

**Excerpt from the
HERITAGE PRESERVATION COMMITTEE MEETING
Community Planning & Economic Development (CPED)
250 South Fourth Street, Room 300
Minneapolis, MN 55415-1385**

The following actions were taken by the Heritage Preservation Committee on September 23, 2014. The Heritage Preservation Committee's decisions on items are final subject to a ten calendar day appeal period.

Commissioners present: Ms. Laura Faucher, Mr. Alex Haecker, Ms. Susan Hunter Weir, Ms. Ginny Lackovic, Ms. Linda Mack and Ms. Constance Vork

Committee Clerk: Fatima Porter 612.673.3153

ITEM SUMMARY

Description:

Item #2- 2300 Milwaukee Avenue (BZH #28347 Ward 6) (Lisa Steiner)

Charles Levin and Lynn Brofman have applied for a Certificate of Appropriateness to replace a non-historic side porch with a new larger enclosed side porch with deck above. The property is located at 2300 Milwaukee Avenue and is within the Milwaukee Avenue Historic District.

Action:

The Heritage Preservation Commission adopted staff findings and **approved** the Certificate of Appropriateness to allow the replacement of a non-historic enclosed side porch with a new enclosed side porch with deck above on the property located at 2300 Milwaukee Avenue, subject to the following conditions:

1. The proposed addition shall be set back a minimum of five (5) feet from the south interior side property line.
2. By ordinance, approvals are valid for a period of two years from the date of the decision unless required permits are obtained and the action approved is substantially begun and proceeds in a continuous basis toward completion. Upon written request and for good cause, the planning director may grant up to a one year extension if the request is made in writing no later than September 23, 2016.
3. By ordinance, all approvals granted in this Certificate of Appropriateness shall remain in effect as long as all of the conditions and guarantees of such approvals are observed. Failure to comply with such conditions and guarantees shall constitute a violation of this Certificate of Appropriateness and may result in termination of the approval.

Absent: Bengtson, Hartnett, R. Mack, Stade

Aye: Faucher, Haecker, Hunter Weir, Lackovic, L. Mack

Nay: Vork

Motion passed

TRANSCRIPTION

Staff Steiner presented the report.

Commissioner Hunter Weir: Maybe this is a zoning question but this came up in the neighborhood. The distance between houses, and if I'm remembering correctly the issue was emergency. It had to do with if ambulances, firemen, whatever, needed to get in there, that they had enough space to do that. I just remember it coming up; it was, basically, the people had to move it because it didn't allow enough space.

Staff Steiner: The 5 foot setback is the smallest setback in the whole city.

Chair Faucher: Other questions? Is the applicant here and do you wish to speak? Please step forward and state your name and address.

Charles Levin (2300 Milwaukee Avenue): My wife Lynn Brofman and I are the homeowners. We've lived in our house on Milwaukee Avenue for 31 years. We know we live in a special place and we value the vigorous review process required to make changes. We're excited to move ahead with work we've intended to do for a very long time. In fact as you've heard we previously applied for and were approved for a slightly larger project with a variance for a 3 foot 6 inch side yard setback. The approving staff report at that time stated in its findings [??] quote, the proposed work meets the guidelines for porches, sidings, setbacks and streetscape, unquote. Unfortunately we were unable to move ahead at that time. And in spite of receiving an extension from staff, the approvals expired. Now we are able to move forward. But there is new staff and the opinions have changed. Although we previously were approved at 3 feet 6 inches, staff now wants 5 foot 0 inches and we're requesting 3 foot 10 and 3/4 inches. While the current staff report is completely favorable. Its approval recommendations based on 7 foot 5 and 3/4 inch porch not the 8 foot 7 inch porch that we proposed. The staff report is quite insistent that the 13 and 1/4 inch difference is the defining boundary between what is appropriate and what is not. I stand before you to ask your support and approval of the design as proposed. While we agree with the reports evaluation criteria, we disagree with the conclusion. Our property is quite small and we have limited space to work with. At 37 1/2 feet wide and 3100 square feet of lot area, our property is significantly substandard for the R2B District. For comparison we've considered all 43 properties in the district and we found that there are 20 different lot widths, half of which are under 40 feet. Another two of those lots are substandard in area and I can provide you with those calculations if you want. We understand these non-complaint 1880's conditions are what led to the 1970's formation of the historic district as a planned unit development (PUD). We find it curious and troubling that the staff report does not mention the PUD. Our lot is undersized; we believe rigid setback rules should be questioned for their appropriateness. What I'm showing here is a comparison between the plan of the porch as proposed and the plan as conditionally approved. So, this is the approved plan, we're really making no change in the space between the buildings. And in fact the face of the porch is at the same position that the current face of the porch is. The difference is, in our proposal we're asking for a 3 foot, 10 and 3/4 inch setback from the property line. The other side of the line is 2 foot 1 and 1/4 inch that's on our neighbor's property. The total dimension that we would have between our building wall and our neighbors building wall is 6 feet. Under building code, if you're between 3 and 5 feet from the property line, you're allowed to have 25% openings in the wall. If you're less than 3 feet, you're not allowed any openings. If you're 5 feet or greater, you're allowed as much openings as you want. In this particular

situation, our neighbor's house is closer than 3 feet to the property line. Technically under today's standards, they wouldn't be allowed to have any openings in their wall whatsoever. So, our thinking about this is, if we compensate for what's going on at our neighbors house, and we restrict this to 6 feet, then we would be able to justify this to the building that we've complied with the spirit of the code, if not the exact dimensions of the code. I also show you this... And by the way, I should mention that the 13 and 1/4 inches that we're asking for is only for a depth of 16 feet. So multiplying that together, the total square footage that we're talking about, that is in dispute here, is 17.67 square feet, which is actually less than the size of this table that I'm standing at. So, I just want to make sure we get proper perspective to what we're talking about. The elevation drawings that you see again illustrate the difference between what we propose and what staff is conditionally approving. So why are we asking for 13... what's magic about the 13 and 1/4? Simply we need more interior width. Without the variance the interior of our porch would be just 7 feet. With it, it would be 8 foot 1 in the interior which is still narrow but it's a better solution to be at 8 foot 1 than at 7 feet. We don't have much space to work with. As I said the gross area we're requesting is about 18 square feet in size. Where it makes a huge difference is we would like to put a table and four chairs on the porch. At a 7 foot dimension, although we could fit a table and four chairs, there wouldn't be any room to walk around inside the porch, to walk around the table to serve food or get up to go in the kitchen. The other factor is that there are two doors on the ends of the porch because this is the entry into the two units of our duplex. So the 13 1/4 inches would really help on the interior. So where this kind of brings us to is, in our minds the only question is whether a 13 1/4 inch variance should significantly change the thinking that led staff to approve our project initially. So, while there are things that are debatable... this is our house with the red roof and these are the four houses that are in our particular sequence of houses on Milwaukee Avenue that maintain uniform spacing. So, there are things debatable, I think it's safe to say our project integrates well with the Historic District. The picture on the screen shows the houses in our grouping. Our porch would have almost no impact on the streetscape since its setback almost 25 feet from the front façade. Walking down Milwaukee Avenue, you can't even see our existing porch until you're right in front of the space between the two buildings. Since Milwaukee Avenue is a narrow linear space the porch would not be visible unless you're standing directly in front of it. I think that the pedestrian would be pleasantly surprised. The picture I put in front of you is what the appearance would be with a 5 foot setback and the porch as conditionally approved. Here's the same drawing with the 13 1/4 inches added to the porch. So we think that it really comes down to question whether the proposed design compromises the immediate environment. To that question we offer the following. The staff report states that the porch would have a negative impact on its setting due to the proximity to the neighbor. The south neighbor doesn't think so and has written a letter of support. As a point of interest, my north neighbor's two story deck stairs which is 4 foot 9 inches from our house, which is a setback on their property of only 2 foot 9 inches. We don't see this as a negative, it's a narrow passage way and its part of the quaint features of Milwaukee Avenue. In contrast to the staff report, we feel that the difference between the proposed and the conditioned dimensions is not significant when considering the properties integrity, location, design, setting, materials, workmanship, feeling and association. Board members agree, no one has stepped forward in opposition. We've discussed the project and setback variance with all of our immediate neighbors and none have a problem with it. In fact all seven of them have written letters of support including our neighbor to the south who's most directly affected. So to conclude, your task is to decide if our proposed design is a problem or a solution. We hope that you would agree that we've complied with all of the standards and that you recommend our variance. In earnest, we hope that you would agree that the design actually looks a little better wider. Thank you.

Chair Faucher: Does anyone have any questions of the applicant?

Chair Faucher opened the public hearing.

Bob Roscoe (1401 East River Parkway): Good afternoon ladies and gentlemen, commissioners and Chair Faucher. At one point my address was 2102 Milwaukee Avenue. That was before it was a Historic District but about the time when some of us got together to keep the whole area from being demolished by public agency demolition. The irregularities of so many things with Milwaukee Avenue is what really gives it its charm. And there really isn't a uniform distance between houses. They vary from as little as 6 feet to about 30 feet. An example is between 2116 Milwaukee Avenue and 2114; I think the distance is only 5 or 6 feet. Across the street between 2117 and 2121 the distance must be 25 or 30 feet. I don't know why this uniform distance got established because I'm guessing a great many of properties really vary in that. And it's a good thing. Because I think that that irregularity is really what's important. One of the things that we instituted that made redevelopment possible was PRD, Plan Residential Development zoning. That provided a number of things but what we were; worked with the Planning Department at the time, it kept on emphasizing that PRD was a more flexible instrument for dealing with problems with conventional zoning that come up. Well the 5 foot setback is conventional zoning and I think this is; to use civic sand paper to try to make it uniform I think is really not what's important. As Mr. Levin said, the houses, almost every house is under a uniform lot size. And some of them significantly so and some of them are only 48% of conventional lot size. And within that, with such a delightful neighborhood, everybody who lives on Milwaukee Avenue enjoys living there. But there are constraints with doing so and I think to just 13 ½ more inches to make a porch more livable is what makes the Historic District more livable. And I think that's really important. So I really encourage you to support the Levin design. Thank you.

Chair Faucher: Thank you. Is there anyone else that wishes to speak for or against this time? Oh, were there questions for Mr. Roscoe? I won't close the public hearing at this time.

Commissioner Hunter Weir: My concern is less aesthetic on this one. But, I'm not sure..my concern is safety. And you talk about sort of conventional, this is not zoning just to make all the blocks even. But it's really an issue for safety, then how does that fit into what happens with Milwaukee Avenue. Clearly they're not going to tear down buildings that are too close together. But when there is an opportunity to do those, does that make sense?

Bob Roscoe: Well, with brick houses, I think that's one aspect of the safety right there, fires not going to spread, leap from one house to the other. And these houses generally have smaller window areas on the side elevations as well. So I don't see where, that safety is an issue. There's still plenty of room to get between the two houses for any kind of emergency, whatever that might be. I just want to add one more thing; I did the renovation/restoration design of the house in the late 1970's and the Levin design is better than the Roscoe design.

Chair Faucher closed the public hearing.

Commissioner Lackovic: I would have to agree with some of the comments earlier; this proposal is very well done. It's a very nice design. I don't know if it's better but it's a very nice design. And I don't think, at least for me, the issue is not really design, nor the spacing, nor the

compatible uniformity of it. I think where the zoning code comes from is more from the IBC, the building code for fire setbacks. And along with those setbacks comes certain requirements like fire retardant materials and glazing. I think that's where that comes from, that is completely out of our prevue. So I guess this is a question for all of us. [??] the design fits in beautifully, I have no issues with it. Size wise, I have no issue with it, it works better bigger. You are varying the height without that [??]. I'm not sure we can approve something that's not in our prevue.

Chair Faucher: They do need to apply for a variance. It said in the application it's in process. But...

Commissioner Lackovic: [cross talk] from a historic district aesthetic perspective [??]

Commissioner Hunter Weir: Would it be possible for us to make a motion with that pending approval? Because I think that's the thing too. It really doesn't matter if we say its ok, if in fact we're not the deciding factor on that one. Then it's going to be.....

Chair Faucher: That would be a question for staff.

Staff Dvorak: If you were to choose to approve this at the setback that the applicant is requesting, you would simply remove the first condition.

Commissioner Hunter Weir: So we would just remove the condition and if they get it, they get it. If they don't they'd be back with a different design, is that how you would see that? So if it were denied by someone else, then their option would be to come back with one that fits the zoning requirement.

Chair Faucher: Or build it at the setback that exists. Commissioner Vork.

Commissioner Vork: I was just going to pile on to that and add that, I think the proposal looks great also and I was sort of confused about being faced with a decision on a setback if it has to go to [??]...I'm sort of wondering if we should remove it anyway. I'm not even sure why it's there.

Staff Dvorak: Just to clarify, Ms. Steiner in her presentation had presented or shown you a slide or two of a similar project that came through HPC a year or two ago and the same question was posed. I don't know if Ms. Steiner wants to put that up. The same question was asked of us then. They wanted to build a porch similar to what you seeing, and a setback less than the five feet which is what the zoning code requires. We recommended approval of the porch however we recommended that it meet the five feet setback for all of the reasons that Ms. Steiner pointed out in her presentation; the National Register nomination and the district guidelines. That recommendation was upheld and they did not apply for the variance and they built the porch at the 5 foot setback. Is my understanding of how that one ended up being? In this case if you were to choose to allow the setback less than 5 feet, then you would need to remove that. In this case, we did not, because there was an option for a variance, a zoning code variance that is where we wanted to put it because it is a life safety issue. Where we deal with, in addition to, emergency access to the road, we look at light and air, people put up fences between properties, can you actually walk around your house if you're less than 5 feet? Can you repair the siding or the brick, paint, put ladders up to get to the second half; all of those are reasons why we have 5 foot setbacks, which is the minimum setback. And if anyone's interested in a PUD, which this is but it

kind of retroactively became a PUD because it had already been prior to our zoning code, our minimum setbacks between buildings in the PUD is ten feet. So in this case if Milwaukee Avenue were to be built today, houses would have to be ten feet apart.

Chair Faucher: The property that we heard and approved a certificate of appropriateness on maintaining the 5 feet is the one immediately to the south?

Staff Dvorak: That is correct.

Commissioner L. Mack: There is a matter of consistency and that it's probably wise for us to adhere to our very [??] regulations as well. I understand why the arguments and I like the wider design better too. The fact is the neighbor may move and another neighbor may be in there. That neighbor is really very close. I think there are these various rules for a reason and it's unfortunate, it's like the 13 inch schools that is an issue. But, I guess I feel like we should accept staff recommendation. And perhaps I will move that we indeed adopt staff findings and approve the CofA (certificate of appropriateness) to allow the replacement of non-historic enclosed side porch with deck above on the property located at 2300 Milwaukee Avenue subject to the following conditions as stated.

Chair Faucher: Do we have a second?

Commissioner Haecker: Second.

Chair Faucher: Thank you Commissioner Haecker. Any further discussion? Commissioner Lackovic.

Commissioner Lackovic: I guess I'm not sure how I would fit this in there but if the applicant is approved for the variance, if that's granted how does that affect this? [??]

Staff Dvorak: Then they would come back to HPC.

Commissioner Lackovic: Could we add that to the condition where they wouldn't have to come back? [??] that first paragraph saying the variance is accepted but...we accept it as conditioned by staff but if the variance is upheld, approved, whatever....

Staff Dvorak: I don't think so. You just need to make, the Commission needs to make a decision whether their comfortable with the 5 foot setback or comfortable with the lesser setback. We don't like to condition one board or commission over the other that could get very messy.

Commissioner Vork: [??] I just think we should not have the setback line in there. I guess I'd just like to advocate for going through the variance process. Let that be dealt with through the variance process. Because I feel like we're kind of putting these applicants through a rigmarole.

Commissioner Hunter Weir: I sort of see that but on the other hand, I don't want to be rigid about being consistent. But this has come up with other properties. I'm thinking the Healy District, where we were holding some homeowners to different standards, higher standards, more rigid standards than others. And I find that very troubling. Had we not approved one last year with that condition, I think I might feel differently. I'm just not really comfortable saying that

they don't need a five foot setback. If someone over rules us, you know, then that's certainly something that I can live with.

Chair Faucher: Except again, they don't over rule us, they'd have to come back to us and we'd have to decide this again.

Commissioner Lackovic: The reason I'm not... obviously I understand the implications for firefighters and access. And if this were a full length of the house, if this was an actual addition, two story addition the full length of the property line. I think maybe I would feel differently about it. But because of the, it's such a minimal porch that 5 feet with minimal distance I guess I'm not as disturbed by it. And because of the conditions, because of the.....this is just a real interesting district. And so, I think this may be one of those cases where an exception is tolerable. I don't think it's a precedent setting decision here. I think other neighborhoods have different challenges, they're not challenged quite the way Milwaukee Avenue is. I might make a friendly along these lines. My friendly amendment would be to strike criteria one.

Commissioner L. Mack. [Commissioner Mack was not heard at all on the recording for this statement. Per notes and recall; to summarize the statement, she did not accept the friendly amendment.] - FP

Chair Faucher: Commissioner Hunter Weir, did you want to say something? No, ok. I think maybe we need to call the roll on Commissioner Mack's motion.

Absent: Bengtson, Hartnett, R. Mack, Stade

Aye: Faucher, Haecker, Hunter Weir, Lackovic, L. Mack

Nay: Vork

Motion passed