



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

Date: December 15, 2005

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Molly McCartney, City Planner

Presenter in Committee: Molly McCartney, City Planner

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

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

**BZZ-2649 – 1221 East 35<sup>th</sup> Street** – Corey Ramsey has filed an appeal of the decision of the Zoning Board of Adjustment denying a variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to 8 ft. and to increase the maximum height of a fence in the required side yard from 4 ft. to 8 ft. to allow for a solid fence for a property located at 1221 East 35<sup>th</sup> Street in the R2B Two-family District.

**RECOMMENDATION:** Notwithstanding the staff recommendation to approve a fence to 6 ft. tall, the Board of Adjustment denied the variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to 8 ft. and to increase the maximum height of a fence in the required side yard from 4 ft. to 8 ft. to allow for a solid fence.

**Previous Directives:** N/A

**Financial Impact** (Check those that apply)

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

**Community Impact:** Other: See attached.

**End of 60/120 Day Decision Period:** On November 15, 2005, staff sent a letter to the applicant extending the 60 day decision period to no later than January 27, 2006.

## Background/Supporting Information

Corey Ramsey, property owner of 1221 East 35<sup>th</sup> Street, has filed an appeal of the decision of the Zoning Board of Adjustment denying two variances to increase the height of a fence in the required front yard along 13<sup>th</sup> Avenue South and the interior side yard setback from 3 ft. to 8 ft. The variances were requested in order to construct an 8 ft. solid fence. The application was originally heard at the November 3<sup>rd</sup>, 2005, Zoning Board of Adjustment meeting. The staff recommendation was to approve a fence to 6 ft. tall with the condition that the fence be setback 10 ft. from the property line along 13<sup>th</sup> Avenue South and 5 ft. setback from the south interior property.

The appellants have stated the decision of the Zoning Board of Adjustment is being appealed because the property is a reverse corner lot and has a much larger setback due to the location of the adjacent property to the south. The location of the adjacent property creates an increase setback along 13<sup>th</sup> Avenue South which limits the height of a fence a 3 ft. solid or 4 ft. open fence along most of the east and south property line. The applicant has also proposed a new fence design. The proposed fence would be 6 ft. tall, with 4 ft. of solid fence topped with 2 ft. of lattice. The applicant states that this design will preserve the neighbors' sightline to Powderhorn Park and should lessen blocked views which were safety concerns of neighbors. The applicant's complete statement and examples of the proposed design are included in this report.

At the November 3<sup>rd</sup>, 2005, Zoning Board of Adjustment meeting, six (6) Zoning Board of Adjustment members were present. Four (4) members voted to deny the variance to increase the fence height. The original staff report and the actions from the November 3<sup>rd</sup>, 2005 Board of Adjustment meeting are attached.

## Board of Adjustment

### HEARING ACTIONS/MINUTES

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

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

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

**6. 1221 East 35<sup>th</sup> Street (BZZ-2649, Ward 9)**

Corey Ramsey has filed a variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to 8 ft. and to increase the maximum height of a fence in the required side yard from 4 ft. to 8 ft. to allow for a solid fence for a property located at 1221 East 35<sup>th</sup> Street in the R2B Two-family District.

**CPED Department Planning Division Recommendation by Ms. McCartney:**

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **approve** variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to **6 ft.** and to increase the maximum height of a fence in the required side yard from 4 ft. to **6 ft.** to allow for a solid fence for a property located at 1221 East 35<sup>th</sup> Street in the R2B Two-family District, subject to the following conditions:

1. That the fence be setback 10 ft. from the property line along 13<sup>th</sup> Avenue South and 5 ft. setback from the south interior property.

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#### **TESTIMONY**

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

**Finlayson:** Any questions of staff? I see none at this moment. Is the applicant present? Please state your name and address for the record.

**Corey Ramsey:** 1221 East 35<sup>th</sup> Street. Basically, the reason I want the variance is because that we have been here four years since 2001. The first year we acquired a dog and from a child growing up I have always wanted a house with a back yard. And when we moved onto the lot we did not understand that it was a reversed corner lot, so when I did the check in to see if I could actually put up a fence, then I started to understand all the things I have to go through to get where I am at. Basically, I want privacy for my children and my dogs. The neighboring house, is so close to our fence line, basically, when they come out they are in our yard. There is some encroachment onto our property. I think there is a couple of feet, when I had the variance done, it showed that they were 2 feet or more on the property, where their sidewalk is. Basically, all we want is a 6 foot fence and Molly has directed you guys to where the existing fence is. That is why I am here.

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**Finlayson:** Thank you. Mr. Ditzler.

**Ditzler:** You are applying for a variance to eight feet? The staff has granted you a fence to 6 feet. Are you okay with 6 feet?

**Ramsey:** 6 feet is acceptable. I am okay with that. It isn't going to be as much privacy but, the way the house is set up on a hill/incline and their house is set up the same kind of way. It is more than what we have and I am grateful if we receive that.

**Finlayson:** Thank you. Anyone else to speak in favor? Anyone to speak against.

**Charles Arndt:** I am here on behalf of Denise Ingberg and Eleanor Horton. We also have several neighbors of the applicant here to speak as well for several reasons. Ms. Ingberg and Ms. Horton are opposed to this fence. Just a little background briefly. The applicants property has a 4 foot retaining wall and sits up on a grade of 4 feet and seeking to add 6 feet fence on top of that. There is already an adequate level of privacy. The second point is that a 6 foot fence will have a significant detrimental impact onms. Horton and Ms. Ingberg's use of the property. We have prepared some photographs of what a six foot fence would look like at this particular site, and I would like to take a few moments to show the Board those pictures.

**Finlayson:** Please do.

**Perry:** While you are doing that could you tell me on this diagram which property you are speaking/representing?

**Charles Arndt:** I can tell you the address. 3510 - 13<sup>th</sup> Avenue South.

**Perry:** Property directly south of the applicants. Thank you!

**Charles Arndt:** This is the home and you can see the existing chain link fence there right behind. You can see the retaining wall and you can see the grade. This is what the proposed fence would look like at 6 feet. As you can see it runs very close to 3510 – 13<sup>th</sup> Avenue South. You will notice in the first picture that there is a view from 3510 – 13<sup>th</sup> Avenue South of Powderhorn Park with a six foot fence it would be completely obstructed. You will also notice that if this fence was there it would cause a blind spot around the corner that completely obstructs the view of Powderhorn Park. Again the Board can see the blind spot and how it obstructs the view and the breeze onto the porch. I will also draw the Boards attention to this window here, at 6 feet it would block the natural light into this home and the side of the property. Again the Board can see it from the other angle as well. There again there is a significant blind spot created. For reasons I and other neighbors will go into, they believe that there are significant public safety issues creating the blind spot. This shows the view from the front porch as it exists right now and front window which would be blocked. Ms. Horton is a 36 year resident at this location. Here again just to show you the effect that this would have, obstructing the view and the breeze on the front porch. Here is a picture looking out of the kitchen window, there again you can see how it obstructs natural light coming in. We also have written statements from a variety of the residents in the neighborhood and a petition signed by 26 residents that are opposed to the construction of the fence at either the 6 foot height or the 8 foot height as originally proposed. I'll show this to the Board. As you can see from the addresses they are all on 13<sup>th</sup> Avenue South. Ms. Horton and Ms. Ingerberg are not opposed to a privacy fence being place here, they just request it is placed in the manner per ordinance. I can show you the second page and total 26 residents that are opposed to the fence as

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proposed. Would the Board like copies of some of the various statements submitted by some residents? I have those available for the Board to review.

**Finlayson:** It may be better to give those to staff, I understand that the tone of them are completely negative.

**Charles Arndt:** If I may I would just like to introduce Ms. Horton, Ms. Ingberg and some other residents so they may have a chance to voice their opinion with respect to this application. With that I will turn this over to Ms. Ingberg.

**Ms. Ingberg:** My name is Denise Ingberg and I am a little nervous about this whole thing. If I ever committed a crime I would have to be taken away on a stretcher. My name is Denise Ingberg and I reside at 3510 – 13<sup>th</sup> Avenue South. I have lived here my entire life. My mother raised me and my brothers and sisters there. Our property is the most effected by this proposal, of a six foot high fence at 1221 East 35<sup>th</sup> Street. The Ramsey fence is a back yard that abuts up to our front yard. I have read that they are claiming an undue hardship. They are saying that a privacy fence would give them a back yard that they do not have now. But they do have a back yard and it was listed when they purchased the home as a fenced in back yard. The Ramsey's home is now enclosed on the east and west, completely on the west by bushes and trees. On the east there is five feet of fence line that does not have bushes that are over 8 feet tall right now. They have planted approximately eight bushes along the south that will grow to the same height as the other ones and will enclose the backyard completely and give them the privacy and being a natural enclosure, more pleasing to the eye. By allowing anything than a 3 foot solid fence or 4 foot chain linked fence, would cause several problems not only to our property but for the entire block on 35<sup>th</sup> and 13<sup>th</sup>. I have constructed that 6 foot privacy fence of cardboard to give a visual effect and the impact it would have in our neighborhood. If a six foot high fence is approved it will cause an undue hardship to us and the neighbors on our block that we did not do, but the Ramsey's did. The hardship would vary from neighbor to neighbor, but would have impact on all such things as housing values dropping. I have talked to a realtor myself and our property value of our home would drop 15-20% if the fence goes up and it would also make our home a lot harder to sell because the ambience of our property with the park. We will lose the ability to enjoy our front porch and front yard as we do now. A fence would stop all breezes that we get on our porch because most of the breezes come from the north. It will take away 90% of our view from our front porch and our front bay window, which we have full view as of right now. Not only will this be blocking our view but block two houses south of us from the park. The fence will cause an eye sore on 13<sup>th</sup> Avenue and for all who resides on our block because they all look north towards the park. It also takes away the openness and beauty of our block. A six foot high fence belongs in an alley way not residing along the frontage lines of properties. The crimes around our neighborhood are on the up rise. Less than a month ago my husband's bike was stolen right outside by our kitchen window between noon and 4 p.m. This fence will block completely those windows from any public view from the streets. It will cause two blind spots, one in the front and also just outside of our windows, which will be a potential for break-ins and robberies and people hiding from the police. I can not tell you a number of occasions where I have had people running through my yard for doing crimes at Powderhorn park, looking for places to hide. I have two young daughters and I also have two nieces that live nearby and are at my house daily. I know that the fence will provide predators a place to hide waiting to commit crimes on them and adults with providing no escape to get to safety. If they were around that fence on the front and came along the side they would be able to corner them. If they came from the back side and towards the front they could come from behind with no one even seeing them or grabbing the children. If I were to come out of my front door and if I were to get pass 5-8 feet I still would not be able to see anyone if they were hiding

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along that fence. I do a weekend paper route and leave my home at approximately midnight on Saturday. That to me would be very scary – not to see before I walked out my door to whatever was out there. The fence will also become a graffiti haven. The Ramsey's retaining wall has already been hit twice last year with graffiti. It will become a local billboard for gang's which have been on the up rise in our area. A lot more graffiti has been going up on the garages. But then last month a 15 year old girl was raped by knife point down the hill from 13<sup>th</sup> Avenue in the park. Just a moment (crying)... The next one is a hard one for me to talk about. Last summer I was assaulted at Powderhorn park. I am sorry, I did not want this to happen (crying)... Last summer I was assaulted at Powderhorn park at the top of the hill by four people in broad daylight. From the open view that we have on our front porch my mom and my husband both witnessed it and were able to come to the park and help me. If that fence was there they would never have been able to see the crime happening and I do not know what the outcome of that would have been. I strongly oppose any approval of the variance from the city ordinance of a 3 foot high fence to a 6 foot for statements and reasons above. The law is the law and I do not feel that we should suffer the long term outcome effects for a variance change that would affect our property.

**Finlayson:** Thank you. Any questions? I see none. Anyone else to speak?

I am **Eleanor Horton**, 3510 – 13<sup>th</sup> Avenue. I object to the fence. Thank you.

**Finlayson:** Thank you. Anyone else to speak?

I am **Dawn Shambaugh**, I do not reside at my mom's house anymore. That is my mom's property. I live out in Coon Rapids and my dog is 14 years old, and I consider my dog my child, because I do not have children, and he has seen me through a divorce and houses, and stuff. So, every morning my job is like maybe five miles from my mom's house, so I bring him to my mom's house at 4:30 a.m. I start work at 5:00 a.m. and sometimes I start at 6:00 a.m. – it varies. I bring my dog to doggy-daycare at my mom's house, because she has two dogs. It would cause problems for me getting out of the car because I would not be able to potentially see if anyone was around to jump me. And being the size that I am I really do not want to confront people in that situation and my family does not get up until around 7:00 a.m. for the kids and school. It is just a potential hazard for my mom. There is some mornings when I get there and she can not sleep at night and is sitting on her front porch. It is not safe to sit on the front porch and this would make it more of an inconvenience and a potential attack on her. And for my sister and my brothers go, if my nieces get sick, children do get sick in the middle of the night, it is a potential hazard taking their sick children out of the house if someone is around. Powderhorn park has gone down hill since I was in grade school. I strongly oppose the fence.

**Finlayson:** Anyone else to speak to it?

My name is **Debbie Houll** and I live directly across from the fence. I live across the street from them and have lived in this neighborhood for 39 years, and my husband was born in this house and he has lived there for 52 years. We enjoy the park. This fence will block our view completely. On summer nights me, my husband and children go and sit in our front yard and we enjoy the summer breeze coming off the lake. This would completely block all of our summer breezes. The Ramsey's house already sits, we live directly across the street, so there house already has a 4 foot concrete wall and then other 4 foot high hill and then their house. So if they put another 6 foot tall fence on top of that it is like 12 feet. It is a big wall, way up there, it is 12 feet high from us, the neighbors that live across the street. Putting this fence up is very dangerous because I come home late at night with my children and I get out of the car, and if this

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fence is there, anyone could be standing there and can not see them in the shadow of this dark fence. Our block is kind of dark as it is and this would really, really darken it. Grandma's porch is what they call it, the whole neighborhood goes over there and we have coffee and get the breeze with 20 neighbors sometimes are sitting on this front porch with grandma over there. We can see the park, we can see things. I just had my house refinanced, and the value of my house I was surprised, because I did not think it was going to be worth that much and when it came back, I was surprised and the agent told me because you can see the beautiful park, you have a beautiful view here and nothing is blocking it. If the fence went up I am sure it would decrease the value, even though I am across the street from this. So, that is all I have to say.

**Finlayson:** Anyone else to speak? I see no one, we will close the public portion of this item. Oh yes – sir. If you support things that have already been said please just say so due to the time, if you have something new to offer please offer it.

My name is **Jerome Ullman** and I reside at 3620 – 25<sup>th</sup> Avenue South and I reside there with my wife Diane and my daughter Sarah. We have gotten to know the Horton's over the last 12 years before Mr. Horton passed away. I am permanently disabled, I have an artificial hip and I have had two strokes and my social life is to be able to go and have coffee with Ms.Horton and Ms. Ingberg during the day time, which passes time for me, because my wife works at the Star Tribune and I am home alone, my daughter also works. By me being able to go to the Horton's and have coffee and visit with them, I also like to check on Ms. Horton because her health has not been the best and I feel that by sitting on the porch in the summertime, having coffee and chit chat gets her out in the fresh air, because she is confined to the house too. I just feel this fence would hinder our sun and breeze for sitting outside. I thank you for your time – thank you.

**Finlayson:** Thank you! Yes sir?

**(No name was given) - I reside at 3535 – 13<sup>th</sup> Avenue South** on the same block as the proposed change. While I feel that the 6 foot proposal is well better than the 8 foot proposal , I still oppose it for many of the reasons that have already been stated. Not the least of which I, from my opinion I don't believe that the existing ordinances cause an undue hardship to the property owner, primarily because this was the condition the property was purchased. I certainly can sympathize with the misunderstanding of what the required setback laws are in terms of fences and how it affects their property. This would significantly alter the character of the block as well as the other issues that have been brought forward. Again pointing out that even at a 6 foot height with the existing retaining wall and the elevation of the yard itself, we would be talking about a height of around 11 to 12 feet from the street level and I am trying to imagine what that would be like when I walk to Powderhorn park with my wife and baby daughter - we are talking about a solid structure higher than a basketball basket for the length of the property. I honestly don't see this as being an acceptable solution to the issue and ask that the Board reject not only the 8 foot proposal, but also the 6 foot proposal as well. Thank you very much for your time.

**Finlayson:** Thank you. Anyone else to speak?

My name is **Darrell Wang** and I live at 3510 – 13<sup>th</sup> Avenue. I am worried about it safety wise because I do a route 7 days per week and leave at 12:30 a.m. and do not come home until 4-4:30 a.m. I worry about that and I know my mom enjoys sitting on the front porch and she has a bad leg and she can't move around. I think having the fence up is not a good idea.

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**Finlayson:** Thank you. I appreciate you coming up, please state your name and address and it is kind of beat to death at this point.

My name is **David Ingberg** and I live at 3510 – 13<sup>th</sup> Avenue South and I oppose the fence for the reasons that have already been said.

**Finlayson:** Thank you, it is appreciated. Anyone else to speak? I see no one, close the public portion of this item. Ms. Lasky.

**Lasky:** I would like to make a motion. I move to deny the application for the fence. I will leave it at that. I see a hardship to the neighbor, I do not see a hardship to the applicant to put a fence up at this height and I do not agree with staff.

**Rand:** Second.

**Finlayson:** Further discussion.

**Ditzler:** I guess I have a question for staff regarding this page that is in out packet. Regarding the site plan. It looks to be that the fence in question runs, this is the section that they are applying for the variance between the garage and the corner and down the length here? There is no fence along this section of the property? Is that correct?

**Staff (Molly McCartney):** The portion that they need the variance for would be in front of the house to the south. A solid fence higher than 3 feet in front of the neighboring house to the south needs a variance.

**Ditzler:** I understand that. The side that we are not talking about is this property encompassed by a fence or not? Is it entirely encompassed with a fence right now?

**Staff (Molly McCartney):** They have a chain linked fence in the backyard.

**Ditzler:** Right now as it sits the property is completely surrounded by a chain link fence? As the property sits right now can you show me on this drawing where there is currently fence on your property, regardless of height. Show me all that is enclosed with fence.

**Corey Ramsey:** This is where the garage is.

**Ditzler:** Does it go all the way to 35<sup>th</sup>? Is it connected to your house at all?

**Corey Ramsey:** It stops just beyond the back door.

**Staff (Molly McCartney):** The survey also show that it comes from the garage on the south property line and to the back door.

**Finlayson:** Thank you. Further discussion. Mr. Gates.

**Gates:** The neighbors fence mock-up is quite compelling, however, I do feel that the area is a case for hardship on the applicants property. Sitting here trying to draw out possible modifications and I know we don't like to design here. It does strike me though that modifications to the proposed could be made to reduce the enclosed area within the fence by only 20% and yet completely address the neighbors concerns with the exception of the concern

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about the daylight into the window from the kitchen. Which I found less compelling than the other safety reasons. I don't know if there has been any attempt between the two neighbors to work out a fence design which might meet the needs of both, but I certainly think it can be done. I don't support a complete denial of this and will not support the motion. If that does not pass, perhaps I will speak again.

**Lasky:** I am overlooking Mr. Gates drawing, I am still bothered by the fact that it is a solid fence that the hardship is the elevation of the existing property already makes a 6 foot high fence analytic, regardless of the angle you cut this off for the site lines for the neighbor. So, I will still maintain my motion.

**Finlayson:** Please call the roll.

**Ditzler:** What is the motion, Mr. Chair?

**Finlayson:** To deny.

**Finlayson:** Please call the roll.

Bloom: No

Ditzler: No

Finlayson: Yes

Gates: No

Lasky: Yes

Perry: Yes

**Tie Vote: 3 – Yes and 3 – No** (*Rand – Departed before voting took place*).

**Lasky:** Anyone like to make another motion?

**Finlayson:** Mr. Gates do you have a motion?

**Gates:** It occurs to me that if the fence variance were to be granted as requested with the exception of applying to an area on the site which would be east of a line connecting the northeast corner of the neighboring property, with the southeast corner of the applicants garage, that there would be no impact what-so-ever on the view from the porch of the neighbor to the park.

**Staff (Molly McCartney):** Should I draw that?

**Perry:** Please.

**Staff (Molly McCartney):** If I understand you are saying a line from the corner of the garage to the northeast corner of the neighbors house – something like this?

**Gates:** That is correct. The view corridor that the neighbor is trying to preserve.

**Ditzler:** I have a motion. I am sorry, unless you are not done.

**Gates:** Let me add. This Board just approved a 6 foot fence on an elevated piece of land, way above the street for a home where the fence was right on the property line.

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**Lasky:** Not anonymously.

**Gates:** No – but there was certainly hardship.

**Perry:** I would like to add that there was not an argument that site lines were being blocked. I do not think that it is an apples to apples comparison.

**Gates:** But if hardship was found on that property then clearly there is hardship on this property. This fence is setback farther than that case was. So, in an attempt to be consistent here we do have to find that there is some hardship on this property and I don't think that we should deny this applicant wholesale. So, If Mr. Ditzler has a motion that might be to this issue I would like to hear it.

**Ditzler:** I would like to make a motion that we grant the variance and maybe we can find a compromise here, maybe to allow them the construction of a fence to 5 feet. I know that is an odd number but considering the topography of the lot, considering the retaining wall and how that is, I think there is definite hardship here because the lot is a reversed corner lot and the applicant knowing that before he bought it is immaterial, it is a hardship that maintains with the property and from owner to owner. I think Mr. Gates is correct considering what we just approved not to long ago, we have to agree there is some hardship here. And as far as the concerns that were raised by the neighbors, the most valid ones to me are the safety issues, property value – sunlight, window in the kitchen is not applicable in this situation and maybe condition that we need to put on this is a safety – no access to that. Right now it looks like going in from the side yard to get into the back area, it may need to be attached to the house, so that there is no security issue of people hiding behind the fence.

**Finlayson:** When things are designed by government and by committee they usually end up being disasters. I don't like the direction this is going at all.

**Perry:** I am still opposed. I know we tied, but I remain opposed to having a fence at all based on the testimony we have heard.

**Finlayson:** Personally I would not be opposed to a 6 foot chain link fence, but when you start going solid back there, it is a security issue.

**Ms. Bloom:** If I could. This is really a hard one for me. I am in agreement with some of my Board members, but this is very, very difficult discussion. There is hardship on this lot because it is a reverse corner lot, the way we look at this is that this has two front yards. The lot has two front yards. They have a garage and the garage is inside the setback, and they have all of these things because this house has been here for years and years and years. But what it comes right down to it how this is different, and I am sorry, I voted against the initial denial motion and I have been struggling with this since I have heard the testimony, looking at the findings that we are asked to look at, we have 3 different findings we have to discuss. I went back and re-read it, and I apologize to the people here, this is going to be a long meeting and this is a difficult discussion. I believe that there is hardship but I do think it is going to be changing the spirit and intent of altering the character of this corner of this world. As a person who voted against the initial motion, I would like to make that motion again to deny it outright, because I do not think that we should be designing this by committee. What has shown up on the thing doesn't make sense, it will alter the character of the locality and will be injurious to other properties within the vicinity, because of the safety reasons – not for the view, because

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you are not entitled to a view of Powderhorn park. For safety reasons, those are the reasons why.

**Perry:** I will second that motion.

**Gates:** Simply a question as to why the safety issues here are different than the one we just approved? A 6 foot fence is a 6 foot fence.

**Bloom:** The reason for this is that this house is one foot from the property line and this house uses the neighbor's property to access this house. This house in the previous application the location of garage, they were just closing off the back yard with the garage.

**Gates:** So is the question then the southern most portion of this fence? Again there is hardship here for a re-design, perhaps not done by this committee but maybe there is a continuance and this thing is sent back and the neighbors work this out. We are completely inconsistent here if we deny this and approve the previous one.

**Bloom:** I think there is a difference because Dowling has a lot more traffic than 13<sup>th</sup> Avenue. I think that is the hardship difference between the two. I think the location of the homes, we are talking about. If you look at the previous application where the backyard and the garage location, this is a very large green space back here, they have a backyard. The other one, you have to use the side yard to make the backyard bigger. There are differences that makes these two unique, these are two unique parcels and that is how we try to look at these hardships. I was the maker of the last motion.

**Gates:** Can I ask a question? Does the applicant at this point have the option to request a continuance? It looks as though this is going to go down and not be approved, but if it were continued perhaps there would be the opportunity to work something out and resubmit without having to reapply with additional fees. And a chance to come back with a different fence. Does the applicant have that choice?

**Lasky:** Does the applicant always have that choice?

**Staff (Molly McCartney):** The applicant can grant a continuance as I understand.

**Finlayson:** Does the clock allow that?

**Staff (Molly McCartney):** Yes – we are well within. I would send a 60-day notice extending the city to make the decision within 120 days for a variance. The 120 days is not until after the 1<sup>st</sup> of the year.

**Ditzler:** Maybe – let me do my newness here on the committee here. But I noticed in the report the staff finds, I do saying who is right or who is wrong here, I have heard testimony about it and I know the area quite well, staff does not list any public safety issues with this variance what-so-ever. I just wanted to bring this up as a point.

**Finlayson:** They may well not be aware of it.

**Ditzler:** Okay. I don't know what they use to base their research on if it is current police reports, interviews or what.

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**Finlayson:** Please tell me this as it currently is structured, the ordinance would allow them to do a 3 foot solid or a 4 foot chain link for instance.

**Staff (Molly McCartney):** Correct.

**Finlayson:** And there is a 4 foot chain link there at present?

**Staff (Molly McCartney):** Right – there is.

**Finlayson:** Thank you. I am frankly interested in voting it out as is.

**Bloom:** I agree.

**Finlayson:** We have a motion and a second, please call the roll.

Bloom: Yes

Ditzler: No

Finlayson: Yes

Gates: No

Lasky: Yes

Perry: Yes

**Motion carried 4 – Yes, 2 - No**

**Finlayson:** Thank you.

**6. 1221 East 35<sup>th</sup> Street (BZZ-2649, Ward 9)**

Corey Ramsey has filed a variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to 8 ft. and to increase the maximum height of a fence in the required side yard from 4 ft. to 8 ft. to allow for a solid fence for a property located at 1221 East 35<sup>th</sup> Street in the R2B Two-family District.

Notwithstanding staff recommendation, Ms. Bloom moved to **deny** the variance application. Mr. Perry seconded the motion. Motion passed.

The motion **denied** the variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to 8 and to increase the maximum height of a fence in the required side yard from 4 ft. to 6 to 8 to allow for a solid fence for a property located at 1221 East 35<sup>th</sup> Street in the R2B Two-family District.

**Roll Call Vote:**

Yeas: Bloom, Finlayson, Lasky, Perry

Nays: Ditzler, Gates

Recused: None

Absent: Fields, Flo, Rand

CPED Planning Division Report  
BZZ-2649

Department of Community Planning and Economic Development – Planning Division Report

Variance Request  
BZZ-2649

**Date:** November 3, 2005

**Applicant:** Corey Ramsey

**Address of Property:** 1221 East 35<sup>th</sup> Street

**Contact Person and Phone:** Corey Ramsey, 612-709-2265

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

**Date Application Deemed Complete:** September 29, 2005

**End of 60 Day Decision Period:** November 28, 2005

**Appeal Period Expiration:** November 14, 2005

**Ward: 9**      **Neighborhood Organization:** Powderhorn Park Neighborhood Association

**Existing Zoning:** R2B Two-family Residence District

**Proposed Use:** Eight (8) ft. tall solid fence

**Proposed Variance:** A variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to 8 ft. and to increase the maximum height of a fence in the required side yard from 4 ft. to 8 ft. to allow for a solid fence for a property located at 1221 East 35<sup>th</sup> Street in the R2B Two-family District.

**Zoning code section authorizing the requested variance:** 525.520 (5)

**Background:** The subject property is a 5,056 sq. ft. (41 ft. by 121 ft.) reverse corner lot in the R2B Two-family Residence District. The applicant is proposing to construct a solid 8 ft. tall fence along the property line along 13<sup>th</sup> Avenue South. The subject site is a reverse corner lot and subject to a front yard setback along East 35<sup>th</sup> Street and 13<sup>th</sup> Avenue South. The subject dwelling is setback 16 ft. from the property line along 13<sup>th</sup> Avenue South and an attached single-car garage is setback 5 ft. from the property line along 13<sup>th</sup> Avenue South. The front yard setback in the R2B District is 20 ft., however, the property to the south along 13<sup>th</sup> Avenue South has an established front yard setback of 31 ft. In addition, the adjacent property to the south is setback 1 ft. from the shared interior property line and has a portion of a walkway on the subject site. The existing chain link fence is located 10 ft. from the property line along 13<sup>th</sup> Avenue South and 4 ft. from the south interior property line. The applicant is proposing an 8 ft. tall solid fence; however, in the proposed location only a 3 ft. solid fence or 4 ft. open fence would be permitted without a variance in the required front yard.

**Findings Required by the Minneapolis Zoning Code:**

- 1. The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The applicant is requesting a variance to increase the maximum permitted height of a fence in the front yard of a reverse corner lot from 3 ft. to 8 ft. Without a variance, the maximum height of a fence that is greater than 60 percent opaque in the required front yard is 3 ft. Staff believes a solid 6 ft. tall fence constructed behind the subject dwelling and attached garage and at the same setback from 13th Avenue South of the existing fence and a 5 ft. setback from the south interior property line is a reasonable use of the property.

- 2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

The circumstances upon which the setback variance is requested are unique to the parcel because the property is a reverse corner lot that has an increased front yard setback of 31 ft. established by the location of the adjacent residential structure. The subject site is a reverse corner lot and subject to two front yards which limits the height of the fence along 13<sup>th</sup> Avenue South to 3 ft. The property to the south is setback 31 ft. from the front property line; a solid fence is limited to a height of 3 ft. in the required front yard. The platting of the lot as a reverse corner lot and the location of the adjacent structure 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.**

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 area if the fence constructed, in the following manner:

- Behind the subject dwelling and attached garage,
- At the same setback from 13<sup>th</sup> Avenue South of the existing fence, which is 10 ft. from the property line along 13<sup>th</sup> Avenue South, and
- At a 5 ft. setback from the south interior property line.

The adjacent structure to the south is located 1 ft. from the shared property line and has a front porch that has views of Powderhorn Park. Staff believes the visual impact created by a solid fence located near to the adjacent structure will be lessened by limiting the fence to 6 ft. tall and to be setback 5 ft. from the shared property line.

- 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.**

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Granting the variance would likely have no impact on congestion of area streets or fire safety, nor would the proposed variance be detrimental to the public welfare or 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** variance to increase the maximum height of a fence in the required front yard setback along 13<sup>th</sup> Avenue South from 3 ft. to **6 ft.** and to increase the maximum height of a fence in the required side yard from 4 ft. to **6 ft.** to allow for a solid fence for a property located at 1221 East 35<sup>th</sup> Street in the R2B Two-family District, subject to the following conditions:

1. That the fence be setback 10 ft. from the property line along 13<sup>th</sup> Avenue South and 5 ft. setback from the south interior property.