Request for City Council Committee Action
From the Department of Community Planning & Economic Development

Date: September 15, 2005

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Molly McCartney, City Planner

Presenter in Committee: Molly McCartney, City Planner

Approved by: Jason Wittenberg, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by Chris and Beverly Smith.

BZZ-2580 – 3454 Fremont Avenue South – Chuck Levin, on behalf of Beverly and Chris Smith, has applied for a variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft. and a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for a property located at 3454 Fremont Avenue South in the R2B Two-family District.

RECOMMENDATION: The Zoning Board of Adjustment adopted the staff recommendation and denied the variances.

Previous Directives: N/A

Financial Impact (Check those that apply)
_X_ No financial impact - or - Action is within current department budget.

Community Impact: Other: See attached.

End of 60/120 Day Decision Period: On August 29, 2005, staff sent a letter to the applicant extending the 60 day decision period to no later than November 17, 2005.

Background/Supporting Information

Chris and Beverly Smith have filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment denying the requested variances to allow for the construction of a detached garage on the property located at 3454 Fremont Avenue South.

The appellant has stated the decision of the Zoning Board of Adjustment is being appealed for multiple reasons. The appellant states that it is a hardship for the garage size of duplexes to be regulated in the same manner as single-family dwellings because of the increased need for vehicular and other storage. Also, the property has increased demands for maintenance equipment and the protection vehicles and property in an enclosed area because of the corner lot status. The appellant states that storage in detached garages contributes to the total amount of square footage allowed, as opposed to a dwelling with an attached garage, which can partition space separate from the garage area which would not be included in the total amount of square footage allowed. The applicant also states there is a need for additional height because the proposed design will match the 6/12 roof pitch of the dwelling, which limits second story space for storage when a 10 ft building wall height is required. The appellant's complete statement for the appeal is attached.

At the August 18, 2005 Zoning Board of Adjustment meeting, eight (8) Zoning Board of Adjustment members were present. Six (6) members voted to adopt the staff recommendation and <u>denied</u> the variances. The original staff report and the actions from the August 18, 2005 Board of Adjustment meeting are attached.

Board of Adjustment

HEARING ACTION/MINUTES

Thursday, August 18, 2005
2:00 p.m., **Room 317 City Hall**

Board Membership: Debra Bloom, Mr. Matt Ditzler, Mr. David Fields, Mr. John Finlayson, Mr. Daniel Flo, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Matt Perry, Mr. Peter Rand

Committee Clerk: Michelle Howard

Board Members Absent: David Fields

The meeting was called to order at 2:03 p.m.

The Minutes were approved for meeting held on: August 4, 2005

The Consent Agenda was approved for the following items: 1, 2, 9, 10, 11 and 12

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m**., on **Thursday, August 18, 2005**, in **Room 317 City Hall**, Minneapolis, Minnesota, and considered requests for the following items:

3. 3454 Fremont Avenue South (BZZ-2508, Ward 10)

Chuck Levin, on behalf of Beverly and Chris Smith, has applied for a variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft., a variance to increase the building wall height of a detached garage from 10 ft. to 13 ft., 7 in., and a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for the construction of a new detached garage at a property located at 3454 Fremont Avenue South in the R2B Two-family District.

Ms. Bloom moved to deny the variance applications. Mr. Flo seconded the motion.
Motion passed.

The motion **denied** the variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft. and **denied** a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for a property located at 3454 Fremont Avenue South in the R2B Two-family District.

Roll Call Vote:

Yeas: Bloom, Ditzler, Finlayson, Flo, Gates, Perry

Nays: Lasky, Rand

Recused: None

Absent: Fields

Board of Adjustment
HEARING ACTIONS/MINUTES

Thursday, August 18, 2005
2:00 p.m., **Room 317** City Hall

Board Membership: Ms. Debra Bloom, Mr. Matt Ditzler, Mr. David Fields, Mr. John Finlayson, Mr. Daniel Flo, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Matt Perry, Mr. Peter Rand

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

3. 3454 Fremont Avenue South (BZZ-2508, Ward 10)
Chuck Levin, on behalf of Beverly and Chris Smith, has applied for a variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft., a variance to increase the building wall height of a detached garage from 10 ft. to 13 ft., 7 in., and a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for the construction of a new detached garage at a property located at 3454 Fremont Avenue South in the R2B Two-family District.

CPED Department Planning Division Recommendation by Ms. McCartney:
The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** a variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft. and **deny** a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for a property located at 3454 Fremont Avenue South in the R2B Two-family District.

TESTIMONY

Staff presented their report and recommendation to the Board of Adjustment.

Finlayson: Are there any questions of staff? Not at this time, thank you. Is the applicant present? Would you care to make a statement?

My name is **Chuck Levin** and I am here to speak on behalf of Beverly and Chris Smith, the owners of the property.

Finlayson: Could you state your address for the record.

Chuck Levin: 2300 Milwaukee Avenue. If I could excuse myself for just one moment, I have a question for your staff person.

Staff (Molly McCartney): Mr. Levin is just verifying some information regarding the wall height. There is an administrative process to increase the height of the structure to 16 feet from the midpoint, provided that the wall height is 10 feet or less. In this case the wall height is not 10 feet or less and even with some changes that we have discussed in getting it down to 16 feet from the midpoint, the wall

height would still be more than 10 feet. If the variance is approved for 16 feet 10 inches or 17 feet 10 inches, because of the wall height we would still need to proceed with the variance and not the administrative approval.

Chuck Levin: We came in here today thinking that we needed to discuss three topics and it sounds like we will only need to discuss two. I have discussed the issue of the overall height. We came in asking for an increase from 16 feet to 17 feet 9 inches. My clients the Smith's have agreed to withdraw that request so we can be at the 16 feet average roof height and since we are matching the roof pitch and exterior materials it is my understanding that staff can manage that without us asking for a variance, and that would not be a problem. I think that we will withdraw that request and we will solve our stairway height problem in other methods. To illustrate that to you very quickly and by having a 16 feet average roof height and the fact that the applicant has a 6/12 roof pitch, our peak comes down and our roof height goes up compared to a roof that has a steeper slope. As a result of that when we meet the 16foot height you can see on the left hand side of the drawing, which is the alley side we have a 10 foot wall. You can see the 10 foot height and we actually end up at 11 foot 9 inches. My understanding of this is that is going to be permitted by staff. So unless there are any questions of that I can move onto what I think our only question is.

Staff (Molly McCartney): Just to clarify again, approving the variance even at 16 feet would be necessary, because the wall height is more than 10 feet, so for the administrative approval it has to be a 10 foot building wall height, as opposed to something taller, like the proposed garage is. The building wall height is wrapped up in the overall structure height variance, it is not separate, it is together.

Chuck Levin: I think that the more important question here has to do with the overall foot print of the garage. There is no question that it is allowable to park three cars off-street on the site and that is what the Smith's would like to do is park three cars. As was mentioned, they have a duplex and it would be two cars for their unit and one car for their tenants unit. The question comes in, in that 676 square feet allows for three cars, but not the room, in looking at the diagram, the plan that we proposed is the whole perimeter of the plan which includes a stairway to get to the upper level of the garage. At 676, which is the dark line, does not have room for an interior stairway, we would be in the position of having to do an exterior stairway and it is the feeling of the Smith's, and I agree with them that an interior stairway is a more secure stair. They do desire a full constructed stairway to their upstairs. Rather than a pull down stair that comes out of their attic for the safety of going up that stair. A couple of other factors that come into this is, is that this property, if you have had a chance to look at the rendering that we provided or any of the photographs, this property is on the corner and there are some concerns related to that, the fact that they have 160 feet of lineal sidewalk that they need to clear in the winter and they want to have good access to their snow blower. They also choose summer time storage, bicycles, wheel barrow, lawn mower, and if they do 676 they would be restricted to that. The point here is that, while 676 for a double garage can be a spacious garage and have 100 square feet of storage at least, it become very tight for a duplex. So, I think that is where the core of the problem is. So, what the request here is, whether or not there is any latitude between the 676 and the 816, could we make it smaller? Of course we could, I can show you that right here, but the question really is can you find any latitude to allow them some storage space and allow them a stairway to the upstairs?

Finlayson: Questions? Ms. Bloom?

Bloom: What we need to do as the Board is establish hardship. Talk about what is unique about this property that is different from all the other properties like it, the R2's, the other duplex's in the city. Do you have a basement for storage?

Chuck Levin: There is a basement. There is only one stairway to the basement, it is a shared basement as opposed to one that has two stairs and could be permanently divided. It is a hot water heating system and it has a big heating plant, low ceiling height and has dampness in the basement. So the desirability of the storage, plus the awkwardness of getting bicycles up and down, needless to say, snow blowers, lawn mowers. So the answer to your question is, yes there is storage, but not enough for what they want to accomplish.

Bloom: Follow-up question as I look at the plans. There is a dormer on the house itself, is there any attic storage, or is that a 3rd story?

Chuck Levin: No, it is a 6/12 pitch with framing interior and just a hatch to get up into the attic area.

Finlayson: Any further questions? None at this moment. Anyone else to speak in favor? Anyone to speak against? Close the public portion of this item, Board comment please. Ms. Lasky.

Lasky: I can see for a hardship, so I am trying to find hardship. I don't know whether the number is where we should settle or not. They need to put a snow blower and mower somewhere that is fire rated, and in the home is not, certainly not next to a heating plant. They need an out building, rather than seeing a second building the property I can see for enlarging the garage to some extent. It is a two family and one family gets one spot and the other family two. I can see additional storage for the families. From that stand point I can see a hardship.

Finlayson: Seasonally, I have a one stall garage and three cars and we manage to keep what operating equipment we have in the garage. Gates?

Gates: I think the applicant makes a good case, although we see many good cases in respect to needing larger garages and we typically deny them. I think we have been fairly consistent on that matter and I am also struggling to find a case for hardship here. It is a corner lot and that sometimes leads us to find hardship although in this case I am not really seeing it. So, I am also anxious to here from other members of the Board here, perhaps they can convince me otherwise, but right now I am not finding a hardship and trying to be consistent with our past actions, I thin we really can not support it.

Ditzler: I would agree, I am having a difficult time finding hardship as well, for me it comes down to lot size. More than anything else the code is written to increase a specific garage size and I do understand the value of having one off-street parking space per unit and they can improve the quality of life for their tenant if they can offer and off-street spot, but, I think with the 676 garage space allowable they will have the option to either provide one vehicle parked off-street and the storage or two for one unit and one for the next. So, I think for me, it comes down to the lot size. I don't think the code prohibits a garage of this size on that lot, so I would support staff recommendation.

Bloom: If I could make a motion, to support staff recommendation. That was a motion.
Flo: Second.

Finlayson: Further comment. Mr. Rand?

Rand: I think that this is an awkward issue, but on the other side of the alley is a 4 car garage and to put a three car garage here, although it is a little bit higher, you may not all agree with me, but it is an announcement of where the alley is. You have a big four car garage and now you will have a three car garage, but the point is this is the alley. I think the request is reasonable, they could have the exterior stairway and on the other hand they could cantilever the storage above, interior storage with interior stairway and have a roof covered carport for the third car. All of these are contrivers on a best solution. I think this is a good solution for this site, hence I will vote in opposition to the motion.

Perry: I think that I can certainly appreciate needing garage space and so forth. I have my seasonal magic that I have to do, but I would also have to agree with the other Board members who do not see this as a unique situation and can not find hardship, so I will be voting with the motion.

Bloom: I have a question. I did move staff recommendation and in the back of my head I said, you had mentioned that for the 16 foot and the 10 foot height on the walls that was a contingency for approving the variance – correct, Molly?

Staff (Molly McCartney): Staff does have a review process that we can do internally to increase the structure height up to 16 feet when the roof pitch matches the existing structure provided that the building wall height is no more that 10 feet.

Bloom: I just wanted to make sure.

Finlayson: Please call the roll

Roll Call Vote:

Yeas: Bloom, Ditzler, Finlayson, Flo, Gates, Perry
Nays: Lasky, Rand
Recused: None
Absent: Fields

Ms. Bloom moved to deny the variance applications. Mr. Flo seconded the motion. Motion passed.

The motion **denied** the variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft. and **denied** a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for a property located at 3454 Fremont Avenue South in the R2B Two-family District.

Roll Call Vote:

Yeas: Bloom, Ditzler, Finlayson, Flo, Gates, Perry

Nays: Lasky, Rand

Recused: None

Absent: Fields

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-2508

Date: August 18, 2005

Applicant: Chuck Levin, on behalf of Beverly and Chris Smith

Address of Property: 3454 Fremont Avenue S

Date Application Deemed Complete: July 20, 2005

End of 60 Day Decision Period: September 18, 2005

Appeal Period Expiration: August 29, 2005

Contact Person and Phone: Chuck Levin, 612-729-5333

Planning Staff and Phone: Molly McCartney, 612-673-5811

Ward: 10 **Neighborhood Organization:** CARAG (Calhoun Area Residents Action Group)

Existing Zoning: R2B District, Two-family District

Proposed Use: Construction of a detached accessory structure.

Proposed Variance: A variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft. and a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for a property located at 3454 Fremont Avenue South in the R2B, Two-family District.

Zoning code section authorizing the requested variance: 525.520 (3), (4)

Background: The subject site is approximately 5,376 sq. ft. and consists of a two-story, two-family dwelling and detached garage. The applicant is proposing to demolish the existing garage and construct a three-stall, detached garage. Two stalls will be allocated for one dwelling unit and one stall for the other dwelling unit. There will be storage space above the parking area. The garage will measure 816 sq. ft. (25 ft. 4 in. by 32 ft 11 in.), more than the maximum 676 sq. ft. permitted for a detached garage. The garage will be 17 ft. 10 in. tall, more than the 12 ft. permitted. The building wall height will be 13 ft. 6 in. The proposed detached garage will have a roof pitch (6/12 gable roof) and exterior materials (stucco and brick) that match subject dwelling. In most cases, a garage size and height can be increased through an administrative review by Plan August 18ning staff if the roof pitch and exterior materials match the primary structure and the building wall height is 10 ft. or less. In this case, the property has neither the lot area to increase the garage size to 816 sq. ft. or to go above 16 ft. at the midpoint of the peak and the eave of the roof and the proposed building wall height is greater than 10 ft.

The proposed garage will have garage doors that face the alley and will be set back from the rear property line 5 ft. The garage will meet the required setback 1 ft. from the north interior property line. The garage will meet the corner side yard setback of 8 ft. on the southern property line. There is a slight grade change along West 35th Street, so the garage will appear to be approximately 15 ft. tall at the midpoint of the roof from this street. The applicant is proposing to apply for a building permit for a rear porch addition and to replace the fence along West 35th Street, which does not require a variance.

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.

   Garage size: The applicant is seeking a variance to increase the maximum permitted floor area for a detached garage from 676 sq. ft. to 800 sq. ft. The applicant states the new detached garage would be used for vehicles and storage space for the two dwelling units. Strict adherence to the zoning code requires one off-street parking space and does not allow for a detached accessory structure more than 676 sq. ft. A garage can be built up to 10 percent of the lot size on the condition that the applicant matches the exterior materials and roof pitch of the garage to the principal structure, the dwelling. In this case, the lot is 5,376 sq. ft, and while the applicant is matching the roof pitch and exterior materials match the primary structure, the size of the garage would not be permitted to go up to 816 sq. ft. without a variance. A 676 sq. ft. garage could accommodate a three-stall garage, if no storage space on the ground level is included. Based on the requested size of the garage and the size of the lot, staff believes that a proposed three-stall, garage that meets the maximum size of a detached garage is reasonable.

   Garage height: The applicant is seeking a variance to increase the maximum permitted height for a detached garage from 12 ft. to 17 ft. 10 in. Strict adherence to the code requires that the midpoint of the roof be no more than 12 ft. or 16 ft. if the roof pitch and exterior materials match the primary structure. In this case, the roof pitch of the garage will match the roof pitch of the primary structure but will exceed the 16 ft height restriction. The roof pitch of the dwelling is a hip roof and the proposed garage will have a gable roof. The applicant has stated that by matching the roof pitch to the dwelling, additional height was needed to access this space. While there is the administrative review process to increase the height of a garage to 16 ft. at the midpoint, the building wall is limited to 10 ft. The proposed building wall height of 13 ft. 6 in. results in a taller garage than is allowed through the administrative review process. Staff believes that a garage that meets the 16 ft. height is a reasonable use.

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.**

Garage size: The conditions upon which the variance is requested are not unique to the parcel. The zoning ordinance requires one off-street parking space and allows up to 676 sq. ft. of accessory structure on a standard size lot. Lack of storage space for vehicles or other storage needs is not a unique circumstance to this parcel of land. The circumstances on which the accessory structure is being requested have been created by the applicant.

Garage height: The conditions upon which the variance is requested are not unique to the parcel. The principal dwelling has a hip roof and in order to match the roof pitch of the proposed garage, the applicant states that additional height is needed for access to the half story. Because the height of the garage exceeds 16 ft. at the midpoint, the applicant can not be approved through an administrative review. The applicant states that the basement of the building does not have adequate storage because it is a damp space and that two dwelling units need space for storage. Lack of storage space is not a circumstance that is unique to this property. A detached garage with the height of 16 ft. can provide space for storage.

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.

Garage size: Granting the variance will alter the essential character of the surrounding area and will not be keeping with the spirit and intent of the ordinance. While the garage will match the roof pitch and the exterior materials to the dwelling, the size of the garage is much larger than what is permitted on a 5,376 sq. ft. lot. The zoning code only requires a two-family dwelling to have two off-street parking spaces. The applicant has stated that on-street parking is an issue in the surrounding area, however, a three-stall garage could be accomplished within the maximum permitted garage size of 676 sq. ft. This would reduce the amount of storage space on the ground floor. The applicant has submitted examples of larger garages in the surrounding area as well. While the property to the west, 3455 Girard Avenue South, has a four stall garage, that residential structure has four dwelling units and an off-street parking requirement of four spaces.

Garage height: Granting the variance will not alter the essential character of the surrounding area and will be keeping with the spirit and intent of the ordinance. The roof pitch and the exterior materials will match the dwelling. There is a grade change on the south side of the property which will make the garage appear to be 15 ft. at the midpoint of the peak and eave and the garage will have window on the half story. The applicant has submitted examples of taller garages in the surrounding area. While these are examples of tall garages, the garages are either two-stall garages, which are much smaller than the proposed garage, or attached garages, which are limited to the primary structure height requirement and may have living space above.

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.

Garage size and Garage height: Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed structure be detrimental to the

public welfare or endanger the public safety. As shown on the submitted plans, the garage will not interfere with vehicular access in and out of the alley and is behind the 15 ft. sight triangle.

Recommendation of the Department of Community Planning and Economic Development Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** a variance to increase the size of a detached garage from 676 sq. ft. to 816 sq. ft. and **deny** a variance to increase the height of a detached garage from 12 ft. to 17 ft. 10 in. for a property located at 3454 Fremont Avenue South in the R2B, Two-family District.