

Department of Community Planning and Economic Development – Planning Division
Variance
BZZ-5338

Date: October 27, 2011

Applicant: Mark Fox

Addresses of Property: 320 Thomas Avenue North

Contact Person and Phone: Mark Fox, (612) 824-2829

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

Date Application Deemed Complete: September 23, 2011

End of 60-Day Decision Period: November 21, 2011

Ward: 5 **Neighborhood Organization:** Harrison Neighborhood Association

Existing Zoning: R2B Two-Family District and SH Shoreland Overlay District

Zoning Plate Number: 12

Legal Description: Not applicable for this application

Proposed Use: Replace and expand an existing deck and install a new above-ground pool.

Concurrent Review:

- Variance to reduce the corner side yard along Thomas Avenue North from 8 ft. to 5 ft. 9 in. to allow for a raised deck expansion
- Variance to reduce the east interior side yard from 5 ft. to approximately 4 ft. to allow for a pool
- Variance to allow for development on or within 40 feet of the top of a steep slope in the SH Shoreland Overlay District

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits, Chapter 525, Article IX, Variances and Chapter 551, Article VI, SH Shoreland Overlay District.

Background: The subject property is approximately 38 ft. by 130 ft., (4,940 sq. ft.) and the property includes a single-family dwelling with an attached garage, above ground pool, raised decks and a cabana. The deck and above ground pool were permitted in 1979. A variance was granted in 1987 to allow for the deck to be expanded and cabana to be located 4 ft. to the east interior side property line. The applicant is proposing to reconstruct the existing deck and expand it approximately 2 ft. 10 in. to the west along the corner side yard. There is an existing deck located 5 ft. 9 in. to the corner side property line and the applicant is proposing to replace the existing deck and expand it along the same setback for

approximately 129 sq. ft. The minimum corner side yard is 8 ft. in the R2B District. The existing deck may be replaced in its present location of 5 ft. 9 in. to the corner side yard; however, the deck expansion of 129 sq. ft. requires a variance to reduce the required corner side yard. The applicant is also intending on removing the existing 231 sq. ft. round above ground pool with a new 240 sq. ft. square above ground pool. The pool will be located 4 ft. to the east interior side property line where the minimum required yard is 5 ft. Therefore, the applicant is proposing to reduce the interior side yard from 5 ft. to 4 ft. to allow for the pool replacement. Due to the proximity of the property to Bassett Creek, the grades on site and the location within the SH Shoreland Overlay District, the proposal requires variance to reconstruct and expand the deck and allow for the pool replacement on or within 40 feet of a steep slope.

To apply for a variance to allow for development on or within 40 feet of a steep slope or bluff the following four items must be met:

1. *Development must currently exist on the steep slope or within 40 feet of the top of a steep slope within 500 feet of the proposed development.*

The existing single-family dwelling, decks, pool and cabana are all located on or within 40 feet of the top of the steep slope and require a variance to allow for the development.

2. *The foundation and underlying material shall be adequate for the slope condition and soil type.*

The project area is currently developed and the foundation and underlying material will be adequate for the slope condition and soil type. The proposed project has been reviewed by Public Works and they have commented that they do not have concern regarding the slope condition or soil type to support the project. The deck expansion will require new footings on top of the steep slope. The proposed footings will be required to comply with the building codes.

3. *The development shall present no danger of falling rock, mud, uprooted trees or other materials.*

The proposed project does not present danger of falling rock, mud, uprooted trees or other materials. There will be no disruption of the existing slope or soil for the proposed project, with the exception of the proposed footings.

4. *The view of the developed slope from the protected water shall be consistent with the natural appearance of the slope, with any historic areas, and with the surrounding physical contexts.*

Staff believes the proposed development will permit very limited site lines from Bassett Creek, if any. The project area is located on or within 40 feet of the top of a steep slope and is located in the SH Shoreland Overlay District. Bassett Creek is located approximately 20 ft. lower than the subject property and the view from the creek will be limited if not consistent with what has existed on this property for many years. The proposed project area is well screened from view of Bassett Creek with the existing canopy trees along Thomas Avenue North.

Findings Required by the Minneapolis Zoning Code:

VARIANCES (1) to reduce the required corner side yard from 8 ft. to 5 ft. 9 in. to allow for a deck expansion; (2) to reduce the east interior side yard from 5 ft. to 4 ft. to allow for a pool replacement

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

Corner side yard for deck: The circumstances upon which the variance is requested are unique to the parcel of land and have not been created by the applicant. The subject property has an existing steep slope which does not allow the applicant to utilize a large portion of the rear yard. In addition, the subject property is substandard in lot width and has a greater required yard along the west property line, because it is a corner side. The adjacent uses across Thomas Avenue North are industrial and there is no public sidewalk adjacent to the property along the corner side. Staff believes that these are circumstances not created by the applicant that have created a practical difficulty in complying with the ordinance.

Interior side for pool: The circumstances upon which the variance is requested are unique to the parcel of land due to the existing location of the deck on a narrow lot. The applicant is proposing to replace the existing pool with a new one and locating it along the same setback as the existing deck, which was allowed by variance in 1987. These circumstances have not been created by the applicant

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

Corner side yard for deck: Staff believes that the granting of this variance would be in keeping with the spirit and intent of the ordinance. The purpose of required yards is to provide for orderly development and use of land and to minimize conflicts among land uses by providing adequate light, air, open space and separation of uses. The proposed deck is not directly adjacent to any other residential uses or a public sidewalk and the existing deck is located 5 ft. 9 in. to the property line. The existing deck may be replaced in the same location without a variance. Staff does have concerns, however, that the proposed deck may be out of character and therefore not a reasonable request. The applicant is making several modifications to the existing pool and deck area to accommodate a larger deck surface. Staff believes that by changing the shape and location of the pool, the applicant will have additional area to allow for a deck that complies with the minimum corner side yard setback of 8 ft., which would allow for reasonable use of the property.

Interior side for pool: Staff believes that the granting of this variance would be in keeping with the spirit and intent of the ordinance. The purpose of required yards is to provide for orderly development and use of land and to minimize conflicts among land uses by providing adequate light, air, open space and separation of uses. The applicant is seeking variance to allow for the relocation of pool along the same setback as the existing deck. Staff believes that the applicant is proposing to use the property in a reasonable manner.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

Corner side yard for deck: Staff believes that the proposed deck expansion may alter the essential character of the locality. The existing deck, pool and cabana cover the majority of the rear yard and are elevated approximately 13 feet above grade, measured at the curb. Because of the limited visibility from other nearby residential properties, however, that the proposed corner side yard variance may not be injurious to the use or enjoyment of other property in the vicinity. The proposed deck will be located behind existing canopy trees and there is no public sidewalk adjacent to the corner side yard. Further, the granting of the variance will not be detrimental to the health, safety or welfare of the general public if the deck is in compliance with the required building codes and life safety ordinances.

Interior side for pool: Staff believes that the proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. The applicant is seeking variance to allow for the relocation of pool along the same setback as the existing deck. There is an existing fence that will be replaced to match the existing directly adjacent to the pool which will screen the deck area from the neighbor. In addition, there is a 4 ft. landscaped yard with trees and shrubs along the east interior property line. Further, the granting of the variance will not be detrimental to the health, safety or welfare of the general public if the pool is in compliance with the required building codes and life safety ordinances.

VARIANCES to permit development in the SH Shoreland Overlay District within 40 feet of the top of a steep slope or bluff.

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

The circumstances upon which the variance is requested are unique to the parcel of land due to the existing improvements that were permitted in 1979 and by variance in 1987, the existing steep slope and the proximity to Bassett Creek; these are circumstances that have not been created by the applicant. The applicant is proposing to maximize the use of the rear yard by constructing an addition to the existing deck and replacing the existing pool.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

The applicant is seeking variance to variance to reconstruct and expand the deck and allow for the pool replacement on or within 40 feet of the top of a steep slope in the SH Shoreland Overlay district. The proposed impervious surface will only increase by 129 sq. ft. and the majority of the project will be similar in size and location as what exists on the property currently. Staff believes that the applicant is proposing to use the property in a reasonable manner.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

Staff believes that the granting of this variance would be in keeping with the spirit and intent of the ordinance and would not negatively alter the essential character of the area, if the deck is replaced in the same location and not expanded into the corner side yard. The project area is located within 40 feet of the top of a steep slope and is intended to allow for the reconstruction or relocation of existing features of the property and a 129 sq. ft. deck expansion. The intent of the ordinance is to protect both the water body and other properties located below a steep slope from erosion and runoff. The applicant has demonstrated that the necessary precautions will be taken during the constructions of the porch and the only proposed changes include new footings to support the deck expansion. Therefore, the subject site will not be significantly altered to adversely affect the water quality of Bassett Creek. Further, granting of the variance will not increase the danger of fire safety or be detrimental to the public welfare or endanger the public safety if the project is in compliance with the required building codes and life safety ordinances.

Findings required by the Minneapolis Zoning Code for development in the Shoreland Overlay District:

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

Staff believes the proposed project will prevent soil erosion and other possible pollution during and after construction. Public Works staff has reviewed the soil type and conditions of the site did not have any objections to the proposed project. The applicant will be required to provide new footings for the proposed deck expansion and must be in compliance with the building code. Therefore, staff does not believe that the subject site will be significantly altered to adversely affect the water quality of Bassett Creek.

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

Staff believes the proposed development will permit very limited site lines from Bassett Creek, if any. The project area is located on or within 40 feet of the top of a steep slope and is located in the SH Shoreland Overlay District. Bassett Creek is located approximately 20 ft. lower than the subject property and the view from the creek will be limited if not consistent with what has existed on this property for many years. The proposed project area is well screened from view of Bassett Creek with the existing canopy trees along Thomas Avenue North.

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

The subject site does not have direct access to Bassett Creek. The proposed project will not require the accommodation of any additional watercraft of any type on Bassett Creek.

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

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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 corner side yard along Thomas Avenue North from 8 ft. to 5 ft. 9 in. to allow for a raised deck expansion accessory to a single-family dwelling located at 320 Thomas Avenue North in the R2B Two-Family District and SH Shoreland Overlay District.

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 **approve** the variance to reduce the east interior side yard from 5 ft. to approximately 4 ft. to allow for a pool accessory to a single-family dwelling located at 320 Thomas Avenue North in the R2B Two-Family District and SH Shoreland Overlay District, subject to the following condition of approval:

1. CPED-Planning and all other applicable City departments review and approve the final plans.

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 **approve** a variance to allow for development on or within 40 feet of the top of a steep slope to allow for the reconstruction and expansion of the deck and allow for the pool replacement accessory to a single-family dwelling located at 320 Thomas Avenue North in the R2B Two-Family District and SH Shoreland Overlay District, subject to the following condition of approval:

1. CPED-Planning and all other applicable City departments review and approve the final plans.
2. The applicant shall maintain the landscaped area of trees and shrubs in the corner side yard.

Attachments:

1. Written descriptions and findings submitted by the applicant
2. September 14, 2011, e-mails to CM Samuels and Harrison Neighborhood Association
3. Zoning map
4. Topographic map
5. Site plan
6. Floor plans
7. Elevations
8. Photos of the site and surrounding area.