

## Community Planning and Economic Development - Planning Division Report

Appeal of the Decision of the Zoning Administrator  
BZZ-2711

**Date:** December 1, 2005

**Applicant:** Shane Walgamuth

**Address of Property:** 3815 Washburn Avenue South

**Contact Person and Phone:** Shane Walgamuth, (952) 546-1904

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

**Date Application Deemed Complete:** October 31, 2005

**End of 60 Day Decision Period:** December 30, 2005

**Appeal Period Expiration:** December 12, 2005

**Ward:** 13      **Neighborhood Organization:** Linden Hills Community Council

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

**Appeal of the decision of the Zoning Administrator:** Shane Walgamuth has filed an appeal of the decision of the Zoning Administrator regarding the determination that setbacks are measured from the building wall and not the foundation for new construction at 3815 Washburn Avenue South in the R1 Single Family District and SH Shoreland Overlay District.

**525.170. Appeals of decisions of the zoning administrator.** All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

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**Background and Analysis:** The applicant is appealing the decision of the Zoning Administrator determining that setbacks are measured to the foundation wall and not the building wall. The applicant submitted building plans in November of 2004, proposing new construction of a single family home located at 3815 Washburn Avenue South in the R1 District. At the same time, the applicant submitted an application for a variance to reduce the required north interior side yard setback from 6 ft. to 3 ft. and a variance to reduce the required south interior side yard setback from 6 ft. to 4 ft. to allow for two cantilevers on the new single family dwelling. The building permit for the single family home proposal, without the cantilevers, was issued on December 1, 2004. The Board of Adjustment denied the variance on December 16, 2004. The applicant then appealed the decision of the Board of Adjustment to the Zoning and Planning Committee on January 20, 2005. The Zoning and Planning Committee and City Council upheld the decision of the Board of Adjustment denying the north and south side variances to allow for the cantilevers.

The lot at 3815 Washburn Avenue South is approximately 40 ft. by 115 ft. (4600 sqft.) The building permit issued for the new single family home, without the cantilevers, showed the internal dimensions of the foundation on the survey at 28 ft. wide. The elevations of the structure also show an internal foundation dimension of 28 ft. Further, the elevations show an external dimension of the foundation and exterior building wall with a dimension of 29 ft. Therefore, based on the elevations, the structure would have been located 5 ft. 6 in. to the interior side property lines. The applicant misrepresented the location of the building on the survey by showing the internal measurements of the foundation.

Section 546.160 of the zoning code addresses yard requirements and reads as follows:

**546.160 Yard Requirements.** (a) *In general.* The minimum yard requirements for uses located in the residence district shall be set forth in each residence district, and in Chapter 535, Regulations of General Applicability, except as provided below. Required yards shall be unobstructed from the ground level to the sky, except as provided as a permitted obstruction in Chapter 535, Regulations of General Applicability.

Building walls and exterior materials are not provided in Chapter 535, Regulations of General Applicability regarding permitted obstructions in the required yard. Therefore, building walls and materials must comply with 546.160, where required yards shall be unobstructed from ground level to sky.

**Recommendation of the CPED Department Planning Division:**

The Department of Community Planning and Economic Development Planning Division recommends **denial** of the appeal of the decision of the Zoning Administrator.