

Minneapolis Planning Department

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MEMORANDUM

DATE: June 26, 2003

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

FROM: Carrie Flack, City Planner

SUBJECT: Appeal of the decision of the Zoning Board of Adjustment by Tim and
Cynthia Slater

Tim and Cynthia Slater 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 to deny the requested variance to increase the height of an existing lamppost from the permitted 8 feet to 17 feet.

The appellants have indicated that this action is being appealed because the property is exceptionally large and that the solution to comply with the zoning code is a worse option. The appellants state that the exceptionally large lot easily accommodates the light without infringing upon neighboring properties. The appellants also state that complying with the code would permit multiple lights that are 8 feet or less in height. They believe that allowing one light with low wattage lamps and baffles to adequately light their sport court is a better alternative for neighboring properties. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

At the May 28, 2003 Zoning Board of Adjustment meeting, nine Board members were present. Six of the Board members voted to deny the variance application and three of the Board members voted to approve the variance application. The actions from the May 28, 2003 Zoning Board of Adjustment meeting are attached.

HEARING AGENDA
ACTIONS/Testimony

May 28, 2003

Minneapolis Board of Adjustment:

Ms. Debra Bloom
Mr. David Fields
Mr. John Finlayson
Mr. Paul Gates
Ms. Tonia Johnson
Ms. Marissa Lasky
Mr. Barry Morgan
Mr. Peter Rand
Ms. Gail Von Bargaen

4638 Fremont Ave. S. (BZZ-1191, Ward 13)

Timothy and Cynthia Slater have applied for a variance to increase the height of an existing lamppost from the permitted 8 feet to 17 feet at 4638 Fremont Ave. S.

Testimony:

Cynthia Slater 4638 Fremont Ave. S. applicant. Ms. Slater handed out a petition indicating a recommendation of approval by the Lynnhurst Neighborhood Association. Ms. Slater stated that the unique characteristics of the property are that it is exceedingly large in size, 120 x 240 feet. She believes that the property easily accommodates the sport court and the light. The light pole was professionally installed. The light pole is 39 feet from the closest property line, which is to the south. The house is then 50 feet beyond the fence. The neighbor to the left that the light actually faces has no problem with it. Ms. Slater stated that they did install baffles on the light to direct light downwards with the least amount of spillover as possible and installed lower wattage lamps. Ms. Slater further stated that they are so rarely up past 10 p.m. that the sport court light is in use maybe twice a month. It is very infrequently used. In the winter, the light is even used less. There are mature trees on two sides of the back yard. The garage is on the other side and there are 8-foot arborvitae's on the side that does not have the mature trees.

Steve Falk, 4629 Fremont Ave S. Mr. Falk appealed to the logic of the lighting that if it is denied, the alternative is several 8-foot lights lighting up towards the basket. Therefore, causing more of a problem.

Opposition:

James Teter, 1318 W. 47th Street South of property. Mr. Teter stated that the Sport Court Company of Utah does advertise the 17-½ foot pole. He handed out photos that show the view from their 2nd floor. Mr. Teter stated that you could see some of the pine trees previously referred to that do shield the neighbor behind and the neighbor to the northwest. Mr. Teter pointed out that the roof to the left in the photo is their garage and there is a big spruce to the west and that helps to shield that neighbor. Mr. Teter stated that every neighbor except us is

screened and that from our kitchen window you can see a bit of silver, which is the baffle that fails to actually block the sport court light completely. We find the light comes in our windows at night. We also find that the reflected light is out of character. The loud speakers, which are, located 12 to 13 feet above the ground carry quite clearly and quite far.

Public hearing was closed.

Board member comments:

Mr. Morgan stated that he comes to this from a commercial developer perspective where he deals with cities and lighting issues on adjacent properties all the time. One of the things he has to present is an illumination study. He stated that typically, at a property line, the overflow light must be limited to about a ½ foot-candle or another value. They could have 4 poles out there at 8 feet in height and it could look like you are going land helicopters out there and it would be a none issue because they are in compliance. Mr. Morgan also stated that he was struggling with the hardship of a 17-foot pole but also on the other side could see them installing multiple poles and having multiple lights that meet the requirement and there would be no public comment.

Mr. Rand stated that he agreed and felt that the alternative was disaster. To have 4 eight-foot posts and lights would light up the world out there. Mr. Rand felt that the pole was very discrete. Mr. Rand stated that there is something wrong with our regulations if it pins all hopes on the post height rather than something more quantifiable like the lighting disturbance to others. This is a huge site. With properties surrounding a bit away from it. Mr. Rand was not sympathetic about not granting a variance because he believes they have solved the problem as efficiently as can be done.

Mr. Finlayson asked staff if there are other light nuisance ordinances.

Staff, Ms. Flack stated that she wasn't aware of any beyond the zoning ordinance lighting policy. Ms. Flack clarified that there is nothing in the ordinance that regulates the number of lights on a particular property.

Mr. Fields stated that based on the ordinance that if they kept the poles at an 8-foot height then they could put up 15 or 25 lights. Mr. Fields felt that the objection was that it looks like a commercial lighting pole on a residential property. He believes that the trees and size of the property obscure it. A lot of homes are built around parks that have heavily lighted sodium lights. Mr. Fields stated that he is very sensitive to private property owners thinking they can do anything with their property. He felt that this was a tasteful sport court and that the lighting alternative could be a disaster.

Mr. Morgan made a friendly comment to Ms. Slater that he thought any location where the light is placed, whether on the current side or one of the other sides of the court, that it would adequately light the court. He suggested in kindness to the neighbors that maybe the light be rotated to the south side of the court with the light facing to the north.

Mr. Gates asked Ms. Slater the reason why the sport court was not located on the side yard.

Ms. Slater responded that the backyard is the largest logical spot for it. The house and the garage sit on a grade that is 9 or 10 feet higher than the backyard where the sport court is, the property terraces down to the area where the sport court is.

Ms. Lasky stated that this is an opportunity for the Board to limit the amount of lighting to the one pole. In granting a variance a condition could be included that stated no additional lighting be added.

Staff, Ms. Watson stated that the zoning code does not regulate the number of lights on a property. However, the amount of foot-candle that the light projects at the property line is limited in the zoning code to ½ foot-candle. If the applicant were to add 3 or 4 lights the city would ask for a lighting diagram that shows the foot-candles at the property line to insure that the light produced by the fixtures is not illuminating more than it should by the zoning code.

Jim Teter, the neighbor stated that he was already promised that there would be plenty of lights added on the garage and maybe on poles or maybe both. Mr. Teter stated that the loud speakers, which seem to be clumped together in this proposal, have been heard so loudly from his basement that he asked his teenager upstairs to turn down the stereo, only to discover that the stereo was not on. Mr. Teter believes that the pole is a nuisance and that it cannot be controlled when the switch is turned on, you cannot control the volume of the speakers. Mr. Teter challenged that maybe the Minneapolis code needs to be amended to cope with the changing technology of sport courts. He questioned the time of day someone is going to be playing basketball under lights? At 10 pm, at 11pm? He stated that the sport court advertisement is that playtime is not subject to the rising and setting of the sun. That high intensity halogen lights will illuminate the court and are available in single, double and triple light units.

Ms. Lasky stated that the only advantage to allowing this light is if we are able to disallow any other lights being added.

Ms. Johnson agreed. Putting up a 17-foot light will not ensure that the applicant will not put up more lights at 8-feet.

BOARD OF ADJUSTMENT ACTION:

Ms. Bloom motioned to adopt staff findings and **deny** the variance application. Ms. Johnson seconded the motion.

ROLL CALL VOTE:

Yeas: Bloom, Finlayson, Gates, Johnson, Lasky, Von Bargaen

Nays: Fields, Morgan, Rand

Absent: None

The Board of Adjustment adopted the staff findings and **denied** the variance application to increase the height of an existing lamppost from the permitted 8 feet to 17 feet at 4638 Fremont Ave. S.

Minneapolis City Planning Department Report

Variance Request
BZZ-1191

Date: May 28, 2003

Applicant: Tim and Cynthia Slater

Address of Property: 4638 Fremont Avenue South

Date Application Deemed Complete: May 1, 2003

End of 60 Day Decision Period: June 30, 2003

Contact Person and Phone: Tim and Cynthia Slater, 612-825-9518

Planning Staff and Phone: Carrie Flack, 612-673-3239

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

Existing Zoning: R1, Single Family District

Proposed Use: Sport court and associated lighting

Proposed Variance: A variance to increase the height of an existing lamppost from the permitted 8 feet to 17 feet.

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

Background: The applicants installed a 25 ft. x 45 ft. sport court in their back yard approximately 3 years ago. Approximately 2 years ago, the applicants installed a 17 foot commercial light pole with two lamps that sits mid-court and faces west, away from the applicant's home.

In addition, there are two speakers attached to the pole. Chapter 389 of the City Ordinances prohibits outdoor amplified sound within the city without a permit. Therefore, staff would recommend that these speakers be removed.

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.**

Lamppost height: The applicant is seeking a variance to increase the height of an existing lamppost from the permitted 8 feet to 17 feet. The applicant has indicated that the lamppost is as tall as it is in order to provide the most light to the sport court.

- 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.**

Lamppost height: Staff is unable to identify a unique physical characteristic of the applicant's property that would warrant the need for the variance to double the permitted height of the lamppost.

- 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.**

Lamppost height: Staff is concerned that the lamppost produces glare that encroaches onto adjacent properties (see attached photos). Staff believes that the lamppost does alter the essential character of the surrounding neighborhood as the lamppost is a commercial design. The applicant has installed baffles to assist with directing the light to the sport court, however the height of the lights and the design of the lamppost are not in character with the residential character of the neighborhood as a more residential light would be.

- 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.**

Lamppost height: Granting the variance would likely have no impact on congestion of area streets or fire safety, nor would the lamppost be detrimental to welfare or public safety.

Recommendation of the City Planning Department:

The City Planning Department recommends that the Board of Adjustment adopt the findings above and **deny** the variance to increase the height of an existing lamppost from the permitted 8 feet to 17 feet.