

**Community Planning and Economic Development Planning Division Report**  
Expansion of a Legal Nonconforming Use & Variances  
BZZ-2581

**Date:** October 17, 2005

**Applicant:** Christopher Rodarte

**Address of Property:** 3509 West 28<sup>th</sup> Street

**Contact Person and Phone:** Scott Durand, (612) 285-7275

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

**Date Application Deemed Complete:** September 14, 2005

**End of 60 Day Decision Period:** November 13, 2005

**Ward:** 7      **Neighborhood Organization:** Cedar-Isles-Dean Neighborhood Association

**Existing Zoning:** R1, Single-Family Residential District & SH, Shoreland Overlay District

**Proposed Zoning:** Not applicable for this application

**Zoning Plate Number:** 23

**Legal Description:** Not applicable for this application

**Existing Use:** Two-family dwelling

**Concurrent Review:**

**Expansion of a nonconforming use:** to allow a detached garage for a duplex located at 3509 West 28<sup>th</sup> Street.

**Variance:** to reduce the minimum front yard setback along Sunset Boulevard from 25 feet to 7 feet 6 inches to allow a detached garage.

**Variance:** to increase the maximum floor area of an accessory structure from 676 square feet to 1,173 square feet.

**Applicable Zoning Code Provisions:** Chapter 525, Article IX Variances and Chapter 531, Section 531.50(b).

**Background:** The applicant, Scott Durand, is proposing to construct a detached garage with finished space above for an existing two-family dwelling at the property of 3509 West 28<sup>th</sup> Street. The property is located in a large residential area between Lake of the Isles and Lake Calhoun. It fronts West 28<sup>th</sup> Street to the North and Sunset Boulevard to the South. The principal structure faces West 28<sup>th</sup> Street

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and the garage would face Sunset Boulevard. The current zoning is R1, which does not allow two-family dwellings. A two-family dwelling has existed on the property since 1938 before the zoning did not allow it, therefore it is legally nonconforming. One of the units is currently owner occupied. No changes are proposed to the existing dwelling. A garage exists at the rear of the house; however, vehicles cannot access it. The applicant is proposing a three-car garage with a total floor area of 1,173 square feet. The proposal includes a finished area above the parking level. Floor area calculations include the garage footprint (770 square feet), finished floor area outside of the garage footprint area (347 square feet) and above-grade stairs, decks, landings, etc. attached to the garage (56 square feet). Please note that the floor area calculation referenced in the applicant's responses to the required findings did not include the area of the proposed stairs and landing.

Constructing an accessory structure for a nonconforming use 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. Because the proposed garage would front a public street, a front yard setback is required along Sunset Boulevard. A variance is required because the applicant is proposing a setback that is less than the minimum requirement. Accessory structures for two-family dwellings are allowed up to 676 square feet of floor area. To increase the floor area, a variance is required. The proposed garage floor area is 1,173 square feet.

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

**Findings as Required by the Minneapolis Zoning Code for the Expansion of a Legal Nonconforming Use:**

**The Community Planning and Economic Development Planning Division has analyzed the application and makes the following findings:**

**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 property is located in a large contiguous area in the R1 district with the exception of one property. The exception is the property to the West of the subject property, which is zoned R2B, Two-Family District. A duplex exists on that property. The applicant could propose to rezone to the R2 or R2B district, which are the first districts that would allow a two-family dwelling. However, the R2B zoning is an anomaly for the area.

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

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The expansion to allow a garage is compatible with adjacent properties and the neighborhood. Most residences in the area have garages.

- (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 expansion of the non-conforming use will not result in significant increases of adverse off-site impacts. There will be no increase in residential units. Adequate off-street parking should be provided for the property with the construction of a garage. No additional traffic, noise, dust, odors or parking congestion would be 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 proposed garage should be compatible with the character of the neighborhood if appropriate exterior materials are used. The zoning code would allow the applicant to build up to 1,000 square feet of accessory structure area through administrative processes if the exterior materials and roof pitch of the garage match those of the principal structure. This ordinance is intended to preserve the character of an area. The two garages on the adjacent properties have two stories; however, they are not typical of size or height of accessory structures in the area. Most of the nearby garages are moderately sized, two-stall garages less than 12 feet in height. The garage would match the exterior materials and roof pitch of the principal structure; however, the type of masonry proposed is not identified for the lower level of the garage. Plain-face concrete block would not be a compatible material for this area. Staff is recommending that another material is used. Allowing a garage for the duplex 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 minimum front yard setback along Sunset Boulevard from 25 feet to 7 feet 6 inches to allow a detached garage; and (2) to increase the maximum floor area of an accessory structure from 676 square feet to 1,173 square feet.

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- 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.**

Variance to reduce the front yard setback requirement: The subject property has frontage on two streets and is a through lot. A through lot has two required front yards. The depth of the lot is approximately 154 feet. By complying with all setback requirements, over 1/3 of the property would be part of a front yard. Because the front of principal structure faces 28<sup>th</sup> Street, the area between the dwelling and Sunset Boulevard acts as the backyard. Building a garage 25 feet from the front property line on Sunset Boulevard would greatly reduce the size of the backyard of the two-family dwelling and would not allow the applicant to match the predominant pattern of the existing garages on the block. Furthermore, a greater setback would likely increase the amount of impervious surface on the property by increasing the length of the driveway. Therefore, providing the 25 foot setback would likely affect reasonable use of the property.

Variance to increase the maximum floor area of an accessory structure: The parking requirement for a two-family dwelling is a minimum of two on-site parking spaces. The zoning code allows 676 square feet of floor area for accessory structures for a two-family dwelling. A three-car garage can be constructed with this maximum floor area. Because of the large size of the lot the zoning code allows an exception to the 676 square feet maximum floor area, which would allow the applicant to build up to 1,000 square feet of accessory structure area through administrative processes by matching the exterior materials and roof pitch of the garage to the principal structure. The proposed garage could be reduced in size and still have three off-street parking spaces with additional finished area, such as the proposed office area, without the granting of this variance.

- 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.**

Variance to reduce the front yard setback requirement: The subject property has frontage on two streets and is a through lot. A through lot has two required front yards. On this block, all of the through lots have garage access from Sunset Boulevard. The site slopes down to the Southeast by approximately four feet. The grade in the 18 foot wide boulevard significantly changes as well. The applicant has indicated that additional site grading would be necessary to comply with the 25 foot setback requirement. The circumstances are unique to the parcel of land and have not been created by the applicant.

Variance to increase the maximum floor area of an accessory structure: Although the parcel has varying topography and is a through lot, these circumstances do not apply to the requested variance. A garage that is larger than what is allowed by the zoning code is a circumstance created by the property owner.

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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.**

Variance to reduce the front yard setback requirement: The majority of the lots on the block are through lots. All of the garages on these through lots as well as many of the garages of the adjacent block to the South face Sunset Boulevard. The proposed location and orientation of the proposed garage is similar to the placement of other garages on block and this section of Sunset Boulevard. The garage would not project beyond the average of the established setbacks of the garages belonging to the adjacent properties. It should not impact adjacent properties and surrounding uses and is in keeping with the intent of the ordinance.

Variance to increase the maximum floor area of an accessory structure: The zoning code would allow the applicant to build up to 1,000 square feet of accessory structure area through administrative processes if the exterior materials and roof pitch of the garage match those of the principal structure. The two garages on the adjacent properties have two stories; however, they are not typical of size or height of accessory structures in the area. Most of the nearby garages are moderately sized, two-stall garages less than 12 feet in height. Although a large garage may not be injurious to surrounding properties, it is inconsistent with the character of the area and does not meet the intent of the ordinance.

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.**

Variance to reduce the front yard setback requirement and a variance to increase the maximum floor area of an accessory structure: 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.

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**Recommendation of the Community Planning and Economic Development Planning Division:**

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 detached garage for a duplex located at 3509 West 28<sup>th</sup> Street, subject to the following condition:

- 1) Plain-face concrete block shall not be used on the exposed portions of the garage walls.

**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 **approve** the variance to reduce the front yard setback requirement along Sunset Boulevard from 25 feet to 7 feet 6 inches to allow a detached garage at the property of 3509 West 28<sup>th</sup> Street.

**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 increase the maximum floor area allowed for an accessory structure from 676 square feet to 1,173 square feet to allow a detached garage at the property of 3509 West 28<sup>th</sup> Street.

**Attachments:**

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