

**Minneapolis Zoning Board of Adjustment Meeting
June 7, 2012, Room 317 City Hall**

Date of Z&P Meeting: July 12, 2012

ITEM SUMMARY

Description: Item #6, BZZ #5551

Application by Steven J. Wells for an appeal of the Zoning Administrator's approval (BZZ #5396) of a new single family dwelling located at 2380 West Lake of the Isles, on the basis that the front yard setback was improperly determined..

Action:

The Board of Adjustment adopted staff findings and denied the appeal of the Zoning Administrator's approval of a new single family dwelling located at 2380 West Lake of the Isles (BZZ #5396) on the contention that the front yard setback was improperly determined.

TRANSCRIPTION

Perry: Item #6, this is 2380 West Lake of the Isles Parkway. Mr. Steen.

Steen: Good evening, Chair Perry, members of the board. As you know, Item #6 is an appeal of the Zoning Administrator's approval of a new single family dwelling located at 2380 West Lake of the Isle Parkway on the contention that the front yard setback was improperly determined. The original structure on this lot was built in 1958 and demolished in late 2011. The property owner received approvals to construct a new single family home in November of 2011 under file BZZ #5396 and those are the approvals that have been appealed by Mr. Wells, the appellant, who resides at 2211 Kenwood. The appellant makes much of the fact that the explanation for the front yard setback has changed. Staff's initial approval was based on a curvilinear setback, determination arising out of Section 546.160B, where the property is on a curvilinear street. However, as you know, zoning staff approves in excess of 5,000 permits a year and for most proposals there are multiple ways to get to yes. Following the application for the appeal, the Zoning Administrator reviewed the underlying platting and determined that the lot was, in fact, identified as a corner lot and amended the determination and said that to the appellant. The appellant asserts that this new determination was because staff approvals are indefensible and that is incorrect. The Zoning Administrator is no longer applying the curvilinear setback, because it is not applicable in this situation and this lot is considered a corner lot for the purposes of applying the increased front yard setback. Therefore the Zoning Administrator is not currently defending that curvilinear setback determination, only the Zoning Administrator's current determination that the lot is in fact a corner lot and that the setback was determined properly. A corner lot is defined as a lot with frontage on two or more streets at their intersection or on two parts of the same street forming an interior angle of less than 135 degrees. The Zoning Administrator has determined that based on the underlying platting of the lot that a portion of the lot is aligned towards West Lake of the Isles Parkway and a portion is lying towards

Kenwood Parkway. Thus the property has frontage on two or more streets at their intersection and it is a corner lot.

When calculating the setback for a corner lot, what is sometimes referred to the string line test under Section 546.160B, is not applicable. The portion, I won't read all 120 words of the ordinance, but the portion of the second line of the ordinance 540.160B which states "provided that where there are principal buildings originally designed for residential purposes on both sides of the property, the required front yard shall not be less than the established, by a line, established the yard by a line joining the nearest front corners of both buildings" and that should be read in conjunction with the first line which specifies that the established yard of the closest principal building originally designed for residential purposes located on the same block face on either side of the property. Now this is explained in the staff report, so I apologize for repeating this, but essentially that string line test is not to be applied in this situation. It is only to be applied where adjacent residential structures are located on the same block face. As a corner lot, the subject parcel's front block faces along Kenwood and Lake of the Isles Parkway. The ordinance does not require an established front yard setback to be determined by a line joining the structures on separate block faces. Now this doesn't mean that 540.160B isn't applicable, rather we just don't require that the line joining the adjacent structures is used. In fact, the structure must still be set back the distance established by the adjacent property on the block face. And here the building permits were approved at a minimum setback of approximately 36.9 to 37 feet, which is 6 feet further back from the property line of the property to the north and over 14 feet further back from the property to the east. In his revised statement the appellant contends that the subject property is not a corner lot but rather that it only has frontage on Kenwood Parkway. This would not in fact change the outcome of how the front yard setback is determined because if in fact the property, 2380 West Lake of the Isles Parkway, is on Kenwood Parkway, then the intersection of the two streets occurs at the eastern edge of the property where it intersects with 2374 West Lake of the Isles Parkway. And this means that the subject parcel and the parcel to the east are on two separate block faces and, as I mentioned earlier, the ordinance is not applied in a way that joins a string line between two separate block faces.

The appellant's reading of the ordinance would result in a few absurd outcomes that would have significant implications for us down the road. First, the structure would actually have, the structure that is now constructed, would actually have to have been built 10 feet further back than the structure that was previously onsite. And the portion that is shaded was actually the survey that would have been nonconforming and the constructed single family dwelling would have had to have been constructed behind that line. And second we need only look across the intersection, across Peavey fountain to see how the established setbacks that would be determined by the appellant's reading, would actually be so severe that each of the structures would be considered nonconforming and the lots would be substantially unbuildable. And if you can take a look, I know it is a little bit difficult, but I've drawn in what would be the established setback based on the appellant's reading and over time this would effectively force every home to become an alley home and it would make these lots effectively unbuildable. Therefore in light of the aforementioned reasoning, staff recommends that you adopt staff findings and deny the appeal.

Perry: Alright, before I take questions from the board, I will do what I do with every Appeal of the Zoning Administrator. I'm going to read our process and explain a few things so that we don't have any confusion when we go through this matter. Appeals of the Zoning Administrator are not variances, they are not a rebuttal of loss of nonconforming rights. The Board's job is narrowly defined: to determine whether the Zoning Administrator correctly interpreted and administered the provisions of the zoning ordinance as adopted or as it is today, that are subject of the appeal. Furthermore, it is not the Board's responsibility to determine whether the zoning ordinance is correct or should be changed. We are not a policy making body. In this particular case, we are to address a narrowly defined technical issue. Did the

Zoning Administrator properly apply the zoning ordinance in his approval of a new single family dwelling at 2380 West Lake of the Isles Parkway on the contention that the front yard setback was improperly determined? As a matter of due process, the appellant is afforded broad latitude in the testimony they are provided to make their case. However, since written testimony has been provided for the record, this body will ask the appellant to be respectful of the amount of time that they are using in providing their testimony today. The same broad latitude in testimony provided applies only to the appellant. It is not afforded to others testifying or not the appellant or a member of the appellant's team. If I feel public testimony or a board member's questions or comments are straying from the aforementioned purpose, I will interrupt the speaker and ask them to address this decision before this body. This is not to be rude but to be respectful of the purpose of these proceedings. With that, I will entertain questions from the board ... Mr. Ditzler.

Ditzler: Thank you, Chair Perry, thank you, Mr. Steen, for your presentation. Could you give me a little bit of a timeline as far as when the front yard setback, the change from the curvilinear to the corner, like where in the process did that happen in correlation to building permits and the construction of the home?

Steen: Chair Perry, Board Member Ditzler, I think I will defer to Mr. Poor, the Zoning Administrator, on this one.

Poor: Good afternoon. Actually, a point I wanted to make on that and the supplemental statement where the appellant is suggesting that this is a contrivance, if you will, it came after the fact. What actually happened in experience is the appellant made appeals questioning about how the setback was established. It may not come to a surprise to you, but I didn't approve the permit so I have to go back and find out what happened. And in going back and looking at this and trying to figure it out, actually one of the things that I kept scratching my head about is the appellant claimed he lived next door but he has a Kenwood Parkway address. I couldn't figure out what that was about. The building plans indicated that the appellant's address was not a Kenwood address, it was mislabeled, actually, as a Kenwood ... or West Lake of the Isles. So as I got into this, trying to figure out if we even did this curvilinear piece right, I finally came to the conclusion that the subject property has a different address. It is actually off West Lake of the Isles, it is actually a lot and a half. If you look at the map in the back of the alley, you can see there is a very sharp hinge on it. And that when we looked at the definition of a corner lot, that it may have been that it actually is a corner lot in that you actually have two streets. It's not a clear break like what we are used to seeing where there is a sharp ninety degree angle or some other more severe angle. But again, kind of faced with this we looked at the platting, we looked across the way from the fountain and we saw similar situation where the addresses are changing as this curvilinear road goes up. So when we looked into this, and this was probably about, I think it was after the initial time Mr. Wells contacted me, so we wrote back to him but it wasn't revealed initially. But I do take exception that it was a contrivance, it was not. And I met with Mr. Wells, I spent almost three hours talking with him and immediately told him that I think this is a little different than we got into it. So it was just more that when we looked at it and we looked at the definition of a corner, we dealt with two different addressing situations, and we looked at the platting, that it became to me more apparent that we might have not properly applied the front yard setback the first time as a corner. So that would have been in process, it was long after the subject property was after construction. The foundation was laid, I think it was fairly well framed in by the time this came about.

Perry: That answers your question? Any other questions ... Mr. Sandberg?

Sandberg: Thanks, Mr. Chair. Mr. Poor, I think Mr. Steen referred to the point that there are several ways of getting to yes and that you did not necessarily abandon the curvilinear argument, but found a

better one. Is it, potentially, is this project potentially approvable if it were not on a corner and just on a curvilinear street?

Poor: Well I believe our position was that we had, yes, we had applied this curvilinear front yard setback, although the house is built further than what staff had thought it would be required. It is actually set back further on that line. But we believe that wasn't an improper application of that interpretation, of how to establish the front yard with a connecting line, the so called connecting line. That it would still render it an affirmative yes to that.

Sandberg: That's my question, thank you.

Perry: Any other questions? I see none; thank you, Mr. Poor. Is the applicant present, and if yes, would you like to give testimony? Please give your name and address for the record.

Steven Wells: Thank you Mr. Chair. Steven Wells, 2211 Kenwood Parkway. I do intend to be respectful of the board's time, please let me know, though, if you think you'd like me to move on from anything and I will try to do that.

Perry: I sure will.

Steven Wells: Thank you. We're here because the zoning administrator made a mistake. The mistake was to approve this in a way, in a fashion that suggested that they could admit that the string line test applied but do it in a curved fashion. We submitted an appeal after we realized what had happened in this case, after we realized that this house was going to be constructed in a way that was very, very far forward of the existing alignment. After we submitted the appeal, and I believe proof beyond a shadow of a doubt, that the curvilinear process doesn't work here, and I'll explain that in a minute. The zoning commission came to a completely different conclusion, one that is also flawed in every single respect, and I'll go through that. But what we're asking for here is that this board do what is right and enforce the plain language of the zoning code and grant this appeal.

I'd like to just put this briefly in context. We've lived in the neighborhood for about 12 years. We lived over on Burnham Road for a little bit longer than that, so we've lived in the neighborhood for almost 22 years. We live right next door to the subject property. The house that was on this property next door to us was a modest Rambler. It substantially complied with the string test. I heard for the first time today that the zoning office is saying that it would have been 10 feet over. That is not evident from the plans at all. It was in substantial conformance with the string test. It might have been slightly over. You are probably all familiar with the sweep of Kenwood Parkway and where it meets Lake of the Isles Parkway. It may be one of the most historic parts of the city, it is one of the most beautiful parts of the city. It is iconic, tour buses go by this every weekend and every day. Part of the beauty of that area is the sweep of the streets, of the two streets, as they meet and they join at Peavey fountain. The houses are all aligned in a fashion to enhance that, and they always have been. This is one of the Google maps, the satellite photos of the neighborhood, and that's Kenwood Parkway coming down this area. This is the old house, this is the house that was demolished. This is our house here, this is the other house, and you can see the alignment of the houses how they are all in a line here. That alignment is not only beautiful from a historic and a neighborhood standpoint, it also allowed us, effectively, unobstructed views of the lake from the entire south facing portion of our house. There was virtually no obstruction from our view of the lake there, and I can show you now how both the alignment and the view have changed so dramatically. And I've put this in the board packet and I'm trying not to be repetitive, but instead of aligning that is taken from the horizontal plane in front of our house. The other house would not have been visible at all. This is now

what we have to face. And this house pushes the boundaries in every possible way. It goes out to the sides as far as it could go, it is right up to the 5 foot setback. It is as high as it can possibly go. It is way far forward of the string line test, and I think everybody agrees that it is at least 10 and maybe 12 feet over the string line test. It has caused a dramatic change to the neighborhood. That is our house to the left, this is the new structure to the right. This is taken from the perspective of across the street on Kenwood Parkway, and our house to the left, the new house to the right. This view from our house, these are our living room windows, used to be completely unobstructed. It is a little hard to see I think because of the photocopying, I think, but it used to be a completely unobstructed view of Lake of the Isles. It is now obstructed from here to here, this is the sliver we have left of Lake of the Isles. For a hundred years residents of our house have had unobstructed views because there either was no house next door to us or it substantially complied to the string line test. That's what we're faced with now and that's why we are here before you. I want to make it clear, before the concrete was poured we raised objections with both the new home owners and with the city. My wife called Mr. Poor's office. We sent emails to Mr. Poor's office. Those are included in the board packet. We got no response. It was only after we submitted the appeal that we got a response from the zoning board.

That's the context in which we are here today and that's the impact that we have here today. And I think that that's very important, but I understand that this board needs to focus on the legal issues. On what does the zoning code mean, what does it require. And that's where I want to turn my remarks right now. I want to make three points that at least until now I thought were in dispute. I thought first, at least when walking in here today, that there was no dispute that if the string line test set forth in Section 546.120 were applied, that it would be applied using the straight line. When I asked this question to the zoning commission, the only response I got from them was we acknowledge that our previous decision was in error. Mr. Poor comes up and he says he takes issue with the fact that we consider this to be a contrivance. Well there is a rule of, not only did we have a number of reasons in our previous presentation about why the straight line test needs to be applied here, all of which are correct and all of which are un rebutted by Mr. Poor's office. But there is an additional reason, and I cite this in our brief, under the rules of construction and I believe it is 520.20, it is in our submission, all distances are to be measured using a straight line unless the code says otherwise. All distances are to be measured using a straight line. There is no argument that here the code says otherwise. This whole curvilinear theory upon which the original application was approved is something that is not in the code, it is not found anywhere in the code and it directly contravenes the provision of the codes and if anybody has a question for me I'll find that cite for you, it is in our brief, which says that distances are to be measured using a straight line.

The second thing that I believe is completely undisputed is that because there is a residence on either side of that subject property that Section 546.120 does apply. Really the only question that they raise is how much of Section 546.120 applies. Is it the string test or is it the other set back requirements that are contained in that provision. But I don't think anybody is arguing that 546.120 applies.

The third thing that I think is undisputed and has been unaddressed completely by the city is this: If the subject property has just one block, just one block face rather than two, the string test applies, under the plain language of 546.120. Because if it has just one block face then that means that the entire argument falls. And I think that in order to address their argument I need to repeat it because it rests on a series of conclusions each of which are wrong. I think they said the string test doesn't apply because this is a corner lot. It is a corner lot because it has frontage on two streets. Because it is a corner lot it has two block faces. And if it has two block faces, the string test doesn't apply because even though the plain language applies, and they don't disagree with that, the plain language of 546.120 applies, they say this would result in unbuildable lots. So you have to find for them on each one of those premises in order to get to their conclusion. And they are all wrong. Let me start with the first one, that this subject property

has a frontage on two streets. And let me suggest, if it doesn't have frontage on two streets, that's the end of the argument because then everybody would have to agree it has only one block face. So, does it have frontage on two streets? No proof whatsoever given to you now and no proof given to you in any of your board packets that would show that this house, 2380 West Lake of the Isles Parkway has frontage on two streets. The information in your board packets shows exactly the opposite. This is exhibit 2 from my brief, and it is the same map that is included in your board packet. This is the subject property, this is our property. I'm not quite sure where they took this map from, it says City of Minneapolis, but it shows the alignment, the distinction that the city of Minneapolis makes, between Lake of the Isles Parkway and Kenwood Parkway. That line is right there. This is the edge of the subject property. It does not have frontage on two streets. It may intersect at that corner, but it does not have frontage on two streets and therefore it is not a corner lot and because it is not a corner lot it doesn't have two block faces and because it doesn't have two block faces the string test applies. This isn't the only map that shows that what is labeled at 2380 West Lake of the Isles Parkway has no frontage on Lake of the Isle Parkway. This didn't copy very well, this is in the board packet too and I'd like to make sure that this is part of the record here. This is a better copy of it. I've taken this map from the Hennepin County interactive maps, the zoning maps that Hennepin County has. That too shows the exact same alignment of Kenwood Parkway and Lake of the Isles Parkway. No frontage, this is the subject property here, no frontage on Lake of the Isles Parkway. Only frontage on Kenwood Parkway. If it doesn't have frontage on two streets, it is not a corner lot.

That should be the end of the argument, but I want to go further because there are other arguments that detract from the city's position here. One is that this is a, and I heard a little bit of this now, well we should just consider it to have two block faces because it is kind of on the corner because even though it doesn't have frontage on two streets it intersects with the very corner. There is a definition of block. Block is defined at Section 520.120 I believe. I'm not sure if you can read it, so I will read it. A block is a tract of land bounded by streets or by a combination of streets, railroad right of ways, shorelines, waterways, or boundary lines of the corporate limits of the city. This, and this is from the board packet, is the block. This is the block. This is not the block. That's what the city is contending here. What the zoning commissioner is intending, is that this somehow is the block. This is the block. This is what meets the definition of block under the code. It is not true that you can define the boundary of a block by a property line. That is the position that the city has taken. That is dead wrong, that is not found anywhere in the code. This is the block, and that is why this property and our property and every other property on this face only has one block face.

And if the city wants to go to what a block face is, that is right below it. That's the half block area facing the street. That's the half block area of a property facing the street. That is all of the front yards of 2380 West Lake of the Isles Parkway and 2211 Kenwood Parkway. But let me go one step further. Let's just say for the sake of argument, that this did have frontage on two faces. The problem with that argument is this, they don't rely on, what they rely on for this argument that it has got two faces so we can't use a string line with two faces is the definition of half block. Half block, I'm sorry block face. But block face doesn't say that corner lots have two faces, it says corner properties have two faces. The code could have very specifically said corner lots have two faces and that's how we are going to interpret that. But it doesn't say that, it says corner properties have two faces. Corner properties is not a defined term under the code. Corner properties has to be defined in accordance with the rule of construction in the code that words are given their ordinary meaning. The ordinary meaning of corner is it is a corner. There is no corner there. That is not a corner. That is not a corner property under either the, and it's not a corner lot and it's not a corner property. So there is no argument that this is a corner lot or that it has two block faces. And because it doesn't have two block faces, then it is treated like any other piece of property under 546.160 and that is that the string test will apply.

Last, and this is set forth in our papers too. The plain language of Section 546.160 doesn't require that properties, that the string test only applies when there are residences on the same block face, it doesn't say that. It says whether there are residences on either side. So it doesn't matter how you choose to look at this. It is not supported in the law, it is not supported by facts, there aren't two frontages here, and this is a contrivance and it never should have been approved. This isn't just my problem as you can tell from the number of comments that have come in and I hope the board has gotten them all. This is a significant, significant neighborhood issue. Many of the neighbors have noticed this problem, have pointed out how disruptive it is to the neighborhood and the iconic views that have existed in that neighborhood for a very long time. It is a very serious issue, not just for us but for the city.

Last, and I think the only other thing that I'd like to say is I'd never heard the argument until this very moment that somehow this would result in unbuildable lots on the side of the street. I don't think that that's the case and I don't think that was very well explained. It has never, that has never been brought up. That isn't an issue. Nobody else is seeking to build on the other side of the street. I don't know where it comes from, but that's not something ever that has been explained to us or used as a reason or rationale here, and I would suggest that to bring it up now violates due process. Questions?

Perry: Actually, I do have a question. You just made an assertion that bringing up violates due process. I don't follow your logic at all there, sorry.

Steven Wells: I don't think, well here's the issue. They are now saying for the very first time that it would result in an unbuildable lot across the street somehow. That is never a rationale that has ever been given. In other words, they are saying if you apply the plain language of this code that it somehow results in an unbuildable lot some other place in the city, now across the street? We've never been given a chance to examine that claim, or address that claim. And I would suggest that it doesn't matter.

Perry: Ok, so it is not a violation of due process, you are not asserting that.

Steven Wells: Only if the board chooses to rely on that for its decision.

Perry: The board is responsible for looking at written testimony and for any public testimony that we hear in this public hearing, including yours, to make a determination. You could bring something up today that we don't have in our written packets, and you have, and so we are to rely on both the written testimony that we have had previously as well as the verbal testimony that we are getting as part of this public hearing. That's the process.

Steven Wells: Mr. Chair, I've made my presentation.

Perry: Very good. Questions? Mr. Ditzler.

Ditzler: Thank you, Mr. Wells, for your presentation. I noticed that the pictures that you put up all seem to be through windows of your, the east side of your residence. Do you have any pictures, when I walked the site today up and down in front, do you have any pictures with you that show your view from the south side of your residence, the front face of your façade.

Steven Wells: No, the south side is not obstructed.

Ditzler: Thank you.

Steven Wells: And if I could just clarify too, the house was designed, as I understand it from the architect, so that every, basically every room would have a view of the lake and that includes the houses on the east, I'm sorry, rooms on the east side of the lake. Those are all obstructed now. So not just the living room, there are rooms in the back, there is an upstairs bedroom, all of those. There used to be two, three rooms with essentially unobstructed views of the lake on the east side. Now all of those east side views are obstructed.

Ditzler: Thank you.

Perry: Thank you, Mr. Ditzler. Are there any other questions for Mr. Wells? Yes, Mr. Cahill.

Cahill: Just to clarify real quick, looking at both properties on both sides of 2380, your property is 2211, correct?

Steven Wells: Correct.

Cahill: Does yours extend, does your front yard currently meet the minimum?

Steven Wells: It exceeds the minimum.

Cahill: It exceeds the minimum. Is the same true for 2374?

Steven Wells: Yes, they both exceed the minimum as I understand it. Also I do want to point out one thing and that is, since you brought it up, I believe that they have said that our setback is 31 feet or so and the setback in the existing house is 35 or 6 feet, I don't remember exactly what they said. That's not right either. You can tell from the scale that they have done, they'd taken some sort of tan ... they haven't actually surveyed those distances, as I understand it. They've taken some sort of tangent off of our house, you can see it in the board materials. They've done some sort of tangent and then measured from essentially the property line to the tangent but not to the house. So it is not an accurate reflection of the setback of our house.

Cahill: So you are saying that the setback would in fact be greater?

Steven Wells: Yes, and it is just clear from the diagram itself.

Perry: Are there other questions for Mr. Wells? I see none, thanks for your testimony, sir.

(indistinct from the audience)

Perry: I don't, not right now please. Is there anyone else who would like to speak on behalf of the appellant? Great. Your name and address?

Mike Elson: My name is Mike Elson and I live at 2235 West 21st Street which is on the other end of the block. I walk by the neighborhood very often and to me this appears to be a monumental screw up. To lay out, when the zoning was presented with the plans, they knew where the old house was, which comes very close to fitting the straight line test. I do not know what the driving force was in projecting that far forward. There is room on the back of the lot to have set that back appropriately. I don't know why they asked, nor do I, for it to be projected out. I don't know why zoning approved it. The same house would

have fit on the lot following it. And the first shot that they showed showing Kenwood Parkway with the houses down, it is obvious as you look how the houses are situated as Kenwood Parkway curves down that the straight line test has been pretty much observed, even across the fountain. The street projects out, but yes the houses are setback rather regularly. When they were presented with the request for that, I don't know why the zoning board approved it. And now they are in the position of not admitting they made a mistake and how far will they go, and that is just absolutely crazy. They were contacted very early in the process, the construction was allowed to go on just assuming that if we get enough money invested in this they won't make us move it.

Perry: So, sir, you are talking about the process. I said I would give a lot of latitude and for purposes of due process to the appellant, and you are not a member of the appellant's team. You are speaking on behalf of the appellant's request, could you confine your comments to the actual challenge that the zoning administrator improperly applied the code here?

Mike Elson: In my view, that is the case.

Perry: Why?

Mike Elson: Just because the way that it sits on the lot. It does not meet that straight line test. The existing house beforehand just about did. It was very, very close and it fit the flow of the houses. The new construction does not ...

Perry: It doesn't?

Mike Elson: It just plain doesn't. That's essentially it.

Perry: Ok, thanks for your testimony. Is there anyone else here to speak on behalf of the appellant's position?

Jim Reece: My name is Jim Reese and I live with my wife, Libby Larsen, at 2205 Kenwood Parkway, so just on the other side of Mr. Wells' home.

Perry: Was that Grace? Mr. Grace?

Jim Reece: Reece, I'm sorry Reece. I just have a few points to make. Number one, I appreciate very much those who have gone out to the site. I think to, from a lay standpoint, and I've certainly looked at the zoning codes, everyone looking at the house would say at the beginning, I would say, this just can't be right. This is sticking so far out of the natural flow, so far out into the street, that it just can't be right. We were obviously told that it was correct under this curvilinear approach, which again at this point they have withdrawn that approach as I understand it. I wanted to show, if I could, this line, this drawing shows the outline of the home under construction and where the straight line test would be, so you can see the extensive amount of construction out in front and towards the street that is beyond where a straight line test would be. Now to suggest this is a corner lot, again, ...

Perry: That is the contention of the city and the way the zoning administrator, that it is a corner property and therefore that string line test that you are showing is not applicable.

Jim Reece: Yes, absolutely, and I would submit that nobody looking at this lot would say that it is a corner lot. I've looked at the ordinances, and I don't think that the regulations allow, suggest, that this is a

corner lot. Certainly absolutely nobody walking on that block would say, gee this house in this string of houses along this street between two other houses on either side, gee, that's a corner lot. May I just, so from a layperson's standpoint, absolutely no one would say that. I have looked at the regulations as Mr. Wells has, and I don't think they support the idea that this is a corner lot. There is no corner, this isn't the kind of thing, I can't imagine the city ever contemplated that a house in the middle of this block could be called a corner lot because by happenstance there is another street that comes near it. Because there is two houses on either side, obviously the string test could have been applied. Certainly the fact that the builder chose to proceed knowing of the dispute, obviously would not impact the decision because the law is the law and if the string test were applied then you would have the basic flow of the street. I would just end with this point, I am sitting here today, you folks are deciding very important issues for families every single day. This is one of those unusual applications where it is really important for the city of Minneapolis. I mean there is thousands of historical photos, postcards, paintings, of this street. Now the street, if approved, instead of having the natural curve that most of the city is familiar with (gap due to tape switch) ...

Perry: ... is a sadness about the visual effect of the building where it is going, but we're not here to talk about that. If you could tell me why you think the zoning administrator did not apply the code properly, I would appreciate it.

Jim Reece: Absolutely, I mean the reason is that I've studied the regulations as Mr. Wells has and I agree with every single one of his technical arguments and I don't think this is a corner lot under any stretching of the regulations. Thank you very much.

Perry: Ok, thanks for your comments, Mr. Reece. Is there anyone else who would like to speak in favor of the appellant's position? I see no one. Is there anybody who would like to speak against the appellant's position? I see no one. Let's close the public hearing. Board comment, questions? I want to remind you this is not a variance. We are looking at whether or not zoning board properly applied the code in this situation. We are also not here to make a determination of whether the string test is a proper test, or any of those sorts of things. It is whether the existing code was applied in a proper manner by the zoning administrator. Mr. Cahill.

Cahill: I have a question for staff if that's alright, Mr. Chair.

Perry: Please.

Cahill: The question for staff is, has, and you may probably have had this up, but at any point has the 2380 property ever paid for an assessment on West Lake Parkway? Have they ever paid for the fact that that property, if there is improvements to that street, had to pay (for the benefit?) of being on the street.

Steen: Chair Perry, members of the board, could you specify what, if they had to, the subject property, have they had to pay for improvements on Kenwood or Lake of the Isles Parkway?

Cahill: Just Lake of the Isles, I am assuming they paid for Kenwood. Do they pay for any benefit of being on the Lake of the Isles Parkway?

Steen: It is my understanding after conversations with public works, that they would be assessed only one time for any construction that occurs in front. They weren't able, they don't really deal with a lot of hypotheticals in public works, so they weren't able to give me anything in writing despite our requests.

Cahill: Just checking, thank you.

Perry: I'm sorry for laughing, but public works is definitely not good with dealing with hypotheticals, I agree with that, that is for certain. Other questions or comments, Mr. Cahill. I'm sorry, Mr. Ditzler.

Ditzler: I'll defer if somebody else wants to comment, please, I'll go second.

Perry: Yes, Mr. Cahill.

Cahill: Another question is, as I'm looking if this was treated as on the same block face, I'm also reading the language that says if there is 135 degree angle on the plot line, what would that look like and where would that measurement be?

Steen: Chair Perry, members of the board, I'll defer to the Zoning Administrator.

Poor: I believe that the 135 degrees is acknowledging that the city has curvilinear roads. I mean that is, if you look across the way at the other point from Peavey Plaza, I suggest you look at the house that is on 24th. It wraps around, I mean that clearly, their address, they have frontage on 24th Street West and then it wraps around the Parkway. So when this was redrafted in 1999, and by the way much here has been talked about the line test, I've been with the office 24 years and I've done front yards four different ways, and the string test only came into existence in 1999 with all due respect. It was done four different ways. So it is not factually correct to say the string test has been around forever, and I've been in the office ...

Perry: Mr. Poor, if you could address us and not the applicant.

Poor: Sure, in any event I just wanted to make that point about the string test, but the code envisioned that there was going to be lots that were not straight and not formed in rectangles and so they put in a clause that if it was over a certain degrees that it constituted a corner. Similarly it talks about why it is an "and" or it is an "or" in there about the two different streets. So the whole problem is we live in a built environment, we have these beautiful curvilinear roads that's not on the grid pattern and we're trying to figure out how to establish front yard setbacks on that, and that's one of the purposes of defining what a corner is.

Perry: Does that help?

Cahill: It does help, but maybe what is the interior angle on this piece of property?

Poor: No ...

Cahill: Are you saying it simply doesn't apply?

Poor: No, it is, the angle does not apply in the analysis for the corner in this case. It is the fact that, in our minds, it is the fact that there are two different addresses which I don't think is insignificant. I mean they have two different addresses, the previous house, contrary to what is being said here, clearly from even the drawing the last person testifying commented about the new house, you can see the underlying old house, it clearly didn't meet, if there was a string test applied, it didn't meet it, and we did ask public works if they could give us some definitive answer on assessment and they couldn't. They didn't. And they said we really only do that when we go out there, because we looked for that. I think the lines that were pointed on the map were not determinate. Those maps were not, the lines on the maps that Mr.

Wells had were not created for that purpose. So we looked at it, and again it was not, it was when staff and myself struggle with there is something just not right here that I'm missing that we made this ... it didn't make, his one part is correct, it didn't make my task any easier, but I offered that to him before I had even written it. So as soon as I kind of found out about it I felt obligated to say I think this is what happened.

Perry: Ok, I think we have the timeline, sequence, the decision making and so forth ...

Poor: I did have one other ...

Perry: Did Mr. Poor answer your question about the 135 degrees? It's not applicable ...

Cahill: Yup, I'm satisfied.

Perry: That's all we're talking about here. Ok, Mr. Sandberg.

Sandberg: My point was the same question about the 135 degrees.

Perry: Ok, we're not talking about that here. Alright, other questions while Mr. Poor is up? Alright, other board comment, questions? Thank you, Mr. Poor. Mr. Ditzler.

Ditzler: Thank you, Mr. Perry. I'll take a stab at it a little bit. I just want to offer a couple of comments. Whenever we hear these I like to use a phrase a fellow board member, Mr. Finlayson, often says is that our job is to see if the zoning administrator made the right call or interpreted the language correctly as obviously the zoning code is imperfect and leaves some need for interpretation, or let me say, administration. So when I look at this, there is obviously some conflicting, potentially conflicting, data here. We have this address, and then we have a map that's got some curvy lines that looks like it is maybe on one road or maybe on another and so when I get, since I don't quite have the expertise of Mr. Poor, when I come into situations like this I go look at the site. Because sometimes I feel that looking at the site makes it clearer for me. And I gotta tell you that maybe I am the odd layman out but when I went out to the site today and stood there I kinda thought it was on a corner. It is on intersecting streets and there is signs that go in a corner and when I looked at it and I went to one edge of the property line and I looked out, it looked like West Lake of the Isles Parkway and I went to the other side it looked to be the other street. It looks to me like it is on a corner. It is kind of a weird corner, it is kind of a different corner, it is very charming, but that is what my gut tells me. And looking at some of the maps that the appellant and people who came and spoke for the appellant have, since the street curves out, to apply any sort of string test between the two adjacent properties, if you want to follow the natural curve while using a straight line string test won't do that. It won't allow for the curvature of the front of the homes, so that doesn't seem right either. I think it is a difficult situation, I think the zoning administrator maybe could have made the call either way, but from a visual inspection of the property it appears to me and his written analysis of his interpretation of the code, that I think the zoning administrator did make the right decision in this case.

Perry: Thanks for those comments, Mr. Ditzler. Mr. Finlayson.

Finlayson: Just a couple of comments. First of all, this address business. I'm a real estate appraiser and I can, from time to time, I run into a property sitting on a corner and the post office says it is one address on one street and the county says it is on the other. So it is not to be relied upon, it is differing bureaucracies labeling things because they have to label it something so they label it. The string test, if this is indeed a corner property, a string test is not usable, you can't run a string test off of one property, the string test is

something that is optional to use and is informative but not necessarily full of guidance. I guess I look at the zoning administrator's referral to curvilinear. I am familiar with the site, visited it, and I kind of watched things go up as I drove by in a disinterested way and I looked at it the other day with a lot more interest and I agree with board member Ditzler's perception that it is indeed on a corner. And if it is a little bit more on the Parkway or a little bit more on Kenwood, who is to say, but it is sitting there more or less on a corner. So what I am saying is I buy the zoning administrator's argument.

Perry: Thank you, Mr. Finlayson. And for point of clarification, what we have before us are findings. There are four of them and they start on the bottom of page three and the fourth one continues on to page four. That is the "argument." It is legal findings that are being addressed by staff in the face of the appellant's case. Any other comments? Mr. Ogiba.

Ogiba: Thank you, Chair Perry. In essentially agreeing with board members Finlayson and Ditzler, what I kept coming back to on this particular site was the fact that there is a major traffic pattern change at this particular site. And looking at and saying that as West Lake of the Isles Parkway comes around here it is clearly automobile traffic can only travel only in one direction and as you enter or exit onto Kenwood Parkway from here there is traffic in two directions which I almost inadvertently pulled into while trying to stare at the site and try to make some determinations. So I think when you look at the definition of what we are faced with for the corner lot analysis to say that it is a lot with frontage on two or more streets at their intersection, I think this lot clearly forms itself at the intersection of these two streets and thus meets the definition of corner lot.

Perry: Alright, I know we have another item on our agenda yet tonight and I don't want to extend this argument, but I would ask that the board when they are considering their decision and their comments, in saying that one feels like it is a corner lot is not sufficient to make the case. Or that it sort of looks like it should be a corner lot or not. We have to look at what the code is. We have to look at what the findings are. We have to look at what the appellant has challenged us with in terms of saying that there is no case for it to be a corner lot, or curvilinear is not an appropriate approach, or whatever their arguments may have been and decide upon that. So I appreciate that everybody has gone and done a visual inspection. If there is some part of the visual inspection that helps you make a determination when you do make a decision of whether the code was applied properly, then that is pertinent. Just as I said, it is fairly sad that a view is being blocked, but that's not really the question before us today, or how people feel about it visually. Mr. Sandberg?

Sandberg: Thanks, Mr. Chair. I also agree that the zoning administrator made the right determination in this case and that the string test should not apply. He determined that it should not apply because it is a corner property. I think that the intent of the string test is if there are adjacent properties that sit substantially behind the required front yard setback that the average between those two be used to set up the front yard setback for the interior property. I think in this case when the string test would be applied, that would create not an average setback between the two adjacent properties but something that is way beyond behind the two adjacent properties. So I think it is inappropriate to apply the string test here, whether it is because of a corner lot, which the zoning administrator says and I would be happy to follow that argument, or whether it is because it is a curvilinear, it is a curved street and whether, and the intent of the string test requirement does not apply. I also looked at the portion of the code that was cited for citing straight lines, that only a straight line could be used for the string test. It specifies a distance shall be measured in a straight line. It doesn't say that boundaries shall be established in a straight line. So I don't think that citation in the code is necessarily supporting the appellant's case.

Perry: Alright, thanks for those comments. Mr. Cahill?

Cahill: Maybe the way that I'm looking at this in the life is that the property here is my approach was I went to what I could guesstimate was the property lines. One end if I walked off one property line I cross Lake of the Isles Parkway. That's the street I crossed. If I walked off the other property line, I crossed Kenwood. I mean, it was kind of from my understanding, it does saddle two streets. The hard part is now is that scientific? No. But we are dealing with the fact that is there frontage on both streets? I think at some point, yes. The question is we are drawing a line of where do you draw the line that splits Kenwood from Lake of the Isles Parkway and that's not a line on the map. I mean we have one where it is like we have one where it goes across from one point on the property to the other but it cuts off half the street. It's just practically speaking I think you do face both streets.

Perry: Alright, thanks for those comments. Mr. Ditzler?

Ditzler: I would like to move staff recommendation.

Sandberg: Second.

Perry: There is a motion by Mr. Ditzler and a second by Mr. Sandberg. Before we have any further discussion I would like staff to repeat something for me. Mr. Steen, I think you are contending that this is a corner lot in part because of the platting.

Steen: Chair Perry, that is correct.

Perry: Could you repeat that for us please?

Steen: Certainly. I do not believe that ...

Perry: And the reason that I am asking is this isn't about me going out and looking at what the street looks like, or you looking at what it looks like. It is about the way it is platted.

Steen: Sure, and I apologize I don't have the exact document. I know it is in your, it is under plat map, and this is in your file. As you will see, the western most portion of the property is a parcel that is split through the middle of that parcel. A portion of that parcel is part of the appellant's property on Kenwood Parkway and the second parcel, it is a complete parcel, is effectively on West Lake of the Isles Parkway and it was using this information in addition to all the other additional information that was used for making this determination.

Perry: Ok, thank you, Mr. Steen for that. Is there any further discussion on the motion? Ms. Thompson.

Thompson: Can I ask another question of staff?

Perry: You certainly may.

Thompson: When I am looking at that image up there, the road front is definitely not straight. So am I correct in understanding that the three options for evaluating this location for zoning would be curvilinear, corner, or kind of general middle of the lot? Those are the three different options, like when you are looking at this to evaluate the zoning?

Steen: I'm sorry, I think there are a number of ways, when I was discussing there are a number of ways to get to "yes" you know obviously what we do is we pick the one that is the most defensible, that we appreciate the most, and that is this determination. The curvilinear we are not arguing at this point. That is a discussion for another day, whether or not we can get there, we are not making that argument at this point.

Poor: Chairman Perry, Board Member Thompson, you can have a corner lot, you can have a reverse interior lot, you can have a regular interior lot on your standard rectangular ... this would probably, I suppose that the appellant would argue it is just merely an interior lot and that's why they go back to a different method to establish the setback. What we are saying is if you kind of even look at the alley how it runs straight and then it jogs, but our definition, the way we've looked at this is defined as a corner lot. I think the appellant would suggest it is just a regular interior lot, and that's why you would have done the connecting line.

Thompson: Thank you.

Perry: Alright. Any further discussion or questions before we take a vote here? I don't see any, will the clerk please call the roll.

Ayes: Cahill, Sandberg, Ogiba, Ditzler, Meier, Finlayson, Thompson

Nays: None

Absent: Nutt

Motion Carried