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

Date: December 18, 2008

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Zoning Board of Adjustment action denying a variance for property located at 3329 22rd Ave S (BZZ-4230) by Cheri Kay Getz.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** a variance to further reduce the required front yard setback from 10 ft. 6 in. to 1 ft. to allow for an approximately 9 ft. 6 in. by 27 ft. 8 in. deck addition to an existing single family dwelling located at 3329 33rd Avenue South in the R1A Single Family District.

Previous Directives: N/A

Prepared or Submitted by: Aly Pennucci, City Planner, 612-673-5354

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

Presenters in Committee: Aly Pennucci, City Planner

Financial Impact (Check those that apply)
_x_ 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: 9
Neighborhood Notification: The Longfellow Community Council was notified on October 30, 2008.
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 November 25, 2008, the applicant was sent a letter by Planning staff extending the decision period to no later than February 3, 2008.
Other: Not applicable.

Background/Supporting Information Attached: Cheri Kay Getz has filed an appeal of the decision of the Zoning Board of Adjustment denying the variance to further reduce the required front yard setback from 10 ft. 6 in. to 1 ft. to allow for an approximately 9 ft. 6 in. by 27 ft. 8 in. deck addition to an existing single family dwelling at 3329 33rd Ave S.

The Zoning Board of Adjustment voted 5-2 to deny the variance on November 20, 2008. The applicant filed an appeal on November 25, 2008. The appellant's statement is included in the attached supporting material.

Attachments:

a) Appellant statement of appeal
b) Additional statement and photographs submitted by the Appellant in the appeal package
c) November 20, 2008 ZBOA actions and minutes
d) November 20, 2008 CPED-staff report with attachments

Board of Adjustment
Hearing Testimony and Actions

Thursday, November 20th, 2008
4:30 p.m., **Room 317** City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Mr. Bruce Manning, Mr. Matt Perry, and Mr. Dick Sandberg

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

4. **3329 33rd Avenue South (BZZ-4230, Ward 9)*:***
   Robert Boals, on behalf of Cheri Getz, has applied for a variance to further reduce the required front yard setback from 10 ft. 6 in. to 1 ft. to allow for an approximately 9 ft. 6 in. by 27 ft. 8 in. deck addition to an existing single family dwelling located at 3329 33rd Avenue South in the R1A Single Family District. This deck is an addition to an existing handicap entrance landing.

   CPED Department Planning Division Recommendation by Ms. Pennucci:
   Mr. Perry moved and Mr. Koch seconded the motion to adopt staff recommendation and **deny** the variance to further reduce the required front yard setback from 10 ft. 6 in. to 1 ft. to allow for an approximately 9 ft. 6 in. by 27 ft. 8 in. deck addition to an existing single family dwelling located at 3329 33rd Avenue South in the R1A Single Family District.
   Roll Call Vote:
   Yeas: Ditzler, Finlayson, Koch, Perry and Sandberg
   Nays: Lasky and Manning
   Recused:
   Absent:

TESTIMONY

Mr. Gates: Thank you Ms. Pennucci. Do we have further questions for staff?

Mr. Koch: Are there any other special situations for handicapped entrances?

Ms. Pennucci (staff): Well, as I stated there are accommodations, we do permit handicapped ramps and entrance landings in the required yard, so …there are provisions in the code to allow entering and exiting of the house. There isn't anything in the code specifically related to an extension of that landing into a deck.

Mr. Koch: Thank you.

Mr. Gates: Further questions?

Mr. Perry: Thank you Board Member Koch, that got me thinking about something else. The porch that we see, maybe I read that…I just missed it in the packet rather, the porch that we see before the deck, and I guess it is still there after the deck was put on…is that entire length of that is that a porch, and is it a three season porch, do you know?

Ms. Pennucci (staff): The enclosed? It appears to be an enclosed four season porch. We would include that in the habitable portion of the dwelling.

Mr. Perry: And it runs the entire length of the front of the home?

Ms. Pennucci (staff): Right … right here it juts in a little.

Mr. Perry: I have one last dimension question. I think I just missed a page here again. Can you tell me how deep that four season porch is?

Ms. Pennucci (staff): Sure, at this section here, it's nine-and-a-half feet.

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

Mr. Gates: Ms. Pennucci, you were just pointing to the deck right? He was asking about the four season porch.

Ms. Pennucci (staff): Oh, excuse me, this?

Mr. Gates: Yeah, that portion there. Is that nine-and-a-half feet also?

Ms. Pennucci (staff): I don't have those measurements in front of me. I think the entire length of the house is 45 feet. Looking at the site plan without a scale, it is hard to say exactly, but it is … I would say it is closer to eight feet. It looks slightly less then the deck.

Mr. Perry: Maybe the applicant knows.

Mr. Gates: Thank you

Mr. Ditzler: Could you speak a little bit to … I know you mentioned that the current code… currently allows for obstruction in the front yard for handicap exits. Could you just repeat what does the code currently allow and do you know the old ramp, before it was redone, you said it was not in compliance, it was in excess of what the code allows and what percentage was it over before the alterations were done?

Ms. Pennucci (staff): Sure, so the existing code allows a 36 square foot landing and the existing handicap landing was 64 square feet in area, and so, over by 28 square feet.

Mr. Ditzler: And then, does the code speak at all to obviously access to that landing as far as ramps… a ramp or size or length or anything like that, or where it could be?

Ms. Pennucci (staff): Well, they … I can't say that I can speak directly to what the code says specifically about the ramp, I do know that handicap ramps and landings are permitted obstructions and what we specifically regulate and that section of the code in the permitted obstructions it is just the size of the landing. Because ramps sometimes … the size and length and things like that depend to some extent on grade, there's codes requirement about the incline.

Mr. Ditzler: Okay, so the 64 square feet was the landing … it did not take into account any square footage of the ramp itself?

Ms. Pennucci (staff): Right.

Mr. Ditzler: Okay. Thank you much.

Mr. Gates: Any further questions? Thank you Ms. Pennucci. Is the applicant here? Good evening, would you care to speak?

Cheri Getz: My name is Cheri Getz; I live at 3329 33rd Avenue South. I guess the biggest reason that I needed to do this was one, the original ramp and the small deck that was on top of it was built when my

father was dying in 2001. He is now deceased, but over the years, the ramp is deteriorating, and so was the deck, and as of two years ago, my mother now is handicapped and as you can see in that picture, that's passed around the old deck was just too narrow for her to come out the front door … for her wheelchair safely, because the stairs from the old deck was right off the door. So, she had to make such a sharp turn… she wasn't able to make that turn, so therefore I wanted to make that deck longer, and all we did was add four more feet for safety reasons. Because I had to literally take the cart out by hand and walk a 300 lb woman out a door with a slight ramp to it and our front porch is only seven and a half feet deep … the original porch. So that's seven and a half feet, because I had to measure all that out so we could get a ramp from our front door out to the end of the deck…end of our existing porch. Because two years ago the back tree of our neighbor had Dutch elm disease and had to be ripped down, we have absolutely no shade in the back yard for my mom to come out and sit outside. Because of her illnesses, she can not be in the direct sun light. So therefore, I thought, we have this huge shade tree … just add a little bit more to the front of the deck, so she can drive out safely, and then make it the width of the house so my mother can come out and enjoy the sun shine as best she could. So this was the whole reasoning behind the new deck and because the other one was a free floating deck and did not need any permits I assumed that just adding on to it was the same, so, I apologize…that was my mistake, so this was the reasoning behind extending that deck to make my mother's life a little bit better so she could come out on her own and enjoy that deck and to make it safe for her to come out on her own without me having to walk her out. Where she could possible have a falling situation trying to get from our front door out onto that small deck and down to our car. So this was the whole reasoning behind extending this deck.

Mr. Gates: All right, thank you Ms. Getz. Questions of the applicant?

Mr. Perry: I think you answered one of my questions, that staff was unsure of which was the depth of your four season porch…is it a four season porch?

Ms. Getz: No it is not, basically summer and fall, because there is actually no insulation and it is all screened windows.

Mr. Perry: And the depth of it?

Ms. Getz: It is about seven and a half feet.

Mr. Perry: You mentioned that you extended the deck out because of the ability for your mother's wheel chair to navigate …

Ms. Getz: Exactly.

Mr. Perry: towards the ramp.

Ms. Getz: Right.

Mr. Perry: Can you explain again why you needed to extend it the length of the front of the house?

Ms. Getz: When you saw the picture of my mother out there, she had basically six inches from the door and six inches from where the staircase was on the old deck for her large wheel chair to get out the door and that is a huge safety issue for my mother … because she didn't feel comfortable enough to come out the door. She thought she was going to go right down the stairs, so she would never drive her chair out. That's why I wanted to extend it four more feet, now she is able to come out the door on her own and feels comfortable doing so.

Mr. Perry: I don't think I asked my question very well, I'm sorry. The extension I was speaking of was going down the front of the home…

Ms. Getz: Oh, the width of the home…

Mr. Perry: Yes. Why that was necessary. I understand what you are saying about your mother's ability to navigate…

Ms. Getz: It's basically for her quality of life. Because she…we certainly could come out the ramp, but she would be sitting out in the sunshine and she was never able to do anything with the family because she couldn't stay in that sunshine. It would…one, she is allergic to the sun, and she breaks out, so, rather than doing that I thought if we made it the width of the house, we could put a small table and chair set out there, she was actually able to enjoy a family outing with us rather than her having to go in and going in and out of the house for us to do anything as a family outside. So it was just for a quality of life.

Mr. Perry: Okay, thanks, I have one final question. I know there is no shade in the back, but when there was shade in the back, did you mom go out in the back yard at all?

Ms. Getz: We had picnics all the time.

Mr. Perry: So, it's a question of shade … not a question of access.

Ms. Getz: Right, it is a question of just her quality of life. Being able to enjoy being out with the family and not having to go in and it's just to help her quality of life for as long as I have her.

Mr. Perry: And you think that she could…if there were shade, she could still go back there. It's not a question of access.

Ms. Getz: Oh, yeah…yeah.

Mr. Perry: Thanks very much. Thank you Mr. Chair.

Mr. Gates: Is there anyone else here to speak in favor of the application? I see no one. Anyone here to speak in opposition? I see no one. Let's close the public hearing on this item and take comment from the Board.

Mr. Perry: I will make a comment just to start things off. My first inclination is that while it sounds like the applicant is doing her upmost to make for good quality of life situation for their mom, which is wonderful…when we look at the code, we need to find something that would in one instance not make the property … not have the applicant be able to use the property in a reasonable way, and I think because there is access to the back and there are obviously ways to provide shade in the back, it does not make the property unusable if the variance were not to be granted … except for the extension for the ability to maneuver the wheel chair to the ramp in a safe manner. So, I'm not making a motion, I'm just making those comments.

Mr. Koch: I sure would love to say yes, this is an isolated incident where this is really important for the mother's quality of life and in this case it is, but the problem I have is we can't throw a condition on there saying okay, I'm sorry once she passes, then that has to come down. That's just not … that's not what we do. Unfortunately, I couldn't in good faith say yeah, we can do this…let this stand and then everybody else on that block could do the same thing and I couldn't … I couldn't say sorry, it doesn't apply to you. I don't…I mean, I want her to have this, and I think that part of it can, but extending that all the way down the front of the house is … it's just a bad precedent to let go. I don't know … I'm just talking out loud here, but…

Ms. Lasky: I'm a big advocate of ADA, but I'm not a big advocate of putting additions right up to the sidewalk, so I'm trying to find some kind of compromise, because we're going to all be aging and looking for some kind of quality of life. Having had variances granted myself for an ADA request, I'm trying to find a way maybe the Board could find a way for some compromise, because I don't see removing this as a good solution just because she can get to the back and find someway to create shade. I don't see that as being a fair or good solution. If we were going to say how would you design this so it would be more amendable to being granted from scratch, I could grant this, but with a somewhat different design.

Mr. Manning: It seems to me that 36 square feet, which is apparently the permitted turn around, space for a wheel chair is awful parsimonious, especially with a door that opens into that space. 64 square feet seems to be also unsuitable for a woman of this size in a wheel chair of that complexity. So, I'm … I'd have been inclined, I am inclined to see no problem with the additional turn around space, in other words,

that portion of the new deck which doesn't extend in front of the enclosed two season porch. That portion of the deck which …

Mr. Gates: Which is south of the stairs?

Mr. Manning: Which is south of the stair and which is also west…and so, the new parts to the west and to the south certainly seem entirely reasonable to me. I found the photo on I2, which unfortunately wasn't in our packet but was shared, to be very compelling evidence of a unique circumstance of a hardship. I should also say that I have never, and I've only been on the Board a year, but I have never seen such a wide spread show of support from the people who live in and around this property. The pink sheet that Ms. Pennucci put up is normally a black and white sheet, it just happened to be colored pink here, because the neighbors who live in this area are fine with this deck which is already built.

Mr. Ditzler: It reminds me a little bit of the deck that we had in Northeast, which was also a handicap accessible problem. I believe it was off of one of the parkways up there … Mr. Perry is shaking his head which leads me to believe that I haven't imagined it in my head for my own amusement, so that's a good start. I'm really struggling with this one, because if feel a little bit like the bad guy, because I can not find… I can not find a reason to grant it. Because it is already built and because permits weren't used … which kind of irks me just kind of in general, being a property renovator myself, that when property owners don't pull permits, it bothers me even though it's not really…shouldn't weigh in the matter, but, the reason for shade…the fact that there is a three season porch on the front already, that she already does have space to enjoy in the front kind of weighs into it. When I think back to the one in northeast Minneapolis, this was a side yard application, there was no access to the side yard at all, I do agree with Mr. Manning that it seems that the code allows for 36 square feet and I have no idea if that is sufficient, it doesn't seem sufficient. I guess I couldn't really say whether 64 square feet is sufficient. That really doesn't seem like enough to me either, but I don't … I don't see how…I don't think that's all that was done here. I think that the fact that the deck was extended down the length of the house… and the problem that I have is that it is so close to the front yard property line. I think that when we talked about the house in Northeast, one of our major topics of discussion was who is going to own this house in the future. Whose going to own the neighboring houses in the future and we decided to scale that back because while it was intended for the current applicants' use … we were concerned about the future impact of that and that's what I'm kind of struggling with here, is that I do want there to be enough space for this woman to come out of this house and turn around and go…but there were a lot of other alternatives to be able to get her outside and enjoy the outside without having done what they've done, with out impacting the front property line the people are going to be walking down the street, the future owners of this property and the neighboring properties. As it sits right …right here when I'm looking at it I would not grant this variance. I would support the staff recommendation on this as it sits right now, and I am not in favor of coming up with a design alternative, because I do not feel educated enough to know how much is enough space. I haven't seen any data or measurements from the applicant, or from staff as to how much space is enough space to safely get out and turn around and come down, and I don't want to speculate as to what that would be. I think that somebody else wants to do that job and present that to me before I can weigh in on that, so.

Mr. Finlayson: I concur, I can't grant this, it's too much the way it is presently configured. Like Mr. Ditzler, I'm loath to turn to design, let somebody who does it for a living give them a design, let them present it to staff … see if they can get a variance for that, but I can't grant this.

Mr. Gates: We have heard a number of opinions, no motion yet.

Mr. Perry: I will make a motion, Mr. Chair. Mr. Ditzler has convinced me that the motion that I was going to make which would be a modified version of what was going to be denied ... I will not make, because I too have no idea what would be right … what measurements would be, so I will move to adopt staff finding and deny the variance and I will say as I think everybody has said who has spoken, that it is not something we do lightly or with any enjoyment given the circumstances.

Mr. Gates: We have a motion.

Mr. Finlayson: Second.

Mr. Gates: Comment?

Mr. Finlayson: I hear none.

Mr. Gates: We have a motion to approve the staff recommendation and deny the variance. Please call the roll.

Ditzler: Yes
Finlayson: Yes
Koch: Yes
Lasky: No
Manning: No
Perry: Yes
Sandberg: Yes

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-4230

Date: November 20, 2008

Applicant: Robert Boals, on behalf of Cheri Getz

Address of Property: 3329 33rd Ave South

Contact Person and Phone: Robert Boals, 612-237-8832

Planning Staff and Phone: Aly Pennucci, 612-673-5342

Date Application Deemed Complete: October 15, 2008

Publication Date: November 14, 2008

Hearing Date: November 20, 2008

Appeal Period Expiration: December 1, 2008

End of 60 Day Decision Period: December 2, 2008

Ward: 9 **Neighborhood Organizations:** Longfellow Community Council

Existing Zoning: R1A Single-family District

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

Proposed Variance: The applicant is seeking a variance to further reduce the required front yard setback from 10 ft. 6 in. to 1 ft. to allow for an approximately 9 ft. 6 in. by 27 ft. 8 in. deck addition to an existing single family dwelling located at 3329 33rd Avenue South in the R1A Single Family District. This deck is an addition to an existing handicap entrance landing.

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

Background: The subject property is located on an interior lot that is approximately 42 ft. by 121 ft. (5922 sq. ft.) and consists of an existing single family dwelling, built in 1903, a detached garage, a handicap ramp to the side of the existing dwelling and a deck (approximately 183 sq. ft.) to the front of the dwelling. The applicant constructed the front deck without obtaining a building permit. The applicant's representative, who is the contractor for this project, believed that a building permit was not necessary because the deck is less than 30 in. tall and is not physically attached to the dwelling. The City of Minneapolis does not require a building permit for a deck if it meets the previously described conditions. Any structure that is part of a required entrance or exit is considered part of the dwelling and does require a permit. In this situation the deck is part of the main entrance/exit and does require a building permit.

The existing home, without the new front deck addition, is set back 10 ft. 6 in. from the property line and is already in the required front yard setback (in the R1A district the required front yard setback is 20 ft.). The existing handicap entrance landing is also in the required front yard. A handicap entrance landing is a permitted obstruction in the required yard if the landing does not exceed 36 sq. ft. The existing

handicap entrance landing is 64 square feet and exceeds this requirement but existed prior to the adoption of the current code and can be replaced without a variance if it is not expanded in anyway. The deck addition to the existing handicap ramp and entrance landing extends the width of the home and projects 9 ft. 6 in. into the required front yard set back, reducing the front yard setback to 1 ft (see appendix H for photos of the original handicap ramp and entrance landing and photos of the new deck addition).

In the R1A single-family district decks not exceeding 50 sq. ft. in area and not projecting more than 4 ft. into the required yard are permitted obstructions. Because the existing home already projects 9 ft. 6 in. into the required front yard and due to the size of the deck addition in question, this is not a permitted obstruction.

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 seeking a variance to further reduce the required front yard setback from 10 ft. 6 in. to 1 ft. to allow for an approximately 9 ft. 6 in. by 27 ft. 8 in. deck addition to an existing single family dwelling located at 3329 33rd Avenue South in the R1A Single Family District. This deck is an addition to an existing handicap entrance landing. The applicant states that the extension to the existing handicap landing is necessary for her disabled Mother, who she shares the home with, to have the ability to exit the house independently and to enjoy the front yard space. The existing home includes an enclosed front porch that already extends into the required yard. Strict adherence to the regulations allows for a handicap ramp and does not cause undue hardship. Staff believes that the existing enclosed front porch and handicap ramp and landing allows for 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.**

   The circumstance upon which the setback variance is requested is not unique to the parcel of land. The existing single family home includes an enclosed front porch that extends 9 ft. 6 in. into the required yard. The applicant states that the extension to the existing handicap entrance landing is necessary for her mother to enter and exit the house independently. In addition, the applicant states that there is an accessible patio in the rear yard but that this area is not usable due to the lack of shade. The applicant is choosing to modify the front yard of the property in order to allow for increased accessibility. Although the circumstances are not unique to the parcel itself, the applicants do have special circumstances that limit their ability to utilize the property. Staff understands that there are special circumstances pertaining to the applicants but does not identify a unique circumstance to the parcel of land for which the variance is sought.

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 required and established front yard setback is to create a consistent building wall, to protect viewsheds in the front of dwellings, to minimize the impact of the activity and potential clutter due to storage of materials on neighbors. Staff believes the deck will substantially alter the essential character of the surrounding neighborhood. The existing single family home with the enclosed porch sits 2 ft. 5 in. closer to the property line than the neighboring property to the north and 10 ft. closer to the property line than the neighboring

property to the south. The deck addition increases this difference by 9 ft. 5 in. The applicant has stated that the primary purpose of the larger deck is to ease entering and exiting the home for her disabled mother and to allow her mother use of the front yard space.

The applicant has included a petition of support for the deck, which includes substantial support from surrounding property owners. The use of the deck cannot be controlled by the Zoning Ordinance and despite the intentions of the current property owners, the future use of the deck could resemble that of traditional decks and alter the essential character of the neighborhood and/or be injurious to the enjoyment of neighboring properties. Staff believes that if the applicant had applied for a building permit prior to constructing the deck alternative designs could have been considered to minimize the impact on the neighborhood character.

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.

The proposed variance would likely have no impact on congestion of area streets or fire safety, nor would the deck 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 further reduce the required front yard setback from 10 ft. 6 in. to 1 ft. to allow for an approximately 9 ft. 6 in. by 27 ft. 8 in. deck addition to an existing single family dwelling located at 3329 33rd Avenue South in the R1A Single Family District.

Attachments:

Appendix A.	Map of Area
Appendix B.	Aerial Photo
Appendix C.	Statement of proposed use and variance findings from applicant
Appendix D.	Authorization letter from property owner
Appendix E.	Letter to Council Member
Appendix F.	Letter to Neighborhood Group
Appendix G.	Site plan & deck plans
Appendix H.	Photos provided by applicant
Appendix I.	Letter from homeowner
Appendix J.	Signatures by neighboring property owners supporting the variance application
Appendix K.	Public comment