



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

Date: February 5, 2004

To: Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

Prepared by: Hilary Watson, Senior City Planner, (612) 673-2639

Approved by: Barbara Sporlein, Director, Planning

Subject: Appeal of the decision of the City Planning Commission by LeRoy Jackson

Previous Directives: At the January 12, 2004 City Planning Commission meeting, seven of the Planning Commission members were present. All seven Planning Commissioners voted to approve the variances for the four-unit condominium development.

Financial Impact: Not applicable

Community Impact:

Ward: 5

Neighborhood Notification: The Northside Residents Redevelopment Council, the neighborhood organization, is the applicant for this development.
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City Goals: See staff report

Comprehensive Plan: See staff report

Zoning Code: See staff report

Living Wage/Job Linkage: Not applicable
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Other: Not applicable

Background/Supporting Information: LeRoy Jackson, a neighbor, has filed an appeal of the decision of the City Planning Commission. The appeal is associated with the decision of the City Planning Commission to approve the five setback variances for the proposed four-unit condominium development located at 1254 Russell Avenue North. The minutes from the January 12, 2004 City Planning Commission meeting are attached.

The appellant has stated that the decision is being appealed for four reasons. First, the appellant does not believe that the applicant has demonstrated undue hardship. Second, the appellant believes that the applicant created the hardships because the proposed project is too dense. Third, the appellant believes that the circumstances necessitating the variances are not unique. And fourth, the appellant believes that the granting of the variances are injurious to the use and enjoyment of other property in the vicinity. The appellant's complete statement of the actions being appealed and reasons for the appeal are attached.

**Excerpt from the
Monday, January 12, 2004
CITY PLANNING COMMISSION
MINUTES
317 City Hall
Minneapolis, MN 55415
4:30 p.m.**

ATTENDANCE: President Martin, Vice President Hohmann, Krause, Kummer, LaShomb, MacKenzie, and Schiff – 7

Hilary Watson presented staff report.

The public hearing was then opened.

Vusumuzi Zulu, 1112 Newton Ave. N. Associate Director with Northside Residents Redevelopment Council. Applicant. We had two meetings with the residents to the south. Tried to explore options that we might be able to use to be more amendable for those residents. We did conclude that we would be able to use the wall. Or add a wall that would be a permanent wall if feasible. They had also requested that we might use a stucco wall as opposed to having a straight fence, with foliage on the south and west. We are willing to do that portion with them. They were also asking that if we were to change the building so the orientations of the building would be to the south, as opposed to having the front of the structures face Plymouth Avenue. But that the garages would be facing Plymouth Avenue and have the driveway behind the garages and have greenway in between the driveway and the sidewalk. We did explore that, but it is not desirable at all.

Commissioner Martin stated that City Code does not approve of that.

Vusumuzi Zulu we did try to address that issue. We did meet with them and have agreed to make the changes that are feasible for the fencing and the foliage and we also have that subject to the Commission approval as stated.

Commissioner Schiff questioned the west side without seeing photos he does not want to motion.

Vusumuzi Zulu what we had said was that the approval would be based subject to coming back to commission later. To make certain that anything we propose for fencing would be subject to approval. We cannot just construct something without further approval. We are not asking for final approval of the fencing. That is on item D

Staff, Hilary Watson the applicant is asking that as a condition of item D staff approve the final fence, design, height and location to meet code standards. Anything along the south property line cannot go over 6 feet. And the front area cannot go over 3 feet. We do not have anything that states that it could not be stucco versus wood versus decorative metal. So if they wanted to do a stucco fence that was not over 6 feet it would meet code standards.

Commissioner Schiff what about on the west property line? Is there any agreement there for fencing or landscaping?

Staff, Hilary Watson on Item C the condition is that the maneuvering area be fully screened from the street and from the south property with landscaping. To not put up a solid fence. We suggested more landscaping instead of a solid fence.

Commissioner Schiff questioned we do not need specification on height of that screening. The issue here was whether or not headlights would shine in the picture window of the property across the street.

Staff, Hilary Watson any solid fence could be 3 feet or less. Anything open could be less than 4 feet. Anything taller and we would be back here for a variance.

Jim Yaroush representing neighbor to the south Mr. Jackson, the one most immediately effected by this project. The practical difficulties are the driveway that comes off the alley, goes by about 10 feet from Mr. Jackson's window. The problem is that it is too many units for this site. They have to show hardship. There are other things that can be done for this property. Reasonable economic use can be done without saying we have to have 4 units. Economic reasons alone are not sufficient to justify these variances. Very important to understand. Example, a case for hardship is Minneapolis has a zoning code that states; typically you would have a 25-foot setback, but if you have an established use already there, you have to follow the established use setback which is 28 feet in this case. So the hardship is we have to comply with the ordinance. Normally we would have three more feet. If there is a problem with the ordinances then redo the zoning code. Do not try to fix each problem by granting 5 or 6 or 8 variances so we can make some of these projects fit. We are not saying, no development on this site, it is simply too much for this site. There was a discussion about the problem of this being a 35-foot structure next to my client's property. There are some privacy issues. There was a suggestion about putting up trees. Maybe some evergreens that would help shield some of that. To prevent the eye level view from the balconies onto our clients property. I do not know the status of that. There was some suggestion that it be put onto our client's property, which was not acceptable to Mr. Jackson. Maybe that is something that can be added as a condition that they do some more landscaping on that side. I urge you to consider if this and ask is this development appropriate at this location given the standards of a variance. Having to comply with an ordinance in one case should not be sufficient for meeting the hardship. On the corner of Plymouth Avenue moving from 12 feet to 0 feet to have a balcony and stairway landings. Having a desire to do something. Is that sufficient to get a variance from this planning commission? I submit that it does not meet the standards requiring undo hardship. They have not made adequate showing.

LeRoy Jackson, the property owner adjacent to this proposed construction. We have met with their group. We are the one that suggested that they reverse the driveway from outside of our 3 bedrooms with 5 windows on that side of the driveway. If it were possible we would be leaning towards that direction. We are not opposed to all construction on this property next to us. We think that this has been a single-family block for over 35 years. Make these 2 units or 2 structures that would be the gateway for the structures to the east of us. Rather than cramming 4 units onto the property next door. We find it unacceptable that cars will be going up and down the driveway next to our bedroom. We suggested to the neighborhood group: why not just spread out the cost over the rest of the blocks that go to the east of us. The ordinance states that economic hardship alone should not be the key. Every time I have talked to staff and the neighborhood group the only thing they say is we can not afford that, it will not fit our pocketbooks. Seems to me that an economic hardship they are talking about. That is the only justification they have given to us as to why they can not change this.

The public hearing was then closed.

Commissioner LaShomb we looked at this on December 8th, 2003. We asked the applicant to go back and make an effort to work with the neighbors. The applicant has made that effort. I supported this project on December 8th. I am going to move that we approve the variances for item number 1. Seconded by Commissioner Schiff.

Commissioner Hohmann questioned requiring landscaping along that drive for privacy purposes.

Staff, Hilary Watson responded that space is less than 2 feet. We cannot make a condition for the applicant to put trees on neighbor's property.

Commissioner Schiff currently the driveway width is 17-feet, what is the minimum allowed by code.

Staff, Hilary Watson replied it is 10-feet.

Commissioner Schiff is the additional 7-feet convenient for the users, or does the planning department think it is essential for them to maneuver.

Staff, Hilary Watson stated we would have to see the turning radius's for anything smaller than what they are proposing. There may be areas where then can cut out 5 x 5 areas for trees to be planted. That would be a possibility.

Commissioner Schiff responded that is exactly what I was thinking. It may not be a straight drive but could also be a traffic-calming device to have a couple landscaped areas in the back. I will try to make condition.

Staff, Hilary Watson replied if we could make that flexible enough for the architect and I to work together.

Commissioner Martin responded we have it in the condition that staff will have to review. We can give Hilary some guidance that this is what we would like to see.

Staff, Hilary Watson replied for item C we do say from the street specifically on that condition. Because that setback is from the street not from the south. They are meeting their setback requirement from the south. You may want to add in from the south property.

Commissioner Schiff responded he would allow that language.

Commissioner MacKenzie wanted to speak in favor of the staff findings on the variances. I think these are unique circumstances because these are corner lots. Traditionally have been used as non-single family uses. It is new use to put townhouses on that site, but I want to support staff findings for the variances.

Commissioner Martin stated, as commissioners know when we are dealing with these types of applications for variances that seem to stretch the purview of the code a tad. We also have to deal

with one of the overriding goals of the plan, to encourage new density in many different parts of the city. This is one of those places where we have a little maneuvering room

Neil Anderson indicated to the commissioners that the first finding of reasonable use, that is the first criteria when we look at variances. Are four units on this site reasonable, if so, then with strict adherence to the regulations of the zoning ordinance cause undo hardship to get those four units in there. At the last Planning Commission meeting this commission voted to rezone this property R4 for the four units, therefore, at that time the commission did feel that the use was reasonable. That is why the variance findings are the way they are.

Commissioner Martin asked all in favor to approve the variances in item 1.

All: Yea

Commissioner LaShomb moved the variances for item 2. Commissioner Schiff seconded the motion.

All: Yea

**Community Planning and Economic Development Department – Planning
Division**
Rezoning and five Variances
BZZ-1445

Date: January 12, 2004

Applicant: Northside Residents Redevelopment Council (NRRC)

Address of Property: 1254 Russell Avenue North

Contact Person and Phone: Lyssa Washington on behalf of NRRC, (612) 333-3941

Planning Staff and Phone: Hilary Watson, (612) 673-2639

Date Application Deemed Complete: October 8, 2003

End of 60-Day Decision Period: December 7, 2004

End of 120-Day Decision Period: February 5, 2004

Ward: 5 Neighborhood Organization: **Northside Residents Redevelopment Council**

Existing Zoning: R2B

Proposed Zoning: R4

Proposed Use: Four-unit condominium development

Previous Actions: None

Concurrent Review:

Variance: to reduce the front yard setback along Russell Avenue North from the established 28 feet to 24 feet to allow a four-plex

Variance: to reduce the front yard setback along Russell Avenue North from the established 28 feet to 18 feet 6 inches to allow a stairway landing/trellis

Variance: to reduce the front yard setback along Russell Avenue North from the established 28 feet to 12 feet to allow a maneuvering area

Variance: to reduce the corner side yard setback along Plymouth Avenue North from 12 feet to 4 feet to allow a four-plex

Variance: to reduce the corner side yard setback along Plymouth Avenue North from 12 feet to 0 feet to allow a balcony, stairway landings and trellises

Background: The applicant is proposing to construct a four-unit for-sale condominium development on the property located at 1254 Russell Avenue North. One of the condominiums would have its front door facing Russell Avenue North and the remaining three condominiums would have their doors facing Plymouth Avenue North. All of the

garages face the interior property line and are accessed from a driveway off of the alley. All four of the condominiums will have two bedrooms plus a den.

The site is located in the R1 zoning district. A four-unit condominium development on this site requires R4 zoning. The applicant has applied for a rezoning and several setback variances.

Update: The rezoning petition to change the zoning classification for the subject property from R1 to R4 in order to allow a four-plex was approved at the December 8, 2003 City Planning Commission meeting and at the December 29, 2003 City Council meeting. The remaining land use applications were continued from the December 8, 2003 City Planning Commission meeting in order to allow the applicant time to meet with the adjacent neighbors. The applicant met with the adjacent neighbors on Monday, December 22, 2003.

Neighborhood Review: The Northside Residents Redevelopment Council, the neighborhood organization, is the applicant for this development.

Attachments:

1. Statement of proposed use
2. Variance findings
3. August 20, 2003 letter to CM Natalie Johnson Lee
4. Zoning Map
5. Site, elevation and floor plans
6. Photographs of the site and surrounding area

VARIANCE - to reduce the front yard setback along Russell Avenue North from the established 28 feet to 24 feet to allow a four-plex

Findings as Required by the Minneapolis Zoning Code for the Variance:

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

Front yard setback: The applicant is seeking a variance to reduce the front yard setback along Russell Avenue North from the established 28 feet to 24 feet to allow a four-plex. The applicant has indicated that the adjacent property is setback three more feet than the R1 zoning district requires and that because of that the available area to build upon is limited. In addition, moving the building further to the east would require a rear yard setback variance.

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.**

Front yard setback: The large setback of the adjacent structure is a unique circumstance that is not generally applicable to other properties in the R4 zoning district.

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.

Front yard setback: The granting of the setback variance to 24 feet would not significantly affect the essential character of the area given that the setback in the R1 zoning district is 25 feet and that this development is located 24 feet from the front 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.

Front yard setback: Staff believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed setback be detrimental to welfare or public safety.

VARIANCE - to reduce the front yard setback along Russell Avenue North from the established 28 feet to 18 feet 6 inches to allow a stairway landing/trellis

Findings as Required by the Minneapolis Zoning Code for the Variance:

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

Front yard setback (stairway landing/trellis): The applicant is seeking a variance to reduce the front yard setback along Russell Avenue North from the established 28 feet to 18 feet 6 inches to allow a stairway landing/trellis. The applicant has indicated that the adjacent property is setback three more feet than the R1 zoning district requires and that because of that the available area to build upon is limited.

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.

Front yard setback (stairway landing/trellis): The unusually large setback of the adjacent structure is a unique circumstance that is not generally applicable to other properties in the R4 zoning district.

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.

Front yard setback (stairway landing/trellis): The granting of the setback variance for the stairway landing/trellis would not significantly affect the essential character of the area given that the stairway landing/trellis is of an open design that is similar to other front entries in the neighborhood. The front stairway landing/trellis also provides a place for the homeowner to sit and interact with 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.

Front yard setback (stairway landing/trellis): Staff believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed setback be detrimental to welfare or public safety.

VARIANCE - to reduce the front yard setback along Russell Avenue North from the established 28 feet to 12 feet to allow a maneuvering area

Findings as Required by the Minneapolis Zoning Code for the Variance:

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

Front yard setback (maneuvering area): The applicant is seeking a variance to reduce the front yard setback along Russell Avenue North from the established 28 feet to 12 feet to allow a maneuvering area. The applicant has indicated that the maneuvering area is necessary in order for the homeowner living in the western most unit to be able back out of their garage.

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.

Front yard setback (maneuvering area): Staff does not believe that a maneuvering area of the size proposed is necessary in order to allow the homeowner living in the eastern most unit to be able to back out of their garage. The zoning code requires that the driveway be a minimum of 10 feet in width. The proposed driveway is 17 feet 6 inches in width.

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.

Front yard setback (maneuvering area): Allowing the proposed maneuvering area to be built closer to the street than the dwelling unit could have a negative impact on the block as a vehicle could park in the space between the dwelling and the street essentially creating a parking space between the structure and the street.

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.

Front yard setback (maneuvering area): Staff believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed setback be detrimental to welfare or public safety.

VARIANCE - to reduce the corner side yard setback along Plymouth Avenue North from 12 feet to 4 feet to allow a four-plex

Findings as Required by the Minneapolis Zoning Code for the Variance:

1. The property cannot be put to a reasonable use under the conditions allowed 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 corner side yard setback along Plymouth Avenue North from 12 feet to 4 feet to allow a four-plex. The applicant has indicated that to create a strong street presence the development was designed with the structure located closer to Plymouth Avenue North than the zoning code allows. In addition, many of the buildings along Plymouth Avenue North have been built close to the street and this building was simply following the development along the roadway.

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 desire to create a strong street presence and mimic the setbacks of other developments along Plymouth Avenue North are unique circumstances that are not generally applicable to other properties in the R4 zoning district.

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: The granting of the variance would not significantly affect the essential character of the area as the west side of the block is being redeveloped with a similar setback.

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: Staff believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed setback be detrimental to welfare or public safety.

VARIANCE - to reduce the corner side yard setback along Plymouth Avenue North from 12 feet to 0 feet to allow a balcony, stairway landings and trellises

Findings as Required by the Minneapolis Zoning Code for the Variance:

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

Corner side yard setback (balcony, stairway landings and trellises): The applicant is seeking a variance to reduce the corner side yard setback along Plymouth Avenue North from 12 feet to 0 feet to allow a balcony, stairway landings and trellises. The applicant has indicated that to create a strong street presence the development was designed with the structure located closer to Plymouth Avenue North than the zoning code allows. In addition, many of the buildings along Plymouth Avenue North have been built close to the street and this building was simply following the development along the roadway.

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 (balcony, stairway landings and trellises): The desire to create a strong street presence and mimic the setbacks of other developments along Plymouth Avenue North are unique circumstances that are not generally applicable to other properties in the R4 zoning district.

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 (balcony, stairway landings and trellises): The granting of the setback variance for the balcony, stairway landings and trellises would not significantly affect the essential character of the area given that the balcony, stairway landings and trellises are of an open design that is similar to other front entries in the neighborhood. The balcony, stairway landings and trellises also provide a place for the homeowners to sit and interact with 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 (balcony, stairway landings and trellises): **Staff believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed setback be detrimental to welfare or public safety.**

RECOMMENDATIONS

Recommendation of the Community Planning and Economic Development Department – Planning Division for the rezoning:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the front yard setback along Russell Avenue North from the established 28 feet to 24 feet to allow a four-plex for the property located at 1254 Russell Avenue North subject to the following conditions:

1. Staff shall review and approve the final fence design, height and location.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the front yard setback along Russell Avenue North from the established 28 feet to 18 feet 6 inches to allow a stairway landing/trellis for the property located at 1254 Russell Avenue North.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the front yard setback along Russell Avenue North from the established 28 feet to 24 feet to allow a maneuvering area for the property located at 1254 Russell Avenue North subject to the following conditions:

1. The maneuvering area shall be fully screened from the street with landscaping.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the corner side yard setback along Plymouth Avenue North from

12 feet to 4 feet to allow a four-plex for the property located 1254 Russell Avenue North subject to the following conditions:

1. Staff shall review and approve the final fence design, height and location.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the corner side yard setback along Plymouth Avenue North from 12 feet to 0 feet to allow a balcony, stairway landings and trellises for the property located 1254 Russell Avenue North.