

**Department of Community Planning and Economic Development – Planning Division**  
Variance  
BZZ-5700

**Date:** August 27, 2012

**Applicant:** Oak Properties

**Address of Property:** 3550 46<sup>th</sup> Street East

**Project Name:** Oaks Station Place

**Contact Person and Phone:** James Schloemer with Kaas Wilson Architects, (612) 879-6000

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

**Date Application Deemed Complete:** August 2, 2012

**End of 60-Day Decision Period:** October 1, 2012

**Ward:** 12 **Neighborhood Organization:** Standish-Ericsson Neighborhood Association

**Existing Zoning:** C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District, AP Airport Overlay District

**Proposed Use:** Fence

**Concurrent Review:** Variance to increase the maximum height of a fence from 6 feet to 7.5 feet to allow for the installation of a cedar fence adjacent to the west property line located at the property of 3550 46<sup>th</sup> Street East.

**Applicable zoning code provisions:** Chapter 525, Article IX Variances, Section 525.520 (5) “To permit an increase in the maximum height of a fence.”

**Background:** A 4-story mixed use development with 104 dwelling units and ground floor commercial is currently under construction at the property of 3550 46<sup>th</sup> Street East. The applicant is proposing to install a privacy fence along the west property line separating the development from the low density residences to the west. On May 23, 2011, the Planning Commission approved a conditional use permit, site plan review, and plat applications to allow the development. Those actions were appealed to the City Council. The City Council upheld the Planning Commission actions, but added a number of conditions to the site plan review approval including the following: “Developer will apply to the City for a variance for a 7’6” cedar fence, then build that fence if approved.” The maximum allowed height for a solid fence is 6 feet in a required yard on the subject property. Therefore, a variance is required to increase the maximum allowed height of a fence.

As of the writing of this report, staff has not received any correspondence from the neighborhood group. Staff will forward comments, if any are received, at the Planning Commission meeting.

## VARIANCE

### **Findings as Required by the Minneapolis Zoning Code for a Variance:**

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

The proposed fence is a 7 foot, 6 inch tall, solid board-on-board cedar fence. It would extend 542 feet adjacent to the west property line in a required interior side yard. The maximum allowed height of solid fence in a required interior side yard is 6 feet. Prior to the sale of this property to the applicant to construct a mixed use development on this site, a solid wood fence greater than 6 feet in height had been erected as a buffer between the 46<sup>th</sup> Street Light Rail Transit Station and the low density residential properties to the west. The fence was not located in a required yard and extended almost the full length of the property. Most of the fence was removed to allow for the construction of the development, but a portion of the fence remains as can be seen in the last two photos attached to this report. The proximity to the light rail transit station and associated noise are circumstances that have not been created by the applicant. The proposed fence will essentially act as a replacement of the part of the fence that was previously removed.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

Standards governing fences are established to promote the public health, safety and welfare, encourage an aesthetic environment and allow for privacy, while maintaining access to light and air. Policies of the comprehensive plan also support the purpose of the yard ordinances. The fence will help to buffer the low density residential uses to the west from the uses, including associated noise, to the east. It would be of a higher quality design that also allows some additional privacy between uses, but should not have any significant effect on adjacent properties access to light and air. The fence would be adjacent to detached accessory structures, but no principal residential structures. As shown on the site plan, the south end of the fence will be set back 5 feet from the lot line adjacent to 46<sup>th</sup> Street East in order to maintain a sight triangle for the adjacent driveways and pedestrians on the public sidewalk. Conversations about the appropriate set back from the south property line are currently underway between the applicant, the neighbors and the council member for this ward. The applicant has indicated that the fence could be set back approximately 20 feet. To ensure that adequate sight-lines are maintained, staff is recommending that the fence is set back at least 10 feet from the lot line adjacent to 46<sup>th</sup> Street East. The request is reasonable and consistent with the intent of the ordinance and the comprehensive plan.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

Granting the variance would not likely affect the character of the area and should have little effect on adjacent properties. It would also not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties. The fence will help to buffer

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the low density residential uses to the west from the uses, including associated noise, to the east. It would be of a higher quality design that also allows some additional privacy between uses, but should not have any significant effect on adjacent properties access to light and air. The fence would be adjacent to detached accessory structures, but no principal residential structures. As shown on the site plan, the south end of the fence will be set back 5 feet from the lot line adjacent to 46<sup>th</sup> Street East in order to maintain a sight triangle for the adjacent driveways and pedestrians on the public sidewalk. Conversations about the appropriate set back from the south property line are currently underway between the applicant, the neighbors and the council member for this ward. The applicant has indicated that the fence could be set back approximately 20 feet. To ensure that adequate sight-lines are maintained, staff is recommending that the fence is set back at least 10 feet from the lot line adjacent to 46<sup>th</sup> Street East.

**RECOMMENDATION**

**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 Planning Commission adopt the above findings and **approve** the variance to increase the maximum height of a fence from 6 feet to 7.5 feet to allow for the installation of a cedar fence adjacent to the west property line located at the property of 3550 46<sup>th</sup> Street East, subject to the following condition:

1. The fence shall be set back a minimum of 10 feet from the lot line adjacent to 46<sup>th</sup> Street East.

**Attachments:**

1. Applicant statement of proposed use
2. Zoning map
3. Plans
4. Photos