that are duplexes. Some are large, some are smaller. Four out of 14 is not primarily.

Mr. Gates: Thank you. Further comment.

Mr. Perry: I'd like to make one additional comment on the Comp Plan, I think again, not having the Marcy Master Plan in front of me, I think what they have done is try to figure out where those increases in development can occur within their neighborhood, so still meet the spirit of the activity center, but they've again fine tuned what...where that happens within their neighborhood within that activity center, so again, I don't think there is a conflict here.

Mr. Gates: All right, thank you.

Ms. Lasky: If you looked at just numbers, you could say there's a reason to not have this site be a duplex. If you look at the map, this is a logical place to put a duplex between a large apartment building and a single family home which are step downs. It's almost as if it's the property owner being punished for not being an ideal property owner in how they are treating their properties and their tenants, etc., etc.

Mr. Gates: Only if we choose to take that into account.

Ms. Lasky: I'm saying that's what the neighborhood group is choosing in some ways. So, I'm having difficulty not supporting staff's recommendation, because it's a logical step down to the single family dwellings and the fact that they tore the building down annoys the heck out of me. I have ambivalence and it's bothering me, yes, you could put a single family dwelling back in there. It does not change the property owner, the property owner is negligent, they'll continue to be negligent for Marcy Holmes Neighborhood Association there are wonderful ways to get the property owners in line, but this is not it. I don't have a position yet, I'd like to hear from the other Board Members.

Mr. Perry: Mr. Chair, may I just give a thought to Ms. Lasky on something to consider. You mentioned the house is torn down, when I'm looking at this I'm considering the house is still there.

Ms. Lasky: Yeah, I know.

Mr. Perry: So, I don't know if that helps you, but when I do my math, it's a single family home still there.

Ms. Lasky: Yes, but I'm also saying that its an R2B lot it's 34 percent instead of 30 percent you're talking about 4 percent, I mean, we've done this before, and I have ambivalence, it's not 50 percent, it's not terribly wrong to put a duplex here, it's a transition type of infill. It's not a shoe in between two single family dwellings in a sea of single family dwellings. It's a lot of student housing and it's in an appropriate student housing type of building. It's not inappropriate. It's the...possibly the property owner might be, but not the building, so I'm ambivalent, but I understand the numbers speak, well, there's only four single family dwellings, so it should be...duplexes, so it should be a single.

Mr. Gates: All Right,

Mr. Finlayson: Really when you start looking at it I mean, obviously it can be looked at in several different ways, the non literal way, you could say everything larger than a duplex is the same as a duplex. On the other hand, this is an area of transition, so if you take the attitude that everything that is larger than a duplex is also a duplex you could use that logic to slide larger housing progressively into areas that have smaller housing, so that's the basis for my looking at the literal interpretation of there are only four out of 14 duplexes here.

Mr. Gates: But if we extended that logic further, would we not have a situation where you've got a number of single family homes in a neighborhood with many multi-family buildings, R5's and R1's and really no R2B's.

Mr. Finlayson: We have had them... these things before us before where there are the housing stock is basically single family and duplexes and basically no other and we've had them where there were a large number of duplexes in the area so it was pretty easy to say yes and we can

grant the variance, but again, I look at this as an area of transition and that hence my literal application of the word duplex.

Mr. Gates: All right, thank you. I haven't heard from the other half of the Board yet, Mr. Sandberg.

Mr. Sandberg: I'm having a hard time making a decision without using the Neighborhood Master Plan. I think that the decision should include that so I guess I wouldn't support the variance. Also, I think it is wrong to use the R5 District in the arithmetic because that would by definition take any adjacent property to that district into a primarily multi-family or if it happened to be duplexes primarily duplexes, so I think the logic of using the adjacent properties or nearby properties within the same zone is appropriate and that again leads us to primarily single family ... or you know, not primarily duplexes.

Mr. Gates: Okay, we haven't heard a motion yet, and I'm glad for that, thank you for holding off a little bit, but for those who are leaning against granting the application, the variance, I'm going to ask that you look at ways in which you find the staff findings to be in error, or that you disagree with them, and that that somehow, well, I suppose you could tie it to the Neighborhood Plan, I'm not quite sure if that would be sufficient or not, but, because the staff was looking at the zoning code, when it made it's determination, so, the point being, if you're not inclined to favor the application, please think in terms of how you think staff has made the incorrect findings.

Mr. Perry: If I may, just to follow up on that point, in this particular situation, we only have to find one of them does not apply.

Mr. Gates: Okay, I'd still like to hear further explanation or further discussion regarding all the findings. I perhaps technically you are correct, I know we discussed that in the past, but I'd like to, if we are going to tell staff that we think they're wrong on this, I'd like to hear some discussion about each of their findings.

Mr. Koch: For me it's the hardship alone that doesn't fly. Based on per numbers, and not only the staff recommendation, but Mr. Gordon was saying that the applicant hardship was, "the City said we could do it", and to me they created their own hardship as he pointed out to me and that's kind of what sold me. It kind of turned my tide. The area of hardship here just isn't met, they have created it themselves.

Mr. Gates: All right, thanks Mr. Koch.

Mr. Manning: I'm working hard to understand the counting issue raised by Mr. Finlayson and I'd like some help. I'm not sure what's wrong from the perspective of the single family home owner of counting the 16 neighborhood properties as single family homes and things that are grosser in the traditional sense of the word meaning larger than single family homes. In other words, I agree that across the street is zoned R5, in other words, it is grosser than a single family home. It could be grosser still than the two or three units that are currently built on those lots. I'm just not understanding that shift; I may not be phrasing this comment very well, but I want to preserve single family homes in this neighborhood, let's say that's my position. Let's say that I accept Matt's comment that I believe that four, five single family homes meets the thresh hold for primary. Meets the sufficient thresh hold to defeat primary, finding of greater than. So, if I accept those two premises, why is it that I'm not counting everything that could be grosser than a single family home in assessing the character of the neighborhood? Marissa thinks I should, and I think there're some voices on the other end that don't think so, and I'm just not following that.

Mr. Lasky: This is why I'm ambivalent, because I'm riding that horse.

Mr. Manning: And I'm hoping that I can hear from John or Matt ...

Ms. Luepke Pier: I'm looking at 525.520 2(b) and it specifically states primarily two family dwellings developed on lots similar in size to the proposed development, so, right there, primarily two family dwellings seems to rule out the apartment building right off the bat. I don't know if that help.

Ms. Lasky: So if we counted everything larger than a single family dwelling, how many are there? There are 11 units larger than a single and how many singles?

Mr. Gates: Five counting the subject property.

Ms. Lasky: Okay, that answered my question.

Mr. Gates: Mr. Manning had a question for several members down at this end, I believe, anyone want to respond to that? If not, perhaps we've dug into this long enough. Go ahead Mr. Finlayson.

Mr. Finlayson: Well, there's a pocket of single family there. They're the most proximate ones as well.

Mr. Perry: Mr. Chair, I'll just say, I've said a couple of times what my thinking is, so.

Mr. Gates: Okay, and do you want to make a motion?

Mr. Perry: I will make a motion, I would like to move that we deny the variance and we deny it because it does not satisfy finding three.

Ms. Lasky: Can you reiterate finding three, so I don't have to dig it up.

Mr. Gates: Yes, speak to the way that you think it does not satisfy that finding.

Mr. Perry: The character of the neighborhood, I think when they were saying primarily duplex, or primarily two family units, they were trying to get to what the character of the neighborhood was. It seems clear to me that we've said in a couple of ways, mine and Mr. Finlayson's that that's not the case. It isn't primarily that, and so my argument is that it does not fit in with the character of the neighborhood and therefore does not satisfy finding three. Additionally, which I think maybe people don't agree with me, I would like also my thinking is it is not in keeping with the Neighborhood's Master Plan.

Mr. Gates: Is there a second?

Mr. Koch: I'll second that motion.

Mr. Gates: Further comment.

Ms. Lasky: I'll disagree because of the numbers. If we have 11 units that are larger, heavier, denser, bigger whatever, more mass than a single family dwelling and you've got ... is it five or four...I keep looking at this drawing and I keep seeing the same thing, then I'm having trouble finding for a single family dwelling, and then if I also put on my broker's hat, I have trouble putting a

single family dwelling in here and saying, yeah, someone wants to buy that next to a large apartment building. It just begs for a nice duplex. I'm not dieing for the architecture of that duplex, but I can't re-draw that. Having 40 years of property management in the University Area, I'm also saying there are good property owners and not so good ones, but, single family or duplex is not a giant difference of numbers of people, so in terms of the impact on the neighborhood, it's not big for numbers. I think the infill being a good transition as opposed to a single it's not a...I think it's appropriate to go from an apartment building to a duplex to single, so that in terms of appropriateness, so I can not support the motion.

Mr. Gates: Thank you Ms. Lasky.

Ms. Lasky: And I don't agree with the hardship.

Mr. Gates: Don't agree with the hardship?

Ms. Lasky: the findings for hardship, in fact it's the opposite for me, from the motion.

Mr. Gates: He didn't even bring up issue of hardship.

Ms. Lasky: I'm sorry, not the hardship, the number three, the character issue.

Ms. Luepke Pier: I will be supporting the motion and on Mr. Perry's point I'd like to add as well, that in terms of being compatible with existing homes, when I look at the odd side of the street and I look at their yard space and then I contemplate six parking spaces in the back of this and read the last line of the first paragraph, especially in height, materials and back yard open space, it's very clear to me. It's not even compatible with the higher density in terms of having back yard open space which is specifically called out, so, I agree with everything Mr. Perry and Mr. Finlayson have said and I just further add that to that and I will be supporting the motion.

Mr. Gates: Mr. Perry, Would you speak to findings one, two and four?

Mr. Perry: Since I don't have to comment on any but one, I'm not going to make a comment on that.

Mr. Gates: Any final comments? We have a motion to overturn the staff recommendation and deny the variance. Please call the roll.

Finlayson: Yes

Koch: Yes

Lasky: No

Luepke Pier: Yes

Manning: No

Perry: Yes

Sandberg: Yes

Mr. Gates: The motion passes, the variance is denied. The applicant can speak to staff about their options from this point forward. Thanks to you all on both sides for coming down.

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-4087

Date: June 26, 2008

Applicant: Patrick Burns, on behalf of Tim Harmsen

Address of Property: 1120 8th Street Southeast

Contact Person and Phone: Patrick Burns, 952-564-6262

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

Date Application Deemed Complete: June 5, 2008

Publication Date: June 20, 2008

Hearing Date: June 26, 2008

Appeal Period Expiration: July 7, 2007

End of 60 Day Decision Period: August 4, 2008

Ward: 3 Neighborhood Organization: Marcy Holmes Neighborhood Association

Existing Zoning: R2B Two-family Residential District

Proposed Use: Construction of a new duplex and rear parking area

Proposed Variance: A variance to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. (34 percent reduction) to allow for a new two-family dwelling (duplex) in the R2B Two-family District.

Zoning code section authorizing the requested variance: 525.520 (2b)

Background: The subject property is an existing vacant property at 1120 8th Street Southeast that measures 80 ft. by 165 ft (6,600 sq. ft). An application for Site Plan Review for a new duplex was submitted and approved by CPED-Planning staff in early May, 2008. In addition, a demolition permit for a single-family dwelling was issued with CPED-Planning staff signing off on the Heritage Preservation portion of that review.

Once the building permit for new construction was issued, staff found that it had been issued in error, due to the fact that the property's lot size did not meet the minimum lot size in the R2B District of 10,000 sq. ft. for a new two-family dwelling. A stop-work order was issued for the construction site and the applicant is now applying for variance to reduce the lot size in order to proceed with the proposed duplex. A single-family dwelling could be built at this site with no lot area variance.

The proposed duplex meets the zoning code requirements for authorized use, lot width, building floor area ratio, height, setbacks, parking requirements and Site Plan Review. For the Site Plan Review, The proposed project received 18 points for including the following building features: basement (5 points), cement based siding (4 points), increase of minimum window on façade (3 points), increase of minimum window on sides and rear (3 points), roof pitch of 6/12 or greater (2 points), front porch (1 points).

The zoning code authorizes a limited number of types of variances, including lot area variances of up to a 30 percent reduction of lot area. The only exception to the 30 percent reduction is for new duplexes in the R2B District. A lot area variance of up to a 55 percent variance for newly construction duplexes in the R2B District may also be applied for, with the provision that the surrounding properties are also two-family dwellings on similarly sized lots. The current request is for a 34 percent variance.

Section 525.520 Authorized variances

(2) To vary the lot area or lot width requirements up to thirty (30) percent, except for the following uses, where the maximum variance of thirty (30) percent shall not apply.

a. To vary the lot area or lot width requirements up to fifty (50) percent for schools, grades K-12, located in the OR2, OR3 and commercial districts.

b. To vary the lot area or lot width requirements up to fifty-five (55) percent for newly constructed two-family dwellings located in the R2B District, provided the surrounding properties are primarily two-family dwellings developed on lots similar in size to the proposed development. (emphasis added)

There is no definition of “primarily” or “surrounding” in the zoning code. Staff has interpreted surrounding to mean the other properties on the same block face as well as those behind the site and across the street from the site. However, the inclusion of properties behind a site and across the street from a site has to be evaluated on a case by case basis depending on the street layout, lot platting, and zoning (commercial and industrial properties should not be included).

Staff consistently measures character by looking at the features of properties with 100 ft. distance of a subject property, a distance used in the zoning code to determine character for Site Plan Review purposes as well as in the floor area ration sections of the Residence Districts. There are a total of sixteen residential properties within 100 ft. of the subject site. There are four other properties on the same block face along 8th Street Southeast within 100 ft. There are five properties on the street face across the street with 100 ft. from the subject site. There are four properties in the rear of the subject site that within a distance of 100 ft.

Table 1. Properties within 100 ft. of 1120 8th Street Southeast

Address	Zoning	Units	Lot area, sq. ft.
<i>subject site street face</i>			
1120 8th St SE	R2B	1	6,600
1108 8th St SE	R2B	13	11,550
1112 8th St SE	R2B	17	14,850
1122 8th St SE	R2B	1	2,520
1126 8th St SE	R2B	1	2,520
<i>across the street</i>			
721 12th Ave SE	R2B	1	4,800
715 12th Ave SE	R2B	2	3,280
1121 8th St SE	R5	2	5,453
1129 8th St SE	R5	2	5,453
1113 8th St SE	R5	3	5,486
1117 8th St SE	R5	3	5,453
1125 8th St SE	R5	3	5,453
<i>to the rear</i>			
705 7th St SE	R2B	2	12,622
1121 7th St SE	R2B	3	6,273
1117 7th St SE	R2B	10	9,333
1109 7th St SE	R2B	1	9,972

Of the sixteen properties, five of the sixteen are single-family homes and eleven properties have two or more units. Three of the properties are multi-family dwellings ranging in ten to seventeen dwelling units. Eight of the surrounding properties are either two- or three-unit structures on similarly sized lots. Therefore, the area is not mostly single-family dwellings and has primarily two-unit structure or greater on properties of similar size.

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 use of the property for a duplex or a single-family home would be reasonable in the R2B District. Strict adherence to the lot area requirements would limit the use of the lot to a single-family home, which does not allow for development of a new two-family dwelling, which is consistent with the surrounding area’s properties. The lot area requirements of the code presents a hardship to development a new two-family structure, which is consistent with the other uses in the area.

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.**

3. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.

The code recognizes that properties in the R2B District that are surrounded primarily by duplexes on similar sized lots are a unique condition that may justify granting a lot size variance. The properties within 100 ft. of the subject site are primarily two and three unit buildings on similar sized lots. Because many areas zoned R2B have a mixture of both single- and two-family dwellings, there are unique circumstance of the subject site that are not 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.

A variance being requested is to reduce the minimum lot size by 34 percent. The intent of the ordinance is to allow variances greater than 30 percent and up to 55 percent where the area is primarily duplexes. Since the area is primarily two- and three-unit buildings, granting the variance of 34 percent reduction in lot area would not violate the intent of the ordinance. Since there are many other duplexes and multifamily properties in the area an additional duplex is not out of character with the surrounding properties. The design of the structure meets Site Plan Review and is compatible with the existing homes in the area, especially in the height, materials, and backyard open space.

The Marcy-Holmes neighborhood is adjacent to the East Bank of the University of Minnesota and Dinkytown. Over time, the east side of the neighborhood had changed from originally a single-family area when many of the home were built at or before the turn of the 20th Century to a mixture of multi-family structures as well as single-family homes that have been converted to multi-family units.

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 applicant is providing six parking spaces on the site, four more than what is required by the zoning ordinance. The proposed development meets all other safety related requirements such as means of bedroom egress.

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** the variance to reduce the minimum lot area from 10,000 sq. ft. to 6,600 sq. ft. to allow for a new two-family dwelling (duplex) in the R2B Two-family District, subject to the following conditions:

1. The project must meet the occupancy requirements of the R2B Two-family District of no more than three unrelated persons,
2. CPED-Planning Division review and approve the final site plan, floor plans, and elevation. All drawings will be measured to an architect or engineer's scale.