

Department of Community Planning and Economic Development – Planning Division
Variances and Minor Subdivision Application
BZZ-3477 & MS-170

Date: April 23, 2007

Applicant: Michael Lander & Dan Niziolek

Address of Property: 3401 Irving Avenue South

Project Name: Not applicable.

Contact Person and Phone: Michael Lander – Lander Group 612-250-6655

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

Date Application Deemed Complete: March 28, 2007

End of 60-Day Decision Period: May 27, 2007

Ward: 10 **Neighborhood Organization:** ECCO

Existing Zoning: R2B Two-family District and SH Shoreland Overlay District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 24

Legal Description: See survey.

Existing/Proposed Use: Parcel A (west parcel) will be 7,878 square feet and contains a single-family home that was converted from a duplex. Parcel B (east parcel) will be 4,202 square feet and is proposed for a new single-family home (currently under construction).

Concurrent Review:

Variance: To reduce the minimum required lot area from 5,000 square feet to 4,202 square feet.

Variance: To reduce the required west interior side yard setback for the proposed east parcel from 5 feet to approximately 1.5 feet.

Variance: To reduce the required east interior side yard setback for the proposed west parcel from 5 feet to approximately 1.5 feet.

Variance: To reduce the required front yard setback on 34th Street West from 20 feet to approximately 8 feet for the proposed east parcel.

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Variance: To reduce the required front yard setback on 34th Street West from 20 feet to approximately 15 feet for the proposed west parcel.

Variance: To increase the maximum allowable height of a fence from 6 feet to 10 feet.

Minor Subdivision: To create two parcels out of one parcel with subdivision variances for a reverse frontage lot and to allow residential lots with more than 5 sides.

Applicable Code Provisions: Chapter 525, Article IX, Variances, Specifically Section 525.520 (1) “to vary the yard requirements...”; 525.520(2) “to vary the lot area or lot width requirements up to thirty (30) percent.”; and Section 525.520(5) “To permit an increase in the maximum height of a fence.” Chapter 598 Subdivisions.

Development Plan: Please see attached survey.

Background: The proposed subdivision would create two parcels out of one parcel that is made up of two platted lots. The applicant would like to create separate parcels; one for the existing single-family home and one for a new single-family home that is currently under construction.

In 2004, the City Council approved a rezoning of this site from the R1A Single-family District to the R2B Two-family District to allow a legally nonconforming duplex (the existing house) to be converted into a conforming single-family home that would have a new structure added on the east side. This new structure, the house currently under construction, was to be an additional dwelling unit that would be attached to the existing structure in such a way that it would be considered a duplex (BZZ-2300). On July 21, 2006, the City Council vacated seven feet of the eight foot interior boulevard, or right-of-way between the sidewalk and the structures, along 34th Street West (Vac-1488). The submitted survey shows the vacated right-of-way as eight feet, rather than seven feet, in error.

In 2006, a building permit was issued to allow the construction of the new unit/structure attached to the existing house as a duplex (please see attached drawing - BZZ-3140). The two structures were attached by a two-story connection between the two buildings. The applicants recorded a CIC condominium plat to create separate ownership of the structures. A CIC plat is not reviewed by the City for approval and creates ownership interests, but does not necessarily change the underlying platting or lots. The applicant now proposes to eliminate the connection between the structures, dissolve the CIC, and create two separate lots through a minor subdivision. The proposed structure is legally under construction and if all of the variances are denied the structure will still be allowed, but the connection will have to be completed and the proposed lot line will not be allowed.

Both parcels will meet the requirements of the zoning code with the exception of the minimum lot area for Parcel B. The R2B District requires 5,000 square feet of lot area and 40 feet of lot width for single-family homes. This is increased to 50 feet for parcel A, because there is no alley access. Parcel A will have 7,878 square feet of lot area and 93.73 feet of lot width. Parcel B will have 4,202 square feet of lot area and 40.70 feet of lot width. Parcel B will need a variance from the required lot area of 5,000 square feet to 4,202 square feet. The maximum that lot area can be reduced by variance is 30 percent. The lot area variance is approximately an eight percent reduction.

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Both of the structures will meet the requirements of the R2B District with the exception of interior side yard setbacks between the structures and front yard setbacks on 34th Street West. When the new lot line is drawn between the structures it creates a five-foot interior side yard setback on both sides of the lot line. Both structures are at varying distances from this common lot line, but at their closest point they are approximately 1.5 feet from the lot line. Currently the setback along 34th Street West is an eight-foot corner yard setback; however, by splitting the lot in the manner proposed the east parcel becomes a reverse frontage lot (a lot platted in reverse orientation to the rest of the block) and the west parcel becomes a reverse corner lot (a lot that includes a side lot line adjacent to the street that is substantially a continuation of the front lot line of the adjacent property to the rear) and the corner yard is changed to a 20-foot front yard. The structures currently comply with the required eight-foot corner yard, but do not meet the newly created 20-foot front yard setback. Variances are required to reduce the setback down to eight feet for the east parcel and 15 feet for the west parcel.

Both of the parcels will meet the requirements of the subdivision ordinance with the exception of the above noted zoning code requirements and the subdivision ordinance prohibition against creating reverse frontage lots and creating a residential lot with more than five sides.

As of the writing of this staff report, staff has not received any comments from the neighborhood group.

VARIANCE (to reduce the required lot area)

Findings Required by the Minneapolis Zoning Code:

- 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.**

Parcel B does not meet the lot area requirements of the zoning code. The R2B District requires 5,000 square feet of lot area. Parcel B will have 4,202 square feet of lot area. The maximum that lot area can be reduced by variance is 30 percent. The lot area variance is approximately an eight percent reduction. A subdivision is not necessary to allow the separate ownership of the two units as the property already has a CIC condominium plat in place. Staff can find no reason why strict adherence to the zoning code would be an undue hardship or would be unreasonable.

- 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.**

In 2006, a building permit was issued to allow the construction of the new unit/structure attached to the existing house as a duplex. The two structures were attached by a two-story connection between the two buildings. The applicant now proposes to eliminate the connection between the structures and create two separate lots through a minor subdivision. While there are other corner lots in the area that had the back part adjacent to the alley split off as separate parcels, these were created before the adoption of the current subdivision regulations. The majority of lots are larger and platted in an east-west orientation.

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The existing parcel is rectangular and flat. Staff can find no unique circumstance. The need for the variance is created by the desire to add a second structure to the site.

- 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 intent of the minimum lot area requirement is to provide reasonably sized lots that allow for adequate room for the principal and accessory structures, sidewalks and drives, and yards. The need for several variances to create the lot indicates that it may not be of a reasonable size for the structure under construction; therefore, granting this variance may circumvent the intent of the ordinance. There are historic parcels split off the rear of other lots in the area, so the proposed split may not be entirely out of character with surrounding parcels.

- 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.**

The variance should have no effect on congestion, as it will not significantly increase traffic demand at the site. A single-family home under conversion to a duplex already exists at the site. The variance should not be detrimental to the public welfare or safety and will not increase the danger of fire.

VARIANCES (to reduce the required side yard setbacks)

Findings Required by the Minneapolis Zoning Code:

- 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 applicants originally proposed to connect the two structures to create a duplex, but now propose to leave them unconnected and to create separate lots. This creates a lot line between the structures with five-foot setbacks on either side of the lot lines. A subdivision is not necessary to allow the separate ownership of the two units as the applicant already has a CIC condominium plat in place. Staff can find no reason why strict adherence to the zoning code would be an undue hardship or would be unreasonable. Denial of the variances would not prevent a reasonable use of the land in a manner to similarly situated lots in the area.

- 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 site is large, square, and flat. During previous land use applications for the site and during the review process staff indicated that a split creating a reverse frontage lot would create several issues including the possible need for setback variances. The structure could have been designed to meet these requirements. The need for the variance has not been created by a unique circumstance, but by the desire to create two separate lots. The hardship has been self imposed in 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.**

The intent of the ordinance is to provide an adequate setback for residential buildings so that they have access to light, air, and views. Setbacks also help to buffer uses and to ensure compliance with building code requirements. Most of the structures will be setback five feet or more. It is a small portion of the buildings that are only 1.5 feet off of the property line, so while the proposed setbacks are not ideal, they will still allow access to light and air and comply with the building code. Therefore, the granting of this variance should not circumvent the intent of the ordinance.

- 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.**

The variance should have no effect on congestion, as it will not significantly increase traffic demand at the site. The variance is required because of a new lot line, but the location of the buildings will remain as they are now, so the proposed variance should not be detrimental to the surrounding area or the public welfare and should not increase the danger of fire.

VARIANCES (to reduce the required front yard setbacks)

Findings Required by the Minneapolis Zoning Code:

- 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 applicant originally proposed to connect the two structures to create a duplex, but now propose to leave them unconnected and to create separate lots. This creates a reverse frontage lot (a lot platted in reverse orientation to the rest of the block) for the east parcel and the west parcel becomes a reverse corner lot (a lot that includes a side lot line adjacent to the street that is substantially a continuation of the front lot line of the adjacent property to the rear). The eight-foot corner yard is changed to a 20-foot

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front yard. A subdivision is not necessary to allow the separate ownership of the two units as the applicant already has a CIC condominium plat in place. Staff can find no reason why strict adherence to the zoning code would be an undue hardship or would be unreasonable. Denial of the variances would not prevent a reasonable use of the land in a manner to similarly situated lots in the area.

- 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 site is large, square, and flat. During previous land use applications for the site and during the review process staff indicated that a split creating a reverse frontage lot would create several issues including the possible need for setback variances. The structure could have been designed to meet these requirements. The need for the variance has not been created by a unique circumstance, but by the desire to create two separate lots. The hardship has been self imposed in 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.**

The intent of the ordinance is to provide an adequate setback for residential buildings so that they have access to light, air, and views up and down the street. Setbacks also help to buffer uses and to ensure compliance with building code requirements. The existing structures meet the eight-foot corner yard setback that is required currently and would be required if the split were not approved, so while the proposed setbacks are not ideal, they will still allow access to light and allow reasonable views up and down the street. The buildings are existing. Therefore, the granting of this variance should not circumvent the intent of the ordinance.

- 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.**

The variance should have no effect on congestion, as it will not significantly increase traffic demand at the site. The variance is required because of a new lot line, but the location of the buildings will remain as they are now, so the proposed variance should not be detrimental to the surrounding area or the public welfare and should not increase the danger of fire.

VARIANCE (to increase the fence height)

Findings Required by the Minneapolis Zoning Code:

- 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 applicant is installing a fence on the east and south sides of Parcel B on top of a retaining wall to provide privacy, but also to address safety concerns of persons falling off the wall into the site. The height for fencing is measured from the adjacent grade. If the fence on the south property line were installed by the neighbor to the south the height would be measured from the adjacent grade on the south side of the wall and no variance would be necessary. This applicant has a hardship. The proposed fencing is a 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.**

The hardship is caused by the zoning code not recognizing the unique grade at this particular site.

- 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 intent of the ordinance was to prevent large fences from being installed around residential properties giving them the look of a fortress and obstructing views up and down the street. It was not necessarily intended to apply to the rear of the site with a unique grade. The situation at this site is not generally applicable to other properties in the area.

- 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.**

The height of the fencing will have no impact on traffic congestion nor will it increase the danger of fire. The fencing should not be detrimental to the surrounding area.

MINOR SUBDIVISION

Required Findings:

1. The subdivision is in conformance with the land subdivision regulations and the applicable regulations of the zoning ordinance and policies of the comprehensive plan.

Subdivision ordinance:

The subdivision is in conformance with the design requirements of the land subdivision regulations except for Section 598.240(2)[a], which requires that no lot shall be created that has more than five (5) sides (both parcels will have six sides) and Section 598.240(4) which prohibits the creation of reverse frontage lots (those platted in reverse orientation to the rest of the block). In order to be in conformance with the land subdivision regulations a variance of Section 598.240(2)[a], the prohibition on lots with more than five sides, and Section 598.240(4), the prohibition on reverse frontage lots, are required.

While variances from the zoning code require a separate application, variances from the subdivision standards are done as a part of the subdivision application subject to the standards listed below.

598.310. Variances. Where the planning commission finds that hardships or practical difficulties may result from strict compliance with these regulations, or that the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to any or all of the provisions of this chapter. In approving variances, the planning commission may require such conditions as it deems reasonable and necessary to secure substantially the objectives of the standards or requirements of these regulations. No variance shall be granted unless the planning commission makes the following findings:

- (1) There are special circumstances or conditions affecting the specific property such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of land.
- (2) The granting of the variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is located.

The intent of the prohibition on creating residential lots with more than five sides is to prevent odd-shaped lots and lots with unusable space. It is staff's opinion that this is a self created hardship and that there are not special circumstances or conditions effecting the property that necessitate the need for this variance and therefore staff recommends denial of the variance. However, it does not appear that the jog in the lot line will be detrimental or injurious to neighboring properties.

The lots are platted east-west. The subdivision would create a reverse frontage and reverse corner lot. The new Parcel B will impose a front yard setback on the neighboring property to the east of the adjacent alley at 3400 Humboldt Avenue South (1503 34th Street West) and on the proposed Parcel A to the west. If the front yard setback variance is approved for Parcel A, then it will be conforming, but the building to the east of the site and alley at 3400 Humboldt (1503 34th Street West) will be made nonconforming for the front yard setback. This will be detrimental to the property to the east. Therefore, staff recommends denial of the variance to create a reverse frontage lot.

Zoning code:

Both parcels will meet the requirements of the zoning code with the exception of the minimum lot area for Parcel B. The R2B District requires 5,000 square feet of lot area and 40 feet of lot width for single-family homes. This is increased to 50 feet for parcel A, because there is no alley access. Parcel A will have 7,878 square feet of lot area and 93.73 feet of lot width. Parcel B will have 4,202 square feet of lot area and 40.70 feet of lot width. Parcel B will need a variance from the required lot area of 5,000 square feet to 4,202 square feet. The maximum that lot area and lot width can be reduced by variance is 30 percent. The lot area variance is approximately an eight percent reduction. The applicant has requested variances for these items and staff is recommending denial of the variances (please see the variance sections of this staff report).

Both of the structures will meet the requirements of the R2B District with the exception of interior side yard setbacks between the structures and front yard setbacks on 34th Street West. When the new lot line is drawn between the structures it creates a five-foot interior side yard setback on both sides of the lot line. Both structures are at varying distances from this common lot line, but at their closest point they are approximately 1.5 feet from the lot line. Currently the setback along 34th Street West is an eight-foot corner yard setback; however, by splitting the lot in the manner proposed the east parcel becomes a reverse frontage lot (a lot platted in reverse orientation to the rest of the block) and the west parcel becomes a reverse corner lot (a lot that includes a side lot line adjacent to the street that is substantially a continuation of the front lot line of the adjacent property to the rear) and the corner yard is changed to a 20-foot front yard. The structures comply with the current required eight-foot corner yard, but do not meet the proposed 20-foot front yard setback. This requires variances down to eight feet for the east parcel and 15 feet for the west parcel. The applicant has requested variances for these items and staff is recommending denial of the variances (please see the variance sections of this report).

Staff is not recommending approval of the variances, and without the variances the parcels will not meet the minimum lot area and setback requirements, so staff is recommending that the subdivision be denied for this reason in addition to the other items listed in this section of the report.

Comprehensive plan:

The Minneapolis Plan does not have a designation for this area and does not speak in detail about subdivision regulations. The existing land use map in the plan shows the area as predominantly low density residential. It is the staff opinion that the use of the land is in conformance with the comprehensive plan, as it is low-density residential.

2. The subdivision will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets.

The proposed subdivision will create two parcels out of one parcel made up of two platted lots lot with an existing single-family home that is being converted to a duplex. The subdivision would create a reverse frontage and reverse corner lot. This will create Parcel B that will impose a front yard setback on the property to the east of the alley at 3400 Humboldt avenue south (1503 34th Street West) and on the proposed Parcel A. If the front yard setback variance is approved for Parcel A, then it will be conforming, but the building to the east of the site and alley at 3400 Humboldt Avenue South (1503 34th Street West) will be made nonconforming for the front yard setback. This will be detrimental to the property to the east. The subdivision should have no effect on congestion, as it will not significantly increase traffic demand at the site.

3. All land intended for building sites can be used safely without endangering the residents or users of the subdivision and the surrounding area because of flooding, erosion, high water table, severe soil conditions, improper drainage, steep slopes, rock formations, utility easements, or other hazard.

The site does not present the above noted hazards. The site is in the SH Shoreland Overlay District.

4. The lot arrangement is such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits and in providing driveway access to buildings on such lots from an approved street. Each lot created through subdivision is suitable in its natural state for the proposed use with minimal alteration.

No significant change to the grading should be necessary. The structures are existing or under construction. Access for the west parcel will be from 34th Street West and for the east parcel it will be from the alley.

5. The subdivision makes adequate provision for storm or surface water runoff, and temporary and permanent erosion control in accordance with the rules, regulations and standards of the city engineer and the requirements of these land subdivision regulations. To the extent practicable, the amount of stormwater runoff from the site after development does not exceed the amount occurring prior to development.

Existing utility and drainage provisions are adequate for the structures.

RECOMMENDATIONS:

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

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance application to reduce the minimum required lot area from 5,000 square feet to 4,202 square feet for property located at 3401 Irving Avenue South.

Recommendation of the Community Planning and Economic Development Department – Planning Division for an interior side yard setback variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance application to reduce the minimum required west side interior yard setback for the proposed east parcel from 5 feet to approximately 1.5 feet for property located at 3401 Irving Avenue South.

Recommendation of the Community Planning and Economic Development Department – Planning Division for an interior side yard setback variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance application to reduce the minimum required east side interior yard setback for the proposed west parcel from 5 feet to approximately 1.5 feet for property located at 3401 Irving Avenue South.

Recommendation of the Community Planning and Economic Development Department – Planning Division for a front yard setback variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance application to reduce the minimum required front yard setback for the proposed east parcel from 20 feet to approximately 8 feet for property located at 3401 Irving Avenue South.

Recommendation of the Community Planning and Economic Development Department – Planning Division for a front yard setback variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance application to reduce the minimum required front yard setback for the proposed west parcel from 20 feet to approximately 15 feet for property located at 3401 Irving Avenue South.

Recommendation of the Community Planning and Economic Development Department – Planning Division for a front yard setback variance:

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The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance application to increase the minimum allowable height of a fence from 6 feet to approximately 10 feet for property located at 3401 Irving Avenue South.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the minor subdivision with subdivision variances:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the minor subdivision application and associated subdivision variances for a reverse frontage lot and lot with 5 sides or more for property located at 3401 Irving Avenue South.

Attachments:

- 1) Statements from applicant.
- 2) Zoning map.
- 3) Survey, site plans, floor plans, and elevations.
- 4) Photos.