

Minneapolis City Planning Department Report

Street Vacation, Variance

Vac. # 1414

BZZ – 1357

Date: September 8, 2003

Date Application Deemed Complete: August 5, 2003

End of 60 Day Decision Period: October 4, 2003

Applicant: Ronald Siron

Address of Property: 3401 Lyndale Ave. S.

Contact Person and Phone: Ronald Siron, 822-4973

Planning Staff and Phone: Jason Wittenberg, 673-2297

Ward: 10 **Neighborhood Organization:** Lyndale Neighborhood Development Corporation;
CARAG

Existing Zoning: C2

Project Name: Sonny's Ice Cream

Proposed Use: Outdoor seating and walk-up window accessory to existing restaurant

Proposed Variances:

Variance to reduce the required front yard setback, up to the front lot line, along 34th Street (on a reverse corner lot) for outdoor dining. The setback applies to the area within 40 feet of the residence district to the east.

Zoning Code Section Authorizing Proposed Variances: 525.520 (1)

Previous Actions: N/A

Development Plan: A development plan is attached.

Concurrent Review: Vacation and variance as noted above. The project is also subject to minor site plan review.

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Responses from Utilities and Affected Property Owners for the Proposed Street Vacation: Utilities were notified of the proposed vacation on May 14, 2003. None of the utility companies expressed concern or requested easements. As of August 22, 2003, staff has not been notified of any concerns about the proposed vacation from any nearby property owners.

Background: The applicant proposes to vacate that portion of the West 34th Street right of way located between the south edge of the public sidewalk and the existing north property line. The proposed area to be vacated measures 4.3 feet by 89.45 feet. Note that a strip of land 1.75 feet in width by 89.45 feet in length was previously vacated contiguous to the proposed vacation.

In the area the applicant proposes to obtain through the vacation, the applicant intends to construct a walk-up ice cream window measuring six feet by 22 feet. Customers would access the ice cream window from the public sidewalk along 34th Street. The applicant also proposes a covered outdoor seating area. Because the residence immediately to the east has a front yard facing 34th Street, the applicant is required to provide a front yard setback along 34th Street for the first 40 feet from the residence district. The applicant requests a variance to allow the seating area in this setback. The outdoor seating would be located at least 20 feet from the residence district as required by section 548.180(b) of the zoning code. The proposed ice cream window would not be located in a required setback and would be permitted if the vacation is approved.

The site is subject to minor site plan review.

Findings for the Proposed Street Vacation: The Public Works Department and City Planning Department find that the area proposed for vacation is not needed for any public purpose, and it is not part of a public transportation corridor, and that it can be vacated if any easements requested above are granted by the petitioner. Although the City typically attempts to avoid creating an uneven or “jogging” right of way in order to allow for future street and sidewalk relocation, the previous vacation of 1.75 feet has already created an uneven right of way in this location.

Findings Required by the Minneapolis Zoning Code for the Proposed Variance to Reduce the Required Front Yard Setback:

- 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.**

The property is a reverse corner lot adjacent to residence districts on both sides. Thus, two front yards are required on the property. If the area in question were a typical commercial corner side yard, no setback would apply. This creates hardship for the applicant in their attempt to use their property in a manner that would be consistent with a more typical commercial 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.**

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The fact that the property is a reverse corner lot is unique and is a condition that has not been created by the applicant.

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

The residential property to the east, which creates the need for the applicant's front yard setback along 34th Street, maintains a very shallow front setback. However, the positioning of the outdoor dining area at least 20 feet from the residence district will ensure that the dining area is largely screened from view from the residence and that noise should not be a major concern provided the applicant complies with the maximum hours of operation in the C2 District. Staff is somewhat concerned about the potential for patrons at the walk-up window to block pedestrian traffic on the public sidewalk. The walk-up window, however, does not require a variance and would be permitted if the right of way vacation is approved.

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.**

Congestion and public safety would not be negatively affected by locating the seating area between the public sidewalk and the north side of the building.

Recommendation of the City Planning Department for the Proposed Street Vacation:

The City Planning Department recommends that the City Planning Commission and the City Council accept the above findings and **approve** the vacation.

Recommendation of the City Planning Department for the Variance Application to Reduce the Required Front Yard Setback:

The City Planning Department recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the required front yard setback for the first 40 feet from the residence district to the east, up to the front lot line, along 34th Street (on a reverse corner lot) for outdoor dining subject to the following condition:

- 1) The outdoor dining area shall be no closer than twenty (20) feet from the adjacent residence district boundary as required by section 548.180 of the zoning code.