



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

Date: November 16, 2004

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Carrie Flack, Senior City Planner
Presenter in Committee: Carrie Flack, Senior City Planner

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

Subject: Appeal of the decision of the Zoning Board of Adjustment by David Keller.

BZZ 1967 – 3757 Harriet Avenue South – Dave Keller has filed an application for a variance to reduce the required corner side yard setback from 12 ft. to 0 ft. to allow for a third floor dormer expansion and a variance to reduce the required lot area from 7,200 sq. ft. to 5,240 sq. ft. (27%) to maintain an 8 dwelling unit apartment building.

RECOMMENDATION: The Board of Adjustment adopted the staff recommendation and granted both variances subject to the following conditions:

1. That the Planning Division review and approve final site, landscaping, floor and elevation plans.
2. That the plans be revised to provide a dormer with a roof pitch that matches the roof pitch of the existing building and that the materials of the dormer match the materials of the building.

Previous Directives: N/A

Financial Impact (Check those that apply)

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

Community Impact

Other: See attached.

Background/Supporting Information

Dave Keller has filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment approving his requested variance to reduce the required corner side yard setback from 12 ft. to 0 ft. to allow for a third floor dormer expansion subject to the following condition: that the plans be revised to provide a

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dormer with a roof pitch that matches the roof pitch of the existing building and that the materials of the dormer match the materials of the building.

The appellant has appealed the decision of the Board stating that the required condition causes an undue hardship on the project by limiting the amount of headroom gained in the project. The appellant has submitted revised plans that indicate the materials for the new addition will be stucco to match the building. The revised plans also indicate a roof pitch that more closely matches that of the building but does not meet the condition of approval. The appellant's complete statement for the appeal is attached.

At the October 21, 2004 Zoning Board of Adjustment meeting, seven (7) Board members were present. Five (5) members voted to adopt staff recommendation and approve both variances with the attached conditions and two (2) members opposed the motion. The October 21, 2004 Zoning Board of Adjustment minutes and the Planning Division staff report are attached.

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Department of Community Planning and Economic Development – Planning Division Report

Variance Request
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Date: October 21, 2004

Applicant: David Keller

Address of Property: 3757 Harriet Avenue South

Date Application Deemed Complete: September 17, 2004

End of 60 Day Decision Period: November 16, 04

End of 120 Day Decision Period: January 15, 05

Appeal Period Expiration: November 1, 2004

Contact Person and Phone: David Keller, 612-716-7368

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

Ward: 10 **Neighborhood Organization:** Kingfield

Existing Zoning: R5, Multiple-family District

Proposed Use: Eight dwelling unit apartment building

Proposed Variance: A variance to reduce the required corner side yard setback from 12 ft. to 0 ft. to allow for a third floor dormer expansion and a variance to reduce the required lot area from 7,200 sq. ft. to 5,240 sq. ft. (27%) to maintain an 8 dwelling unit apartment building.

Zoning code section authorizing the requested variance: (2) (1)

Background: The subject site is 40 ft. x 131 ft. (5,240 sq. ft.). The property consists of an 8 dwelling unit apartment building with 3 parking spaces located at the rear of the building. The applicant is proposing to expand an existing dormer on the south side of the building. The existing dormer is 12 ft. long with a 4/12 roof pitch that matches other roof pitches on the building. The new dormer will be 36 ft. long and will have a shed roof with almost no pitch that is inconsistent with the roof pitches of the existing building. The materials proposed for the new dormer are vinyl siding which is also inconsistent with the stucco material of the existing building. The building has a 0 ft. corner side yard setback and a variance is necessary for the dormer expansion.

In addition, the property is currently legally nonconforming as to the required lot area for the existing 8 dwelling units. The applicant has also applied for a lot area variance to bring the property into compliance.

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.**

Corner side yard setback: The applicant is seeking a variance to reduce the required corner side yard setback from 12 ft. to 0 ft to allow for a third floor dormer expansion. The applicant has stated that the third floor unit does not consist of enough headroom and living space for residents. Strict adherence to the regulations would not allow for the proposed dormer expansion. Based on the submitted information staff believes that expanding the dormer seems reasonable.

Lot area: The applicant is seeking variance to reduce the required lot area from 7,200 sq. ft. to 5,240 sq. ft. (27%) to maintain 8 dwelling units in an existing apartment building. The applicant has stated that the building was originally constructed with 8 dwelling units on the subject property. City records indicate that the building is a legally nonconforming use. Strict adherence to the regulations would not allow for 8 dwelling units on the subject property. Based on the submitted information staff believes that maintaining the existing 8 unit apartment building seems reasonable.

- 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.**

Corner side yard setback: The circumstances upon which the setback variance is requested are unique to the parcel of property and have not been created by the applicant. The current building is located with a 0 ft. corner side yard setback. Any modification to the south side of the building will require a variance. The location of the building was not a circumstance created by the applicant.

Lot area: The circumstances upon which the lot area variance is requested are unique to the parcel of property and have not been created by the applicant. The building was originally constructed as an 8 unit apartment building. City records indicate that the property is a legal nonconforming use. The construction of 8 dwelling units on property with less than the current required lot area in the R5 District is not a circumstance 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.**

Corner side yard setback: Granting the variance will not be in keeping with the spirit and intent of the ordinance and will alter the essential character of the area or be injurious to the use or enjoyment of other property in the vicinity. While the expansion of the dormer is reasonable, staff believes that the proposed shed roof with almost no pitch and not matching materials to the existing building will alter the architectural character of the building. The building is located on a corner and thus is a highly visible structure. The proposed dormer expansion will be visible from both Harriet Avenue South and 38th Street. The applicant has stated that the modified roof pitch is necessary to gain headroom in the unit. Staff believes that headroom adjacent to the windows will still not fully exist however the proposed expansion of the dormer from 12 ft. in length to 36 ft. in length will provide additional floor space that does not currently exist, providing a net benefit to the unit. Staff believes that altering the roof pitch of a structure that is symmetrical and visible from the public sidewalk will have a negative impact on the building itself as well as the street wall and neighborhood character.

Lot area: Granting the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the area or be injurious to the use or enjoyment of other property in the vicinity. The property has consisted of 8 units since the original construction of the building. Staff believes maintaining the architectural character of the building as well as the original floor plan layout provides and maintains the original fabric of the neighborhood.

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.**

Corner side yard setback: Granting the variance would likely have no impact on the congestion of area streets, increase fire safety or be detrimental to the public welfare or endanger the public safety.

Lot area: Granting the variance would likely have no impact on the congestion of area streets, increase fire safety or 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** the variance to reduce the required corner side yard setback from 12 ft. to 0 ft. to allow for a third floor dormer expansion and **approve** the variance to reduce the required lot area from 7,200 sq. ft. to 5,240 sq. ft. (27%) to maintain an 8 dwelling unit apartment building subject to the following conditions:

1. That the Planning Division review and approve final site, landscaping, floor, and elevation plans.
2. That the plans be revised to provide a dormer with a roof pitch that matches the roof pitch of the existing building and that the materials of the dormer match the materials of the building.

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Board of Adjustment
Hearing Testimony and Actions

Thursday, October 21, 2004
2:00 p.m., Room 220 City Hall

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

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

8. 3757 Harriet Avenue South (BZZ-1967, Ward 10)

David Keller has applied for a variance to reduce the required corner side yard setback from 12 ft. to 0 ft. to allow for a third floor dormer expansion and a variance to reduce the required lot area from 7,200 sq. ft. to 5,240 sq. ft. (27%) to maintain an 8 dwelling unit apartment building for property located at 3757 Harriet Avenue South in District R5.

CPED Department Planning Division Recommendation by Ms. Flack:

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 required corner side yard setback from 12 ft. to 0 ft. to allow for a third floor dormer expansion and **approve** the variance to reduce the required lot area from 7,200 sq. ft. to 5,240 sq. ft. (27%) to maintain an 8 dwelling unit apartment building subject to the following conditions:

3. That the Planning Division review and approve final site, landscaping, floor, and elevation plans.
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TESTIMONY

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

Finlayson: Any questions of staff? You must be the applicant. State your name and address.

Mike Birrenbach, Birrenbach Construction, 1263 Rice Street, Saint Paul and David Keller, 4248 Linden Hills Boulevard, Minneapolis. When we started this project, the main purpose was to improve the property with a more livable space. We think that the shed style roof can be still architectural integrity of the building will be maintained. I think that the picture that you show, you really have to be in that unit on that property to really see how it, with respect to the staff, you really have to be on that property to appreciate how absurd to have style of roof. There is very little head room and the windows, architecturally from the inside, from the inside the windows are down around your belly. So, there is really no function of opening the windows and enjoying the view from the apartment. Although it doesn't increase the floor area, it puts a hand on the overall improvement of the property. The bathroom, you can see the shower is about chest level. The cost of reconfiguring it in order to allow for that tub to be in a different place to allow headroom, would be a minimal additional cost to meet the

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overall style would not be feasible. Here is the contractor, Mike Birrenbach and he can give you the stand point from building it. My point is that it really defeats the whole purpose because you cannot create a livable space. I do own a handful of properties in uptown, it is not my full-time job and it is more like a hobby for me and one of the things is that I do take pride in the work that we do and maintaining these properties and I feel from my stand point that our intent is to make this look good. And so, it does look attractive from even across the street.

Mike Birrenbach: I would like to point out you had brought up whether this situation would resolve the headroom situation. In the shed style roof design, it would deal with that. We would not have the pitch of the roof interfering with that. The problem there is that we would have to go pretty high, above the existing roof line and chimney and there is a lot of, it is nearly impossible to extend that any higher above the existing ridge line. In order to, whatever amount we are required to cut off the walls and to make hips on that will compromise floor space, useable floor space. Most importantly the window space on the front of the building if we have to put a hip on there, then we are will be looking at the windows sitting about 5 feet. Right now with a narrow hip, I did make another drawing showing the hips, that I think 3 foot is what staff was looking for, but again, we will run into the same situation, up against the walls on three outside walls you have a decline, which is not a real big deal, except for the one front edge, at that point the hip comes down and the windows start at about 5 feet, it comes down from there, less than ideal for all sorts of reasons.

The other thing is just looking at the floor plan diagram layout sketch, the kitchen cabinets and the plumbing is on the other side of the bathroom, I would have to reroute the plumbing to the other side of the apartment to have applicable space to put cabinets. So, right now I am proposing cabinets on the side near the bathroom to utilize the existing plumbing and really the dormer and style of roof that staff is proposing is extended all the way across the property and there is not going to be a lot of extra space in the kitchen. There again, it kind of defeats the purpose of doing it. When you look at the current situation, I have a picture of the kitchen, it is like a little space with sink and about 12 inches on one side to stack your dishes and absolutely no cabinet space. So, you really need to extend the walls up to have adequate cabinet space for the kitchen.

Lasky: This is a nonconforming right?

Carrie Flack (staff): Well, with a lot area variance, then the apartment building is no longer a legal nonconforming use, but right now it is nonconforming with the lot area, the unit is not considered nonconforming.

Lasky: Are 8 units licensed?

Carrie Flack (staff): Yes, the property is allowed 8 units.

Mike Birrenbach: We are not increasing the amount of units at all. I would also like to point out that this change would also make this apartment unit, not for expanding the floor space, makes the apartment much more useable, I think. With attic style apartments often times the knee wall and that entire area within that spot is un-useable, except for a dresser or something.

Lasky: How many bedrooms in that unit?

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Mike Birrenbach: Three (3). And this expansion would also allow for a living room, kitchen and expand the bathroom where it is useable.

David Keller: I manage property around uptown for over ten years and I know what the people in the area want. The biggest thing is kitchens. People want nice kitchens and cabinets. My experience with making improvements to the properties, it improves the overall neighborhood. I think that we should not be restricted to the style of the roof. I think it would be a hardship and defeat the overall code. The pictures pointed out that it is visible from 38th Street, and that is true. But actually, the third floor is up so high that there is not only two floors below it, but is yard below it. It is very high up, if you go back far enough on the street to actually see both sides of the roofs to see if they match, you have to go back pretty far. And if you look at it straight on from the property, the addition will have nicer windows, I think that will be an overall improvement to the property.

Mike Birrenbach: I would also like to point out that from the front and back of the building, it is nearly impossible to get a shot of both dormers. If that is a concern, that one dormer will not match the other side (north and south), it is virtually impossible to get a view of that, you have to step one block over and then other buildings block the view. Although you can see the dormer, you cannot see both dormers at the same time.

Flo: I want to confirm that I understand correctly. Your only objection is to one condition concerning the roof pitch and not the condition regarding the materials?

David Keller: I would be willing to put stucco on, I think that looking at that side of the building it wouldn't be a siding issue. When you are talking about raising the wall and the ridge of the roof up to get a type of pitch that would be impossible.

Mike Birrenbach: There is another option which is less than ideal, we could put a matching pitch slope, an eyebrow around it just to get it that look. We would still want to slope it out just a little bit, but that would not be visible to the naked eye, we are talking 6 inches, 35 feet off the ground. That little bit of slope is just for drainage, but we could feasibly without compromising the wall space just a lip, one and one-half foot lip around it that matches the pitch of the other roof.

Finlayson: Anyone else have any further questions?

Lasky: Question for staff, what is the prohibition of expanding a floor, but not adding any units to apartments.

Carrie Flack (staff): In this case this is a multi-family dwelling, the 50% rule usually comes into play with single and two-family dwellings. This is a legal unit, so increasing the floor area, doesn't affect anything else for the property. The lot area is based on the number of units and not the square footage of each unit.

Lasky: Whether that is an existing unit expanding, or all units expanding upwards is the same rule.

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Carrie Flack (staff): I believe so.

Mike Birrenbach: My understanding is that if it wasn't for the lot size a variance would not be needed at all.

Carrie Flack (staff): The lot size is something that I recommended because you needed to file the other variance. You don't need that variance, but you need the setback variance to do the dormer expansion.

Mike Birrenbach: Exactly.

Carrie Flack (staff): The lot area does not relate to the square footage of the dormer expansion, this is an entirely separate issue. If we see something nonconforming, we can make it conforming, we recommend to do that otherwise it would be an expansion of a nonconforming use..

Lasky: How many bedrooms?

Finlayson: I think we need a clear delineation. Let's say the public testimony is closed unless you have something further to say, we will just leave it as questions at this point.

Rand: Could they pop the roof off and put a third floor on?

Carrie Flack (staff): No. That would be coming in for a height variance, if you are going to increase the overall height of the building, then that would be evaluated for height and additional units.

Finlayson: I have fairly well established views on shed dormers. I don't want to be cruel.

Bloom: This one is difficult for me.

Rand: First of all, I want to make a motion, get it going. I believe that is the way to conduct this business. I would vote to approve staff recommendation.

Bloom: And I will second that. I am kind of torn on this one. I think Peter what you were getting at is that this third level, fourth level, including the garden apartment. Built on top it was built as attic space. Just looking at it, it was attic space. It was never really a normal apartment for rental.

Lasky: I don't think it meets code.

Bloom: We won't discuss that.

Carrie Flack (staff): When they pull the building permit they will be required to make any necessary updates to meet building code in addition to the variances.

Bloom: We are being asked to grant a variance. We always try to make sure that what is being done conforms to the structure, what is being done is not going to be detrimental to the structure, or to the

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neighborhood or all the above. I don't like shed dormers, especially when you have a gorgeous building like this and I don't see how this fits into the hardship for the shed dormer, hardship for putting this in and what are the conditions for putting this in. The conditions that staff has recommended are perfectly understandable, even though it seems that it is unreasonable to you guys, it is making it less of an impact to the neighborhood.

Lasky: Going back to the time it was built, was it an eight (8) unit building. And the reason I am asking this is because it doesn't seem to meet the height requirements for living space.

Carrie Flack (staff): The city has it licensed for eight (8) units. It is considered legal for eight (8) units. I cannot tell you if the building was originally constructed that way, but the city does recognize and acknowledge it as being eight units.

Lasky: If it was built today, you could not build that eighth unit with those ceiling heights so, it is nonconforming in every way unless we can allow something to happen to bring it in to conformance.

Finlayson: Three quarters ($\frac{3}{4}$) of the city is nonconforming.

Lasky: True.

Carrie Flack (staff): Just for your clarification, whenever a variance is granted, it does not include building code requirements. So if there are building code issues those do have to be addressed when the building permit is applied for. I do not know the building code and what kinds of issues that could arise. But if there are any, they are required to bring them up to code. The building code has to be adhered to.

Lasky: Are you increasing the number of bedrooms?

David Keller: No. The only type of people that are interested in living in that type of apartment, are people that share rooms. They each have their own rooms and they share the kitchen space. That is what this is being rented as. It is going to improve and add on a living room and useable kitchen with useable cupboards. Otherwise just leave it in this state where you have basically people renting a room and sharing a kitchen.

Lasky: So, this did not have an existing kitchen? Correct?

David Keller: Almost. The kitchen is almost.

Mike Birrenbach: The existing kitchen is here (photo), and has literally a kitchen sink crammed in the corner, refrigerator over here and a tiny cook top that blocks the hallway.

Lasky: From my stand point, I am mostly having problems with density. You have too many units and that is it, with three and four bedrooms per unit. By improving this it improves the use ability and the density of the building actually increases. So that puts more impact on the neighborhood with the parking, etc., etc. You have to decide how you want to dictate this. The building will be less attractive with a shed roof, and have more square footage and ample parking.

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Fields: I'm really conflicted because I am an advocate for creating more living spacing. We never have a glut of housing. On the other hand, it was never really, in my mind, never meant to be a living unit. No matter what nonconforming license it has, and that bothers me. And I just cannot see the staff's point about the design issue. To create a living unit that was really not meant to be. I am really conflicted about it. I think the urban plan is to increase living space, but I am very sympathetic particularly with quality buildings like this, to maintain the architectural integrity, it has just as much to do with the neighborhood and living space.

Finlayson: Please call the roll.

Mike Birrenbach: Before you do that, I did take the time to review what was recommended by the staff and put together another drawing that shows hopefully a compromise that would be more acceptable. That is to put a lip all the way around the outside of the roof, shingled and dipped to match the existing roof. I don't want to maintain the same, this would be the existing dormer and this is the new dormer. To maintain that exact shape from the front, would require leaving the windows at 3 foot height, which is almost ludicrous. Literally right now they are this height off the floor, there is a lot of ways to fix for convenience, etc. But this would with any luck, have a lip that matches the pitch of the roof, and match the shingles, and do the stucco. Structurally this would match. It would not match if you were looking straight on at the building, but that view cannot be had. You cannot look at it, there is a building across the street and it is impossible to look at it straight on. This dormer, what you see is a larger dormer, with a shingled hip around the roof, and come down as far as the existing one to allow for windows to be where they need to be, also to provide more useable floor area.

Lasky: Anyone want to address the objections?

Flo: My understanding of the objections is that this person thought there were going to be more units within the establishment and there will not be more units.

Mike Birrenbach: If you look at the pictures that we gave you. If you look at it from a straight on view you cannot get a shot of it anyway. If we modified it, compromised, we actually would be putting on the style, but not coming down quite as far and then that way we could put in windows. I don't think you would ever really notice the difference on how far it came down and may even look better. Looking from the back of the building you will always have a line, looking at it from a distance. So, it won't be noticeable. From back here looking at it from the street, you would not be able to see the dormer from the other side, and you will not be able to see the other dormer on the front. There is just a slight difference on how far down the actual hips come, I don't think it will be noticeable.

Rand: In Paris or London there are several people that would be happy and care less about the window height and rent.

Finlayson: Pass it around.

Mike Birrenbach: I think that would circumvent the staff recommendation, and that meets it exactly.

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Finlayson: We have a motion on the floor. Maker of the motion comfortable with leaving the motion.

Rand: Approve staff recommendations.

Finlayson: Secunder, do you still feel comfortable with the original motion?

Bloom: Yes.

Mike Birrenbach: Would that meet the spirit of the staff's recommendations, that design there?

Carrie Flack (staff): You are working with the Board at this point in time.

Mike Birrenbach: And your recommendation says?

Carrie Flack (staff): To match the roof pitch.

Mike Birrenbach: It does match the roof pitch.

Carrie Flack (staff): No, that does not. That is a completely different type of roof at that point.

Mike Birrenbach: It is a different style of roof, but it does match the roof pitch. There is no question.

Finlayson: We have a motion on the floor. Please call the roll.

Roll Call Vote:

Yeas: Bloom, Fields, Finlayson, Lasky, Rand

Nays: Flo, Morgan

Recused: None

Absent: Gates

The Motion **approved** the variance the variance to reduce the required corner side yard setback from 12 ft. to 0 ft. to allow for a third floor dormer expansion and **approved** the variance to reduce the required lot area from 7,200 sq. ft. to 5,240 sq. ft. (27%) to maintain an 8 dwelling unit apartment building subject to the following conditions:

1. That the Planning Division review and approve final site, landscaping, floor, and elevation plans.
2. That the plans be revised to provide a dormer with a roof pitch that matches the roof pitch of the existing building and that the materials of the dormer match the materials of the building.