

Department of Community Planning and Economic Development – Planning Division Report**Variance Request
BZZ-3369****Date:** January 18, 2007**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:** December 20, 2006**Hearing Date:** January 18, 2007**Appeal Period Expiration:** January 29, 2007**End of 60 Day Decision Period:** February 18, 2007**Ward:** 6 **Neighborhood Organization:** Whittier**Existing Zoning:** R5, Multiple-family District**Proposed Use:** Construct a new two unit dwelling with attached garage

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

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

Background: The applicant has previous applied for variances at this site to build a three-unit dwelling. On May 4th, 2006, the Board of Adjustment approved the variances. An appeal of the Board's decision was submitted by adjacent property owners and on June 16th, 2006, the City Council denied the original variance applications based on additional findings that are attached to this document (see attached Findings and Recommendation for full Council actions). The City Council's findings to deny the variances were largely based on documentation from a lot split in 1990 of the subject site by the former MCDA (now CPED) that the site was not considered a lot of record. The documentation stated that that the intensions of the lot split were for the subject site to remain green space for the adjacent apartment building at 2630 – 1st Avenue South and that the property was not legally established as a lot of record.

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The applicant has since provided additional research on the title history of the property from the lot split of the subject site that was not presented to staff, the Board of Adjustment or City Council at the time of the previous variance applications (see attached Memo from Applicant). The applicant states the additional research supports that the property is a lot of record with no deed restrictions to prevent development on the subject site. CPED – Planning and the City Attorney’s Office have reviewed the documentation and advised the applicant that variances may be applied for again to develop the property.

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.). 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. The applicant is proposing to construct a new two-dwelling unit building with a rear, attached garage. A two-family dwelling has 5 ft. required side yard setbacks in the R5 District. The applicant is asking for a reduction for both side yard setbacks to 3 ft. The applicant is applying to build a two-unit dwelling and does not need the lot area variance, per the nonconforming lot requirement in the zoning code:

531.100. Nonconforming lots. (b), and notwithstanding any other provision to the contrary, in the R1 through R4 Districts and OR1 District, a single-family dwelling shall be permitted on a lot of record existing on the effective date of this ordinance, **and in the R5, R6, OR2 and OR3 Districts, a two-family dwelling shall be permitted on a lot of record existing on the effective date of this ordinance**, provided that the yard dimensions and all other requirements for the district in which the lot is located, not involving lot area or lot width, shall be met.

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 brick/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 two stories above grade, but has the appearance of a three story building because much of the basement projects out of the ground. However, the structure does not exceed the first floor height limit above grade for the basement to be considered a story. Much of the basement projects only 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.

Currently, the properties across the alley to the west from the subject site are subject to a new construction building moratorium on Nicollet Avenue. This moratorium is on Nicollet Avenue, east and west, alley to alley, from Franklin Avenue on the north to the Midtown Greenway on the south. The moratorium is primarily concerned with the underdevelopment and underutilization of properties along Nicollet Avenue (580.20. Findings and purpose). This moratorium does not affect the subject site.

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 ft. 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, two-unit dwelling is a reasonable use of the property and that strict adherence to the side setbacks 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 two-unit dwelling. The minimum width for a two-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, two-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 3 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 and also plans indicate that a portion of the building will be treated with anti-graffiti paint. Staff believes that these features will help in deterring illegal activity.

The subject site is smaller than an average lot in Minneapolis and is in an area that has properties with larger lots. However, the surrounding area is predominantly multi-family and commercial uses and is located one block from Nicollet Avenue, identified as a Commercial Corridor in the Minneapolis Plan. A new construction moratorium on Nicollet Avenue was enacted by the City Council on October 6, 2006 as a result of underdevelopment of Nicollet Avenue. A study by CPED – Planning is underway to determine the feasibility of adding a Pedestrian Oriented Overlay District to this portion of Nicollet Avenue.

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*).

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

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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., and **approve** the variance to reduce the minimum lot width from 40 ft. to 29 ft. 8 in. to allow for a new two-unit dwelling at 2624 1st Avenue South in the R5 Multiple-family District, subject to the following conditions:

1. CPED-Planning review and approve final site plans, floor plans and elevations.