

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

Date: November 14, 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

Application Description:

Variance: To increase the allowed height of the fence from that which was approved by the Planning Commission in 2004. For the metal fencing at the west end of the Grant Street frontage, to increase the allowed height to 6 feet ½ inch. For the masonry and metal fencing in

the central part of the Grant Street frontage, to increase the allowed height to 7 feet 8½ inches for the masonry piers and to 6 feet 11 inches for the metal fencing between the piers.

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 5th 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.

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 that time it was also determined that an oversight of a plan detail on final drawings by planning 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 materials for 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 overlooking the fence height in the sign-off of final drawings was an error on the part of the developer in the installation of the fence. 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’-8½” for the concrete and stone pillars. This is over a foot above what was proposed on the final plans submitted by the developer in 2002.

	Simple Fence	Compound Fence	
	Height of Simple Metal Fencing	Height of Masonry Piers	Height of Metal Sections Between Piers
Fence Dimensions on 2002 Approved Site Plan	6'	8'	6'
Fence Dimensions as Approved by Variance in 2004	5'	7'-4"	5'
Fence Dimensions as Constructed and Currently Requested	6'	7'-8½"	6'-11"

In May, 2004, the developer submitted an application for variance of fence height to allow the fence to remain as installed. 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.”

After determining that fence height adjustments would cost \$50,000, the developer inquired about the possibility of sharing this cost w/ the city. And, 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.

More information is available now as compared with the review of the 2004 variance application because the fencing has been fully installed and the visual impact of the fencing can be observed.

The primary concern identified by staff in 2004 was whether fencing of the scale proposed would seem imposing and would communicate to the public, in particular to pedestrians on the adjacent sidewalk, a sense of gated-ness and exclusion. The countervailing consideration was the observation that the fencing can be considered in the context of a grand and very high building. The appropriate balance between these two considerations is still at the heart of this analysis and recommendation.

The staff recommendation in this report is in two parts, reflecting the fact that the experience of the installed fence is different for two sections of the fence along Grant Park. The fencing at the west end of the Grant Street frontage is all metal, and wrought iron in style. The fencing in the central part of the Grant Street frontage is a compound fence. It has masonry piers and wrought

iron style metal fencing between the piers and above a masonry base.

Despite the fact that the metal part of the compound fencing in the central part of the Grant Street frontage is almost 7 feet high, and the masonry piers nearly 7 feet 9 inches, its location directly in front of the Grant Park tower and the porte cochere (tall constructed awning in front of the front door that shelters part of the semicircular drive so passengers can get out of vehicles without getting wet) diminishes its height in the perception of the pedestrian. Moreover, the two 35' lengths of the compound fencing in front of the porte cochere are separated by 10 feet for the sidewalk to the front door. Moreover, drive aisles separate these sections of the compound fence from the next fencing sections to the east and west by gaps of 65 feet and 55 feet. Because of these factors, the perception of the compound fencing from the perspective of the pedestrian isn't that of a continuous barrier. Rather, there is a sense of ample space and access to the front entrance to the Grant Park tower.

The metal fencing at the western end of the Grant Street frontage, at 6 feet high, is lower than the compound fencing in front of the semicircular drive. But its 40 foot length (70 feet if you include the section of compound fence which it joins on the east) is not interrupted by any breaks, so it leaves the pedestrian with a much stronger sense of looking at the grounds of Grant Park through a high fence rather than over it. Moreover, unlike the compound fence sections in front of the semicircular driveway, the backdrop to the simple metal fence is not the Grant Park tower, so the eyes are not drawn upward. Rather, they are drawn through the fence to the landscaped grounds. Finally, this section of fencing is a bit anomalous in comparison to all of the other purely metal fence sections around the development. The ground-level metal fencing in front of the CityHomes and townhouse units is predominantly 3 feet in height, and on the west side of the development along the extensive length of the I-35W exit ramp the fencing is no more than 5 feet in height.

Given these considerations, staff supports an expanded variance for the compound fencing that would allow its height as currently constructed. However, staff recommends no change to the 2004 variance that allowed a 5 foot height for the simple metal fencing at the western end of the Grant Street frontage. There would be some expense on the part of the applicant to replace this part of the fence, but it is certainly more easily done than modifying the masonry and metal compound fencing.

VARIANCE -

Findings as Required by the Minneapolis Zoning Code for the Variance:

- 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.**

Fencing is an important element in creating a clear distinction between the public sidewalk realm, and the semi-private Grant Park grounds. Because of the height and width of the Grant Park tower, it is reasonable to allow fencing that is higher than what would be allowed as of right. In particular, the fencing directly in front of the tower and porte cochere appears in scale with these elements despite the piers being over seven feet in height and the metal

fence segments being almost 7 feet in height. This is less true for the simple metal fence at the west end of the Grant Street frontage.

- 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 height of the Grant Park tower, and the extensive landscaped area on the block is not generally true of property in the OR3 zoning district.

- 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.**

The spirit and intent of the city's fence ordinance is to restrict fence heights so that a) visibility is allowed in and out of yards (and in particular front yards), and b) fencing does not present an imposing view or create an impression of a gated community. A four foot fence establishes a crystal clear boundary between public and semi-private space, while easily allowing views over the fence. When a development can only be viewed through the bars of a fence, the sense of barrier and exclusiveness that is experienced is quite different in comparison to being able to can easily view a development over a fence. The creation of a sense of exclusivity is a particular risk when the residents of the development are, on average, affluent in comparison with most neighborhood residents.

The sense of exclusivity is communicated by the simple metal fencing at the west end of the Grant Street frontage. It is 6 feet high, unbroken and above eye level for the most people. Staff deems this to be injurious to the use or enjoyment of other property in the vicinity. This is less true of the compound fencing in front of the semi-circular drive. There is ample discontinuity in the compound fencing that allows a perception of access and openness to the interior of the property and the Grant Park tower entrance. Given this, Planning staff proposes that no change is made to the fence height variance granted in 2004 for the simple metal fence. It allows a 5 foot height.

Planning staff propose that a variance be granted for the compound sections of fencing along Grant Street to allow it to remain as constructed. For the reasons outlined above, this would not be expected to alter the essential character of the locality or be injurious to the use or enjoyment of other property 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.**

Constructing the fencing as described by planning staff above would not be expected to have an impact on street congestion, fire or public welfare.

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 adopt the above findings and **deny** a variance to increase the height of the metal fencing at the west end of the Grant Street frontage to 6 feet ½ inch, and to **approve** a variance to increase the height of the compound fence in the center part of the Grant Street frontage to 7 feet 8½ inches for the masonry piers and to 6 feet 11 inches for the metal fencing between the piers.

Attachments:

1. Applicant cover letter and letter of clarification
2. Applicant findings
3. Public notice
4. Correspondence
5. Site Plan
6. Fence elevations