

Department of Community Planning and Economic Development – Planning Division Report**Variance Request
BZZ-3147****Date:** August 17, 2006**Applicant:** Kathleen Geagan**Address of Property:** 4601 33rd Avenue South**Contact Person and Phone:** Kathleen Geagan, 612-724-4452**Planning Staff and Phone:** Molly McCartney, 612-673-5811**Date Application Deemed Complete:** July 21, 2006**Public Hearing Date:** August 17, 2006**Appeal Period Expiration:** August 28, 2006**End of 60 Day Decision Period:** September 19, 2006**Ward:** 12 **Neighborhood Organization:** Standish Ericsson Neighborhood Association**Existing Zoning:** R1A Single-family District**Proposed Use:** A wall in the required corner side yard

Proposed Variance: A variance to increase the maximum height of a wall in the required corner side yard setback from 3 ft. to allow for a portion of a wall that is 5 ft. and 6 ft. in height and a side yard setback to allow for a patio in the required corner side yard setback at 4601 33rd Avenue South in the R1A Single-family District

Zoning code section authorizing the requested variance: 525.520 (5)(1)

Background: The subject site is a corner lot, measuring 40 ft. by 139 ft. (5,560 sq. ft.), that consists of a two-story, single-family dwelling. The applicant resides and operates a home day care at this location. The applicant is proposing to install a wall in the required corner side yard on the north side of the dwelling that will exceed the maximum height and will use this area between the wall and the dwelling as a patio to locate a grill.

The proposed wall is located along the side of the house at two different heights. The 5 ft. tall portion of the proposed wall has a 3 ft. solid wall with two feet of an open, wrought iron detail and three 5 ft. tall columns. The 6 ft. tall portion of the wall has a 5 ft. solid wall with 17 in. wrought iron details and one 6 ft. tall column. The maximum height of a wall or solid fence in the required corner side yard along the

side of the house is 3 ft. This height can be increased when the wall or fence is at least 40 percent transparent. The portion of the wall that is 5 ft. tall is 28 percent transparent and the portion of the wall that is 6 ft. tall is 18 percent transparent. The proposed fence is not eligible for an increase in height based on transparency. The site currently has two 6 ft. columns located in the rear of the house along the corner side yard setback, which meets the maximum wall height.

Staff considers the area that the grill will be located as a ground level patio, which needs a variance to be located in the required corner side yard because of its size. The patio is approximately 5 ft. 10 in. by 17 ft., which is the length of the proposed wall, and measures 99 sq. ft. in size. A ground level patio in the required corner side yard that measures 5 ft. and no more than 50 sq. ft. is a permitted obstruction and would not need the variance. The proposed-sized patio is not a permitted obstruction.

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.**

Fence height: The applicant is requesting a variance to increase the maximum permitted height of a wall in the required corner side yard from 3 ft. to 5 ft. and 6 ft. Without a variance, the maximum height of a solid wall in the required corner side yard is 3 ft. The applicant states that the fence height is proposed in order to provide privacy to this area from the public sidewalk. While privacy is a desired feature for this area, staff does not identify a hardship associated with meeting the height requirements of the ordinance.

Patio in required corner side yard: The zoning code permits a small sized patio in the required corner side yard, but not the size as proposed on the applicant's plan. The applicant is proposing to use this area for a patio in order to separate barbeque equipment from the play area in the backyard. Staff believes that a patio that meets the permitted obstruction regulations for a patio in this area is a reasonable use of the property.

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.**

Fence height and patio in required corner side yard: The property is a corner lot, which has a greater setback along the corner side yard than an interior lot. In some situations, a wall is allowed to be 6 ft. tall along an interior side yard. The applicant states that this proposed location was determined to be the best area for the patio because the small side yard on the south side of the house would not accommodate a patio and the current use of the backyard as a play area. However, the circumstances on which the variances are request have been created by the applicant since the backyard is used for a play area and due to the design and height of the wall and the patio size.

- 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.**

Fence height: The wall height requirement along a corner side yard is intended to provide a sense of privacy and still offer access to light and air and regulate visual impacts. The wall along the corner side yard is limited to 3 ft. in order to reduce the mass of a solid wall or fence along the public sidewalk and height requirement also preserves views from inside the dwelling to the street. While there are no other similar walls in the surrounding area, the design of the proposed wall is in character with the subject dwelling and site. The brick of the wall and columns is similar to the brick on the dwelling and front porch and the wrought iron details of the wall will be similar to an exiting gate to the backyard.

Patio in required corner side yard: The patio in the required corner side yard is limited to a size smaller than the proposed patio. The proposed sized patio could result activity that may have conflict with the activity of the public sidewalk. Limiting the size of the patio to 5 ft. deep and no more than 50 sq. ft. in this area also restricts activity that may be more compatible in the backyard away from the public sidewalk.

- 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.**

Fence height and patio in required corner side yard: Granting the variances would likely have no impact on congestion of area streets or fire safety, nor would the proposed variance be detrimental to or public safety. By locating a patio so close to the public sidewalk, there may be conflicts between the private use of the patio and the public use of sidewalk.

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

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** the variance to increase the maximum height of a wall in the required corner side yard setback from 3 ft. to allow for a portion of a wall that is 5 ft. and 6 ft. in height and **deny** the side yard setback to allow for a patio in the required corner side yard setback at 4601 33rd Avenue South in the R1A Single-family District.