



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

Date: June 8, 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 variances for property located at 2624 1st Avenue South (BZZ-2850) by Paul and Nancy Railsback.

Recommendation: The Board of Adjustment adopted the staff recommendation and approved the following four variances: approving the variance to reduce the required north side yard setback to 3 ft., approving the variance to required south side yard setback to 3 ft., approving the variance to reduce the minimum lot area from 5,000 sq. ft. to 3,756 sq. ft., and approving the variance to reduce the minimum lot width from 40 ft. to 29 ft. 8 in. to allow for a new three-dwelling unit multi-family structure at 2624 1st Avenue South in the R5 Multiple-family District.

Previous Directives: N/A

Prepared or Submitted by: Molly McCartney, Senior Planner, 612-673-5811

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

Presenters in Committee: Molly McCartney, Senior 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: 10

Neighborhood Notification: Whittier Alliance was notified of this application by letter, mailed on March 17, 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: On April 28, 2006, the applicant provided a letter extending the decision period to no later than July 1, 2006.

Other: Not applicable.

Background/Supporting Information Attached: Paul and Nancy Railsback have filed an appeal of the decision of the Zoning Board of Adjustment approving the variances at 2624 1st Avenue South. The Railsbacks are the adjacent homeowners to the north of the subject site. The Zoning Board of Adjustment voted 4-3 to approve the variances on May 4, 2006. The applicant filed an appeal on May 15, 2006.

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-2850

Date: April 20, 2006

Applicant: Gregory Langford

Address of Property: 2624 1st Avenue South

Contact Person and Phone: Gregory Langford, 612-743-4095

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

Date Application Deemed Complete: March 3, 2006

End of 60 Day Decision Period: May 2, 2006

End of 120 Day Decision Period: July 1, 2006

Appeal Period Expiration: May 1, 2006

Ward: 6 **Neighborhood Organization:** Whittier

Existing Zoning: R5, Multiple-family District

Proposed Use: Construct a new three-dwelling unit multiple-family structure with attached garage

Proposed Variances: A variance to reduce the required north side yard setback to 3 ft., a variance to reduce the required south side yard setback to 3 ft., a variance to reduce the minimum lot area from 5,000 sq. ft. to 3,756 sq. ft., and a variance to reduce the minimum lot width from 40 ft. to 29 ft. 8 in. to allow for a new three-dwelling unit multi-family structure at 2624 1st Avenue South in the R5 Multiple-family District.

Zoning code section authorizing the requested variance: 525.520 (1) (1) (2) (2)

Background: This item was continued from the April 6, 2006, Board of Adjustment meeting.

The subject site is a vacant, substandard-sized lot in the R5 Multiple-family District measuring 29 ft. 8 in. by 126 ft 6 in. (3756 sq. ft.). The applicant is proposing to construct a new three-dwelling unit building with a rear, attached garage. In the R5 District, a single- or two-family dwelling is not permitted and a three-unit dwelling is the least dense residential use permitted. A four-dwelling unit structure was demolished on this property in 1990. Historical permits do not specify the exact size of that structure. During the 1990s, a portion of this lot was split and sold by the City of Minneapolis to the property owner to the north. The subject property has been used as a community garden since the demolition of the four-unit building.

With the requested variances, the proposed structure will meet all other zoning requirements, including Site Plan Review Design Standards. The property receives the minimum 15 points for including a basement (5 points), exterior building materials of cement/stucco (4 points), not less than twenty (20) percent of the walls on each floor that face a public street are windows (3 points), a flat roof where there is at least one existing building with a flat roof within one hundred (100) feet of the site (2 points). In

addition, the building is 23 ft. 8 in. wide and is setback 3 ft. on both the north and south side which will allow for windows per the Building Code (*Section 302.1 2000 IBC*).

The structure is technically two stories, but has the appearance of a three story building. Much of the basement projects 6 ft. out of the ground, which does not meet the definition of a story per 520.160 of the Minneapolis Zoning Code:

520.160. Definitions.

*Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, or fourteen (14) feet, whichever is less, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. **If the finished floor level directly above a basement, cellar or unused under floor space is more than six (6) feet above grade, for more than fifty (50) percent of the total perimeter, or is more than twelve (12) feet above grade at any point, such basement, cellar or unused under floor space shall be considered a story.***

The side yard setbacks for multiple-family residential structures are based on the height of a structure. The side yard setback for a two story structure is 7 ft. and 9 ft. for a three story structure. The applicant is asking for a reduction for both side yard setbacks to 3 ft. The height limit in the R5 District is 4 stories.

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.**

North and south interior side yard setbacks: The applicant is requesting the side yard variances for a 23 ft wide residential structure because the property is approximately 29 ft. wide. Per 535.90 of the Zoning Code, the structure must be a minimum of 22 wide and the minimum building width cannot be reduced with a variance. Without the side setback variances, no residential structure could be built that meets the minimum building width requirement. Staff believes that a 23 ft. wide, three-unit structure is a reasonable use of the property and that strict adherence to the side setbacks creates a hardship on this property.

Minimum lot area: The applicant is requesting a reduction in the minimum lot size to allow for the construction of a three-unit building. Without the variance, no structure could be built on this lot. Staff believes that a 23 ft. wide, three-unit structure is a reasonable use of the property and that strict adherence to the minimum lot size creates a hardship on this property.

Minimum lot width: The applicant is requesting a reduction in the minimum lot width to allow for the construction of a three-unit building. The minimum width for a three-unit building is 22 ft. wide. Without a reduction in the lot width, no structure could be built on this lot. Staff believes that a 23 ft. wide, three-unit structure is a reasonable use of the property and that strict adherence to the minimum lot width creates a hardship on this 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.**

North and south interior side yard setbacks, minimum lot area, and minimum lot width:

The subject property is a substandard-sized lot that does not meet the minimum lot area and lot width requirements. Due to the width of the lot, any structure will require side yard setback variances. During the 1990s, a portion of this lot was split and sold by the City of Minneapolis to the property owner to the north, creating the substandard size. The conditions upon which the variances are requested are unique to this parcel and have not been created by the applicant and in fact were created by the lot split by the City.

- 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.**

North and south interior side yard setbacks and minimum lot width: Granting the side yard setback variances and the minimum lot width variance will be keeping with the spirit and intent of the ordinance and will not alter the essential character of the surrounding area. The side yard setback for a two story structure is 7 ft. and this building appears from the sides to be much like a three story building, which has 9 ft. side setbacks. The multiple-family building to the south is set back 9 ft. from the shared property line and the single-family dwelling to the north is set back approximately 22 ft. from the shared property line. Given the distance the adjacent structures are set back from the shared property lines, the proposed structure will not encroach on either property.

The property to the north has an existing 6 ft. retaining wall on the property. With only a three ft. setback, this space may be susceptible to illegal activity such as graffiti. The proposed structure has 56 sq. ft. of windows on the basement level of the building walls that face the adjacent structures. The applicant has indicated lighting along the sides of the building on the site plan. Staff believes that the proposed windows and lighting will help in deterring illegal activity.

Minimum lot area: Granting the lot area variance for the three-unit structure will be keeping with the spirit and intent of the ordinance and will not alter the essential character of the surrounding area. The surrounding area has a mix of single-family dwellings, multiple-family dwellings and commercial uses.

- 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.**

North and south interior side yard setbacks and minimum lot width: Granting the side yard setback variances and the minimum lot width variance would likely have no impact the congestion of area streets or fire safety, nor would the proposed structure be detrimental to the public welfare or endanger the public safety. A 3 ft. setback of the building from the property line will allow for windows per the Building Code (*Section 302.1 2000 IBC*).

Minimum lot area: Granting the minimum lot area variance would likely have no impact the congestion of area streets or fire safety, nor would the proposed structure be detrimental to the public welfare or endanger the public safety. The structure has parking spaces for three cars; however, one space is tandem and while it can be used as a parking space, cannot be included in the off-street parking calculations for zoning purposes. The parking requirement can be reduced by one space by installing a bike rack with 4 spaces.

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 north side yard setback from 7 ft. to 3 ft., **approve** the variance to required south side yard setback from 7 ft. to 3 ft., **approve** the variance to reduce the minimum lot area from 5,000 sq. ft. to 3,756 sq. ft., and **approve** the variance to reduce the minimum lot width from 40 ft. to 29 ft. 8 in. to allow for a new three-dwelling unit multi-family structure at 2624 1st Avenue South in the R5 Multiple-family District, subject to the following conditions:

1. That the Planning Division review and approve the final site and elevation plans that measure to an architectural or engineering scale; and
2. Bicycle racks shall be provided to accommodate no fewer than four (4) bicycles. The bicycle parking may be located in the public right-of-way with permission of the city engineer.

Board of Adjustment Hearing Testimony and Actions

Thursday, May 4, 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, Mr. Matt Perry, Mr. Peter Rand

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

1. **2624 1st Avenue South (BZZ-2850, Ward 6)**

Gregory Langford has filed for a variance to reduce the required north side yard setback to 3 feet, a variance to required south side yard setback to 3 feet, a variance to reduce the minimum lot area from 5,000 sq. feet to 3,756 sq. feet, and a variance to reduce the minimum lot width from 40 feet to 29 feet 8 in. to allow for a new three-dwelling unit multi-family structure at 2624 1st Avenue South in the R5 Multiple-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** the variance to reduce the required north side yard setback from 7 ft. to 3 ft., **approve** the variance to required south side yard setback from 7 ft. to 3 ft., **approve** the variance to reduce the minimum lot area from 5,000 sq. ft. to 3,756 sq. ft., and **approve** the variance to reduce the minimum lot width from 40 ft. to 29 ft. 8 in. to allow for a new three-dwelling unit multi-family structure at 2624 1st Avenue South in the R5 Multiple-family District, subject to the following conditions:

3. That the Planning Division review and approve the final site and elevation plans that measure to an architectural or engineering scale; and
4. Bicycle racks shall be provided to accommodate no fewer than four (4) bicycles. The bicycle parking may be located in the public right-of-way with permission of the city engineer.

TESTIMONY

Molly McCartney (staff): Item #1 has been continued from the last two meetings of the Board of Adjustment. The neighborhood group had requested the continuances so the applicant could come to their meetings and I believe that that has been completed. In the packet there is a letter from the neighborhood group, Whitter Alliance in regards to the variances. There are also about nine pages of information from the property owner as well, I just wanted to point that out to you, I'll address that later in my presentation. There four variances for this item. There is a lot area and lot width variance. This is a survey of the property. It's 29 feet wide, so it needs side yard set backs as well. The proposed use is a triplex. It's in the R5 district. The minimum residential structure that can be built in the R5 is a triplex so this is the least dense use that can be there. The property to the south is an apartment building. It

used to be a coop I don't think it is anymore and the property to the north is a single family home, that is zoned R2B. This is on 1st Avenue South at 2624. Staff is recommending approval of the variances based on the hardship of the property that nothing could be built without the side yard setbacks and the lot and width area. The minimum building width is 22 feet. The proposed building is about 23½. So even if they were to build it the minimum 22 foot width for these three units they would need side yard setbacks. Here's the building elevation. The building is technically a two story building. It appears to be three stories. This garden level apartment on the bottom is six feet from grade that technically does not make it a full story in the zoning code, although it probably will appear to look like three stories with the windows and it has this rooftop part for mechanicals. This is all in your packet. Here is a site plan of it as well. The lot with the dash line and the building is the large rectangle. It meets the front and rear yard setbacks. The property also needs to go through site plan review and will receive enough points to pass site plan review. Do you have any questions?

Finlayson: Any Questions?

Molly McCartney (staff): Oh I'm sorry. The lot does have some unique history. In the packet there is some information from the property owners to the north. This was owned by CPED, excuse me, the MCDA. In 1990 the lot was condemned by the city and was split. A portion was sold to the property owners to the north, a portion was sold to the property to the south which I've deducted that they didn't combine the tax ID parcels and this property went into tax delinquency and the county took it back and it was sold at auction last fall to the applicant.

Finlayson: Any questions?

Gates: Just one. Hence there is no other option for this space, other than a triplex?

Molly McCartney (staff): That is the minimum residential structure.

Gates: Yes or no?

Molly McCartney (staff): It can be used for open space, it could be used in conjunction with the property to the south but the proposal before us today is for this three unit building.

Finlayson: Thank you. Is the applicant present?

Applicant: Yes.

Finlayson: Would you care to make a statement?

Applicant: Yes.

Finlayson: Name and address for the record please.

Applicant: Gregory Langford, I live at 1028 Portland Avenue South. Good afternoon everyone. This project is a very interesting project in regards to putting property on a narrow piece of land. I spent a lot of time trying to design and put something that is going to be conducive with the neighborhood. I think this is going to make a great use of a narrow lot, which of course the City of Minneapolis has a wide variety of and that CPED sells on a continual basis. I would like to add to say that the size of this lot is actually a little bigger than a lot of the CPED lots that are actually being sold by the city of Minneapolis. Thank you for your time today.

Finlayson: Thank you. Anyone else to speak in favor? Anyone to speak against? Name and address please?

Citizens Opposed: Good afternoon, Marian Biehn, executive director for the Whittier Alliance. As you have in your packet the Whittier Alliance Board did not support either of the variances or the lot size reduction, as part of the record. The rationale behind that was that it's too much building for the lot. The

lot does have kind of a illustrious history in that it was divided back in the late 1980's early 90's, there is paperwork to support that it was deeded to the coop to the south for the purposes of being a playground and through a series of who knows what it did not happen, so it ended up on the auction block. Because it was to be deeded, was deeded to the apartment building to the south, it remained as R5 zoning and then ended up as an R5 on the auction. At minimum, probably as long as it didn't get the transfer it should have been down zoned because the lot is really quite narrow. The neighborhood discussion at the board level was that it would be preferred to be kept as a green space to be used by - - to be re-deeded to the apartment building to the south for the use as a playground which was the original intention and that the lot was sold at auction as an undersized lot with the kind of dubious needs for variances. The lot is really quite narrow. On the apartment buildings to the south there are balconies and patios which nearly come to the lot line. So to grant a variance to within three feet of the lot line will make those balconies and patios quite close for both uses of the two properties if this proceeds. It's not supported by the Whittier Alliance Board, two of the variances were not supported at the committee level and the neighbors in the immediate area are very opposed to it. So with your consideration we are asking that you deny the variances and the lot size reduction in support of the neighborhood and the immediate neighbors.

Finlayson: Thank you. Anyone else to speak against? Name and address please?

Citizen Opposed: My name is Paul Railsback. We live at 2620 1st Avenue South. We have owned our home for six generations now and my Grandpa actually designed our home. We were at the public auction to try to purchase this land as a side yard and didn't get it. At that auction there was numerous paperwork notifying the Langfords of the need for variances so that it was all disclosed that he needs a variance to build and they made no promises to that affect. Would you like to see any of that stuff?

Finlayson: No. I certainly believe you. They would not be in a position to make those assurances. They can't grant variances.

Paul Railsback: In the 90's the MCDA bought the lot and it was understood at that time that it should have been divided at that time right down the middle between us and the Whittier Alliance but the Whittier Alliance had a petition against us stating that they wanted the space for green space. So we then requested and purchased only one third of the lot. We have literature from the Alliance saying that we would be able to use that lot and maintain our fence on that side and there is the petition. We also have a petition of 22 neighbors that are opposed to these variances and these are low income people. Have you read the petition or do you have a copy of it?

Finlayson: We do. Yes.

Paul Railsback: And they're all opposed. They feel that the building is an encroachment upon them and their deck space. That's 22 neighbors. We feel that by allowing the side yard variance setbacks it would be heavily impacted. You can see the shadow of the building next door, that's 2636 that shadows over half of that lot in question and for a building to be built like that, taller than that building it would shadow our lot so that we feel like we would have a negative impact. We think the building is too large. He's got 5600 square feet of living space plus 900 for the attached garage with a possible 2400 on the roof deck and we understood that when we divided it that it was an unbuildable lot. That the minimum to build was 30 feet was the minimum, 40 feet's the minimum, but 30 feet is allowable and that this being 29 feet eight inches was unbuildable. We are also quite concerned about the plan that either side of the building has a three foot space up to our lot line which we have a block wall that's six foot tall and it's 100 feet wide and that's on either side of the building and we're thinking it could be an unsafe place for graffiti and gangs and such. There are also six 50-year-old Elm trees that would have to be cut down affecting the character. So we ask your support in opposing the variances requested by the Langfords. Thank you.

Finlayson: Thank you. Anyone else to speak? Name and address please?

Citizen Opposed: Hi, I'm Nancy Railsback and I live at 2620 1st Avenue South. I do feel strongly that by putting a large building in that small space our neighborhood would be impacted. I am here to represent the neighborhood. I've talk to several of them and there have been people who have actually stopped by to talk to us with concerns about the development in the lot next door. So we do ask for your support and thank you very much.

Finlayson: Thank you. Anyone else to speak to the matter? I see no one. We will close the public portion of this item. Board comment please? Staff, Mr. Ditzler has a question.

Ditzler: Just to clarify, at this block, what are the primary and secondary zoning for this block? You said it is zoned R5?

Molly McCartney (staff): The subject side is zoned R5, the property to the north is zoned R2.

Ditzler: Okay.

Finlayson: Board comment. Mr. Rand.

Rand: Well, this is a classic illustration of the worst of all possibilities. It's sort of a yes, and no. I think everyone, even expressing my support for Mr. Langford, would say that this ought to be an empty space. But he acquired it legitimately under the rules in place and has had this design developed and it meets the zoning ordinances and so he wants variances. It's amazing to me that somehow the space didn't stay open. That there wasn't better management of it between the city and neighbors and I can't understand that, but I have no reason to oppose the variances that have been approved by the City. So I'm in support of the staff. I'll move to support staff recommendation.

Finlayson: is there a second?

A Board Member: Second.

Finlayson: Further comment. Mr. Ditzler.

Ditzler: I will also be supporting staff recommendation for the following reasons. I know that the triplex is the least dense option on that lot. I think on an R5 you can go up to 5 or 6 units. One thing that I did notice in the packet is that I think that the applicant has attempted to address not only has he been agreeable to the continuances but I know that he has attempted to address the safety concerns by adding some lighting and some other features on the property, which is something that on my short time on the board I haven't seen a lot of. So I think that he has at least attempted to address some of the concerns at the same time trying to move his own agenda forward and meet site plan reviews so I will be supporting staffs recommendation.

Finlayson: Ms. Lasky.

Lasky: I think that if it had been a wealthier neighborhood I think there might have been an attorney involved. I will not support staffs recommendation on this.

Finlayson: Mr. Fields

Fields: May I ask, this items been continued twice, why was there a delay in the Whittier Alliance response? Was there an ongoing discussion concerning this? This has obviously been, these parcels have been at the attention of the neighborhood for a long time, why couldn't this have been worked out between a prospective buyer and the neighborhood?

Marian Biehn: We did not have control of the lot.

Fields: I know that, but.

Marian Biehn: Mr. Langford came to the neighborhood and identified his intent to have a proposal for that lot. The timing was such that when he came to present it was delayed off our agenda because of an overactive agenda and then he got into this City pipeline and got on the City calendar before he got to present to the neighborhood. So that's why there were two postponements in order to have it go through the full neighborhood process. He was aware of that process. We had talked about it and he was also agreeable to presenting to the neighborhood and to the postponements.

Fields: Okay, thank you.

Marian Biehn: Does that answer your question.

Fields: Yes. Thank you.

A Board Member: If I may Mr. Chair, while Ms. Biehn is still up, can you tell us, Ms. Biehn, tell us again if I missed it, what steps, what pro-active steps the neighborhood took before this went to public auction to have the site rezoned.

Marian Biehn: The site wasn't in our control. So when it went up for public auction, we weren't aware of it until the sign went up. We did not have any indication; we were under the assumption that it had been deeded to the apartment building to the south. So we had no reason to look at that site as a rezoning option because we were under the assumption that things had gone through and the site had been attached to the apartment to the south. An R5 for that site would make sense at that point. Otherwise had we understood that it hadn't been attached to that we probably would have taken steps to get it rezoned, down zoned, or something, so that it could have remained a green space.

A Board Member: Okay, thank you.

Finlayson: Mr. Fields.

Fields: This is a tough one for me, because I'm a big proponent of inner-city using properties to use up density, I like the design, I am troubled though by the city's marketing of this property and I've had this experience in Elliot Park without properly really consulting with the neighborhood plans for the property, it happened in Elliot Park where we lost a community garden with the one MCDA property in our neighborhood and a little single home went in which was really no addition to the neighborhood. I'm really torn on this one, but I'm going to lean toward not approving the staff recommendation.

Finlayson: Please call a roll.

Ditzler: Yes

Fields: No

Finlayson: Yes

Gates: Yes

Lasky: No

Perry: No

Rand: Yes

Motion supports staff's recommendation.

Finlayson: Thank you.