

Department of Community Planning and Economic Development – Planning Division Report**Variance Request
BZZ-1901****Date:** September 2, 2004**Applicant:** Gary Knox**Address of Property:** 4624 Upton Avenue South**Contact Person and Phone:** Gary Knox, (612) 929-2905**Planning Staff and Phone:** Tanya Holmgren, (612) 673-5887**Date Application Deemed Complete:** August 5, 2004**End of 60 Day Decision Period:** October 4, 2004**End of 120 Day Decision Period:** December 3, 2004**Ward:** 13 **Neighborhood Organization:** Linden Hills Neighborhood Council**Existing Zoning:** R1A, Single-family District**Proposed Use:** Construction of a 7 ft. 6 in. tall fence in the side yard.**Proposed Variance:** A variance to increase the maximum height of a fence from 4 ft. to 7 ft. 6 in. in the interior side yard where the adjacent house is closer than 5 ft. to the property line and a variance to increase the height of a fence from 6 ft. to 7 ft. 11 in. in the interior side yard.**Zoning code section authorizing the requested variance:** 525.520 (5)**Background:** The subject site is 42 ft. x 135 ft. (5,670 sq. ft.) and consists of a single-family dwelling with a two car detached garage. The applicant is proposing to construct a 7.5 ft. tall brick and cedar fence in the side yard along the property line to provide privacy for the property from the neighbor. Due to the height of the fence the applicant received a violation letter. The brick fence columns were constructed on top of a retaining wall that averages 10 in. in height above the driveway. The columns are 5.5 ft. and 7.5 ft. in height, measured from grade, including the retaining wall.

Although the columns maintain two separate heights, the fence does not comply with the maximum height regulations. Fences located in the required side yard shall not exceed 6 ft. in height when located entirely behind an adjacent dwelling. Fences located in the required side yard shall not exceed 4 ft. in height above grade when located adjacent to a dwelling that is located less than 5 ft. from the property line. The portion of the fence adjacent to the dwelling to the south was constructed at 7.5 ft. The fence consists of 1 ft. by 2 ft. wide brick columns that are 4 ft. 3 in. and 6 ft. 3 in. in height and solid cedar

fencing that is 3 ft. 10 in. and 5 ft. 10 in. in height. The brick columns have a 3 in. stone cap and were constructed on a retaining wall that is 10 in. above grade, making the overall height of the columns approximately 7.5 ft. tall.

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.**

Fence height: The applicant is seeking a variance to increase the maximum height of a fence from 4 ft. to 7 ft. 6 in. in the interior side yard where the adjacent house is closer than 5 ft. to the property line and a variance to increase the height of a fence from 6 ft. to 7 ft. 6 in. in the interior side yard in order to screen the side yard. The applicant has stated that a taller fence is necessary to provide privacy for their property. Strict adherence to the regulations would not allow for the proposed 7 ft. 6 in. high fence. Staff believes that based on the submitted information a 4 ft. high solid fence in the interior side yard where the adjacent house is closer than 5 ft. to the property line is a reasonable use of the property and would adequately screen the property. Staff also believes that based on the submitted information a 6 ft. high solid fence constructed entirely behind the adjacent dwelling is a reasonable use of the property and would adequately screen the property. Staff believes the property can be put to a reasonable use if the fence were constructed at the maximum height allowed by the regulations.

- 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.**

Fence height: The circumstances upon which the setback variance is requested are not unique to the parcel of property. Staff believes that a 4 ft. high solid fence in the interior side yard where the adjacent house is closer than 5 ft. to the property line is a reasonable use of the property and would adequately screen the property. Staff also believes that a 6 ft. high solid fence constructed entirely behind the adjacent dwelling is a reasonable use of the property and would adequately screen the property. Staff could not establish any circumstances unique to the parcel or a precedent in the area that would warrant a 7.5 ft. high fence in the side yard. Staff believes that the applicant is creating the circumstances by constructing a fence higher than allowed by the ordinance. The applicant did state that they would be willing to construct the cedar portion of the fence in compliance with the regulations. The height of the cedar portion could be constructed to 3 ft. 2 in. in height between the first 6 columns and 5 ft. 2 in. in height between the last 6 columns. However, the columns are still a significant portion of the fence and impact the overall height of the fence.

- 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.**

Fence height: Granting the variance will not be in keeping with the spirit and intent of the ordinance and will alter the essential character of the area or be injurious to the use or enjoyment of other property in the vicinity. As previously mentioned, 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 adjacent to a dwelling that is less than 5 ft. to the property line or a fence that exceeds the permitted 6 ft. located behind the adjacent dwelling. A fence of this nature would create a 'fortress' like environment along the entire length of the property, adjacent to a neighboring property that has a lower grade, which is not consistent with other properties on the block or in the neighborhood or with the intent of the code. The fence will likely be injurious to the adjacent property to the south of the subject property. The fence will be an additional 2 ft. in height taller on the adjacent property to the south, as the grade is lower. Although height is not measured from the adjacent property, the height will still affectively be 9.5 ft. in height. Additionally, granting the variance could be precedent setting in the neighborhood. Staff believes this fence is an example of why the ordinance should be enforced.

- 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.**

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

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 adopt the findings above and **deny** the variance to increase the maximum height of a fence from 4 ft. to 7 ft. 6 in. in the interior side yard where the adjacent house is closer than 5 ft. to the property line and **deny** the variance to increase the height of a fence from 6 ft. to 7 ft. 11 in. in the interior side yard.