

Jeff Cox
City Clerk/City Council Secretary
City Hall, Room 330
411 West First Street
Duluth, MN 55802
218-730-5500

05.18.17

Mr Cox,

Please find the attached request to overturn the May 9th ruling by the Planning Commission regarding the following Variance application:

PL 17-036

Applicant: James Mohn and Heather Muster
3421 East First Street
Duluth, MN 55804

First Hearing April 11, 2017

A Rear Yard Setback Variance Request to construct a screen porch addition and deck to the rear yard of the house that would encroach 10.5' into the rear yard setback.

The size of the proposed encroachment was 193 SF, including overhangs.

Action taken:

Denied, Motion failed 3-5

Move was made to Table and was approved 7-1

Notes:

As representatives of the Applicant, we were asked to return with a solution that minimized the proposed encroachment on the Rear Yard setback. It was noted by Commissioner Moffat that there was another wall of the house where the addition could be attached, which would not require a setback variance.

It is noteworthy that, in 1967, under prior ownership, a significant portion of the existing 5000 SF house (735 SF) was built to and granted a 10' rear yard setback, which is 15' into the standard rear yard setback of 25'. The size of the lot is 29,500 SF. The original 1925 home is at an extraordinary front yard setback of 81'.



Second Hearing May 9, 2017

A Rear Yard Setback Variance Request to construct a screen porch addition and deck to the rear yard of the house was **AMENDED** to encroach 4' 1-1/2" into the rear yard setback. The proposed deck was redesigned to be compliant on the property. So Moved. **The size of the proposed encroachment was 36.63 SF, including overhangs, an 81% reduction of encroachment area.**

Action taken:

Denied, Motion Failed 4-4

Notes:

The summary report for this May hearing is attached. The requested proposal for this hearing is identical to the original 10.5' encroachment into setback Variance Request. This is not an accurate report of the presented options and discussion related to the Setback Variance Requested, and does not show the 3 options for reduced encroachment presented to the Commissioners by the Applicants representative. As such, the report leaves the impression that serious efforts were not made to minimize the encroachment of the proposed addition.

In the May 9 hearing, the Applicants proposed encroachment was AMENDED to a 4'-1-1/2" encroachment of the structure only, including overhangs, and complete removal of the deck from the request. The area of coverage within the Rear Yard setback was reduced from an original request in April of 193 SF, at a depth of 10.5', to an AMENDED request of 36.63 SF at a depth of 4'1-1/2".

3 options were presented by the Applicants representative.

Option 1 showed the placement of the screen porch attached to the formally organized wing of this classic house, facing directly into the steep hillside at the back of the building. This placement would not require a Variance. Diagrams were shown explaining the impracticality of attaching an informal/ family use screen porch to the formal side of the house, where its access was not visible from the family room and kitchen, from which the screen porch would most often be used. Further, it was pointed out that the addition would cover 2 unique pointed arch windows in the formal living room and reduce the daylight into the formal living room whose windows face north. It was shown that the visibility of the screen porch from the family room and kitchen would be appropriately (for existing functional patterns) increased if the addition were placed on the west wall of the family room.

Option 2, explained as the option favored by the Applicant, was reduced in size from the original application and the deck was relocated to be outside of the Rear Yard setback. This option reduced the encroachment to an area just slightly larger than a sheet of plywood at 36.63 SF. Further, the width of the addition allowed for existing windows symmetrically placed on the wall of the family room, where the porch would be attached----to remain symmetrical. The windows in almost every interior wall in the house are symmetrically placed on their walls. This is a consistent architectural expression of the house.

Option 3, further reduced the width of the screen porch to have only the overhang of the structure within the Rear Yard setback. As such, it would not need a Variance, however, it would require the removal of a family room window, to frame the porch to the exterior wall. This would cause an asymmetry of window placement in the family room and shift the addition off center of a bow window located directly above. As such, it is an inferior quality, inconsistent architecture for this classic home.

Ruling requested May 18, 2017:

The applicant requests that the ruling denying the AMENDED encroachment into the Rear Yard setback, of 4'-1-1/2" (36.63 SF) be overturned. The requested Variance is consistent with the intent of the UDC and the Comprehensive Plan in this traditional neighborhood. The size of the encroachment (approximately the size of a sheet of plywood) is insignificant and minimal. The Variance would allow for the most complimentary architectural solution of 3 greatly reduced options, with the most functional and aesthetic relationship to the existing home. There have been no objections to the project from any neighbors in the 70+ days the informational sign has been posted.

One of the Findings of Fact by the staff indicates that there was no finding of practical difficulties or hardship requiring the Variance. We feel that there is a fundamental hardship created for the Applicants by the existing condition of the home 15' within the Rear Yard setback. The Applicants did not cause this practical difficulty. Much of this existing built space is family room space, addressed and improved by the proposed screen porch function. The proposed screen porch does not increase this existing setback depth and is fully within the character of the home and the reasonable use of the back yard.

Respectfully submitted,

Cheryl Fosdick, Principal

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Attachments

Email thread as of 05.18.17

Action Report received by e-mail 05.16.16

E-mail thread as of 05.18.17

Cheryl,

The application, the minutes and subsequent materials provided by the applicant to the Planning Commission will all be sent to the Council as the application for appeal is submitted.

John Kelley
Planner II

City of Duluth
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jkelly@duluthmn.gov

From: Cheryl Fosdick [<mailto:cheryl@cfdesignltd.com>]
Sent: Wednesday, May 17, 2017 10:24 AM
To: John Kelley <jkelly@duluthmn.gov>
Cc: Keith Hamre <khamre@duluthmn.gov>
Subject: RE: PL 17-036 Action Letter

Mr Kelley,

The problem with the report is that it is not inclusive of the discussion and the presentation that actually took place on May 9 regarding the second very reduced option. We did not ask for a 10' setback variance on May 9- we asked for that in April. On May 9, we asked for a 4'-1-1/2" setback variance for the building only, including the overhangs and completely removed the deck, reducing the overall infringement 81%. Your report sends us into the appeal with City Council without the benefit of the entire content of the May 9 discussions in the report. This is greatly disadvantaging us in our appeal, requiring us to appeal our original request and not our revised request presented and rejected on May 9. There was specific discussion about our ability to appeal our proposed solution (the greatly reduced second choice) to City Council, and I was made to understand that I could do so. Now it is not even acknowledged that we presented a greatly reduced option and it was voted on and rejected by the Commissioners. Essentially, you are making us start completely over with Council, despite the efforts we made through the Planning process to greatly reduce the setback infringement. This does not seem at all a fair accounting of our efforts.

Cheryl Fosdick, Principal

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From: John Kelley [mailto:jkelly@DuluthMN.gov]
Sent: Wednesday, May 17, 2017 9:44 AM
To: 'Cheryl Fosdick' <cheryl@cfdesignltd.com>; Heather Muster <heathermuster@gmail.com>
Cc: Keith Hamre <khamre@DuluthMN.gov>
Subject: RE: PL 17-036 Action Letter

Cheryl,

At their meeting on April 11, 2017 the Planning Commission tabled the variance application PL 17-036. On May 9, 2017 the Planning Commission removed this item from the table and discussed the other two designs that were submitted for consideration. Option 2 was presented with a reduction in the encroachment to the rear yard setback from the initial proposal. The third option discussed detailed that the deck and screen porch could be constructed entirely outside of the rear yard setback, with the exception of an 8" roof overhang. This option does not require action by the Planning Commission as it is permitted with the 8" overhang. The Planning Commission did have a motion to approve Option 2, however that motion failed. The second motion was to deny the variance request for an encroachment into the rear yard setback per staff recommendation in staffs report. That motion passed. Hope this helps clarify the action taken by the Planning Commission.

John Kelley
Planner II

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From: Cheryl Fosdick [mailto:cheryl@cfdesignltd.com]
Sent: Tuesday, May 16, 2017 7:51 PM
To: John Kelley <jkelly@DuluthMN.gov>; Heather Muster <heathermuster@gmail.com>
Cc: Keith Hamre <khamre@DuluthMN.gov>
Subject: RE: PL 17-036 Action Letter

This report is inaccurate as to date and associated actual proposed request.

I appeared before the Planning Commission 5/09/17 as a response to tabled action taken after our issue first hearing on 04/11, 2017. (item I)

The motion at that time (04/11) was for a proposed addition wherein the proposed area of coverage within the 25' setback, including a deck, was 19'4" x 10', or approximately **193 SF of coverage**. The motion failed and the project was TABLED on 4/11. We were requested to return with a different proposal that either did not require a Variance (in which case we would not return) or sought a Variance for a project with less intrusion upon the setback.

We returned on May 9 with 3 options and discussed them.

One option, entirely outside of the setback, required the screen porch/addition proposed be placed on the house in a location not in keeping with circulation and use patterns developed inside the house floor plan. Further it directed the primary view into a steep hillside and not to the more open aspect of the house "yard" and provided access to the "informal living" function of the screen porch from the "formal living" spaces of this classic house, rather than the informal family room spaces. We showed several diagrams explaining this issue very clearly.

Our second option**, and the one I expressed as "favored for the Commission approval" showed a proposed addition attached to the house in the most direct relationship to the informal family spaces, that was 4' 1-1/2" inches (including 8" overhang) into the 25' rear yard setback. The project was 8'-10.5" deep (including 8" overhang), for **a total of 36.63 SF within the setback**, approximately the size of a sheet of plywood, which was expressed to the Commissioners. Further NONE of the deck was in the setback. This represented **a reduction in the SF within the setback of 156.37 SF or, an 81% reduction in the violation of the setback.**

We then showed a further compromised plan that projected less than 10" into the setback, but required us to remove an existing window in the family room behind the porch in order to frame it . We showed how the original family room windows were "centered" in the space and how removing a window would compromise the symmetry of the existing space behind the porch and was, therefore, **a less appropriate architectural solution than our second option.** Even as this option would NOT require a Variance, because of the minimal projection into the setback, **we requested approval of our second option****, : a significant revision to our request of April 11, AND a superior architectural solution for preserving the existing character of the home inside and out. Further, the encroachment, invisible to anyone but the homeowner and NO neighbors, was the size of a sheet of plywood. There were no objections to the Variance from neighbors.

We requested approval of a project with a 37 SF encroachment into the setback or: 4'1-1/2" deep x 8'10-1/2 wide . We did not request approval of a project projecting 10' deep into the 25' rear yard setback.

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