



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

Date: January 20, 2005

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Carrie Flack, Senior City Planner

Presenter in Committee: Carrie Flack, Senior City Planner

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

Subject: Appeal of the decision of the Zoning Board of Adjustment by Shane Walgamuth.

BZZ 2111 – 3815 Washburn Avenue South – Shane Walgamuth has applied for a variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and a variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on a new single family dwelling.

RECOMMENDATION: Notwithstanding staff recommendation to approve both variances, The Board of Adjustment denied the requested variances finding that there was nothing implicit with the design of the structure being built, there were no unique circumstances for the parcel, and a hardship may be imposed on the adjacent property with regard to fencing regulations.

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

Shane Walgamuth 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 denying his requested variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and a variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on a new single family dwelling.

The appellant has appealed the decision of the Board stating that the property is unique as it is the only 40 ft. wide lot in the area and that the character of the area consists of dwellings that have a wide design to the structure. The appellant states that the proposed variances allow for two cantilevers which architecturally balance the dwelling as well as are features that were common to the cottage style of house characteristic in the neighborhood. The appellant's complete statement for the appeal is attached.

Staff supported both variances finding that that the cantilevers were small in nature providing room for a stairway landing and mudroom and added architectural qualities to the dwelling characteristic in the neighborhood. In addition, staff found that the property was unique to the area due to the fact that the lot was the only 40 ft. wide lot in the area and the applicant was proposing a dwelling design that was consistent with dwellings located on larger lots in the area.

At the December 16, 2004 Zoning Board of Adjustment meeting, eight (8) Board members were present. All eight members voted to **deny** both variances finding that there was nothing implicit with the design of the structure being built, there were no unique circumstances for the parcel, and a hardship may be imposed on the adjacent property with regard to fencing regulations. The December 16, 2004 Zoning Board of Adjustment minutes and the Planning Division staff report are attached.

**Department of Community Planning and Economic Development – Planning Division
Report**

Variance Request
BZZ-2111

Date: December 16, 2004

Applicant: Shane Walgamuth

Address of Property: 3815 Washburn Avenue South

Date Application Deemed Complete: November 19, 2004

End of 60 Day Decision Period: January 18, 2005

End of 120 Day Decision Period: March 19, 2005

Appeal Period Expiration: December 27, 2004

Contact Person and Phone: Shane Walgamuth, 612-578-0900

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

Ward: 13 **Neighborhood Organization:** Linden Hills

Existing Zoning: R1, Single-family District

Proposed Use: Construction of a new single family dwelling with attached garage.

Proposed Variance: A variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and a variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on a new single family dwelling.

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

Background: The subject site is currently 40 ft. x 115 ft. (4,600 sq. ft.). The applicant has obtained a building permit to construct a new single family with an attached garage that will be accessed from the existing alley. The new dwelling is approximately 28 ft. in width which complies with the required 6 ft. side yard setbacks. However, the plans consist of two cantilevers: one cantilever is 2 ft. 3 inches for a mudroom and one is 1 ft. 6 inches for a stairway landing, both of which do not meet the required 6 ft. side yard setbacks. The applicant submitted plans without the two cantilevers in order to obtain the permit and begin foundation work.

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.

North interior side yard setback: The applicant has requested a variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. to allow for the construction of a new single family dwelling with an attached garage. The lot is 40 feet wide which is 10 ft. less in width than the majority of lots on the block and in the area. Many lots on the block and in the area are greater than 50 ft. in width as well. The proposed dwelling is 28 ft. in width which complies with the R1 District 6 ft. side yard setback requirement. The portion of the dwelling that triggers the variance is the mud room on the north side of the dwelling. The applicant states that the dwelling has been designed to maintain architectural characteristics found within the neighborhood. All other lots on the block are 50 ft. or greater in width. Strict adherence to the regulations would not allow for the proposed new single family dwelling. Based on the submitted information this request seems reasonable.

South interior side yard setback: The applicant has requested a variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for the construction of a new single family dwelling with an attached garage. The lot is 40 feet wide which is 10 ft. less in width than the majority of lots on the block and in the area. Many lots on the block and in the area are greater than 50 ft. in width as well. The proposed dwelling is 28 ft. in width which complies with the R1 District 6 ft. side yard setback requirement. The portion of the dwelling that triggers the variance is the stairway landing on the south side of the dwelling. The applicant states that the dwelling has been designed to maintain architectural characteristics found within the neighborhood. All other lots on the block are 50 ft. or greater in width. Strict adherence to the regulations would not allow for the proposed new single family dwelling. Based on the submitted information this request seems reasonable.

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.**

North interior side yard setback: The conditions upon which the setback variance is requested are unique to the parcel and have not been created by the applicant. As previously mentioned, the variance is to allow for a cantilever of 2 ft. 3 inches for a mud room bench. The lot is 40 feet wide which is 10 ft. less in width than the majority of lots on the block and in the area. All other lots on the block are 50 ft. or greater in width. The proposed dwelling is 28 ft. in width which complies with the R1 District 6 ft. side yard setback requirement. While the dwelling could have been designed to comply with the side yard setbacks, the applicant stated that they are proposing a dwelling that is architecturally similar to dwellings on the block which are all located on larger lots. The uniquely narrow width of the subject lot in an area with larger established neighborhood lots and dwellings are not circumstances created by the applicant.

South interior side yard setback: The conditions upon which the setback variance is requested are unique to the parcel and have not been created by the applicant. As previously mentioned, the variance is to allow for a cantilever of 1 ft. 6 inch stairway landing. The lot is 40 feet wide which is 10 ft. less in width than the majority of lots on the block and in the area. All other lots on the block are 50 ft. or greater in width. The proposed dwelling is 28 ft. in width which complies with the R1 District 6 ft. side yard setback requirement. While the dwelling could have been designed to comply with the side yard setbacks, the applicant stated that they are proposing a dwelling that is architecturally similar to dwellings on the block which are all located on larger lots. The uniquely narrow width of the subject lot in an area with larger established neighborhood lots and dwellings are not circumstances 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.**

North and south interior side yard setbacks: Granting the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the surrounding area or be injurious to the use or enjoyment of property in the vicinity. The dwelling has been designed to compliment existing dwellings on the block which are located on 50 ft. wide lots or greater. Staff believes the size of the dwelling is appropriate for the neighborhood and that the 40 ft. wide lot prohibits the construction of a dwelling consistent with that of the neighborhood. Staff believes the setback variances are appropriate to allow for the proposed dwelling design.

In addition, staff does not believe that the two cantilevers will negatively impact the adjacent properties. The dwelling to the north will be located 18 ft. from the new cantilever and the cantilever is actually located 10 ft. to the rear of the north adjacent dwelling. Therefore, the cantilever is not actually located adjacent to a structure on the northern property. Furthermore, the cantilever on the south side of the dwelling will be located 24 ft. from the adjacent dwelling to the south due to an existing driveway on the southern property.

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.**

North and south interior side yard setbacks: Granting the variances would likely have no impact on the congestion of area streets or fire safety, nor would the variances be detrimental to the public welfare or endanger the public safety.

Recommendation of the Department of Community Planning and Economic Development:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **approve** the variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and a variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on a new single family dwelling subject to the following conditions:

1. That the Planning Department review and approve the final site and elevation plans.

**Board of Adjustment
Hearing Testimony and Actions**

**Thursday, December 16, 2004
2:00 p.m., Room 317 City Hall**

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

Board Members Absent: None

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m.**, on **Thursday, December 16, 2004**, in **Room 317 City Hall**, Minneapolis, Minnesota, and considered the request for the following items:

5. 3815 Washburn Avenue South (BZZ-2111, Ward 13)

Shane Walgamuth has applied for a variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and a variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on a new single family dwelling on property located at 3815 Washburn Avenue South in District R1.

Notwithstanding staff recommendation, Mr. Rand moved to **deny** the variances requested. Mr. Gates seconded the motion. The motion passed.

The Motion **denied** the variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and **denied** the variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on a new single family dwelling based on the following findings: there was nothing implicit with the design of the structure being built, there were no unique circumstances for the parcel, and a hardship may be imposed on adjacent property with regard to the fencing regulations.

TESTIMONY

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

Finlayson: Thank you. Is the applicant present? Care to make a statement? Name and address for the record, if you would please?

My name is **Shane Walgamuth**, I live at 2520 Abbey Hill Drive, Minnetonka and I am the land owner of this lot. I would like to reiterate some of the comments from staff regarding this project. First of all, when I purchased this property we had a vision of a cottage style house. We were trying very hard to get it to fit into this neighborhood. So our inspiration for this project, Edmund Lundy, who was a famous Minnesota architect, is where we got some of the features of this house. As staff mentioned the lot size in this neighborhood for this particular lot is smaller than most everything around us. So, to get the features we want to put into this house and to

make the house look as wide as possible, we were hoping to get a variance for these cantilevers. From the front of the house it makes the house look wider. You take away those cantilevers the house looks narrower and doesn't look as proportioned. I would also like you to know that we meet all the other codes. Our foundation and everything else fits the requirements and city ordinances.

Finlayson: Was the lot vacant when you purchased it?

Shane Walgamuth: No it was not.

Finlayson: What was on there?

Shane Walgamuth: There was a little two story with a detached garage.

Finlayson: Are you building this to live in?

Shane Walgamuth: No, I am not.

Finlayson: Any further questions? Please.

Shane Walgamuth: I am trying to follow the requirements for the variance, and so I took pictures of the neighboring houses.

Finlayson: Anyone else to speak in favor? I see none. Anyone to speak against? One of you please come up and give your name and address for the record please?

I am **Charles Ainsworth**, I live at 3811 Washburn. Before I start, there are a few points that I would like to make. I am head of the Custom Homes Division at Charles Cut Company. Our company builds about 80 homes per year, so I familiar with home building and design. We are against this house, and one of the main reasons is, is that it is really large. I will talk a little bit more about that in a moment. Specifically, the cantilevers diminish the area between the houses, which is significant and important. The feel of the neighborhood is the size of the houses themselves. So, if you live in a neighborhood where there is space between the houses, psychologically people feel like this is a more generous place to be. If you live in a neighborhood where the houses are very much shoulder to shoulder and very tight, it doesn't have that same kind of feel. That is why we are against the cantilevers. It is a small cantilever in the sense of it's size, but large in sense and impact from the sidewalk. We went around and took a letter asking people to sign it, I don't know if you have copies of it. We have 30 some letters signed by people in the neighborhood who said that they were against it happening. This isn't a neighbor who is looking to improve his house, this is purely an economic thing. He is a developer who is trying to maximize the size of this house for profit. The house in your packet that I live in is the red one with the arched top, front door, and there are two pictures of it, but the last picture in the packet is the front of my house. My house is approximately the same size as the house that was torn down, it is a story and ½ house. The house that was torn down, was a story and ½ - not a two story. The height of the house that was torn down was 24 feet, the new house is approximately 35 feet. The length of the house that was torn down was about 34 feet,

that is what my house is, including the porch. The new house is 72 ½ feet. The upper two levels of the house that was torn down was approximately 1200 square feet of living space, the new house will have 2400 above grade and about 3700 total. Building a whole lower level is projecting 5 feet out of the ground to stay above the water table there. So, the house is taking on a taller characteristic than the average two story. It is a big house. It will block our light on the south side of our lot, so our living room will be in the shadow of this house and our backyard will be in the shadow of this house. I can't talk about them not building the house to size that the city allows without the variances, it is excessive to ask for even more of my space and my light to do this projection towards our house. There was a visually attractive picket fence on that side of our lot that was torn down along with the house. If they are allowed to build this cantilever, I will not be able to replace that fence. If my wife and I, we are trying to find a Bermese Mountian Dog, we go to the National Bermese Show and that, so we are going to build a fence in there. According to the fence code, if they project out over there six foot side yard set back, the fence has to be smaller and different than what is normally allowed in the fence code, this is just something extra, that I found in investigating when I was building this fence. The other thing they said was that there are not many 50 foot lots, or all of the lots on this block are over 50 feet. My lot is 45 feet and if you look on the map of this block you will see in the packet that there are a lot of houses on this block that are close to 40, 45, 50 and several houses that are on bigger lots, but I would like to point out that they are duplexes, side by side splits, so they housing two families on the wider lots. I am against this for safety, fire, the ability for people to get around the side of the house for an emergency, I am against it for aesthetics, and I am against it for the nature of the exercise here where somebody is building to the maximum and then asking for more. We feel that it will diminish our property, it will make a feeling of crowding between our houses and that we would like you to vote against it.

Finlayson: Thank you. Anyone else to speak?

My name is **Ken Dahl** , I live at 3808 Vincent Avenue South, I am across the alley and two houses down and I have not seen the plans for this house. So my objection is based primarily on a high level, I guess is what you would say. Finding a rational basis to allow this variance. I do not believe that they have shown a justification. There is nothing about this yard or this lot that justifies a variance. It is flat, it is accessible and it did have a two story house and a detached garage on it. The only thing is that it is small. The second point that I would like to bring up is this issue of the size of this lot. For some reason we are lead to believe that this 40 foot lot is atypical. It is not true. I live on a Vincent Avenue South and my lot is 45 feet, and I would venture to say that 45 feet would appear more often than not of any size, it is one of those averages, whichever shows up the most. My legal description is part of three different lots. We are in the Cottage City Subdivision of Minneapolis. The lots started off at 25 feet wide. Now there is a lot, an existing lot with a house on it, a cabin, that is twenty-five feet wide in the neighborhood. Across the street from this house a double bungalow has been subdivided and their legal description is 37 feet wide. I am concerned with the precedent that we are setting here. If a double bungalow wants to expand two feet from its neighbor can you deny that? If my neighbor that has a 45 foot lot, wants to move four foot closer to my backdoor can you deny that? I am just very concerned, and taking this request to its illogical end, we will have houses that are four feet apart. We live in that neighborhood on small lots. Some of them yes, are larger and some of the larger lots have bigger houses. It is very predictable. But to allow a big house,

on a small lot is not the appropriate way to go. Now again I have not seen the plans, I have just object to the path that we are walking down. It is a very desirable neighborhood, it is near Lake Calhoun and what is happening in that neighborhood is bigger houses are coming in and overwhelming the true character of our homes. Thank you.

Finlayson: Thank you. Anyone else to speak? Please.

Sharon Bestrom: I don't know if I should be speaking, I am kind of a light-weight person here. I don't know the law, but this is my home, this is my parent's home. I have lived in Linden Hills neighborhood for 64 years. We just move around a lot in the neighborhood. I also own the other house pictured on the other side, I own their house. When I was growing up and raising my son, I took care of my parents in this house for 20 years and I love the neighborhood, but the reason why I am speaking at all, is because I just retired from teaching for 40 years. I am impacted by this already in two ways. One, I haven't had curtains for the past 8 years, Bernie had macular degeneration, I was worried about him seeing in my windows and now I am getting curtains, and that is fine. The second point is that she kind of denied my flower garden. One of the things that I was going to do and in fact I already talked with a landscape artist last fall, and we decided this summer that I would landscape the front of the house and I would plant my flower gardens. It is on the other side of that driveway that she mentioned. She said that the driveway is there and there is my flower garden on my land, you can't really see it here, you can just see the driveway, but my land goes further over. And the workmen have already walk up my driveway, my driveway is the closest driveway to their house. All the other houses go up a half alley. It is a half alley in the back. So, people coming in to go into there extension where the steps will be will walk up my driveway, over my flower garden, okay. I have already had to tap on the window a couple of times to workmen who have left garbage, the workmen are very nice by the way. But they are, that ribbon they have there which is exactly on my boundary line, they are on the other side and leaving garbage there, can of pop and things and when I tap on the window and pick up your garbage so I don't have to, I am certain they think it is not my land. But it is my land. Anyway, I am very afraid that I am going to start my retirement with as one of those weird old women who will be knocking on the window, looking out of her new curtains at people who are walking on her, through her strip of her flower garden, which is getting over shadowed by this extension that they want to build.

Rand: You are at 3821?

Ah I am sorry, 3821 Washburn Avenue South, **Sharon Bestrom.**

Rand: What does the sun do?

Sharon Bestrom: It comes from the south and from the west but basically it hangs over.

Finlayson: Anyone else to speak? I see no one. Let's close the public portion of this item. Board comment please.

Lasky: There is no variance for height, so this is not an issue, correct? This happens with progress and that is how things work. As much as I would like to see the house have some

variation, it is new construction and I am having trouble finding a reason why a house can not be designed without variances. Somebody needs to tell me something other than it looks better as a hardship for these variances. I probably would be most amenable to the second story one, rather than the one closer to grade. The setback from the neighbor I am having a little trouble finding a reason for that because there are houses closer on the block, so they are already precedent setting, but I keep going back to new construction as being able to massage the design to work within the present guidelines. The fact that the garage is attached to the house lets the house have more mass and a non attached garage then I would be more amenable to the bump-outs. That is it for me.

Finlayson: Anyone else? Mr. Flo?

Flo: I am compelled to say that I am in opposition, correct me if I am wrong, but this house is going to be built on this lot, but the question here is the cantilevers. (*Technical difficulties resulted and non-perception of sound on tape was affected and did not tape/could not hear Mr. Flo's continued comments*).

Lasky: In defense of the applicant and something for the neighborhood we have seen applications that have been so unbelievable and ugly, this is really a credit to the applicant to make this look like it fits into the neighborhood regardless of the height or whatever. This is so much better than a vinyl sided house that they could put in next to you.

Morgan: I would like to put my two cents in here, I think that the design is great and appreciate what Mr. Flo said, I think he hit this on the head here with the real issue is that the house is going to be built whether it has the bump outs or not. But, I do agree with Ms. Lasky I think that so many times we are brought into issues here where people are building new construction and they can not find ways to build what they need to meet the requirements. This is a 40 foot lot and I think that there other lots similar in size in other areas, so I do not find that to be the exact hardship here.

Finlayson: Personally, I do not have a problem with the way it is drawn. The variances are small in nature, they are an architecturally attractive addition to an already attractive design, the materials appear to be good, both bump outs have history in the arts and crafts era or the tudor revival era, which predominate in the neighborhood, unlike some of the 50's ramblers on the other block.

Bloom: I just have one specific question, and we have had this debate before. We had one where one person needed a variance because it was closer than 5 feet, but if the neighbor would have put it up, it would have been okay. In this particular instance in the discuss point of the variance for the bump out would this impact the neighbors ability to put up a 6 foot fence? And I guess that is my only reluctance, I am on a 50 foot lot, my brother is on a 40 foot lot, 40 foot lots are all over Minneapolis, my brothers house is huge and it is on a 40 foot lot, that is just the way that Minneapolis is. Seeing a hardship for that is really a struggle for me. I agree this is a nice house, I wish it was next door to mine. You should see the house next door to me. I understand the neighbors concerns, but I do agree with my colleagues that this house will be built regardless, it is just a question of the cantilevers and it is a question of any decision we make is based on

hardship and base it on impact to the neighbors that are directly facing it. So, you guys are ready, I am done talking.

Flack: Because the garage is attached it does limit the fence height. You can have a fence in the front yard and it would be limited to 4 feet in height. If they wanted the 6 foot high fence, that is not allowed until the very back here, because of the garage being attached. They could have a four foot fence all along here, and then it could be 6 foot right here, because it is to the rear of that property. You can still have the fence, it just can not be 6 feet tall.

Lasky: If it were a detached garage they could have it from the end of the house?

Flack: Correct.

Lasky: So they could apply for a variance – the neighbor could?

Flack: Yes.

Bloom: Regardless the impact is not because of this set back variance, the impact is because of the garage being attached.

Flack: Otherwise, at the rear of this dwelling here, if this is the rear of the dwelling, it would be 6 feet from the rear of this dwelling here, and would start being 6 feet high here.

Bloom: I am just making sure that I am asking the right question.

Flack: It can not be 6 feet tall. It could be 4.

Bloom: If the cantilever was not there, they could have it 6 feet tall.

Flack: Yes, 6 feet tall.

Bloom: Thank you.

Lasky: Can the applicant address why both bump out are important to the interior layout and design.

Hi, my name is **Terry Curtis** and I am the architect of the project. The bump out that is on the south side of the house is the staircase landing, what that is mainly doing is breaking up the façade that you can see from the street, because of the driveway. We wanted to be able to, when you came down the street you would be able to see something attractive there. It also gives the look from the inside of the house an attractive landing, you get the look you see in many of the older homes with a bench seat on the landing. The back cantilever is a mud room, you can see that we have made a very small space between the garage and the house, it is really only two hallways, one that goes up to the bonus room, and one that goes into the house, so that bump out is really creating a space for a family or a couple to leave their coats and have a bench seat there

as well. Both in design more so the staircase bump out, the other one is mainly functional for the homeowners.

Finlayson: Thank you. Please.

Charles Ainsworth: Again, my background is architecture design that is what I do all day. I think it is important to design a good house, and it fits in the neighborhood and I appreciate that they are trying to do a cottage house, I have even met with Shane and have talked with him extensively about the plan and offered ideas to avoid having this cantilever coming out towards and into our yard, diminishing the space between the houses. I do not have a problem with Shane making a profit on the house, I understand that and I do not have a problem with him taking this lot and making the most of what he can out of it. What I have a problem with is the asking for the variance. The house is going to be big, it is going to be wide and do what it is going to do, and I can not stop that and I don't really care about that so much. There are a lot of different ways to design this house so that you do not need the cantilevers projection towards out lot. There is a lot of different ways to design this house so that the house would have less street presence, it would be less wide and looking down between the houses there are ways to do this house so that it doesn't look like it is crowding into my house. Or that he owns the 50 foot lot and I own the 40 foot lot. It is only the variance that I am against. I would like the inner city to stay strong, we need to renew the housing and keep the stock up in order to do that, but I can live anywhere, we build houses all over, my wife and I both work, and we chose to live in a little old house by lake Calhoun built a long time ago with leaking windows, when we could have our pick of the litter in terms of housing, because of the nature of our jobs, so I am against this because it is going to make this look narrow between our houses.

Finlayson: Thank you. Board comment.

Rand: I like to have a motion on the table before I speak so, I move to deny the staff recommendation.

Finlayson: Is there a second?

Rand: Once again being the minority, I will then comment why I would.

Gates: I'll second that.

Rand: Okay. I am an architect, and so is Paul and we understand about design and having an attractive spirited design for building and this building has character and so on. But when the project started, on day one, the rules were on the table. The side yard setbacks, the variance requirements, all this was there. And the existing home stock in the area was there. So, fitting a building into the character of it, and fitting a building into the constraints, legal constraints of the setbacks and so on and variances required was all part of the game. I see nothing implicit that has been presented about this design that says that they had to do this, this way, opposed to doing it another way to comply. Therefore that is why I moved to deny.

Lasky: I can not find a hardship. It is new construction. So, I agree.

Gates: If I can just way in on my second there. There is a case to be made I think for hardship given the narrowness of the lot. It is a 40 foot lot, not a 45, and many of the lots in the neighborhood are wider so, I think there is a case there. However, I am not sure that it is strong enough to warrant our granting the variance and there by restricting the right of the neighbor to put up a fence that is 6 feet tall. Clearly the house that is now apparently being built, is putting the property to a very reasonable use and the very minor variance that we would be granting for the two cantilevers I guess I do not think is quite warranted given the other issues that I mentioned. So I obviously seconded the motion.

Flo: Question for staff. I am a little concerned, I am concerned about the statement in the staff report that the applicant submitted the plans without the two cantilevers, etc. There is different ways to interpret that, that someone made a misrepresentation to get a permit and then altered the plans.

Flack: No. That is not the first time that this has happened. There are instances where people go ahead and modify the plans and they will say that this is our plan just in case we don't get the variances. There is no guarantee whenever you apply for a variance that you will get it and so they submitted plans that complied with everything and those will be the plans they build, it will be without the two cantilevers, so they can go ahead and proceed and finish with those. Generally in a situation like this when they are trying to beat the weather and have a design issue that they want to address, then that is when they will come back through our variance process because it takes quite a bit longer. But there was no misrepresentation.

Finlayson: Anyone else? Please call the roll.

Roll Call Vote:

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

Nays: None

Recused: None

Absent: None

Notwithstanding staff recommendation, Mr. Rand moved to **deny** the variances requested. Mr. Gates seconded the motion. The motion passed.

The Motion **denied** the variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and **denied** the variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on a new single family dwelling based on the following findings: there was nothing implicit with the design of the structure being built, there were no unique circumstances for the parcel, and a hardship may be imposed on adjacent property with regard to the fencing regulations.