



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

Date: October 25, 2007

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Board of Adjustment action denying a variance for property located at 4445 Garfield Avenue (BZZ-3772) by Nicholas Stessman and Antonia Dingman.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** a variance to reduce the required front yard setback to allow for a 212 sq. ft. patio and 8 ft. wide front stairs at 4445 Garfield Avenue in the R1A Single-Family District filed by Nicholas Stessman and Antonia Dingman.

Previous Directives: N/A

Prepared or Submitted by: Molly McCartney, Senior Planner, 612-673-5811

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

Presenters in Committee: Molly McCartney, 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: 11

Neighborhood Notification: The Kingfield Neighborhood Association was notified on September 6, 2007.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: On October 15, 2007, the applicant was sent a letter by Planning staff extending the decision period to no later than January 3, 2008.

Other: Not applicable.

Background/Supporting Information Attached: Nicholas Stessman and Antonia Dingman have filed an appeal of the decision of the Zoning Board of Adjustment denying the variance at 4445 Garfield Avenue. The Zoning Board of Adjustment voted 5-1 to approve the variances on September 27, 2007. The applicant's appeal statement is included in the staff report.

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-3772

Date: September 27, 2007

Applicant: Nicholas Stessman and Antonia Dingman

Address of Property: 4445 Garfield Avenue

Contact Person and Phone: Nicholas Stessman, (612) 823-3769

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

Presenter in Hearing: Aaron Hanauer, (612) 673-2494

Date Application Deemed Complete: September 5, 2007

Public Hearing: September 27, 2007

Appeal Period Expiration: October 9, 2007

End of 60 Day Decision Period: November 4, 2007

Ward: 11 **Neighborhood Organization:** Kingfield Neighborhood Association

Existing Zoning: R1A, Single-Family District

Proposed Use: 212 sq. ft. patio and 8 ft. wide front stairs in the front yard

Proposed Variance: A variance to reduce the required front yard setback to allow for a 212 sq. ft. patio and 8 ft. wide front stairs at 4445 Garfield Avenue in the R1A Single-family District.

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

Background: The subject property is located on an interior lot that is approximately 55 ft. by 131 ft. (7,205 sq. ft.). The applicants removed an open deck at the front of the house and installed an in-ground patio, measuring 212 sq. ft. and a new stairs and landing, in which the stairs measured 8 ft wide. The applicants did not obtain building permits for the stairs and were issued a citation (RFS #: 07-0586656) by Inspections staff in Regulatory Services Division. The applicants are now applying for a variance to be in compliance with the front yard setback.

The patio and stairs are located in the required front yard setback which is 28 ft. from the front property line. This setback is greater than the R1A District setback of 20 ft. because the adjacent residential structures are set further back. The subject home is in the line with the two adjacent homes. The patio is located on the south side of the front yard and projects 15 ft. in front of the house. The edge of the patio is approximately 14 ft. to the front property line. The stairs and landing are at the

north side of the front of the house. The patio consists of brick pavers and concrete and stairs and landing is made of stone material.

The front yard of the home has a significant elevation change from the sidewalk. The home is approximately 8 ft. higher than the sidewalk grade. The patio is entirely on the elevated level of the front yard and the patio surface is not highly visible from the public sidewalk or street. This elevation change is similar for the adjacent homes as well.

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 applicants have requested a variance to reduce the front yard setback to allow for a patio and larger stairs in front of a single-family dwelling. The applicants state that the style of the stairs and landing allow people to approach at two directions and that the allowed 36 sq. ft. would not allow this style of stair and landing design. They also state the allowed 50 sq. ft. for a patio in as a permitted obstruction in the front yard setback is not large enough to allow for room to physically enjoy the space. Staff believes the property can be put to reasonable use without the size of the stairs, landing or patio in the front yard and strict adherence to the Zoning Ordinance does not cause undue hardship.

- 2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

The circumstance upon which the setback variance is requested is not unique to the parcel of land. The lot is 50 feet wide and has an area of 7,205 square feet, which is wider and larger than a standard lot in the R2B District. This size of property would allow for a patio to the side or rear of the house. The applicants have stated that because of the grade changes in the front yard, the visual impact of the patio from the public right of way will be minimal.

- 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.**

The intent of the ordinance as it relates to the front yard setback is to ensure uniformity of open space in the front of homes. This uniformity often adds to the shared character of residential neighborhoods. The ordinance does allow for open front porches to be constructed in the front yard setback, with limitations on the depth of the porch.

The applicants have stated their desire to add attractive improvements to their front yard that are respectful of the architecture of the home. The home style is a bungalow that has an

enclosed entrance porch. To their credit, the applicants removed an open deck that was constructed in 1984 (*B-528521*) which is also not a permitted obstruction, but received a building permit nonetheless. The stairs and patio at 4445 Garfield Avenue are of durable, quality materials and have a notable aesthetic quality.

Staff believes the patio will alter the essential character of the surrounding neighborhood. The Zoning Ordinance limits the size of a patio in the front yard to minimize the impact of the activity on neighbors that occurs on a patio and to minimize the amount of materials (furniture, grills, etc) that are stored or used on a patio that result in clutter.

Staff recognizes that there is neighborhood support of the patio and the use, as outlined by the applicant, will not be injurious to the use or enjoyment of the other property. However, the use of the patio cannot be controlled by the Zoning Ordinance and despite the current intentions of the property owners the future use of the patio could resemble that of traditional patios and alter the essential character of the neighborhood and be injurious to the enjoyment of neighboring properties.

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

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

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the variance to reduce the required front yard setback to allow for a 212 sq. ft. patio and 8 ft. wide front stairs at 4445 Garfield Avenue in the R1A Single-family District.

Board of Adjustment Hearing Testimony and Actions

Thursday, September 27, 2007
4:30 p.m., Room 317 City Hall

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

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

3. **4445 Garfield Avenue (BZZ-3772, Ward 11):**

Nicholas Stessman and Antonia Dingman have filed for a variance to reduce the required front yard setback to allow for a 212 sq. ft. patio and 8 ft. wide front stairs at 4445 Garfield Avenue in the R1A Single-Family District.

Mr. Ditzler moved and Mr. Finlayson seconded the motion to adopt staff recommendation and **deny** the variance to reduce the required front yard setback to allow for a 212 sq. ft. patio and 8 ft. wide front stairs at 4445 Garfield Avenue in the R1A Single-family District.

Roll Call Vote:

Yeas: Ditzler, Finlayson, Lasky, Luepke Pier and Perry

Nays: Rand

Recused: None

Absent: None

TESTIMONY

Gates: Thank you Mr. Hanauer. Are there questions for staff?

Mr. Finlayson: Yes, Mr. Hanauer, is there adequate room in the rear yard for a deck or a patio or something of that nature?

Mr. Hanauer (staff): I believe so, the typography, Board Member Finlayson, I believe the typography and other issues were not a factor in this in not allowing this patio in the back, so I will leave it to the applicants to confirm that.

Mr. Finlayson: Thank you.

Mr. Gates: Further questions? Mr. Hanauer you said that there was ... and the photos show that there was a front deck there that was granted a permit apparently in error? Is that correct? That it was non-conforming to the zoning code?

Mr. Hanauer (staff): Chair Gates, that correct that the building permit was issued, but it did not, either ... I don't know what happened in 1984 when it was built, but it is not a permitted obstruction.

Mr. Gates: And do we know how far forward from the house that deck projected?

Mr. Hanauer (staff): I do not know off the top of my head.

Mr. Gates: All right. Okay, thank you very much. Is the applicant here and wish to speak?

Mr. Stessman: my name is Nick Stessman, I'm here to represent myself and my wife, Antonia Dingman, regarding our application for a variance at 4445 Garfield Avenue South, to reduce the required front yard setback to allow for a 212 sq. ft. patio and 8 foot wide stairs as mentioned previously. I'd like to begin by acknowledging our mistake and not obtaining a permit for our landscaping project, including the patio and the front stoop. It was not our intention to evade the inspections process; in fact we have pulled numerous permits on our property for various home improvements, including a basement renovation. So I'd like to start off by speaking to some of the findings in the Planning Division's report on this variance application. The Planning Division has expressed a few concerns regarding our application for a variance. Chiefly their main concerns are maintaining uniformity of open space in front of homes, preserving the essential character of the neighborhood and discouraging clutter that can be associated with patio's of this sort. I'd like to address some of these concerns. We feel there several mitigating circumstances for these concerns, one of which is as you can see from the photos the minimal visual impact of the patio. In fact, we have had various neighbors, or people passing by on the street that have complimented us on our landscaping and expressed astonishment when they learned that we've applied for a variance, because they frankly can't see the patio from their vantage point. Another mitigating circumstance in our case is my wife and I plan on...intend to maintain long term residency in our neighborhood and as such, our intent is to keep or maintain a very clean, uncluttered appearance to the front patio. Lastly, I will speak a bit to one of the issues that was brought up earlier. The back deck, we do have a back deck and we feel that does actually provide some mitigation against the concerns in regards to clutter. The back deck is an area that we can enjoy each other's company and the company of guests and do so in an area that is more private. This is an area where we would have our grills, patio furniture and the like, that would normally...could possible be considered clutter in the sense of the zoning divisions concerns. So, another distinction I would like to make in mentioning the back deck is the intended use of the back deck and distinguishing the intended use of the back deck from the intended use of the front patio. The back deck as I have mentioned is an area that we use more for a private setting. The intent of the front patio was to add an attractive improvement to our home that provides a welcoming environment for people entering our home, and more importantly providing an environment that we can connect with our neighbors. My wife and I have been considered ourselves very fortunate to have found ourselves in the 4400 block of Garfield Avenue South. We've, over the nine years that we have lived there, have enjoyed a very friendly and interactive group of neighbors. As I mentioned the intent of our patio was to allow ourselves to provide more interaction with our neighbors. In fact in the short time that we had our patio, we've found ourselves in a position to ... there have been several cases where people would walk ... neighbors have walked by and stopped by to say hello, have a conversation, so again, our intent there is not to create any kind of disruption to the community. In fact, we believe this addition has actually helped to enhance the neighborhood. As was mentioned before, we've had numerous letters of support and I'd like to correct Aaron's previous statement regarding the letters, there has been a letter of support submitted from our neighbor to the south. I don't remember the exact address, so we have a total of six letters that have been submitted on our behalf.

Mr. Gates: Mr. Stessman, if the board is to grant a variance against the recommendation of staff, we're required to have findings that would include hardship associated with the property itself, and I wonder if you have any comments to that affect. Is there anything about this site, the property, the house that you acquired when you bought it that would constitute hardship in this respect?

Mr. Stessman: The only hardship I would mention in that context is just our ability to enjoy that outdoor space. Frankly when we had the deck on the front, we never used it. It was an area that had a very obstructed feel to it.

Antonia Dingman: Can I interject please, I am his wife, Antonia Dingman, the hill is something that separates us very much from the street level and when the previous deck that was there that we removed that was there when we purchased the home, you could not communicate with people who were walking by on the sidewalk, and I would sit literally on the other steps to talk to people, and that created a place where I was just sitting on steps, I wasn't comfortable with people passing by and so the idea of the patio was to provide a place that we could sit in front of our home and talk to the neighbors because of the slope of the big hill that we have in the front. Does that make sense?

Mr. Gates: Okay, thank you.

Mr. Stessman: The only other thing that I'd like to add is that there is the additional benefit of having to use the phrase "eyes in the street where, essentially there is an increased presence to discourage crime, that sort of thing.

Mr. Gates: All right, any questions for the applicant?

Mr. Perry: Just curious, if you could help us out on...maybe it's in the report and I just missed it, the size of the previous deck that was there in relation to the patio that you have today.

Mr. Stessman: Yes, the previous deck that was installed projected approximately 4 – 4 ½ feet from the front of the house. So again, a fairly restrictive area in that sense.

Mr. Perry: Okay, thank you. Thank you Mr. Chair.

Mr. Gates: Any further questions? No, thank you very much. Is there anyone else here to speak in favor of the application? And is there anyone here to speak in opposition to the application? I see no one. We'll close the public hearing and take Board comment. Mr. Ditzler.

Mr. Ditzler: I was talking to Board Member Gates earlier; I looked up the code on this one because I was confused. We seem to see a lot of these. How big can you build in the front yard? And while it is restricted to 50 sq ft which seems very small, but

Mr. Gates: I believe it's 36 for a patio.

Mr. Ditzler: Is it 36 not 50.

Mr. Gates: 50 is for a stoop if I'm not mistaken.

Mr. Ditzler: "balcony's, decks, and patios not exceeding 50 sq. ft. ... 535.280. To me this is really, really cut and dry. It is a beautiful improvement to the home, but it is not a gray area of zoning, it is actually specifically forbidden by zoning. I don't think there is any interpretation here that we need to look into. I don't think there are any other measurements that we need to do, according to the zoning code, this ... whether we agree it to be esthetically pleasing or not, is specifically prohibited by the zoning code. I think the fact that it is esthetically pleasing, maybe that it is not quite visible from the street, neighbor support, all that stuff is not really relevant. The fact that if this sort of improvement that citizens want to start seeing on their blocks, they need

to talk to their city council members about it, about changing the policy. We've not here to enact policy, we're here to decide whether or not they deserve a variance based on hardship, which to me according to the size of the lot. There is none. In order for us to grant the variance, we have to find that all four findings are true, not three out of four, all four. And number two is that the applicant has created this variance on their own, through their own actions. Whether or not there is hardship or not, whether it's not esthetically pleasing, that alone should kill the variance...giving it to them, so while I think it is esthetically pleasing, the fact that they didn't pull a permit in which to do it. I think that it is clear and that if they want to receive special exception from their council member, they have means to do that outside of this body. So, I'm going to vote for staff recommendation and that's my movement.

Mr. Gates: Is there a motion in that?

Mr. Ditzler: Yes. I move to adopt staff recommendations.

Mr. Finlayson: Second.

Mr. Gates: Further comment?

Mr. Perry: I just want to, if I could, ask the staff again, I just want to get clarity on the size, what was there before vs. what is there today.

Mr. Hanauer (staff): Board Member Perry, I don't have those specific measurements in the staff report that I was provided or in discussions with Molly, I did not see that, and I think the applicant stated that it was 4 ½ feet deep and it extended the length of the front of the structure... 4 ½ x 20.

Mr. Perry: Okay, that was 4 ½ x 20, and today it is 212 sq. ft.

Mr. Hanauer (staff): So 90 sq ft.

Mr. Perry: Thank you.

Mr. Gates: Further comment, we have a motion and a second to approve staff recommendation. Yes, Mr. Perry.

Mr. Perry: Yes, as the chair mentioned, we really are in a position where we have to find hardship. The code restricts us in many ways, in fact if you have an economic hardship, we can't even take that into account, so we are really, in this particular situation, sort of in a bind, because we have, what many of us would acknowledge as an appealing addition to the neighborhood and I think all of us are supportive of this notion of a front porch neighborhood, so, I think there may be a lot of agreement, but I'm going to have to agree with my colleagues, Mr. Ditzler and Mr. Finlayson and support this motion, because I can't see where there is something unique or a hardship at least for this body to consider.

Mr. Gates: Thank you Mr. Perry. Ms. Lasky.

Ms. Lasky: Usually I'm notoriously liberal on these, but the applicant did not pull a permit, so it lays them bare for ... it's just too large, and had they come for a variance prior to the construction, I would have been amenable to something. In light of no permit pulled I can not approve this.

Mr. Gates: Okay, Mr. Rand.

Mr. Rand: I'll oppose because I simply refuse to accept the fact that ordinances and so on should supersede positive contribution to the quality of life for people in neighborhoods and I think this is a very fine addition.

Mr. Gates: All right, thank you Mr. Rand. Further comment? None. We have a motion and a second to approve staff recommendation and deny the variance. Please call the roll.

Ditzler: Yes

Finlayson: Yes

Lasky: Yes

Luepke Pier: Yes

Perry: Yes

Rand: No

Gates: That motion carries. It's denied, you can talk to staff about your options at this point.