



Request for City Council Committee Action from the Department of Community Planning & Economic Development - Planning Division

Date: September 16, 2010

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

Referral to: Zoning & Planning Committee

Subject:

Name of Appellant: Steven Erickson
Name of Original Applicant: Steven Erickson
Property Address: 3923 Zenith Avenue South
Ward #: 13

Appeal of decision of the Zoning Board of Adjustment to deny a variance to reduce the front yard setback along Zenith Avenue South from the setback established by connecting a line between the two adjacent neighbors from approximately 40 ft. to 26 ft. to allow for a pergola addition to an existing single-family dwelling located at 3923 Zenith Avenue South in the R1 Single-Family District.

Recommendation:

The Zoning Board of Adjustment and staff recommend concurrence with the action taken on August 5, 2010, for the property at 3923 Zenith Avenue South, Ward #13, as follows:

1. 3923 Zenith Avenue South (BZZ-4858, Ward 13)

Variance: Steven Erickson has applied for a variance to reduce the front yard setback along Zenith Avenue South from the setback established by connecting a line between the two adjacent neighbors from approximately 40 ft. to 26 ft. to allow for a pergola addition to an existing single-family dwelling located at 3923 Zenith Avenue South in the R1 Single-Family District.

ACTIONS: The Board of Adjustment **adopted** the findings and **denied** the variance to reduce the front yard setback along Zenith Avenue South from the setback established by connecting a line between the two adjacent neighbors from approximately 40 ft. to 26 ft. to allow for a pergola addition to an existing single-family dwelling located at 3923 Zenith Avenue South in the R1 Single-Family District.

Previous Directives: None

Prepared by: Shanna Sether, Senior City Planner, 612-673-2307
Approved by: Jason Wittenberg, Planning Manager, 612-673-2297
Presenters in Committee: Shanna Sether, Senior City Planner, 612-673-2307

Community Impact

- Neighborhood Notification: Linden Hills Neighborhood Council was notified of the appeal application.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On August 18, 2010, staff sent a letter to the applicant extending the 60 day decision period to no later than November 9, 2010.

Background/Supporting Information

Steven Erickson has filed an appeal of the decision of the Board of Adjustment to deny a variance to reduce the front yard setback along Zenith Avenue South from the setback established by connecting a line between the two adjacent neighbors from approximately 40 ft. to 26 ft. to allow for a pergola addition to an existing single-family dwelling located at 3923 Zenith Avenue South in the R1 Single-Family District. At its meeting on August 5, 2010, the Board of Adjustment voted 8-0 to adopt staff findings and deny the required variances. The appeal (attached) was filed on August 13, 2010. The appellant's complete statement of the action being appealed and reasons for the appeal are attached. The Board of Adjustment minutes and Planning Division staff report are also attached.

Department of Community Planning and Economic Development – Planning Division
Variance
BZZ-4858

Date: August 5, 2010

Applicant: Steven Erickson

Address of Property: 3923 Zenith Avenue South

Project Name: 3923 Zenith Avenue South Pergola

Contact Person and Phone: Steven Erickson, (612) 382-3484

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

Date Application Deemed Complete: July 12, 2010

End of 60-Day Decision Period: September 10, 2010

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

Existing Zoning: R1 Single-Family District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 29

Legal Description: Not applicable for this application

Proposed Use: New pergola to the front of an existing single-family dwelling

Variance: to reduce the front yard setback along Zenith Avenue South from the setback established by connecting a line between the two adjacent neighbors from approximately 40 ft. to 26 ft. to allow for a pergola addition to an existing single-family dwelling

Applicable Code Provisions: Chapter 525, Article IX, Variances, Specifically Section 525.520(1) “to vary the yard requirements...”

Background: The subject property is approximately 58 ft. by 131 ft. (7,600 sq. ft.) on an interior lot with an existing single-family dwelling and detached garage. The adjacent structures to the north and south frontage along Zenith Avenue South and create an established required front yard of approximately 40 ft. to the front property line. The minimum required front yard in the R1 District is 25 feet, except when the established setback created by the adjacent property is greater. The applicant is proposing to add a 6 ft. by 32 ft. pergola along the front of the existing dwelling, facing Zenith Avenue

South. Due to the established setback created by the properties adjacent to the subject property, a variance to reduce the front yard setback along Zenith Avenue South from approximately 40 ft. to 26 ft. to allow for a pergola addition to an existing single-family dwelling.

Staff has received a letter from the Linden Hills Neighborhood Council stating support for the requested variance and a copy of the letter is attached to the staff report. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

Findings Required by the Minneapolis Zoning Code:

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

Staff believes that the applicant has reasonable options under the conditions allowed by the official code without causing undue hardship. The applicant is seeking a variance to reduce the front yard setback along Zenith Avenue South to allow for a pergola addition to an existing single-family dwelling. The adjacent structures to the north and south have created a setback of 40 feet; 15 feet greater than the district setback. The existing single-family dwelling has an overhang/pergola over the existing raised landscaped area, stoop and a portion of the sidewalk between 4 and 6 feet in depth. The applicant is proposing to construct a freestanding pergola that would be located between 12 and 17 feet from the front of the dwelling. The applicant has stated that the variance is being requested to improve the house without altering the sightlines from neighbors and to allow for new footings for the pergola to be located on the other side of the existing sidewalk. Staff cannot find that hardship exists in this case, as the lot is sufficient in area to allow for an outdoor area outside of the required yards.

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 circumstances upon which the variance is sought are not unique to the parcel of land and have been created by the applicant. The applicant is seeking a variance to reduce the front yard setback along Zenith Avenue South to allow for a pergola addition to an existing single-family dwelling. The adjacent structures to the north and south have created a setback of 40 feet; 15 feet greater than the district setback. The existing single-family dwelling has an overhang/pergola over the existing raised landscaped area, stoop and a portion of the sidewalk between 4 and 6 feet in depth. The applicant is proposing to construct a freestanding pergola that would be located between 12 and 17 feet from the front of the dwelling. The applicant has stated that the proposed pergola will be visually mitigated through existing trees at the front of the lot. Staff cannot find that hardship exists in this case, as the lot is sufficient in area to allow for an outdoor area outside of the required yards.

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.

CPED - Planning Division Report
BZZ-4858

Staff believes that granting the variance will not keep within the spirit and intent of the ordinance. The purpose of the front yard increase is to project the view corridor when adjacent properties are setback further than the subject property. In this case, the established setback created by connecting a line between the two adjacent neighbors is approximately 40 ft., which is 15 ft. greater than the district setback in the R1 District. The applicant is proposing to construct a freestanding pergola that would be located between 12 and 17 feet from the front of the dwelling and would be located 14 feet within the required front yard. The applicant has stated that the pergola has been designed by a professional to be in good character with the surroundings and neighborhood. Staff believes that the proposed pergola is of good design; however, the location of the pergola may alter the essential character of the locality.

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.

Granting of the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed pergola be detrimental to the public welfare or endanger the public safety.

RECOMMENDATION:

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

The Community Planning and Economic Development Department – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the variance to reduce the front yard setback along Zenith Avenue South from the setback established by connecting a line between the two adjacent neighbors from approximately 40 ft. to 26 ft. to allow for a pergola addition to an existing single-family dwelling located at 3923 Zenith Avenue South in the R1 Single-Family District.

Attachments:

- 1) Statement and findings from applicant
- 2) Copies of letters sent to Linden Hills Neighborhood Council and CM Hodges
- 3) Correspondence from the neighborhood association
- 4) Zoning map
- 5) Site plans
- 6) Photos

Board of Adjustment 8/05/2010 Minutes
3923 Zenith Avenue South BZZ-4858

Matt Perry: Let's start with our first item, item number 1 which is 3923 Zenith Ave S. Ms. Sether.

Bruce Manning: Mr. Chair before Ms. Sether begins, if I may, I should note that 3923 Zenith Avenue South is in the Linden Hills Neighborhood where I sit as co-chair. While I was not aware of this application, other than that it had been filed, I did not discuss it or otherwise vote on it or hear it at any level at the neighborhood, or in any capacity at the neighborhood level.

Matt Perry: Okay, thank you. Ms. Sether.

Shanna Sether: Thank you Mr. Chair, Board of Adjustment members. The first item for discussion is for the property located 3923 Zenith Avenue South. The application is made by the property owner, **Steven Erickson**. The application request is for a variance to reduce the front yard setback established by connecting the two closes corners of the two adjacent properties from 40 ft. to approximately 26 ft. in order to allow for a pergola addition to an existing single-family dwelling.

Matt Perry: Ms. Sether, I'm sorry for interrupting you and your presentation, but could you adjust the contrast there? Perfect, thanks so much.

Shanna Sether: The subject property is approximately 58 feet wide, 131 feet deep, approximately 7,600 square feet in area, and it's an interior lot. The existing subject parcel has a single family residence as well as a detached garage and is zoned R1, Single Family District. In the R1 District the minimum district setback along the front yard is 25 feet, however, the Zoning Code allows for a front yard increased when the two adjacent structures create a line that increases the setback beyond 40 feet. So in this case we would draw the line from this corner of the adjacent structure to this corner and that line that goes through the property is approximately 40 feet at the closest point. The Applicant is requesting to construct a new pergola addition to the existing single family dwelling approximately 6 feet in depth and 32 feet in width, and it would be facing the front along Zenith Avenue. Here's another shot of the site plan so you can see the footings here. There's an existing sidewalk, stoop, raised landscape area here, and it also has a pergola-like overhang over the front of the dwelling. There is a drawing of the elevation of just the pergola alone and then the Applicant has also provided a rendering of what it would look like if constructed – an architectural rendering. Here's a picture of the existing dwelling. You can see almost that pergola-like feature with the overhang and then it's solid here and open on the sides. Staff is recommending denial of the proposed application for the variance to reduce the front yard setback along Zenith Avenue South from 40 feet to approximately 26 feet based on the following findings: First, staff believes that there are reasonable options for the Applicant to provide outdoor space without causing undue hardship. The existing overhang and pergola area is over the existing raised landscape beds, stoop and sidewalk. The new pergola is going to extend

from the existing dwelling approximately - or between 12 and 17 feet. If you look at the front of the dwelling you can see at the closest point it would be 12 feet away, but at the furthest point near the front door it would be approximately 17 feet away from the front of the dwelling. The Applicant has stated that the request of the variance is required in order to improve the house without altering sight lines and to allow for footings to be on the other side of the existing sidewalk. So as you can see, this is the existing driveway here, the walkway that connects to the stoop and then the front door. The footings would be placed just on the outside of the sidewalk at the closest point. Staff cannot find that hardship exists in this case due to the sufficient area of lot size that would allow for an outdoor space outside of the required yards on this lot. In addition, staff does not believe the circumstances were particularly unique to the lot considering the size and the width that would allow, again, for an outdoor area without the need for the variance. The purpose of the front yard increase is to protect the view corridor when adjacent properties are set further back. The Applicant has designed the proposed pergola to be professionally designed and within good character with the surrounding area. Staff agrees that the pergola, proposed pergola is of good design, however, believes that the proposed location may alter the essential character. Finally staff does not believe that there will be any impact to the traffic congestion or endanger the public health, safety, welfare, however, in order to grant approval for a variance all 4 legal findings have to be met by the Zoning Board. Staff believes that this particular project does not meet findings 1, 2, or 3 and therefore must recommend denial of the proposed variance. That concludes my presentation and I can take any questions.

Matt Perry: Alright, thank you Ms. Sether for your presentation. Questions of staff? I see Mr. Sandberg and then Mr. Manning.

Dick Sandberg: Thank you Mr. Chair, thanks Ms. Sether. Could you point out to us on the existing plan drawing where the existing pergola-like structure is, and how it compares to the proposed structure?

Shanna Sether: Sure. This dotted line represents the proposed pergola and these pieces here represent what the pergola will look like from the top view. The existing pergola is what you see approximately here. It comes out beyond the buttress and over the stoop, over a portion of the sidewalk, and here adjacent to the windows is an existing landscape area. If we look here at some of the pictures you can see that the pergola extends out and then there is the existing raised landscape areas and the windows as shown in the site plan.

Dick Sandberg: Alright, thank you very much.

Matt Perry: Mr. Manning.

Bruce Manning: Thank you Ms. Sether. Am I right that Zenith in this location is one of the wider streets in this neighborhood and wider than a standard street?

Shanna Sether: Unfortunately, I don't think I have sufficient information to answer that question.

Bruce Manning: I think it is. The next question was, and I guess my question is if it in fact is, does that affect – does staff take that into consideration in addressing the issue of whether or not the sight lines along the block would be impeded by a structure that was further in the front yard than the neighboring structures but still less than the minimum setback required in the district?

Shanna Sether: I would say not necessarily in this case. The public sidewalk is in the same approximate location as any other street in the City of Minneapolis irregardless of the width of that street. So the view corridor shared by pedestrians, or viewed by pedestrians would appear to be the same with or without a wider street.

Bruce Manning: And my second question, if you would, the existing pergola is considered what? Is it a structure? Is it an overhang? Is it an eave? Is it

Shanna Sether: It's more or less a combination of an overhang/pergola. It's a little bit deeper than what you would normally see as a permitted encroachment in a required front yard, so I would say that it's something that goes beyond your standard overhang.

Bruce Manning: And it appears that it is within the string test line, or at least a portion of it is?

Shanna Sether: That is correct.

Bruce Manning: Base on my shaky drawing. Do we know anything about the history of a variance being granted for its construction?

Shanna Sether: There are no previous variances granted for this parcel. So it was either constructed as such and I'm not sure of the age of the adjacent structure. It's possible one of those structures was constructed at a time where it was set further back and therefore created the circumstance for which the variance is required now. But there have been no variances previously applied for or granted for the subject property.

Bruce Manning: And I take it when the staff is considering whether an overhang or pergola or similar attachment on the front that isn't a stoop or porch impedes on the required front yard setback that is a determination – that determination would include things like roof lines, right? In other words the impeding on the front yard setback is not based on the corner or the wall, but on ...

Shanna Sether: The projection outward.

Bruce Manning: Projection of whatever it is that projects.

Shanna Sether: Yes. There are certain allowed obstructions, if you will, or permitted obstructions ...

Bruce Manning: Stoops and entryways.

Shanna Sether: Within the required front yard. Exactly, stoops, front porches.

Bruce Manning: Thank you.

Matt Perry: Mr. Koch.

Chris Koch: Just a follow-up question to Board Member Manning's questions. So would an allowable encroachment into that front yard setback be an overhang of an eave?

Shanna Sether: Yes. An eave or overhang can project into the required front yard, but only 3 feet into the required front yard. The existing eave or overhang or pergola, whatever you want to call that structure, already extends further than 3 feet beyond the required front yard.

Chris Koch: So if the Applicant even wanted to rebuild this as it is would a variance be required?

Shanna Sether: The Applicant would be able to retain nonconforming rights assuming that he's able to prove there are nonconforming rights exist and would be able to do so with pictures and the existing site plan, and be able to reconstruct what's there presently. Anything that's expanded beyond the existing footprint or height, if you will, would require an additional variance. But rebuilding to match existing would only be a building permit.

Chris Koch: Okay, thank you.

Matt Perry: Mr. Keobounpheng.

Souliyah Keobounpheng: Is, just for clarification, the pergola is not attached to the house?

Shanna Sether: The proposed pergola is not attached to the house. That is correct.

Souliyah Keobounpheng: Thank you.

Matt Perry: Any other questions of staff? I see none.

Shanna Sether: Thank you very much.

Matt Perry: Is the Applicant present, and do they wish Yes sir. If you'd state your name and address for the record.

Steven Erickson: Steven M. Erickson. 3923 Zenith Avenue South.

Matt Perry: Sure, go ahead.

Steven Erickson: Okay. I have a little bit better picture that helps at all to see what the existing pergola is. The house was built in 1955, I believe, and they added another addition, which is about 10 feet right here. So this first – this is 38 feet right here from the sidewalk to the front of the sidewalk here, from the sidewalk to sidewalk. Here it's 40 feet, and then it goes - so there's 19 feet of 40 feet and then there's 8 feet of 48 feet. I'm not making any sense here. Anyway, so this existing pergola is kind of under the – I never even considered a pergola in my life, you know, I guess, but I just shot a lot of pictures here. So if you're on the roof this first 10 feet – it's all – it's 10 feet of mainly just hardscape here, then it goes to 8 feet. So on this picture here I guess – so I'm looking for – I guess there's hardscape for the first 10 feet and then along this side, then there's 8 feet of hardscape. So I'm looking for 2 feet more over here and 4 more feet over here. I had 2 professional architects come with separate designs and they both came up with the pergola. So then I went to the entire neighborhood and everyone was like – yeah, no big deal, because it's detached. There's no sight lines creating the obstruction sight. Then I went to the Linden Hills Zoning Committee and they were good about saying we support it. So I could've gotten more signatures. I got the majority of the block and I was thinking about going down 2 more, but people, I guess, at the block party said a couple people sent in letters even saying hey, he's continued to improve his house. And I don't know if you have that letter. There's one, at least. There was two, I guess, but I didn't ask them to do that even. But I do go out of my way to, you know, kind of upgrade the house. And I just completely renovated every square inch of the house. It's the smallest house on the block. But I wanted to kind of add some curb appeal to the house without, you know, tearing down the house and everything else, you know so again they came up with the idea that if we have 3 big pillars and just an overhang with a pergola it wouldn't really obstruct anything on either side of the houses on either side of me. And then in terms of any other options, you guys, I think Shanna said there's a couple – or one other option that I had to put it in another place, but you really can't put one right here. It's another area of my house where it's set back 48 feet and there's an egress window there that's pretty deep and a nice tree in there. But it really wouldn't be very conducive for a pergola. So you can see I've done some nice landscaping and this picture might show it best. So this line right – the pergola would essentially go right here all the way to like right here. So it would be about 2 feet in front of the sidewalk that's right there. So I – the hardship I guess is that the first 8 to 10 feet is mainly hardscape, my cement sidewalk and this little retaining wall. And then at this point in the house right here you've got a 2 foot overhang where it was recently built on to, maybe 25 years ago. And then there's a 4 foot. So I think that's why they decided to put that – this open air thing in there so. (unintelligible) talking about this – so I have gone to some work just to kind of make it look as pleasing as possible without like altering the neighborhood landscape or anything like that.

Matt Perry: Alright. To answer your question we do have some letters in our packet and we do have also the Linden Hills Neighborhood Council good faith notification which has the signatures of several of your neighbors on your street. Any questions of Mr. Erickson? Yes, Mr. Koch.

Chris Koch: I think this thing is beautiful. But as a Board member whose job it is to say okay, this warrants departure from the Code because clearly there's a certain number of items that warrant it. The biggest one that I have to overcome here is hardship. And I need help from you to get there.

Steven Erickson: Yeah, I mean I'd like to do something to improve – you know I've been working at improving this front part and it doesn't look bad now. But that first – that first 8 to 10 feet it is all cement and I think I'm probably one of the only houses on that block that just has that kind of look you know. And I just was hoping to kind of pull it together a little bit with a little bit of landscaping. So that's why I was really like impressed when they said hey this is more a detached kind of unit or pergola or whatever so I kind of like pulled it all together a little bit. The front part of your house with the grass and et cetera, et cetera, your sidewalk kind of curves in so. So that if I went out – if I tried to go out the 6 feet the City allows I'd land first pole right in the middle of the sidewalk here. This area it's 10 feet right here, then if I go in you know, then 8 feet out I'd have a pole about right here. So that's why they're suggesting that the 6 feet more that I need to kind of make a balance, come together. So without, you know, I could take this out and run the sidewalk right up next to the house. That would look kinda goofy, and stuff like that. And I don't need to do this, I know that. But it certainly, you know I'm just try to, it's a really nice block and all my neighbors are like really great neighbors and just trying to improve the look of my house. But at the same time I can't do it without you know, sticking some poles in the ground and they'd hit the cement and stuff like that so...

Matt Perry: Yes, Mr. Cahill?

Sean Cahill: Thank you Mr. Chair, thank you Mr. Erickson for your time. Just a quick question, maybe a little bit for your information is Minnesota Supreme Court recently has kind of upped the odds on us and made it a little harder to do this and so no longer can we just say this is a great idea and it's reasonable, but we kind of have to look forward to that you can't do anything but what you're asking for, so my question is: is there anything that this proposed pergola will do or needs to do that the existing one cannot?

Steven Erickson: Again, I didn't even consider it an existing one. I think it was – I guess you can't even see it from the sidewalk or the road, you gotta get right up under the house to really see it. So I don't really consider it a pergola in the first place, but you know, so no comment on that I guess, you know. I don't know, I guess I'm just trying to improve the, you know, pull it together – the house and the hardscape around it. You'd have to kinda see it. I can show you another view I guess, but I tried to give you multiple views ...

Matt Perry: Mr. Erickson, if I may, sorry for interrupting you but, maybe what Mr. Cahill's driving at is what your motivation for doing it. I think you said in part it aesthetic. You're trying to improve the look of the house.

Steven Erickson: Trying to pull that hardscape and that front of the house kinda together with the house.

Matt Perry: Okay, are there other motivations perhaps?

Steven Erickson: Nope. Not a bit. Nope.

Matt Perry: Okay, great. Any other questions of Mr. Erickson? Mr. Sandberg.

Dick Sandberg: Thank you Mr. Erickson, I have one question. When you install the pergola are you intending to put any more hardscape surface beneath the pergola or just continue to use what's there.

Steven Erickson: No, simply to use what's there. Just to tie it together.

Dick Sandberg: So only the posts would be occupying space, it's

Steven Erickson: Yeah, I think it's going to look pretty good. I have Gensler working on, which is one of the top firms in town and I tell my neighbors if it doesn't look good I'm taking it down, you know and well, so but, I know that's not here nor there here but

Matt Perry: Okay. Any other questions for Mr. Erickson? I see none. Thank you for your presentation. Is there anyone else here to speak in favor of this application? Is there anyone here to speak against the application? I see no one. Let's close the public hearing. Board comment? Mr. Finlayson.

John Finlayson: At this point in time I see no hardship and I'm inclined to follow staff's recommendation. But I'd like to hear comment from my other Board members.

Matt Perry: Alright, thanks for that comment Mr. Finlayson. Other Board comment? Mr. Koch.

Chris Koch: Making this property look so much better or having it be so much worse than it is, is a hardship then I'm all for it but I, unfortunately, I just don't have that latitude. So I too am inclined to kind of follow staff recommendation.

Matt Perry: Okay, thank you for your comments. Mr. Keobounpheng?

Souliyahn Keobounpheng: I tend to look at this here as a - almost a yard sculpture. Not necessarily a structure permanent, and the intent of Mr. Erickson is not adding on to this house, not making this any larger as a permanent structure. I tend to agree with the

aesthetic qualities that this will improve the house and the block. And given that Zenith is a larger road that the obstructive issue doesn't play here. So I tend to look at this as more of a garden trellis yard art rather than a structure. So in some saying to that it's a variance or doesn't even apply in that sense, I believe.

Matt Perry: Alright. Thank you for your comments. I will note that staff is – they have made a determination of what it is, which is why a variance is being required. So respecting and recognizing what you're saying, staff is differing in their view on that and that's why we're here listening to the presentations because of that. Mr. Ditzler.

Matt Ditzler: Thank you Chair member Perry. I was just going to say that I think that I will disagree with my fellow Board member. I believe that it is a structure. It seems to have footings and I think staff is treating it similar to as they would a porch. Which they should and it encroaches further into the front yard and I do believe it does have some nice aesthetic qualities, however this is completely created by the Applicant and while I think we could mitigate some of the other findings I cannot possibly fathom how we would go around that one. And so therefore I will be supporting staff's recommendation on this.

Matt Perry: Alright. Before we here from you Mr. Koch, Mr. Nutt?

James Nutt: Thank you Chairman Perry. As much as I do like the design, we can't approve things based on design. I wish we could because we could strike out things that are not as attractive as this. But I do have a hard time with the hardship and the fact that it is so clearly out of the setback, as much as I do appreciate beautifying neighborhoods and everything. So I will have to agree with staff recommendation on this one.

Matt Perry: Okay. Mr. Koch.

Chris Koch: I have a question for staff. Looking at the photos Ms. Sether, it appears that there is a, you maybe want to call a flagstone kind of patio area that extends into the setback as well. Given that the proposed – would that be considered a structure, and if so, would the proposed pergolas – you can see to the right in that top picture there – would that be considered a structure? And if so, wouldn't the proposed pergola fall behind that so it would then be a permitted obstruction because - how does that work?

Shanna Sether: A patio is defined as a structure. A patio greater than 50 square feet in area is not an allowed obstruction in a required front yard. Staff is not aware of the size of that particular patio. It wasn't found on the site plan. However, if it is greater than 50 square feet in area it's not allowed anyway.

Chris Koch: Unless it's been there a long time correct?

Shanna Sether: It would've had to have been constructed

Chris Koch: I mean would the burden of proof on its existence be on the City or on the homeowner?

Shanna Sether: No, it would be on the property owner.

Chris Koch: And it would be an allowable obstruction?

Shanna Sether: Mm-hmmm.

Chris Koch: Okay.

Matt Perry: Any other questions, comments? Mr. Manning?

Bruce Manning: I have a well known hostility to the string test. However ...

Matt Perry: Which we are all very aware of. And I also would mention should not be coming into play into our discussion.

Bruce Manning: And it's not. I'm just noting that despite that I think, and what has been my shared consensus that this is a nice project on a nice block and that what we're talking about here is a fairly insignificant mass of pillars that are less than a foot square. They're less obstructive to the sight line, for instance, than mature trees which the Applicant could go buy and plant right there without any problem. I share some of Mr. Keobounpheng's questioning about whether this is in fact a structure, but I don't think it's our purview here to overturn staff's determination as to this particular item, whether it is a structure or not. So although I like the project and wish it were happening, I'm feeling quite constrained by recent events determining what was within our purview to decide and for that reason reluctantly I will move staff.

Matt Perry: There's a motion to adopt staff recommendation to deny the variances. Is there a second?

John Finlayson: Second.

Matt Perry: There was a second. I think I heard Mr. Finlayson second that for the record. Any further discussion? Will the clerk please call the roll?

Clerk: Mr. Cahill?

Sean Cahill: Yes

Clerk: Mr. Ditzler?

Matt Ditzler: Yes.

Clerk: Mr. Finlayson?

John Finlayson: Aye

Clerk: Mr. Koch?

Chris Koch: Yes.

Clerk: Mr. Manning?

Bruce Manning: Yes.

Clerk: Mr. Nutt?

James Nutt: Yes.

Clerk: Mr. Keobounpheng?

Souliyahn Keobounpheng: Reluctantly, yes

Clerk: Mr. Sandberg?

Dick Sandberg: Yes.

Clerk: The motion passes.

Matt Perry: Alright. To the Applicant, the request is denied. You can see staff after the hearing for what your options are. Thanks very much.