

Department of Community Planning and Economic Development – Planning Division
Expansion of a Nonconforming Use and two Variances
BZZ – 2655

Date: October 31, 2005

Applicant: Ron Machel, 2801 Rolling Oak Rd, Burnsville, MN 55337

Address of Property: 3117 Fremont Ave S

Project Name: 3117 Fremont Ave S

Contact Person and Phone: Ron Machel, 2801 Rolling Oak Rd, Burnsville, MN 55337, 952-707-0653

Planning Staff and Phone: Tara Beard, 612-673-2351

Date Application Deemed Complete: September 27, 2005

End of 60-Day Decision Period: November 26, 2005

Ward: 10 **Neighborhood Organization:** Calhoun Area Residents Action Group

Existing Zoning: R2B (Two-family) district

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 24

Lot Area: 5,893 square feet

Legal Description: Not applicable for this application

Proposed Use: Four-car, 924-square-foot detached garage accessory to an existing non-conforming four-unit building in an R2B District.

Concurrent Review:

- Expansion of a non-conforming use to permit an attached garage accessory to a four-plex in the R2B (Two-family) district.
- Variance to allow an increase in the allowable accessory structure size from 676 square feet to 924 square feet for an attached four car garage.
- Variance of the interior south side yard setback from the required 7 feet to 2 feet 10 inches for a detached garage.

Applicable zoning code provisions: Expansion or alteration of nonconforming uses and structures 531.50 and Article IX Variances.

Background: The applicant's four-unit residential building is nonconforming in the existing R2B District. An existing 696 square foot garage is currently on site; the applicant claims it is too small and residents do not use it to park their vehicles. The existing garage is also somewhat in need of repair. The proposed garage is under the maximum height of 1 story or 12 feet permitted by the Code. Construction of a garage constitutes an expansion of the nonconforming use under section 531.50 of the zoning code. A four-car garage with 924 square feet of area is proposed and would be used for off-street parking. In addition to the expansion of the nonconforming use, two variances are also being applied for which include a variance to allow an increase in accessory structure size, and a variance of an interior south side yard setback in order to allow for a wider garage than currently exists. This latter variance is required because the principle structure of the property to the south is within the rear 40% of the lot, which renders the 1 foot setback permitted on the north side (because the property to the north's principal structure is *not* within the rear 40% of the lot) inappropriate on the south side.

There is currently one property within a block of the subject property (it is the adjacent property) that has a garage of greater size. However, the adjacent property is a 5-unit residential building and its garage is for five cars. The applicant's intention is to provide one enclosed parking space for each residential unit in the building. The applicant proposes to utilize vinyl siding for the exterior in a color that will compliment and blend with the existing structure.

Staff has received a letter from the adjacent property owner to the south with the 5-car garage (3121 Fremont Ave S). The adjacent property owner supports the applicant's intention to build a new four-car garage but does not support the setback variance requested by the applicant. The adjacent property owner's garage is located 3 inches from the property line between the two structures and the requested setback of 2'-10" would provide just 3'-1" for access between the principal structure and the public alley. The adjacent property owner is also concerned with drainage issues and would like to see a flat roof on the new garage as the existing principal structure is flat and the garages on either side of the applicant's have flat roofs, as well.

At this time staff has not received written correspondence from the Calhoun Area Resident's Action Group.

The original notice for this project included the need for a setback variance for the north side setback. As described above, the property to the north does not have principal structure in the rear 40% of the lot (nor does the applicant). Therefore that variance is not necessary. Staff recommends returning said variance to the applicant.

EXPANSION OF A LEGAL NONCONFORMING USE -

Findings as Required by the Minneapolis Zoning Code:

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 on block where all residential properties are zoned R2B. Rezoning the property to a higher zoning classification would not be appropriate for this property within the context of the surrounding area.

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

The proposed placement of the attached garage, five feet from the public alley, would be compatible and relatively consistent with the placement of other attached garages in the vicinity. However, the rear setback requirement is 7 feet. Therefore, staff recommends requiring the applicant to move the structure 2 feet to the west, or seven feet from the public alley.

(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 garage would accommodate four vehicles; one enclosed parking space per unit. The garage would allow for convenient enclosed parking instead of the surface parking which is currently utilized despite the existence of a garage. The expansion of the non-conforming use will not result in significant increases of adverse off-site impacts.

(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 existing garage, as noted, is dilapidated in appearance. The applicant proposes the new garage exterior be composed of vinyl siding to match the color of the existing principal structure's exterior, which is brick. Planning staff believes the selected material should be relatively consistent with the principal structure. To ensure compatibility with the property and surrounding area, all areas not covered by the driveway or walkways include turf or landscaping. The proposed driveway must be paved with asphalt, concrete, brick, cement pavers or similar material as required by section 541.300 of the zoning code.

(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 site is not located in a Floodway District.

Findings Required by the Minneapolis Zoning Code for the Proposed Variances:

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 increase accessory structure size from 676 square feet to 924 square feet:

The current garage size of 696 square feet is more than the 676 allowed and is still too small to be practicably used by residents. It would not be possible to provide covered parking for all four units located on site with strict adherence to the regulations of the zoning ordinance.

Variance of the south interior side yard setback from the required 7 feet to 2 feet 10 inches:

The site would be unable to accommodate an enclosed detached parking garage on site that provides off-street parking for each dwelling unit without attaining interior side yard setback variances. However, a setback of 2 feet 10 inches is extremely narrow and provides for four 9 foot wide individual garage doors; which is wider than necessary.

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 increase accessory structure size from 676 square feet to 924 square:

The circumstances are unique to this parcel of land as four units are established on a relatively small parcel. In order to provide enclosed parking for each unit a variance of the accessory structure size must be provided.

Variance of the interior side yard setbacks from the required 7 feet to 2 feet 10 inches:

The circumstances are unique to this parcel of land as four units are established on a relatively small parcel. In order to provide enclosed parking for each unit a variance is required, however, undue hardship is not established for the entire width of the proposed structure. A 40 foot wide structure can easily accommodate four parking stalls, as opposed to the 42 feet proposed by the applicant. A 2 foot narrower garage would also allow for a 4'-10" setback rather than a 2'-10", which seems more reasonable.

- 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 increase accessory structure size from 676 square feet to 924 square:

The granting of the variance will not alter the essential character or be injurious to the use or enjoyment of other property in the vicinity. There is a similarly sized garage adjacent to the site.

Variance of the interior side yard setbacks from the required 7 feet to 2 feet 10 inches:

The granting of the variance will not alter the essential character or be injurious to the use or enjoyment of other property in the vicinity. The existing residential building is located at 3 feet 6 inches from the south interior lot line and 3 feet 9 inches from the north interior lot line.

- 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 increase accessory structure size from 676 square feet to 924 square:

Staff does not believe that the granting of a variance to increase the allowable accessory structure size shall impact or affect public safety in any way.

Variance of the interior side yard setbacks from the required 7 feet to 2 feet 10 inches:

Staff feels safety and accessibility would improve by increasing the requested setback from 2 feet 10 inches to 4 feet 10 inches.

RECOMMENDATIONS

Recommendation of the Community Planning and Economic Development Department – Planning Division for the Expansion of a Nonconforming Use:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the application for an expansion of a nonconforming use to allow a new attached garage accessory to an existing four-family building in the R2B District at 3117 Fremont Avenue South, subject to the following conditions:

1. All areas not covered by the driveway or walkways include turf or landscaping. The proposed driveway must be paved with asphalt, concrete, brick, cement pavers or similar material as required by section 541.300 of the zoning code.

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

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The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the variance to allow an increase in the allowable accessory structure size from 676 square feet to 924 square feet for an attached four car garage for the property located at 3117 Fremont Ave S.

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

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission adopt the findings above and **return** the variance to reduce the required north interior side yard and **approve** the variance to reduce the required interior side yard setbacks from 7 feet to 4 feet 10 inches for the property located at 3117 Fremont Avenue South, subject to the following conditions:

1. The east (rear) setback is moved two feet west to allow a distance of 7 feet from the public alley to the structure and to comply with Chapter 546.400 of the Code.

Attachments:

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