



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: December 6, 2004

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Tanya Holmgren, Zoning Specialist
Presenter in Committee: Carrie Flack, Senior Planner

Approved by Neil Anderson, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by Mark Arlinghaus.

BZZ 1989 – 3717 5th Avenue South – Rob Clapp on behalf of Mark & Erin Arlinghaus has applied for a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot with an existing two-family dwelling located at 3717 Fifth Avenue South in District R1A.

RECOMMENDATION: The Zoning Board of Adjustment adopted staff recommendation and denied the variance application.

Previous Directives: N/A

Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.

Community Impact

Other: See attached.

Background/Supporting Information

Mark Arlinghaus has filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment to deny the requested lot area variance to allow for the re-establishment of a platted lot with an existing non-conforming two-family dwelling in the R1A district.

According to the appellant, the Board of Adjustment's action to deny the variance is being appealed because they want to remain in their neighborhood and that there is significant support in the neighborhood for the existing duplex to remain and for the construction of a new single-family dwelling. The appellant has included copies of this support. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

Planning Division staff recommended denial of the lot area variance to allow for the re-establishment of a platted lot with an existing non-conforming two-family dwelling in the R1A district. Staff felt that a non-conforming duplex in a single-family district would be more non-conforming on a smaller lot.

At the September 2, 2004 Zoning Board of Adjustment meeting, seven (7) Zoning Board of Adjustment members were present. Five (5) members voted to adopt the staff recommendation and denied the variance. The October 21, 2004 Board of Adjustment minutes and the Planning Division staff report are attached. The Board of Adjustment hearing actions are included below and the Planning Department staff report is attached.

4. 3717 5th Avenue South (BZZ-1989, Ward 8)

Rob Clapp on behalf of Mark & Erin Arlinghaus has applied for a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot with an existing two-family dwelling located at 3717 Fifth Avenue South in District R1A.

Mr. Rand moved to adopt staff recommendation. Mr. Morgan seconded the motion. Motion passed.

The Motion denied the variance to reduce the required lot area from 5,000 sq. ft. to 4,860 sq. ft. (2.8%) to allow for the re-establishment of a platted lot with an existing two-family dwelling.

Roll Call Vote:

Yeas: Bloom, Fields, Lasky, Morgan, Rand

Nays: Finlayson, Flo

Recused: None

Absent: Gates

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-1990

Date: October 21, 2004

Applicant: Mark & Erin Arlinghaus

Address of Property: 3717 5th Avenue South

Contact Person and Phone: Rob Clapp, (612) 508-6350

Planning Staff and Phone: Tanya Holmgren, (612) 673-5887

Date Application Deemed Complete: September 23, 2004

End of 60 Day Decision Period: November 22, 2004

End of 120 Day Decision Period: January 21, 2004

Ward: 8 Neighborhood Organization: Powderhorn Park Neighborhood Association

Existing Zoning: R1A, Single-family District

Proposed Use: Reestablish a platted lot.

Proposed Variance: A variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot to allow for the construction of a single-family dwelling.

Zoning code section authorizing the requested variance: 525.520 (2)

Background: The subject property is the combination of two platted lots (Lot 9 and Lot 10) that total 80 ft. x 122.4 ft. (9,760 sq. ft.). The two combined lots consist of a legally non-conforming two-family dwelling and a detached garage. The applicant is proposing to reestablish a platted property line to allow for the construction of a new single-family dwelling. The existing two-family dwelling maintains a north setback of 2.9 ft, as this is an existing circumstance and the new property line would be along the south of lot 10, a variance is not required.

The lot area requirement for a single-family dwelling in the R1A District is 5,000 sq. ft. This requirement may be varied up to 30 percent. The applicant is proposing a 2.5 percent variance. The above referenced variance applies to Lot 10, which is 40 ft. x 122.4 ft. (4,860 sq. ft.). This lot consists of an existing detached garage that maintains at least 1.7 ft. setbacks on the property. Due to the separation of the two properties, Lot 9 will no longer have parking on the property. Lot 9 would be required to provide two parking spaces, as one space is required for each dwelling unit.

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.

Lot area: The applicant is seeking a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to reestablish a platted lot. The applicant is reestablishing an original platted line and returning the lots to the original platted sizes. Strict adherence to the regulations would not allow for the reestablishment of the platted lot to allow for the construction of a new single-family dwelling, which is a reasonable use of property in the R1A District. The new lot would be consistent with the adjacent platted

lots on the block and surrounding streets. However, staff believes the lots should remain combined to accommodate the existing two-family dwelling, based on the combined lot area. Single-family dwellings in R1A districts require lot size of 5,000 sq. ft. Conforming two-family dwellings in R2B districts require 10,000 sq. ft. Combined the lots are 9,760 sq. ft. and would be considered a reasonable use, since the lot is an existing circumstance. Staff does not believe a variance is required to allow reasonable use of the subject 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.**

Lot area: The conditions upon which the variance is requested are unique to the parcel of land and were not created by the applicant. The proposed lot is 4,880 sq. ft. in area and was originally platted that size. The applicant would need to acquire an additional 120 sq. ft. of land to allow for the construction of a new single-family dwelling on the subject site without a variance. It would be difficult to acquire additional property without affecting the adjacent properties, because the lots are all similar in size. Staff does not believe the original platting of the property that established the lot size is a circumstance created by the applicant.

The area surrounding the subject site does not appear to consist primarily of two-family dwellings. Staff determined that the area does consist of 30 of 228 properties zoned R1A with duplexes on similarly sized lots, 10 additional properties in the area that are either triplexes or other non-conforming uses. There are also a number of commercial and higher density residential zoning in the area. However, the majority of the properties are zoned R1A and are conforming single-family dwellings.

Staff believes that while the lot area variance of 2.5% needed to accommodate the reestablishment of two platted lots and the construction of a new single-family dwelling does not appear to be significant, the existence of a duplex on a lot of less than 5,000 sq. ft. is an increase in density that is not consistent with the area. The variance is necessary because the property does not meet the minimum lot size of 5,000 sq. ft. which is required for any type of dwelling. The property is a legal nonconforming use consisting of two legal dwelling units on a lot zoned R1A. Staff believes allowing the reestablishment of two platted lots and the construction of a new single-family dwelling increases the nonconformity of the property.

- 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.**

Lot area: Although the property is being returned to the original platted size and is consistent in size with other platted lots in the area, staff believes that granting the lot area variance will alter the essential character of the surrounding neighborhood. Staff does not believe that allowing the reestablishment of the platted lot with the existing duplex meets the intent of the ordinance since the use is non-conforming and there are not a substantial number of duplexes in the area. Staff believes adding a new single-family dwelling after reestablishment of the platted lot increases the nonconformity of the property, which may negatively impact the surrounding area. Granting the variance may not be injurious to the use or enjoyment of other property in the vicinity, but is inconsistent with the majority of the properties in the vicinity.

- 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.**

Lot area: Granting the lot area variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed variance be detrimental to the public welfare or public safety, because each of the lots will be providing parking on site.

Recommendation of the Community Planning and Economic Development Department:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the finding above and **deny** the variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot to allow for the construction of a single-family.

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-1989

Date: October 21, 2004

Applicant: Mark & Erin Arlinghaus

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Contact Person and Phone: Rob Clapp, (612) 508-6350

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Ward: 8 Neighborhood Organization: Powderhorn Park Neighborhood Association

Existing Zoning: R1A, Single-family District

Proposed Use: Reestablish a platted lot with an existing nonconforming two-family dwelling.

Proposed Variance: A variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot with an existing two-family dwelling.

Zoning code section authorizing the requested variance: 525.520 (2)

Background: The subject property is the combination of two platted lots (Lot 9 and Lot 10) that total 80 ft. x 122.4 ft. (9,760 sq. ft.). The two combined lots consist of a legally non-conforming two-family dwelling and a detached garage. The applicant is proposing to reestablish a platted property line to allow for an existing nonconforming two-family dwelling. The existing two-family dwelling maintains a north setback of 2.9 ft, as this is an existing circumstance and the new property line would be along the south of lot 10, a variance is not required.

The lot area requirement for a single-family dwelling in the R1A District is 5,000 sq. ft. This requirement may be varied up to 30 percent. The applicant is proposing a 2.5 percent variance. The above referenced variance applies to Lot 9, which is 40 ft. x 122.4 ft. (4,860 sq. ft.). This lot consists of an existing nonconforming two-family dwelling. Lot 10 consists of an existing detached garage that maintains at least a 1.7 ft. setback on the property. Due to the separation of the two properties, Lot 9 will no longer have parking on the property. Lot 9 would be required to provide two parking spaces, as one space is required for each dwelling unit.

Findings Required by the Minneapolis Zoning Code:

2. 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.

Lot area: The applicant is seeking a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to reestablish a platted lot. The applicant is reestablishing an original platted line and returning

the lots to the original platted sizes. Strict adherence to the regulations would not allow for the reestablishment of the platted lot. The new lot would be consistent with the adjacent platted lots on the block and surrounding streets. However, staff believes the lots should remain combined to accommodate the existing two-family dwelling, based on the combined lot area. Single-family dwellings in R1A districts require lot size of 5,000 sq. ft. Conforming two-family dwellings in R2B districts require 10,000 sq. ft. Combined the lots are 9,760 sq. ft. and would be considered a reasonable use, since the lot is an existing circumstance. Staff does not believe a variance is required to allow reasonable use of the subject property.

- 3. 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.**

Lot area: The conditions upon which the variance is requested are unique to the parcel of land and were not created by the applicant. The proposed lot is 4,880 sq. ft. in area and was originally platted that size. The applicant would need to acquire an additional 120 sq. ft. of land to allow for the reestablishment of the platted lots without a variance. It would be difficult to acquire additional property without affecting the adjacent properties, because the lots are all similar in size. Staff does not believe the original platting of the property that established the lot size is a circumstance created by the applicant. Additionally, the applicant did not create the non-conforming two-family dwelling, it is an existing circumstance, as the property was built as a duplex.

The area surrounding the subject site does not appear to consist primarily of two-family dwellings. Staff determined that the area does consist of 30 of 228 properties zoned R1A with duplexes on similarly sized lots, 10 additional properties in the area that are either triplexes or other non-conforming uses. There are also a number of commercial and higher density residential zoning in the area. However, the majority of the properties are zoned R1A and are conforming single-family dwellings.

Staff believes that while the lot area variance of 2.5% needed to accommodate the reestablishment of two platted lots and the construction of a new single-family dwelling does not appear to be significant, the existence of a duplex on a lot of less than 5,000 sq. ft. is an increase in density that is not consistent with the area. The variance is necessary because the property does not meet the minimum lot area of 5,000 sq. ft. which is required for any type of dwelling. The property is a legal nonconforming use consisting of two legal dwelling units on a lot zoned R1A. Staff believes allowing the reestablishment of two platted lots increases the nonconformity of the property by having a duplex on a property less than 5,000 sq. ft. and by not being consistent with the surrounding area.

- 4. 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.**

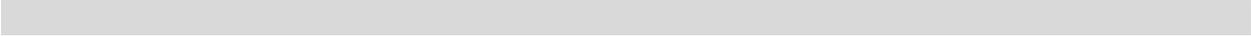
Lot area: Although the property is being returned to the original platted size and is consistent in size with other platted lots in the area, staff believes that granting the lot area variance will alter the essential character of the surrounding neighborhood. Staff does not believe that allowing the reestablishment of the platted lot with the existing duplex meets the intent of the ordinance since the use is non-conforming and there are not a substantial number of duplexes in the area. Staff believes allowing the reestablishment of the platted lot increases the nonconformity of the property, which may negatively impact the surrounding area. Granting the variance may not be injurious to the use or enjoyment of other property in the vicinity, but is inconsistent with the majority of the properties in the vicinity.

- 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.**

Lot area: Granting the lot area variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed variance be detrimental to the public welfare or public safety, because each of the lots will be providing parking on site.

Recommendation of the Community Planning and Economic Development Department:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the finding above and **deny** the variance to reduce the required lot area from 5,000 sq. ft. to 4,860 sq. ft. (2.8%) to allow for the re-establishment of a platted lot with an existing two-family dwelling.



Board of Adjustment Hearing Testimony and Actions

Thursday, October 21, 2004
2:00 p.m., Room 220 City Hall

Board Membership: Ms. Debra Bloom, Mr. David Fields, Mr. John Finlayson, Mr. Daniel Flo, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Barry Morgan, Mr. Peter Rand

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

4. 3717 5th Avenue South (BZZ-1989, Ward 8)

Rob Clapp on behalf of Mark & Erin Arlinghaus has applied for a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot with an existing two-family dwelling located at 3717 Fifth Avenue South in District R1A.

CPED Department Planning Division Recommendation by Ms. Holmgren:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the finding above and deny the variance to reduce the required lot area from 5,000 sq. ft. to 4,860 sq. ft. (2.8%) to allow for the re-establishment of a platted lot with an existing two-family dwelling.

5. 3717 5th Avenue South (BZZ-1990, Ward 8)

Rob Clapp on behalf of Mark & Erin Arlinghaus has applied for a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot to allow for the construction of a single-family dwelling located at 3717 Fifth Avenue South in District R1A.

CPED Department Planning Division Recommendation by Ms. Holmgren:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the finding above and deny the variance to reduce the required lot area from 5,000 sq. ft. to 4,860 sq. ft. (2.8%) to allow for the re-establishment of a platted lot to allow for the construction of a single-family dwelling.

TESTIMONY

Staff presented their report and recommendation to the Board of Adjustment.

Finlayson: Any questions? Not at this time. Thank you. Is the applicant present?

I am **Rob Clapp** who is representing the applicant.

Finlayson: State your name and address for us.

Rob Clapp, my address is 971 Sibley Memorial Highway, Saint Paul. Again, I am representing the owners of this property. Currently, they live in the duplex at 3717 and what they would like to accomplish is be able to do this lot split, so they can build a single family house, not to sell or for economic reasons, but actually live in the house and stay in the area. They want new construction and the other alternative is to move out to the suburbs, but with this option they can stay within the neighborhood. I did advise them that since this is a 2% - little over a 2% variance - I didn't think that it would be major and thought that they had a good shot at it. I would not have advised them if it was a major variance. Also, about the parking, right now there is a garage on the vacant property, which they would

use for the new construction house and provide a new parking garage for the duplex, so there would be adequate parking for both parcels. That is it, unless there are any questions.

Finlayson: Questions? Marissa?

Lasky: Will the new garage for the duplex need a variance?

Rob Clapp: No, there is plenty of room to allow for the set-backs.

Tanya Holmgren (staff): Staff does not have anything regarding the new garage.

Rand: Will the duplex become a single-family?

Rob Clapp: No – right now it is a legal nonconforming duplex, which is how they bought it.

Flo: So, the applicant will continue to own the duplex and the single family home?

Rob Clapp: That is yet to be seen, obviously they need the variance. But, I think that their intent is to sell the duplex.

Rand: As a duplex?

Rob Clapp: As a duplex.

Lasky: Do you know how many bedrooms are up above?

Rob Clapp: There are two on the main floor and three up stairs.

Finlayson: Any further questions? Thank you. Anyone else to speak on this matter? I see no one. Close the public portion of this hearing. Board comment please.

Bloom: I am looking at this neighborhood and there are not a lot of duplex's in this neighborhood. I see there is another house, 3709, one block over, is about the same thing, one house on two lots. That is an R1A and appears that it is not a duplex at this point. Looking at consistency within the neighborhood, fitting in, and densities and all these other things, I don't know that a duplex conforms, however we are not debating that, I am just saying that that is part of my thought process on whether or not we split up a lot because of density reasons. If you have a two family dwelling on this R1A zoned lot, that is the only thing, we have discussed this before, these variances. We have looked at the other houses in the area, usually you can say the majority of them are duplex, and then support the variances like we have done in the past based on that. That is why I am having trouble with the opposition.

Finlayson: I don't believe or recall that we see duplex's being predominant building style in any given block. Usually never is. These were constructed before the zoning code was enacted, so it is the usual hodge-podge of people built what they wanted to build. Mr. Flo?

Flo: My inclination is to grant the variances for both 4 & 5 as requested, primary reason is being that the increasing of density is a goal of the City of Minneapolis, and in this case the increase is a tremendous effect on the lots or the neighborhood, so my inclination is grant both.

Finlayson: I agree with you.

Marissa: Usually, I would agree with that. I don't see a lot of duplex's on that lot. I would feel very comfortable granting the variance if the duplex was converted to a single family. You are now making a rental building next door to a predominantly single family owned block, and it is a different animal. So, I am having some difficulty in granting it. Either you have a duplex on an over-sized lot, and then I am comfortable and okay or you have two single families and one is with a variance.

Rand: I am interested in getting a motion on the floor before this discussion. So, I would move to approve staff recommendations.

Finlayson: Is there a second?

Morgan: I'll second that.

Finlayson: I see no further discussion. Please call the roll.

Roll Call Vote:

Yeas: Bloom, Fields, Lasky, Morgan, Rand

Nays: Finlayson, Flo

Recused: None

Absent: Gates

4. 3717 5th Avenue South (BZZ-1989, Ward 8)

Rob Clapp on behalf of Mark & Erin Arlinghaus has applied for a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot with an existing two-family dwelling located at 3717 Fifth Avenue South in District R1A.

Mr. Rand moved to adopt staff recommendation. Mr. Morgan seconded the motion. Motion passed.

The Motion **denied** the variance to reduce the required lot area from 5,000 sq. ft. to 4,860 sq. ft. (2.8%) to allow for the re-establishment of a platted lot with an existing two-family dwelling.

Roll Call Vote:

Yeas: Bloom, Fields, Lasky, Morgan, Rand

Nays: Finlayson, Flo

Recused: None

Absent: Gates

5. 3717 5th Avenue South (BZZ-1990, Ward 8)

Rob Clapp on behalf of Mark & Erin Arlinghaus has applied for a variance to reduce the required lot area from 5,000 sq. ft. to 4,880 sq. ft. (2.5%) to allow for the re-establishment of a platted lot to allow for the construction of a single-family dwelling located at 3717 Fifth Avenue South in District R1A.

Mr. Rand moved to adopt staff recommendation. Mr. Morgan seconded the motion. Motion passed.

The Motion **denied** the variance to reduce the required lot area from 5,000 sq. ft. to 4,860 sq. ft. (2.8%) to allow for the re-establishment of a platted lot to allow for the construction of a single-family dwelling.