

Department of Community Planning and Economic Development—Planning Division
Expansion of a Legal Nonconforming Use and Variances
BZZ-4784

Date: June 28, 2010

Applicant: Colin Hirdman

Address of Property: 3748 Park Avenue South

Contact Person and Phone: Colin Hirdman, (612) 850-4200

Planning Staff and Phone: Janelle Widmeier, (612) 673-3156

Date Application Deemed Complete: June 3, 2010

End of 60 Day Decision Period: August 2, 2010

Ward: 8 Neighborhood Organization: Central (adjacent to Bryant)

Existing Zoning: R1A Single-Family Residential District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 25

Legal Description: Not applicable for this application

Existing Use: Two-family dwelling

Concurrent Review:

Expansion of a nonconforming use to legalize a basement bedroom in a duplex.

Variance to reduce the front yard requirement adjacent to 38th Street East to allow two surface parking spaces and a patio.

Variance to allow parking between a building and the front lot line adjacent to 38th Street East in a residence district.

Applicable Zoning Code Provisions: Chapter 531, Section 531.50(b) and Chapter 525, Article IX Variances, specifically (1) “To vary the yard requirements, including permitted obstructions into required yards not allowed by the applicable regulations.” and (8) “To permit parking that cannot comply with the location requirements for on-site parking, as specified in Chapter 537, Accessory Uses and Structures, and Chapter 541, Off-Street Parking and Loading.”

Background: The applicant is proposing to legalize a basement bedroom and surface parking for the duplex located at the property of 3748 Park Avenue South. The current zoning is R1A, which does not allow two-family dwellings. A two-family dwelling has existed on the property since 1950. A single-family dwelling was originally built on the site. The second dwelling unit was added as an addition at the rear of the original dwelling. The conversion occurred before the zoning did not allow it, therefore it is legally nonconforming. The second unit is one story with a basement level. A living room, kitchen and bathroom are located on the first floor. Although the basement has been finished for living space, it cannot legally be used as a bedroom because the existing stairs do not comply with building code requirements. The applicant proposes to address the building code issues to legalize the basement as a bedroom. Converting space of a nonconforming use to habitable space 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 site is a reverse corner lot with front lot lines adjacent to Park Avenue and 38th Street. Surface parking is located in the required front yard adjacent to 38th Street that is nonconforming. In the residential districts, parking is also not allowed to be located between the principal structure and the front lot line. The applicant is therefore requesting a variance from the yard and location requirements to allow two parking spaces. To bring the parking area closer to compliance, the applicant is proposing to remove some of the existing asphalt in the front yard. Some hard surface will be left near the dwelling to be used as a patio for the residents. The patio would extend more than 4 feet into the front yard, which requires a yard variance.

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

EXPANSION OF NONCONFORMING USE

Findings as Required by the Minneapolis Zoning Code:

The Planning Commission may approve an application if it meets the following standards and all other applicable regulations in the zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

1. A rezoning of the property would be inappropriate.

The future land use map in *The Minneapolis Plan for Sustainable Growth* classifies the use of the site as urban neighborhood. The plan also designates 38th Street as a community corridor. Community corridors support low to medium density. The site is not adjacent to any other land use designations that support higher density zoning. The site is also located within the boundaries of *The 38th Street and Chicago Avenue Small Area / Corridor Framework Plan*. The plan does not have any policies that support higher density at this site. The first zoning district that would allow a two-family dwelling on a lot of this size is the R3 Multiple-Family District. The properties directly to the north, west, and south of the site are zoned R1A. There is R4 zoning on the east side of Park Avenue; however, this section of Park Avenue marks a transition in the neighborhood from medium to low density. A rezoning of the property may not be appropriate.

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

The expansion is compatible with adjacent properties and the neighborhood. The applicant is not changing the footprint of the existing structure or adding building bulk, and the amount of impervious surface would be reduced with the applicant's proposal to legalize two surface parking spaces.

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.

There will be no increase in residential units. With the approval of the variances, there would be adequate off-street parking provided for the property. Therefore no additional traffic, noise, dust, odors or parking congestion is expected with the expansion.

4. The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.

Nonconforming building code issues will be remedied with the expansion. The changes to the use are only internal to the structure. The impervious surface for the parking area would also be reduced. Allowing existing building bulk to be converted to legally habitable space will likely increase the value of the property and contribute to the stability of the neighborhood.

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 Floodway District.

The property is not located in the Floodway District.

VARIANCES: 1) to reduce the front yard requirement adjacent to 38th Street East to allow two surface parking spaces and a patio, and 2) to allow parking between a building and the front lot line adjacent to 38th Street East in a residence district.

Findings Required by the Minneapolis Zoning Code:

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

Yard and parking location variances: The site is a reverse corner lot because the corner lot line along 38th Street is a continuation of the front lot line of the adjacent property to the rear. Therefore, a front yard is required along 38th Street as well as Park Avenue. In the R1A district, the minimum front yard requirement is 20 feet or the established front yard setback established by the adjacent residential building, whichever is greater. The adjacent residence is set back more than 20 feet. Parking is not allowed in a required front yard and it is not allowed to be located between a principal building and the front lot line. The proposed parking location is therefore in the required front yard and a portion of the area would be between the dwelling and front lot line. A patio is a permitted obstruction if it is not more than 50 square feet in area and does not project more than 4 into the front yard. The proposed patio would be less than 50 square feet, but all of it would project into the front yard.

The variance requests are reasonable and strict adherence to the zoning requirements would cause undue hardship. The minimum parking requirement for a two-family dwelling is two off-street spaces (one space per unit). The applicant has a one-car garage and is proposing to park two cars on a parking pad near the alley. There is not another option for providing a second parking space that complies with all zoning requirements because the existing location of the dwelling and garage limits where parking and the patio can be located. Vehicles currently park within 6 feet of the dwelling, which is not allowed. The space between the garage and rear of the dwelling would not be wide enough for a vehicle to be located at least six feet from the dwelling. The applicant is proposing to locate the surface parking at least 6 feet from the dwelling. To maintain room to maneuver a vehicle into and out of the garage, the parking spaces must be located farther east on the site between the dwelling and front lot line. The applicant has indicated that the patio would be used by residents of both dwelling units for outdoor activities. The proposed location could be easily accessed by both 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.**

Yard and parking location variances: A legal nonconforming 2-unit dwelling exists on the property. The use was established before minimum parking requirements were adopted. Currently, the zoning code requires a minimum of one parking space per unit. The site is a reverse corner lot. The existing buildings occupy most of the lot not subject to yard requirements and their location limits where surface parking and a patio can be located. The proposed parking and patio location would be separated from the adjacent residence by an alley. These circumstances are unique to the site and were 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.**

Yard and parking location variances: In general, yard and parking location controls are established to provide for the orderly development and use of land and to minimize conflicts

CPED Planning Division Report
BZZ – 4784

among land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses. The proposed parking and patio location would be separated from the adjacent residence by an alley. An existing wood fence provides screening from the street. The applicant is proposing to remove paving, which would reduce the size of the parking area and bring the site into compliance with the impervious surface requirement. The amount of impervious surfaces on the site (approximately 69 percent) currently exceeds the maximum impervious surface requirements. In the R1A district, up to 65 percent of the lot area can be impervious surfaces. The site plan does not indicate what will happen in the areas where paving is to be removed. Staff is recommending that sod, perennials or shrubs are planted in those areas. With the addition of more landscaping, the granting of the variances would not likely be injurious to the use or enjoyment of other property in the vicinity.

- 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.**

Yard and parking location variances: Allowing two surface parking spaces in addition to the space located in the garage could reduce congestion in the streets. Granting the variances should not increase the danger of fire or endanger public safety.

RECOMMENDATIONS

Recommendation of the Community Planning and Economic Development Department – Planning Division for the Expansion of Nonconforming Use:

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the application for an expansion of a legal nonconforming use to allow a basement bedroom in a duplex located at 3748 Park Avenue South.

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 above findings and **approve** the application for a variance to reduce the front yard requirement adjacent to 38th Street East to allow two surface parking spaces and a patio for the property located at 3748 Park Avenue South, subject to the following conditions:

- 1) Surface parking spaces shall be located at least six feet from the dwelling as required by section 537.80 of the zoning code.
- 2) The hard-surfacing shall be removed as proposed by the applicant and shall be replaced by sod, perennials and/or shrubs.
- 3) Community Planning and Economic Development Department – Planning Division staff review and approval of the final site and landscape plans.
- 4) Site improvements required by the City Planning Commission shall be completed by June 28, 2011, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

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 above findings and **approve** the application for a variance to allow parking between a principal structure and the front lot line (38th Street) in a residential district for the property located at 3748 Park Avenue South.

Attachments:

- 1) Statement of use
- 2) Findings
- 3) Zoning map
- 4) Plans
- 5) Photos