

Community Planning and Economic Development Planning Division Report
Expansion of a Nonconforming Use and Variances
BZZ-5445

Date: February 6, 2012

Applicant: Michael Warren

Address of Property: 2844 Irving Avenue South

Contact Person and Phone: Michael Warren, (612) 871-0177

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

Date Application Deemed Complete: January 9, 2012

End of 60 Day Decision Period: March 9, 2012

Ward: 10 **Neighborhood Organization:** East Isles Residents Association

Existing Zoning: R1 Single-Family Residence District and SH Shoreland Overlay District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 24

Legal Description: Not applicable for this application

Existing Use: Two-family dwelling

Concurrent Review:

- Expansion of a nonconforming two-family dwelling located in the R1 district.
- Variance to reduce the established front yard requirement as measured between the two adjacent residential structures to allow a 2 ½ story building and porch addition with steps exceeding six feet in width.
- Variance to reduce the interior side yard requirement from 8 feet to 3.4 feet to allow building additions.
- Variance to increase the maximum floor area ratio from 0.5 to 0.521.

Applicable Zoning Code Provisions: Chapter 525, Article IX Variances, Section 525.520 (1) “To vary the yard requirements, including permitting obstructions into required yards not allowed by the applicable regulations” and (3) “To vary the gross floor area, floor area ratio and seating requirements of a structure or use,” and Chapter 531 Nonconforming Uses and Structures, Section 531.50(b).

Background: The applicant is proposing to construct additions to a two-family dwelling located at the property of 2844 Irving Avenue South. As described in the applicant's project description, the additions will replace some existing floor area as well as add additional floor area. A two-family dwelling is not an allowed use in the R1 district, therefore an expansion of nonconforming use application is required to allow the proposed additions. The additions are also subject to yard requirements. The minimum front yard requirement is 25 feet or the established setback of the closest residential structures, whichever is greater. In this case the established setback is greater. The proposed 2 ½ story building and porch addition would extend beyond the established setback one to three feet. Stairs not exceeding 6 feet in width are permitted obstructions in a required front yard. The width of the proposed porch stairs, including the buttresses on each side, would be nine feet wide. A variance is required to allow these encroachments into the required front yard. The minimum interior side yard requirement for a two-family dwelling in the R1 district is $6+2x$, where x is equal to the number of stories above the first floor (not including a half story). The dwelling has two full stories; therefore the minimum interior side yard requirement is 8 feet. Please note: the public hearing notice included an error indicating that the minimum interior side yard requirement is 7 feet. The existing dwelling is located approximately 3.4 feet from the interior side lot line. The proposed front and rear additions would follow the existing setback line of the dwelling; therefore a variance is required to reduce the interior side yard requirement. The maximum floor area ratio (FAR) in the R1 district is 0.5. The proposed additions would increase the gross floor area by approximately 550 square feet, which increases the FAR to 0.521. A variance is required to increase the maximum FAR.

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

EXPANSION OF A NONCONFORMING USE: To allow additions to a two-family dwelling located in the R1 district.

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 of the site is designated as urban neighborhood by the comprehensive plan, *The Minneapolis Plan for Sustainable Growth*. The urban neighborhood land use designation includes areas with a range of densities, but is primarily low density. A two-family dwelling has existed on the subject property since 1910. Surrounding properties in the immediate area include a variety of densities from single-family dwellings to a multiple family dwelling with five units. Irving Avenue acts as the boundary between the R1 district (west side of the street including the subject property) and the R2B district (east side of the street). In the late 1970's, the City Council adopted the Calhoun-Isles 40-acre rezoning study, which established most of the current zoning in this area and down-zoned the subject site from the R2 Two-Family District to the R1 Single-Family Residence District. The purpose of this study was to establish density and environmental regulations and zoning to better reflect the needs and desires of the neighborhood while following the Land Use Plan and the comprehensive plan that was in effect at that time. Although there are a

variety of residential densities in the immediate area, there is little policy support today to rezone the property.

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

There is a mix of residential uses in the immediate area. Most of the surrounding properties are similar in scale and height (two to 2 ½ stories) to the subject property. The peak of the new roof would be at the same height as the existing roof peak. A one-story single-family dwelling is located directly north of the subject site, which is one of the smallest dwellings in the area. A 3-story, 5-unit multiple family dwelling is located to the south of the site, which is one of the largest dwellings in the area. The size and character of the expansion would retain compatibility with adjacent properties and the neighborhood.

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.

The proposed expansion would enlarge two existing dwelling units. It would not increase the parking requirement or eliminate any on-site parking. 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.

The exterior changes to the building would be consistent with the size and character of other properties in the area. The primary exterior materials of the building are stucco, glass and wood. The same exterior materials would be used on the additions. The materials would be durable. The porch addition should provide additional opportunities for natural surveillance and visibility of the street. The expansion should improve the appearance and 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.

VARIANCE: To reduce the established front yard requirement as measured between the two adjacent residential structures to allow a 2 ½ story building and porch addition with steps exceeding six feet in width.

Findings as required by the Minneapolis Zoning Code:

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

There are existing practical difficulties and unique circumstances that were not created by the applicant. The established setback is greater than the district front yard requirement of 25 feet. On the same block face, the front yard setback varies from property to property. The property to the south is set back approximately 26 feet from the front lot line. The property to the north of the subject site is set back approximately 30 feet, which is one of the larger setbacks on this block face. Most of the properties in the immediate area were built in the early 1900's. The property to the north was built in 1949. The existing structure was built in 1910. The front of the porch would be located 26.8 feet from the front lot line.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

In general, yard controls are established to provide for the orderly development and use of land and to minimize conflicts among land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses. Policies of the comprehensive plan also support the purpose of the yard ordinances. The building and porch addition, including the stairs, would be located at least 25 feet from the front lot line. On the same block face, the front yard setback varies from property to property. The proposed setback would not be out of character with building placement along the same block face. The request is reasonable and in keeping with the spirit and intent of the ordinance and the comprehensive plan.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

On the same block face, the front yard setback varies from property to property. The property located to the south of the subject site is a 5-unit dwelling with a 2-story open front porch set back 26 feet from the front lot line. The proposed 2-story open porch with the half-story above would be set back 26.8 feet from the front lot line and would only extend one to three feet beyond the established setback. The granting of the variance would not alter the character of the area and should have little effect on surrounding property.

VARIANCE: To reduce the interior side yard requirement from 8 feet to 3.4 feet to allow building additions.

Findings as required by the Minneapolis Zoning Code:

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

There are existing practical difficulties and unique circumstances that were not created by the applicant. The existing use and structure was established in 1910. The existing north interior side yard setback is approximately 3.4 feet for most of the dwelling. It is typical of properties in the immediate area to have narrower yards on the north side of a dwelling and a wider yard on the south side of a dwelling to retain solar access. The dwelling located to the north of the subject site is setback 8.2 feet from the shared lot line. In the zoning code, a single or two-family dwelling nonconforming as to side and rear yards only has all the rights of a conforming structure, provided the structure is located not closer than 3 feet from the side and rear lot line, and provided further that the structure is not enlarged, altered or relocated in such a way as to increase its nonconformity. For these dwellings, the extension of a single or two-family dwelling along the existing setback or the addition of a second story or half-story is not considered as increasing its nonconformity, provided the portion of the structure within the required side or rear yard comprises at least 60 percent of the length of the entire structure, and provided further that the structure is not enlarged, altered or relocated within the required front yard and all other requirements of this zoning ordinance are met. The addition can also not extend closer to the side lot line than the existing setback. The subject site was down-zoned in the late 1970's making the existing use nonconforming. Although the subject property does not qualify for this exception, 59 percent of the dwelling, including the front porch, is 3.4 feet from the side lot line.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

In general, yard controls are established to provide for the orderly development and use of land and to minimize conflicts among land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses. Policies of the comprehensive plan also support the purpose of the yard ordinances. The dwelling located to the north of the subject site is setback 8.2 feet from the shared lot line. The additions would extend along the existing side yard setback. At the front of the house, the depth of the shared first floor entry vestibule would increase by 2 ½ feet to improve functionality. The proposed first level of the porch would replace the existing open porch. Both levels of the porch would be unenclosed. The rear addition would extend approximately 15.5 feet from the rear of the house and over the existing garage and would provide a rear facing door instead of a door facing the side lot line. The roof over the porch would be occupied by habitable space. The proposed half-story dormer would replace existing dormers on the north side of the building. The height of the new roof will not exceed the height of the existing roof. For these reasons, granting the variance should have little effect on access to light and air to the adjacent property to the north. The request is reasonable and in keeping with the spirit and intent of the ordinance and the comprehensive plan.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will**

not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

It is typical of properties in the immediate area to have narrower yards on the north side of a dwelling and a wider yard on the south side of a dwelling to retain solar access. The dwelling located to the north of the subject site is setback 8.2 feet from the shared lot line. Combined there would be over eleven feet between the two buildings. The granting of the variance should have little effect on surrounding property.

VARIANCE: To increase the maximum floor area ratio from 0.5 to 0.521.

Findings as required by the Minneapolis Zoning Code:

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

There are existing practical difficulties and unique circumstances that were not created by the applicant. The maximum FAR in the R1 district is 0.5. When calculating the FAR, the gross floor area (GFA) computation for single or two-family dwellings does not include the following:

- (1) Detached accessory structures.
- (2) Up to 250 square feet of any attached accessory use designed or intended to be used for the parking of vehicles.
- (3) Open porches.
- (4) The basement floor area if the finished floor of the first story is 4 feet or less from natural grade for more than 50 percent of the total perimeter.
- (5) Half story floor area.

The finished floor of the first floor is less than 4 feet from the adjacent grade and the top story meets the definition of half story. The existing GFA is 2,803 square feet, which is an FAR of 0.435. The proposed GFA is 3,355 square feet, which is an FAR of 0.521. The difference between the existing and proposed FAR is approximately 550 square feet. The 585 square foot garage is attached; therefore, 335 square feet of the garage is included in the GFA. The attached garage was constructed in 1981 prior to the current owner purchasing the property. If the garage wasn't attached, the variance would not be necessary. The zoning code also authorizes a one time GFA increase of up to 500 square feet for existing single and two-family dwellings that exceed the maximum FAR as of January 1, 2008. Because the FAR is currently less than 0.5, the use does not qualify for this exception.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

Building bulk regulations are established in order to assure that the scale and form of new development or expansion will occur in a manner most compatible with the surrounding area. Policies of the comprehensive plan also support the purpose of the building bulk ordinances. The proposed additions are consistent with the scale and character of the existing structure and other

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properties in the immediate area. Most of the bulk being added would be toward the rear of the property. The overall size of the dwellings in the area varies, but many exceed the 0.5 FAR as allowed by the zoning code. The request is reasonable and in keeping with the spirit and intent of the ordinance and the comprehensive plan.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

The proposed additions are consistent with the scale and character of the existing structure and other properties in the immediate area. Most of the bulk being added would be toward the rear of the property. The overall size of the dwellings in the area varies, but many exceed the 0.5 FAR as allowed by the zoning code. The granting of the variance should have little effect on surrounding property.

RECOMMENDATIONS:

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 City Planning Commission adopt the above findings and **approve** the application for an expansion of a legal nonconforming use to allow additions to a two-family dwelling located at 2844 Irving Avenue South.

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 City Planning Commission adopt the above findings and **approve** the variance to reduce the established front yard requirement as measured between the two adjacent residential structures to allow a 2 ½ story building and porch addition with steps exceeding six feet in width at the property of 2844 Irving Avenue South.

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 City Planning Commission adopt the above findings and **approve** the variance to reduce the interior side yard requirement from 8 feet to 3.4 feet to allow building additions at the property of 2844 Irving Avenue South.

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 City Planning Commission adopt the above findings and **approve** the variance to increase the maximum floor area ratio from 0.5 to 0.521 at the property of 2844 Irving Avenue South.

Attachments:

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