



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

Date: February 21, 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 Board of Adjustment action denying a variance for property located at 2708 Emerson Avenue South (BZZ-3906) by Thomas Frattallone.

Recommendation: The Board of Adjustment adopted the staff recommendation and denied a variance to reduce the rear yard setback from 5 feet to 2.5 feet to allow for a detached garage to have vehicle access doors face the alley at 2708 Emerson Avenue South in the R2B, Two-Family District.

Previous Directives: N/A

Prepared or Submitted by: Aaron Hanauer, City Planner, 612-673-2494

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

Presenters in Committee: Aaron Hanauer, City Planner

Financial Impact (Check those that apply)

- 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.

CPED Planning Division
BZZ-3906

Community Impact (use any categories that apply)

Ward: 10

Neighborhood Notification: The Lowry Hill East Neighborhood Association was notified of this application by letter, mailed on February 11, 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 60 decision period expires on November 13, 2006. On February 1, 2008 Planning staff sent a letter extending the decision period to April 19, 2008.

Other: Not applicable.

Background/Supporting Information Attached: Thomas Frattallone of 2708 Emerson Avenue South has filed an appeal of the decision of the Zoning Board of Adjustment denying the rear yard setback variance. The Zoning Board of Adjustment voted 4-3 to deny the variance on January 24, 2008. The applicant filed an appeal on February 1, 2008. The applicant's reason of appeal statement is included in Appendix C.

Supporting Material

Appendix A: Board Of Adjustment Hearing Testimony and Actions

Appendix B: Staff Report

Appendix C: Reason of Appeal Statement

Appendix D: Public Comments after staff report publication

Appendix A:

**Board of Adjustment
Hearing Testimony and Actions**

Thursday, January 24th, 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:

3. **2708 Emerson Avenue South (BZZ-3906, Ward 10):**

Tom Frattallone has applied for a variance to reduce the rear yard setback from 5 feet to 2.5 feet to allow for a detached garage to have vehicle access doors face the alley at 2708 Emerson Avenue South in the R2B, Two-Family District.

Mr. Perry moved and Ms. Luepke Pier seconded the motion to adopt staff recommendation and **deny** the variance to reduce the rear yard setback from 5 feet to 2.5 feet.

Roll Call Vote:

Yeas: Koch, Luepke Pier, Perry and Gates

Nays: Finlayson, Lasky and Manning

Recused: None

Absent: Ditzler

TESTIMONY

Mr. Gates: Thank you Mr. Hanauer. Are there questions for staff? Yes, Mr. Koch.

Mr. Koch: So, could they, so I understand, if the garage was not there and they wanted to build this new garage, it would have to be setback two-and a-half feet from where it currently is, into the yard, correct?

Mr. Hanauer: Chair Gates and Board Member Koch, that is correct, it would have to be five feet from the rear property line.

Mr. Koch: So that has nothing to do with the size of the garage? It's the location to the alley.

Mr. Hanauer: It is only the location to the alley.

Mr. Koch: Okay, and then are there other garages in the alley that are entered from the alley so the doors face the alley that do not meet the code now?

Mr. Hanauer: Board Member Koch, I have not seen that aspect. I know that with the garage immediately to the west, the address being 2707 Freemont Avenue, that those garage doors do face the alley and it is five feet from the rear property line.

Mr. Koch: Thanks.

Mr. Byers: The applicant may be able to speak to that issue a little bit.

Mr. Gates: Sure, thank you. Mr. Perry.

Mr. Perry: Thank you Mr. Chair, Mr. Hanauer, there were two main safety reasons for the five foot distance, one was a turning radius, the ability to turn into the garage. The other I did not quite follow, about traffic backing out when traffic was going up and down. Can you explain that a little bit more in detail, please?

Mr. Hanauer: Of course, Board Member Perry, with the property being two-and-a-half feet from the rear property line, in conversations with Public Works, having this garage...this requirement has been in the zoning code for a substantial amount of time, at least since 1999. The reason to have a garage setback further from the rear property line when it's access doors are facing the alley is to improve sight lines for cars for vehicles either going through the alley and also to provide enough...a little extra time for the vehicle exiting the garage to be seen by other cars in the alley.

Mr. Perry: Okay, thank you very much Mr. Hanauer and thank you Mr. Chair.

Mr. Gates: So, with the five foot rear yard, and the 12 foot alley we get 17 feet, which is one foot shy of the 18 feet that Public Works recommends. And that's considered to be negligible or there is nothing in the code which would require them to go back another foot even though Public Works thinks it should be another foot back, is that fair to say?

Mr. Hanauer: Chair Gates, that is correct.

Mr. Gates: Thank you, any further questions?

Mr. Manning: Mr. Hanauer, with the side entrance is there any way to enter and exit that garage without blindly backing into an alley?

Mr. Hanauer: Board Member Manning, I believe I understand the question, and with this hash mark, you're asking with the proposal, is that correct?

Mr. Gates: No, the existing.

Mr. Hanauer: As it currently stands, I see. I will possibly defer to the applicants to answer that question.

Mr. Gates: Mr. Finlayson.

Mr. Finlayson: Does the proposed garage lie within the square footage requirements?

Mr. Hanauer: Board Member Finlayson, it does.

Mr. Gates: Any further questions? I see none, thank you Mr. Hanauer. Is the applicant here? Do you care to speak?

Mr. Frattallone: I'm Tom Frattallone, at 2708 Emerson Avenue South, and I'm the applicant, I've been here before for a commercial property last summer and fall. But I'm here to talk about my garage today, and we're talking about the hardship issues, and when we talk about hardship, we've lived in this house for 11 years, and we've spent a lot of time upgrading the house and being part of the neighborhood. We have a back yard that is bordered by a 10 inch high retaining wall that we would have to remove 42 inches of the retaining wall. We'd lose roughly 87 feet of planted mature perennial gardens, we'd lose a 14 foot high flowering lilac tree and two ten foot high arborvitaes. We'd also create 240 square foot of concrete slab rather than 100 square foot that is existing right now and 140 square foot of green space. Those are the hardship reasons. We've taken a lot of time in landscaping our property and making it look nice, and we enjoy the green space and don't want to add to the concrete slab behind. We talk about, also, the hardship in not such economic terms, but in wasting terms when I think about ripping up the concrete slab which is sized for the project that I have now and not utilizing the existing building, which this is going to be a remodel of the garage, to incorporate the existing building rather than a tear down of the garage and rebuilding a new garage. We're planning on using almost all the materials, basically, the only materials that won't be used is the north face of the garage and the garage door. Everything else will be used on the existing thing. We think that because the designer claims all those resources, that it makes this project unique. It's not that I'm looking to rip down the building and make a new building, it's making it unique. Then I look at, and I'm going to go as fast as I can, but then I'm looking at, I don't know if you have the exact copies of this design, or my letters...we've looked at the design of the building for function; in specific maneuverability. We've set 12 foot wide garage doors, two single 12 foot wide garage doors on the back of the building. They mirror exactly the width of the concrete slab that I turn into everyday without having to turn onto the adjacent property to the west. Both of our cars can make 90 degree turns to the left or right within 19.35 feet, which makes that turn 76 percent done by the time I'm five foot into the garage. Okay? A 90 degree turn...a whole 180 degree turn takes 37.7 feet to make, so between the two-and-a-half foot of my property that's concrete slab – the 12 foot alleyway and the 18 foot in the garage, I have 32.5 foot. I'm almost capable of making a whole 180 degree turn. Right now, I access my garage doors; I have a double wide garage door on my garage. But because of mature trees, that I have to the north, that I haven't pulled down as of this time, I don't have a big enough slab to make a turn in and then turn to access the other parking spot in my garage, so right now I'm kind of backing...pulling in a little ways, backing out a little ways and re-focusing to get the one

car in the garage and the other car sits outside generally. There shouldn't be any intent to have backing in or backing out on this space. We wouldn't have to drive on the neighbor's property. We've done that, we have the things from both Jeep and Volvo that tell how much space I need, how I can turn, I'm currently turning in without going onto the neighbor's property. We've designed it for visibility. We've created a cutout on the west face of the garage to hold our trash cans and we're going to be moving the three additional trash cans for the neighbors from the west side of the property and we've got an enclosure for mine built onto the alley side and we're going to build an enclosure on the south side of the garage for the neighbor's trash cans. This takes five trash cans and recycling bins out of the alley that easily take up three foot into the alley that reduce my visibility when I'm pulling my sedan out of my garage now. You can not see the back end of my sedan until I'm beyond the trash cans. When I remove those trash can obstacles out of my way, you will be able to see my car for two-and-a-half feet before it hits the alleyway. We increase the maneuverability both for vehicular traffic and pedestrian traffic by taking those trash cans out of the alleyway...I shouldn't say off the alleyway...off of that two-and-a-half foot slab that we have on our property that abuts the alleyway. We've designed this project for safety. We've looked at how you back in and back out of here. The big thing where you're not being hidden by the trash cans is a big safety issue. We actually have more visibility with this...with bigger garage doors on the back, and with that two-and-a-half foot wide slab than I currently have now. The size of the doors and the location will make it so that people can see when something is functionally happening in my garage, unlike now, where they don't know that I'm moving out of...if you're coming from the south, you don't know whether I'm maneuvering out of my garage until you're within six feet of my car. If the visibility is truly a safety issue, there are ways that we can fix that. We can put convex mirrors on either side of the doors to give access when I'm backing out to look in the mirrors. If it's more of an issue than convex mirrors can handle we can mount a monitor and put cameras down the alley so I can see everything that's happening. We're looking at this design and I'm looking at going to the standards that my house is. When we make this garage, we're not looking at keeping the same type of OSB board on the outside that's painted. I'm moving to upgraded garage doors, hardy siding which is a full wood composite siding. The trash can cutout helps, a trash area for the neighbors and possible brick on the side facing my house so that I can...if I can find brick to match. I've had a very nice response from the neighborhood. I went to people and the neighborhood...immediately my block leaders said "I'm going to sign this, you'll do a nice job, there's nothing that we're worried about." I had a very nice response from the Lhena board. They had one issue that possible I may have to mount convex mirrors. The only adjacent property that we didn't get a letter from was Ms. Audrey Hasting, the lady who owns the tri-plex at 2708 Freemont Avenue South; the tri-plex is currently for sale. I sent her a next day mail item on January 14th, that was delivered to her house and I left two messages and called her one additional time and I have not heard anything one way or another from her and I sent her the whole packet of everything that I propose to do with a self addressed stamped envelope if she wanted to question me and my contact numbers and all that. I also am looking at the Lhena Board, their Lhena Phase II for our neighborhood and I'm looking at the different things that they are looking for and ... I won't bore you with everything that the Lhena Board says, but I go down their list of stuff and we're upgrading our garage to ... more closely mirror the historic tenor of the neighborhood. In 2.1, they're looking for ways to educate people in the neighborhood about recycling. We're recycling almost all of the building materials off this

garage. 2.2 is reducing the amount of impervious surface in the neighborhood. I'm not adding any impervious surface. 3.1 is they're funding actively...improvements to exterior of the buildings in the neighborhood. I'm not seeking funding, but I'm actively improving the exterior of my building. 7.1 is they're looking at ways to grind down the stumps and replace the boulevard trees in the neighborhood. We've actively maintained all of the trees at our home for the 11 years that we've been there. We've planted 14 new trees and we've fertilized the trees on the boulevard and our personal trees and we've paid to have professionals take care of the trees. I believe pedestrian safety is there in 11.1 and I believe that pedestrians will be safer walking down our block with the unobstructed view down the alley. 13 part of the Lhena plan talks about crime, and to be quite honest, that's the thing that motivated us. I unfortunately had the luck of having a nice backyard and nice cars and my cars have had windows broken out three times. All of my pots have been stolen out of my backyard, my patio furniture has been displaced down the alleyway, and I'm looking at a way to protect my property. This is a way that will help control crime in my neighborhood. It will not give access to these things and it will make it easier to protect against crime. When we had someone break into our house, we installed new doors on the back, we installed alarm systems. That's what we did to fix that problem. I think this garage will help fix a big problem for us.

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

Mr. Perry: One of the things that you mention is ... you've mentioned maintaining or preserving or advancing maybe even the historic character of your property, I'm a little confused by that, because I would suspect...what year was your house build?

Mr. Frattallone: My house was built in 1908.

Mr. Perry: Right, typical, so a two car garage was not something typical in 1908, in fact, that's one of the things we are challenged with in the city is most of our homes and the way they were laid out was not for, in fact, two car and three car families, so, maybe you could expand a little bit on how you are drawing this...

Mr. Frattallone: Well, I'm speaking of more the trim will match the house, the garage doors will be more updated garage doors, and when I say upgraded, more historically looking garage doors, the brick, if I can find brick that mirrors the brick that goes up two-and-a-half levels on my house, that's the goal for that, making it maybe not be the exact size of the historic garage, but making the look and the visual appeal of the building mirror that of the house.

Mr. Perry: Okay. So, and when you bought the house it had this...it's a single car garage?

Mr. Frattallone: It has a 16 foot wide garage door which is a two car garage door, it is ...for all intensive purposes, it should be a two car garage. I have a 12 foot slab that sits next to the garage, and I have an additional, I believe it's seven feet that I have three curly willow trees in a landscaped area. In order to move my second car into the garage, I'd have to remove those three trees and the landscaped area and put down more slab.

Mr. Perry: Okay, last question if I may Mr. Chair, we have as you know, you've been here before and you know one of the things we're trying to find is hardship, I'm still not quite certain what hardship exists in the use of your property that you are not in fact creating by wanting a two car garage that works more like a real two car garage. If you're creating the hardship, it's not really a hardship. The things that I saw on your list weren't really things that I saw that you were not creating yourself by wanting a two car garage.

Mr. Frattallone: So, having two people in a house I should just have one car? Or I should limit my...I'm trying to understand the question and I don't know if I'm understanding it.

Mr. Perry: What is the hardship that you have that has been imposed on you by the zoning code that you are not creating yourself.

Mr. Frattallone: The hardship is if...if I don't get this variance, I have to remove three trees and much green area in my backyard.

Mr. Perry: To what end?

Mr. Frattallone: To put a new slab in that would let me.

Mr. Perry: So that's the part that you're creating.

Mr. Frattallone: Well, I don't know, that's the only way I'd be able to have a garage in the appropriate place.

Mr. Perry: Fair enough. I just wanted to get clarity on what you saw as the hardship. I will simply...I'm not going to try and be an expert, but, I will state that if it's a single family home the code only requires one off street parking spot, so, in fact, we might argue whether that makes sense in this day and age or not, but that is what the code states. Thank you Mr. Chair.

Mr. Gates: Thank you Mr. Perry. Mr. Manning, would you like to redirect the question you asked earlier to the applicant?

Mr. Manning: I think he actually answered it, but I do have another question.

Mr. Gates: Go ahead.

Mr. Manning: Because I'm a little unclear on (inaudible).

Mr. Frattallone: If I get my variance, I will put up the mirrors that the Lhena Zoning and Planning Commission suggested that I put up. Okay, we will draw them in, they will be there.

Mr. Gates: Further questions for the applicant. Yes, Mr. Koch.

Mr. Koch: Have you had the slab investigated, will it be able to have a new structure put on top of it?

Mr. Frattallone: No, I haven't. It's an existing slab that has a great proportion of the structure on it already. It's ... it was all poured at one time in 1996. I assume it was all poured the same way.

Mr. Gates: Further questions, Mr. Koch.

Mr. Koch: I had driven down the alley, and granted, I have a bigger vehicle, but, there are a few houses on the 2600 block and if you...I think even on your own alley that have older garages where they were built pretty close to the alley right-of-way. Somewhere between two and four feet and in virtually everyone, you could tell how those people had to enter those garages was fortunately, the garage on the other side of the alley was built back far enough where they could pull in there and so, as I hear your case, I'm faced with the challenge that okay, you're willing to...and you have the right vehicles to apparently pull in there and not have to either drive on the alley...the property across the alley from your property, or the ability to have a 90 degree turn in so many feet, but what I am faced with is not just what you want and are willing to do, but what your neighbors and future owners have to do, because what we build today is not just for today. And so as I look at it I think...I couldn't make that turn, I couldn't make that turn with three maneuvers. And I have to judge by, okay, if I had my wife's car would it be any easier, it's a lot smaller, she could not make that turn. So as I look at what you're willing to do to get into your garage, I'm just having a really hard time grabbing that future owners aren't going to be like why did they let this happen?

Mr. Frattallone: I'm ... I think that design handles obstacles. I could put a 24 foot opening on the back of this garage and parallel park two cars in the garage, okay, I mean, it's maneuverability and right now, I have...my father has a 1965 Cadillac El-dorado convertible. I couldn't get it in the garage spaces that are ten foot off the alley. But, cars are becoming smaller; they're becoming much more maneuverable. The simple fact that eight years ago when I had a Jeep, I had to take two turns, now I have a Jeep and I can turn right into my spot without pulling onto the neighbor's property ... and I've been watching myself everyday, because I can see where my snow marks are and I can make the 12 foot turn in with no problem, and I do understand the idea for future generations, I also believe that progress will be made in both engineering, just like my Jeep has been engineered better, and cars will become smaller.

Mr. Gates: Speaking to that point Mr. Koch, and I'm not at all sure how I feel about this item, but, it would seem to be noteworthy that there is a 12 foot wide door proposed and so, seemingly, the vehicle in the first pass into the garage would not end up at a 90 degree angle to the alley, but, seemingly with a multi-point turn, it could be accomplished, whereas, in a conventional eight or ten foot wide door it would seem to be much more difficult to accomplish that.

Mr. Koch: That's true.

Mr. Gates: Mr. Frattallone, I have a number of questions, based upon your testimony, but maybe only one or two of them are actually relevant, so I'll restrict myself. You talk about these mature trees, I saw some fairly small trees when I drove by the alley, they may be mature for their particular species, but when we hear mature, I think we often think about 75 foot elms, and I didn't see anything that looked anything near that.

Mr. Frattallone: No, I have a 12 foot, 11 year old Japanese Maple, that is roughly a five inch caliber tree that is probably four or five feet away from maturity. It's...generally that type of tree is supposed to be a 16 foot tree, maybe a 17 foot tree; it's now at 14 foot.

Mr. Gates: Okay, and regarding that one particular tree, what I saw was that a substantial portion of that canopy was actually projecting into the area of the proposed extension of the garage, and while I'm not an arborists, I would question whether or not the tree would survive the pruning it would have to undergo for this garage.

Mr. Frattallone: It will be done by the person that's trimmed my other trees, and unfortunately...I've had all of my trees trimmed. I've had my boulevard tree trimmed, and it will be done by the person who planted the tree.

Mr. Gates: Alright, I don't want to belabor it, I just wanted the Board to have a sense of what the nature of these trees is. And, I had a question about the camera system, but you're not really proposing that even though it's in the packet, so...

Mr. Frattallone: This is basically, I'm looking at doing this project, I will put in the camera system, if it was required for me to do I could put in the camera system. I have a quote; it's a \$1500 monitor system and cameras.

Mr. Gates: Okay, in case any member of the Board was so inclined to require that, can you tell us very briefly, how that system would actually work?

Mr. Frattallone: Basically, there would be a monitor sitting in between the two cars, hanging down from the ceiling.

Mr. Gates: Inside the garage?

Mr. Frattallone: Inside the garage, and there would be a camera facing either direction, probably right in between the two garage doors facing either direction. I'd have complete view-ability down both directions. I'd have three foot that I wouldn't be able to see in between the two cameras, but I could change that, I could mount the cameras facing different directions this way.

Mr. Gates: Okay, I have no further questions. Ms. Luepke Pier.

Ms. Luepke Pier: So you'd rather spend \$1500 on a camera than to just get a spade shovel to move your trees?

Mr. Frattallone: Yes. I'd rather maintain the green space in my backyard, which I've worked hard on, than lose the \$1500 bucks. I'd rather cut out the area for the trash cans and build an area for my neighbor's trash cans than lose this three foot times 40 in my backyard.

Mr. Gates: Any further questions? I see none, thank you Mr. Frattallone.

Mr. Frattallone: Thank you.

Mr. Gates: Is there anyone else here to speak in favor of the application? Yes sir.

Mr. Vannavong: Hi, my name is Sebastian Vannavong, I also live at 2708 and you had asked a question in regards as to is there any other garage in our alley that is facing that a way, the same proposed ... which we are proposing to do, there is one garage that is in the same category that we are proposing to do, as well, that address is 2732 and that is exactly the same measurement off the alleyway that we are looking at to design and also, there is another one which I don't recall the address on. Right now, I should say that we are also backing out of the alleyway right now, so we can't really see what's going on, so with us proposing to put the camera or the mirror in the alleyway, that would really assist us on seeing what's going on behind us when we are pulling out.

Mr. Gates: Other questions? I see none, thanks very much.

Mr. Vannavong: Thank you.

Mr. Gates: And I see no one else in the room except for staff, so I take it no one else is here to speak in favor or in opposition. So we will close the public hearing and take comment from the Board. Beginning with Mr. Finlayson.

Mr. Finlayson: I think first of all we have to look at the origin of the information which is Public Works, my neighborhood has had extensive dealings with them and many of their rules seem to be steeped in antiquity with no explanation and frankly a lot of the personnel seem to have been previously trained by the Soviets. So it's counter productive to really dwell too much on this. But really if you look at the practicality of it I've got a neighbor directly across the alley from me who had a one stall garage, about two feet from the alley and five years ago they tore it down and put up a two car garage and nobody really seemed to care about it a whole lot. And this is a 20 foot wide garage with about an 18 foot door and they have two cars, one is a station wagon and the other is a SUV, and one of the vehicles is parked in there and the other individual comes along and wishes to park there, they hit the door opener and pull in, it's about that complex. So, really I think that all of this carrying on about how close it is and how dangerous it is...I mean this presumes first of all that people are driving 30 and 40 mph down the alley, which frankly doesn't happen and that people back out without looking or taking care or taking caution. Now if you combine this with a thought that there is a hardship here, and

since he didn't build the existing garage, nor the existing slab in the positions they're in, he didn't create them. But it is a hardship, because he has turning radius issues about getting into the garage, so he's decided to solve his problem by making it an alley access garage and by doing so he also cuts down on hard surface. In other words, if he isn't going to make this extended garage, and then he's going to have to be ripping up some green space and throwing down something hard and permanent. So what he's come up with is a practical solution to a problem that somebody else created. He merely wishes to...since he has a two car garage, to actually get two cars in it. So seeing that it's a reasonable request and I can't buy into safety issues as being a particular problem, if somebody's going down the alley at 30 – 40 miles an hour ...well, that's another issues and that's essentially an enforcement issue. So in any event, having said all that, I suggest that the...no, I move that the variance be granted as requested with the use of mirrors, as stated.

Mr. Manning: I'll second.

Mr. Gates: Any further comment? Yes, Ms. Lasky.

Ms. Lasky: In terms of the hardship, I can't find a direct hardship, but we've been granting two car garages standard across the board as something that you want to get the cars off the street. Avoid the theft and vandalism to the cars a safety issue.

Mr. Gates: Mr. Koch.

Mr. Koch: Well as I understand it, the other solution is to cut down the three trees, enlarge the slab and keep the garage door right where it is and nothing has to be done to the garage then.

Mr. Gates: Well, to construct a new garage, that's two-and-a-half feet further back that would have doors that would be facing the alley.

Mr. Koch: Right, but I mean, right, as I understand it though, it's possible to ... by enlarging that slab...

Ms. Lasky: Towards the house?

Mr. Koch: Nope, not towards the house, keeping the garage right where it is, but enlarging the slab which is now a parking...the driveway into the garage, where the trees are, is what I'm talking about, along the, I guess there where the north side ;;; isn't that where he's thinking of expanding the garage, on that slab on the north side, isn't that an alternative, or is that not, did I not read the plans right?

Mr. Gates: to expand the slab to the north...

Mr. Koch: Because right now they can get one car in that garage, because of the way, essentially what the driveway does, is that...if you took out these trees on the north side and expand the slab.

Mr. Gates: There is only one tree on the northerly side of the lot.

Mr. Koch: Okay, so it wouldn't help at all? Okay. So the only way he is going to get two cars in this garage is to have the doors face the alley. Or build a new garage ... move the garage into the yard. Is that correct?

Mr. Gates: Seemingly there could be a way if the garage were enlarged substantially, to make that "S" turn off of the alley into...expand the garage with the doors still facing north, but because of the width of the lot, that would seemingly, in my opinion, be quite a difficult maneuver, even with an expanded garage.

Mr. Koch: Right, okay.

Mr. Perry: I'm not going to be supporting the motion; we have the code as it is. I've said before that maybe the code is not right, maybe Public Works, their information is antiquated, I'm not going to make that claim, but what is...is, and within that framework, we're asked to find hardship and uniqueness that's not created by the applicant, and so far today, in spite of the applicant's well stated presentation, I haven't heard anything that addresses those things directly. It certainly is desirable for some folks to have a two car garage, but it is not required. In fact I would say from a Cities point of view, and City policy point of view, one of the things the City is interested in doing is having less cars in the City. Having people rely more on transit, so in the future, I would expect two car garages to not be something that people would desire, certainly not something the City is interested in from a policy point, in promoting, and so, I do not...as my fellow Board Members who have sat on the Board with me know, I do not see not having a two car garage inherently as a hardship. I think there are safety concerns, there's a reason for having the measurements we have for five foot setback when the doors are facing the alley and those are for safety, the staff, I think did a very good job of articulating those, and lastly, I'm concerned when I think about the variance going with the land, not with the property owner as well intentioned as the current property owner is...we have no control after you move on what happens, and so, I'm concerned about giving this right to the land, and extending it and so I will not be supporting the motion for all of those reasons.

Mr. Gates: Thank you Mr. Perry. Any further comments? I'll just add that it's not clear to me what's antiquated about the Public Works information, it seems to me that the 18 feet is more or less corroborated by the evidence that has been submitted by the applicant in terms of being roughly half of the turning radius and that would seemingly allow a vehicle to enter the garage at a right angle to the garage. As I said before, seemingly, the extra width that the applicant is proposing for the garage doors might allow for the maneuver to be made with a multiple point turn and get into the garage facing at 90 degrees to the alley, which I think is the goal. Regarding the safety aspect, I happen to have a garage that is similar to the way the applicant's is currently oriented, but with a much larger pad because we share a pad with the neighbor, and despite the fact that I have probably twice as much room as what the applicant has, I've come very close on more than one occasion to backing into someone who is going down the alley at maybe not 30 but probably 20 or 25 mph. So, since the applicant has far less

room to make that maneuver as it currently exists, it really isn't at all clear to me if the condition is more or less safe, with the proposal, given that seemingly, the existing condition is fairly unsafe in my mind. But, the new conditions also present problems as well, so I am not able to really draw any conclusions about the safety aspects of this. But that notwithstanding, we have a motion and a second to grant the variance as requested with the condition that mirrors be used on the alley side. Please call the roll.

Finlayson: Yes

Koch: No

Lasky: Yes

Luepke Pier: No

Manning: Yes

Perry: No

Tie.

Mr. Gates: This is a rare occasion where I get to vote. The evidence is again ambiguous for me, I think that if there were actually a clearly compelling safety issue, I would be inclined to support, directly in contradiction to the staff recommendation, which is basically saying that it's more safe now than it's proposed to be. I suspect that it's pretty risky right now, but I'm not at all clear that it's going to be any better with the proposal. And, for that reason, not being able to make a clear finding that there is a safety concern, there are grounds for hardship, but they can be amended by moving a garage more near to the house, which is the typical location for garages that face alleys and homeowners all across the city have that same issue where they've got to have a somewhat smaller garage in order to have the proper setback off the alley. So I am not either able to make a finding that there is a hardship here. So I'm going to vote no as well. So that motion does not carry.

Mr. Manning: Mr. Chair, can I make a renewed motion to grant the variance with the use of cameras.

Mr. Finlayson: I don't know that we can do that. Can we?

Mr. Gates: Well, we can make a requirement that there be the mirrors, so I don't know why we could not make a requirement that there be cameras as well.

Mr. Finlayson: I'll second it.

Mr. Perry: Mr. Chair, I just gave a long, hopefully compelling list of reasons cameras or mirrors do not really seem to make any difference to any of the arguments, so I'm not going to take anymore time from my Board Members time, or anybody here in the public, the same issues apply and I will not be supporting the motion for the same reasons I didn't when the mirrors were in motion.

Mr. Gates: Thank you Mr. Perry. Other comments? I see none, please call the roll.

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

Tie.

Mr. Gates: Once again, I'm less clear how the cameras could actually help the matter if you're trying to both back out of the garage looking to the rear at the same time that you're looking at the monitors in the front...hard for me to understand how that would be affective. Again, in my case, I know that I've looked both ways before backing out and then come to find that somebody is moving very quickly down the alley and I just didn't see them and came within inches of striking them, so, the camera system is problematic for me. There is certainly less of ability for us to monitor how that would be used or even if it would be used, so again I'm voting no on that motion. So...so far we have no motion that's carrying.

Mr. Perry: Mr. Chair, I'd like to move that we adopt staff finding and deny the variance for the reasons stated in the staff report.

Mr. Gates: Is there a second on that?

Ms. Luepke Pier: Second.

Mr. Gates: And is there comment?

Mr. Perry: I would just like to add one thing again to the applicant that the motion for this denial is not based on your good attentions, but on the way the land will be used well after you are no longer the owner. Thank you Mr. Chair.

Mr. Gates: Please call the roll.

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

Tie.**Mr. Gates:** And I vote yes on that. That motion carries that application is denied, you can speak to staff about your options at this point.

Appendix B: Department of Community Planning and Economic Development - Planning Division Report

Variance Request

CPED Planning Division
BZZ-3906

BZZ-3906

Date: January 24, 2008

Applicant: Tom Frattallone (property owner)

Address of Property: 2708 Emerson Avenue South

Contact Person and Phone: Tom Frattallone, (612) 874-1445

Planning Staff and Phone: Aaron Hanauer, (612) 673-2494

Date Application Deemed Complete: December 21, 2007

Publication Date: January 18, 2008

Public Hearing: January 24, 2008

Appeal Period Expiration: February 4, 2008

End of 60 Day Decision Period: February 19, 2008

Ward: 10 **Neighborhood Organization:** Lowry Hill East

Existing Zoning: R2B

Proposed Use: To allow for a detached garage to have vehicle access doors face the alley and for a garage expansion.

Proposed Variance: A variance to reduce the rear yard setback from 5 feet to 2.5 feet.

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

Background: The subject property, 2708 Emerson Avenue South, is zoned R2B. It measures 5,142 sq. ft. (40 ft. x 128 ft.), which conforms to the Zoning District lot area and lot width requirements. The property is an interior lot that contains a 2½ story, single-family dwelling constructed in 1908. The lot also contains a small, two-car, detached garage that is 348 sq. ft. (18 ft. x 19.3 ft.) which is accessed via an alley. The garage was built in 1996 prior to the applicant purchasing the property. It is located 1 foot from the south interior lot line and 2.5 feet from the west, rear lot line (see Appendix B: Site Plan). The existing garage is conforming to the Minneapolis Zoning Code setback requirements because it meets the requirements of provisions 535.280 (d) and (e) (see below).

535. 280(d) Interior side yards for detached buildings accessory to dwellings. The interior side yard requirement for a detached accessory building may be reduced to one (1) foot when the entire accessory building is located in the rear forty (40) feet or rear twenty (20) percent of the lot,

whichever is greater, provided that the principal structure on the adjoining lot has its rear wall at least forty (40) feet from the rear lot line. Further, the required side yard for a detached accessory building may be eliminated where adjoining property owners construct detached garages sharing a common wall and which are located in the rear forty (40) feet. Where the interior side yard is reduced, eaves, including gutters, shall not be less than six (6) inches from the property line, except where a common wall is allowed.

535.280 (e) Rear yards for detached buildings accessory to dwellings. The rear yard requirement for a detached accessory building may be reduced to one (1) foot, except where vehicle access doors face the rear lot line, in which case no reduction of the required yard is permitted. Further, where a rear yard abuts a required side yard no reduction of the required yard is permitted unless the entire accessory building is located in the rear forty (40) feet or rear twenty (20) percent of the lot, whichever is greater, and is located behind the rear wall of the principal structure on the adjacent property to the rear. The required yard along such adjacent property may be eliminated where adjoining property owners construct detached garages sharing a common wall and which are located in the rear forty (40) feet of both properties. Where the rear yard is reduced, eaves, including gutters, shall not be less than six (6) inches from the property line, except where a common wall is allowed.

Proposal: The applicant is proposing to expand the existing garage. The garage is proposed to be 576 sq. ft. (18 ft. x 32 ft). With the expansion, the applicant is proposing to have the vehicle access doors face the alley at a distance of 2.5 feet from the rear property line. The Minneapolis Zoning Code requires that a detached garage's access doors, when they face the rear property line, be located at the zoning district setback, which is 5 feet in the case of the subject property.

Public Comment: CPED notified property owners within 350 feet of subject property of the variance request. No comments were received as of January 9, 2008. The applicant stated in a phone conversation that he plans to attend the January 9th Lowry Hill East Neighborhood Association to explain the proposal.

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 rear yard setback from 5 feet to 2.5 feet to allow for a detached garage with vehicle access doors that face the rear property line. Strict adherence to the zoning code would require the applicant to have a detached garage with vehicle access doors facing the alley be located 5 feet from the rear property line. CPED does not recognize a hardship on this lot, and believes that design alternatives exist that would not require this variance.

- 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 subject property does not contain unique circumstances for which the variance is sought. It conforms to the Zoning District lot area and lot width requirements. The lot also contains alley access.

The applicant's garage expansion proposal creates the need for the variance. CPED believes that design alternatives exist that would not require this 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.

Granting of the variance will not be keeping with the spirit and intent of the ordinance for two reasons. The first reason is safety concerns. The reason the Zoning Code establishes a greater rear yard setback for detached garages that open up to the alley is to improve site lines when cars back out into the alley. CPED and Public Works believe that when this setback distance is reduced it may diminish site lines to a point of being unsafe.

The second reason pertains to the access of the garage. This alley is 12 feet wide, which is a typical Minneapolis alley width. The distance from access doors that open up to the alley to the other side of the alley is less than 18 feet, therefore it creates a greater likelihood that a multiple-point turn will be required for vehicles to access a garage and/or it creates the need for driving on a neighboring property to access the garage.

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.

The proposed variance will not increase congestion of the public streets, or increase the danger of fire. However, the variance may be detrimental to public welfare and endanger public safety. The Zoning Code requires a rear yard setback to be increased for detached garages that open up to the alley to improve site lines for cars backing out into the alley. CPED and Public Works believe that when this setback distance is reduced it may diminish site lines to a point of being unsafe.

Recommendation of the Department of Community Planning and Economic Development:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment **deny** the variance to reduce the rear yard setback from 5 feet to 2.5 feet

Attachments:

Appendix A: Zoning map

Appendix B: Application

Appendix C: Aerials

Appendix D: Public Comments