

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ-4969

Date: November 1, 2010

Applicant: A Tree Service & Landscape, Inc.

Address of Property: 1849 East 38th Street

Project Name: A Tree Service & Landscape, Inc.

Contact Person and Phone: Denise Volk, (612) 724-4978

Planning Staff and Phone: Shanna Sether, (612) 673-2307

Date Application Deemed Complete: October 10, 2010

End of 60-Day Decision Period: December 9, 2010

Ward: 12 **Neighborhood Organization:** Standish-Ericcson Neighborhood Association

Existing Zoning: C1 Neighborhood Commercial District

Proposed Zoning: Not applicable

Zoning Plate Number: 32

Legal Description: Not applicable

Proposed Use: Contractor's office

Concurrent Review:

- Conditional use permit to allow for a contractor's office
- Variance to increase the maximum height of a fence the required front yard along Longfellow Avenue and East 38th Street from 3 ft. to 6 ft. on a reverse corner lot.

Applicable zoning code provisions: Chapter 525, Article V Conditional Use Permits, Chapter 525, Article VI Fences, and Chapter 548 Commercial Districts

Background: The subject property is approximately 84 ft. by 106 ft. (8,904 sq. ft.) and was originally constructed as an automobile convenience facility with minor automobile repair in 1960. The current owners purchased the property in February 2008 for the purpose of having a garden store and a location for an office for A Tree Service & Landscaping, Inc. A Tree Service & Landscaping, Inc. trims and removes trees, grinds sumps, trims and shapes hedges and removes hedges and roots. All of the

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equipment for A Tree Service & Landscape, Inc. is stored off-site. One of the property/business owners parks her vehicles on-site during business hours. This vehicle has advertising for A Tree Service & Landscape, Inc.

The applicant has indicated that the primary use of the existing site is a greenhouse, lawn and garden supply store. They sell seasonal gardening merchandise, including mulch, dirt, trees, shrubs and flowers. In addition, they also sell pumpkins in the autumn months and Christmas trees, wreaths and dogwood in the winter.

A determination has been made that there are two principal uses of the property; a greenhouse, lawn and garden supply store and a contractor's office. A greenhouse, lawn and garden supply store is a permitted use in the C1 District. However, a contractor's office is a conditional use in the C1 District; therefore, the applicant has applied for a conditional use permit.

The subject site is located on a reverse corner lot with substantial street front along 38th Street East and Longfellow Avenue. The maximum height of a fence within the required front yards along 38th Street East and Longfellow Avenue is 3 feet. There is an existing 6 ft. chain-link fence on the subject property that was constructed within the last 2 years. The applicant installed the fence to deter theft of merchandise stored outdoors for the lawn and garden supply store. The applicant is requesting to retain the existing 6 ft. fence and is therefore requesting a variance to increase the maximum height of a fence from 3 ft. to 6 ft.

As of writing this staff report, staff has received a letter from the Standish-Ericsson Neighborhood stating support for the project. Staff will additional forward comments, if any are received, at the City Planning Commission meeting.

CONDITIONAL USE PERMIT – to allow for a contractor's office

Required Findings for the Conditional Use Permit:

1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.

The applicant is proposing to have an office for A Tree Service & Landscape, Inc., a contracting service, within an existing structure. All storage of maintenance equipment will occur off-site. The applicant will be making site improvements with landscaping and has existing fencing. The proposed contractor's office will not prove detrimental to public health, safety, comfort or general welfare provided the development complies with all applicable building codes and life safety ordinances.

2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

The surrounding area is fully developed. The properties immediately adjacent are single-family dwellings. The properties across East 38th Street and Longfellow Avenue are commercial uses. The zoning classifications near the site are C1 and R1A. The proposed use should not have negative impacts on surrounding properties.

3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.

The site is served by existing infrastructure. Vehicle access would be from Longfellow Avenue through existing curb cuts and the existing curb cut along East 38th Street will be closed.

4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.

The proposed use would be required to provide four off-street spaces, however, because the building was constructed prior to July 19, 1963, off-street parking is not required per 541.70; however, existing accessory parking and loading facilities shall not be reduced below the requirements for a similar new use. There is an existing asphalt paved area at the side of the building that would accommodate approximately 4 off-street spaces along the west property line that serves as the parking area. In addition, traffic congestion may be further minimized through the use of other transportation options near the site, including the #23 or #14 bus lines along Cedar Avenue.

5. Is consistent with the applicable policies of the comprehensive plan.

THE MINNEAPOLIS PLAN FOR SUSTAINABLE GROWTH (2008)

The Minneapolis Plan for Sustainable Growth, the site is designated as Mixed Use, is located on 38th Street East, which is considered to be a community corridor and is located in a Neighborhood Commercial Node.

The mixed use designation allows for mixed use development, including mixed use with residential. Mixed use may include either a mix of retail, office or residential uses within a building or within a district.

Policy 1.4: Develop and maintain strong and successful commercial and mixed use areas with a wide range of character and functions to serve the needs of current and future users.

1.4.1 Support a variety of commercial districts and corridors of varying size, intensity of development, mix of uses, and market served.

1.4.2 Promote standards that help make commercial districts and corridors desirable, viable, and distinctly urban, including: diversity of activity, safety for pedestrians, access to desirable goods and amenities, attractive streetscape elements, density and variety of uses to encourage walking, and architectural elements to add interest at the pedestrian level.

1.4.3 Continue to implement land use controls applicable to all uses and structures located in commercial districts and corridors, including but not limited to maximum occupancy standards, hours open to the public, truck parking, provisions for increasing the maximum height of structures, lot dimension requirements, density bonuses, yard requirements, and enclosed building requirements.

1.4.4 Continue to encourage principles of traditional urban design including site layout that screens off-street parking and loading, buildings that reinforce the street wall, principal entrances that face the public sidewalks, and windows that provide “eyes on the street”.

In Minneapolis, streetcar routes and the traditional urban corridors they create serve as principal travel routes. The rhythm of development in community corridors contributes to the dynamic nature of city living and is a source of pride and identity for residents and workers. Many of these streets are designated here as Community Corridors because they serve distinct residential neighborhoods and contain limited commercial and mixed uses.

Community Corridors support limited commercial uses that are frequently concentrated in Neighborhood Commercial Nodes. Proposed commercial uses are evaluated according to their impacts on residential character. Design and development along Community Corridors is oriented towards the pedestrian experience and residential quality of life. These streets carry moderate volumes of traffic. These streets are important travel routes for both neighborhood residents and through traffic. In many cases, they are part of the Primary Transit Network that provides frequent, high quality transit service citywide.

Policy 1.9: Through attention to the mix and intensity of land uses and transit service, the City will support development along Community Corridors that enhances residential livability and pedestrian access.

1.9.1 Support the continued presence of existing small-scale retail sales and commercial services along Community Corridors.

1.9.2 Support new small-scale retail sales and services, commercial services, and mixed uses where Community Corridors intersect with Neighborhood Commercial Nodes.

1.9.3 Discourage uses that diminish the transit and pedestrian oriented character of Community Corridors, such as automobile services and drive-through facilities.

Minneapolis' Neighborhood Commercial Nodes are typically comprised of a handful of small- and medium-sized businesses focused around one intersection. These nodes primarily serve the needs of the immediate surrounding area, although they may also contain specialty stores that serve a regional client base. Neighborhood business prosperity varies throughout the city and is affected by a variety of factors, including the buying power in the surrounding locality and competition from other commercial areas.

The character of Neighborhood Commercial Nodes is defined by the limited scale of businesses operating in these locations. Related to the city's historical growth pattern, these nodes generally consist of traditional commercial storefront buildings. They maintain a building typology and pedestrian orientation that is appropriate for the surrounding residential neighborhoods.

Policy 1.11: Preserve and enhance a system of Neighborhood Commercial Nodes that includes a mix of housing, neighborhood-serving retail, and community uses.

1.11.2 Support the continued presence of small-scale, neighborhood serving retail and commercial services in Neighborhood Commercial Nodes.

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1.11.3 Discourage new or expanded uses that diminish the transit and pedestrian character of Neighborhood Commercial Nodes, such as some automobile services and drive-through facilities.

1.11.7 Encourage the redevelopment of vacant commercial buildings and direct City services to these areas.

Policy 4.2: Promote business start-ups, retention and expansion to bolster the existing economic base.

4.2.1 Promote access to the resources and information necessary for successful operation of healthy businesses.

4.2.5 Encourage small business opportunities, such as appropriate home occupations and business incubators, in order to promote individual entrepreneurs and business formation.

Staff believes that the proposed project is in conformance with the above-stated policies.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.

In addition to the conditional use permit, the applicant is applying for a variance to increase the maximum height of a fence the required front yard along Longfellow Avenue and East 38th Street from 3 ft. to 6 ft. on a reverse corner lot. The applicant is proposing to landscape the boulevard and provide additional landscaping on-site, while removing bituminous, in addition to the landscaping materials for sale. With the installation of the proposed and recommended site improvements, the building and intended uses will comply with the applicable regulations of the zoning district.

Variance – to increase the maximum height of a fence the required front yard along Longfellow Avenue and East 38th Street from 3 ft. to 6 ft. on a reverse corner lot.

Findings Required by the Minneapolis Zoning Code - Variance:

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.

The applicant has requested a variance to increase the maximum height for a chain-link fence located in the required front yard from 3 ft to 6 ft. on a reverse corner lot. The required front yard and subsequent fence height requirement is based on the type of lot and the adjacent residential zoning and use of the property. The use of the subject property is a lawn and garden supply store, which allows for the outdoor storage of merchandise. Based on the platting and adjacent zoning the maximum height of a fence is only allowed to be 3 ft. in height, which does not allow for the outdoor storage of merchandise without the threat of theft and does not allow for a reasonable use of the property. Staff believes that a decorative ornamental fence in the required front yard would be more desirable, but understands that the existing fence is in good condition and has only been constructed within the last two years, albeit in violation of City ordinance. Staff

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believes that if the fence were to be damaged or in need of repair, it shall be replaced with an open, decorative fence, not less than 60% opaque.

- 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 conditions upon which the fence height variance is requested are unique to the property due to the platting of the subject site, the adjacent zoning and uses. These are circumstances not created by the applicant.

- 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.**

Staff believes that the proposed fence will be keeping with the spirit and intent of the ordinance and will not alter the essential character of the surrounding neighborhood. The applicant is proposing to landscape the boulevard and provide additional landscaping on-site, in addition to the landscaping materials for sale. Staff believes that a decorative ornamental fence in the required front yard would be more desirable, but understands that the existing fence is in good condition and has only been constructed within the last two years. Staff believes that if the fence were to be damaged or in need of repair, it shall be replaced with an open, decorative fence, not less than 60% opaque.

- 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.**

Granting the variance to increase the maximum height of the fence would likely have no impact on the congestion of area streets or fire safety, nor would the fence be detrimental to the public welfare or endanger the public safety. The applicant has stated that the fence will help to ensure that the lawn and garden supplies will not be stolen.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission and City Council adopt the above findings and **approve** the conditional use permit to allow for a contractor's office for the property located at 1849 East 38th Street in the C1 Neighborhood Commercial District, subject to the following conditions of approval:

1. CPED Planning staff review and approval of the final site, elevations and landscaping plans.
2. All site improvements shall be completed by November 1, 2011, unless extended by the Zoning Administrator, or the permit may be revoked for noncompliance.

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3. The use shall not involve any outdoor storage of machinery or equipment related to the landscape contracting business.
4. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission and City Council adopt the above findings and approve variance to increase the maximum height of a fence the required front yard along Longfellow Avenue and East 38th Street from 3 ft. to 6 ft. on a reverse corner lot located at 1849 East 38th Street in the C1 Neighborhood Commercial District, subject to the following conditions of approval:

1. CPED Planning staff review and approval of the final site, elevations and landscaping plans.
2. All site improvements shall be completed by November 1, 2011, unless extended by the Zoning Administrator, or the permit may be revoked for noncompliance.
3. If the fence were to be damaged or in need of repair, it shall be replaced with vinyl-coated chain link or another open, decorative fence, not less than 60 percent opaque.

Attachments:

- 1) Written descriptions and findings submitted by the applicant
- 2) Copy of e-mail sent to SENA and CM Colvin-Roy
- 3) Correspondence from the neighborhood organization and neighbors
- 4) Zoning map
- 5) Site plan
- 6) Photographs