



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

Date: December 13, 2010

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

Referral to: Zoning & Planning Committee

Subject:

Name of Appellant: Paul Satre

Name of Original Applicant: Paul Satre

Property Address: 2210 Sheridan Avenue South

Ward #: 7

Appeal of decision of the Zoning Board of Adjustment Paul Satre has appealed the decision of the Board of Adjustment to deny a variance application to reduce the established front yard setback along Sheridan Avenue South to allow for a screened-in-porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South in the R1 Single Family District and the SH Shoreland Overlay District.

Recommendation:

The Zoning Board of Adjustment and staff recommend concurrence with the action taken on November 18, 2010, for the property at 2210 Sheridan Avenue South, Ward #7, as follows:

1. 2210 Sheridan Avenue South (BZZ-5000, Ward 7)

Variance: Paul Satre has applied for a variance to reduce the established front yard setback to approximately 19 feet to allow for a screened-in-porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South in the R1 Single Family District and the SH Shoreland Overlay District.

ACTIONS: The Board of Adjustment **adopted** the findings and **denied** the variance to reduce the established front yard setback from approximately 28 feet to 20 feet to allow for a screened-in porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South in the R1 Single Family District and the SH Shoreland Overlay District.

Previous Directives: None

Prepared by: Shanna Sether, Senior City Planner, 612-673-2307
Approved by: Jason Wittenberg, Planning Manager, 612-673-2297
Presenters in Committee: James Voll, Principal City Planner, 612-673-3887

Community Impact

- Neighborhood Notification: Kenwood Neighborhood Association was notified of the appeal application.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On December 1, 2010, staff sent a letter to the applicant extending the 60 day decision period to no later than February 16, 2011.

Background/Supporting Information

Paul Satre has appealed the decision of the Board of Adjustment to deny a variance application to reduce the established front yard setback along Sheridan Avenue South to allow for a screened-in-porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South in the R1 Single Family District and the SH Shoreland Overlay District. At its meeting on November 18, 2010, the Board of Adjustment voted 5-1 to adopt staff findings and deny the requested variance. The appeal (attached) was filed on November 29, 2010. The appellant's complete statement of the action being appealed and reasons for the appeal are attached. The Board of Adjustment minutes and Planning Division staff report are also attached.

Department of Community Planning and Economic Development - Planning Division Report
Variance
BZZ-5000

Date: November 18, 2010

Applicant: Paul and Cynthia Satre

Address of Property: 2210 Sheridan Avenue South

Project Name: Satre Addition

Contact Person: Paul Satre, (612) 374-4070

Planning Staff: Shanna Sether, (612) 673-2307

Date Application Deemed Complete: October 19, 2010

End of 60-Day Decision Period: December 18, 2010

Ward: 7 **Neighborhood Organization:** Kenwood Isles Area Association

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

Zoning Plate Number: 17

Legal Description: Not applicable

Proposed Use: An addition to an existing single-family dwelling.

Variance: to reduce the established front yard setback from 28 feet to approximately 20 feet to allow for a screened-in porch and a two story addition to the front of an existing single family dwelling.

Zoning code section authorizing the requested variance: Chapter 525, Article IX Variances, Specifically Section 525.520(1) “to vary the yard requirements, including permitted obstructions into required yards not allowed by the applicable regulations.”

Background: The size of the subject site is approximately 48 ft. by 173 ft. (8,500 sq. ft.) and is a through lot with frontage along both Sheridan Avenue South and Thomas Avenue South.

The subject site has a significant grade change from the rear of the house westward towards Thomas Avenue South. This grade change is approximately 20 percent and is considered a steep slope by Zoning Ordinance. In the Shoreland Overlay District development within 40 feet of the top of the steep slope would require a variance. The front addition to the subject dwelling is located approximately 42 feet from the top of the steep slope and does not require an additional variance.

The applicant is proposing to construct a 9 ft. 8 in. by 14 foot long screened-in porch, 9 ft. by 6 ft. one-story foyer and a 9 ft. 4 in. by 11 ft. 4 in. two-story addition to the front of the existing dwelling. The proposed addition will contain mudroom on the first floor and new bedroom on the second floor. The subject dwelling is located approximately 30 feet from the front property line.

The required front yard setback is 25 feet in the R1 District. The Zoning Ordinance has a provision that increases the front yard setback where the established front yard created by the front corners of the two adjacent residential structures exceeds the front yard required by the zoning district. Nothing in this provision shall authorize a front yard less than that required by the zoning district.

The property to the south is located approximately 30 feet from the front property line and the dwelling to the north is located 16 feet from the front property line. The established front yard setback would allow for an addition to the subject dwelling being located 29 feet from the property line along the south building wall and 22 feet from the north building wall of the subject dwelling. The proposed screened-in front porch and addition will be located approximately 20 feet from the front property line and requires a variance to reduce the established front yard setback.

Notwithstanding the staff recommendation, Zoning Board of Adjustment granted variances to allow for the screened-in-porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South on April 5, 2007. Building permits were not issued for the project within one year of the approval or the additional year granted by the Zoning Administrator, per 525.40 of the zoning code. The applicant has modified the design and eliminated the variance to reduce the required interior side yard to allow for the addition.

Staff has identified discrepancies in the proposed plans. The proposed dormer on the structure will be required to be a shed dormer and not a gable dormer. A dormer cannot extend above the primary roof line per 520.160 of the zoning code. Also, the site plan has been drawn showing an 8 foot wide walkway in the required front yard. The maximum width of a walkway in the required front yard is 4 feet. The applicant has indicated that it was an oversight on the plans and therefore they are not requesting a variance to allow for the 8 foot wide walkway.

Staff had received a letter regarding the previous application from the Kenwood Isles Area Association stating that they did not object to the request. A copy of the letter dated March 13, 2007, is attached to the staff report. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

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 is requesting a variance to reduce the front yard setback to approximately 20 feet for a screened-in porch and a two story addition. The existing dwelling is setback approximately 30 ft. from Sheridan Avenue South. The zoning code allows for permitted obstructions in the required yard without variance, including an open front porch, not exceeding 8 feet in depth and a vestibule not exceeding 50 square feet in area. In addition, there is between 5 and 7 feet of additional area in

the front yard that would allow for an addition, outside of the required yard. Strict adherence to the zoning code would not allow the proposed enclosed additions in the required front yard. Staff believes the applicant has reasonable alternatives that will not require a variance. Staff believes that there is not undue hardship caused by strict adherence to the zoning code.

- 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.**

While there are unique characteristics of the parcel, the circumstances for which the variance has been sought are not and have been created by the applicant. The subject property is located on a through lot in the Shoreland Overlay District and has a steep slope located to the rear of the existing dwelling. Any addition to the rear of the existing dwelling requires a variance to allow for development within the SH District and according to the applicant, creates structural and environmental issues. Construction of an addition to the front of the dwelling would not be within 40 feet of the steep slope and would have less environmental impacts. The steep slope and the location of the subject dwelling in respect to the slope is unique to this parcel of land is not created by the applicant. However, the zoning code allows for permitted obstructions in the required yard without variance, including an open front porch, not exceeding 8 feet in depth and a vestibule not exceeding 50 square feet in area. In addition, there is between 5 and 7 feet of additional area in the front yard that would allow for an addition, outside of the required yard. Staff believes the applicant has reasonable alternatives that will not require a variance.

- 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.**

Granting the setback variance will likely alter the essential character of the neighborhood. The majority of the front yard setbacks along the block face along Sheridan Avenue South range from approximately 25 feet to 30 feet. The property immediately north of the subject site has a front yard setback of 16 feet for a front facing garage with an open deck. The proposed front yard setback of the subject site is approximately 19 feet for a two story addition which is closer to the street than any other two-story portion of a home along the block. Further, staff believes the variance will be injurious to the use or enjoyment of the surrounding property. The impact the reduced setback will likely be most experienced by the immediate property to the south, 2212 Sheridan Avenue. This dwelling is setback the same distance as the subject dwelling, 29.8 feet. The proposed enclosed porch will extend approximately 10 feet in front of their dwelling. This neighbor to the south has provided a letter of support for the proposed project.

- 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 deck be detrimental to the public welfare or endanger the public safety.

ADDITIONAL FINDINGS FOR THE VARIANCE PER THE SHORELAND OVERLAY DISTRICT:

- 1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.**
The applicants will be required to prevent soil erosion and possible pollution of public waters, both during and after construction of the proposed addition. The applicants will be required to install a silt fence during construction and will be required to follow all applicable City requirements to prevent any type of water pollution.
- 2. Limiting the visibility of structures and other development from the protected waters.**
The surrounding properties consist of single-family dwellings with similar height and detached garages in the rear of the property. Staff believes the proposed project will be no more visible than the adjacent dwellings. The view of the Cedar Lake or Lake of the Isles will not be further limited with the proposed addition.
- 3. The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.**
The proposed variance should have no impact on the types, uses, and numbers of watercraft that occupy the Cedar Lake or Lake of the Isles.

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 reduce the established front yard setback from approximately 28 feet to 20 feet to allow for a screened-in porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South in the R1 Single Family District and the SH Shoreland Overlay District.

Attachments:

- 1) Written descriptions and findings submitted by the applicant
- 2) Copy of e-mail sent to Kenwood Isles Area Association and CM Goodman
- 3) Correspondence from Kenwood Isles Area Association
- 4) Correspondence from the neighbors
- 5) Zoning map
- 6) Survey
- 7) Site plan
- 8) Building elevations
- 9) Floor plans
- 10) Photographs of site and surrounding properties

**Board of Adjustment Minutes
November 18, 2010**

2210 Sheridan Avenue South (BZZ-5000, Ward 7)

Variance: Paul Satre has applied for a variance to reduce the established front yard setback to approximately 19 feet to allow for a screened-in-porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South in the R1 Single Family District and the SH Shoreland Overlay District.

ACTIONS: The Board of Adjustment adopted the findings and denied the variance to reduce the established front yard setback from approximately 28 feet to 20 feet to allow for a screened-in porch and a two story addition to the front of an existing single family dwelling located at 2210 Sheridan Avenue South in the R1 Single Family District and the SH Shoreland Overlay District.

Matt Perry: Item number 1 which is 2210 Sheridan Avenue South. Ms. Sether.

Shanna Sether: Thank you. Item number for today's agenda is for the property located at 2210 Sheridan Avenue South. The property is located in the R1 Single Family Residential District. It's also located in the Shoreland Overlay District. The Applicant is requesting a variance to reduce the required front yard along Sheridan Avenue South from approximately 28 feet to about 20 feet in order to allow for a series of developments. One is a two-story addition to the front of the structure, second is a foyer and the third part is an enclosed screened porch. The subject property is a through lot with substantial frontage along both Sheridan and Thomas. Thomas works as almost kind of like the alley for the subject property and the rest of the properties along this particular block. The Applicants have access to their existing detached garage along Thomas Avenue to their detached garage in the rear of the property. This particular property also has Shoreland regulations that come into effect with any additions to the rear. There is a steep slope at the rear of the property. You can see a little bit better, this is a picture taken from Thomas Avenue. So you can see they have landscaped here, retaining walls that go towards the back of the house. This is the existing (unintelligible).

Matt Perry: Can everybody see that picture? Do you want it around?

Chris Koch: If you could hand it around

Matt Perry: And just as a note, for those who are here for maybe the first time, we usually meet in Council chambers. They've got some other things going on over there so thanks for your indulgence. We're working in a slight different environment without the typical audio visual support that we have.

Shanna Sether: So as I mentioned, there are three components of the proposed addition to the (unintelligible) of the existing structure. First, there's a two-story addition. The second piece is the foyer and the third piece is this new screened porch. The Zoning

Code allows for the foyer to be a permitted obstruction in the required front yard. The screen porch, if the screens were to be removed and it would only be an open front porch that would also be a permitted obstruction, so those two things may be allowed with the removal of the screens. It's this new addition for sure that would be located within the required front yard that would require the variance no matter what. This particular plan shows that the required yard – they're asking for a reduction in not only the established setback of approximately 28 feet at the furthest most corner along the south side, but also a reduction of the front yard District setback of 25 feet which is established in the R1 District. Here's just another picture, this line is drawn – the string test is from the front corner of this attached garage to the property to the north to the closest corner of the structure adjacent to the south. Want me to pass this around as well?

Matt Perry: Please.

Shanna Sether: Staff is recommending denial of the request to allow for the variance. I should mention in 2007, April 5th, the Zoning Board of Adjustment notwithstanding staff recommendation did approve a similar request by the Applicants at that time. Their approvals have expired, however, this is a new project. The design is slightly different and I should also add that those decisions were made pre-Krummenacher decision and that our required analysis for reasonable and hardship has adjusted since then. Staff had received letters of support from the Kenwood Isles Area Association previously and also more recently. That's in your packet that you received today, as well as additionally e-mails and letters of support. There is one, I think, in opposition that was also in your packet. So staff is recommending denial of the proposed variance request based on the following findings: The first finding staff does not believe this particular project meets it. The Applicant is requesting the variance to reduce the required front yard. The Applicant does have design alternatives that would allow for additions to the structure that would not require a variance. Simply removing the screens in the screened porch no longer requires a variance, (unintelligible) the foyer as proposed would also be treated as a vestibule, permitted obstruction again. There would be sufficient area to allow for some addition to the front of the structure without triggering the need for a variance. Staff believes that the Applicant has reasonable alternatives that would not require a variance, therefore strict adherence to the Zoning Code would not cause undue hardship. Further, staff believes that the circumstances, while there are unique circumstances, that the lot is a through lot. It also has a steep slope towards the rear of the property, the Applicants' desire to ask for further front yard reduction is created by themselves when they have other design alternatives that would allow for some addition to the front of the structure. Staff also believes that the third finding has not been met and that granting the variance will likely alter the essential character. The majority of homes along Sheridan Avenue South range between 25 feet and 30 feet in a required front yard. This particular design shows a reduction closer to about 20 feet. Further, staff believes that the variance will be injurious to the use and enjoyment of other property in the vicinity. The impact the adjacent neighbor to the south that's right in line with the current structure would be probably felt the greatest, however, we do have a letter of support from them for the project. Staff believes that the fourth finding for the variance has been met. That the granting of the variance would likely not increase the impact of traffic congestion or be

detrimental to the life safety ordinances. This property is located in the Shoreline Overlay so they are required to address those three additional findings for the variance for the Shoreland Overlay District in Chapter 551 of the Zoning Code. Staff believes that all three of those findings also have been met. In order to grant approval of the zoning variance today the Zoning Board of Adjustment must find that all four zoning variances and the three additional findings for the Shoreland Overlay are met. Staff does not believe that findings one through three have been met and is therefore recommending denial of the project. That concludes my presentation if you have any questions?

Matt Perry: I'm going to ask a question before maybe others have – you included that 2007 approval – the variance that was requested at that time so then could explain why that's included in our packet?

Shanna Sether: The Applicants submitted that as part of their request and therefore is part of your packet today. It's just reminding the Board of Adjustment that this was previously approved in a similar design and (unintelligible) front yard reduction. However, that was in 2007 and the same standards, at least for the first finding, are no longer the same.

Matt Perry: So to my colleagues, I'll just remind that you that one: this is not exactly the same proposal. When we're considering the Applicants' and other's testimony this is not exactly the same proposal that was in 2007 and more importantly, the Krummenacher decision, which fundamentally altered the definition of undue hardship was not in play at that time and is now. Keep that in mind when you're listening to the presentations. Any other questions of staff? Mr. Koch then Mr. Sandberg.

Chris Koch: You passed around the drawing that essentially showed the string test?

Shanna Sether: Yes.

Chris Koch: But what I did not see on there was how the new addition – but the new addition isn't part of the string test, it's actually the side yard setback that would encroaching on or what is the issue with the new addition?

Shanna Sether: This is the drawing of the site plan and the additional structures adjacent to it. Here we see the new addition with the string test (unintelligible) through the center of all three components of the construction. So you can see that the new addition would be nicked, essentially, in that required front yard. So it's approximately two feet here at the northern most point and somewhere maybe around three or four feet at the southern most point of the new addition here with the screen porch. You can see that's 28 feet and ...

Chris Koch: So the, I'll call it the front of the house.

Shanna Sether: Yes.

Chris Koch: Any part of that that is acceptable? If there was a screen porch for example, is that (unintelligible) is that considered a permitted obstruction?

Shanna Sether: If as proposed with the screened porch and the foyer and the new additions – all three pieces would require a variance.

Chris Koch: So the portion to the right is considered not part of the foyer? (Unintelligible) Okay.

Shanna Sether: So this drawing (unintelligible)

Chris Koch: Okay.

Matt Perry: Mr. Sandberg and then Mr. Nutt?

Dick Sandberg: Yeah, I'm going to withdraw my question.

Matt Perry: Okay, Mr. Nutt?

James Nutt: Thanks Chairman. So is it my understanding that if – what I'm going for here is if there are other design alternatives? So if we get rid of the screens on the porch that would be acceptable. And if the (unintelligible) permitted obstruction, and if the mudroom were shortened to the point it was behind the setback then we would be okay?

Shanna Sether: Yes, the whole design would comply with the Zoning Code and variances would not be required.

James Nutt: Thank you.

Matt Perry: Other questions of staff? Please let the record show that Mr. Manning has joined us. Alright. I think we're all set. Ms. Sether, thank you. Is the Applicant present? If you – would you like to testify? If you could approach the podium, state your name and address for the record please?

Cynthia Murtha: Okay, my name is Cynthia Murtha and what else am I supposed to state? I'm sorry.

Matt Perry: Your address please?

Cynthia Murtha: 2210 Sheridan Avenue South.

Matt Perry: Thank you.

Cynthia Murtha: Okay. We're hoping that we can get this approved because if we did go shorter on the mudroom then we're not able to expand the bedroom upstairs. Well our situation is we have a three bedroom house and we have three kids and the two kids

bedrooms are very small so the 15-year-old is sleeping in a top bunk right now and it's not impossible, but it's just uncomfortable and it's just – we should have done it three years ago when it was approved but we were stupid, and we didn't want to go into debt so then we saved money and now this whole room and everything's harder. So we're in essence asking for the same thing. The design's a little different. We're trying to keep it less expensive so the design is less everything, but it would look nice. If we did not go as far out on the mudroom then the upstairs bedroom – there's two kids bedrooms on the front of the house. In order to get the fourth bedroom we would have to create a stairway up to the attic, because the one there, the one that exists – it's one of those really steep ones, it's not within Code so you can't really use it and have it in Code so we have to create a hallway and a stairway. That takes away of one of the two kids bedrooms that are already super small off the front of the house. In fact, that bedroom is so small there is no closet in it. So to not be able to go out those extra two feet out the front really, we can't figure out a way to create the stairway and the hallway that would lead up to that extra bedroom in the attic and still have the bedroom big enough to put a bed and a dresser in. And we've had three different firms look at it. Waldenwood looked at it, now we have our current guy Brian, then we had the neighbor look at it and do a design a couple years ago too. So and everyone came up with you really need this much space in order to have two usable bedrooms with closets. Because like I said, the one does not have a closet right now. But this, you know, it's fine, you can fit a dresser and a bed. Are you understanding what I'm saying?

Matt Perry: Absolutely.

Cynthia Murtha: I'm talking fast and it's nerve wracking, I'm sorry, but. And the neighbors are all fine with it. Actually– did you see pictures of what the house looks like now? You saw that picture. We're not looking – people on the corner did this huge addition. It's this gigantic, I don't know if you know it, the Victorian – it's beautiful, but we're not looking for anything like that, we don't have that kind of money or time. We just want a modest looking house that fits in with the character. The neighbors have all seen it's not going to be anything crazy. It's going to look like it was there. It's not going to be modern or contemporary. We're really asking for that extra two feet so that we can get the mudroom and the small bedroom in the attic for the 15-year-old before she leaves the house. So that's really why it's important to keep it – that extra two feet. I mean we have three different sets of plans where they've tried working within the existing foot print. That would mean getting rid of the laundry room upstairs, cutting into our bedroom and then it just becomes an issue with the existing stairway and some of the – you could relocate that, then you're tearing the whole house apart and that kind of becomes impossible for us to swing a project that big. So that's what we have looked at so many other options. I'm a less is more – less is more. I want to do less. You know they were coming up with – we can make laundry room bigger. I don't want any of that. I just want an extra bedroom and a mudroom. And that extra bedroom if it's going to make one of the existing bedrooms so small that it's unusable it's against the purpose. So that's kind of why we're even spending time coming back here and you know, asking for you to consider it again.

Matt Perry: Okay. Any questions of Ms. Murtha? I don't see any.

Cynthia Murtha: Okay thanks very much.

Matt Perry: Anybody else like to speak in favor of this application? Yes sir, your name and address please?

Paul Satre: I'm Paul Satre, I also live at 2210 Sheridan Avenue South, Minneapolis, Minnesota. There is just a couple of additional points I'd like to make that are included in a separate packet that I handed out to all of you. There are some visual pictures so I believe that the staff starting from the front of that handout I'm going to be more - I believe it's the sixth page. There's a picture that has red lines that (unintelligible) are you at that page? This is a picture that shows the parallel line of sight where the addition would be. It confirms that the actual obstructions - so not including this porch, which I think we'd be open to discussing as far as it being open or screened, this red line represents the exact line parallel across the front of the house running south to north and where it would run into the neighbor's home. So I think one of the findings from staff was that with this particular addition our home would be closer to the street than any other home and based on this picture I'm not sure that we're in complete agreement with that. I think that it's also further illustrated by the second to the last page, it's an aerial photo and if you look from the house starting at the corner on the large burgundy colored (unintelligible) and look to the next home in, which is the second home in, which is that home that is one house to the north. We're the third house in. I think you can see how they align. And then the final point I guess that I would like to make, unless there's further questions about the information in the packet, is that I have worked with the City Planning group and we have gone back and forth a little bit on this established setback based on the surveys that we have. And what I have tried to outline in this very final diagram is measurements and a drawing from myself, actually, measuring the distance between the homes and the exact points, and comparing the established setback based on these lines that I have drawn compared to the work I had done with the City Planning group, it appears that there is a discrepancy roughly in the range of approximately 2 feet. So you can see the proposed addition that I drew on this particular diagram and that represents the entire foot print, but it doesn't accommodate for the foyer entry area being a permitted obstruction. And although I'm not completely certain, but maybe with validation of this it appears that this may be, if this is accurate, that it could be that the current plans would fit within the permitted setback, if that's the correct language. So those are the only points I wanted add to the previous points.

Matt Perry: Why do you think there is a discrepancy?

Paul Satre: I'm not sure. I think part of the discrepancy can be potentially from the surveys and the errors. What I did is I worked from the survey and the points on the survey. I worked from the points on the houses.

Matt Perry: Oh, I see.

Paul Satre: And my understanding, correct me if I'm wrong, is that the points for established setbacks are based on the points of the homes. Not surveys.

Matt Perry: So, if I may, I need clarification from staff on what - the famous string test rears its ugly head again. We get educated on this about every fourth meeting so let's go through this again if we could.

Shanna Sether: Staff will measure the string test, if you will, based on site plan. The site plans submitted by the Applicant and the architect this time around did not include the adjacent structures. What we did have was the survey and based on that information we did our best guess of the approximation where the structure was in relationship to the property lines. That being said, the Applicant has now provided an additional drawing showing that the required area for the variance is less substantial than what was originally thought, based on what was submitted by the architect. So I think what you have before you today, in the last page, are the Applicant's submitted document is a revised drawing and we did talk about whether or not it's approved what we would approve it to or deny to. But essentially what we would take for a building permit at the counter would be simply a site plan for an addition, and so with the site plan it's not required to have a survey. So we would have a drawing maybe similar to what you have before you today. And that would be verified on the field based on property (unintelligible) by the building.

Matt Perry: I see. There's questions all around. Mr. Nutt and then Mr. Koch and Mr. Sandberg do you have a question as well? I'm really just going to go in order because I was listening to Ms. Sether and I wasn't paying attention to who raised their hand first. Mr. Nutt?

James Nutt: Thanks. Let me go first here. So let's say even if we look at this new drawing given by Applicant, it says that to the corner of the building is 9 foot 4.

Shanna Sether: Correct.

James Nutt: But now the architectural plans this is still 9 foot 4 so even if this is different this addition is still not in compliance.

Shanna Sether: That's correct. A variance and I don't think the Applicant is arguing. A variance would be required for the proposed construction.

James Nutt: So worst case scenario or best case scenario is this is accurate.

Shanna Sether: It would just be less of a variance.

(Unintelligible – many talking at once)

Matt Perry: Great, Mr. Ditzler.

Matt Ditzler: Nope, nope.

Matt Perry: You got all three of these to get their questions answered. Great. Did anybody else have questions of Mr. Satre? Okay, Mr. Sandberg?

Dick Sandberg: I guess you understand from discussions with staff that we have to make our decision based on the fact that the circumstances of the property prevent you from putting into any reasonable use. Is there anything that you'd like to tell us about it that's preventing you from putting the property to use now the circumstances are of the property and the Zoning Code preventing any reasonable use of this property? Can you make a case for that?

Paul Satre: I believe I can. So I think there's two, if not three components that are worth considering in terms of reasonable use. One is that because of the elevations of the lot from the front to the back and the fact that we live on the back of the house is potentially because of the detached garage and the length that it is away from the home. We live out the front of our home. There are no closets as there are in many older homes. So with the family we have no closets whatsoever like in the front of the home so from the usability perspective I think in our opinion it is almost unusable. When you enter our home you have the living room serving as a closet as well as the adjacent room off to the right that serves as a quasi homework area for children and kids, and there are pictures that reflect of what that looks like in the pack that I handed you. So I think we consider that unusable space. The second component relates to the second floor bedroom that my wife Cindy outlined and the fact that it, as well, has no closet space because the closet is actually the attic stairway. And so it's part of the plan to add usable, or to make that space usable, the incorporation of a closet was proposed in those plans. However restricted in terms of the distance of the allowable addition out the front, that again constricts the size of the second floor bedroom to the point where we have to give up a closet or the functional use of the bedroom becomes unusable. Those are the two areas that are most greatly impacted in terms of usability or our position on why it's unusable.

Matt Perry: Any other questions of Mr. Satre? I think as Board Member Sandberg said (unintelligible) educated about this that has changed. This reasonable use and undue hardship in a recent court ruling. It's very different than it was.

Paul Satre: No legal opinion but I think it's still very unclear from my perspective. It's unclear because whatever it used to be called an undue hardship and now it's in some way stated that we have to be able to demonstrate whether or not the house is usable.

Matt Perry: I'm sure that there will be a lot of discussion about this in the coming years. And maybe in the coming year.

Paul Satre: I'm sure there will.

Matt Perry: The City's been, legal has given us guidance and it's pretty clear about what definition we have to use. I just want to make sure you're aware of that.

Paul Satre: Absolutely.

Matt Perry: Okay, great. Any other questions? Mr. Keobounpheng?

Souliyahn Keobounpheng: Thank you Chairman Perry. Mr. Satre what is beyond the, I see the house is cut off here. It's missing like maybe 25% of the house in the back here beyond the kitchen, is that just a really giant kitchen back there?

Paul Satre: I'm not sure which, if you could (unintelligible – several talking at once)

Matt Perry: Could you repeat the question?

Souliyahn Keobounpheng: The extent or the missing portion of the back of the house, what's the program back there?

Paul Satre: So looking at the picture so that the writing is right side up, what you see here is the kitchen and it would go approximately, I would say approximately 10 feet back from what you can visibly see here and directly to the west of the kitchen, directionally as it's oriented to the land, so towards the top of the page on your piece of paper, is a dining room table. To the left is a couch and a TV room. And it's all one large very great room essentially. It serves as a TV room and a dining room. And then just for clarification, beyond that is a deck and then after that deck is that 11 ½ foot drop-off within 10 feet.

Souliyahn Keobounpheng: Okay, thank you.

Matt Perry: Okay, any other questions? Anyone else to speak in favor of this application? I see no one. Is there anyone here to speak against? I see no one. Let's close the public hearing. Board comment? Mr. Finlayson.

John Finlayson: A mess. In terms of reasonable use, they say they've got three bedrooms upstairs, but from a legal point of view they've got two bedrooms because they've got no closet in one of them. And to have a two bedroom house with this square footage is just out of scale. It doesn't make any sense. And so what they're trying to do does make sense. They can't go out the back because it drops. I'm not coming to a conclusion but I'm offering information so that tells me that they're stuck. They probably have side setback issues so that can't go out the sides. That means they get to go out the front. It doesn't make any sense to me to have a house this big with two bedrooms, which is what they currently have. So I don't know. Somebody else can offer something else into this. At the moment that's my best effort.

Matt Perry: Alright. Thank you Mr. Finlayson. And just to refresh people's memory that Krummenacher decision sort of what it did was change the definition of "undue hardship" of what folks would like to do, that's how we used to (unintelligible) what they like to do as reasonable as now what can they do. That's the difference. Other Board comment? Please. Mr. Sandberg, then Mr. Ditzler.

Dick Sandberg: Yeah, I'll take a shot at it. I'm certainly very sympathetic to the Applicant here. It looks like a, what we (unintelligible) call a reasonable project and approve because of that but what I'm having difficulty, and I appreciate Mr. Finlayson's (unintelligible) I'm coming up with the difficulty that the property can't be put to reasonable use and it's been used as a single family house and a single family (unintelligible) for a number of years that it's not being used as a house and now I generally try to be liberal about these decisions but I'm struggling with it so I need more support, more than Mr. Finlayson gave me at this point.

Matt Perry: Thank you Mr. Sandberg and I appreciate your comments because I think as Mr. Finlayson's do echo sort of the internal struggle all of us have with this new court decision that we have to abide by as it relates to undue hardship. Mr. Ditzler?

Matt Ditzler: Thank you Chair Perry. I have to concur with Mr. Sandberg, since staff has found that the first three are not – I think we can disagree about point number three. I don't think this addition would alter the essential character of the neighborhood. I think that's – and it's always been a little subjective and I think the Applicant is actually given data to suggest that that is not the case, that it would not alter the essential character, but I think unfortunately, like many we're seeing, I think a year ago this would've flown through without an obstacles. Considering the charge and the instruction from the City Attorney's office I've not heard any testimony from the Applicant to refute points one and two of staff's conclusion. I agree with Mr. Finlayson's testimony as well, however it's not – I don't think it's enough to overturn them.

Matt Perry: Okay, thanks. Other Board comment? Mr. Koch.

Chris Koch: I'm not going to give up that easily. I think that the case can be made that for number two – it is unique in that that rear slope does not make it just – oh well you can't come up with one. Which I think number two we can come to. Number one I'm finding that taking Mr. Finalayson's argument a step further that it is a hardship to continue using that as a bedroom when it isn't. It's not a bedroom. I mean, it should be a three bedroom house, but I think a case can be made to say that it's reasonable and it's unreasonable to continue using it as a third bedroom and that two bedroom houses are common. So I think I mean I obviously need some help, but I think number one their concern may be a different lens we can try to argue for that it is unreasonable to use it as it currently is.

Matt Perry: Alright. Thank you Mr. Koch for those comments. Mr. Manning?

Bruce Manning: Mr. Chair before I speak I think you have entirely within your discretion to determine whether the Board will entertain comment from me due to my late arrival. I am familiar with the application, I read it and heard the remainder of Ms. Sether's explanations and have heard testimony (unintelligible) but I was tied up in court and I didn't get here on time, so I will leave that to your discretion.

Matt Perry: Sure, and I think for the reasons you just said that your participation is warranted and completely compliant with what we need to do here today.

Bruce Manning: I appreciate that Mr. Chair, thank you. I'm afraid that I have a question that relates to where the string test line gets – and that's (unintelligible) I'm going to try to (unintelligible) the case and I'm going to look at the survey that was submitted by the Applicant and then the drawing submitted by the Applicant, I think it's the northern line goes to the second of the things that jut out into the front yard at 2208, the one northern to (unintelligible) and my curiosity is twofold. One, why is that the case and two on the survey it looks like if I drew the line to the first thing that juttred out and the disturbed the line of sight which the string test purports to be concerned with, the amount of area behind the line which would be permissible to build in would increase, ultimately. If I draw that line in the same jutting out on the drawing the Applicant submitted I come to a different conclusion, and I'm feeling a little lost as to where the actual test is and what the amount of the variance that might be at issue is. Which then leads to question: if the variance is less than 50 square feet no matter what the shape of the obstruction beyond the string test line is, is it therefore permitted even if it's an oddly shaped triangle slice in an otherwise thing, as opposed to a more traditional (unintelligible).

Shanna Sether: All three very good questions. The first question is why do we draw the string test to the second projection vs. the first?

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Bruce Manning: The nearest corner of the second projection.

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Shanna Sether: Exactly. So the first projection, the southern most piece of the existing building at 2208 is actually an entry vestibule. An entry vestibule is a permitted obstruction, therefore staff will not use that corner for the purpose of the string test. Instead we go to the next projection which is an attached garage. Attached garage by virtue of being attached is part of the principle structure and is therefore the closest point to the street. So that is why we would draw the line from the closest corner to Sheridan at 2208 from the attached garage which is the northern most projection. I have the picture too if it's more helpful.

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Bruce Manning: I don't know that we need the picture (unintelligible)

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Shanna Sether: I'm trying to remember the second question – oh I answered the third question I might need you to ask the second question again. If the area within the required yard is greater than 50 square feet it actually doesn't matter. Permitted obstructions for entry vestibules have to be less than 50 square feet. The portion of the proposed construction that is within the required yard really is a two-story addition and therefore is not a permitted obstruction, so that would require a variance if it was 1/2 of a square foot or bigger.

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Bruce Manning: Because of its two-story nature.

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Shanna Sether: That just adds (unintelligible) to its function. So it's functioning as habitable space as a mudroom plus a bedroom and its not the entry point of the dwelling which is the foyer as you can see on the first floor.

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Bruce Manning: Okay, I think that answered my – the second question I think became irrelevant because the Applicants (unintelligible) has the line in different places but I think his line is closer to the second obstruction.

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Shanna Sether: It is. There is some discrepancy between plans and based on the survey and what the Applicant has drawn. Staff took a stab at drawing it as well. We understand that the two-story addition is somewhere between two to four feet within the required front yard.

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Bruce Manning: If I may continue. Does staff have that calculation of what the square footage that was (unintelligible) front yard setback.

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Shanna Sether: We did not do that calculation. However, based on the findings I didn't feel that this particular project (unintelligible) for findings for the variance anyway. But I might be able to do some quick math also.

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Bruce Manning: Thank you Ms. Sether.

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Matt Perry: Okay, and I'd like the record to show that we've lost Mr. Ditzler to another commitment.

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Bruce Manning: I think I'd like to make a comment on following my questions Mr. Chair.

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Matt Perry: Yes, please do Mr. Manning.

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Bruce Manning: One of the bases for my hostility to the string test is that I don't see from the goals of the string test the difference between a permitted front yard encroaching vestibule and a attached garage. Both of them theoretically have the event of blocking the clean line down the block and if the purpose of the string test is preserve that why you wouldn't count the vestibule but you will count some other obstruction doesn't make a lot of sense to me. The other issue that it strikes me a particularly painful in this case is the Applicant could build a contemporary completely out of style sloped glass two-story addition that all modern in this area that carefully stayed a millimeter behind the string test line and would provide them an adequate square footage. It would just give the building this ridiculous trapezoidal front and I suppose I would be inclined to say well that's the reason we (unintelligible) the property because if it's behind the setback. But what I've done is destroyed the architectural integrity of the home and the neighborhood in order to comply with the string test. And going metrically such a ridiculous addition adds a lot more disturbance to the home and to the area than (unintelligible) continuing that awkward trapezoid into proper square traditional porch. It's like feeling particularly hostile to the world today and what is considered for legal purposes to be a reasonable

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alternative is (unintelligible) the slope of the back yard suggested (unintelligible) impossible and I think that the side yard setback itself creates problems. So I hope that issue and that is why (unintelligible). The other question I have for the Board to consider is whether the addition of the Code requiring a closet for something to be considered a bedroom operate as a taking on this house, and it was built as a three bedroom home and (unintelligible) for the time it was built, when the Code was rewritten to say that bedrooms must have closets took – the government took this three bedroom home and made it a two bedroom home and in the context of the taking like that that in fact the definition of reasonable use of this home is as constructed is as a three bedroom home. And that when the Applicants lost, for legal purposes that bedroom didn't have a closet which wasn't needed at the time of construction considered a bedroom, whether in fact it's a reasonable use to say you know what, you can have that closet back. And that to have that closet back you in fact need to put this addition where they put it. That is a long and winded and nontraditional way of saying I think there's potential hardship here and I'd be interested in Board reaction to that.

Matt Perry: Well first, as you know, I don't want to debate the string test. And I won't entertain questions about that. My colleagues know, it is what it is and what happens behind if you don't need a variance there are other controls and mechanisms (unintelligible) City Code that control that. And that is outside our purview. It's what happens where you need a variance. So I think we need to confine our comments to that. So if they could do something that maybe we would like or we wouldn't like without a variance, that's not our business (unintelligible). Mr. Finlayson?

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John Finlayson: At feeble best I can respond to Mr. Manning in regard to the taking. Staff told us before the City Attorney considers that a taking (unintelligible) no use, but there is some use here. And it's more of a real estate market standard in terms of how to view it. Even though it is a modern design requirement for every municipality that a bedroom has to have a closet or it isn't a bedroom, but I'm pretty much running out of options.

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Matt Perry: Alright. I do want to acknowledge that again Mr. Manning's comments show sort of the struggle that we are all having with this (unintelligible) of a new definition of what undue hardship is. So for the Applicants you can see us struggling, what we've been (unintelligible) we've been struggling with this every time and it's clear by the comments here today, Mr. Manning, Mr. Sandberg and Mr. Finlayson and others that we do have difficulty with this just as the Applicants do. Any other Board comment? Mr. Finlayson?

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John Finlayson: I think we've kind of run it out. It pains me to do it, but I think must move staff recommendation.

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Matt Perry: There is a motion, is there a second?

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Dick Sandberg: I'll reluctantly second.

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Matt Perry: There is a motion and a second. Further discussion on the motion? Mr. Manning?

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Bruce Manning: I feel compelled in case my comments weren't hesitant enough for the state of the record to say that I wasn't making any (unintelligible) legal finding that there had been a taking of this home. I'm speculating whether or not this is a fruitful avenue for us to explore in terms of (unintelligible) for the sake of public record I wanted to make that clarification.

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Matt Perry: Thanks...

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Bruce Manning: I will say that the last six months now I have been reluctantly supporting staff in a number of cases, not because they don't do excellent work, but because we are really constrained in what we are able to do. Particularly following this case where the Applicant decided not to seek further debt (unintelligible) faulting the economy to take this project on (unintelligible) I will be supporting the motion, but quite glumly.

Matt Perry: Alright. We have motions and seconds and discussions with all sorts of emotional adjectives added to them. Any other comments or discussion? Alright will the clerk please call the roll?

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Clerk: Mr. Finalyson?

John Finlayson: Aye.

Clerk: Mr. Keobounpheng?

Souliyahn Keobounpheng: Aye.

Clerk: Mr. Koch?

Chris Koch: No.

Clerk: Mr. Manning:

Bruce Manning: Aye.

Clerk: Mr. Nutt?

James Nutt: Aye.

Clerk: Mr. Sandberg?

Dick Sandberg: Yes.

Clerk: The motion passes.

Matt Perry: Alright and that means that the request is denied and you can see staff about what your options are. Thanks for coming down. I appreciate your testimony.

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