



**Request for City Council Committee Action  
From the Department of Community Planning & Economic Development**

Date: June 10, 2004

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

Prepared by: Tina Sanz, CPED Committee Clerk (612-673-3710)

Presenter(s) in Committee: Lonnie Nichols, CPED-Planning Division staff

Approved by Neil Anderson, Supervisor, CPED Planning-Development Services

Subject: Appeal of decision from the May 3, 2004 City Planning Commission Meeting to deny garage size variance for a new construction duplex with tuck under garage located at 4436 Thomas Avenue South in the R2B zoning district.

**RECOMMENDATION:** See report from the City Planning Commission

**Previous Directives:** N/A

**Financial Impact** (Check those that apply)

No financial impact - or - Action is within current department budget.

**Community Impact**

The applicant's project has been the subject of much discussion by neighbors and the neighborhood organization. See citizen comments in attached staff report.

**Background/Supporting Information**

The attached appeal statement from the applicant, letter from neighbors who anticipated the appeal, CPC staff report including citizen and neighborhood organization comments, and CPC hearing minutes summarize the information received to date and actions taken at the City Planning Commission meeting held on May 3, 2004. The findings and recommendations are respectfully submitted for the consideration of your Committee.

Stuart Residence  
4436 Thomas Ave. South  
BZZ-1598

#### Statement – Reason for Appeal

We are appealing the decision made by the Planning Commission on May 3, 2004 to deny a variance for an accessory use garage in excess of 676 SF. We are appealing for the following reasons:

1. The Zoning Code requirement is not specific when used for a tuck-under garage.

As evidenced during the discussion by the Planning Committee at the public hearing, the finding that requires this variance was not clear in the code. In fact, it wasn't until the following day that we received confirmation that a variance was required. It is now apparent that in a one or two family residence an accessory structure used as a garage is limited to 676 SF. It is not clear why a basement tuck-under garage becomes an accessory structure when the definition in the zoning code for an accessory structure is as follows: "A structure detached from a principal structure, incidental or subordinate to the principal structure or use, including but not limited to garages, carports and fences." The garage for our project is located in the basement of the structure, in excess of 50% below grade and as such is not a story and has no other limitations. We believe this requirement is intended for free standing and single story attached garages.

2. The Planning Commission public hearing discussion was confusing.

The discussion by the Planning Commission at the public hearing was almost entirely based on the code interpretations and the need for the variance and not on the merits of the request. While this is understandable given the nature of the requirement and finding, we have no idea why the Commissioners voted as they did, either for or against. In fact, at the time of the vote they did not know if a variance was required. There was no discussion related to the variance findings (by staff of Architect), the process, the streetscape image, the design, or even the points made in opposition by some members of the neighborhood group.

3. There is support for the variance within the Linden Hills Neighborhood and among immediate neighbors.

The planning staff report showed only negative letters. It could appear that opposition is unanimous to the project and variance. Many of the letters were objecting to the proposed height increase for a roof stair, which was removed following the initial neighborhood meeting. The Stuarts did not request neighbors favoring the variance to stand up and speak or send letters in support. They felt this could put them in an uncomfortable position with their other neighbors. There is, however, support for it, including the neighbors to the south who are most closely affected by the garage. The neighborhood planning and zoning committee voted 3-2 to support the variance (with the condition of adding landscaping, which we did). The LHNC Board voted 7-6 to oppose it with a number of board members voting against the variance having obvious personal relationships with the objecting neighbors, (who in the interest of fairness should have excused themselves from the vote). The Stuarts have communicated with their neighbors throughout this process. Following the neighborhood planning and zoning committee's request, we provided a landscape plan and rendered front elevation as well as provided a streetscape plan. We have added landscaping at the front and back and details to the front elevation to help the front blend in with the varied Thomas Avenue streetscape. The current front yard has among the most greenspace of any lot on Thomas Avenue, and much more landscaping than the previous residence. Based on these drawings and revisions, we have received many favorable comments not reflected in the staff report.

4. The actual size of the garage spaces in the variance request total 945 SF not 1,611 SF.

The actual size of the garage square footage for which we are seeking a variance is 945 SF (a 40% increase above the allowable) not 1,611 (a 238% increase) per the staff report. 1,611 SF is the entire space of the basement. Per the finding, the accessory use is only limited to 676 SF when used as a garage. The plan

submitted with our variance application showed spaces for the vehicles totaling 945 SF. We will provide walls within the basement limiting the square footage area for the garages to the 945 square foot total. We currently are permitted for garage spaces totaling 676 SF and providing only 2 parking spaces. Granting the variance and allowing the additional 269 SF of basement to be used as vehicle storage will allow for 4 garage spaces, and not require on-street parking for the residents cars. In addition, we are also proposing reducing the doors to 10' in width and increasing the landscaping and terraced planters adjacent to the driveway at the front of the building to help screen the garage doors from the street. This will be the only residence on the street without garage doors facing the street.

**Community Planning and Economic Development Planning Division Report**  
Setback Variance and Garage-size Variance  
BZZ-1598

**Date:** May 3, 2004

**Applicant:** Scott Nelson, DJR Architecture dba Thomas and Carol Stuart

**Address of Property:** 4436 Thomas Avenue South, Minneapolis

**Date Application Deemed Complete:** February 27, 2004

**End of 60-Day Decision Period:** April 26, 2004

**End of 120-Day Decision Period:** June 25, 2004

**Applicant has voluntarily extended 60-Day Review period to:** July 30, 2004

**Contact Person and Phone:** Scott Nelson, DJR Architecture (snelson@dj-r-inc.com) 612-676-2714 or 612-669-4699; Tom and Carol Stuart 612-926-8290

**Planning Staff and Phone:** Lonnie Nichols, Senior Planner 612-673-5468

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

**Existing Zoning:** R2B (Residential, Two-Family District) in the SH (Shoreland Overlay District)

**Proposed Use:** Duplex (Up-Down)

**Concurrent Review:** Setback and Garage-size Variances as proposed revisions to Construction Plan approved by the Zoning Office for 4436 Thomas Avenue South

**Appropriate Section(s) of the Zoning Code:** Chapter 520 Introductory Provisions, Chapter 521 Zoning Districts and Maps, Chapter 546 Residence District, Chapter 551 Overlay Districts

**Background:** In 2003, the applicants via DJR Architecture submitted construction plans to the City for the property at 4436 Thomas Avenue South that the zoning office determined met code standards and was permitted without a Conditional Use Permit (CUP) for height, setback variance, or garage size variance. The applicants were issued a building permit from the City of Minneapolis on November 21, 2003. At a later date, the applicants came back to the City with proposed revisions to the "approved building plan" which prompted the notification for a public hearing. The applicant has stated the proposed revisions will not be incorporated into the building plan, unless approved by the City Planning Commission/City of Minneapolis.

Carol and Thomas Stuart have now made application for a variance to increase the maximum permitted floor area of an attached accessory garage from 676 sq. ft. to 1,611 sq. ft. and a variance to reduce the required south interior side yard setback for a principal entrance facing an interior lot line adjacent to a driveway from 22 ft. to 15 ft. for new construction located at 4436 Thomas Avenue South in the R2B (residential two-family) zoning district. The setback variance from 22 feet to 15 feet is for a walk-through door on the South side of the building

proposed to replace full length windows shown on the original plan. The garage-size variance was requested to convert a larger amount of interior basement space from multi-purpose livable space to garage/off-street parking space.

The applicants have withdrawn an application for a conditional use permit to increase the maximum allowed height of a structure in the shoreland overlay district from 35 ft. to 37.5 ft. at the March 22, 2004 CPC hearing. The CUP for Height was for an enclosed interior stairway from the second floor to the rooftop for access to a roof-top deck. The applicants have now removed the enclosed interior stairway structure covering from the roof on the building plans.

**Findings Required by the Minneapolis Zoning Code for a Variance** to increase the maximum permitted floor area of an attached accessory garage from 676 sq. ft. to 1,611 sq. ft.:

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

The applicant has in hand a building permit to construct two one-stall garages in the basement of the new construction duplex. The property can be put to a reasonable use under the conditions allowed, the construction plan approved by the City on 11-21-03. The size of a garage is limited to 676 or 10% of the lot area (in this case 6517 sf) by the zoning code. The applicant has proposed to use the entire basement space as an enclosed tuck-under garage to create two, two-stall garages.

- 2. The circumstances are not unique to the parcel of land for which the variance is sought and have 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 exist under the terms of the ordinance.**

The applicant has stated that restricting the accessory building square footage (in relation to the size of the lot) makes good sense when the garage is a stand alone structure. And that when the building is completely contained below grade as a tuck under basement, limiting its square footage as a garage creates an undue hardship. In this case two tuck under garage stalls have already been established.

- 3. The granting of the variance will not 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 applicants were issued a building permit from the City of Minneapolis on November 21, 2003 that included two one-stall tuck under garages in the basement. Granting the variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.

- 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 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.

**Findings Required by the Minneapolis Zoning Code for a Variance** to reduce the required south interior side yard setback for a principal entrance facing an interior lot line adjacent to a driveway from 22 ft. to 15 ft. for new construction located at 4436 Thomas Avenue South in the R2B (residential two-family) zoning district:

- 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 has proposed to change the approved plan which showed a rear door entrance to building to a side door entrance into the basement which requires a side yard setback. The area was previously shown as an egress window. The location of the proposed side door entrance will be between the garage spaces for each unit and face south toward the driveway. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance may cause undue hardship.

- 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 applicants have stated there is no functional need for a rear door entry and the proposed side door entry is provided as a convenience to the residents, and will not be used as a principal entry to either the first or second floor units. The circumstances are unique to the parcel of land in the sense that there is a significant grade/elevation change at the rear of the lot which limits the back yard space and makes a rear door entry less practical. The garage space will also be a tuck under space in the basement of the principal (and only) structure on the lot.

- 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 applicants already have a construction plan approved by the city which shows garage door entries facing the side of the lot. 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.

- 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 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.

### **Recommendations of the Community Planning and Economic Development Planning Division:**

#### **Variance Recommendation of the Community Planning and Economic Development Planning Division:**

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the variance application to increase the maximum permitted floor area of an attached accessory garage from 676 square feet to 1,611 square feet.

#### **Variance Recommendation of the Community Planning and Economic Development Planning Division:**

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the application for a variance to reduce the required south interior side yard setback for a principal entrance facing an interior lot line adjacent to a driveway from 22 ft. to 15 ft. for new construction located at 4436 Thomas Avenue South in the R2B (residential two-family) zoning district.

#### **Attachments:**

- Staff report
- Written Statements from Applicant
- Written Correspondence from Neighborhood Group/Residents
- Written Statement from Ward 13 Council Member Office
- Written Correspondence from 3-22-04 CPC packet
- City Zoning and Land Use Policy Maps
- Site Plan Materials
- Elevations and Photographs

To: Councilmember Barrett Lane  
Fr: Jane Schuldt and John Fitch  
Dt: 07 May 2004  
Re: 4436 Thomas Avenue South

Dear Councilmember Lane:

We are taking this opportunity to write and comment on the Variance request for 4436 Thomas Avenue South for increasing garage space, anticipating it may come before the City Council following its recent defeat by the Planning Commission. We apologize for the extent of our remarks, but feel it's important to put our position into context.

We believe granting of this variance will:

- 1) Set a negative precedent city-wide to which future developers/developments will be able to refer
- 2) Dilute validity of requests for variances resulting from true hardships, which cannot be applied in a case of new construction which allows the opportunity before the fact vs. after the fact for intelligent and responsible design intended to meet code.
- 3) Further exacerbate the already compromised due process to which the neighborhood is entitled, but has been denied opportunity for advance comment/input prior to the stage at which the structure in question could have been designed to eliminate or at least mitigate the need for variance request post formal new construction.
- 4) Contradict the recommendation of the City Planner who wrote an opinion following his assessment against

granting of the variance requests

As the neighbors adjacent to the north of subject property, residents of Linden Hills for 24 years, former and current business owners in the neighborhood, we have some sincere and serious concerns about the impact of granting the appeal which requests approval of the variance and have some feelings about the wisdom in denying it.

Having progressed through several stages up to this point, we recognize that the primary remaining issue before the City Council to deliberate is the request for variance to increase the maximum garage area from 676 to 1611 square feet, a 140% increase.

As background and to review our experience in the process:

- 1) There was significant concern by next-door neighbors as well as others up and down the block with a plan that had been shown by the owners and the builder indicating a roof top deck, large scale footprint, etc. This prompted a personal visit to the City Planning office to view the plans that were actually on file.
- 2) Upon personally visiting with the City Planning office, the plans that were then on file did not show a rooftop deck, and showed two garage bays and two storage units, and a back entrance. It should be noted that although requested, no elevation plan was available, and was said not to exist as it was not required.

Based on this plan a building permit was issued as no variance requests were required nor filed under this plan. In fact it was noted on the plan that a variance would be required to build the garages (in fact at this point they are substantially built, pending only installation of garage doors vs. exterior/interior walls compatible to storage unit requirements.

We subsequently reported to the neighborhood that the plans they had initially been shown to or discussed with them with garages and rooftop deck were not the plans that were on file and approved. Based on this information, the original neighborhood concern abated as it was felt the city was well aware of the project and conditions under which the permit was issued.

Had the neighborhood known at this time that variances were going to be requested, it would have provided an earlier opportunity to engage in the process. This would have been the case had the variances been requested of the City from the beginning – which is the time it was known by a) the owners b) the architect and c) the builder. The only people who could have recommended changes prior to the building permit being issued – the City and the neighbors – were the people left in the dark.

The owners have stated that the reason they changed the design to one that did not trigger the need for variances is so they could start construction as quickly as possible. It should be noted that without approval of variances in hand, the construction did in fact take the anticipated future variance approvals into account, with four garage door openings in place (still there), a stairwell in place (since removed) to access the rooftop deck and roof rafters initially missing (now replaced) following owners voluntary withdrawal of the CUP.

- 3) Shortly thereafter, the requests for variances and CUP arose based on the original plans that the neighbors had been shown by the owners and by the builder.

This clearly establishes a timeline of intent as to the ultimate desired outcome of the garage size, and when viewed today at this stage of the construction, it clearly indicates the intent to have these be used as garage stalls vs. storage bays existed in the beginning, was altered to obtain the building permit in order to begin construction, and knowing – and we repeat ‘knowing’ it would be revised thereafter. There is testimony to this exact effect on several occasions given by the owner’s architect, beginning with the statement being made in front of the LHINC Zoning Committee. Several members of the zoning committee were so stunned by this admitted but flagrant disregard for the city code that one zoning committee member who had to leave just minutes prior to a single motion vote stated that regardless of the motion, if she were able to stay – she’d vote against all three on principle. Another zoning committee member was so visibly shaken that she shook her finger at the architect and at the owner and said, and I quote “You should be ashamed of yourselves”.

We are of the understanding that the City’s intention is for variances to be used for ‘unknown’, ‘unanticipated’, ‘unavoidable’ circumstances as may occur ‘during the course of’ construction. Any reasonable person would conclude that this was clearly not the case in this circumstance.

The one remaining variance that is being requested was clearly known in advance, as well as at the time of the start of construction, and yet was not presented until construction was well underway. For this reason alone – it does not stand up as an acceptable reason to grant the variance. The variance mechanism should not be allowed to be used in this way, as it undermines all legitimate requests that are presented to the City in good faith.

- 4) The next steps were – in brief:
  - a) Hearing in front of the LHINC Zoning Committee. They voted 3-2 for a motion which opposed the CUP, but did not oppose the other two variances. There is an important context to note to this vote. There was only one motion made and due to time constraints it would be the only one made. In order to get any opposition on the record, those opposed to the roof had to vote for this motion or be seen to not be in opposition to it. One of those who had to leave early commented - ‘however you construct the motion, I’m against them all three or one by one.’ Because she was also against the other two variances, I have no idea how she would have voted, but the point is her opposition to them all.
  - b) Recommendation then came out from City Planning staff, who issued a recommendation against approval of the garage variance.**

- c) From there the issue came before City Planning on May 3 and again, City Planning staff reiterated his recommendation to deny the variance. The neighborhood representatives presented a letter with 14 signatures representing 13 households on the block in opposition. The applicants could only refer to two neighbors – the one to the immediate south who filed an original letter in opposition, and from another neighbor – in the landscape business - who assisted applicants with the landscape plans – as being ‘totally in favor’ of their project. Neither of these supporters has submitted in writing nor ~~has~~ attended the hearings in support of the applicants.

The vote of the City Planning Commission upheld the City Planner’s recommendation and voted to deny the request for variance.\*

- It was later explained to us by your staff that this reason for this vote was due to last minute confusion and conversation amongst the commissioners as to whether or not a variance was even required in this case, and if not – they could not vote to approve a variance that would attach to a property in perpetuity. To this point, again following the Planning Commission hearing your staff stated to us that according to the findings of your office, a variance was definitely required. Today, we also received the following clarification from Commissioner Anderson:

All,

Just a clarification at last night’s (meaning 5/3/04) planning commission meeting. On the application for 4436 Thomas the question was asked if the application needed the variance for the size of the parking garage. In looking through the zoning code I had the correct section citation 537.60 but incorrectly cited the wrong paragraph. This was the reason for my confusion and I apologize for that confusion. However, the correct citation indicates that the maximum floor area for garages for single family and duplexes is 676 feet or 10% of the lot whichever is greater. A variance is therefore required if the applicant wants a larger size garage. In the case of 4436 Thomas the variance was needed. Making a decision on the variance was correct to prevent approval by default.

Neil Anderson

- d) On May 04 the full LHINC board finally met and heard the request for the first time.  
**A motion was made to Oppose the variance request, which passed – 7 to 6, one abstention.**

- i) The comments of those who wanted to approve it included and I paraphrase “The city wants to encourage an increase in the housing density in the city for moderate income families, perhaps even with teenage children, and this project addresses that’. Our comment to that is the board member couldn’t have been paying very close attention as his statement makes no sense whatsoever. A two unit building is replacing a former two unit building. “Moderate” income cannot be used in this case as the unit the applicants are seeking to sell will no doubt list at or above \$600,000.
- ii) Furthermore, to the point of density, the City Code (546.320) states the opposite as its purpose:

The **R2** Two-family District is established to provide for an environment of predominantly low density, single and two-family dwellings and cluster developments on lots with a minimum of six thousand (6,000) square feet of lot area per dwelling unit...

In summary:

Cause:

- 1) *Decision to tear down an existing structure zoned R2 and replace it with another*

- 2) *Desire of owners to build a brand new structure which required variances in order to complete to their satisfaction but out of favor with the neighborhood and outside the existing city code, and their willingness to proceed with an expedient plan that they had no intention of building, rather than seeking neighborhood input at a point when changes could be incorporated. Instead they relied on the after-the-fact approval to proceed in order to meet their chosen economic objectives.*
- 3) *Misrepresentation of true intended usage of space contrary to what was shown and approved.*

Effect:

- 1) *A building which has a 1611 square foot garage area which requires a variance of approximately 140% over code in order to be used for the purposes intended – namely as a four car garage –in order to support after the fact what the owners contend is necessary to make the project economically viable, which can reasonably be presumed to have been known before the fact. Neither the City nor the neighborhood should be held accountable by an owner to help solve their economic issues after the fact, and at the neighborhood’s and City’s expense, and in so doing, it encourages irresponsible future development.*
- 2) *A building (using the city’s terminology) which does not meet the litmus test of an oft repeated standard in the City code for new construction of all types – residential and commercial included - “To the extent practical, all new construction or additions to existing buildings shall be compatible with the scale and character of the surroundings, and exterior building materials shall be harmonious with other buildings in the neighborhood.” \**

*\*It should be noted that 16 out of 21 homes on the block are stucco or brick (with all houses, including 4 to the immediate north and two to the south), and when asked what materials would be used and stucco was not mentioned, it was said to be ‘too expensive’ on a building of this size. This has now migrated to a revised plan that is partial stucco on the front, with siding on the other three exterior walls. Again, economics driven by the consumption of available dollars – at the choice of the owner - in the construction of a building designed and built (but as yet unapproved, which I believe is contrary to granting building permits also) to house four garages is being used as the basis and reason for important compromises being forced onto the neighborhood and choices faced by City.*

*While the subject property has been said to be in technical compliance with the 2.5 story or 35’ maximum height (whichever is less) code, when viewed from the east or from the south or from the north and because of where the “0” line was established, it is by every other measure a 3+ story structure, and even more when viewed from street level.*

- 3) *A stimulant to other developers to scope the neighborhood for a similar opportunity. The granting of this increased garage area to more than 140% of what is currently allowed by the City will become a precedent to which many other developers will point and refer in their quest for approval of similar projects. With the presence of 4 other Duplex properties (including two that are side by side) in the neighborhood, approving this variance request would and has put these properties in the cross hairs of developers.*

*As our Councilmember of the 13<sup>th</sup> Ward, we ask you to please carefully consider the long term negative impact a decision in favor of the variance will undoubtedly have on the majority of not only the surrounding neighbors, but any other near-lake neighborhoods as well, highly*

*desired by high-end developers. We ask that you take a position to deny this variance request and to encourage your fellow Council members to do the same.*

*We believe a very strong principle is at stake. And despite the negative impact on us personally as the near north duplex-owner neighbors (yes – if only two garages, there will be tenant or owner parking on the street, likely in front of our home or the home to the near south– but no more than was the case before) we would rather see the development of the neighborhood as a whole take precedent over the convenience of a few – for any reason, let alone one so avoidable.*

*We are in a unique situation of having another duplex next to us which has a double garage near the sidewalk which was grandfathered in. We had an opportunity to file for a variance also to add a double garage in the front of our house at the time we added a second story on top of an double garage space in the rear of our property– given the duplex nature of our own property. We chose not to even consider it. Not because it wouldn't have greatly enhanced the value of our property – as clearly it would have. But we felt very strongly in spite of the neighbor's ability at that time to get their variance (which was necessary), it was not the right overall direction for the neighborhood and we made a conscious decision not to be part of any development that started really changing the scale of the neighborhood – knowing it was that which attracted us to it in the first place.*

In Summary:

We believe opposing these 2 variances will:

- 1) Set a positive precedent city-wide to initially design structures within code to which future developers/developments must refer, and preserve the integrity of the process.
- 2) Strengthen the validity of requests for variances resulting from true hardships that are only known to all post granting of permits, and presented in good faith and with all good intention.
- 3) Elevate and underscore the importance, need and opportunity for due process.
- 4) Support the findings of the City Planner.

*Thank you for listening and we'll look forward to seeing you at the Council meeting and addressing this, if further input beyond what's contained is beneficial to the Council's deliberation.*

*Sincerely,*

**Jane E. Schuldt**  
**Fitch**

*(Computer Si*

*Jane E. Schuldt*

*4434 Thomas Avenue South*

**John**

*John O. Fitch*

*4434 Thomas Avenue South*



**Excerpt from the  
CITY PLANNING COMMISSION  
MINUTES**

350 South Fifth Street, Room 210  
Minneapolis, MN 55415-1385  
(612) 673-2597 Phone  
(612) 673-2728 Fax  
(612) 673-2157 TDD

The following actions were taken by the Planning Commission on March 22, 2004. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

**ATTENDANCE**

President Martin, Vice President Hohmann, Krause, Kummer, LaShomb, MacKenzie, and Schiff – 7.

**PUBLIC HEARING**

**18. Stuart Residence (BZZ-1598, Ward 13)**

**4436 Thomas Avenue South** (Lonnie Nichols)

**A. Conditional Use Permit**

Application by Carol and Thomas Stuart for a conditional use permit to increase the maximum allowed height of a structure in the Shoreland overlay district from 35 ft. to 37.5 ft. for new construction located at 4436 Thomas Avenue South.

**Motion:** The applicant **withdrew** the application for a conditional use permit to increase the maximum allowed height of a structure in the Shoreland Overlay district from 35 feet to 37.5 feet for new construction located at 4436 Thomas Avenue South.

**B. Variance**

Application by Carol and Thomas Stuart for a variance to increase the maximum permitted floor area of an attached accessory garage from 676 sq. ft. to 1,611 sq. ft. located at 4436 Thomas Avenue South.

**Motion:** The City Planning Commission **continued** the variance application to increase the maximum permitted floor area of an attached accessory garage from 676 square feet to 1,611 square feet for the property located at 4436 Thomas Avenue South to the meeting of May 3, 2004.

**C. Variance**

Application by Carol and Thomas Stuart for a variance to reduce the required south interior side yard setback for a principal entrance facing an interior lot line adjacent to a driveway from 22 ft. to 15 ft. for the property located at 4436 Thomas Avenue South.

**Motion:** The City Planning Commission **continued** the application for a variance to reduce the required south interior side yard setback for a principal entrance facing an interior lot line adjacent to a driveway from 22 ft. to 15 ft. for new construction located at 4436 Thomas Avenue South in the R2B (residential two-family) zoning district to the meeting of May 3, 2004.

The public hearing was opened.

No one present to speak to the item.

Commissioner Krause motioned, Hohmann seconded to **continue** the public hearing to the May 3, 2004 meeting. The motion carried 5-0 (Schiff not present).

### **ATTENDANCE**

President Martin, Vice President Hohmann, G. Johnson, Krause, Kummer, LaShomb, MacKenzie, and Schiff - 8

### **PUBLIC HEARING**

#### **13. Stuart Residence (BZZ-1598, Ward 13)**

**4436 Thomas Avenue South** (Lonnie Nichols) *This item was continued from the March 22, 2004 meeting.*

##### **A. Variance**

Application by Carol and Thomas Stuart for a variance to increase the maximum permitted floor area of an attached accessory garage from 676 sq. ft. to 1,611 sq. ft. located at 4436 Thomas Avenue South.

**Motion:** The City Planning Commission adopted the findings and **denied** the variance application to increase the maximum permitted floor area of an attached accessory garage from 676 square feet to 1,611 square feet.

##### **B. Variance**

Application by Carol and Thomas Stuart for a variance to reduce the required south interior side yard setback for a principal entrance facing an interior lot line adjacent to a driveway from 22 ft. to 15 ft. for the property located at 4436 Thomas Avenue South.

**Motion:** The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the required south interior side yard setback for a principal entrance facing an interior lot line adjacent to a driveway from 22 ft. to 15 ft. for new construction located at 4436 Thomas Avenue South in the R2B (residential two-family) zoning district.

Staff Lonnie Nichols presented the staff report.

President Martin opened the public hearing. She asked for a show of hands how many people attending were opposed to the project.

Carol and Thomas Stuart (applicants, 4436 Thomas Avenue South): Tom Stuart: We are the ones that are building this project and we'd like to take you through the process from beginning to end. It will not take us a long time, but certainly our attempt here tonight is to make sure you understand that we did follow the process and that we made no attempt to try to deceive anybody, including our neighbors. Hopefully, we'll be able to discuss the glitch of the project – the planning glitch that we think we got caught up in and has caused a lot of confusion, but I'm going to let Carol talk because she has some prepared notes. Thank you. Carol Stuart: We first met with City Planning while rehabbing the original house. After talking with the structural engineer and contractors, we realized this was not economically feasible due to major structural concerns. Because it had been a duplex, we decided to demolish the

old house and build a new duplex, since the existing one had only one kitchen and other unworkable arrangements. We sent a letter to the neighborhood explaining our decision, the anticipated timeline, and offered them [tape unclear] materials to make their own home repairs free of charge. After construction began, we met with the neighbors to the north and south of our property to answer any questions. We sent out another letter explaining the variance and the conditional use permit requests, which were told by Planning were now required. We attended the Linden Hills neighborhood meeting on March 15<sup>th</sup>, where our application was discussed extensively. The garages and side doors were approved and a landscape plan was requested. The rooftop deck was denied. We withdrew our rooftop deck application after hearing our neighbors' input. We understood their position and felt it was the right decision to withdraw that application. We then called the neighbors we knew who were at the meeting to show them the landscape plans we had drawn. We met with neighbors who responded and dropped off landscape copies to the rest. We then went to the April 19<sup>th</sup> Linden Hills neighborhood meeting to show these landscape plans. At this meeting, we were next asked to show a pictorial elevation of the surrounding houses which we are providing at this meeting. Tom and I feel we have tried our best to communicate with our neighbors during this entire process. We have always included our phone number on any correspondence if they had questions. We were never invited to any of the neighborhood meetings held to discuss our project to explain our position. We are requesting the approval of two variances. The first one is one side entrance per unit. An entrance at the back would be impractical because the house is built into the side of a hill and cannot be easily reached. Our neighbors to the south, the McCrae's, are fully supportive of this because it means less disruption for them than raising and lowering garage doors for coming and going not involving automobiles. Our second variance request is two parking spaces per unit. We are asking for two parking stalls for each unit. No additional space will be required since the space needed already fits within the footprint of what is built. Again the McCrae's, our neighbors to the south, are in full agreement with our having four spaces for vehicles, so they will not have cars in the driveway which they said was a problem when renters were there with car doors slamming and other associated driveway noises this type of parking caused. Parking all four cars within the project will eliminate both the extra street congestion which is always a problem and garages will not be seen from the street. The number 1667 square feet has been stated as the size we are requesting to use as garage space. That is the whole underground area. Much of the square footage will be used for stairs, entrance corridors, storage, not just parking. Any requests for variances should always stand on its own merits. Because of that, we do not believe that the approval of these variance requests sets any precedent. We are asking for variance approval for two side doors and parking for four vehicles. The McCrae's, our neighbors to the south, are the only people affected by the two variances and they fully support us in our effort to get approval. There is far more benefit to the neighborhood to take the cars off the streets or driveway and park them in a space that already exists. Tom and I have been described as duplicitous, profit-motivated people by persons who have not even met us. This is not true. We happen to be good, honest people who are going to live in one of these units. We followed the process correctly and feel that these variance requests are not unreasonable and should be approved.

Commission President Martin: Ms. Stuart, what is the actual size of the garage space?

Carol Stuart: I think Scott can answer.

Scott Nelson (DJR Architecture, garage architect): The actual square footage of the entire basement is the 1,667 that Lonnie referenced. The actual sizes that we're looking for to store four vehicles is slightly less than 1,000. To answer your question, the initial project was submitted for permitting with four garages. It was after about 2 ½ weeks of review by Planning, they came up with the finding that what we refer to as the tuck-under garage, should in effect be termed an accessory structure and thus carry with it the limitations of 676 feet. We at the time were facing a winter construction start deadline, so we revised the drawings – we did a couple of things. Anything that required a variance. We removed the two garage doors on the elevation and replaced it with a panel because the space behind that window would be a storage room, thus meeting the zoning code in that respect. Other than that, all of the parking, all of the garage structure is within the garage. It doesn't need to reach the size of the space.

President Martin: OK, so the conditional use permit for the structure originally...?

Scott Nelson: At one time, we had applied for a conditional use permit for a height variance of 2 ½ feet for a rooftop deck. There was a stair that accessed the deck that because of the slope, how the height was measured protruded to the stair itself. It went to the height limitation [tape end]. We brought that to the neighborhood meeting and there was a lot of opposition to that so at the conclusion of that meeting we withdrew the application for the conditional

use permit (it was a conditional use permit because its in the Overlay district, not a height variance, so we withdrew that application).

Dean Navolis (DJR Architecture): I'm late in the process, and the reason I am coming before, and I'll be brief, is that the nature of this variance has somehow become wrapped up in the scale of the building and all the issues surrounding it so I just want to make a few points that granting this variance or denying it will not make the building one foot shorter, one foot smaller or change it in any aspect. It will do nothing in terms of changing the application as it is. In terms of parking – every time I have been before community groups or this Commission, the request has been, “Can you get more parking off the street, can you get it underground, can you get it below the building so we relieve our street congestion?”. And it's like, yes, I will do what I can to make this work. I have great respect for Lonnie, but the rule in accessory structure and the issues become that it's working against the fact that now, you're taking this building, you'll deny two parking garages that are an underground space with garage doors facing away from the street, all the kind of urban design factors that you want, so you'll end up with two more cars on the street. Because you'll have one unit that is owned, and they'll sell the other unit and those cars will impact the street more so. So I am just sort of saying (note overhead picture) you can see the architectural styles to the street vary dramatically and the subject property and in response to the letter of architectural consistency or being foreign to the area or looking huge, it's within what I call the diverse character of this street and it's part of the scale of the zoning. What I'm requesting is a common sense approach that – let the parking be below the building because there's a logic to that it will keep the cars off the street, keep the garage doors hidden and work in what I call a long-term urban principle of trying to conceal cars, conceal garage doors and preserve the street parking for the guests.

Randy Bryant (4430 Thomas Avenue S): I am one of the neighbors impacted. I have been asked to speak in representation of the neighborhood. We have a prepared letter that is included before you. We have a total of 14 signatures that represent 13 dwelling units on Thomas that are backing our support of this letter. The neighborhood does not feel that we've had that voice in the prior meetings whole-heartedly. Certainly didn't feel that it was brought up in a timely manner, that perhaps if these had been addressed at the time the permit was submitted or requested, the variances that were requested could have been incorporated into the building design which has not occurred. This is a new building and therefore we feel like the variances could have been incorporated into the original design. There [are] all types of creative construction going on throughout the Uptown and South Minneapolis area and we feel like they built this building with the image of having those garage stalls. The size of the structure, obviously, was intended to accommodate that and then they came back asking for variances. There were several points in the Stuart's history of the events that I would take personal disagreement with, but I won't take time at this point to do that, I don't think it's relevant to the issues and I would also point out while the neighbors of the south may or may not be in agreement, I haven't heard that comment myself. They did mention whether or not it's a profit motivated venture and I know [tape unclear] you did mention you couldn't get the price you needed without the four garage stalls and I do believe that's profit. Obviously, the building was built with the four-garage stalls, so it did directly add to the size of the structure and now they are asking for the variances to allow what they've built. If I can, I would like to go through the neighborhood letter very quickly. Neighbors in the Linden Hill Community have signed below which to voice our unanimous opposition for two variance requests for a four-car garage versus two-car and the request for a 15 foot setback versus the 22 setback for the side yard entrance on the new construction at 4436 Thomas (I'm abbreviating for the purposes of this meeting). We believe these variances will do the following: 1) We believe this does set a negative precedent and a domino effect-this is the only duplex that we are aware of in the City of Minneapolis that has 4 garage stalls; There are several other duplexes on the street that only have two allowed stalls. I live in one of those buildings. There is representation here from a couple of those other buildings. We feel that the garage space has added to an excessive structure size and disproportionate garage space which the code is intended to restrict. 2) We feel that this circumvents the building code and it's a dilution of valid requests for variances, in this case the need for variances was done prior to the start of construction and prior to submission of the plans that received approval for a building permit. Granting a variance in this case would send the wrong message and provide a roadmap for future developers as to how to work the system. In this case, by the applicant's own admission, and that of their architecture in front of the LHNC zoning subcommittee the intent to build a structure that did not comply, and therefore would require variances was done from the very beginning. The original plans were then altered to remove the items that triggered the need for variances. Shortly thereafter, the requests for variances were submitted according to the original plans. We do believe that a two-car garage is not a hardship for a duplex and it is keeping it in proportion with the garage and the balance of the structure and lot usage for other properties on the street. If the original premise on which the new construction was designed depended on 4 garages to make it economically viable, which [tape unclear]. We feel

that this project flaunts the laws knowingly and violates the standards most citizens try to adhere to. Third point, due process: if the variance request had been submitted prior to construction, design alternatives could have been pursued. Attempts by neighbors to be heard where changes could have still been made were thwarted on several occasions when an opportunity should have existed and a process theoretically in place. Item 4: the Shoreland Overlay district standards. The standards set forth in the Shoreland Overlay document process. Four items that are noted there are access to light and air of surrounding properties, the scale and character of surrounding uses, the shadowing of residential property, preservation of views of landmark buildings, open spaces [tape unclear], so we feel the intent of that particular code section is to limit things of this nature in the Shoreland Overlay district. We believe that these items exist for the purpose of preserving the scale and character of city neighborhoods and to protect the enjoyment by others. This building is not in keeping with that scale of the neighborhood. Viewed in its best light, violates the intent. Item 5, the City Planner is on record following a thorough assessment of the situation, thus opposing the approval for the request for a variance for 4-garages. Item 6, the neighborhood feels the City's sensitivity and forward-thinking regarding the livability and alternative transportation solutions at the expense of encouraging more vehicular use, is a responsible one, and fully supported of actions that take designing construction into account. As to the role they play and the impact they have. We believe that opposing these two variances will first of all set a precedent city-wide, a positive precedent, to initially design structures within code to which future developers can reaffirm. It would strengthen the validity of a request for variances that result from true hardship, not those that may be self-imposed, like a design of a building. We believe this that this would underscore the importance need and opportunity for due process. We believe this would uphold the intentions of the Shoreland protection ordinances, designed and adopted, and support the findings of the City plan as well as encouraging alternative transportation modes and pedestrian and environmentally friendly solutions. We are passionate about our neighborhood and the lakes, please help us preserve it by not allowing it to be manipulated for the enjoyment of two homeowners, the commercial benefit of the architect, and the expense of the City and the neighborhood. Respectfully submitted, the residents of Thomas Avenue South. I believe there are a couple of other residents who would like to add their comments.

President Martin: We have such detailed material from yourself, the letter you just read, and lots of other folks, I would like to hear new information.

Kara Coffler (4437 Thomas Avenue South): I live directly across the street from the affected property. My husband and I are both architects so we have been through the process of getting conditional use permits, variances for projects that we have done professionally and we know the process here. With regards to the side yard setback, the zoning code in section 535.250 specifically addresses the issue of a principal entrance on the side yard. It says that if you have a 15 foot setback on the side yard; however, if you have a side yard and a driveway, it specifically asks for a larger setback. The people who wrote the code put this in there because they knew that having that extra traffic coming in the side really did require more space and so this was specifically addressed in the code, so I don't see how there is a hardship, or why there is a need to vary that in this case. Especially as it was new construction. There are many creative ways that we could have looked at getting that extra space, setting back the south wall of the project at the garage level, so the upper floors could cantilever over, perhaps that would be a way that you could have achieved compliance with the code and still gotten some of the things that they wanted. With regards to the garage issue, a point of order is that the Linden Hills Neighborhood Zoning Committee met and made the recommendations before this planning staff had made their recommendations so they were not working based on that. As Chair of our neighborhood Zoning Committee in the past, I do know that precedent is an important thing. There have been many times where we have looked at another project, wanting to take action one way or another, but because Zoning had approved things in a previous project, it really limited what we could do, so I think in this case, we are looking at the individual case, but as a body, you all are charged with looking at what this means for development really throughout the City. Garage size is not just the car footprint, everybody uses their garage for storage for additional materials so I think the number really we're looking is somewhere between 1,000 and 1,600. Secondly, if this variance is denied, if there's only a 2-car garage here, that really gives opportunity perhaps for more green space on site. The driveway could be shortened, we could look at having more grass and places to absorb the water runoff, so I think there are advantages to adhering to the code the way it exists. Thank you.

David Smith (4411 Thomas Avenue South): I had kind of a long thing I was going to say, but I would just like to point out – the applicants say that there is no cost to this tuck under garage, but if you look at the structure, it's really a 3-story structure. The garage level – a great deal of it is above grade. There were a lot of opportunities for living space. Excluding circulation, which exists on every floor, this is an entire story for cars. Half of that could have

been devoted to living space and they could have shortened their building by a half a story. Right now, it towers over the rest of the neighborhood by a half a story and it has a square roof which casts a bigger shadow. If these variances are approved, and a new garage precedent is set, it will be open season on existing stock of traditional homes and duplexes on our two lots. Developers will see big money in tear-downs. I fear for the future of my charming and very walkable neighborhood and I fear for the future of a transit-friendly city. Thank you.

Scott Nelson (DJR Architects): It's been stated that it was our intent from the beginning that we had a non-compliant structure and that's what we were going to do. I want everyone to know that no one in their right mind would go through this kind of process to do this. We at DJR, and we're no rookies to this meeting forum, we went through this shortly after meeting the Stuart's, met with Planning and Zoning about the initial project, went through a very careful zoning review, had many questions to them answered, specifically with the idea that we were going to build a project without needing a variance. It was only at the 11<sup>th</sup> hour, upon having to go in for permitting that the finding that was created accessory structure which is further definition, a structure detached from a principal structure, that was created that we had to come back and revise the plans to make them permissible to start construction. It was our intent to build a four-garage-stall, but we believed that throughout the process up until that finding was created, that we were in full compliance with the zoning code for doing it, and that it was a good thing to store cars off the street, and provide more off-street parking.

Commissioner Krause: Madame Chair, maybe this is a question for Lonnie, but it seems like this issue turns a lot on the definition of garage space as accessory and I'm trying to recall another project where a tuck-under area that is essentially integral to the structure itself, is considered accessory, so I have that question. And then, if it were not accessory, how would the code provisions change for this? Because it appears to meet the height restrictions, and but for the R2B Zoning, if it was a tri-plex for example, and this was living space, this would not be an issue, is that right?

Staff Nichols: First off, we took special care to notice this as an attached accessory structure, realizing that clearly it's not a detached accessory garage unit. But we noted the attached accessory structure noting that one of its primary purposes would be parking. Regarding if this were in the R3 district, I didn't quite follow that. Would we then want a 3-stall or a 6-stall, I didn't quite follow the question Commissioner Krause.

Commissioner Krause: I guess if it was not considered accessory, then how would the square footage be affected?

Staff Nichols: I think I'm following you; however, I don't know answer to that question and I don't know if Mr. Anderson can answer that better than I.

Staff Neil Anderson: Space for parking is considered to be accessory. There is a provision of the code; however, that didn't come up until a few minutes ago deals with 537.60 which talks about garages and it talks about the maximum floor area of all detached accessory structures and the attached accessory use designed or intended to be used for parking vehicles except for parking garages in the building, entirely below grade or at the least two levels will not exceed 676 square feet or 10 percent of the lot area whichever is greater. It seems that what that is saying is that it almost excludes the parking inside the building, but it is something that I was not aware of at the time we came to the meeting. So I don't know if Lonnie has some input on that or not.

Staff Nichols: Well, what I can add is the final grading plans for this structure, what we're calling the basement or the tuck-under garages is not actually a story, because slightly over 50 percent of it will be firmed into the hillside. And that's probably something that has caused some contention in the neighborhood as well regarding the height issue of the massing of the building, but the final grading plans do show that this tuck-under garage space is actually not considered a story, it's the two stories on top that are the above ground levels are.

Commissioner Krause: If it's not considered a story, does that mean it's considered underground? That's the language... If it's a story, I mean, it has to be one or the other.

Staff Anderson: Basically, I'm confused at this point in time. 537.60, number 2, talks about detached accessory structures and any attached accessory use. Now we know that structure for the parking of automobiles is considered accessory, whether it's attached or detached, but it says that except for parking garages in the building, entirely below grade or of at least two levels, shall not exceed 676 square feet or 10 percent of the lot area, whichever is

greater. It seems to say here, that if you fit into one of those categories, then you are not held to the 676 square feet, which is what I'm learning now. What I'm saying is that this was brought to my attention, so, I apologize for not having that information before you came to the meeting. That's why I asked if Lonnie knew the reason that the Zoning folks indicated that this would require a variance for the 676 to whatever they wanted.

Staff Nichols: And I'm not sure. This application actually followed a rather interesting path from initially going to the Board of Adjustments, thinking that it would just be variances, setback variance, then the later idea of height and the Shoreland Overlay and so, once it came to the Commission, we stuck with it, and here we are.

Commissioner Krause: Lonnie, what is the 10 percent of the lot area number?

Staff Nichols: The...

Commissioner MacKenzie: 651.

Commissioner Hohmann: Based on the 537.60, I had a question if the variance was indeed needed. The other question I've got is, with or without the side yard variance distance from the lot lines, hill to the lot line..?

Staff Nichols: Right.

President Martin: OK, I think what Neil has just told us is that the variance here is not actually needed, you think?

Staff Anderson: The way I'm reading it here it appears that it is not needed, but I'm going to have to check into that, but unfortunately, according to the time frame, we're not able to continue this a cycle and still make the 120 days.

Commissioner LaShomb: Madame President, I am going to move staff recommendation for 13 B (Johnson seconded).

Commissioner Schiff: Well I just want to say to all the neighbors who came down here, despite all the issues and the confusion on this case, the findings that we have to consider are fairly straightforward for variances, whether or not it can be put to use. And I think the arguments of one person were compelling about how the applicant has created this problem by creating the setback first, and then going back and creating the door, but I think the fact that this lot does not have alley access and that there is considerable slope involved, creates enough of a physical hardship that it's likely you wouldn't get an entrance in the back anyway so that adequate use of this probably is going to require a setback for this. And I don't know where we're going to end up with the garages, but just so I can not speak later, I'll say in honesty, I can't count the number of times we've approved four-car garages for duplexes only because we've done it so much. I can think of over a dozen times in the past 3 years that the Zoning Board of Adjustments has approved four-car garages for duplexes, so this has become an issue...

President Martin: It's becoming habit...

Commissioner Schiff: ...Overlay district, but at least it's been fairly difficult for people to request.

President Martin: OK, the motion on the floor is to approve the side yard setback variance, all in favor, please signify by saying aye.

The motion carried 7-0.

Commissioner LaShomb: Madame President, I would recommend to you that this item be determined to be complete because it is my understanding that the other variance is not necessary, so therefore no action is required.

Commissioner Krause: Well I think to make it more complete, we could, in fact deny the variance to act on it; however, that doesn't seem like it would prejudice the project necessarily if in fact the variance is not needed. The other determination which you're suggesting which is declaring the application complete, to me, just kind of leaves this variance in limbo, and we might find ourselves on the wrong side of the time rules and in effect approving it by default.

President Martin: So, Commissioner Krause, you're suggesting that we approve the staff recommendation to deny it, but the understanding is that it is going to be an entirely moot question altogether will probably be the interpretation by the legal staff...?

Commissioner Krause: Well, I guess I would be inclined to support the variance if it were needed, but it doesn't appear that it is and we don't have the option of laying it over, so I think we have to take action on it one way or another, I would be concerned about approving a variance when one in fact isn't needed, without really knowing what the impact might be and what rights that might give the applicant to do something else other than what's before us.

Staff Anderson: The variance has been applied for so we need you to bring this to a conclusion, either approval or denial. It may, in fact, be needed. I don't know at this point, so you should either approve it or deny it, or as Commissioner Krause indicated, it could end up being approved by default depending on the Commission and the City Council may or may not want that so I think we need conclusion.

Commissioner Kummer: If it is not approved, how is the opposite not true...? How can we deny it if it is not needed?

President Martin: Director Sporlein, do you have some useful advice here?

Director Sporlein: [tape unclear].

Commissioner MacKenzie: I just wanted to say in favor of denying the variance, although I feel that it's the kind of use, and especially my very quick reading of the Code, make sense to put that kind of space underground. If you just look at our strict findings, and our typical requirement, rigorousness for hardship, I just can't support it. So on that ground I would suggest that we deny.

Commissioner LaShomb: I'll move that we deny the variance. I'm not real comfortable doing that, but apparently it's going to go that way anyway (MacKenzie seconded).

The motion carried 4-3 (Hohmann, Krause and Kummer opposed).

President Martin: Lonnie, first thing I think you're going to have to do is check with somebody who knows whether or not Neil's interpretation of this is correct. And if it is correct, then presumably all of this goes away.

Neil Anderson: We need to get this thing done quickly, because if it turns out that this variance is indeed needed, then the applicant has an opportunity to appeal it to the City Council.