



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

Date: July 15, 2004

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Tanya Holmgren, Zoning Specialist
Presenter in Committee: Tanya Holmgren, Zoning Specialist

Approved by Neil Anderson, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by David Juncker.

BZZ 1693 - 16 East Minnehaha Parkway – David Juncker has applied for a variance to reduce the required front yard setback along East Minnehaha Parkway from the setback established by connecting a line between the front two corners of the two adjacent residential structures to 80 ft. to allow for a 12 ft. by 8 ft. conservatory porch addition onto the front of an existing single-family dwelling in the R1 District.

RECOMMENDATION: Notwithstanding the staff recommendation, The Zoning Board of Adjustment denied the variance application.

Previous Directives: N/A

Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.

Community Impact

Other: See attached.

Background/Supporting Information

David Juncker has 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 front yard setback variance to allow for the construction of a conservatory porch onto the front of an existing single-family dwelling.

The appellant states that he has worked with an architect on the redevelopment of the project and would like the opportunity to show renderings of the project. The project

has received considerable community support. The emails received in support are attached. The appellant's complete statement of appeal is attached.

This project was previously presented to the Zoning Board of Adjustment in April 1982. Planning Division staff recommended approval of the established front yard setback variance and the Zoning Board of Adjustment adopted staff recommendation approving the variance. However, the structure was not completed within one year of obtaining the variance and thus, the variance expired. Staff again recommended approval of the front yard setback variance to allow for the construction of the conservatory porch based on the previous approvals, the less intrusive nature of the redesigned porch addition, and the increased setback of the properties of about 90 ft. The 65 ft. increased setback is a limitation on the property.

At the May 20, 2004 Zoning Board of Adjustment meeting, seven (7) Zoning Board of Adjustment members were present. Notwithstanding staff recommendation, six (6) members present voted to deny the requested variance to allow for the construction of a conservatory porch to the front of a single-family dwelling in the R1 District. One (1) member voted against the motion. The May 20, 2004 Board of Adjustment minutes and the Planning Division staff report are attached.

Community Planning and Economic Development - Planning Division Report

Variance Request
BZZ-1693

Date: May 20, 2004

Applicant: David Juncker

Address of Property: 16 East Minnehaha Parkway

Date Application Deemed Complete: April 13, 2004

End of 60 Day Decision Period: June 12, 2004

Contact Person and Phone: Bill Persson, (612) 889-4449

Planning Staff and Phone: Tanya Holmgren, (612) 673-5887

Ward: 11 **Neighborhood Organization:** Tangletown Neighborhood Association

Existing Zoning: R1, Single-family District

Proposed Use: Addition of a conservatory porch to the front of an existing single-family dwelling.

Proposed Variance: A variance to reduce the required front yard setback along East Minnehaha Parkway from the setback established by connecting a line between the front two corners of the two adjacent residential structures to 80 ft. to allow for a 12 ft. by 8 ft. conservatory porch addition onto an existing single-family dwelling.

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

Background: The subject property is approximately 45 ft. by 190 ft. (8,550 sq. ft.) and consists of an existing single family dwelling and detached garage. The existing front yard setback of this property is 90 ft. The applicant is seeking a variance to the established front yard setback to allow for the construction of a 96 sq. ft. conservatory porch addition to the front of the house. The conservatory is proposed on the western half of the front of the house.

A variance was granted for this addition on April 28, 1982. The original application was to reduce the front yard setback from 88 ft. to 80 ft. to allow for the construction of an 8 ft. by 11 ft. solarium on an existing terrace. Since the structure was not entirely constructed within one year the variance expired.

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.

Front yard setback: The applicant is seeking a variance to reduce the front yard setback along East Minnehaha Parkway from the established setback to 80 ft. to allow for the construction of a 12 ft. by 8 ft. conservatory porch addition to the front of the dwelling. The applicant states they received a variance and constructed the foundation and floor for the conservatory after the original variance was granted. This portion of the property has been unusable since the time the foundation for the conservatory was constructed. Although an enclosed porch does not constitute hardship, the established setback of the two

adjacent dwellings presents a challenge for the applicants. Strict adherence to the regulations would not allow for the addition.

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.**

Front yard setback: The condition upon which the setback variance is requested is unique to this parcel of land due to the setback of the two adjacent single-family dwellings. The R1 zoning district requires a 25 ft. setback. However, the adjacent residential structures are both setback further than 25 ft. The entire addition will be behind the district setback and will be in line with the previously approved setback variance. The location of the adjacent structures is not a circumstance created by the applicant.

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.**

Front yard setback: Staff believes that the addition will not alter the essential character of the surrounding neighborhood. The addition design will be primarily constructed of glass and will not disrupt sightlines. Additionally, front porches bring activity to the street side of the property. Staff believes that the addition meets the intent of the ordinance, is in keeping with the structure, and will not be injurious to the use or enjoyment of other property in the vicinity.

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.**

Front yard setback: Granting the front yard setback variance would likely have no impact on congestion of area streets or fire safety, nor would the proposed porch addition be detrimental to the public welfare or endanger the public safety.

Recommendation of the CPED Department Planning Division:

The CPED Department Planning Division recommends that the Board of Adjustment adopt the findings above and approve the variance reduce the required front yard setback along East Minnehaha Parkway from the setback established by connecting a line between the front two corners of the two adjacent residential structures to 80 ft. to allow for a 12 ft. by 8 ft. conservatory porch addition onto an existing single-family dwelling subject to the following conditions:

1. Review and approval of final site and elevation plans by the Planning Department.

**Board of Adjustment
Hearing Testimony and Actions**

Minneapolis Board of Adjustment:

Ms. Debra Bloom

Mr. David Fields

Mr. John Finlayson

Mr. Daniel Flo

Mr. Paul Gates

Ms. Marissa Lasky

Mr. Barry Morgan

Mr. Peter Rand

The Board of Adjustment of the City of Minneapolis will meet at **2:00 p.m.**, on **Thursday, May 20, 2004** in **Room 317 City Hall**, Minneapolis, Minnesota, to consider requests for the following:

3. 16 East Minnehaha Parkway (BZZ-1693, Ward 11)

Bill Persson on behalf of David Juncker has applied for a variance to reduce the required front yard setback along East Minnehaha Parkway from the setback established by connecting a line between the front two corners of the two adjacent residential structures to 81 ft. to allow for a 12 ft. by 8 ft. conservatory porch addition onto an existing single family dwelling in the R1 District at 16 East Minnehaha Parkway.

Department of CPED Planning Division Recommendation by Ms. Holmgren:

Staff is recommending **approval** of the variance to reduce the required front yard setback along East Minnehaha Parkway from the setback established by connecting a line between the front two corners of the two adjacent residential structures to 80 ft. to allow for a 12 ft. by 8 ft. conservatory porch addition onto an existing single-family dwelling subject to the following conditions:

2. Review and approval of final site and elevation plans by the Planning Department.

TESTIMONY

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

Finlayson: Thank you. Is the applicant present? Would you care to make a statement? Name and address if you would please?

Applicant: My name is **David Juncker**, 16 East Minnehaha Parkway. I thought maybe I had to deal with questions. I support what was said.

Finlayson: Does any member of the Board have any questions at this point? I see none. They may occur later. Thank you.

David Juncker: I would be glad to answer them.

Finlayson: Anyone else to speak in favor?

I am **Bill (Persson) from Solarium Designs**, and I have been working with Dave for a couple of years to try and find some answer to his little foundation he had out front that would be as unobtrusive as possible. We came up with an all clear conservatory, clear glass that you can see completely through. We used a bronze structure, so that it doesn't reflect light, it absorbs light, and it kind of disappears to your eye as you look through it. He was looking for something not obtrusive, and something that would be blending into the house as possible, and he has an old stucco type house, so it blended right in. The yews that you see in the picture, that was up there before, the big blobs, are full 2 story tall yews that are 30 years old and completely block this. These two blobs that you see right here are the height of the house, so it just sits inside that structure. So, any questions at this point? Or?

Lasky: Do you have a better design, a better sample of the finished product?

Bill Persson: Not speaking into microphone – tape did not pick up voice and answer.

Finlayson: Any further questions?

David Juncker: When you look at this picture, we have a hip roof here. The original variance was for an extension, another hip coming out with tile. What we found out is with glass under that, you could not see the front of the house and we specifically wanted to see that. So, this new structure tucks completely, the whole thing is underneath what you see.

Finlayson: Anyone else to speak in favor? I see none. Anyone to speak against? Name and address if you would please.

Mr. Chair and Members of the Board, my name is **Barbara Ross with the Law Firm of Best and Flanagan**, and I represent Mr. Gleeson, who is the neighbor of Mr. Juncker. Mr. Gleeson will briefly explain his opposition to the variance and I will briefly address the legal issues.

Mr. Gleeson: We have some handouts. My name is George Gleeson and I live at 20 East Minnehaha Parkway. I have lived there for 30 years. See the item shown first on the handout talks about an energy efficient entry way and the term that is used both by the staff and the contractor is a conservatory porch. In another document that I got from the staff, the document talks about a living room extension. I should call attention to the fact that this is called an 8 x 12 x 20. So, it goes up 20 feet from the base. That is a fairly large structure and it protrudes 8 feet from the existing structure, which makes it an extension of a little over 21 feet, out from the edge of my home, from the southwest corner of my home. I should point out that in 1997, I put an addition on that side of the house, perhaps if I would have known about this, I wouldn't have done that, but I did. So, I have invested about \$150,000 in that addition, which is a 625 square foot addition on two levels. That was done with a permit and no work was started before the permit was granted, my objection is to call this an energy efficient entry way, is an understatement at best. It really is a living room extension, or that is what it was called, I didn't call it that, but that is what was in the documentation. So that means it will probably be used year-around, and if it is used year-around, then there are some energy considerations. I had a friend of mine, at the University of St. Thomas, who is an engineer look at this and try to analyze it from an energy point of view. The conclusion was there are easier and cheaper ways to get energy efficiency. In that neighborhood people use storm doors, there is no reason why storm doors could not be put on, just trying to create energy efficiency. This is a very scudous route of getting there, it is not only scudous, but intrusive route, because this sits up 20 feet from the base. The base itself is 68 inches above the grade, so now we have a 25 foot, 8 inch structure that goes up, 8 x 12 or 1900 cubic feet. So, if this structure is shaded for any period of time, that is not going to be clear glass, and it is going to be very hard, according to my expert, to not shade it because it is on the south side of the house. So, how do you dispel all of the heat that is going to be generated by the sun in the summertime? That is a major thing. How are you going to heat it in the winter time? Those things don't seem to be provided in this design. So, I don't know where we are coming out with respect to energy conservation, but to call it a conservatory maybe favors the representation some. So, we are concerned, very concerned that the present line between the adjacent properties, goes right through the existing structure. So, if you draw a line, a straight line between the two corners of the adjacent structure, it goes right through the existing house, the existing Juncker house. Now you put 8 feet in front of that and you really got a barrier for visual feel so to speak. So, I would reference you to John Abrahams letter, which talks about some of the problems with the heat and also talks about some issues with respect to the light. Point of fact, John calculates that there is 51 degrees of view that is blocked by virtue of this structure, so that makes the triangle there, goes out 8 feet blocks that adjoining

property that is east of me. There are 4 houses east of me that are even, the setback is all even. So, those houses are also going to be blocked, if they looked in a westerly direction, they are going to have to look through this glass structure or if the glass is shaded, they will not be able to look through there. So, it is not just my house that is affected, other houses are also on the same block. This quotation "energy efficient" comes from the application. The next quotation also comes from the application saying, "Will not alter the essential character, the locality, be injurious to the use and enjoyment of other properties within the vicinity." Well, something that is 25 feet, 8 inches certainly changes the site, and the character of the whole neighborhood. So, this is not something that should be trivialized, we are just going to look through this glass, we will all be able to see as we were able to see before. That is not going to happen. So, that is our concern, so I have submitted some attached pictures so you can see, take a look. Go up to page, 4th page down, I guess. You can see the houses, and the house with the red roof, protrudes down without the addition. So you can extend that another 8 feet along this line. That is what everyone is going to see, an additional 8 feet on the front of that. That is all the way, 4 houses down are going to see that. And it will most impact me, because I am the closest, so wide angle is greater, so obviously I am going to be shielded from my field of view more than everyone else. But they are not without some inconvenience or shielding of views too. So, it is just more than my house. I also have a CAD drawing, and I have one picture here that shows, so you can get a perspective on how far out the current house extends from a straight line. It would reflect the setback. Approximately 13 feet, give or take 3 or 4 inches. There is 13 feet already existing and forward from the line. The drawing here is an asymmetric view, which shows that, which shows the structure and the two properties. These dimensions were taken off of the drawings that were provided by the contractor, so we think these are reasonably accurate. We have verified some of the measurements with a survey of my property. As you can see, the platform that they sit on adds to the height of 68 inches. Incidentally the yellow part of the platform was constructed after this original blue item was put on. I don't know when, but fairly recently, some of the work has proceeded without permit. That is another problem there. We think it does change the essential character of the locality and is injurious to the use and enjoyment of the property, because it cuts our field of vision and it blocks that. And work has been done without a permit. So, that proposition #3, the properties around will have no visible change of existing use of their properties does not hold water. I can put this on the CAD system and show you from each angle, from each house how much the view is obstructed. I just did it with my own, but I could do it with the rest of them, I have that capability, I work at the University of St. Thomas, I am a professor in the graduate school of Engineering and Technical Management, I work with people who do CAD drawings. The next item, no further variance proceedings were required. The conservatory was ordered. The question is why? First place the original variance had eleven interested parties listed on the variance, and two of these parties were governments, so that takes it down to nine, only three of the original owners are still at their original homes, David Juncker is one, I'm one, and another party who lives behind me is the third one. So, that is three parties out of a group of nine, who are still there. The current variance has 48 names on it, 48 people who presumably somehow are involved in this or have an interest in this, and I am not sure that they understand all of this. I am not sure if they have had time to digest it, because it came as a variance request, and I haven't been able to let them know the impact on them. The impact, I think is premature to say, that there is no impact. That is a representation made by the contractor and homeowner, but the question is, is it really a fair representation? I don't happen to think so. Things change in 22 years, from the original variance to now. I put up a structure, other people have put structures. The whole configuration of the neighborhood has changed. All the people are changed and David knows that, because he produces a list every year with the people in the neighborhood. So, he would know better than anybody would that this neighborhood has changed. And I don't see anything constant from the time the variance was issued to the present time, except for the requirement that you don't start work on a structure until a permit is issued. I don't find that unusual. I have probably put in \$170-180,000 into improvements and I have not started any work without a permit. Any work that has required a permit I have received prior to doing the work. Seems to me that is a criteria that needs to be maintained. So, if there is undue hardship due to the building permit, caused by premature ordering, nobody required that of the contractor or homeowner. That is something the homeowner did themselves and to some extent that is self-inflicted. I disagree with the findings of the staff.

Barbara Ross: Mr. Chair, I will briefly speak to the issue of undue hardship.

Finlayson: That would be appreciated. I appreciate no repetition of what has been said already, that was quite lengthy.

Barbara Ross: Understood. We don't believe that the petitioner in this case has made a showing of undue hardship. He has to show he cannot make reasonable use of the property, clearly he has over the last 20 years. The foundation

that he has constructed has been used as a patio. He can use this area of the property as an open porch or a patio, which would be a permitted obstruction into the front yard. We also in the written submission, express the concern that the property is being used as a Bed & Breakfast without licensing, which can have a negative impact on the neighboring properties. In looking at the spirit and intent of the ordinance, it is important that Mr. Juncker be complying with all of the ordinances of the city. He is not doing that and is a serious issue that needs to be considered by the Board in making the decision on the variance.

Finlayson: Thank you. Anyone else to speak against? I see no one. We will close the public portion of this item. Board comment please?

Lasky: I am going to be very popular or very unpopular, take your choice. I actually make a motion to deny the application, because I feel strongly about this one. I cannot see a reason to do a 20 foot tall structure. I do not see a hardship that would necessitate that. It also is not in architectural keeping with the home and the neighborhood. I think it has a hardship impact on the neighbor, rather than being advantageous in any way. I think that the applicant can arrive and get their structure done in some other fashion, and certainly would entertain another variance request, but I really object to this one. And I can go into all the energy issues, being a building contractor, but I think it is really irrelevant, and I would like to move to deny.

Finlayson: Is there a second?

Gates: Second.

Finlayson: Further comment? I will say that I support the motion.

Mr. Gates: I will add briefly that I concur with most of what Ms. Lasky said. I am not convinced that the design is in keeping with the architecture, which may or may not be material to these discussions, but I am certainly having a hard time finding hardship. The site is quite large and there is ample opportunity for expansion on other areas of the lot. So, I obviously support the motion.

Finlayson: Please call the Roll.

Roll Call Vote:

Yeas: Bloom, Fields, Finlayson, Flo, Gates, Lasky

Nays: Rand

Recused: None

Absent: Morgan

BOARD OF ADJUSTMENT ACTION:

Notwithstanding the staff recommendation, Ms. Lasky moved to **deny** the variance to reduce the required front yard setback along East Minnehaha Parkway from the setback established by connecting a line between the front two corners of the two adjacent residential structures to 81 ft. to allow for a 12 ft. by 8 ft. conservatory porch addition onto an existing single family dwelling in the R1 District at 16 East Minnehaha Parkway finding that the proposed structure is 20 feet in height and is too tall, is not in architectural keeping with the homes in the neighborhood, creates a hardship that impacts the adjacent neighbor, and the applicant can construct another structure without creating energy issues. Mr. Gates seconded the motion. Motion passed.