

**Department of Community Planning and Economic Development – Planning Division**  
Variance of Fence Height  
BZZ-2589

**Date:** October 31, 2005

**Applicant:** Urban Condos LLC

**Address of Property:** 500 East Grant Street

**Project Name:** Grant Park

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**Date Application Deemed Complete:** August 8, 2005

**End of 60-Day Decision Period:** October 7, 2005

**End of 120-Day Decision Period:** On September 21, 2005, staff sent a letter to the applicant extending the decision period to no later than December 6, 2005. The applicant has since submitted a letter authorizing extension of the legal time frame for processing the application to January 2, 2006.

**Ward:** 7      **Neighborhood Organization:** Elliot Park Neighborhood, Inc.

**Existing Zoning:** OR3

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

**Zoning Plate Number:** 19

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

**Proposed Use:** Fencing for Grant Park, a planned residential development

**Concurrent Review:**

**Variance:** To increase the allowed height of the fence from that which was approved by the Planning Commission in 2004 to “nominally” 6 feet for the metal portion of the fence, to “nominally” 6 feet 7 inches for the concrete and stone pillars.

**Applicable zoning code provisions:** 525.520 (5) To permit an increase in the maximum height of a fence

**Background:**

- The City Council approved development applications (BZZ-615) for Grant Park in May, 2002.
- A variance of fence height (BZZ-1778) was granted by the City Planning Commission on July 26, 2004.

Grant Park is located in the Elliot Park Neighborhood. It encompasses the entire block bounded by Tenth Street South, Portland Avenue, Grant Street and the 5<sup>th</sup> Avenue exit from Interstate 35W. The site is approximately 130,000 square feet or approximately 3 acres.

The construction of the proposed development is completed. It consists of three components. 1) The CityHomes are comprised of 30 units of walk-up housing at the eastern side of the block. These housing units surround a roughly 500 car, six level parking ramp. 2) Around 289 housing units are in the 27 story high-rise. 3) A townhouse component of the development, which includes 13 housing units, is located at the northernmost corner of the block.

	Simple Fence	Compound Fence	
	Height of Simple Metal Fencing	Height of Piers	Height of Metal Sections Between Piers
<b>Fence Dimensions on 2002 Approved Site Plan</b>	6'	8'	6'
<b>Fence Dimensions as Constructed</b>	6'	Approximately 7'-9"	Approximately 6'-11"
<b>Fence Dimensions as Approved by Variance in 2004</b>	5'	7'-4"	5'

The landscaping plan approved in 2002 included proposed fence dimensions along Grant Street. The notation on the plan stated, “2’ HT. FREESTANDING BRICK WALL W/ 4’ HT. ORNAMENTAL FENCE.” The plan set submitted for final administrative review included an elevation view of these fences. In the drawing, the metal part of the fence was dimensioned at 6’ in height, and the concrete and stone piers were 8’ high. On both of these drawings, planning staff overlooked the fact that the zoning code only allows a four foot fence height in the required front yard.

The discrepancy between what was approved in 2002 and what is allowed by the zoning code was noted as construction began on the Grant Street fencing. At this time it was also determined that an oversight of a plan detail on the part of staff does not absolve the developer from the responsibility of being cognizant of, and complying with, the ordinances of the City of Minneapolis. When the issue

was brought to the attention of the developer, the developer was asked to cease construction of the fence until the issue of noncompliance with the city code was resolved. All of the Grant Street fencing had been ordered by that time and was on site, and a section of fencing in front of the semicircular driveway had been partly constructed. Rather than cease construction, the developer informed city staff that it would continue the installation of the fencing “at its own risk”.

Compounding the error of submitting and signing off on a nonconforming 2002 approval process was an error in the installation of the fence on the part of the developer. The fencing in front of the semicircular driveway was improperly installed, resulting in fencing placed at 6’-11” for the metal part of the fence and 7’-9” for the concrete and stone piers. This is almost a foot higher than what was proposed on the final plans submitted by the developer in 2002.

In May, 2004, the developer submitted an application for variance of fence height to allow the fence to remain as installed. On July 26, 2004, the City Planning Commission approved a variance of fence height that was smaller than that which was requested. (See table above.) The developer chose not to appeal the City Planning Commission action, stating in an e-mail: “the variance that the Planning Commission approved last Monday is acceptable to us.”

Upon later review, and after determining that fence height adjustments would cost \$50,000, the developer inquired about the possibility of sharing this cost w/ the city. Given a negative response to this question, the developer asked whether a fence height variance could again be pursued on the basis of the additional cost information. The zoning administrator, Mr. Blake Graham, said that the city would accept a new variance application. The subject variance application was submitted as a result.

In evaluating the application, staff discovered a discrepancy. While the application materials indicated that the objective of the applicant is to receive a variance that allows the fencing to remain as installed, field measurements by staff showed that the as-built dimensions of the fence go beyond the variance that was requested. In other words, the variance that applicant applied for would not be adequate to make the as-built fence conforming. On September 19, the City Planning Commission continued the public hearing to October 17, 2005, at the recommendation of staff. This was to allow the applicant to address this issue with corrected drawings and documentation, and to allow a corrected public notice to be sent out. At the October 17 CPC meeting, the application was continued again to October 31, 2005.

As of October 21, the applicant has submitted a corrected variance request and new mailing labels. The variance application has been re-noticed to the public, with a November 14 public hearing date.

## **RECOMMENDATIONS**

### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the variance of fence height:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission **continue** the variance application to November 14, 2005.