

**Department of Community Planning and Economic Development - Planning Division Report****Variance Request  
BZZ-2294****Date:** May 5, 2005**Applicant:** Teresa Jo Knutson**Address of Property:** 3906 York Avenue South**Contact Person and Phone:** Bruce Knutson, (612) 332-8000**Planning Staff and Phone:** Tanya Holmgren, (612) 673-5887**Date Application Deemed Complete:** April 1, 2005**End of 60 Day Decision Period:** May 31, 2005**Ward:** 13      **Neighborhood Organization:** Linden Hills Neighborhood Council**Existing Zoning:** R1 Single-family District**Proposed Use:** A swimming pool, patio, and fence accessory to an existing single-family dwelling.**Proposed Request:** A variance to reduce the established front yard setback along York Avenue South from 47 ft. to 23.5 ft. to allow for the construction of a pool and a patio over 50 sq. ft. in the front yard, a variance to reduce the corner side yard setback from 10 ft. to 6 ft. allow for the construction of a patio over 50 sq. ft., a variance to increase the maximum height of a fence from 3 ft. to 4 ft. and from 3 ft. to 6 ft. in the front and corner side yards.**Zoning code section authorizing the requested variance:** 525.520 (1)**Background:** The subject property is approximately 116 ft. by 130 ft. (15,080 sq. ft.) and located on the corner of York Avenue South and 39<sup>th</sup> Street West. The property consists of an existing single-family dwelling that fronts York Avenue with a two-car attached garage that is accessed off of 39<sup>th</sup> Street. The site is a combination of two city lots. The existing dwelling is located 49.5 ft. from the side property line along 39<sup>th</sup> Street West and is built across the shared property line, allowing no future split of the property. The property maintains a 36 ft. by 39 ft. rear yard and a 49.5 ft. by 130 ft. side yard. The applicant is proposing to construct a below ground pool and a patio to the north side of the dwelling. The proposed pool and patio extend into the front yard and requires a variance. Pools are not permitted in the required front and corner side yard and patios are allowed as a 50 sq. ft. obstruction. The proposed patio would surround the pool, allow for a table, and allow for a sunning area. The proposed patio will be approximately 541 sq. ft. in the required front yard and approximately 256 sq. ft. in the required corner side yard.

The applicant is also proposing to construct a fence to enclose the pool and patio area. Building code requires a fence height of a minimum of 4 ft. and a 4 ft. wide patio around swimming pools. The proposed fence consists of a solid wood security fence that is 4 ft. in height located 2.5 ft from the front and side property lines and behind the existing 6 ft. tall hedge located along the property line on the corner of the property. The proposed fence would also be 6 ft. in height connecting the front of the dwelling to the proposed 4 ft. tall fence along York Avenue and would run parallel to 39<sup>th</sup> Street West. Additionally, a 6 ft. tall portion of fence would run parallel with 39<sup>th</sup> Street to the rear of the 4 ft. tall security fence constructed behind the hedge. The fence crosses the driveway with a gate and continues around the rear of the property. Fences located in the rear yard are allowed 6 ft. in height. Fences located in the required front and corner side yard shall not exceed 3 ft. in height. Fences located in the required corner side yard shall not exceed 6 ft. in height when located behind the dwelling and attached garages. Due to the 4 ft. and 6 ft. height of the security fence a variance is required to construct the fence around the swimming pool in the required front and corner side yards.

### **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.**

**Established front yard setback:** The applicant is seeking a variance to reduce the required front yard setback established by the adjacent residential structure along York Avenue South to 23.5 ft. to allow for the construction of a below ground pool and patio. The patio will be located 23.5 ft. from the property line along York Avenue South. The pool will project 7 ft. from the front of the dwelling and the patio will project 24 ft. from the front of the dwelling. Strict adherence to the code requires that the subject property construct a patio that is 50 sq. ft. and project no more than 4 ft. into the front yard. Strict adherence to the regulations would not allow for the patio or pool as proposed. Staff believes that a pool and patio are a reasonable use of a residential property. Staff is concerned with the size and scale of the pool and patio and believe a more reasonable use of the property exists.

**Corner side yard setback:** The applicant is seeking a variance to reduce the required corner side yard setback along 39<sup>th</sup> Street West from 10 ft. to 6 ft. to allow for the construction of a patio surrounding a below ground pool. Strict adherence to the code requires that the subject property construct a patio that is 50 sq. ft. and project no more than 4 ft. into the corner side yard. Strict adherence to the regulations would not allow for the patio as proposed. Staff believes that a patio is a reasonable use of a residential property. Staff is concerned with the size and scale of the patio and believe a more reasonable use of the property exists.

**Fence height:** The applicant is seeking a variance to increase the maximum height of a fence from 3 ft. to 4 ft. and from 3 ft. to 6 ft. in the front yard and a variance to increase the height of a fence from 3 ft. to 6 ft. in the corner side yard. Strict adherence to the regulations would not allow for the construction of the proposed fence to enclose the proposed pool and patio, which is a requirement of the building code. Staff believes that a pool and patio are a reasonable use of a residential property, as well as the fence enclosure. Staff is concerned with the size and scale of the pool and patio and believe a more reasonable use of the property exists that could remove the tall fences from the required yard.

- 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.**

**Established front yard setback:** The conditions upon which the setback variance are requested are unique to the parcel of land. The location of the dwelling allows limited use of the remaining portion of the property. Staff believes that the applicant has proposed to construct a pool and patio that is excessively large and projects 23 ft. in front of the existing single-family dwelling and the established front yard setback. Staff does recognize the difficult configuration of this property and believes a variance from 47 ft. to 40 ft. would allow reasonable usability of the property. Staff believes the scale of the proposed pool and patio is a circumstance created by the applicant.

**Corner side yard setback:** The conditions upon which the setback variance are requested are unique to the parcel of land. The location of the dwelling allows limited use of the remaining portion of the property. Staff believes that the applicant has proposed to construct a patio that is excessively large. Staff does recognize the difficult configuration of this property and believes a variance may be required to allow reasonable usability of the property. Staff believes the scale of the proposed patio is a circumstance created by the applicant.

**Fence height:** The conditions upon which the setback variance are requested are unique to the parcel of land provided that a 4 ft. fence is required surrounding a pool, but have been created by the applicant. The location of the dwelling allows limited use of the remaining portion of the property. Staff believes that by constructing a large pool and patio places the required fencing in the front and corner side yards. Staff recognizes that an existing 6 ft. tall hedge currently exists on the property, but staff believes this creates a significant amount of privacy on the property and that the fence is excessive and creates a fortress-like appearance.

- 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.**

**Front yard setback:** Staff believes the patio and pool addition to the existing single-family dwelling would be within the spirit and intent of the ordinance. Granting the variance from 47 ft. to 40 ft. would allow usability of the property and the addition would not be injurious to the use or enjoyment of the other property in the vicinity. Staff feels a patio that is greater than 4 ft. deep is more useable, however is concerned with the scale of the entire proposed project.

**Corner side yard setback:** Staff believes the patio addition to the existing single-family dwelling would not be within the spirit and intent of the ordinance, by exceeding the allowed patio requirement by 200 sq. ft. Granting the variance could be injurious to the enjoyment of other property and is not characteristic of other properties in the vicinity.

**Fence height:** Staff is concerned about the 4 ft. tall fence in the front and corner side yard and the 6 ft. tall fence in the front and corner side yard. The applicant has proposed a large pool and patio and has proposed to construct a fence that surrounds the north half of the property. Staff believes this is not in keeping with the intent of the ordinance and is not characteristic of the area.

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.**

**Front yard setback:** Granting the front yard setback variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed construction be detrimental to the public welfare or endanger the public safety.

**Corner side yard setback:** Granting the corner side yard setback variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed construction be detrimental to the public welfare or endanger the public safety.

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

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

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **approve** the variance to reduce the established front yard setback from **47 ft. to 40 ft.** to allow for the construction of a pool and a patio over 50 sq. ft. in the front yard, **deny** the variance to reduce the corner side yard setback from 10 ft. to 6 ft. allow for the construction of a patio over 50 sq. ft., **deny** the variance to increase the maximum height of a fence from 3 ft. to 4 ft. and from 3 ft. to 6 ft. in the front and corner side yard.