

Department of Community Planning and Economic Development – Planning Division
Appeal of the Decision of the Zoning Administrator
BZZ-4566

Date: October 15, 2009

Applicant: William Wells

Address of Property: City-wide

Project Name: ZA Appeal of “Habitable Space”

Contact Person and Phone: William Wells, (612) 669-2052

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

Date Application Deemed Complete: September 11, 2009

End of 60-Day Decision Period: November 10, 2009

Ward: All **Neighborhood Organization:** All

Existing Zoning: Not applicable for this application

Zoning Plate Number: Not applicable for this application

Legal Description: Not applicable for this application

Proposed Use: Not applicable for this application

Appeal of the decision of the Zoning Administrator: interpretation of “habitable space” as it pertains to the zoning code definition of *half-story*.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the

board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis: The appellant has filed an appeal of the decision of the Zoning Administrator regarding intent of the words “habitable space” within the zoning code definition of *half-story*. The Zoning Administrator issued the attached response to the applicant’s inquiry questioning why CPED-Planning staff does not use the building code definition of the term when administering the zoning code.

Half-story is defined in the Minneapolis zoning code as:

Story, half. A story under a gable or hip roof that contains a habitable floor area, including floor area under dormers, not exceeding fifty (50) percent of the floor area of the floor below.

The appellant has stated that “Minneapolis has no formal definition of Habitable Space published in the Zoning Code” and that the Zoning Administrator does not refer to the building code definition of “habitable space” when applying it to the *half-story* definition.

The 2006 International Building Code defines *habitable space* as:

HABITABLE SPACE. A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

The appellant argues that the Zoning Administrator should use the building code definition of “habitable space” when applying the *half-story* provision.

Findings:

1. Habitable is not defined in the zoning code. If a word is not defined in the zoning code, the zoning administrator applies the common meaning as required by section 520.160 of the zoning code.

520.160 Definitions. Unless otherwise expressly stated, or unless the context clearly indicates a different meaning, the words and phrases in the following list of definitions shall, for the purposes of this zoning ordinance, have the meanings indicated. All words and phrases not defined shall have their common meaning.

To find a word's common meaning, a dictionary(s) is referenced. For example, the American Heritage Dictionary defines habitable as "Suitable to live in or on; inhabitable."¹

2. The use of the term "habitable space" in other parts of the zoning code helps to clarify the intended meaning. *Half-story* is intended to be applied to residential uses. The zoning code definitions for *dwelling* and *dwelling unit* below indicate that "habitable space" encompasses an entire dwelling unit.

Dwelling. A building, or portion thereof, containing one (1) or more dwelling units, designed or used exclusively for human habitation.

Dwelling unit. One (1) or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with a single complete kitchen facility, sleeping area and bathroom provided within the unit for the exclusive use of a single household.

The intent of the zoning ordinance is to include all areas that are suitable to live in and would not exclude bathrooms, hallways, closets, or stairs, as indicated in the definition of dwelling unit.

3. The word "habitable" is found in Chapters 535 and 551 in the zoning code; therefore the application of this word must be consistent in all of those provisions unless otherwise indicated in the ordinance. No exceptions are made to differentiate how habitable should be applied in any of these provisions.

535.90. **Minimum size and width, principal entrance and windows, and location of attached garage requirements for residential uses.** (a) Size and width. The minimum gross floor area of a dwelling unit, except efficiency units, shall be five hundred (500) square feet. The minimum gross floor area of efficiency units shall be three hundred fifty (350) square feet. Not less than eighty (80) percent of the habitable floor area of single or two-family dwellings and multiple-family dwellings of three (3) and four (4) units shall have a minimum width of twenty-two (22) feet.

551.1160. **Application of provisions.** The provisions of 551.2050 shall apply to all new development, major redevelopment, in fill development, construction and reconstruction of a building, and any habitable additions or expansions of an existing building requiring a building permit after the effective date hereof. This section shall not apply to remodeling or rehabilitation of an existing residential building; construction of decks, swimming pools, breezeways, three-season porches or the construction of an appurtenance to an existing residential building.

¹ "habitable." *The American Heritage® Dictionary of the English Language, Fourth Edition.* Houghton Mifflin Company, 2004. 03 Sep. 2009. <Dictionary.com <http://dictionary.reference.com/browse/habitable>>.

4. Building bulk regulations are established in order to assure that the scale and form of new development or expansion will occur in a manner most compatible with the surrounding area. The allowance of half-stories is intended to allow some flexibility in the building bulk regulations for residential structures subject to limitations to prevent adverse affects on adjacent properties. For the purpose of the zoning ordinance, building bulk that is dedicated to closets and bathrooms, for example, has the same impact on character as building bulk dedicated to bedrooms. On the other hand, the provisions of the building code and definitions in the building code are intended primarily to ensure the safety of the structure.
5. The application of the building code definition of *habitable space*, within the definition of *half-story* in the zoning code would result in greater floor area without added zoning restrictions to bulk, height and setbacks, in most cases.
 - a. The building code excludes bathrooms, hallways, closets, or stairs, whereas the zoning administrator's determination would not.
 - b. Height is measured in both feet and stories. The zoning administrator's determination of habitable area under a hip or gable roof would include all finished areas with a ceiling height of 5 feet or greater. If the area on the floor under a hip or gable roof is more than 50% of the floor below, it would constitute a full story. In zoning districts where the maximum height is 2 ½ stories, the use the zoning administrator's determination is that a variance or conditional use permit would be required, whereas the building code definition would not.
 - c. Setbacks for uses other than single and two-family structures are based on the number of stories above the first floor. The zoning administrator's determination would require greater interior and rear yard setbacks of multiple-family dwellings than would the definition of *habitable space* under the building code.
6. The zoning code does not refer the definition of "habitable space" to the building code. The zoning code specifically references the building codes in the following provisions:

543.120. **Installation of signs.** Signs shall be subject to the provisions of the building code and state electrical code.

551.400. **Accessible parking.** Accessible parking spaces for the disabled shall be provided as required by the Minnesota State Building Code.

551.580.(f)(5) Floodproofing measures, in accordance with the State Building Code and this zoning ordinance.

551.620 (1)a. Accessory structures shall be elevated on fill or structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classifications in the State Building Code. As an alternative, the structure may be floodproofed to the FP-3 or FP-4 floodproofing classification in the State Building Code provided the structure constitutes a minimal investment, shall not exceed five hundred

(500) square feet, and for a detached garage, the garage shall be used solely for the parking of vehicles and limited storage. In addition, all floodproofed accessory structures shall be subject to the following:

535.70. (1)a. The required screening shall be permanently attached to the structure or the ground and shall conform to all applicable building code requirements.

551.640. d. (1) Design and certification. The structure's design and as-built condition shall be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code...

2.b. The enclosed area shall be constructed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code.

2.c. (3) Nonresidential structures. All areas of nonresidential structures, including basements, located below the regulatory flood protection elevation shall be floodproofed in accordance with the structurally dry floodproofing classifications in the State Building Code. Structurally dry floodproofing shall meet the FP-1 or FP-2 floodproofing classification in the State Building Code...

551.620 **Nonconformities.** (2) Any structural alteration or expansion which would increase the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques allowable in the State Building Code, except as further restricted in this article.

551.765. (1) Residential uses. ... Accessible spaces required for residential uses by the Minnesota State Building Code and visitor parking spaces required by this chapter shall not count toward the maximum parking requirement.

541.330. **Size.** (b) Vertical clearance. All required parking spaces shall have a vertical clearance of at least six (6) feet, six (6) inches except where the building code requires greater vertical clearance.

Table 530-2 The structure includes a basement as defined by the building code

541.140 **Capacity of persons.** Where required parking spaces are determined on the basis of capacity of persons, such requirement shall be based on the maximum number of persons that can avail themselves of the goods or services of a use at any one (1) time year round, as determined by the required floor space per person established in the building code.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the appeal of the decision of the zoning administrator:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the decision of the zoning administrator’s interpretation of “habitable space” as it pertains to the zoning code definition of *half-story*.

Attachments:

- 1) Zoning Administrator interpretation in a letter dated September 10, 2009.
- 2) Written descriptions and findings submitted by the applicant
- 3) Correspondence from neighbors, neighborhood associations, etc.