

Department of Community Planning and Economic Development - Planning Division
Conditional Use Permit and Variance
BZZ-4534

Date: September 14, 2009

Applicant: Brad Isaacson

Address of Property: 4831 Nicollet Avenue S

Project Name: Tangletown Dental

Contact Person and Phone: Taunya Nelson (612) 216-2194

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: 11 **Neighborhood Organization:** Tangletown Neighborhood Association

Existing Zoning: OR1 Neighborhood Office Residence District

Zoning Plate Number: 31

Legal Descriptions: Not applicable

Existing Use: Vacant

Concurrent Review:

Conditional Use Permit: To expand a dental clinic

Variance: To reduce the required front yard setback along the Nicollet Avenue frontage from 31 feet to 20 feet.

Variance: To reduce the required front yard setback along the Rustic Lodge frontage from 30 feet to 10 feet for the structure and from 30 feet to 0 feet for surface parking.

Variance: To reduce the rear yard setback from 7 feet to 0 feet.

Applicable zoning code provisions: Chapter 525, Article VII Conditional Use Permits; Chapter 525, Article IX, Variances; Chapter 547 Office Residence Districts

Background: Brad Isaacson has applied for a conditional use permit and setback variances to allow for expansion of an existing dental clinic at 4831 Nicollet Avenue. The subject site is located on the southeast corner of the intersection of Nicollet Avenue and Rustic Lodge E. Dental clinics are a conditional use in the OR1 District. The proposed project includes a 596 square foot building addition, a handicap accessible entrance on the west side of the building, reconfiguring the surface parking lot and installing landscaping. Due to the topography of the site, the parking in the rear of the site is

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considerably below the front grade and not handicap accessible. The applicant is pursuing permits through Public Works to locate a handicap accessible parking space on Nicollet Avenue.

The required front yard setback in the OR1 District is 15 feet. However, the established front yard of the existing residential structure to the south along the Nicollet Avenue frontage is 31 feet. The Zoning Code states that the front yard shall be increased where the established front yard of the closest principal building originally designated for residential purposes located on the same block face on either side of the property exceeds the front yard required by the zoning district. Therefore, a setback of 31 feet is required for the front yard on the west side of the property. The proposed building will be setback 20 feet in this location, requiring a variance to this provision.

The property is a reverse corner lot, therefore also having a front yard along the north property line, adjacent to Rustic Lodge. The established front yard of the property to the east of the site is 30 feet. A variance from 30 feet to 10 feet is requested for the building addition along this frontage, and a variance from 30 feet to 0 feet is requested for the parking area. The rear yard setback requirement for non-residential uses in the OR1 District is 5 feet plus 2X where X is the number of stories above the first floor. A one-story trash enclosure is proposed within this setback and the applicant has requested a setback from 7 feet to 0 feet.

In 2005 the City a conditional use permit to allow for expansion of the dental clinic. This conditional use permit was never implemented. The City also approved setback variances for the addition at that time, including a front yard setback variance along the Nicollet Avenue frontage from 31 feet to 20 feet, a front yard setback variance along the Rustic Lodge frontage to 10 feet and a variance to allow parking within the required front yard. These variances were not implemented either.

As of writing this staff report, staff has not received any official correspondence from the neighborhood group. Staff will forward comments, if any are received, at the City Planning Commission meeting.

CONDITIONAL USE PERMIT (to allow expansion of a dental clinic)

Findings as Required by the Minneapolis Zoning Code:

The Minneapolis City Planning Department has analyzed the application and from the findings below concludes that the establishment, maintenance, or operation of the proposed conditional use:

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

The site is zoned OR1 and contains an existing non-residential building. A dental clinic has been located on the site since at least 1975. The expansion of this clinic is not expected to endanger the public healthy, safety, comfort of general welfare. A conditional use permit for a nearly identical expansion of the clinic was approved by the City in 2005 but never implemented.

- 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.**

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The proposed clinic expansion is not expected to impede the normal and orderly development of surrounding property. The use has been located on the site for over 30 years and the project includes a number of aesthetic improvements to the property. The intersection of Nicollet Avenue and Rustic Lodge contains two other non-residential uses, an office structure and a church, as well as an apartment building. The use is separated from the residential use to the east by a public alley. The proposed addition and other exterior building modifications to serve this commercial use will be performed in a manner that retains the residential character of the structure. As such, the expansion of the existing facility is not expected to have an adverse impact on surrounding property.

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

Roads and utilities are existing and adequate. Access to the parking area is proposed to be moved from the alley to the public street as part of the project. This reconfiguration will eliminate the need for commercial traffic to utilize this alley, which predominantly serves residential uses.

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

As part of the project the parking lot will be reconfigured to move the access from the alley to Rustic Lodge. The parking area is expected to function more efficiently with the revised access and layout. The minimum vehicle parking requirement and bicycle parking requirement for the use have been met. Bicycle parking is proposed in the right-of-way between the building and Nicollet Avenue. As such, no traffic congestion is expected to result from the proposed dental clinic expansion. Public Works has reviewed the project as well and the Preliminary Development Review report is attached.

5. The conditional use is consistent with the applicable policies of the comprehensive plan.

The Minneapolis Plan for Sustainable Growth identifies Nicollet Avenue as a Community Corridor in this location. The site is located half a block south of the neighborhood commercial node at Nicollet Avenue and 48th Street. Community Corridors support limited commercial uses that are frequently concentrated in Neighborhood Commercial Nodes. Specific policies that relate to the project are as follows:

Policy 1.8: Preserve the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses.

1.8.2 Advance land use regulations that retain and strengthen neighborhood character, including direction for neighborhood serving commercial uses, open space and parks, and campus and institutional uses.

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.

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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.

Permitting the expansion of an existing dental clinic on a Community Corridor and in close proximity to a Neighborhood Commercial Node is consistent with the above policies and intent of the comprehensive plan.

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.

Clinics are limited to a maximum gross floor area of 2,000 square feet in the Office Residence Districts. The gross floor area of the clinic will be 1,436 square feet after the expansion. While the proposed addition does not require site plan review, it is subject to Section 535.95 of the Zoning Code which states,

“Nonresidential buildings shall be oriented so that at least one (1) principal entrance faces a public street rather than the interior of the site, clear and well-lighted walkways at least four (4) feet in width shall connect building entrances to the adjacent public sidewalk and to any parking facilities located on the site, and shall maintain compliance with the nonresidential windows requirements of Chapter 530, Site Plan Review. A nonresidential building nonconforming as to these requirements shall have all the rights of a conforming building, except that said building shall not be enlarged, altered, or relocated in such a way as to increase its nonconformity with these requirements.”

The existing building is non-conforming as to the window requirements on the east, west, and north elevations. The total window percentage on the west and north elevations will be increasing with the proposed project, reducing the level of nonconformity. The proposed addition will decrease the window percentage on the second floor of the east elevation from 12 percent to 10.4 percent. However, this meets the minimum requirement of 10 percent for this upper floor.

The site plan shows a landscaped yard 7 feet in width between the parking area and south lot line. This landscaped yard will include 6 overstory trees. A cedar fence is also shown to provide additional screening in this location. With the exception of the encroachment for the trash enclosure, a landscaped yard 7 feet in width is also proposed between the parking area and the east property line, adjacent to the alley. Three additional trees are proposed in this location and the cedar fence is continued. Landscaping including 2 canopy trees and 6 shrubs is proposed between the parking lot and Rustic Lodge. The width of this landscaped area is reduced per the requested variance to allow parking within the required setback.

With the approval of the conditional use permit and requested setback variances, the use will conform to the applicable district regulations.

VARIANCE (to reduce the front yard and rear yard setbacks)

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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.**

Front yard variance along Nicollet Avenue:

The required setback along this frontage has been increased from 15 feet to 31 feet due to the established front yard setback of the property to the south. A variance from 31 feet to 20 feet has been requested to allow for the building addition. This addition is proposed, in part, to allow handicap accessibility to the front entrance. Allowing an addition that provides handicap accessibility and complies with the base setback for the OR1 District allows reasonable use of the property.

Front yard variance along Rustic Lodge:

The property is a reverse corner lot, therefore also having a front yard on Rustic Lodge. The required setback along this frontage is increased from 15 feet to 30 feet, due to the established front yard of the property to the east, across the alley. Due to the curvature of Rustic Lodge, the entire property is located in front of the property to the east. In that regard, the property would not be able to be put to reasonable use without a variance of some degree along this frontage. Reducing the front yard setback from 30 feet to 10 feet for the structure and from 30 feet to 0 feet for the parking allows reasonable use of the property.

Rear yard setback variance:

The applicant is also requesting a variance to the rear yard setback from 7 feet to 0 feet for the trash enclosure. Given the topography and irregular shape of the property, the potential locations for a trash enclosure are very limited. Requiring strict adherence to the ordinance for this enclosure may cause undue hardship.

- 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.**

Front yard variance along Nicollet Avenue:

The required setback along this frontage has been increased from 15 feet to 31 feet due to the established front yard setback of the property to the south. This circumstance is unique to the parcel and has not been created by the property owner. The front yard setback required in the OR1 District is 15 feet and the proposed building will be setback 20 feet. Permitting a building addition that meets the base setback requirement for the zoning district allows reasonable use of the property. A variance to reduce the front yard setback from 31 feet to 20 feet was previously approved by the City in 2005 but not implemented.

Front yard variance along Rustic Lodge:

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The property is a reverse corner lot, therefore also having a front yard on Rustic Lodge. The required setback along this frontage is increased from 15 feet to 30 feet, due to the established front yard of the property to the east, across the alley. The proposed setback on this frontage is 10 feet for the building addition and 0 feet for the surface parking. The established front yard of the adjacent property creates a greater front yard requirement. Furthermore, the parcel is a reverse corner lot and due to the curvature of Rustic Lodge, the lot is irregularly shaped. These circumstances are all unique to the property and not created by the property owner. Granting of the requested variances would provide reasonable use of the property. A variance to reduce this front yard setback to 10 feet for a building addition, and to allow parking in the front yard, was approved by the City in 2005. A variance to reduce the front yard setback along this frontage to 10 feet 4 inches was also approved in 1998. Neither variance was implemented.

Rear yard setback variance:

The applicant is also requesting a variance to the rear yard setback from 7 feet to 0 feet for the trash enclosure. The existing trash enclosure on the property is located in close proximity to the proposed location, with a setback of 1.2 feet from the property line. The topography of the site creates a unique condition which limits potential locations for a trash enclosure. Granting this variance will allow 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.**

Front yard variance along Nicollet Avenue:

Reducing the front yard setback from 31 feet to 20 feet for the proposed building addition is not expected to alter the character of the locality or be injurious to adjacent properties. The residential building to the north, across Rustic Lodge, is located on the front property line. The proposed setback is in keeping with the base front yard setback for the OR1 District.

Front yard variance along Rustic Lodge:

Reducing the front yard setback from 30 feet to 10 feet for the building addition and from 30 feet to 0 feet for the surface parking is not expected to be injurious to other property in the vicinity or alter the character of the surrounding area. The curvature of Rustic Lodge puts the entire site in front of the adjacent residential property to the east. A variance to allow a building addition and parking to encroach into this required yard is therefore not expected to have an impact on the neighboring property.

Rear yard setback variance:

The applicant is also requesting a variance to the rear yard setback from 7 feet to 0 feet for the trash enclosure. The existing trash enclosure on the property is located in close proximity to the proposed location, with a setback of 1.2 feet from the property line. The trash enclosure is provided to comply with Section 535.80 of the zoning code, which states, “*Refuse storage containers are required to be*

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enclosed on all four sides by screening compatible with the principal structure, not less than two feet higher than the refuse container, or shall be otherwise effectively screened from the street, adjacent residential uses located in a residence or office residence district and adjacent permitted or conditional residential uses.” Therefore this variance request is in keeping with the intent of the ordinance.

The proposed location will limit any impact on adjacent properties, due to the fact that the trash enclosure will be separated from the property to the east by the public alley. There is an additional strip of land 4 feet in width between the property line and the alley, essentially creating a greater setback from the public alley and neighboring properties. The requested setback will therefore not be injurious to the use or enjoyment of adjacent properties.

- 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.**

The proposed variance should not increase the danger of fire or endanger public safety. The required minimum vehicle parking requirement and the minimum bicycle parking requirement have been met.

RECOMMENDATIONS:

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

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the conditional use permit for a dental clinic expansion at the property 4831 Nicollet Avenue, subject to the following conditions:

- 1) 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.
- 2) The applicant shall secure a handicap accessible space within the public right-of-way directly adjacent to the site or shall provide a handicap accessible space on the subject site.
- 3) Landscaping, screening, and curbing shall be installed in the parking area as required by sections 541.360, 530.170, and 530.230 of the zoning code.
- 4) CPED Planning staff review and approval of the final site and landscaping plans.
- 5) All site improvements shall be completed by September 14, 2010, unless extended by the Zoning Administrator, or the permit may be revoked for noncompliance

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

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The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the **front yard setback** requirement from 31 feet to 20 feet along the Nicollet Avenue frontage for property at 4831 Nicollet Avenue.

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

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the **front yard setback** requirement from 30 feet to 10 feet for the building addition and from 30 feet to 0 feet for the surface parking lot along the Rustic Lodge frontage for property at 4831 Nicollet Avenue.

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

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the **rear yard setback** requirement from 7 feet to 0 feet for property at 4831 Nicollet Avenue.

- 1) The proposed trash enclosure shall be constructed in compliance with Section 535.80 of the zoning code.

Attachments:

1. Statements from applicant.
2. PDR report.
3. Zoning maps.
4. Site plans and floor plans.
5. Photos.