

Department of Community Planning and Economic Development – Planning Division
Rezoning, Conditional Use Permit & Variances
BZZ-2472

Date: August 15, 2005

Applicant: El Bethel Baptist Church

Address of Property: 3936 South 4th Avenue

Project Name: 3936 4th Avenue Building

Contact Person and Phone: Pastor Willis L. Gilliard, (612) 382-0795

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

Date Application Deemed Complete: July 22, 2005

End of 60-Day Decision Period: September 20, 2005

End of 120-Day Decision Period: On August 8, 2005, staff sent the applicant a letter extending the decision period no later than November 19, 2005.

Ward: 8 **Neighborhood Organization:** Bryant Neighborhood

Existing Zoning: R1A, Single-Family Residential District

Proposed Zoning: OR1, Neighborhood Office Residence District

Zoning Plate Number: 31

Legal Description: Lot 3, Block 2, Bakers 5th Addition

Proposed Use: Office

Concurrent Review:

Rezoning: petition to rezone from R1A, Single-Family Residential District to OR1, Neighborhood Office Residence District.

Conditional Use Permit: for an office.

Variance: to reduce the South interior side yard from 5 feet to 0 feet to allow a parking area and a walkway.

Variance: to reduce the North interior side yard from 5 feet to 0 feet to allow a parking area and a walkway, stairs and landing.

Variance: to reduce the South interior side yard from 5 feet to 1 foot to allow a walkway.

Variance: to reduce the North interior side yard from 5 feet to 4 feet to allow and a walkway, stairs and landing.

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Variance: to reduce the rear yard from 5 feet to 0 feet to allow a parking area.

Applicable zoning code provisions: Chapter 525, Article VI, Zoning Amendments; Chapter 525, Article VII, Conditional Use Permits; and Chapter 525, Article IX Variances, Specifically Section 525.520(1) “to vary the yard requirements, including permitted obstructions into required yards not allowed by the applicable regulations.”

Background: The applicant, Pastor William Gilliard, on behalf of El Bethel Baptist Church is proposing to convert an existing residential structure to an office at the property of 3936 South 4th Avenue. The site is located in a predominantly single-family residential area on 4th Avenue; however, there are several places of assembly in the area. As part of the conversion, a rear addition and a parking area accessed from the alley are proposed. El Bethel Baptist Church proposes to use the site for their office. The church is located at the property of 3949-3953 South 4th Avenue on the Northeast corner of Park and 40th Street East. The church also owns the property of 3944 South 4th Avenue on the Northwest corner of 4th Avenue and 40th Street. Neither of these properties is contiguous to the subject site.

Offices are not an allowed use in the R1A, Single-Family Residential District. Therefore, the applicant is proposing to rezone the property to the OR1, Neighborhood Office Residence District. In the OR1 district, offices are allowed as a conditional use. Also, the OR1 district does not allow obstructions in required yards for non-residential uses. To comply with the district requirements, the applicant is applying for a conditional use permit to allow an office and variances to reduce the required setbacks to allow a parking area and walkways in the interior side yards.

Prior to June of this year, two residential structures existed on the property. These buildings had been condemned and boarded since 1998. The buildings were also registered as vacant since September of 2001. The City Council Public Safety & Regulatory Services Committee determined that the building located at the rear of the site, 3938 4th Avenue, should be demolished. They also decided that the existing building, 3936 4th Avenue, could be rehabilitated by the applicant. The Inspections Department did a study of the property and determined that the cost of rehabilitating the existing structure exceeds the market value. Therefore, the building will have to be demolished if the applicant does not convert it to a nonresidential use.

Please note that the applicant has changed the proposed use description that was originally submitted with the application. The original description, attached to this report, is classified as a community center in the zoning code. A community center is not allowed in the Residence Districts or OR1, Neighborhood Office Residence District. It is first permitted in the OR2, High Density Office Residence District with a minimum lot size requirement of 20,000 square feet. The lot size of this property is 5,320 square feet. The commercial zoning districts allow community centers with no minimum lot size requirement. The revised description provided by the applicant is for an office use. Office uses can provide counseling services. The applicant has indicated that the proposed use will be limited to church administrative functions and behavioral counseling services.

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.

REZONING: petition to rezone from the R1A, Single-Family District to the OR1, Neighborhood Office Residence District.

Findings As Required By The Minneapolis Zoning Code:

1. Whether the amendment is consistent with the applicable policies of the comprehensive plan.

According to Map 9.8, as found in the *The Minneapolis Plan*, the site is designated as single-family. The majority of the area around the site is single- or two-family with the exception of the properties on the corner of 40th Street and 4th Avenue. These properties are designated as cultural, entertainment; transportation, communications, and public facilities. The subject site is not directly adjacent to any of these areas. The site is not located with a designated land use feature such as community corridor, commercial corridor, or neighborhood commercial node. It is located within two blocks of 38th Street, which is a community corridor.

According to the principles and polices outlined in *The Minneapolis Plan*, the following apply to this proposal:

1.2 Minneapolis will encourage both private and public development that provides gathering spaces in city neighborhoods.

Applicable Implementation Steps

Encourage not-for-profit institutions and places of worship to increase resident access to and use of facilities and meeting spaces.

4.9 Minneapolis will grow by increasing its supply of housing.

Applicable Implementation Steps

Support the development of infill housing on vacant lots. Use partnerships and incentives to reduce city subsidy level and duration of vacancy.

Use new and strengthened strategies and programs to preserve and maintain existing housing stock.

4.14 Minneapolis will maintain the quality and unique character of the city's housing stock, thus maintaining the character of the vast majority of residential blocks in the city.

Applicable Implementation Steps

Provide the flexibility in the city's ordinances to improve and maintain existing structures.

9.21 Minneapolis will preserve and enhance the quality of living in residential neighborhoods, regulate structures and uses which may affect the character or desirability of residential areas, encourage a variety of dwelling types and locations and a range of population densities, and ensure amenities, including light, air, privacy and open space.

Applicable Implementation Steps

Limit non residential land uses allowed in low density residential areas to religious institutions, specific public facilities such as schools, libraries and parks and other non residential land uses that can be integrated with low density residential uses through proper location, site planning and facilities design.

Although the proposed use will be an extension of the church and provide counseling services and may be a use more integral with residential uses than other non-residential uses, the site is not properly located. The proposed zoning and nonresidential use is flanked on all sides by residential zoning and uses. Furthermore, a single-family dwelling is currently a permitted use on the site. The existing structure has remained vacant for 4 years; however, it can be rehabilitated without approvals of land use applications. The proposed zoning does not reinforce the residential character of the block. In the OR1 district, residential uses and some nonresidential uses are allowed. Maintaining a residential use on the property is more in keeping with the policies *The Minneapolis Plan*.

2. Whether the amendment is in the public interest and is not solely for the interest of a single property owner.

An amendment to the zoning will allow for additional nonresidential uses on the property. Currently, a nonresidential use cannot be established on the site. Allowing a district which allows for a nonresidential use to be established in the middle of a residential block is in the interest of the property owner.

3. Whether the existing uses of property and the zoning classification of property within the general area of the property in question are compatible with the proposed zoning classification, where the amendment is to change the zoning classification of particular property.

The purpose of the OR1 district is to provide a small scale mixed use environment of low to moderate density dwellings and office uses. The district may serve as a transition between neighborhood commercial centers and the surrounding residential uses. The site is in the middle of an R1A district. Zoning within approximately two blocks is primarily residential, and the site is not adjacent to any other zoning district except R1A. The OR1 district allows for more density. A single-family dwelling exists to the South of the site and a two-family dwelling exists to the North of the site. Other residential uses exist to the North, East and West. Up to three dwellings could be established on the subject site as-of-right in the OR1 district. A few multifamily uses exist in the area; however, this site is not adjacent to a commercial center. The closest commercial zoning is located at the intersection of 40th Street and 4th Avenue on the opposite side of the street; however, active commercial uses are not established. Three parcels are zoned commercial. Two of the commercially zoned parcels are owned and used by El Bethel Baptist Church. A place of assembly is also allowed in all residential districts. The other commercial parcel contains a nonresidential building that appeared to be vacant when staff visited the area. This parcel is owned by the place of assembly located at the Southeast corner of 40th Street and 4th Avenue. The last recorded use of the property is a school. These are

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nonresidential uses that are typically located in low density residential areas. The OR1 district allows for commercial uses that could not be established in a residential district. The proposed zoning is less compatible with the adjacent uses and is not compatible with the other zoning districts in the area.

4. Whether there are reasonable uses of the property in question permitted under the existing zoning classification, where the amendment is to change the zoning classification of particular property.

Reasonable use of the property is permitted under the R1A zoning district. A single-family dwelling is a permitted use which has existed on the site for over a century.

5. Whether there has been a change in the character or trend of development in the general area of the property in question, which has taken place since such property was placed in its present zoning classification, where the amendment is to change the zoning classification of particular property.

Within this area of Minneapolis there has not been a change in zoning or in the type of development. The area has remained predominantly residential; however, vacancy of some properties has occurred. At least two of those properties were redeveloped for single-family dwellings.

CONDITIONAL USE PERMIT: to allow an office in the OR1 district.

Findings as required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Planning Division has analyzed the application and from the findings above 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.

Staff does not believe the proposed use will be detrimental to or endanger the public health, safety, comfort or general welfare.

2. Will be injurious to the use and enjoyment of other property in the vicinity and will impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

Staff believes that the establishment of the proposed use will be injurious to the use and enjoyment of other property in the vicinity. The site is in the middle of an R1A district. Uses within approximately two blocks are primarily residential. A single-family dwelling exists to the South of the site and a two-family dwelling exists to the North of the site. These properties will be most affected by the establishment of the office use. Nonresidential uses typically have more

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pedestrian and vehicle traffic. The proposed office with counseling services will have employees and multiple other persons coming to the site from 8:00 AM to 9:00 PM each day. Privacy for the adjacent residential uses could be impacted. The South residential use will be especially affected. With the new parking area proposed for the office, parking lots would exist on both sides of the property. Fumes and noise from additional vehicles could also be a nuisance for adjacent residential properties. These impacts could have an affect the value of the property. Allowing a nonresidential use to be established in the middle of residential uses can impede the normal or orderly development and improvement of surrounding properties.

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

Utilities are existing and adequate. The Public Works Traffic division will allow access from the alley for the parking area. Drainage issues may occur with the proposed parking area for the office. The site slopes down to the South. The proposed parking area would drain onto the adjacent residential property if grading and curbing are not proposed. A drainage plan will also be reviewed by Public Works at the final site plan stage.

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

The minimum parking requirement for the use is four spaces. The applicant is proposing three vehicle parking spaces including one van-accessible parking stall. To meet the minimum parking requirement, the applicant is also proposing four bike parking spaces in lieu of one vehicle parking space as allowed by the zoning code. Because all required vehicle parking is accessed from the alley, Public Works is requiring closure of the curb cut access on 4th Avenue. Also, the applicant indicated that most people who use the facility will not drive to the site. With the vehicle parking stalls, closure of the curb cut and bicycle parking spaces, adequate measures are proposed to minimize traffic congestion in the public streets.

5. Is not consistent with the applicable policies of the comprehensive plan.

According to Map 9.8, as found in the *The Minneapolis Plan*, the site is designated as single-family. The majority of the area around the site is single- or two-family with the exception of the properties on the corner of 40th Street and 4th Avenue. These properties are designated as cultural, entertainment; transportation, communications, and public facilities. The subject site is not directly adjacent to any of these areas. It is located within two blocks of 38th Street, which is a community corridor. However, residential uses separate the subject site from 38th Street. The location of the use is not appropriate.

According to the principles and polices outlined in *The Minneapolis Plan*, the following apply to this proposal:

1.2 Minneapolis will encourage both private and public development that provides gathering spaces in city neighborhoods.

Applicable Implementation Steps

Encourage not-for-profit institutions and places of worship to increase resident access to and use of facilities and meeting spaces.

9.21 Minneapolis will preserve and enhance the quality of living in residential neighborhoods, regulate structures and uses which may affect the character or desirability of residential areas, encourage a variety of dwelling types and locations and a range of population densities, and ensure amenities, including light, air, privacy and open space.

Applicable Implementation Steps

Limit non residential land uses allowed in low density residential areas to religious institutions, specific public facilities such as schools, libraries and parks and other non residential land uses that can be integrated with low density residential uses through proper location, site planning and facilities design.

9.15 Minneapolis will protect residential areas from the negative impact of non-residential uses by providing appropriate transitions between different land uses.

Applicable Implementation Steps

Provide appropriate physical transition and separation using green space, setbacks or orientation between residential and non-residential uses.

Mitigate, through screening and buffering, limiting the size and scale of a building, and a business' hours of operation, the effects of commercial properties on residential areas.

Although the proposed use will allow residents to use the facilities as part of the church, the proposal is not consistent with *The Comprehensive Plan*. Sufficient separation of a nonresidential use from residential uses is not proposed. Nonresidential uses typically have more pedestrian and vehicle traffic. The proposed office with counseling services will have employees and multiple other persons coming to the site from 8:00 AM to 9:00 PM each day. Access to the building can occur from the front, side or back of the site. Where walkways are proposed on the side of the building, no screening is proposed. Therefore, privacy for the adjacent residential uses could be impacted. Also, the new parking area abuts the property lines of two adjacent residences. Although screening is proposed here, fumes and noise from additional vehicles could be a nuisance for adjacent residential properties. The quality of living may be negatively affected by the establishment of the office.

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.

The site plan and proposed use do not comply with several regulations.

The site plan shows the bike rack located in the required front yard. Required yard must remain unobstructed from ground level to the sky, or a variance must be obtained. The applicant has agreed to relocate the bike rack outside of a required yard.

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A driveway and parking area exist on the South side of the structure. A residential use is allowed a driveway as a permitted obstruction in the interior side yard. Driveways and parking areas in interior yards for nonresidential uses are prohibited. A parking area in the interior side yard is not allowed from residential uses unless it is located in the rear 40 feet of the lot. The parking area is not in the rear 40 feet and is therefore nonconforming. The applicant has submitted information showing that grandfather rights exist for the parking area. By allowing a nonresidential, the yard setback becomes more nonconforming. Public Works is requiring closure of the 4th Avenue curb access. Along with removal of the curb, the driveway and parking area should also be removed because access by vehicles would no longer be possible.

The rear wall of the proposed addition does not meet the minimum window requirement. A nonresidential facade facing a parking area must be 30 percent windows. The plans show approximately 15 percent windows. The applicant has agreed to provide additional windows to meet the minimum requirement.

The use of the site for an office will conform to the applicable regulations of the district in which it is located other than the items described above upon the approval of the rezoning, conditional use permit and yard variances.

VARIANCE: (1) to reduce the South interior side yard from 5 feet to 0 feet to allow a parking area, (2) to reduce the North interior side yard from 5 feet to 0 feet to allow a parking area, (3) to reduce the South interior side yard from 5 feet to 1 foot to allow a walkway, (4) to reduce the North interior side yard from 5 feet to 4 feet to allow and a walkway, stairs and landing, and (5) to reduce the rear yard from 5 feet to 0 feet to allow a parking area.

Findings as 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.**

Variances to reduce the South and North interior side yards and rear yard from 5 feet to 0 feet to allow a parking area. Office uses are required to provide a minimum of four parking spaces. The yard requirements of the OR1 district and minimum parking stall size requirements limit where parking can be located on the site. The applicant is proposing parking at the rear of the site. The three spaces proposed are parallel to the alley. The applicant has indicated that maneuvering in and out of the spaces can be accomplished without backing into the alley. A different parking arrangement could be proposed, such as orienting the parking spaces perpendicular to the alley. With the example arrangement, sufficient drive aisle can still be provided without requiring maneuvering in the alley. However, variances are still required for both interior side yards in order to fit three parking spaces.

The parking area can be set back five feet from the alley without causing hardship. Public Works requires that some form of separation (e.g. bollards, fencing, and/or landscaping) must be

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provided between the parking area and the alley. Opening doors and entering or exiting a vehicle into the alley are safety concerns.

Variance to reduce the South interior side yard from 5 feet to 1 foot to allow a walkway, and a variance to reduce the North interior side yard from 5 feet to 4 feet to allow and a walkway, stairs and landing. The walkways are proposed to provide access to the building from the rear parking area and from the street. Strict adherence to the zoning code would allow the same access to be accomplished. The walkway, stairs and landing on the North side of the property are surrounded by green-space. They can be moved South four or more feet without affecting the building layout. The building is set back almost twelve feet from the property line. Seven feet of land is available for a walkway outside of the required interior side yard. The proposed ramp could also be used as a walkway. There is no hardship for these variances.

- 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.**

Variances to reduce the South and North interior side yards and rear yard from 5 feet to 0 feet to allow a parking area. The circumstances are not unique to the parcel and are being created by the applicant. Residential uses, such as a single-family dwelling permitted under the existing zoning district, are allowed to park in the interior side yard in the rear 40 feet of a lot as well as the rear yard without obtaining a variance. Nonresidential uses cannot park in either of these yards because of the additional traffic generated by nonresidential uses. Furthermore, the applicant does not have alternatives for off-site parking even though the church owns the parking lot two lots away. The zoning code does not allow a non-residential use in the OR1 district to park in the R1A district. This ordinance was established to protect the character and desirability of the residential districts by not allowing off-site parking for uses that are not compatible with other districts and uses. The applicant must provide onsite parking or obtain a variance. Because the applicant is proposing to rezone the property and establish a nonresidential use, more regulations apply to the property.

Variance to reduce the South interior side yard from 5 feet to 1 foot to allow a walkway, and variance to reduce the North interior side yard from 5 feet to 4 feet to allow and a walkway, stairs and landing. The circumstances are not unique to the parcel and are being created by the applicant. Again, it is the applicant who is proposing to establish a nonresidential use and thereby is affected by more regulations. To convert a residential structure to a nonresidential structure, the applicant must make the existing structure accessible. The site plan as proposed does not comply with accessibility requirements. They must provide access to the building from the street and the parking. A ramp is proposed, but it exceeds the maximum slope allowed and does not connect to the parking area. The site plan must be altered to build a compliant ramp. Regardless, there is sufficient room on the site to provide accessibility without encroaching on the required yards. Ramping and walkways can be accomplished in the buildable area between the addition and the parking area. The ramp could also be used as a walkway.

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.**

Variations to reduce the South and North interior side yards and rear yard from 5 feet to 0 feet to allow a parking area. Minimum yard setback requirements are established by the code to minimize conflicts among land uses. Other than the required yards, no other screening is required for a parking area with three spaces. Granting these variances would allow almost no separation between a nonresidential use and residential uses. The applicant is providing shrubs and a fence as a buffer. However, to maintain the minimum stall sizes required by code, the shrubs as shown cannot be installed. Drainage issues may occur with the proposed parking area for the office. The site slopes down to the South. The proposed parking area would drain onto the adjacent residential property if regrading and curbing are not proposed. Therefore, granting the variances will be injurious to adjacent properties.

Variance to reduce the South interior side yard from 5 feet to 1 foot to allow a walkway, and variance to reduce the North interior side yard from 5 feet to 4 feet to allow and a walkway, stairs and landing. Granting of these variances would not meet the intent of the code. Minimum yard setback requirements are established by the code to minimize conflicts among land uses. The proposed walkway on the South side of the property is only 6 feet away from the adjacent residential structure. The walkway in such close proximity to the residence without any screening affects the amount of privacy for that dwelling. Having public walkways directly adjacent to residential properties could affect the use and enjoyment of those properties.

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.**

Variations to reduce the South and North interior side yards and rear yard from 5 feet to 0 feet to allow a parking area. On-site parking will most likely decrease congestion in the streets. Although allowing parking to abut a residential property could have several negative impacts, granting of the interior side yard variances would likely not increase the danger of fire, or be detrimental to the public welfare or endanger the public safety. Granting of the rear yard setback could affect public safety. Opening doors and entering or exiting a vehicle into the alley are safety concerns.

Variance to reduce the South interior side yard from 5 feet to 1 foot to allow a walkway, and variance to reduce the North interior side yard from 5 feet to 4 feet to allow and a walkway, stairs and landing. Granting the variances would likely have no impact on the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.

RECOMMENDATIONS

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Recommendation of the Department of Community Planning and Economic Development – Planning Division for the rezoning:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission and City Council adopt the above findings and **deny** the petition to rezone the property of 3936 South 4th Avenue from R1A, Single-Family Residential District to OR1, Neighborhood Office Residence District.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the conditional use permit for an office at the property of 3936 South 4th Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to reduce the South interior side yard from 5 feet to 0 feet to allow a parking area at the property of 3936 South 4th Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to reduce the North interior side yard from 5 feet to 0 feet to allow a parking area at the property of 3936 South 4th Avenue

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to reduce the South interior side yard from 5 feet to 1 foot to allow a walkway at the property of 3936 South 4th Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to reduce the North interior side yard from 5 feet to 4 feet to allow a walkway, stairs and landing at the property of 3936 South 4th Avenue

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to reduce the rear yard from 5 feet to 0 feet to allow a parking area at the property of 3936 South 4th Avenue.

Attachments:

1. Zoning code information sheet
2. Statement of use
3. Findings
4. Correspondence
5. Zoning map
6. Plans
7. Photos