



Request for City Council Committee Action from the Department of Community Planning & Economic Development – Planning Division

Date: September 27, 2007

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Zoning Board of Adjustment action approving a variance to reduce the front yard setback to 10 feet to allow for a ground level patio for a property located at 2220 Cedar Lake Parkway (BZZ-3705) by Joel Conner

Recommendation: The Zoning Board of Adjustment notwithstanding staff recommendation approved a variance to reduce the established front yard setback to 10 feet to allow for a ground level patio and fountain located at 2220 Cedar Lake Parkway in the R1 Single Family District and SH Shoreland Overlay District with the following condition:

1. CPED-Planning review and approve final site plan, floor plans, and elevations

Previous Directives: N/A

Prepared or Submitted by: Brian Schaffer, City Planner, 612-673-2670

Approved by: Jack Byers, Planning Supervisor, 612-673-2634

Presenters in Committee: Brian Schaffer, City Planner

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain):
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Ward: 7

Neighborhood Notification: Bryn Mawr Neighborhood Association was notified of the appeal on September 11, 2007.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: The end of the 60 day decision period is September 29, 2007.

Other: Not applicable.

Background/Supporting Information Attached: Joel Conner filed an appeal of the Zoning Board of Adjustment decision approving a variance to reduce the front yard setback to 10 feet to allow for a patio and a fountain. The applicant request a variance to reduce the front yard setback to 3 feet and staff recommended approval of a variance to the front yard setback to 20 feet.

The Zoning Board of Adjustment voted 3-2 to approve the variance to 10 feet on August 23, 2007. The appellant filed an appeal on September 4, 2007. The appellant's statement is included in the attached supporting material.

Supporting Material

Appellant statement of appeal with attachments

August 23, 2007 ZBOA Meeting Minutes

August 23, 2007 ZBOA Staff Report with attachments

Letters of support from adjacent neighbors- provided at August 23, 2007 ZBOA meeting

Board of Adjustment Hearing Testimony and Actions

Thursday, August 23, 2007
4:30 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Matt Perry, and Mr. Peter Rand

Board Member(s) Absent: Ms. Alissa Luepke Pier

The meeting was called to order at 4:30 p.m. The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

2220 Cedar Lake Parkway (BZZ-3705, Ward 7):

Eric Baldus, on behalf of Joel Conner, has applied for a variance to reduce the established front yard setback to 3 feet to allow for a patio and fountain in front of a single family dwelling located at 2220 Cedar Lake Parkway in the R1 Single Family District and the SH Shoreland Overlay District.

Notwithstanding staff recommendation Mr. Ditzler moved and Ms. Lasky seconded the motion to **approve** a variance to reduce the established front yard setback to **10** feet to allow for a patio and fountain in front of a single family dwelling located at 2220 Cedar Lake Parkway in the R1 Single Family District and the SH Shoreland Overlay District with the following condition.

1. CPED-Planning review and approve final site plan, floor plans, and elevations.

Roll Call Vote:

Yeas: Ditzler, Lasky, and Rand

Nays: Finlayson and Perry

Recused: None

Absent: Luepke Pier

TESTIMONY

Mr. Gates: Thank you Mr. Schaffer: This one has lots of dimensions I'm trying to wrap my head around. Can you put the aerial back up for a minute?

Mr. Schaffer (staff): The overhead aerial?

Mr. Gates: Yes, thank you, the line that is drawn in there between the adjacent patios is not the established setback we are talking about, correct?

Mr. Schaffer (staff): The dotted line here is not the exact line, Chair Gates and Board Members; it would actually be a little bit further out, but that line is fairly representative of that distance of what they would be allowed. This wall here is approximately where the patio is. I don't have dimensions on that, but that is to give you an idea on the distance that would be allowed to come out.

Mr. Gates: I guess my question is... is it the corners of the adjacent patios, or is it the corners of the adjacent homes that sets up the established setback?

Mr. Schaffer (staff): Chair Gates, Board Members, my apologies. The established setback is set by the two adjacent homes and that would be a corner from this point here to this point here, which basically would run right to the front of that vestibule of that home. If we zoomed in it would be right to there. The term that I was using was established setback for the determination of setting a new patio distance out at 20 feet was by the patio ...two patios that are adjacent to the property. So using similar idea that we'd have for established front yard setback and a string line test, we were using that as reference for the suggestion of the setback at 20 feet.

Mr. Gates: But there is nothing in the code which would...

Mr. Schaffer (staff): Nothing in the code would grant them that. As stated the code would only allow a four foot patio. It will be allowed for a four foot patio or 50 square foot patio...

Mr. Gates: Four feet in front of that line that you just drew. The blue line.

Mr. Schaffer (staff): Four feet in front of this line and it...the whole patio could not be more than 50 square feet. So they could put something here, but if it passed that line it would... So what staff is presented as an option for approval at 20 feet allows them to have a more substantial patio than what would be allowed by the strict interpretation of the zoning ordinance but still keeping with what staff believes the character of the neighborhood is.

Mr. Gates: Okay, and so can you show with a dotted line where that ...the edge of that patio that staff is recommending is?

Mr. Schaffer (staff): This would be on the aerial photo the best representation that staff has the brown dotted line here.

Mr. Gates: Right there?

Mr. Schaffer (staff): Right. And this is what would be on the...what you have in your packets there is a smaller version not in color, but this established setback of the adjoining properties of their patios would be right here, so this would be the setback. So this would be 20 feet from here, 18 feet from the south portion of the home and 12 feet from the vestibule of the subject home. Does that clarify?

Mr. Gates: So if this is all to scale, then what staff is recommending that we approve a variance that will allow a patio that is roughly 10 feet, half that 20 foot distance is what it looks like, in front of the existing stoop?

Mr. Schaffer (staff): Right now, what the distance from the existing stoop to the property line ranges somewhere around 32 feet, 30 feet, if this is all drawn to scale. Using the scale the applicant has provided. If that is correct, they have approximately 32 feet from this point here to the property line and then another 36 feet to Cedar Lake Parkway. What staff would be allowing would be a patio that would project approximately 12 feet from that vestibule or stoop outward and have to be terminated at this point here.

Mr. Gates: Okay.

Mr. Schaffer (staff): So this would be allowed...not allowed.

Mr. Gates: Thank you. Further questions for Mr. Schaffer?

Ms. Lasky: I drive this everyday. I see this house 10 times a day. Where is this snow fence, or whatever the little mud fence is it at the 32 feet...where is this?

Mr. Schaffer (staff): Chair Gates, Board Member Lasky, I believe that fence that you are referring to that's an erosion control fence ... actually goes out to this point right along Cedar Lake Parkway so it goes out farther than what they own. There have been some issues of some work being done on the Park Board Land with out authorization which has been remedied and resolved and that is why this silt fence is there now, but I'm sure it will be. I haven't been out to the site today, but...

Ms. Lasky: It just gives me a relative idea what the dimensions are.

Mr. Gates: I was out there today and I didn't see a silt fence I saw an orange construction fence.

Mr. Schaffer (staff): I'm sorry Chair Gates, I'd assume that's been remedied, the applicant can speak to that.

Mr. Gates: Yeah, I didn't see that, but I saw an orange construction fence, which appeared to be down on the lot line actually. Thank you Mr. Schaffer. Is the applicant here?

Joel Spoonheim: I'm here representing Mr. Connor; he was called away on business. He asked me and Eric Baldus, who is the landscape designer who is working on installing this to speak. I was asked because I spent the last 10 years mostly as a city planner working on design issues and he thought amongst his friends I might be able to articulate his concerns and I like his house and his design here so I thought I would show up and try to plead his case. Staff have done a great job looking at the code and the two ... well the main finding as you saw is that it alters character is his finding and specifically it's the patio that alters the character by being out of scale is what he suggested. We think that based on a lot of work at looking at what defines the character in this neighborhood that this design was made specifically to respond to the character. The three parties that we were responding to in designing this were the neighbors to the south, neighbors to the north, not just immediate but beyond and then our important neighbor, immediate out the front door which was the park and the park land which goes out in every direction. And so, in looking at what defines character, I mean it's a variety of landscapes, it's a variety of interacting in the public realm and our goal was to create a design that honored the public realm as well as the private needs of the neighbors on both sides. As you might have noticed in the overhead, these houses were very, very close together and have patios and the goal was to create a patio that literally allowed you to sit on your patio perhaps or your neighbors could and you wouldn't be sitting this close together so that's part of the design. I'm going to have Eric walk you through a couple of the drawings, if that's all right, that try to really dig into this and we've got some additional photos and then the last couple of things I just want to quickly mention, we have letters of support from both the immediate neighbors which we were able to secure last evening and today and I have copies of those to provide to staff. We also have the neighbor from two doors down whose here to speak in support so hopefully you'll get a chance to hear from them, but I think it's important to hear from Eric. Thanks.

Eric Baldus: 1115 6th Street NE, I'm the owner and principal designer from Terra Vista Landscaping; we're a smaller residential firm in Northeast. Joel Conner had come to me and asked for a landscape design for his property. One of the main concerns was being that he bought the property on the lake that he wanted to be able to enjoy the view of the lake and enjoy a patio out front and with that desire I came up with a landscape plan...drawing to follow that. In keeping with that there were a couple of reasons why the patio ended up being situated as it is. The primary reason was again just to be able to enjoy the view of the lake out front, because of the setback issues and things like this, the patio would be awfully close to the house and really encroach on it. It is difficult to see from this photo - this is a window well here and this is also a window well, and the neighbor's property and patio is just adjacent to this area. I decided to move the patio out into a little more open realm to be able to have some open space, to not feel

crowded with the neighbor and impose upon the neighbor and also not to create a safety issue because of the window well here. So that's why everything got moved out into this area. With that in mind for the enjoyment of both the patio and of his neighbors to enjoy their patios without Joel being right next to them, one of the other concerns was then to match the character of the neighborhood and I actually made sure that the patio wasn't imposing to anybody enjoying the drive on Cedar Lake. One of the big thoughts with that and one of the benefits of this property is that the patio actually sits up almost four and a half feet in elevation, so at grade, this photo is taken across the street, essentially it's at my eyes height, I'm 5'8" you can't actually even see the patio there. That was one of the benefits, that it's above the standard viewpoint. One of the other thoughts then to help create a screening and a buffer for both Mr. Conner and any of the viewers of Cedar Lake Parkway, I have planted a small row of little giant arborvitae. Typically these are seen at about three to four feet tall. At that height, you can see a small drawing of a person here, really only standing are you going to view a person being engaged on the patio. If they are sitting you wouldn't be able to see them at all. With that then also was the idea that this wasn't just a solid hedge row as can be seen directly to the north with that vegetated property. That it is broken up a little bit more like Cedar Lake where there's a variety of different shrubberies a variety of different textures of evergreen and deciduous. The idea that it was broken up a little bit and not quite as imposing as a traditional hedge row or something that would say be six to seven feet tall. At that three foot height I think it fits that scale of the home very well. It still allows the participants driving by to view the house but not to be engaged particularly with those who are sitting on the patio. One of the other things that I think works for this property is actually the park land out to the front. Joel's property starts almost 30 feet back from the road itself, so the patio is really pretty far removed from the road.

Mr. Gates: All right, thank you. Question, I presume that the patio that you propose is generally level and so if it is coming out as you show there is maybe eight or ten feet till we get to the park land and your up probably a couple of feet above that park land right, so are you proposing to put in a wall there, or is that just going to be graded?

Mr. Baldus: No, this ...there's basically a five to one slope that starts at this point and drops to Cedar Lake Road. Basically this is at your four foot elevation in about 15 to 20 feet it drops down to the height of the curb.

Mr. Gates: But what is the grade differential between that point and the patio?

Mr. Baldus: The grade differential from here to here is four feet and from the patio to this point is zero. This is essentially level across here and then it drops down.

Mr. Gates: So you're saying the land is actually flat for the first western half of the front yard?

Mr. Baldus: This might clarify things a bit. This is the buffer zone. This is the planting of arborvitae here. This would be the curb cut for Cedar Lake Road showing the elevation.

Mr. Gates: All right, thank you. Further questions for the designer?

Mr. Perry: As you've been sitting here for an hour and a half you've probably heard this question a few times about hardship. What is it...which we have to find, and we're not allowed to take economic hardship into consideration, what is it that you find to be hardship for having the patio be the size that the staff recommendation is making?

Mr. Baldus: The reason for hardship primarily has to deal with the setback that is needed. That setback line comes essentially across this circle right here. The constraints, I have an easement to side, there's a patio right here and this window well. This doesn't create a very safe area, to be able to have a patio in between this 12 foot area here. This window well is an egress window; essentially I think about three and a half feet deep. As you can see, as I've drawn, I have a pretty good size buffer in between the patio and this window well and that was to make sure that guests

weren't falling in there. Then the other reason is if I were to try to move the patio over this way the property to the south is essentially their patio is right on that line. It's extremely close. I felt that would be putting undue hardship both on Mr. Conner and his neighbors to the south. Therefore we moved it out into this area.

Mr. Perry: Thank you for all that detail, I don't know that really answered the question. It seems like there's a certain amount of area that you want and you're trying to figure out how to put it in. What I think staff is saying is you have less patio area effectively, and what is the hardship of having less patio area and maybe the same amount of patio area, *I know you don't know this*, as the neighbors to the north and the south.

Mr. Baldus: I'm specifically dealing with the setback of 20 feet which keeps me behind this line. I really don't feel very comfortable with having a patio in this area so close to the window well and so close to the neighbors. I'd ideally like to have it out a little bit further from that.

Mr. Perry: I'll ask one more question here just while I have the applicant talking. Is there...Is that a window well on the other side of the...

Mr. Baldus: This is a window well here also yes.

Mr. Perry: So you're saying that the first window well is an egress window?

Mr. Baldus: They're both...I believe they're both egress.

Mr. Perry: Okay, thanks.

Mr. Gates: Further questions? Mr. Ditzler.

Mr. Ditzler: Mr. Gates, this may be a little out of turn, but I have to ask, because I think it might have some bearing on the direct testimony is, why do we not need a variance for patio size in the front yard of this property?

Ms. Lasky: Good question?

Mr. Schaffer (staff): We actually do need a variance for the patio size. Reducing the front yard setback to allow the patio is one way of doing that otherwise it would be varying for a patio of a certain size. Staff tends to like to vary the front yard setback to allow for things behind that setback so once we establish the setback as staff has proposed at 20 feet what happens behind that for this patio would be allowed but in front of that would not.

Mr. Ditzler: Thank you.

Ms. Lasky: The house needs a patio. I see it all the time. It needs help with landscaping, etc, etc. I'm having a little trouble with more square feet than a three car garage and the fountain to the front because the argument is you don't see the patio, but then we put the fountain to the front, so can we hear the argument for that?

Mr. Baldus: Yeah, the reason the fountain sits so far forward has to do with the fact that one of the ideas of the fountain was that it was for the people in the house. This right here is a living room. You can see from the floor height from the entryway that you are really pretty high up in this room so to view out from this window to put things into scale and to give them proper context, I'd move the fountain to the front of the patio out that way.

Ms. Lasky: The problem with doing it is it then exasperates the size of the patio, whereas not having the fountain hides the patio. So I'm sort of left with that conundrum.

Mr. Spoonheim: Mr. Chair, we have a couple of pictures which might help with Board Member Laskys question. A very big close up of the statue, just to give you a sense, it's a bronze, proposed a fish, again responding to the context of the lake, when you put it in the context of scale Eric and his collages lugged this thing out there so you could get a sense of scale. Normal sized person set in place the top of the...So...and so I think the point here is you won't be able to see it. And the challenge is, because of the size of the fountain, if you don't put it up far, you can't see it from within the house. That was a critical point when Eric was designing it they literally lugged this thing around to figure out where could you put it to have the ability to see it.

Ms. Lasky: That helps thank you.

Mr. Spoonheim: Does that help. The other thing...the orange fence is exactly on the property line, placed there by the Park Board to make sure that we all knew where the line was. And we thanked them for that.

Ms. Lasky: By the way, is that where the fountain would rest, where it is now, in that picture?

Mr. Spoonheim: Actually you can't tell, because of the position ... that fountain is about, where it is set is about six feet back from the line Eric is that right? Centered? actually it's more than six, it's ... it is seven feet back from the property line.

Mr. Baldus: Yeah, the fountain is in the drawing sits back.

Mr. Spoonheim: This is...in this photo this is approximately where the fountain would sit.

Mr. Gates: Okay thank you very much.

Mr. Spoonheim: Could we just add one last thing on the hardship question which Board Member Perry keeps raising. Fundamentally, I don't know how public safety factors into the code that you have to wrestle with, but that is ... it's not public safety, but it is occupancy safety, which is a really critical issue because of those egress windows. To place the patio immediately adjacent to it creates a real safety hazard, because as you probably know from fire code, you can not put a fence around the egress window, that would prevent someone from escaping and hence you end up with a pit, and so, the important thing was to move the patio away to create that space so people could escape, and I think requiring the patio to be pushed against the house creates fundamentally a safety hazard and I don't know where the fire code weighs in on that. The one last thing, the line drawn by staff makes common sense if we think about mass of scale standing up. Both the neighbors have patios that are defined by walls. The fundamental issue here is that the proposal is saying that this mass does not appear, it is a softscaped mass that is out further, yes, but it is not defined by a wall. We felt that in thinking about the park and this design, having a softscaped perimeter which would be just like any other landscaping that one could put out there would not feel imposing because as you noticed in pictures to the south just a couple of other quick photos the neighbors to the south have done an exquisite job doing extensive landscaping all the way out into parkland this is yet another neighbor's house and the park land runs along the first six-eight feet or so of their line. So again we're trying to design this in a way that the softscaped from the park perspective from where Board Member Lasky is driving by as regularly and so folks who see it don't feel that wall is a way to do things differently. So just another point.

Mr. Gates: Thank you very much. Is there anyone else here to speak in favor of the application?

Kelly Nelson: I'm very nervous; I don't do public speaking, so I'm kind of shaking. But that was my house that he just put up there for you.

Mr. Gates: So your address is?

Ms. Nelson: 2210 Cedar Lake Parkway, and I don't have a pointer, but the hardship question that I would like to address for you is that this particular patio right next door to my house, this is Michele and Evan's patio, and when Michele designed this patio, and we are all very closely ...we know each other and all their business so we know all this stuff ... and that patio was designed not as a patio, but as a little bit of tile that she wanted to put in front of her water feature that you can see outside of her family room, and so, if you sit in that "patio" there's hardly enough room for two people to kind of just even just step around each other, and so, what Eric had said in his letter about all that Joel would have available for space is to put a little bistro table and two chairs that's really what would be there and so if you draw this line from her tiny ... it's actually just a tiny water feature space all the way across to this one, now this one at Diane and Chad's house, that's not their patio, that's their walkway into a very large patio that goes off to the side, and so drawing that line across is ... I mean I know the intention of it, but it's not an accurate representation of what's really there for him to use, and so, if you do put it up here by the window wells, that was the thing that Michele said, because of her baby twin boys, what happens if were having lunch over there with you, that's too close to the window well and that is really what got Joel thinking oh, my goodness, that is dangerous, and so, its just those window well egresses are huge, there just absolutely huge, and so, the line that we're looking at is , it's just not a fair representation of what's really usable. I think that's really all I have to comment on.

Mr. Gates: Thank you for your comments. Is there anyone else here to speak in favor of the application? I see no one. Is there anyone here to speak in opposition? I see no one. We'll close the public hearing. And take Board comment.

Mr. Perry: Listening to all the comments and making notes here the window wells are sort of interesting with regards to safety, but, I don't know really that we know who was responsible for putting the window wells in, whether it was the Connors or whether they bought the house with those window wells in there or not?

Mr. Gates: That's a fair question actually. Does anybody know?

Mr. Spoonheim: To the best of my knowledge when the remodeling was done they were recommended and required by the city as egress for that lower level.

Mr. Perry: So they put them in?

Mr. Spoonheim: As required by they city if I recall correctly.

Mr. Perry: So, with that information, which is very helpful, I was sort of going in that direction any how, I was going to make an assumption that was the case, but now that we have that information, the applicant has really created the safety problem. They have created the situation. One of the things that we have in front of us is that granting variances based on things that...situations that the applicant has created, and they have created potentially a safety issue when they want to put a patio in, is not considered hardship, so with that, I think it is reasonable to have a front yard patio given the nature of the through lot, I also think it is very reasonable on staff's part to try, given the code to be less than adequate in what a patio can be, I think we have had that discussion several times, the actual dimensions for a patio are way too small. I think this is a reasonable compromise and I'm going to move to adopt staff recommendation for that reason.

Mr. Gates: Is there a second?

Mr. Finlayson: Second.

Mr. Gates: Further comment?

Ms. Lasky: I'm not going to damn the applicant for putting in an egress window, sorry...it's a through lot, they should have a front patio, I'm sure most people would prefer to have a back patio with a lake view, but it just didn't happen to occur on this site. In a small front patio that you can put a couple of folding chairs is just not adequate. Maybe there is some kind of compromise in size. This is pretty big. I guess the square footage is the size of a three car garage, but some of that is walkway. It's well landscaped. I'd like to see something happen here where I don't think the 12 foot deep from the stair is going to give you an adequate patio and I'm going to vote against the motion I see a hardship here and I'm just not going to penalize the applicant for their egress window.

Mr. Gates: Okay, further comments.

Mr. Perry: I'd like to address one other thing if I could. When we are making this there is a comment about whether there was a wall or not and I actually ...I think that the design of what they are trying to do is a good design, clearly, but when we make or grant a request for changing the front yard setback, that basically gives the ability to put a wall there in the future, so we do not have control over what happens ... over the design in the future, we simply are moving the front yard setback to a different place, and so, I think we need to keep that in mind. We aren't making... I'm saying this not more for the Board, but for the applicant, We're not making a decision, or we would not be making a decision if we voted to deny the variance request based on the current design, but on where that front yard setback is being put and how it could potentially be use in the future as well as it is being used today.

Mr. Ditzler: Thank you Board Member Gates. I'm, not going to be supporting the motion because ...and if it does fail I will probably propose a compromise somewhere between three and 20 feet which I think that the applicant, the fact that it is a through lot and that they do actually have the bonus of having the park control the green space between the road and what is actually their property line in this case I believe mitigates some leniency in the code for their property. I don't think it's three feet and I don't think it's 20 feet, I think it's probably somewhere in the middle so if we get to that point I'll propose a compromise, but I will not be supporting the current motion on the floor.

Mr. Gates: Thank you very much. We have a motion and a second to approve the staff recommendation, which is the reduce the established front yard setback to 20 feet.

Mr. Perry: I would like to make one comment in response to Mr. Ditzlers if I may. That's appealing to me as well. The struggle I would have if you in fact decide to ... my fellow Board Members decide to vote against the motion based on this compromise ... is how we go about being somewhat systematic in the future in making this determination, so I think that's where I'm coming at this, it's a good compromise because it can be applied in some sort of definable and quantifiable way and that's why I would ask folks to support my motion.

Mr. Gates: Please call the roll.

Ditzler: No
Finlayson: Yes
Lasky: No
Perry: Yes
Rand: No

Failed:

Mr. Gates: Motion fails. Further comments?

Mr. Ditzler: I'm going to move that we grant the variance not as requested to three feet, or staff recommendation to 20 feet, I'm going to recommend a 10 foot front yard setback, and the

hardship is the fact that it is a through lot that they have two front yards to deal with and also mitigating circumstances of the extensive Park and Rec Board controlling the property between Cedar Lake Road and their property line I think will significantly mitigate the impact along with the excellent design of the patio and the landscaping will mitigate the impact on the pedestrians and the street traffic not only on the road but also to the neighbors to the north and south.

Mr. Gates: And is there a second?

Ms. Lasky: I will second it, only if the applicant is amenably.

Mr. Ditzler: Oh, that's true.

Ms. Lasky: Yeah, that's why I wanted comments before the motion.

Mr. Ditzler: Sorry.

Mr. Gates: I don't think we're here to negotiate the deal. I think we simply want to hear what the Board has to say.

Mr. Ditzler: If they don't want to do it it's a waste of our time.

Mr. Gates: I don't think this is *let's make a deal*, I think we have to apply the best judgment that we can come up with.

Mr. Ditzler: 10 feet.

Mr. Gates: Is there a second.

Ms. Lasky: I'll second it.

Mr. Perry: I would like to ask Mr. Ditzler how he came up with the 10 foot vs. the staff recommendation if I may?

Mr. Ditzler: Based on the packet and the, which drawing was it in here, the drawing that staff provided along with the line that connects...the staff recommendation line that connects the two patios to the north and south, so I think that without being an architect...without having a scale, or survey or anything it appears that a 10 foot setback would, from my estimation be somewhere around there, splice right through the fountain, just behind the fountain and would move the whole thing back a little bit, which I believe would be enough to mitigate the safety concerns with the egress windows which I do sympathize with and yet at the same time it's going to force them probably to chop off 10 percent of their patio surface, that's a guess.

Ms. Lasky: I'd certainly like to hear from them, I'm not completely comfortable.

Mr. Gates: Their option would be to get nothing at all which would mean going back to 20 feet so I would think that getting a 10 feet variance would actually be a windfall for them so...

Ms. Lasky: And they can appeal by the way, which I think is probably your better bet than a continuance.

Mr. Gates: We have a motion and a second to grant a variance to move the front yard setback to 10 feet. Please call the roll.

Mr. Perry: Could I be on record for a comment, I'm going to be opposing the motion for the same reasons that I was in support of the motion that I made before, I think this, I understand Mr. Ditzler's desire to give the applicant a reasonable sized patio, but I...this seems somewhat

arbitrary to me, and I don't think that it sets a good precedent and I will reiterate that this situation of the amount of room in the front yard has been created by the applicant by putting in the egress windows, as unusual as that sounds, because you were told to do it and it was the right thing to do, but none the less, that is what you created, even though you were required to create it, so, thank you for the time.

Mr. Gates: Thank you, please call the roll.

Ditzler: Yes

Finlayson: No

Lasky: Yes

Perry: No

Rand: Yes

Mr. Gates: Carries.

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-3705

Date: August 10, 2007

Applicant: Eric Baldus, on behalf of Joel Conner

Address of Property: 2220 Cedar Lake Parkway

Contact Person and Phone: Eric Baldus (612) 227-0107

Planning Staff and Phone: Brian Schaffer, (612) 673-2670

Date Application Deemed Complete: August 1, 2007

Public Hearing: August 23, 2007

Appeal Period Expiration: September 3, 2007

End of 60 Day Decision Period: September 29, 2007

Ward: 7 Neighborhood Organization: Bryn Mawr Neighborhood Association

Existing Zoning: R1 Single Family District and the SH Shoreland Overlay District

Proposed Use: A 24 foot deep by 32 foot wide patio and a 6 foot diameter fountain.

Proposed Variance: A variance to reduce the established front yard setback to 3 feet to allow for a patio and fountain in front of a single family dwelling located at 2220 Cedar Lake Parkway in the R1 Single Family District and the SH Shoreland Overlay District.

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

Background: The size of the subject site is 61 ft. x 137 ft. (8,357 sq. ft.). The subject site is a through lot, which means that it fronts two streets, Cedar Shore Drive and Cedar Lake Parkway, and is subject to front yard setbacks along both streets.

The subject site addresses off of Cedar Lake Parkway, but does not have access to the parkway. The Minneapolis Park and Recreation Board owns the right of way along the parkway and, according to the applicant, will not allow walkway access to the parkway.

The applicant is proposing to construct an approximately 24 foot deep by 32 foot wide patio and a 6 foot in circumference fountain in the front yard along Cedar Lake Parkway. The proposed patio and fountain extend approximately 29 feet from the

front of the dwelling and are approximately 3 feet from the front property line along Cedar Lake Parkway. The Parkway right-of-way extends another 26 feet from the front property before intersecting the parkway.

The established front yard setback along Cedar Lake Parkway is 27 feet and the proposed patio and fountain will be 3 feet from the front property line. A variance is required to reduce the front yard setback to 3 feet to allow for the proposed patio and fountain.

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.

The applicant has requested a variance to reduce the established front yard setback along Cedar Lake Parkway from approximately 27 feet to 3 feet to allow for a patio and fountain. The subject site is a through lot, which means it has front yard setbacks along both Cedar Shore Drive and Cedar Lake Parkway. Staff believes that this unique situation creates a hardship as the subject site has no backyard and is subject to two front yard setbacks, which are more restrictive than standard setbacks on a standard lot. Staff believes that strict adherence to the zoning ordinance would cause undue hardship.

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.**

The conditions upon which the setback variance is requested are unique to the parcel. The lot is a through lot and is subject to two front yard setbacks, which is more restrictive than the setbacks on a standard Minneapolis lot.

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.**

Staff believes that a front patio facing Cedar Lake Parkway will not negatively alter the essential character of the surrounding neighborhood or be injurious to the use or enjoyment of other property in the vicinity. The adjacent properties to the north and south both have patios facing Cedar Lake Parkway. The applicant has indicated that the adjacent patios are both approximately 12 feet deep. The applicant is proposing a 24 foot deep patio, which will be 3 feet from the front property line along Cedar Lake Parkway. The adjacent patio to the north, at 2214 Cedar Lake Parkway, is approximately 23 feet from the front property line. The adjacent patio to the south, at 2224 Cedar Lake Parkway is approximately 20 feet from the front property line.

Staff believes that a 24 deep patio at the subject site will alter the essential character of the neighborhood. The proposed depth would be out of scale with the adjacent properties and would affect the character of Cedar Lake Parkway.

Staff believes that a patio that does not extend closer to the front property line along Cedar Lake Parkway than the adjacent patios to the north and south would not alter the essential character of the neighborhood and would be in keeping with the spirit and intent of the ordinance. This would result in an approximately 20 foot setback from property line along Cedar Lake Parkway.

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.

Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed dwelling be detrimental to the public welfare or endanger the public safety.

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 **approve** a variance to reduce the established front yard setback to **20** feet to allow for a patio and fountain in front of a single family dwelling located at 2220 Cedar Lake Parkway in the R1 Single Family District and the SH Shoreland Overlay District with the following condition.

1. CPED-Planning review and approve final site plan, floor plans, and elevations.