

**Department of Community Planning and Economic Development – Planning Division**  
Conditional Use Permit, Variances  
BZZ-3031

**Date:** July 17, 2006

**Applicant:** John Johannson

**Address of Property:** 3408 Zenith Ave S

**Project Name:** 3408 Zenith Ave S

**Contact Person and Phone:** Charles Ainsworth, 612-804-9938

**Planning Staff and Phone:** Tara Beard, (612) 673-2351

**Date Application Deemed Complete:** May 24, 2006

**End of 60-Day Decision Period:** July 23, 2006

**End of 120-Day Decision Period:** The applicant was sent a letter on June 5, 2006 extending the decision period to September 20, 2006.

**Ward:** 13      **Neighborhood Organization:** West Calhoun Neighborhood Council

**Existing Zoning:** R1 Single Family District, SH Shoreland Overlay District

**Zoning Plate Number:** 23

**Lot area:** 24,072 square feet

**Proposed Use:** New single family home

**Concurrent Review:**

- A Conditional use Permit to allow development within 40 feet of the top of a steep slope in the Shoreland Overlay District
- A variance to allow development within 40 feet of a steep slope in the Shoreland Overlay District
- A variance to reduce the required front yard setback along Zenith Avenue South from the setback established by the adjacent residential structures to 37 ft. to allow for a below grade attached garage, a front patio and a corner of a new single-family dwelling
- A variance to increase the maximum size of accessory use from 676 sq. ft. to 1,249 sq. ft. to allow for a 529 sq. ft. attached garage for a new single-family dwelling in addition to an existing 720 square foot detached garage to remain

**Applicable zoning code provisions:** Chapter 525: Article VII Conditional Use Permits; Article IX Variances – Chapter 546: Residential District – Chapter 551: Article VI SH Shoreland Overlay District.

**Background:** Charles Ainsworth, on behalf of John Johansson, has submitted a request to build a new single family home within 40 feet of a steep slope at their property at 3408 Zenith Ave S. The existing single family home will be demolished but a detached garage will remain on the site as an accessory structure. The property is located within the Shoreland Overlay District.

The proposed home would be built within 40 feet of the top of a steep slope. The entire south and east sides of the building are within 40 feet of the steep slope, which occurs to the south and east of the site (see attachment). This requires a variance and a conditional use permit. The front yard setback is established by a line joining the two adjacent properties, and a front yard setback variance is requested to allow for a below grade attached garage, a front patio and a corner of the home to 37 feet. Finally, the tuckunder garage in the proposed home and the existing garage that is to remain are greater than the permitted maximum size of accessory use. The applicant is requesting a variance to increase the maximum size of accessory uses from 676 square feet to 1,249 square feet.

The new garage is proposed to be 529 square feet; the existing garage is 720 square feet. Chapter 537.60 permits all accessory structures and uses to a single family home to be either 676 square feet or 10% of the lot area, whichever is greater, not to exceed 1,000 square feet. The lot area is 24,072 square feet; therefore a garage up to 1,000 square feet on the site would be permitted.

This proposal is also subject to the design standards of Chapter 530 of the zoning code. That review will occur administratively. The submitted proposal does appear to meet the points system in Chapter 530.

On June 27, 2006 staff has received written comments from the West Calhoun Neighborhood Council indicating support of the setback and accessory structure size variances. They declined to opine on the steep slope CUP and variance. Staff also received email from an adjacent resident with concerns about the slope and soil conditions. See attachments for copies of these letters.

## **CONDITIONAL USE PERMIT -**

### **Required Findings for the Conditional Use Permit to allow development within 40 feet of the top of a steep slope in the Shoreland Overlay District:**

**1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

It is possible that development of the site could be detrimental to surrounding properties. In 2001 the owners of 3308 W 34 ½ St, which is directly south of 3408 Zenith, applied for a variance to allow for an addition to their home in the front of their property (V-376, see attachment). The rear of their lot abuts the south side of 3408 Zenith. The proposal triggered substantial concerns about the ability of the soils to support construction due to the soil's make up (sugar sand) and its slope. Potential problems could affect them and their neighbors at 3408 Zenith.

The location where digging would need to occur to build the proposed new structure at 3408 Zenith is at the top of a steep slope that begins at a retaining wall just behind the house at 3308 W 34 ½ St. It is possible that soil conditions are such that the structural integrity of the new proposed home and the hill sloping down to the neighbor to the south's home could be detrimental. Staff has asked the applicant for additional information to better determine the potential impacts of the proposed development but has not received such information at this time.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

It is possible that adjacent properties to the south could be impacted by erosion or construction disturbance due to the type and slope of the soil as described above. Such impacts could include damage to the yards or even structures of the properties to the south, impeding their use and enjoyment.

**3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

Adequate utilities and access roads are existing and will remain. Drainage would be directed and mitigated by retaining walls and landscaping. However, the applicant has not clearly identified these measures in plan at the time of the writing of this report and therefore staff is not able to determine its adequacy.

**4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

The proposed project provides ample off street parking; traffic congestion should not be an issue.

**5. Is consistent with the applicable policies of the comprehensive plan.**

Chapter 7.5 of *The Minneapolis Plan* states: "Minneapolis will protect and sustain its water resources." One of the implementation plans for this section of the plan is to "encourage practices that result in either reduced overall amounts of impervious surfaces, or disconnect impervious surfaces and allow water to be slowed or detained in vegetated areas where it will do no harm to homes or property." The new home proposed on the site has a larger footprint than the existing four bedroom home and is closer to the top of the steep slope. The applicant has not fully identified how water will be slowed or detained by way of vegetation and retaining walls as it moves towards the properties to the south.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.**

In addition to the Conditional Use Permit, the applicant must obtain a variance to allow construction within 40 feet of a steep slope, a variance to reduce the front yard setback, and a variance to allow an increase in the maximum size of accessory uses to be in full compliance.

**Additional Findings for the Conditional Use Permit per the Shoreland Overlay District:**

**1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.**

The site is just barely inside the Shoreland Overlay District and is not likely to have a significant impact on the nearby body of water, Lake Calhoun. The applicant has indicated that they will follow the mandates of the Minnehaha Watershed District during construction.

**2. Limiting the visibility of structures and other development from the protected waters.**

Because of the distance from the lake and the mature foliage in the area, staff does not expect the proposed new home to be visible from the lake.

**3. The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.**

The proposed variances should have no impact on the types, uses, and numbers of watercraft that occupy the Lake.

**VARIANCE – to permit development in the SH Shoreland Overlay District on a steep slope or bluff, or within forty (40) feet of the top of a steep slope or bluff.**

**Findings Required by the Minneapolis Zoning Code for the Proposed Variance:**

**1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The site is currently put to a reasonable use as a single family home with a detached garage. Any addition or new construction on the site would likely require a CUP and Variance for development within 40 feet of the top of a steep slope as the entire site is basically the top of a steep slope to the south and east. Most of the eastern portion of the house that is within forty feet of the top of the steep slope is also in the required front yard setback. If the home were set back within the required front yard less of it would be within 40 feet of the top of the steep slope.

**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 steep slope conditions on the property were not created by any persons having an interest in the property. A steep slope is not uncommon to properties near Lake Calhoun. However, due to

the soil and slope concerns, staff would find a footprint that was no closer to the top of the steep slope than the existing home a more appropriate request. Such a footprint could be extended to the west without increasing the home's distance from the top of the steep slope if a larger footprint than the existing 1,800 square foot footprint was desired.

- 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 spirit and the intent of the ordinance are to protect vulnerable watersheds and steep slopes. The proposed project does not negatively impact Lake Calhoun but staff has not been able to determine that during or after construction the steep slope might have a negative affect on adjacent properties. The applicant has indicated that the trees and shrubs located on the slopes of the property would serve as protection from erosion and construction damage, however, staff has not yet received specific information about what landscaping will be kept and what would be removed/replanted. Furthermore, the applicant has not identified or addressed soil conditions that might have an impact during or after construction.

- 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 project will have no impact on street congestion, danger of fire, or public welfare and safety.

**VARIANCE – to reduce the required front yard setback along Zenith Avenue South from the setback established by the adjacent residential structures to 37 ft. to allow for a below grade attached garage, a front patio and a corner of a new single-family dwelling**

**Findings Required by the Minneapolis Zoning Code for the Proposed Variance:**

- 1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The largest portion of the reduction that would be needed to comply with the established front yard setback is 27 feet for the northeast corner of the garage. The survey of the property indicates that there is ample, relatively flat land west of the proposed location to allow the house to be located outside the established setback. The footprint of the structure would need to be altered slightly to accommodate the southern interior side yard setback if the house were relocated 27 feet to the west, but with a proposed width of 70 feet at the widest point, staff believes that this could be accommodated.

- 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 established setback conditions on the property were not created by any persons having an interest in the property. The front yard setback is significant but the depth of the lot is such that it should be able to be accommodated by proposing a structure with sited in a manner similar to the existing dwelling.

- 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 spirit and the intent of the ordinance is, in part, to support consistent street walls, maintain consistent front yards that allow views up and down the public street, and appropriate delineations of public, semi-public, and private space. Zenith Ave is curved at this location making it difficult to maintain a unified street wall.

- 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 project will have no impact on street congestion, danger of fire, or public welfare and safety.

**VARIANCE – to increase the maximum size of accessory use from 676 sq. ft. to 1,249 sq. ft. to allow for a 529 sq. ft. attached garage all for a new single-family dwelling**

**Findings Required by the Minneapolis Zoning Code for the Proposed Variance:**

- 1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The applicant is proposing to build a new garage on top of the existing detached garage's foundation. The applicant is also proposing an attached tuckunder garage in front of the new home. The existing garage is 720 square feet, and the proposed tuckunder would be 529, with a total of 1,249 square feet of accessory use on site. The site is over 10,000 square feet, which means that up to 1,000 square feet of accessory use would be permitted if the roof pitch and materials of the accessory structures matched the principal structure. Staff believes that the conditions allowed (1,000 square feet of accessory use) would not cause undue hardship, and as we are not recommending approval of the proposed structure itself, it would be inappropriate to recommend approval of an accessory use variance.

- 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 applicant is not responsible for the size and location of the existing garage, but is choosing not to demolish it along with the existing house. The size of the proposed attached garage was created by the applicant.

**3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

The spirit and the intent of the ordinance is in part to ensure that the principal use of the site, in this case housing, is not dominated by an accessory use, i.e. parking, and to reduce the impact of vehicles on residential property frontage. Staff believes that the intent of the ordinance should be met as 1,000 square feet of accessory use allows up to a large four car garage and the principal use on the site is a single family home.

**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 project will have no impact on street congestion, danger of fire, or public welfare and safety.

**RECOMMENDATION:**

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for a conditional use permit allow development within 40 feet of the top of a steep slope in the Shoreland Overlay District at 3408 Zenith Ave S.

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to allow development within 40 feet of the top of a steep slope at 3048 Zenith Ave S.

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to reduce the required front yard setback along Zenith Avenue South from the setback established by the adjacent residential structures to 37 ft. to allow for a below grade attached garage, a front patio and a corner of a new single-family dwelling.

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to increase the maximum size of accessory use from 676 sq. ft. to 1,249 sq. ft. to allow for a 529 sq. ft. attached garage for a new single-family dwelling at 3408 Zenith Ave S.

**Attachments:**

1. Statement of use
2. Findings
3. Correspondence
4. Site Plan, Floor Plans, Elevations, & Zoning map
5. Contour Map
6. Photos