

Department of Community Planning and Economic Development – Planning Division

Appeal of the Zoning Administrator
BZZ-4141

Applicant: Dan Radunz, Property Owner

Address of Property: 5912 Girard Avenue South

Contact Person and Phone: Dan Radunz, (952) 947 - 9044

Planning Staff and Phone: Robert Clarksen, (612) 673-5877

Date Application Deemed Complete: August 6, 2008

Publication of Staff Report: September 3rd, 2008

Public Hearing: October 30, 2008

Appeal Period Expiration: November 10, 2008

End of 120 Day Decision Period: December 2nd, 2008

Ward: 13 **Neighborhood Organization:** Kenny Neighborhood Organization

Existing Zoning: R1 Single Family Residential District
 SH Shoreland Overlay District

Appeal of the decision of the Zoning Administrator:

Dan Radunz has filed an appeal of the Zoning Administrator's decision that the proposed structure at 5912 Girard Avenue South 1) exceeds the maximum height regulation resulting in a 3 story dwelling, and 2) the front elevation does not comply with the minimum 15% window requirement. A dwelling located in the R1 District must meet the maximum 2 ½ story or 35 foot height requirement, whichever is less, as well as the minimum window requirements for each elevation, in order to obtain a zoning certificate.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning

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administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis:

The subject property is an irregular, five-sided lot of record (the survey submitted by the applicant indicates the lot is 6833 square feet) with a maximum dimension of 111 x 70 feet, of which a substantial portion is located in the Shoreland Overlay district. The proposal is to construct a single family residence on the property. The proposed structure attempts to take advantage of the slope of the site. As grade increases from the south property line to the north side of the proposed dwelling, the home takes on a walkout style with southerly views of Grass Lake. The original application to construct the dwelling was denied by the City Planning Commission, and later approved upon appeal to the Zoning and Planning Committee of the City Council on June 16, 2006. Later, an application for Administrative Review of a Single Family Dwelling was determined non-compliant with Administrative Site Plan Review requirements. Later, the applicant decided to appeal upon notice of the incomplete application (see attached letter dated July 3, 2008).

The appeal filed by the applicant considers two issues summarized in the following paragraphs. The first issue relates to the height regulations for a proposed structure in the R1 zoning district. The second issue relates to the minimum window standards for each elevation of the home. The zoning administrator has concluded the project exceeds the maximum height requirement for a single family home in the R1 district, and it does not comply with the minimum window requirement necessary for approval via the administrative site plan review process. The statement of appeal submitted by the applicant addresses the impact of the exposed basement and the half story upon the overall building height, and whether the regulations of chapter 535.90 regarding minimum windows should apply to the lowest level of the dwelling, which the applicant suggests is not part of the front facade.

Building Height

The Zoning Administrator determines whether the height of a dwelling is compliant with the zoning code regulations based on a two-fold evaluation of height. Normally this evaluation is expressed both in terms of the overall height in feet above grade, and the number of stories (or floors) above grade. The home must comply with **both a 30 foot** maximum (the first test) height requirement **and a 2 ½ story** maximum (the second test) height requirement. In the plans submitted by the applicant, the subject property appears to meet the 30 foot height requirement, but fails the 2 ½ story test. Correspondence (see attached letters dated July 3, 2008) with the applicant regarding the definition of the ½ story reflects the City's attempt to convey these requirements on several occasions dating back to the original CUP applications submitted in 2006, where similar designs were determined unable to comply.

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In reviewing the Administrative Site Plan Review application, the Zoning Administrator considers whether the home meets the ½ story regulations. If the project fails this test, the house is considered a 3 story home by default, regardless of whether it appears to meet the other prong of the height requirement test. The Zoning Administrator relies on the definition of a half story as defined below to make such decisions:

Story, half. A story under a gable or hip roof that contains a habitable floor area, including floor area under dormers, not exceeding fifty (50) percent of the floor area of the floor below.

Review of the plans found the following attributes for the lower level:

Elevation	Width	Portion exceeding 6' exposure		Overall Perimeter	234 feet
East	41 feet	14'6"		Perimeter exceeding 6' exposure	174 feet
West	41 feet	39'			
South	76 feet	76'		Percent	74%
North	76 feet	44'6"			

For purposes of calculating compliance with the height requirement, the lower level of a single family dwelling is considered the first story when 50% of its perimeter is exposed at least 6 feet from adjacent grade. Where the basement is considered the first floor, the uppermost level of the subject property must meet the requirements of a ½ story or the structure would be rendered unable to meet the height requirements in the residential zoning districts. In this case, the lower level of the home was found to be the first story. Consequentially, the main level became the second, and the upper level was determined as a third story by default. The table above clearly indicates that 74 % of the lower level elevation was exposed beyond the maximum allowable by the code, and therefore, the home was appropriately classified to exceed the 2 ½ story regulation in the ordinance.

When building height is limited to 2-1/2 stories, the definition of half-story must also be referenced in the determination of compliance with height regulations. A half-story exists when the proposed dwelling meets both conditions of the following two-fold definition, the half-story must be under a gable or hip roof, **and** the habitable floor area of the half-story must be less than half the habitable floor area for the floor below.

The plans for the proposed house indicate compliance with the habitable area limitation of the half story definition. However, the roofline over the upper level of the subject property does not align with the exterior walls that define the space below, and this was part of the rationale for describing this upper level of the home as an independent story as it was deemed dissimilar from much of the typical 2 ½ half story construction that lends to the aesthetic character of many City neighborhoods, and the conclusion the house should have been classified as a 3 story home was based on these factors. The applicant could have designed a different building which took advantage of the sloping nature of the lot and met the height requirement as an alternative.

Window Requirement:

The second part of the statement of appeal refers to the lack of windows on the front elevation of the dwelling. The minimum window requirement for newly constructed homes was established to safeguard the quality and character of existing residential neighborhoods. In chapter 535.90 (c), the zoning code states:

Not less than fifteen (15) percent of the walls on each floor of single and two-family dwellings and multiple-family dwellings of three (3) and four (4) units that face a public street shall be windows. Not less than five (5) percent of the walls on each floor of single and two-family dwellings and multiple-family dwellings of three (3) and four (4) units that face a rear or interior side lot line shall be windows. Half stories shall not be subject to the minimum window requirement.

Chapter 535.90 of the zoning code mandates that 15 percent of the façade area of any building elevation visible from a public street, and 5 percent of other elevations must be windows. The table below illustrates the minimum window requirements for each floor and each proposed elevation of the dwelling.

Window Requirements Per Elevation – 5912 Girard				
Elevation	Floor	Percent Required	Square Foot Required	Proposed
Front/East	Lower	15	17.4	0
	Main	15	49.2	68
	Upper	15	49.2	24.5
Rear/West	Lower	5	15.6	5.25
	Main	5	16.5	25.5
	Upper	5	8.5	6
Left /South	Lower	5	30.4	63
	Main	5	30.4	147
	Upper	5	16.5	96
Right/North	Lower	5	17.8	6.5
	Main	5	30.4	59.25
	Upper	5	16.8	23

The applicant appealed the decision of the Zoning Administrator due to a belief that the windows included on the front elevation comply with the window requirement for the main and upper level. The table shows that several of the other elevations in the proposed home also do not meet these regulations. In regards to the front elevation, the applicant has referred to the windows in the garage door. Windows in a door do not count towards the minimum requirement due to practical considerations of whether they contribute value to the safety and surveillance of the street or surrounding area. Staff believes this is a practice that supports the intent of the ordinance. It is notable that a true half story in a home is not

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subject to the minimum window requirement, but the upper level of the proposed dwelling is because it has been considered a story.

As the applicant could have designed a structure which met the minimum window requirements for each of the building elevations, the Zoning Administrator made the correct interpretation of the window regulations. The design of the home does not meet the minimum standards of the Site Plan Review ordinance, and therefore granting the appeal would be inconsistent with the policies set forth in the existing version of the Comprehensive Plan. Chapter 4.14 of the Comprehensive Plan states:

“Minneapolis will maintain the quality and unique character of the city's housing stock, thus maintaining the character of the vast majority of residential blocks in the city.”

Granting the appeal would also be inconsistent with Policy 10.4 of the draft “Plan for Sustainable Growth” which the City recently adopted. The plan states the City will “support the development of residential dwellings that are of high quality design and compatible with surrounding development”, and includes the following implementation steps:

10.4.1 Maintain and strengthen the architectural character of the city's various residential neighborhoods.

10.4.2 Promote the development of new housing that is compatible with existing development in the area and the best of the city's existing housing stock.

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

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment **deny** the appeal of the decision of the Zoning Administrator that the proposed structure at 5912 Girard Avenue South 1) exceeds the maximum height regulation resulting in a 3 story dwelling, and 2) the front elevation does not comply with the minimum 15% window requirement for a proposed single family home at 5912 Girard Avenue South in the R1 Single Family Residential District.

Attachments

1. Site Plan.
2. Elevations.
3. 350 foot proximity map.
4. Applicant's Statement of Appeal.
5. Notice to Council Member and Neighborhood Group.
6. Incomplete letter dated July 3, 2008 regarding site plan review application.
7. Emails and letters from neighboring residents.