



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

**Date:** November 9, 2006

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

**Referral to:** Zoning and Planning Committee

**Subject:** Appeal of the Board of Adjustment action approving a variance for property located at 4249 Penn Avenue North (BZZ-3222) by Joseph Dalton.

**Recommendation:** The Board of Adjustment adopted the staff recommendation and approved a variance to decrease the required south interior side yard setback from 5 feet to 4 feet 10 inches on parcel A to allow for the reestablishment of two originally platted parcels at 4249 Penn Avenue North in the R1A, Single Family District, with the following condition:

1. The existing deck on parcel A, located 2 feet 10 inches from the south interior property line, shall be no closer than 4 feet 10 inches to the south interior property line to match the existing dwelling.

**Previous Directives:** N/A

**Prepared or Submitted by:** Brian Schaffer, City Planner, 612-673-2670

**Approved by:** Jack Byers, Planning Supervisor, 612-673-2634

**Presenters in Committee:** Brian Schaffer, City Planner

### Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the \_\_\_\_\_ Capital Budget or \_\_\_\_\_ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: \_\_\_\_\_ Action is within the plan. \_\_\_\_\_ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

**Community Impact (use any categories that apply)**

**Ward:** 4

**Neighborhood Notification:** The Victory Neighborhood Association was notified of this application by letter, mailed on September 14, 2006.

**City Goals:** See staff report.

**Comprehensive Plan:** See staff report.

**Zoning Code:** See staff report.

**Living Wage/Job Linkage:** Not applicable.

**End of 60/120-day Decision Period:** The 60 decision period expires on November 13, 2006. On October 24, 2006 Planning staff sent a letter extending the decision period to January 12, 2006.

**Other:** Not applicable.

**Background/Supporting Information Attached:** Joseph Dalton of 4249 Penn Avenue North has filed an appeal of the decision of the Zoning Board of Adjustment approving the reduced south interior side yard setback variance. The Zoning Board of Adjustment voted 8-0 to approve the variance on the consent agenda on October 5, 2006. The applicant filed an appeal on October 16, 2006. The applicant's statement is included in the staff report.

**Department of Community Planning and Economic Development – Planning Division  
Report**

Variance Request  
BZZ-3222

**Date:** October 5, 2006

**Applicant:** Joseph Dalton

**Address of Property:** 4249 Penn Avenue North

**Contact Person and Phone:** Joseph Dalton (612) 770-7887

**Planning Staff and Phone:** Brian Schaffer, (612) 673-2670

**Date Application Deemed Complete:** September 14, 2006

**Public Hearing:** October 5, 2006

**Appeal Period Expiration:** October 16, 2006

**End of 60 Day Decision Period:** November 13, 2006

**Ward:** 4      **Neighborhood Organization:** Victory Neighborhood Association

**Proposed Use:** Reestablish two originally platted parcels

**Proposed Variance:** A variance to reduce the required interior side yard setback from 5 feet to 4 feet 10 inches for an existing dwelling and 2 feet 10 inches for an existing deck to allow for the reestablishment of two parcels at 4249 Penn Avenue North in the R1A District.

**Zoning code section authorizing the requested variance:** 525.520 (1)

**Background:** The size of the subject site is 43 ft. x 126.65 ft. (5,418 sq. ft.) The property owner is proposing to reestablish the originally platted lots; Lots 2 (Parcel A as denoted on the survey) and 3 (Parcel B), Block 1, Wilcox Park, Minneapolis. The single family dwelling located on Parcel A is located 4 feet 10 inches from the south interior property line and has an attached deck that is located 2 feet 10 inches from the south property line. The district interior side yard setback is five feet.

Parcel B does not currently have a structure located on it and the applicant has not presented a development proposal for the lot. Lot 3 is 43 feet wide and 126.65 feet long, (5,418 sq. ft.). The minimum lot width and area for the zoning district is 40 feet and 5,000 sq. ft..

## **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 has requested a variance to reduce the required south interior side yard setback from five feet to four feet ten inches on Parcel A to allow for the reestablishment of two originally platted lots. The lot is 43 feet wide and meets the minimum lot width. However, the existing dwelling on Parcel A is nonconforming to the south interior side yard, located only 4 feet 10 inches to the property line. Staff believes the reestablishment of the platted lots is a reasonable use of the property and recognizes the hardship on the property created by the location of the subject dwelling.

- 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 conditions upon which the setback variance is requested are unique to the parcel. As previously mentioned, the variance is to allow for the reestablishment of the originally platted lot line. Parcel A is 43 feet wide and meets the minimum lot width. However, the existing house is nonconforming to the south interior side yard, located only four feet ten inches to the property line. The location of the existing dwelling is a circumstance that is unique to this parcel and was not created by the applicant. However, Staff believes that the location of the existing deck is not a unique circumstance and alternative designs for the deck exist that would not require it to extend into the required interior side yard setback.

- 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.**

Staff believes that reestablishment of the two originally platted lots and a 4 foot 10 inch side yard setback will not alter the essential character of the surrounding neighborhood or be injurious to the used or enjoyment of other property in the vicinity. The reduced side yard of two inches on Parcel A will likely be unnoticeable. The undeveloped parcel, Parcel B, meets the minimum lot width and dimensions for the zoning district. Parcel B will likely be developed for a single family dwelling, as this is the only type of development permitted. The addition of another dwelling to the block will continue the block face established by the other dwellings on the block. The development of Parcel B will likely impact the adjacent property to the south at 4241 Penn Avenue North which

is located to 2 feet 7 inches from the shared property line. Staff does not believe the proposed reduced side yard setback on Parcel A and reestablishment of the two originally platted lots will alter the essential character of the neighborhood or be injurious to the use or enjoyment of other property in the vicinity.

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.**

Granting the variances would likely have no impact on the congestion of area streets or fire safety, nor would the variances be detrimental to the public welfare or endanger the public safety.

**Recommendation of the Department of Community Planning and Economic Development:**

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 south interior yard setback from five feet to four feet ten inches on Parcel A to allow for the reestablishment of two parcels at 4249 Penn Avenue North with the following condition:

1. The existing deck on Parcel A shall be no closer than four feet - ten inches to the south interior property line.

**Board of Adjustment  
Hearing Testimony and Actions**

**Thursday, October 5, 2006**  
2:00 p.m., Room 317 City Hall

**Board Membership:** Mr. Matt Ditzler, Mr. David Fields, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Matt Perry, and Mr. Peter Rand

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

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**TESTIMONY**

5. **4249 Penn Avenue North; (BZZ-3222, Ward 4)**

Joseph Dalton has applied for a variance to reduce the required interior side yard setback from 5 feet to 4 feet 10 inches for an existing dwelling and 2 feet 10 inches for an existing deck to allow for the reestablishment of two parcels at 4249 Penn Avenue North in the R1A District.

**CPED Department Planning Division Recommendation by Mr. Schaffer:**

The above item was **approved** on consent to grant the variance to reduce the required south interior yard setback from five feet to four feet ten inches on Parcel A to allow for the reestablishment of two parcels at 4249 Penn Avenue North with the following condition:

1. The existing deck on Parcel A shall be no closer than four feet ten inches to the south interior property line.

**Finlayson:** Let's open the hearing. First of all cell phones, pagers, please make them quiet. Then a reminder to applicants and others, if you are going to speak you need to be signed in on the sheet outside of the door. If you have not yet done so, you may do so at the end of the meeting. No need to run out there now. Also if you have any questions of staff regarding an outcome or how to proceed, please see them somewhere other than during this meeting.

Let's revisit the consent agenda. Staff has proposed 2 and 5. Number 2 is 4159 Cedar Avenue South. Is there anyone here in opposition? I see no one.

Number 5 is 4249 Penn Avenue North. Is there anyone here in opposition? I see no one. Would someone please move items 2 and 5 for consent?

**Gates:** So moved

**Perry:** second.

**Finlayson:** All in favor?

Aye: (Verbally unanimous)

Opposed:

Abstentions:

Carries.

Items 2 and 5 you are done. Thank you.

**Joseph Dalton:** Sir. To do with 4249 Penn.

**Finlayson:** Yes, I asked if anyone was in opposition to it. I heard nothing.

**Joseph Dalton:** Well, not necessarily in opposition to the lot split, only the condition of the deck.

**Finlayson:** And you are?

**Joseph Dalton:** Joseph Dalton, the applicant of the variance.  
I apologize for the delay.

**Finlayson:** Well, where are we at. We have already ruled on this. We're done. You will have to see staff about appealing.

**Joseph Dalton:** I don't come to very many of these meetings, so I apologize for not understanding.

**Finlayson:** Well the problem is that we would be put in a position of reviewing our decision and we are not authorized to review our decisions.

**Joseph Dalton:** I thought I was number 5. I didn't know that I would be first.

**Finalyson:** I'm sorry.