

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

Variance Request
BZZ-3605

Date: July 12, 2007

Applicant: John Borden

Address of Property: 3915 East Lake Street

Contact Person and Phone: Andy Faulkner, (612) 426-4706

Planning Staff and Phone: Erik Carlson, (612) 673-5348

Date Application Deemed Complete: May 25, 2007

Hearing Date: July 12, 2007

Appeal Period Expiration: July 22, 2007

End of 60 Day Decision Period: August 10, 2007

Ward: 12 **Neighborhood Organization:** Cooper

Existing Zoning: C2, Neighborhood Corridor Commercial District

Proposed Use: Hardware Store

Proposed Variances:

- 1) Decrease the front yard setback from 20 feet to 0,
- 2) Decrease the side yard setback from 5 feet to 0,
- 3) Increase the maximum fence height from 4 feet to 8 feet, and
- 4) Decrease the required outdoor sales area setback from 20 feet to 6 feet

Zoning code section authorizing the requested variances: 525.520(1), 525.520(5), 525.520(26)

Background: The lot is 187.5 feet long and 100 feet wide. The lot contains a commercial building that is proposed to be occupied by Frattallone's Ace Hardware. This building is 9,000 square feet. The parcel also contains a parking and a loading dock. The lot on which the building is located contains a mixed use structure to the east, separated by an alley and residential structures to the south, also separated by an alley. Across 39th Avenue South is an office building.

The applicant proposes to fill in the loading dock area to construct a garden center at the corner of 39th Avenue North and an alley just to the south as a part of a hardware store. This outdoor sales and display area (40 feet by 50 feet) would be fenced and would have two entrances: one into the building and another in the fence that leads onto the sidewalk along 39th Avenue South.

All first-floor window openings along East Lake Street would be filled as would the main entrance on this façade. A new main entrance would be created that faces 39th Avenue South. As a result, the west side of the building is considered the front of the building and the south is considered an interior side yard.

The parking lot would be reconfigured to contain 21 parking spaces two of which are handicapped stalls. No landscaping buffer would be provided in the parking area.

Setbacks

Due to the zoning of the site, the setbacks of the proposed garden center are based upon the setbacks of adjacent uses. The residence to the south provides the basis for the setback dimensions.¹ This parcel is zoned R1A, Single Family Residential with front and side yard setbacks of 20 and 5 feet respectively. These setbacks apply to the garden center when that structure is within 40 feet from the line that divides the commercial and residential districts which is the midpoint of the alley.

The proposed garden center is also required to be no closer than 20 feet from an adjacent residential district boundary and shall be screened. The residential district boundary begins at the midpoint of the south alley and extends south. The distance from proposed garden center fence to the residential district boundary is 6 feet. The screening requirement is satisfied by the proposed wrought iron fence.²

Fence

The outdoor sales area would be fenced in with a an 8 foot high decorative wrought iron fence with rock-face block concrete piers spaced out approximately 8 feet. The fence would be placed on top of the south property line. To the west, garden center gates would swing open to meet the west property line. The maximum height of a fence in the front yard is 3 feet unless it is decorative. The proposed fence is decorative therefore a maximum of 4 feet is allowable.

Parking

The required parking for the site is a parking space for every 300 square feet of gross floor area over 4,000 square feet. This equals 17 required spaces

¹ 548.140(b)(1 and 2)

² 530.160(b)(1)

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.**

Setbacks

A garden center at the subject property is a reasonable use. The zoning code allows it and it is compatible with commercial uses which line East Lake Street. However, design options exist which could accommodate a garden center without the need for setback variances, including the district setback variance. Design options include making the garden center smaller and/or relocating the garden center away from the property lines. Therefore, the property can be put to reasonable use under conditions allowed by the zoning ordinance and there is no hardship.

Fence

Due to the fact that the fence protects an outdoor sales area from crime (stolen merchandise and vandalism) and the district allows commercial uses, an 8 foot high decorative fence to protect a garden center is reasonable. There are no feasible options to protect the merchandise in an outdoor sales area which would meet the strictures of the code.

- 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.**

Setbacks

The circumstances that have created the need for the setback variances have been created by the applicant—that is the construction of a garden center at the proposed location. There are no unique aspects of the property that limit design options to the proposed location and there therefore there is not hardship.

Fence

The circumstances that have created the need for an 8 foot high fence have not been created by the applicant but are a result of the garden centers location in an urban area.

- 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.**

Setbacks

The intent of the front yard setback ordinance is to promote good urban design by providing each property owner with similar views from his or her property out into the street, access to light and the presence of green space. The proposed 8 foot high fence in the front yard setback by virtue of the opacity of a wrought iron fence, and the position of the home to the south which is setback about 8 feet from the front of the fence, the position of the fence along 39th Avenue S is in keeping with the purpose of the front yard setback.

The intent of the side yard setback ordinance as it relates to structures is to separate structures to provide privacy and green space, among other benefits. The alley to the south of the subject property provides this separation adequately. The required side yard setback for the home to the south and garden center are 5 feet. Structures are therefore required to be at least 10 feet apart according to the code. The width of the alley is 12 feet. Therefore the proposed setback for the garden center by virtue of the separation the alley provides is in keeping with the spirit and intent of the ordinance.

Though the intent of the front and interior setback ordinance is satisfied in most cases as described above, however, the complete absence of landscaping in the parking lot is not in keeping with the purpose of the setback or site plan review sections of the ordinance.

The intent of the district setback is to separate uses. Again the alley plays a role. The required 20 foot setback ordinance language does not assume an alley to be present, therefore the presence of the alley skews the setback requirements in this case. If the alley was not present and the lots were coterminous as the ordinance assumes, the district dividing line would be a shared interior property line and the garden center area would need to be 20 feet away from that line. Using the north property line of the home to the south as a proxy for an interior lot line and district boundary, the garden structure would still not meet the district setback requirement. Therefore, the location of the garden center does not meet the intent or spirit of the ordinance.

Buildings along East Lake Street are and have been for decades commercial in nature. A garden center on the subject property is in keeping with the character of the area. A garden center, given that it does not meet district setback requirements, would be injurious to the home owner to the south. The home owner's privacy may be compromised as shoppers use the garden center.

Fence

The fence, being decorative and wrought iron, would not be injurious to the enjoyment of other property in the area. A protective fence would deter vandalism and the stealing of merchandise making the neighborhood less attractive to criminals.

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.**

Required parking is provided. Congestion of public streets is not expected. A garden center and fence would not increase the danger of fire. The design of the garden center with its protective fence would not attract criminal activity and therefore would not endanger public safety by providing an opportunity for would be thieves or vandals.

Recommendation of the Department of Community Planning and Economic Development

The Department of Community Planning and Economic Development recommends the Board of Adjustment **adopt** the findings above and

Deny the front yard setback from 20 feet to 0,

Deny the side yard setback from 5 feet to 0,

Approve Increase the maximum fence height from 4 feet to 8 feet, and

Deny the outdoor sales area setback variance from 20 feet to 12 feet

Appendix A: Maps and Aerial Photographs

Appendix B: Application Material including drawings.

Appendix A

Appendix B