

**Department of Community Planning and Economic Development – Planning Division Report**

Variance Request  
BZZ-2383

**Date:** October 6, 2005

**Applicant:** Dwayne Ethridge, on behalf of Robert Burgess

**Address of Property:** 4201 10<sup>th</sup> Avenue South

**Contact Person and Phone:** Dwayne Ethridge, (763) 234-9162

**Planning Staff and Phone:** Molly McCartney, (612) 673-5811

**Date Application Deemed Complete:** August 11, 2005

**End of 60 Day Decision Period:** October 10, 2005

**End of 120 Day Decision Period:**

**Appeal Period Expiration:** October 17, 2005

**Ward:** 8      **Neighborhood Organization:** Field, Regina, Northrop Neighborhood

**Existing Zoning:** R1A, Single-family District

**Proposed Use:** Construction of a single-family dwelling with attached garage

**Proposed Variance:** A variance to reduce the front yard setback along 42<sup>nd</sup> Street East from 20 ft. to 6 ft., 9 in. to allow for the construction of a new single-family dwelling with attached garage on a reverse corner lot located at 4201 10<sup>th</sup> Avenue South in the R1A, Single-family District.

**Zoning code section authorizing the requested variance:** 525.520 (1)

**Background:** This application was continued from the September 15, 2005, Board of Adjustment meeting. Testimony from affected property owners from the September 15, 2005, meeting is included in the end of the staff report.

The subject property is 3,873 sq. ft. (38 ft. by 76 ft.) and is a vacant lot. A fire in December 2004, damaged a single-family dwelling which was subsequently demolished. The property owner could have rebuilt the dwelling without a variance at the previous setbacks under Minnesota State Statute 462.357, which allows for nonconforming uses to be rebuilt. However, the property owners were unable to provide documentation of the location of the house on the property.

The property is a reverse corner lot that has adjacent residential structures that face both 10<sup>th</sup> Avenue South and 42<sup>nd</sup> Street East. The applicant is proposing to construct a single-family dwelling with an attached garage. The applicant is requesting a front yard variance along 42<sup>nd</sup> Street East in order to rebuild a structure similar in width to the previous dwelling. The front yard setback of the proposed dwelling is in line with the dwelling on 10<sup>th</sup> Avenue South and meets the 5 ft interior and rear side yard setback. The property to the east along 42<sup>nd</sup> Street East is a single-family dwelling and detached garage which are located less than 2 ft. to the property line along 42<sup>nd</sup> Street East. The proposed dwelling will be located behind the established setback created by this residential structure. The public right of way between the property line and the sidewalk is approximately 8 ft. and with the proposed setback, the location of proposed dwelling will be approximately 15 ft. from the public sidewalk.

In addition to the variance, the applicant will need Site Plan Review approval in order to obtain a building permit for a new single family dwelling. The current plans do not meet the minimum points required for approval per the Design Standards Checklist. In addition, a principal entrance must face 10<sup>th</sup> Avenue South and that the proposed doors facing 42<sup>nd</sup> Street East do not meet this requirement (535.90(b)).

**Findings Required by the Minneapolis Zoning Code:**

- 1. The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The applicant has requested a variance to reduce the required front yard setback along 42<sup>nd</sup> Street East from 20 ft. to 6 ft., 9 in. The subject site is a reverse corner lot and has two front yard setbacks, along 10<sup>th</sup> Avenue South and 42<sup>nd</sup> Street East. The property to the east that faces 42<sup>nd</sup> Street East is set back from the front property line less than 2 ft. Without the requested variance, the zoning code would prevent the applicant from constructing a single-family dwelling that meets the minimum width for a residential structure of 22 ft. Staff believes the single-family dwelling with a setback greater than the adjacent residential structure to the east is a reasonable use of the property.

- 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.**

The conditions upon which the setback variance is requested are unique to the property due to the reverse corner lot status of the subject site, the size of the lot and the location of adjacent dwelling. The R1A District requires a 20 ft. setback or an established setback created by the adjacent residential structures. In this case, the adjacent residential structure has a much smaller front yard setback along 42<sup>nd</sup> Street East than the proposed dwelling. The original platting and size of the property and location of the adjacent uses is not a circumstance created by the applicant.

- 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.**

Staff believes that the new dwelling will be keeping with the spirit and intent of the ordinance and will not alter the essential character of the surrounding neighborhood. The proposed dwelling with the setback variance will be located behind the established setback of the adjacent residential structure to the east. The adjacent dwelling is only 2 ft. from the front property line along 42<sup>nd</sup> Street East and does not meet the R1A District front yard setback of 20 ft. The front yard setback requirement is used to create a uniform building wall along the street and the requested variance will be keeping with the spirit of and intent of the ordinance. In addition to the variance, the proposed dwelling will have to meet the Site Plan Review Design Standards Checklist to review land use approval for a building permit.

- 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.**

Granting the front yard setback variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed addition to the existing dwelling be detrimental to the public welfare or endanger the public safety.

**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 Board of Adjustment adopt the findings above and **approve** the variance to reduce the front yard setback along 42<sup>nd</sup> Street East from 20 ft. to 6 ft., 9 in. to allow for the construction of a new single-family dwelling with attached garage on a reverse corner lot located at 4201 10<sup>th</sup> Avenue South in the R1A, Single-family District, subject to the following conditions:

1. That the Planning Division review and approve the final site and elevation plans that measure to an architectural or engineering scale.

## Board of Adjustment

### HEARING ACTIONS/MINUTES

Thursday, September 15, 2005  
2:00 p.m., Room 317 City Hall

**Board Membership:** Ms. Debra Bloom, Mr. Matt Ditzler, Mr. David Fields, Mr. John Finlayson, Mr. Daniel Flo, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Matt Perry, Mr. Peter Rand

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

**9. 4201 10<sup>th</sup> Avenue South (BZZ-2383, Ward 8)**

Dwayne Ethridge, on behalf of the Robert Burgess, has applied for a variance to reduce the front yard setback along 42<sup>nd</sup> Street East from 20 ft. to 6 ft., 9 in. to allow for the construction of a new single-family dwelling with attached garage on a reverse corner lot located at 4201 10<sup>th</sup> Avenue South in the R1A, Single-family District.

Mr. Perry moved to **continue** the variance application one cycle to the Board of Adjustment public hearing to be held on Thursday, October 6, 2005. Mr. Rand seconded the motion. Motion passed.

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### TESTIMONY

Staff presented a request from the Field, Regina, Northrop Neighborhood Group that the item be continued to the October 6, 2005, meeting to the Board of Adjustment.

**Finlayson:** Before we call the roll on this would the applicant care to say anything? Name and address please.

Hello everybody. My name is **Robert Burgess**, 3904 Park Avenue South, Minneapolis, Minnesota.

**Finlayson:** Did you attempt to notify the neighborhood group?

**Robert Burgess:** Yes, we emailed them and we sent a letter. On the same day that we sent the letter, we brought a copy to Molly, she had asked me if I had sent them and I said yes. And as far as them saying that they did not get it, or whatever the situation was, he had to post signs up two to three weeks ago. I am sorry, but I think it was the Regina Neighborhood Group or something like that, that is who it was emailed to and sent to. And if they are saying that they want a continuation, that will end up pushing construction, if you guys even approve it, up until next year. The construction season in Minnesota ends due to our cold weather.

**Finlayson:** Construction does go on all year here. I have been involved with that. I think that we ought to postpone this one, one cycle and make sure that the neighborhood organization

knows about it so they have that amount of time to do something about it, by whatever means that they wish to deal with it.

**Molly McCartney (staff):** They did receive the 21 day notice from the city, that is one of our requirements. This is a copy of the notice that the applicant provided to staff regarding their notice. The neighborhood group did not provide anything in writing this is just phone conversations that I had back and forth.

**Finlayson:** But they did say that they had been noticed.

**Molly McCartney (staff):** Yes. They did receive the 21 day notice, but not the notice from the applicant, which is also required, it is part of the application process.

**Gates:** It is true that construction goes on all year, but there certainly are winter conditions, where it becomes much more expensive to construct in the winter. So, I am inclined to hear this today, because of the hardship that will be imposed upon the applicant, who seems to have made a good faith effort to notify the right people. So, I do not support the motion to continue.

**Finlayson:** Any further comment? Please call the roll.

**Roll Call Vote:**

Yeas: Fields, Finlayson, Perry, Rand

Nays: Bloom, Gates, Lasky

Recused: None

Absent: Ditzler, Flo

**Lasky:** Can they make testimony or not?

**Molly McCartney (staff):** I know there are some neighbors here, maybe we can go over what happens as far as their testimony.

**Finlayson:** For those of you who are here, you have a choice. You can give testimony today and it will be recorded and applied to the application when it is heard. But if you give testimony today, you can not give testimony at the next occasion. Or you can delay giving testimony until the next cycle and then may freely do it at that time. Yes sir.

Can I testify? My name is **Calvin Alexander** and I live at 4216 11<sup>th</sup> Avenue South, Minneapolis, Minnesota 55407. My question is about this notification cycle. The first that I heard of this is when I received a letter from the city. You are talking about notifying the neighborhood group. Is there some requirement to notify the neighbors?

**Molly McCartney (staff):** The applicant is required to notify the Council Member and the Neighborhood Group. And the city notices property owners within 350 feet. So, the applicant is not required to go out to individual neighbors and notify them, although we recommend that they talk with their adjacent neighbors.

**Finlayson:** Is there any of you who care to give testimony today? Please.

My name is **Lydia Wardlaw Brown**. I live at 1009 East 42<sup>nd</sup> Street. I live right next door to the property where the man wants to build his house on. I will give you a past preview of the history. The property that they are speaking of was involved in a fire. And how I feel about this. I will give you my testimony because I am not able to come back on October 6<sup>th</sup> to come to the other meeting. How would you feel coming home from work and then walking up the street, there are fire trucks and a fire and your heart is in your hand because you think that your house is on fire. Not a very good feeling. The closer you get to your house, you realize that it is not your house, but the neighbors next door. I was at work when all of this happened and I walked in on this. As I got closer to my house a neighbor came to me and said, where in the world have you been? I said that I had just gotten off from work. She said, I thought you were in the house. Why would I be in the house with this major fire? Calvin took a picture of the fire. What it looked like. The house collapsed in 20 minutes, I was told. When I got to it, it was smothering smoke and the house started at 11:37 and the fire trucks did not arrive until 11:40 and did not leave the property until 6 in the morning. That is how long that this fire smothered. I looked out my bedroom window, and I became emotionally disrupted by this situation. I called my Insurance agency and they recommended that I take pictures of damage of my property and the property at hand. I received the fireman's report. Fire Marshall's report, the fire was undetermined, in other words, nobody knows how it started. I ended up having to pay a deductible and to this day, I have not heard from the fire department or the fire investigator, police department on how this fire started. I am a little upset and feel that the neighborhood is upset because I was talking to the neighbors, but I am upset, so upset that I put up a fence, so I don't have to look at this property. It left me kind of emotionally unbalanced I think. I had advice from my family, my brothers, who told me Lydia, alright, it is their property, they got a settlement and they have the right to do whatever they please on their property, it is theirs, but you can make some demands when you come to this meeting. Since I don't know how this fire started, heard about how it started, anything, my demands would be that they rebuild a house they have to come up to code, specification and the city should check it fanatically, because I don't want to see another fire. I don't want to see some people working in this house who are trying to save money by trying to do things skimpy and that is what happened with the last repair. People were working in the house and trying to repair it. There is nothing wrong with trying to repair a house, but they were repairing a house that probably should have probably been condemned, that is my opinion. I am not a contractor and I don't even have the right to say what I said, but I do have the right to express my opinions about it. This house was condemned and they were having problems with it and the next thing you know there was a fire. If they rebuild, I would prefer them to build a garage facing 42<sup>nd</sup> Street. I would prefer them to build a house that wouldn't be conducive to having a slum landlord or rental property where just anybody can move in. The neighbors are pretty picky. Particular I would prefer the owner to live there. I really am not to favorable about having them move in myself. If you have been through one fire, I would prefer these people if they are going to build, have the city or specified that the construction is up to par, totally, 100% so there is no more fires.

**Finlayson:** I appreciate what you are saying and appreciate what you have been through and first of all if you are interested in the police report, arson report, get a hold of your council

members office they can get the information for you or tell you how about it. It is available, it is public information and they can help you with that. Regards to any construction, there are building inspections that go on by city inspectors and they do have to meet code and in many cases what they are stuck with, is not what has been done many years ago, but they have to do what is done by modern code. So, I think that you have some safety features there and some assurances that the property will be properly built.

**Lydia Wardlaw Brown:** I just want the assurance that if it is to be built, just built properly and to the point that there will not be anything like this happening again. It really devastated the neighborhood, I am just telling you how I feel.

**Finlayson:** I appreciate how upsetting it is, but there are some guarantees although nothing is absolute, but the entire process is designed to make sure that the property being constructed or remodeled/renovated are done in a safe way. I think that you are okay.

**Lydia Wardlaw Brown:** That is what I wanted to understand. Just bringing it to you, they have to do it, right?

**Finlayson:** Yes – they do.

**Perry:** You will not be coming back and you mentioned one thing that I would like to get some clarification on, you asked if the garage to be built that it be built on 42<sup>nd</sup> Street? Can you explain why?

**Lasky:** It is – this is what they are proposing in the drawings, it is facing 42<sup>nd</sup>.

**Finlayson:** I think that we are fine and thank you for coming down. Anyone else wish to speak at this time?

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My name is **Lisa McGlasson** and I live at 4228 – 10<sup>th</sup> Avenue South, 55407. I guess I am not so much against the variance as I am as to who is getting the variance. This property owner has a long history of not taking care of this rental property. Basically, what I would consider a slum lord, who let's bullet holes in windows stay there for years and years. Somebody who half demolishes the front steps and never repairs them.

**Finlayson:** I am very sorry, but we can not help you with that. We are not designed to do that, we are only designed to deal with the variance. The city Inspections is designed to deal with that if you observe problems either in this building or any other building with regards to whomever owns them, please get a hold of Inspections and give them the address.

**Lisa McGlasson:** I have, I have done that and so you would grant a variance to somebody who has a long history of not taking care of property?

**Finlayson:** We grant variances based on the city code and circumstances rather than the individuals involved. We are not in position to take them into account nor do we have the investigative ability to find out whether someone truly is a slum lord or not. I think that you can

see our dilemma, we are just dealing with the physical facts on the property, like what shape is the property, where are the improvements located on it, what may the hardships be to allow someone to get a variance according to city code. So that is the way that we are structured and the way that we are set-up. In terms of the other problems, if you have tried Inspections, then try your Council Members office and see what resolution you can get through them in working with Inspections. Inspections is very busy, but if there is a specific problem of real concern, then maybe it can be focused. That is the best advice that I can give you.

**Lisa McGlasson:** What about esthetics? The houses on the block are story and ½ bungalows and built in the 20's and do you have any say over what type of structure is built? Pre-fab?

**Finlayson:** City code has actually been changed recently and there is a point system where you need to get 15 points out of 20 to be able to proceed with a project. We can get things presented here that we will grant a variance for a side setback or something where they show us a drawing where the house has no windows, they still have to meet with staff and make the point system to be able to construct it. You can not get a variance for points either, you can't get around them, so it is designed to enhance some of the infill housing that is going on. Some of it was being built with no friendly features and did not fit into the neighborhood at all. Having said that it is still difficult to get all new housing to totally fit into the neighborhood, cost of materials, etc. Do you have any particular comments about the request for a variance?

**Lisa McGlasson:** It seems to me that they are using the same footprint as the previous house – is that correct?

**Finlayson:** That would be something that is normally done –use the same foundation.

**Lisa McGlasson:** So there is hardship involved, so I am assuming that this will be granted. What about the neighborhood group, and what if the neighborhood group comes back and says something.

**Fields:** Can I say something to that? Well, you are not going to be able to speak at the next meeting unless it is totally different. What John said was right, the importance of the neighborhood group – do you go to your neighborhood group meetings?

**Lisa McGlasson:** I have not.

**Fields:** Go to the one that is about this, because of your neighborhood group, Inspections and the Council Member will also get pressure from the neighborhood group, they are the ones that address issues of property management. That is the proper venue for that. Not making promises, but a lot of times that has a pretty heavy sway in terms of whether a particular development proposal is approved or not. But discuss that issue with the neighborhood group. That is why we are putting it off – to see what they say and how they come into it the next time.

**Lisa McGlasson:** Thank you.

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**Finlayson:** Anyone else care to speak? Thank you and I appreciate the fact that you all came down this time and some of you will come back next time. It is very important to do these things, it is also very important to regularly attend your neighborhood group association

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meetings because that is a good source of information, that is how you find out what is going well in advance in many cases as opposed to almost too late. Again thank you all for coming.

If you testify this time, you can not testify next time. Okay.

**Applicant:** I don't know if this would be called testimony, but when I bought that property, the stairs we already like that. I went through the process of trying to get it remodeled. I had problems with the city as far as the design, so I went through the process of selling the property. I sold the property actually in May of 2004 and I had bought the property in November of 2002. I was doing another remodel on another place. The guy that I sold it to never made any payments to me, and he was the one who was doing the work when the fire happened. He never made the payments, so I had to continue to make the payments. When the fire took place, I had not seen him but he called me and told me that there was a fire over there and what are we going to do, do you have insurance? He never paid insurance, he never made a payment and I am out \$10,000 dollars in payments and now this is what happened and you are calling me. I guess what I am trying to say to you guys is, I intentionally did not try to put up a slum house as you had put it out there and I apologize to you what had happened and the condition of the property and how it stayed that way for so long. But I had sold that property and I thought that I was done with it. When the fire happened I got dragged back into it. I made a mistake I should have gone over to Miss Lydia's house I guess and ask her if she was okay. If you notice since that December, I have been trying to work with Molly, I think since April or May and this is how long that this process has taken as far as getting the plans approved and everything approved. I am wasting my testimony where I could be talking to them, but I wanted to apologize to you, because in my heart I am not no slum lord, I have decent properties in bad neighborhoods and that was a good neighborhood and a bad property. All I want to say is that I apologize to you and if it gets approved I am building a quality house that would be a drastic improvement from the other one and I am not going to say it will improve your neighborhood, but I don't think that it will hurt it. I apologize to you as a man and I know she was devastated as far as it was right next door to her house. But I do apologize for that and that is basically all I have to say.

**Finlayson:** I view this is as more of a conversation with the neighbors rather than testimony. You are free to testify next time, if you stop it here.

**Applicant:** Okay. Thank you.