Department of Community Planning and Economic Development – Planning Division
Expansion of a Nonconforming Use and Variances
BZZ-1981

Date: October 13, 2004

Applicant: Robert and Ruth Bly

Address of Property: 1904 Girard Avenue South

Contact Person and Phone: Robert and Ruth Bly 612-377-5057

Planning Staff and Phone: Jim Voll 612-673-3887

Date Application Deemed Complete: September 2, 2004

End of 60 Day Decision Period: November 11, 2004

Ward: 7 **Neighborhood Organization:** Lowry Hill

Existing Zoning: R2 District, Two-family District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 18

Legal Description: Not applicable for this application.

Proposed Use: Construction of a second detached accessory structure

Concurrent Review:

Expansion of a Nonconforming Use. To allow a second approximately 440 square foot detached accessory structure.
Variance: A variance to increase the maximum allowable floor area for detached accessory structures from 1,000 square feet to 1,452 square feet.
Variance: To increase the maximum allowable height of a detached accessory structure from 12 feet to 16 feet where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling.

Applicable zoning code provisions: Chapter 531, Section 531.50 Expansion or alteration of nonconforming uses and structures. Chapter 525, Article IX Variances, Specifically Section 525.520(3) to vary the gross floor area…" and Section 525.520(4) "to vary the height requirements…."

Background: The subject site is approximately 95 feet by 162 feet (15,390 sq. ft.) and consists of a 2-story single family dwelling with a 26.5 foot by 38.2 foot (1,012.3 sq. ft.) detached accessory structure.

The existing detached accessory structure is a carriage house that consists of garage space on the ground level with a dwelling unit above the garage space that was rented out at one time and is currently used as a writing studio by the applicant. The carriage house has not lost its rights to be used as a dwelling unit. Two principal residential structures on one lot are prohibited by the zoning code; therefore, the site is nonconforming.

The applicant is proposing to construct a second detached accessory structure on the property. The new detached accessory structure will be 16 feet by 24 feet with a 6.5 foot by 8.5 foot open porch for a total of approximately 440 square feet. The applicant intends to use the new detached accessory structure as a writing studio. This application was originally scheduled before the Board of Adjustment (BOA) at its meeting of September 2, 2004. After the application was noticed and scheduled for the BOA meeting, staff identified that an expansion of a nonconforming use application was required for the additional structure to be constructed on the site. The applicant withdrew the application before the BOA and applied for an expansion of a nonconforming use, which are reviewed by the City Planning Commission. The Lowry Hill neighborhood reviewed the proposal at its meeting on September 7, 2004 and passed a motion "not to oppose the variance request subject to the approval of the immediate neighbors" (please see attached e-mail).

EXPANSION OF A NONCONFORMING USE

Findings as Required by the Minneapolis Zoning Code:

The Planning Commission may approve an application if it meets the following standards and all other applicable regulations in the zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

(1) A rezoning of the property would be inappropriate.

The property is zoned R2 Two-family Residential. There is no zoning district that would allow two principal residential structures on the same zoning lot. The surrounding area is zoned R2, R1, and R2B and is made up of residential uses. It would be inappropriate to rezone this property.

(2) The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

The applicant proposes to build a second accessory structure. Although the building will be professionally designed to be compatible with surrounding structures, the addition of a second large accessory structure would be out of character with the area. While some homes have large accessory structures, staff could not identify any sites with two large structures.

(3) The enlargement, expansion, relocation, structural alteration or intensification will not

result in significant increases of adverse, off-site impacts such as traffic, noise, dust, odors, and parking congestion.

No new units are being added. Therefore, no additional noise, dust, odor, traffic, or parking congestion should be added.

(4) The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.

The new building will use materials that are compatible with the existing structures.

(5) In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will not result in the creation or presence of more dwelling units on the subject property than is allowed by the regulations of the district in which the property is located.

The expansion will not add an additional unit. The applicant is aware that adding additional units to the site would require additional zoning approvals.

(6) The enlargement, expansion, relocation, structural alteration or intensification will not be located in the Floodway District.

The property is not located in the Floodway District.

(7) The enlargement, expansion, relocation, structural alteration or intensification is consistent with the policies of the comprehensive plan.

Policy 4.14 of *The Minneapolis Plan* states that, "Minneapolis will maintain the quality and unique character of the City's housing stock, thus maintaining the character of the majority of residential blocks in the City." The size and number of the structures may be incompatible with the surrounding area and may have an adverse impact on surrounding homes. This would not be in conformance with this policy.

<u>VARIANCE (to increase the maximum allowable floor area and height)</u>

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.**

   Maximum allowable floor area: The applicant is seeking a variance to increase the maximum permitted floor area for detached accessory structures from 1,000 square feet to 1,452 square feet to allow for the construction of a 16 foot by 24 foot with a 6.5 foot by 8.5 foot open porch (440 sq. ft.) detached accessory structure. The property has an existing 1,012.3 square foot detached garage and carriage house on the property. The applicant states that the existing carriage house currently used as a writing studio consists of stairs which are difficult to maneuver. The new detached structure will serve as a writing studio that does not require the use of stairs. Strict adherence to the regulations would not allow for the second detached accessory structure. The ordinance allows for a total of 1,000 square feet of accessory structure floor area, which has been deemed a reasonable amount of accessory structure floor area by the City Council. Based on the existing detached carriage house, staff believes that the proposed second structure is unreasonable and that reasonable use of the property exists without the new detached accessory structure.

   Maximum allowable height: The applicant is requesting a variance to increase the maximum permitted height of a detached garage from 12 feet to 16 feet where the proposed roof pitch of the detached garage does not match the roof pitch of the principal dwelling. The applicant stated that the existing carriage house roof pitch matches the dwelling and that the proposed new structure would look better with a shed roof. Strict adherence to the regulations does not allow for the proposed shed roof. The desire to construct a roof pitch that does not match the principal dwelling is not considered a hardship and does not prevent 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.**

   Maximum allowable floor area: The conditions upon which the variance is requested are not unique to the parcel. The zoning ordinance recognizes that larger lots can accommodate a larger amount of accessory structure floor area. However, the ordinance caps the total amount of accessory structure floor area at 1,000 sq. ft. to avoid constructing excessively large amounts of accessory structure space within the city limits. The property already consists of a detached garage and carriage house with a building footprint that is over the 1,000 sq. ft. limit. While staff understands the applicant's limitations with utilizing a staircase to access the carriage house as a writing studio, staff can find no circumstance that is unique to the parcel of land. The circumstances on which the second accessory structure is being requested has been created by the applicant.

Maximum allowable height: The circumstances upon which the variance is requested are not unique to the parcel of land. The roof pitch of the house is approximately 12/12 and the roof pitch of the proposed second accessory structure is a 9/12 shed roof. The desire to construct a roof pitch that does not match the principal dwelling is not a unique circumstance of the parcel of land but is a design issue that has been proposed by the applicant. Staff believes that the applicant has created this circumstance.

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.

Maximum allowable floor area: Granting the variance will alter the essential character of the surrounding neighborhood and will not be in keeping with the spirit and intent of the ordinance. The intent of the ordinance does allow for larger properties within the city to accommodate greater floor area for detached accessory structures. The subject property already consists of a detached accessory structure that is significant in size and exceeds the current maximum. Staff could find no other properties in the surrounding area that consist of two large detached accessory structures. The block consists of several other large properties. Staff believes that the second structure will establish a precedent in the neighborhood that is uncharacteristic.

Maximum allowable height: Granting the variance will alter the essential character of the surrounding area and will not be in keeping with the spirit and intent of the ordinance. The ordinance allows for an increase in height when the roof pitch of an accessory structure matches the roof pitch of the dwelling. The purpose of this requirement is to allow for the construction of an accessory structure that matches a dwelling with a steep roof pitch. Staff believes that the proposed design of the garage is exceptional and would not be dramatically impacted by incorporating a 12/12 roof pitch to match the dwelling.

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.

Maximum allowable floor area: Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed structure be detrimental to the public welfare or endanger the public safety.

Maximum allowable height: Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed structure be detrimental to the public welfare or endanger the public safety.

RECOMMENDATIONS:

Recommendation of the Department of Community Planning and Economic Development Planning Division for the expansion of the nonconforming use:

The Department of Community Planning and Economic Development - Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the nonconforming use application to allow for the construction of a 440 square foot detached accessory structure on property located at 1904 Girard Avenue South.

Recommendation of the Department of Community Planning and Economic Development Planning Division for the expansion of the nonconforming use:

The Department of Community Planning and Economic Development - Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to increase the maximum permitted floor area for detached accessory structures from 1,000 square feet to 1,452 square feet to allow for the construction of a 440 square foot detached accessory structure on property located at 1904 Girard Avenue South.

Recommendation of the Department of Community Planning and Economic Development Planning Division for the expansion of the nonconforming use:

The Department of Community Planning and Economic Development - Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to increase the maximum permitted height of a detached accessory structure from 12 feet to 16 feet where the proposed roof pitch of the detached accessory structure does not match the roof pitch of the principal dwelling to allow for the construction of a 440 square foot detached accessory structure on property located at 1904 Girard Avenue South.

Attachments:

1) Statements from the applicant.
2) Letter from a neighbor.
3) Letter from the neighborhood group.
4) Zoning map.
5) Site plan, floor plans, and elevations.
6) Photos.