Request for City Council Committee Action from the Department of Community Planning & Economic Development – Planning Division

Date: April 24, 2008

To: Council Member Gary Schiff, Chair, Zoning and Planning Committee
Members of the Committee

Referral to: Zoning and Planning Committee

Subject: Appeal of the Zoning Board of Adjustment action denying a variance to reduce the north interior property line from 6 feet to 3 feet to allow for the construction of a new attached raised deck on a single family dwelling located at 4858 Fremont Avenue South in the R1 Single Family District.

Recommendation: The Zoning Board of Adjustment adopted staff recommendation and a denied a variance to reduce the north interior property line from 6 feet to 3 feet to allow for the construction of a new attached raised deck on a single family dwelling located at 4858 Fremont Avenue South in the R1 Single Family District.

Previous Directives: N/A

Prepared or Submitted by: Brian Schaffer, Senior City Planner, 612-673-2670

Approved by: Jack Byers, Planning Supervisor, 612-673-2634

Presenters in Committee: Brian Schaffer, Senior City Planner

Financial Impact (Check those that apply)
_x_ No financial impact (If checked, go directly to Background/Supporting Information).
___ Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
___ Action provides increased revenue for appropriation increase.
___ Action requires use of contingency or reserves.
___ Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
___ Other financial impact (Explain):
___ Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)
Ward: 13
Neighborhood Notification: The Lynnhurst Neighborhood Association was notified of the appeal application on April 14, 2008.
City Goals: See staff report.
Comprehensive Plan: See staff report.

Zoning Code: See staff report.
Living Wage/Job Linkage: Not applicable.
End of 60/120-day Decision Period: The end of the 60 day decision period is April 29, 2008. On April 14, 2008 staff sent a letter extending the decision period another 60 days. The 120 day decision period expires June 28, 2008.
Other: Not applicable.

Background/Supporting Information Attached: Gregg Hanson filed an appeal of the Zoning Board of Adjustment decision denying a variance to reduce the north interior property line from 6 feet to 3 feet to allow for the construction of a new attached raised deck on a single family dwelling located at 4858 Fremont Avenue South in the R1 Single Family District.

The Zoning Board of Adjustment voted 4-2 to deny the variance to reduce the side yard setback from 6 feet to 3 feet to allow for a deck on March 27, 2008. The appellant filed an appeal on April 4, 2008. The appellant's statement is included in the attached supporting material.

Supporting Material

A. Appellant statement of appeal
B. March 27, 2008 ZBOA Meeting Minutes
C. March 27, 2008 ZBOA Staff Report with attachments
D. Supplement materials provided by applicant to the ZBOA on March 27, 2008

Board of Adjustment
Hearing Testimony and Actions

Thursday, March 27th, 2008
4:30 p.m., **Room 317** City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Bruce Manning and Mr. Matt Perry

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

6. **4858 Fremont Avenue South (BZZ-3964, Ward 13)*:***
   Gregg Hanson, on behalf of Jim Johnson and Kathy Schweikart, has applied for a variance to reduce the north interior side yard setback from 6 feet to 3 feet to allow for the construction of a new attached raised deck on a single family dwelling located at 4858 Fremont Avenue South in the R1 Single Family District.

   Mr. Perry moved and Mr. Ditzler seconded the motion to adopt staff recommendation and **deny** a variance to reduce the north interior property line from 6 feet to 3 feet to allow for the construction of a new attached raised deck on a single family dwelling located at 4858 Fremont Avenue South in the R1 Single Family District.
   Roll Call Vote:
   Yeas: Ditzler, Koch, Luepke Pier and Perry
   Nays: Finlayson and Manning
   Recused: Lasky
   Absent: None

TESTIMONY

Mr. Gates: Thank you Mr. Schaffer. Questions for staff? I see none, thank you. Is the applicant here?

Gregg Hanson: Representing 4858 Fremont. I've handed in a packet in response to the staff recommendations on possible relocating the deck to the south. Just want to set a little scenario here and read the statement. The kitchen expansion is necessary due to limited space in the existing kitchen. It's a 10'6" x 13' kitchen which is inadequate for the existing four person family, so we are proposing to expand … over the terrace space is our only course of action based on interior layout. We do not want to take space away from existing pantry or dining room on the plan. Expansion over the terrace eliminates that usable deck space, so that then is why we have decided to add the deck on the rear of the home. Placement of the deck along the north side will align with existing structure which typically has been allowed in past years on projects that we have done. If the deck were being made to conform to the 6' setback requirement it would result in a supporting post on the north end severely limiting if not completely eliminating access to the north stall of the garage. That can be viewed on the third page of the packet, also shown … an example here of a car trying to pull in around that post and access that north stall, also on page four of the handout … an elevation showing the post directly in front of the garage door. In essence it turns the two stall garage into a single stall which would be a severe hardship for again

a four person/two car family. It would force them to either park on the street or in the driveway, thus making the driveway less accessible for a second car. As well as creating a potential hazard to the post itself or the vehicle for damage to the vehicle and structural damage to the support of the deck if the post were hit. Recommendation by the zoning staff was to relocate the deck to the south side of the driveway. This will create some additional problems with the yard access. It will also create head room issues to access an existing door from underneath the deck, which would be on pages five and six of the handout, there is an elevation to show the deck to the south which will then eliminate use of the existing stairs that go from the backyard up to the terrace currently. The deck will cover that entire sidewalk and stair and render that area unusable. It will also force the elimination of existing green space including garden area, a small tree, and several large shrubs, as well as eliminating useable yard space, whereas the current proposed deck plan will be over existing driveway which will remain usable and is already impervious surface. Moving the deck to the south will also force relocation of existing electrical meter on the rear of the home to another location and render existing concrete walkway along the north side of the house useless as it will lead to nowhere since the deck will not continue at the northwest corner. Moving the deck to the south will also block existing access to gardens along the south side of the house. We also feel that the deck on the southwest corner may also create some safety issues in that it will create a small area where someone might be able to hide under the deck and have access to two basement level windows where general public would not be able to see them. In summary, the recommendation by zoning staff to deny the variance forces the home owner to choose between having a two stall garage or usable deck space that is accessible from both the north and south sides of the home.

Mr. Gates: Thank you Mr. Hanson. Are there questions for the applicant?

Mr. Manning: The property to the north in the back yard…(inaudible)

Mr. Hanson: Both properties have walk out level garages on the back. The actual … the neighboring property actually has two garages, one on either side of the home.

Mr. Manning: (Inaudible)

Mr. Hanson: There is … I'm sorry I don't have pictures of it, but I would estimate there is probably about ten feet of garden space.

Mr. Manning: (inaudible)

Mr. Hanson: This would be a picture, angling to try and get a north elevation of the house, and it does show the neighboring home with a deck and you can see the garage here in the background.

Mr. Manning: Can you circle where the…(inaudible)

Mr. Gates: Thank you Mr. Hanson. Is there anyone else here to speak in favor of the application? I see no one. Is there anyone here to speak in opposition to the application? And there is no one. Let's close the public hearing and take comment from the Board.

Ms. Lasky: (Inaudible).

Mr. Gates: Actually, Ms. Lasky, I hate to say it, but I think you missed the beginning of the presentation and I think we better ask you to recuse. Sorry.

Mr. Ditzler: I'll just open up the discussion. I think my initial problem with this is that the lot size is 8100 sq. ft. it's far in excess of a standard city lot, which leaves me difficulty in finding hardship for the candidate. I think actually the alternative drawing that they submitted is actually a fairly reasonable compromise and it sounds like …

Mr. Gates: Which drawing would that be?

Mr. Ditzler: In the packet that was submitted, page five. To move the deck to the south or maybe not that exact design, but some design facsimile of it…it sounds like there are some gardens and some landscaping that needs to be done, but it seems to be less of an impact as to the original proposed design, to me.

Mr. Gates: Okay, thank you.

Mr. Perry: I would just remind my Board collages and the Board that we need to think very carefully about granting variances for which the applicant has created the situation and by doing this addition, which will likely be approved through the administrative approval they have created this situation, where they will need to have this deck over the property line…not over the property line, but within the required side yard setback. I think this comes down to a matter of choices. They have a choice to do the addition or maybe build out somewhat in having a deck where they don't have the addition if they decide not to do the addition. I think it is just a matter of choice. I would agree with Mr. Ditzler, the property size is considerably larger than the average lot size, so they have plenty of space to work with.

Mr. Gates: Thank you Mr. Perry.

Mr. Manning: I find myself concerned. (Inaudible). We are talking about 3 feet. I struggle with the hardship.

Ms. Luepke Pier: I find myself agreeing with Mr. Manning in a sense, I'm looking at what the elevation will be and I understand the concerns about possible break ins in the lower window and the side deck that goes to no where, but the thing that is most glaring to me is the fact that where the garage currently is and this photo, its quite charming that there's different things on the elevation that are kind of undulating in and out, but with the new addition of the kitchen, that will be a two story wall of garage and you know it will be kitchen not that anyone will know it, above it and it just seems like the kitchen will seem entirely … it will ruin…it almost ruins the esthetics of the house. I find that I kind of agree with Mr. Manning, I wish that there was a way to make it so their deck wouldn't infringe three feet into the setback, but given the fact that it keeps with the character of the house to do so and it doesn't seem…I don't know, I guess I'm with him in the boat of I wish I could find hardship, because it just seems that in order for them to do this it would almost make the design really atrocious, and the way it is now it seems like it would almost be appropriate, but you know, we can't find hardship in aesthetics unfortunately, so I'm throwing my hands up.

Mr. Finlayson: Really I think that if you are looking for hardship, the hardship designs is in the original design and location and placement of the house on the lot. Which the applicant had nothing to do with that particular occurrence and it seems that having a deck is not an unreasonable thing to do. It is a large lot, large house on a large lot, but the placement is actually dictated by things that are beyond the control of the current homeowner. So, I don't really have a problem with this at all and I think the hardship is the original placement of it and I move that we grant the variance as requested on the basis that the original placement of the house on the lot has created the hardship.

Mr. Gates: I would like to thank Mr. Finlayson for his comments and I believe if I'm not mistaken, staff could not find in favor of items one or two. Questions one or two, Mr. Finlayson has spoken to item one; can you speak to item two? Perhaps you did in saying that the applicant did not create the circumstances.

Mr. Finlayson: That's my view.

Mr. Perry: The applicant is creating the situation. They didn't create the position of the house certainly, but they are building the addition and then they are choosing to say for several reasons that are all I think very legitimate, but not unique or not a hardship, they do not want that deck on the south side of the yard. So I will not be supporting the motion for those reasons. I think the applicant is creating the situation and they have an alternative which they don't choose to use because of a number of issues, while important, are not really relevant to the zoning code.

Mr. Koch: I'll agree that there are myriad alternatives and just by taking this course of design you are creating the hardship. We're going to build this kitchen out this way. We're going to cause this deck to go no where then. So they are causing it. I will not be supporting the motion.

Mr. Gates: Mr. Schaffer, I want to take a brief side track here before we take a vote on this. Sometimes I think I understand something and then we get further into it and maybe it's clear to me that I'm not understanding something. I had understood that if an addition was extending the line of a current building backward that that could be approved administratively, right? Or, I know it is often done at least.

Mr. Schaffer: Chair Gates, you mean when a property is with in, which is not conforming to the side yard setback already?

Mr. Gates: Correct.

Mr. Schaffer: Yes, there is a caveat, the caveat is that you can extend along the rear towards the rear of the property as long as you are following the building wall, but that building wall has to represent 60% of the entire façade of that wall, so, let me grab a site plan and show you what I mean on this. I will use the information the applicant provided just to kind of…since it's a full page it may make it easier for us today. If when you have a complete façade, so taken from this point here to the front of the home here, if that wall represents 60% of that façade, you can then follow that existing building wall back if it's nonconforming to the side yard setback, as long as it is no closer than three feet to the property line. That three feet is the key portion, from the building code requirements, due to windows. In this situation, the terrace does not allow you to extend it along the terrace or the foundation for that garage, that first, however you want to call it, the basement level, that doesn't give them, they don't have the rights to follow that at three feet.

Mr. Manning: Is that because it is shorter than 60%? Or is that because it is … terrace and not a building wall?

Mr. Schaffer: Chair Gates, Board Member Manning, that is actually two…both reasons, one it's for living space, we typically do not give the same reasoning towards decks. They have to meet the setback for the decks. And that's just because of the activity that can take place, maybe it's quietness or maybe it is a wild party as you eluded to, but it also is the building wall, and it has to represent 60%, so it doesn't represent 60% and it's also not a building wall, or not solid mass and fair living space. Does that clarify it?

Mr. Gates: Thank you Mr. Manning, Thank you Mr. Schaffer. I actually now am wondering about … will you leave that drawing up for a minute please? Wondering about what other options there might have been, what we're hearing is that there is sentiment here that the applicant is creating the problem by putting the mud room where it is proposed to be and I'm wondering if there are … if there were alternatives investigated for putting the mud room somewhere else? So I want to go back to the applicant actually and request that somebody speak to that issue.

Mr. Hanson: Put up to a very small scale here, this is existing kitchen… there is a pantry and then a dining room, and there is also a stairs that go from the pantry up to second floor to capture any of this space, either pantry or dining room would simply reduce those areas.

Mr. Gates: And if the mud room, proposed mud room, were to go further to the south in the back of the home it would open up into the den, is that what I'm seeing here?

Mr. Hanson: Correct. In essence, the addition itself is creating a more usable space by providing a larger kitchen and a dining space in one area which is quite common in a typical Minneapolis … south Minneapolis home. That's what we're trying to achieve.

Mr. Gates: All right, thank you very much.

Mr. Ditzler: I just wanted to state for the record too, I'm not going to be supporting the motion, it seems a little bit of putting a square peg into a round hole or attempting to do so, and I would go back to Mr. Perry's comments before, it seems to me to be a little bit about choices. I like these six things in my addition which are very reasonable, but the…according to the code and according to the circumstance, I'm only allowed to do five of them and it seems reasonable, five out of six seems reasonable to me and it doesn't seem to be enough of a hardship and I still can not get past the point that the applicant is creating the need for the variance by their design. And I'm not an architect, so I can't really suggest alternative designs, because I don't have the expertise to do that, but that's how I feel.

Mr. Gates: Thank you.

Ms. Luepke Pier: I actually want to thank Mr. Perry, I …in looking at it he made some very relevant points and I think that there are design alternatives, including just doing a smaller addition and leaving the existing terrace … leaving much of it where it exists, and not removing the pantry or dining room, but you could even just add on to part of the terrace. I don't want to design it, but, it just seems to me that there are other alternatives and I think he made a valid point, and so, I will not be supporting the motion either.

Mr. Gates: All right, thank you.

Mr. Finlayson: It really comes down to reasonable use of the property. Again, the applicant did not create the original design, the side setback nor the placement of the kitchen. It's a reasonable expectation, given that it's a large lot to expand the kitchen and the deck is a replacement for the terrace, and a terrace or a deck is a nice amenity. It's an amenity that's best served being close and approximate to the kitchen, because serving goes from the kitchen to the deck or to the terrace. So it seems to me a quite reasonable expectation that they can expand both the kitchen and maintain an outdoor eating amenity that is proximate to it. If you remove the deck to some other place then it becomes something that isn't going to be used very much, so I don't really have a problem with it and I don't view these suggestions of change as having been a cause that has been determined by or instigated by an act of the homeowner, the homeowner merely wants to expand what they already have and whoever originally sited the house on the lot created the present set of circumstances. Again, I have no problem with it.

Mr. Gates: Thank you Mr. Finlayson.

Mr. Koch: Respectfully I'll disagree with that because, it seems like this house was sited pretty well. We're going to tuck it up against this setback to create as much yard space to the south as possible. So, the idea of this little shaded area that needs a variance is because it … we're saying, you know, it's not right … sure you live in the city and you need to be close to your neighbors, but, there's a setback saying, you know, that's too close. And what we're allowing them to do now is say, I want to be a little closer, part of my house is kind of closer, so let me just go a little bit even more, and while yes, it's going to be a lot more enjoyable for these homeowners, it won't be for the neighbors, and for anybody else that lives there from here on out, we're saying yeah, go head, use up as much space as you can and we'll give you even a little more to get closer to the neighbors. I just don't think that's right.

Mr. Gates: All right, thank you Mr. Koch. We have a motion to approve the variance. Please call the roll.

Ditzler: No
Finlayson: Yes
Koch: No
Lasky: Recusing
Luepke Pier: No
Manning: Yes
Perry: No

Mr. Gates: That motion fails.

Mr. Perry: Mr. Chair, I would move that we adopt staff findings and deny the variance.

Mr. Gates: Second?

Mr. Ditzler: I'll second.

Mr. Gates: Final comments. We have a motion to approve the staff recommendation and deny the variance, please call the roll.

Ditzler: Yes
Finlayson: No
Koch: Yes
Lasky: Recused
Luepke Pier: Yes
Manning: No
Perry: Yes

Mr. Gates: That motion carries. You can speak to staff about your options from this point forward. Thank you.

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-3964

Applicant: Gregg Hanson, on behalf of Jim Johnson and Kathy Schweikart

Address of Property: 4858 Fremont Avenue South

Contact Person and Phone: Gregg Hanson, (612) 861-0188

Planning Staff and Phone: Brian Schaffer, (612) 673-2670

Date Application Deemed Complete: February 29, 2008

Publication of Staff Report: March 21, 2008

Public Hearing: March 27, 2008

Appeal Period Expiration: April 7, 2008

End of 60 Day Decision Period: April 29, 2008

Ward: 13 **Neighborhood Organization:** Lynnhurst Neighborhood Association

Existing Zoning: R1 Single Family District

Proposed Use: A 9 foot by 21 foot 8 inch deck

Proposed Variance: A variance to reduce the north interior property line from 6 feet to 3 feet to allow for the construction of a new attached raised deck on a single family dwelling located at 4858 Fremont Avenue South in the R1 Single Family District.

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

Background: The subject property is 60 feet by 135 feet (8,100 square feet) and consists of single family dwelling with an attached rear facing garage that is accessed off the alley. The subject home is located 6 feet from the north property line and the attached rear facing garage is 3 feet from the north property line. The roof top of the attached garage is designed as a terrace. The terrace is located 3 feet from the north property line and follows the building wall of the garage below.

The applicant is proposing two projects; the first is a 126 square foot addition that will be built on top of the existing terrace and will follow the existing building wall of the home,

which is 6 feet from the north property line. This project can be approved administratively and is not the subject of this variance request. The second project is a 9 foot deep by 21 foot, 8 inch wide deck that will follow the building wall of the attached garage and terrace. The proposed deck will be 3 feet from the north property line. The district side yard setback is 6 feet and a variance is required to allow for the deck to be 3 feet from the north interior property line.

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 north interior side yard setback from 6 feet to 3 feet to allow for a new deck. The house was constructed in 1926 and the attached rear facing garage and roof top terrace appears to be original to the design. The proposed deck will follow the setback of the garage and the original terrace. The applicant has stated that the deck cannot be located to meet the side yard setback of 6 feet as the posts for the deck will then block access to the garage stalls. Staff believes the applicant has design alternatives for the deck, which include locating the deck to the south of the proposed location which would not interfere with the driveway or be located in the required side yard setback. Staff does not believe there is undue hardship caused by strict interpretation of the zoning ordinance.

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 variance is sought are unique to the parcel due to setbacks and configuration of the dwelling. The existing terrace and attached garage are located 3 feet from the north interior property line. The applicant did not construct the house or the attached garage. However, the applicant is choosing to construct the addition on the location of the existing terrace resulting in the desire to construct the proposed deck. The applicant is creating the circumstances that require the variance.

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 proposed setback variance will not alter the essential character of the neighborhood. The proposed deck will maintain the same setback and size as the existing terrace. Staff believes that the impacts of noise or enjoyment to adjacent property owners will not be increased since the proposed deck is no closer to the property line than the existing terrace and similar in size. However, the existing terrace is 3 feet from the property line and its current impacts could be injurious to the enjoyment of the adjacent property owners to the north at, 4850 Fremont Avenue South. The owners of this dwelling have written a letter of support for the variance request, though owners and their opinions can change.

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 variance would not likely increase congestion in the area or increase the danger of fire safety, nor would the variance be detrimental to welfare or 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 **deny** a variance to reduce the north interior property line from 6 feet to 3 feet to allow for the construction of a new attached raised deck on a single family dwelling located at 4858 Fremont Avenue South in the R1 Single Family District.

Attachments

1. Applicant's statement
2. Map of the area
3. Plans for the deck and home
4. Pictures
5. Statement of support from neighbor