



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

Date: February 2, 2006

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Board of Adjustment action denying variances for property located at 2708 Irving Avenue South (BZZ-2695).

Recommendation: The Board of Adjustment adopted the staff recommendation and denied the variance to allow a patio in the front yard setback and denied the variance to increase the maximum allowable impervious surface from 75 percent to 87 percent.

Previous Directives: N/A

Prepared or Submitted by: Jim Voll, Senior Planner, 612-673-3887

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

Presenters in Committee: Jim Voll, Senior 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: The East Isles Residents Association was notified of this application by e-mail on October 21, 2005.

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: On January 4, 2006, the applicant provided a letter extending the decision period to no later than March 31, 2006.

Other: Not applicable.

Background/Supporting Information Attached: Christo Stavrou, on behalf of William Weisman, applied for a variance to allow for a ground level patio in the required front yard and a variance to exceed the maximum impervious surface coverage from 75 percent to 87 percent for property located 2708 Irving Avenue South. The Board of Adjustment denied both variances on December 1, 2005. The Board voted 8-1 to deny the front yard setback variance and 9-0 to deny the impervious surface variance. The applicant filed an appeal on December 9, 2005.

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-2695

Date: December 1, 2005

Applicant: Christo Stavrou, on behalf of William Weisman

Address of Property: 2708 Irving Avenue South

Contact Person and Phone: Christo Stavrou, (612) 308-7406

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

Date Application Deemed Complete: October 20, 2005

End of 60 Day Decision Period: December 19, 2005

Appeal Period Expiration: December 12, 2005

Ward: 7 **Neighborhood Organization:** East Isles Residents' Association

Existing Zoning: R1, Single-family Residential District

Proposed Use: A front patio addition to an existing single-family dwelling.

Proposed Variance: A variance to allow a ground level patio in the required front yard of a single-family dwelling and a variance to increase the maximum impervious surface coverage of the lot from 75 percent to 87 percent for a property located at 2708 Irving Avenue South in the in the R1 Single Family District and SH Shoreland Overlay District.

Zoning code section authorizing the requested variance: 525.520 (1) (15)

Background: The subject property is approximately 52 ft. by 120 ft. (6,240 sq. ft.) and consists of an existing single-family dwelling and attached garage. As a response to a neighborhood complaint, Zoning Enforcement cited the applicant this fall for a patio in the front yard that exceeded the maximum size permitted, 50 sq. ft. Building permits are not required for the landscaping completed at this property, however, the project must adhere to certain zoning code regulations. The applicant has been working on a landscaping project for the homeowner that consisted of two patio areas in the front yard, a new driveway from the street to the to the detached garage as well as landscaping along the public sidewalk and through the property. The larger patio area in the front yard contains a sculpture and is located adjacent to the driveway, while the other patio area has room for seating. There are also benches along the public sidewalk that the homeowner had installed for public use.

After a site plan was submitted for the front yard variance, Planning staff discovered that the size exceeded the maximum impervious surface coverage for a property in the R1 District. The amount of hard surface (buildings, hard cover, including pavers) is approximately 87 percent of the lot, which exceeds the maximum 75 percent of the lot the zoning code allows. Much of the runoff from impervious surfaces on the lot is directed to the landscaped portions of the property. This property is located approximately two blocks from Lake of the Isles and is in the Shoreland Overlay District.

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 variance to allow for a patio greater than 50 sq. ft. in the required front yard. Strict adherence to the code prohibits a patio larger than 50 sq. ft. in the required front yard. The larger patio has an area of 452 sq. ft. and the smaller patio has an area of 153 sq. ft. Staff believes that patios that meet the maximum 50 sq. ft. in the front yard or are located in an area other than the required front yard are a reasonable use of the property.

Maximum impervious surface: The applicant is seeking a variance to increase the maximum impervious surface coverage from 75 percent to 87 percent. Much of the property is either building or pavers. Staff believes that a property with 75 percent impervious surface or less is a reasonable use of the property.

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 circumstances upon which the variance is requested are not unique to the parcel and have been created by the applicant. The subject site does have a paved patio in the rear of the property in addition to the front yard patios. While the project does have aesthetic qualities, there are no unique circumstances on the property that would require a patio larger than the 50 sq. ft. permitted by the zoning code.

Maximum impervious surface: The circumstances upon which the variance is requested are not unique to the parcel and have been created by the applicant. The subject site does have a paved patio in the rear of the property in addition to the front yard patios. While the project does have aesthetic qualities, there are no unique circumstances on the property that would require the maximum impervious surface to be increased.

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 and maximum impervious surface: Staff believes the patio will not substantially alter the essential character of the surrounding neighborhood but may have an impact on off-street parking and stormwater runoff from the site. The landscaping project creates a semi-public area that includes sculpture, gardens, and seating for the public. A large patio, with a radius of 12 ft., is connected to the driveway and even though a large sculpture is located in the middle of the patio, there is potential for illegal parking to occur in this area. In addition, the property is located two blocks from Lake of the Isles and in the Shoreland Overlay District. While some of the paved portions of the property drain into the landscaped beds, increasing impervious surface coverage increases the stormwater runoff of this property that eventually flows into Lake of the Isles.

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 and maximum impervious surface: Granting the variances would likely have no impact on the congestion of area streets or fire safety, but the requested impervious surface is detrimental to the public welfare through increasing stormwater runoff to Lake of the Isles and the subsequent water bodies.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the variance to allow a ground level patio in the required front yard of a single-family dwelling and **deny** the variance to increase the maximum impervious surface coverage of the lot from 75 percent to 87 percent for a property located at 2708 Irving Avenue South in the in the R1 Single Family District and SH Shoreland Overlay District.

**Board of Adjustment
Hearing Testimony and Actions**

**Thursday, December 1, 2005
2:00 p.m., Room 317 City Hall**

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

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

3. 2708 Irving Avenue South (BZZ-2695, Ward 7)

Christo Stavrou, on behalf of William Weisman, has applied for a variance to allow a ground level patio in the required front yard of a single-family dwelling and a variance to increase the maximum impervious surface coverage of the lot from 75 percent to 87 percent for a property located at 2708 Irving Avenue South in the in the R1 Single-family District and SH Shoreland Overlay District.

CPED Department Planning Division Recommendation by Ms. McCartney:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the variance to allow a ground level patio in the required front yard of a single-family dwelling and **deny** the variance to increase the maximum impervious surface coverage of the lot from 75 percent to 87 percent for a property located at 2708 Irving Avenue South in the in the R1 Single-family District and SH Shoreland Overlay District.

TESTIMONY

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

Finlayson: Any questions of staff?

Perry: I have a question Mr. Chair about the, are there any required setbacks for patio's in required front yards?

Molly McCartney (staff): Patio requirements, I am trying to remember, I think the interior side yard setback is what they would have to meet. Right here there is approximately 4 feet, on this side it is fine because there is an 8 foot driveway. The applicant does state that (Perry asked the next question).

Perry: So it is on the interior?

Molly McCartney (staff): Yes , it is an interior property, not on a corner.

Perry: Okay.

Molly McCartney (staff): Everything in front of the house is in the required front yard setback. There is a limit to the kind of patio and how big the patio is in the front yard.

Bloom: Just a quick question. I know Public Works has been working on a number of different water quality improvements for the lakes. Is there any requirement for Minnehaha Watershed District reviewing this hard surface. Again like you said, this little lot is not going to impact the lake, but if everyone did this we would never be able to improve the water quality of Lake of the Isles, Chain of Lakes, Minnehaha Creek. IS there any review process by them?

Molly McCartney (staff): I am not sure if there is for a small residential project such as this.

Bloom: The DNR?

Molly McCartney (staff): We notice the DNR on Shoreland properties and the Watershed, however I have not gotten a comment.

Ditzler: Just so I can get some clarification. When you started out Molly. You do not need any permits to do the work that they did? As long as you do not exceed 75% of impervious surface on your property – you are okay? Now is there restrictions on the size of a patio that you can put in? Or not, as long as it does not exceed.

Molly McCartney (staff): 50 square feet is the maximum size of a patio in the required front yard. I am sorry, it is not called out in the variance language. In the first finding, staff addresses that a patio greater than 50 square feet needs a variance.

Ditzler: So my question is even if they were to remove enough patio in the front to go down to the 75% number, this patio is way too big?

Molly McCartney (staff): Yes.

Lasky: It needs a variance.

Gates: Question on the math. I am not clear on this. If I add up the large and the small patio, I get 605 square feet that was added to the front yard. Right?

Molly McCartney (staff): Right.

Gates: 87% versus 75% is 12% that they exceed. And 12% times the size of the site gives me 748 square feet. So, by that math they were already exceeding the code and could not add another square foot of impervious surface to the front yard.

Molly McCartney (staff): The property is 6,240 square feet. 75% of that would be 4,680 square feet from my calculations. They have 5,453 or 87% of the lot in hard cover. Much of the work that was done in the front yard was in addition to this patio, there is other hard cover added.

Gates: Okay – I guess my math is differing from yours, just going on the stated information.

Molly McCartney (staff): There is more impervious surface than just the patio size that is called out in the staff report in the finding #1. Are you in understanding?

Gates: What I was trying to get at is – could the applicant have added any size patio at all and be in compliance? The 75% requirement. According to the math that I am doing based on the numbers that are provided here.

Molly McCartney (staff): A less impervious surface, smaller patio they could be under the 75%, but still be in violation of the maximum size of a patio.

Gates: I understand that different criteria there. But...

Bloom: If I could help?

Gates: Please.

Bloom: The staff report is calling out the two circles. That is all they are calling out. They are not talking about sidewalk, pavers around those circles or anything else.

Molly McCartney (staff): Yes.

Bloom: They are including all this pink that is highlighted and this pink back here. The 153 is just these two circles.

Gates: I understand. If we require that they abide by the 75% restriction, they can not have any patio whatsoever in the front.

Molly McCartney (staff): They can have a patio that is 50 square feet, under strict adherence to the code. Variance could be granted.

Gates: I think they are over the 75% with the numbers that you have provided.

Molly McCartney (staff): If you were to grant a patio variances, other portions of the property that are hard cover would need to be removed and some landscaping, turf would need to be replaced, such as the portion here, something over here. If you grant the variance to allow for the patio's, that is fine, something else has to become pervious or not hardcover.

Gates: What I am questioning is whether or not, even if this is denied, lets say, will there be further enforcement action to bring the property below the 75%?

Molly McCartney (staff): Yes.

Gates: Because again as I do my math, the new patio's is not even all the issue because they were over the limit prior to that.

Molly McCartney (staff): Yes, this has been tagged by our Zoning Enforcement, if the variances are not granted, there will have to be a date set to meet the code, probably in the spring.

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

Christo Stavrou: 6237 Lyndale Avenue South. I am here representing Mr. Weisman who is the property owner. He is out of town and is unable to be here today. He is out on business. I have some packets for you, if you'd like it. Do I hand these out now?

Finlayson: Please.

Christo Stavrou: First of all, Mr. Weisman wrote a letter that he would like for me to read to you. Dear Honorable Board Members.

Finlayson: I think that we can all read this ourselves in the interest of time.

Christo Stavrou: Basically what we are looking at is two issues. Would you like for me to let you read that first?

Finlayson: Please go ahead.

Christo Stavrou: From what Molly has told me earlier, we really had not addressed the hardship issue. There is a little misunderstanding here that we think is happening. The whole driving force of this project was to create a safe way to enter Irving Avenue with backing out and not injuring pedestrians. If you

look in this photograph here, this is what we are considering our hardship. One hundred foot deep driveway, 8 feet wide and at the very end there which obstructs the view. We are not able to see pedestrians when you are backing out until you are literally, your vehicle is in the sidewalk. And you can not see traffic coming from Irving until you are in the street. Irving is a very busy street and this concerned Mr. Weisman and we wanted to solve the problem. The way to solve the problem we found was to widen the driveway and to add that first, bigger circle which is actually being used as a turn around. That is why we have put that in, so can back into there and be able to pull out onto Irving forward, instead of having to back out onto it. The addition of the patio at the front door right next to it was to have it tie in, be esthetically pleasing to the yard and also the neighbor to the south of him has a very similar front yard and I believe there is a photograph in the packet that Molly has supplied us with. So, we were trying to have it make sense that way as well. Now the area right next to the driveway, this area here, which is new as well, we found and heard from previous owner of the property and from the neighbor to the south of him that area, that yard never flourished. The previous owner remembers walking over with the mower and there was nothing but dust coming up. So, there was not a lush area that things were growing in. It seemed like another reason to beautify the area right there. We did add plantings next to it – here and here (photos). We did not realize that we needed permits for this and Mr. Weisman states that in his letter to you. We were tagged for it.

I am the general contractor, by the way, and I do understand that it is my responsibility to know what we need and what we need variances for and don't. I spoke to my landscape architect who was doing the work and asked him if we needed anything and he said no, he is based out in the western suburbs and he had never ran into any problems before with the city either. This is not something that we were trying to sneak by in any way. Mr. Weisman also spoke to his neighbors across the street and on both sides and was asked to show them the plan, people were very receptive to it. There was one item that the neighbors next to them asked them to remove, which were some posts that he was going to put at the two corners of his property, and without hesitation said absolutely that he would take it out. His whole motivation was to really make it work for the neighborhood, safe and be esthetically pleasing to everyone as well.

The Southwest Journal recently praised individuals creating patio's larger than 50 square feet as well. There are hundreds of patio's all over the city that exceed the 50 square feet and I don't know if they are getting challenged or not. The staff said that the current code is a reasonable use of the property. We believe that this is a reasonable use of the property too.

We don't think that anything that we have done is unreasonable, we think it is reasonable and responsible. Again, the driving force was being able to get back onto Irving safely. The other issue has to do with impervious surface. This item we didn't even know about until we applied for the variance. We did not know that this was an issue at all. We recognize this as a very legitimate concern and believe we have dealt with this responsibly also. We are asking for a 12% increase which is 150 square feet. We took great care in directing the slope of the driveway into the planting bed areas whenever we could. Basically right here we have planting beds here where we removed, originally a curb was proposed, we removed that, so water could run into there. On the backside of the driveway, it runs into the back yard into a drain, which then goes into another planting bed too. So, we are really keeping the water on the lot itself. We are not pushing into the storm drains or shooting it onto the street, or even day lighting it out with a wall towards the lakes at all. We are trying to contain it on the property itself.

The other thing that we need to take into account is that pavers do have some permeable qualities to it. Minitrista considers them 100% permeable. I don't think they are 100% permeable, but I do think they have permeable qualities to it. Even in this photograph here you can see the driveway here, concrete has standing water on it and the pavers do not have any standing water on them. So, we think that we have created some adequate drainage and as far as the overage, it was really due to the amount of material that safe driveway to be able to enter Irving. So, with that information, Mr. Weisman requests that you honor these variances that we need. Thank you.

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

Bloom: If we can separate these two issues I would feel more comfortable, because we are being asked for a patio – hard surface as well as the patio variance. Am I correct staff? The lot area for hard surface is what we are being asked, and then the ground level patio. There are two variances.

Molly McCartney (staff): Yes.

Bloom: I would like to separate those two out and I am sorry if I am causing issues, but there are two issues here and I could discuss one and not the other. I would like to move that we deny the impervious variance at this time and if I could have a second.

Fields: Second that.

Bloom: And the reason for that is because I truly believe that in a small city, small lots, we need to have some green space, we need to respect the pervious requirements mainly because of the rules that are coming down from the FEDS on clean water act. That is a burden on the city and each one of us as tax payers, if we don't start addressing those things.

Ditzler: I understand what my fellow Board member is trying to do, and I will support her motion as well. It would allow the applicant to do, if they wanted to keep the patio's in front they comply with the percentage of impervious surfaces. I guess between my Board members what it looks like to me is that it is a beautiful design and looks great, and if the contractor and landscape architect are used to doing homes out in Deep Haven and Minnetrista, and they want to come and do one around one of the lakes in the City of Minneapolis, you got to do your homework. It is just a president that we can not afford to set. As we talked about before, if everyone on that block did 87% that lake will never get clear. Used to building out there with old farm land that hasn't been developed and you are putting construction on it for the first time – that is fine. In the City of Minneapolis where you have buildings on a lot for 100 years, it is just something that we can not do. I think this way what she is trying to do is allow the applicant to choose what gets removed without forcing them to remove those beautiful patio's, which are great and everyone can enjoy. This way the applicant has a choice – what do I want to remove, what do I want to keep is that correct on what you are trying to do?

Bloom: I think the debates with members will be different.

Ditzler: I agree – I'll support the motion.

Gates: Before I make an option on this issue I want to get clear on the hardship that has been alleged by the applicant's representative. Well, the driveway, the edge and the view to the sidewalk. Did you speak to the issue of the curb cut? The width of the curb cut coming off the street? And, if you did or did not maybe you can iterate. How does widening the hard surface in the area of the driveway on the property increase safety if the vehicle still has to come through the same narrow curb cut in the public way? Can you speak to that?

Christo Stavrou: Sure, basically – I don't have my diagram. We only have 8 feet, we have an 8 foot driveway, by widening that he is able to come back closer to the house farther away from the brush, shrub, hedge right here and be able to see better. Basically, if he is backing out rather than coming in and turning out in anyway, he needs to have a better line-up on his left hand side when he is backing out. You were literally, when you were backing out sir, your car was here and the hedge was right here. So, the hedge would end here and the sidewalk is there – you could not see anything until you were in the sidewalk and partially into the street. Widening it you can come back a little further and least get a little bit (Gates spoke).

Gates: I believe you would get a slightly improved angle although it would seem to make much more sense to widen the curb cut as well. Actually to get the vehicle away from the hedge.

Christo Stavrou: Parking is really a premium on that block too, and I think we would get quite an objection if we went to widen the curb cut.

Gates: I am not recommending it, I am trying to explore whether the hardship is in fact the reason why this was done and is a valid hardship or not. There are restrictions on the width of driveways – correct?

Molly McCartney (staff): Yes. Currently this driveway does not meet the minimum driveway width. The amount of driveway width in the Zoning Code is 10 feet, although there are many driveways in the city that are less than that. A new driveway we would require them to have 10 feet.

Bloom: If I could clarify, I would like to vote on the motion that is on the table right now, which is to deny the impervious request. I think then we will discuss whether or not this patio is appropriate.

Finlayson: Please call the roll.

Bloom: Yes

Ditzler: Yes

Fields: Yes

Finlayson: Yes

Flo: Yes

Gates: Yes

Lasky: Yes

Perry: Yes

Rand: Yes

Motion carries.

Bloom: Now I would like to discuss the hardship on the patio, the turn around discussion. I think if the answer to that last question had been for turn around so you can exit the driveway forward so you can see better, my discussion hardship would be different, but I did not hear that so, I am not sure with that statue in the middle if it is possible to use it as a turn-around. I think it is always good on a busy street to be able to turn your car around and exit face forward, but I don't see that as evidence with that statue in the middle, so I do not know that there is a hardship to allow for the additional hard surface attached to a driveway in the front, which they made to look like a patio, and a very beautiful patio. So, I am having a hard time with hardship on the patio discussion.

Finlayson: My comment would be that I think it is well to remember the esthetic of this is wonderful and it is in a very nice neighborhood, but what if it was in my neighborhood with small houses and someone using this as a precedent decided they wanted to pave most of their front yard – concrete, big old patio. So, I am sorry it is beautiful but I can not support this variance.

Gates: I do not see that there is any demonstrable hardship really, I think, like Ms. Bloom says there are other ways to address the issue of the site lines and that this design does not significantly do that enough to say yes this is why this design was put in. So, I support the arguments of the Board and that is it.

Finlayson: Is that a motion.

Gates: I move to deny – yes.

Bloom: I'll second.

Finlayson: Please call the roll.

Bloom: Yes

Ditzler: Yes

Fields: Yes

Finlayson: Yes

Flo: Yes

Gates: Yes

Lasky: No – I am finding a hardship.

Perry: Yes

Rand: Yes

Motion carries.

3. 2708 Irving Avenue South (BZZ-2695, Ward 7)

Christo Stavrou, on behalf of William Weisman, has applied for a variance to allow a ground level patio in the required front yard of a single-family dwelling and a variance to increase the maximum impervious surface coverage of the lot from 75 percent to 87 percent for a property located at 2708 Irving Avenue South in the in the R1 Single-family District and SH Shoreland Overlay District.

Ms. Bloom moved to adopt staff recommendation and deny the variance to increase the maximum impervious surface coverage of the lot from 75 percent to 87 percent for the property located at 2708 Irving Avenue South in the in the R1 Single-family District and SH Shoreland Overlay District. Mr. Fields seconded the motion. Motion passed.

The motion **denied** the variance to increase the maximum impervious surface coverage of the lot from 75 percent to 87 percent for a property located at 2708 Irving Avenue South in the in the R1 Single-family District and SH Shoreland Overlay District.

Roll Call Vote:

Yeas: Bloom, Ditzler, Fields, Finlayson, Flo, Gates, Lasky, Perry, Rand

Nays: None

Recused: None

Absent: None

Mr. Gates moved to deny the variance to allow a ground level patio in the required front yard of a single-family dwelling for the property located at 2708 Irving Avenue South in the in the R1 Single-family District and SH Shoreland Overlay District. Ms. Bloom seconded the motion. Motion passed.

The motion **denied** the variance to allow a ground level patio in the required front yard of a single-family dwelling for the property located at 2708 Irving Avenue South in the in the R1 Single-family District and SH Shoreland Overlay District.

Roll Call Vote:

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

Nays: Lasky

Recused: None

Absent: None