

Department of Community Planning and Economic Development - Planning Division Report

Variance Request
BZZ-1835

Date: August 19, 2004

Applicant: Octavio Zeas and Blanca Bautista

Address of Property: 2444 Chicago Avenue South

Contact Person and Phone: Octavio Zeas and Blanca Bautista, 612-871-0349

Planning Staff and Phone: Tanya Holmgren, 612-673-5887

Date Application Deemed Complete: June 28, 2004

End of 60 Day Decision Period: August 27, 2004

End of 120 Day Decision Period: October 26, 2004

Appeal Period Expiration: August 30, 2004

Ward: 8 Neighborhood Organization: Central Neighborhood Improvement Association

Existing Zoning: R4, Multiple-family District

Proposed Use: Conversion of a duplex to a triplex.

Proposed Variance: A variance to reduce the required lot area from 5,000 sq. ft. to 4,400 sq. ft. (12%) to allow for the conversion of a two-family dwelling to a triplex, a variance to reduce the required parking from 3 to 0 where 2 are grandfathered, a variance to increase the maximum allowed impervious surface from 75% to 97%, a variance to increase the maximum height of a fence in the front yard from 4 ft. to 6 ft., a variance to allow parking in a front yard, a variance to allow parking within 6 ft. of a structure, a variance to allow parking not located entirely behind a dwelling, and a variance to allow parking between a principal structure and a front lot line.

Zoning code section authorizing the requested variance: 525.520 (2b) (7) (15) (5) (8) (8) (8)

Background: The applicants have received a violation letter regarding parking, impervious surfacing, and fence height. The subject site is approximately 50 ft. x 88 ft. (4,400 sq. ft.). The site consists of an existing duplex with no legal parking. The applicant is proposing to convert the existing duplex into a triplex dwelling. The lot area requirement for a triplex in the R4 District is 5,000 sq. ft. This requirement may be varied up to 30 percent. The applicant is proposing a 12 percent variance. The applicant is applying for a variance to a parking space in conjunction with the addition of the third unit.

The property is located at the corner of Chicago Avenue South and 25th Street East and fronts onto Chicago Avenue South. However, the adjacent lot to the west faces 25th Street East. Thus, the subject site is considered a reverse corner lot and is required to maintain two front yard setbacks. In the R4 District, residential structures are required to maintain a minimum 15ft. front yard setback. Parking is not permitted in the required front yards. The property currently requires two parking spaces for the two existing dwelling units. The proposed additional third dwelling unit is also required to provide a third parking space. The property currently has no parking that meets the requirements to count toward their required spaces. However, the property is grandfathered for two spaces and the applicant is attempting to provide on-site parking.

The subject site has been paved in concrete on the south, east, and west sides of the property. The subject site does have an existing curb cut located at the rear of the property off of 25th Street East. Parking has been occurring to the rear of the dwelling and next to the dwelling along the 25th Street East side of the property. Staff received a phone call from the neighborhood group regarding the concrete on the property. They stated funds are available to aid in the removal of some of the concrete on the subject property.

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.**

Lot area: The applicant is seeking a variance to reduce the required lot area from 5,000 sq. ft. to 4,400 sq. ft. (12%) to allow for the conversion of a two-family dwelling to a triplex in the R4 District. The property is a reverse corner lot and cannot adequately accommodate the number of parking spaces required for a triplex. Strict adherence to the regulations does not allow for the addition of the third dwelling unit, which may not be a reasonable use of the property based on the lot size, floor plan of the existing dwelling, and the parking requirement. Staff believes two dwelling units are appropriate based on the lot size, configuration of the existing dwelling, and the lack of available on-site parking.

Parking reduction: The applicant is seeking a variance to reduce the required parking from 3 to 0 where 2 are grandfathered. The requirement of three parking spaces is the number required for the 3 proposed dwelling units. The parking on site was not established legally and is not in conformance with the regulations. Strict adherence to the regulations does not allow for a third parking space on the property. Although the two existing parking spaces were established illegally, staff believes that it is reasonable to allow two parking spaces to remain on site in conformance with the parking requirement for two units. Staff does not believe that it is reasonable to grant a further variance to allow for a third parking space for a third unit that is not in conformance with the property.

Impervious surface: The applicant has requested a variance to increase the permitted impervious surface on their property from 75% to 97%. The property can be put to a reasonable use under

strict adherence to regulations of the code. Concrete does not allow greater usability of front yard than grass would. Impervious surfacing to the rear of the dwelling is a reasonable use of the property to allow for a hard surfaced parking area. Strict adherence to the impervious surface limitations do not cause an undue hardship on the property.

Fence height: The applicant is seeking a variance to increase the maximum height of a fence in the required front yard from 4 ft. to 6 ft. The applicants state they require the 6 ft. tall fence to prevent people from entering their property. Staff believes that a fence 4 ft. in height will adequately provide the applicants desired separation from the property and the public sidewalk. This property can be put to reasonable use within the regulations of the code.

Parking in the front yard, Parking within 6 ft. of a dwelling, Parking not entirely located behind a dwelling, Parking between a principal dwelling and front lot line: The applicant has requested a variance to allow parking not entirely behind the principal structure on a reverse corner lot, a variance to allow parking between a principal dwelling and front lot line, a variance to allow parking within 6 ft. of a principal structure, and a variance to allow parking in the front yard along 25th Street East of this property. Since this lot is considered a reverse corner lot, the property must maintain front yard requirements on both Chicago Avenue South and 25th Street East. Strict adherence to the regulations would not allow for parking in any location on this site, which causes an undue hardship on the property. Staff believes that parking adjacent to a residential use is a reasonable use of the property and that the front yard setback requirement imposed along 25th Street East creates a hardship for the property owner since the property is required to provide a minimum of two spaces for the two legal dwelling units.

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.**

Lot area: The conditions upon which the variance is requested are not unique to the parcel of land and were created by the property owner. The lot is 4,400 sq. ft. in size and is zoned R4, Multiple-family District. The subject site consists of an existing duplex building with no legal parking provided on-site. An additional dwelling unit appears to have been added illegally to the basement, due to the lack of egress windows to the finished basement. Staff believes that while the variance needed to accommodate the additional unit (12%) does not appear to be significant, the variance is necessary because the property does not meet the minimum lot size of 5,000 sq. ft. which is required for any type of dwelling. The property is a legal nonconforming use consisting of two legal dwelling units on a lot with less than 5, 000 sq. ft. Staff believes adding a third dwelling increases the nonconformity of the property.

Parking reduction: The conditions upon which the variance is requested are unique to the parcel and have not been created by the applicant. The location of the existing dwelling and the fact the property is a reverse corner lot makes it difficult for the property to meet the regulation requiring one parking space per dwelling unit. However, the property is already providing parking for two

dwelling units. Staff believes that granting a variance for a third parking space increases the parking nonconformity on the property.

Impervious surface: The conditions upon which the variance is requested are not unique to the parcel of land and were created by a previous property owner. The circumstances are not unique to this parcel of land. Staff could not establish any circumstances unique to the parcel or a precedent in the area that would warrant impervious surfacing in the front yard along both Chicago Avenue South and 25th Street East. Staff believes that the applicant is creating the circumstances by proposing impervious surfacing greater than allowed by the ordinance. Staff believes that portions of the concrete can be removed to comply with the ordinance.

Fence height: The conditions upon which the variance is requested are not unique to the parcel of land and were created by the property owner. The circumstances are not unique to this parcel of land. Fences 6 ft. in height are not permitted in front yards or in corner side yards adjacent to principal residential structures. Staff believes that a 4 ft. fence will adequately provide separation from the property and the public sidewalk without creating a fortress like appearance. Staff could not establish any circumstances unique to the parcel or a precedent in the area that would warrant a 6 ft. high fence in the front yard. Staff believes that the applicant is creating the circumstances by proposing a fence higher than allowed by the ordinance.

Parking in the front yard, Parking within 6 ft. of a dwelling, Parking not entirely located behind a dwelling, Parking between a principal dwelling and front lot line: The conditions upon which the variance is requested are unique to the parcel and have not been created by the applicant. Two 15 ft. front yard setback requirements imposed on the property is a circumstance that is unique to the parcel of land and has not been created by the applicant. The subject property is 88 ft. deep, the existing two-family dwelling is setback approximately 19 ft. and the existing dwelling is approximately 60 ft. long, this leaves approximately 9 ft. to the rear of the property for parking and zero ft. between the house and the parking area. The applicants are proposing to park the vehicles in tandem to the rear of the dwelling, a portion of one of the vehicles will be located within the 15 ft. required yard. Staff believes that the applicant should be allowed to provide two parking spaces on-site to accommodate two dwelling units. However, staff believes that the site will not accommodate a third parking space for a third unit and creates a nonconforming situation.

- 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.**

Lot area: Staff believes that granting the lot area variance will alter the essential character of the surrounding neighborhood or be injurious to the use or enjoyment of other property in the vicinity. Staff does not believe that the additional unit meets the intent of the ordinance since the property cannot adequately address the required number of parking spaces for the two legal dwelling units. Staff believes adding a third unit increases the nonconformity of the property which may negatively impact the surrounding area.

Parking reduction: Staff believes that granting the parking variance will alter the essential character of the surrounding neighborhood or be injurious to the use or enjoyment of other property in the vicinity. The applicant is currently providing parking on the property that cannot comply with all ordinance requirements for two legal dwelling units. Staff believes adding a third parking space increases the nonconformity of the property which may negatively impact the surrounding area.

Impervious surface: Staff believes that granting the impervious surface variance will alter the essential character of the surrounding neighborhood, by being the only property on the block to have 97 percent of their property paved. Staff does not believe paving in the front yard meets the intent of the ordinance. The amount of paving will be injurious to other properties by causing run off onto the two adjacent properties and the public street. Additionally, allowing 97 percent impervious surfacing will be precedent setting. Staff believes that portions of the concrete can be removed to comply with the ordinance.

Fence height: Staff believes that granting the fence height variance to 6 ft. will alter the essential character of the surrounding neighborhood, by being the only property on the block to have 6 ft. fence in the required front yard. Staff does not believe a 6 ft. fence in the front yard meets the intent of the ordinance. A 4 ft. fence provides separation from the property and the public sidewalk without creating a fortress like appearance. Staff does not believe that the area consists of similar types of fences and cannot establish a hardship or unique circumstance that would allow for a fence to exceed the permitted 4 ft. maximum. The 6 ft. tall fence may not be injurious to other properties, but it will be precedent setting.

Parking in the front yard, Parking within 6 ft. of a dwelling, Parking not entirely located behind a dwelling, Parking between a principal dwelling and front lot line: Staff believes that the parking pad will not alter the essential character of the surrounding neighborhood since there is no rear yard on the subject property since it is a reverse corner lot. Staff believes the variance meets the intent of the ordinance and will not be injurious to the use or enjoyment of other property in the vicinity because they are complying with the parking requirement for two dwelling units on the portion of property that functions as a rear yard.

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.**

Lot area: Granting the lot area variance would likely increase the congestion of area streets and could be detrimental to the public welfare or endanger the public safety since the property cannot adequately address the required number of parking spaces for three dwelling units. There is a potential threat to fire safety in the existing structure because there is no egress window to the finished basement third unit.

Parking reduction: Granting the parking reduction variance for the third dwelling unit may have an impact on congestion of area streets. The proposed parking variance may be detrimental to the

public welfare or endanger the public safety since the property will be providing two on-site parking spaces for two legal dwelling units that are not in compliance with the ordinance.

Impervious surface: Granting the impervious surface variance would likely have no impact on congestion of area streets or fire safety. However, it would be detrimental to the public welfare or endanger the public safety by increasing storm water run off to public streets and to the two adjacent properties.

Fence height: Granting the fence height variance would likely have no impact on congestion of area streets or fire safety. Nor would the fence be detrimental to the public welfare or endanger the public safety.

Parking in the front yard, Parking within 6 ft. of a dwelling, Parking not entirely located behind a dwelling, Parking between a principal dwelling and front lot line: Granting the parking location variance would likely have no impact on congestion of area streets or fire safety. Nor would the proposed parking slab be detrimental to the public welfare or endanger the public safety since the property is complying with the parking requirement for two dwelling units in the area of the property that functions as a rear yard.

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

The Community Planning and Economic Development Department – Planning Division recommends that the Board of Adjustment adopt the finding above and **deny** the variance to reduce the required lot area from 5,000 sq. ft. to 4,400 sq. ft. to allow for the conversion of a two-family dwelling to a triplex, **deny** the variance to reduce the required parking from 3 to 0 where 2 are grandfathered, **deny** the variance to increase the maximum allowed impervious surface from 75% to 97%, **deny** the variance to increase the maximum height of a fence in the front yard from 4 ft. to 6 ft., **approve** the variance to allow parking in a front yard, **approve** the variance to allow parking within 6 ft. of a structure, **approve** the variance to allow parking not located entirely behind a dwelling, and **approve** the variance to allow parking between a principal structure and a front lot line all to allow parking for a duplex subject to the following conditions:

1. Review and approval of final elevation and site plans by the CPED Department Planning Division.
2. That the applicant remove all concrete from the front yard along Chicago Avenue South except for a 4 ft. walkway from the front of the dwelling to the public sidewalk along Chicago Avenue South and install landscaping.
3. That the applicant remove all concrete from the front yard along 25th Street East to a line extended from the southeast corner of the open porch to the public sidewalk and install landscaping.
4. That the applicant remove a 1 ft. strip of concrete from the north interior side yard, to prevent parking within 1 ft. of the property line and install landscaping.