

**`Department of Community Planning and Economic Development**  
Variances  
BZZ 6134

**Date:** July 25, 2013

**Applicant:** Al Theisen

**Address of Property:** 2905 Brookwood Terrace

**Contact Person and Phone:** Al Theisen, (612) 616-0198

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

**Date Application Deemed Complete:** July 2, 2013

**End of 60-Day Decision Period:** August 31, 2013

**Ward:** 13      **Neighborhood Organization:** Fulton Neighborhood Association

**Existing Zoning:** R1 Single-Family District

**Existing Overlay Districts:** FP Floodplain Overlay District and SH Shoreland Overlay District

**Zoning Plate Number:**

**Proposed Use:** Addition to an existing attached garage

**Concurrent Review:**

- Variance to reduce the minimum south interior side yard setback from 6 feet to approximately 3 feet to allow for an addition to the existing attached garage.
- Variance to allow for development within 40 feet of the top of a steep slope or bluff in the SH Shoreland Overlay District.

**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” and (17) “to permit development in the SH Shoreland Overlay District...within forty (40) feet of the top of a steep slope or bluff”.

**Background:** The subject property is approximately 61 feet by 137 feet, on average, (8,365 square feet) and is occupied by an existing single-family dwelling with a parking pad accessed from 52<sup>nd</sup> Street West. The dwelling was permitted for construction in 1923. Previous land use approvals include variances to allow for the parking pad in the required front and interior side yards in 1969. In 2004, variances were granted to allow for development on or within 40 feet of the top of a steep slope to allow for additions to the existing dwelling at the west side and rear.

The property is bound by 52<sup>nd</sup> Street West to the north and Minnehaha Creek to the south. The subject property is also located in the SH Shoreland Overlay District and the survey shows that there is a grade change exceeding 18 percent just beyond a retaining wall on the property. The applicant is proposing to construct a new attached garage over the existing parking pad. Due to the proximity of the property to Minnehaha Creek, the grades on site and the location within the SH Shoreland Overlay District, the proposal requires a variance to construct the proposed attached garage within 40 feet of the top of a steep slope or bluff.

The minimum interior side yard setback in the R1 District is 6 feet. The proposed attached garage will be constructed 3 feet from the east interior side yard setback. Therefore, the applicant is requesting a variance to reduce the east interior side yard setback from 6 feet to 3 feet to allow for the attached garage addition to the existing single-family dwelling.

A portion of the subject property is located in the FP Floodplain Overlay District. The FP Overlay District was established to comply with the rules and regulations of the National Flood Insurance Program and govern development within the District in order to minimize damage to property due to flooding and promote public health, safety and welfare. The proposed attached garage will be located outside of the district boundary and is therefore not subject to additional regulations established in this ordinance.

As of writing this staff report, staff has not received any correspondence from the Lynnhurst Neighborhood Association. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

**Findings Required by the Minneapolis Zoning Code:**

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

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, parking pad, accessory structures, walkways and retaining wall are located within 40 feet of the top of the steep slope or bluff.
- 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 attached garage will be constructed where a parking pad and shed currently exists. The applicant has provided an erosion control plan that shows the locations of silt fences and a fenced stockpile area for removed soil. The proposed erosion control measures will be in place for at least 30 days after determination that the site has been permanently stabilized. After construction, the project area will be fully landscaped.

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

There will be no disturbance of the existing slope and the applicant has provided an erosion control plan outlining measures to ensure that there is no present danger of falling rock, mud, uprooted trees or other materials.

**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.**

The project area is located within 40 feet of the top of a steep slope or bluff and is located in the SH Shoreland Overlay District. The proposed attached garage will replace an existing shed that is located on the existing parking pad. The site and adjacent property owned by the Minneapolis Park and Recreation Board is heavily landscaped. The view of the property from Minnehaha Creek will be consistent with what has existed on this property for many years.

**Findings Required by the Minneapolis Zoning Code:**

**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 steep slope and the proximity to Minnehaha Creek. The project area is located within 40 feet of the top of a steep slope or bluff and is located in the SH Shoreland Overlay District. The applicant is proposing to construct a new 11 foot 8 inch by 23 foot attached garage to the existing single family dwelling. The project area is currently developed and the foundation and underlying material will be adequate for the slope condition and soil type. The proposed attached garage will be constructed where a parking pad and shed currently exist. The applicant has provided an erosion control plan that shows the locations of silt fences and a fenced stockpile area for removed soil. The proposed erosion control measures will be in place for at least 30 days after determination that the site has been permanently stabilized. After construction, the project area will be fully landscaped.

**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 a variance to allow for the construction of an attached garage located within 40 feet of the top of a steep slope or bluff in the SH Shoreland Overlay District. There will be no disturbance of existing slope and the applicant has provided an erosion control plan outlining measures to ensure that there is no present danger of falling rock, mud, uprooted trees or other materials. Staff finds 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 finds 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. The project area is located on and within 40 feet of the top of a steep slope. 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 construction and no significant changes to slope or soil will be made. Therefore, the subject site will not be significantly altered to adversely affect the water quality of Minnehaha 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.

**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 finds that the proposed project will prevent soil erosion and other possible pollution during and after construction. The proposed attached garage will be constructed where a parking pad and shed currently exist. The applicant has provided an erosion control plan that shows the locations of silt fences and a fenced stockpile area for removed soil. The proposed erosion control measures will be in place for at least 30 days after determination that the site has been permanently stabilized. After construction, the project area will be fully landscaped.

Therefore, the subject site will not be significantly altered to adversely affect the water quality of Minnehaha Creek.

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

According to the survey, the subject property includes a portion of Minnehaha Creek. The proposed attached garage will also replace an existing shed that is located on the existing parking pad. The site and adjacent property owned by the Minneapolis Park and Recreation Board is heavily landscaped. The view of the property from Minnehaha Creek will be consistent with what has existed on this property for many years. Staff finds that the visibility of the new attached garage will be limited due to the existing topography and natural vegetation.

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

According to the survey, the subject property has access to Minnehaha Creek. However, the attached garage addition will have no impact on watercraft usage on Minnehaha Creek.

**VARIANCE** to reduce the interior side yard setback from 6 feet to 3 feet to allow for an attached garage addition to the existing single-family dwelling

**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 location of the existing dwelling, the slopes of the property and the lack of an alley. These circumstances have not been created by the applicant. The existing dwelling is located approximately 14 feet 8 inches from the east interior property line. The applicant is proposing an attached garage addition in place of an existing parking pad and will be located 3 feet from the east interior property line. The project area is located within 40 feet of the top of a steep slope or bluff and is located in the SH Shoreland Overlay District and the property does not have access to alley. Therefore, there is not a location on the subject property that would allow for an off-street parking area without a variance.

**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 a variance to reduce the required east interior side yard setback from 6 feet to 3 feet for the proposed attached garage addition to the existing single-family dwelling. The dwelling was built in 1923 in its present location, approximately 14 feet 8 inches from the east property line. The purpose of yard requirements is to provide for orderly development and use of land and to minimize conflicts among land uses by governing the location of accessory uses and structures. The proposed attached garage will be a one-stall garage, approximately 11 feet 8 inches wide and 23 feet deep, and will be constructed in place of an existing parking pad that was approved in this location with a variance in 1963. The adjacent use to the east is an existing single-family dwelling with a 3-car attached garage. Staff finds 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 finds that the granting of this 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 proposed attached garage addition is to allow for one-stall and will have a roof pitch, exterior materials and eave detail that complement the existing dwelling. The proposed addition will require compliance with section 535.80 of the zoning code and the applicant is proposing to add a window to meet this requirement. Finally, granting of the variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties, ensuring that the proposed attached garage addition meets all applicable building codes.

**Recommendation of the Department of Community Planning and Economic Development:**

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt staff findings and **approve** the variance to allow for development on and within 40 feet of the top of a steep slope to allow for a new in-ground swimming pool with apron and fence and the repair and/or replacement of an existing retaining wall accessory to an existing single-family dwelling located at 1616 Mount Curve Avenue in the R2 Two-Family District and SH Shoreland Overlay District, subject to the following conditions of approval:

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1. Approval of the final site plans by the Department of Community Planning and Economic Development.
2. All site improvements shall be completed by May 2, 2015, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

**Recommendation of the Department of Community Planning and Economic Development:**

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt staff findings and **approve** the variance to allow for development on and within 40 feet of the top of a steep slope to allow for a new in-ground swimming pool with apron and fence and the repair and/or replacement of an existing retaining wall accessory to an existing single-family dwelling located at 1616 Mount Curve Avenue in the R2 Two-Family District and SH Shoreland Overlay District, subject to the following conditions of approval:

1. The proposed addition shall comply with the minimum window requirements per 535.90(c) of the zoning code.
2. Approval of the final site plans by the Department of Community Planning and Economic Development.
3. All site improvements shall be completed by May 2, 2015, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

**Attachments:**

1. Written descriptions and findings submitted by the applicant
2. Letters to Council Member Goodman and Lowry Hill Neighborhood Association
3. Zoning map
4. SH Shoreland Overlay map
5. Survey
6. Erosion control plan
7. Site plan
8. Building elevations
9. Floor plans
10. Photos