

Community Planning and Economic Development Planning Division Report
Expansion of a Legal Nonconforming Use, Variance
BZZ-4531

Date: September 28, 2009

Applicant: Mark Cummings

Address of Property: 1011-13 23rd Avenue SE

Contact Person and Phone: John Anderson, (612) 332-4525

Planning Staff and Phone: Kimberly Holien, (612) 673-2402

Date Application Deemed Complete: August 18, 2009

End of 60 Day Decision Period: October 17, 2009

Ward: 1 **Neighborhood Organization:** Southeast Como Improvement Association

Existing Zoning: R1A, Single-Family District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 16

Legal Description: Not applicable for this application

Existing Use: Duplex

Concurrent Review:

Expansion of a nonconforming use: to allow for basement bedrooms with egress window wells for each unit in a two-family dwelling located at 901-03 Weeks Avenue Southeast.

Variance: To reduce the required number of vehicle parking stalls.

Variance: To reduce the required number of bicycle parking stalls.

Applicable Zoning Code Provisions: Chapter 531, Section 531.50(b); Chapter 541, Off-Street Parking and Loading; Chapter 551, University Area Overlay District

Background: John Anderson, on behalf of Mark Cummings, has applied for an expansion of non-conforming use and parking variances to allow four additional bedrooms in the basement of a legally non-conforming duplex. Specifically, two bedrooms are proposed in the basement of the unit at 1011 23rd Avenue SE and two bedrooms are proposed in the basement of the unit at 1013 23rd Avenue SE. All bedrooms are proposed to have egress window wells. The property is zoned R1A, which does not

allow two-family dwellings. The property is also located within the boundaries of the University Area Overlay District.

The structure was constructed as a side-by-side duplex in 1957. The property was rezoned from R2B to R1A as part of the Como Forty-Acre Study in 1987 and the use became legally nonconforming. Each unit currently has one bedroom on the first floor. The expansion would increase the total number of bedrooms in the structure to six; three in each unit. Installing egress window wells would make the basement level habitable. Creating habitable space in a basement level for a nonconforming use is an expansion of a nonconforming use under Section 531.50(b) of the zoning code and therefore requires authorization from the City Planning Commission.

The University Area Overlay District was established per Council action on August 14, 2009. This overlay district changes the parking requirement for residential uses from 1 space per unit to 0.5 spaces per bedroom, along with establishing requirements and restrictions related to bike/scooter parking, site paving, landscaping and screening. With the new parking requirements for this district, an increase to the number of bedrooms increases the parking requirement. Two additional parking spaces are required for the property accordingly. The property currently does not have any off-street parking available and a variance to the minimum vehicle parking requirement has been requested. The University Area Overlay District also requires residential uses to provide at least one bicycle or motorized scooter parking space per bedroom, or six spaces in this case. No bicycle or scooter parking is provided and an additional variance has been requested accordingly.

Staff received a letter dated September 8, 2009 from the Southeast Como Improvement Association stating that it does not support the expansion of the non-conforming use for 1011-1013 23rd Ave SE.

EXPANSION OF A NONCONFORMING USE:

Findings as Required by the Minneapolis Zoning Code for the Expansion of a Legal Nonconforming Use:

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

The block the property is located on is zoned R1A. Although there are other nonconforming multi-family residences existing on the block, most of the residences are single-family dwellings. The properties bordering the site in every direction are also zoned R1A. In 1987, the subject property, and other property in the immediate area, was down-zoned from R2B to R1A as part of a 40-acre study of the Como area. Higher density development has not occurred in the area since the rezoning study. A rezoning of the property would not be appropriate.

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

The applicant is not changing the footprint of the existing structure or adding building bulk. Two egress windows would be located on the north side of the structure, and one egress window is proposed for each of the east and west sides of the property as well.

- (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.**

The expansion of the non-conforming use could result in increases of adverse off-site impacts. Although there would be no increase in residential units, the number of bedrooms would increase from one per unit to three per unit. This could result in more inhabitants occupying the property. The University Area Overlay District specifically addresses bedrooms, in addition to dwelling units, due to the fact that additional bedrooms increase the intensity of residential uses, particularly in this area.

Each inhabitant could own a car if they are of legal driving age. The expansion would likely have an affect on traffic and parking congestion, particularly because no off-street vehicle parking or bicycle parking is provided. The applicant has stated that the current occupants of the building park on the adjacent public street. It is expected that the occupants of the requested additional bedrooms will park vehicles on the street as well. Parking congestion is already a problem in this area because of proximity to the University.

- (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 changes to the use are only internal to the structure and would not likely affect the appearance of the neighborhood. The Como Area 40-acre rezoning study conducted in 1987 down-zoned the property to prohibit the establishment of additional two-family and multi-family dwellings and thus stabilize the area for primarily single-family dwellings. Increasing the number of bedrooms could increase the number of inhabitants occupying the property. This change could have an impact on the lower density intended in the R1A districts in the area.

Increasing the number of units would also create non-conformities to the parking requirements of the newly established University Area Overlay District. This overlay district was the result of a year-long moratorium in the University area due to an interest in protecting the livability of the study area by examining issues such as parking, density, and studying whether the existing pattern of zoning districts within the study area is consistent with the policies of the comprehensive plan. The UA University Area Overlay District was established to ensure high quality residential development through site design and off-street parking regulations that acknowledge the unique demands placed on land uses near a major center of educational employment and enrollment. The internal intensification of this structure would not be consistent with the intent of the new Overlay District.

- (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.**

No additional dwelling units are proposed.

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

The property is not located in the Floodplain District.

VARIANCE (to reduce the required vehicle parking from 4 spaces to 2 spaces where 2 are grandfathered and to reduce the required bicycle parking from 6 spaces to 2 spaces where 2 are grandfathered.)

Findings Required by the Minneapolis Zoning Code:

- 1. The property may not be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

Vehicle Parking:

The owner of the building is requesting variances to the vehicle parking requirement and the bicycle parking requirement to accommodate four additional bedrooms in a legally non-conforming duplex. Per the University Area Overlay District, the parking requirement for the use is .5 spaces per bedroom. Each unit has grandfather rights to one parking space. The overlay district vehicle parking requirement applies to the four new bedrooms only, resulting in a requirement of two spaces. The site currently does not have any off-street parking, requiring a variance for the two spaces.

The property currently contains a non-conforming duplex with grandfather rights to two parking stalls, one for each unit. The property may continue to exist as a duplex with the current number of bedrooms. The property is zoned R1A. Allowing the duplex to remain on the property in its existing condition provides reasonable use of the property by allowing a legally non-conforming use to remain.

Bicycle Parking:

The University Area Overlay District requires residential uses to provide at least one bicycle or motorized scooter parking space per bedroom. The parking requirement for the proposed bedrooms is 4 stalls. The existing bedrooms have grandfather rights to two spaces. No bicycle or scooter parking is provided.

As stated above, the property may continue to exist as a duplex with the current number of bedrooms without the granting of the variance. The property is zoned R1A. Allowing the duplex to remain on the property in its existing condition allows reasonable use of the property and thus no hardship is caused by requiring the property to adhere to the zoning regulations.

- 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.

Vehicle and Bicycle parking:

The site does not have a garage and does not have alley access, limiting the potential for parking facilities. However, the parking variance at this time is triggered by the request to add bedrooms in the basement of the structure. The additional bedrooms require more parking which is a situation that is directly created by the property owner. No parking variances are required in order for the structure to remain in its current condition. Allowing the duplex to remain on the property in its existing condition allows reasonable use of the property.

- 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.**

Vehicle and Bicycle parking:

The intent of the vehicle and bicycle parking requirements is to provide adequate parking spaces to recognize the parking demands of a use. The parking requirements established by the University Area Overlay District were specifically to deter situations such as this where occupants of a residential structure do not have adequate off-street parking facilities. Having additional cars parking on the street would not be consistent with the intent of the ordinance and may alter the character of this low-density residential neighborhood.

- 4. The proposed variance may 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.**

Vehicle and Bicycle parking:

The proposed variance would increase congestion in public streets. It is expected that, if the variance is granted, additional cars will be parking on the public street in front or near the property. The statement submitted by the applicant states that the tenants currently living in the structure park on the street. Having additional cars park on the street, potentially one car per bedroom, is therefore expected to increase congestion and be detrimental to the public welfare.

RECOMMENDATION:

Recommendation of the Community Planning and Economic Development Planning Division:

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for an expansion of a legal nonconforming use to allow basement bedrooms with egress window wells for each unit in an existing duplex located at the property of 1011-13 23rd Avenue SE.

Recommendation of the Community Planning and Economic Development Planning Division:

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for variance to the minimum off-street vehicle parking requirement and bicycle parking requirement for an existing duplex located at the property of 1011-13 23rd Avenue SE.

Attachments:

- 1) Statement of use/Findings
- 2) Zoning map
- 3) Correspondence
- 4) Site plan and floor plans
- 5) Photos