

Department of Community Planning and Economic Development – Planning Division Report
Variance
BZZ 5228

Date: August 11, 2011

Applicant: Svitlana & Ihor Uniyat

Address of Property: 1602 California Street NE

Contact Person and Phone: Svitlana & Ihor Uniyat, (612) 706-2675

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

Date Application Deemed Complete: July 14, 2011

End of 60-Day Decision Period: September 11, 2011

Ward: 3 **Neighborhood Organization:** Sheridan Neighborhood Association

Existing Zoning: R2B Two-Family District

Zoning Plate Number: 9

Legal Description: Not applicable

Proposed Use: A privacy fence, patio and play equipment accessory to an existing single-family dwelling.

Concurrent Review:

- Variance to reduce the minimum required front yard to allow for an existing patio.
- Variance to reduce the minimum required front yard to allow for children's play equipment.
- Variance to increase the maximum height of a fence in the required front and corner side yards from 3 ft. to 6 ft.

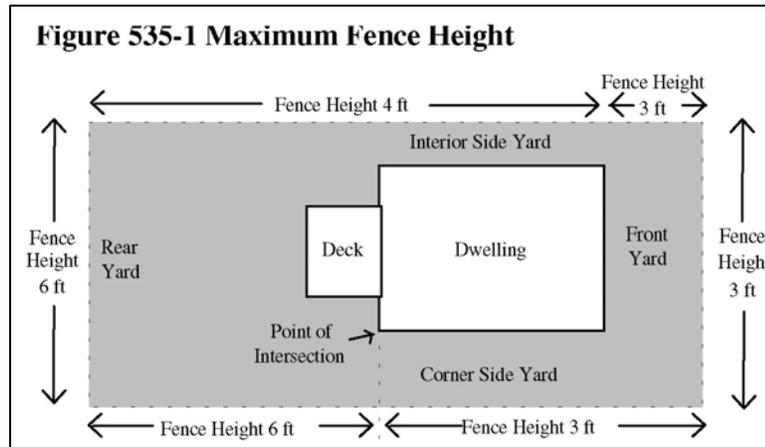
Zoning code section authorizing the requested variance: Chapter 525, Article IX Variances, Specifically Section 525.520(5) "to permit an increase in the maximum height of a fence" and Section 525.520(1)(1) "to vary the yard requirements, including permitted obstructions into required yards not allowed by the applicable regulations."

Background: The subject property is approximately 50 ft. by 120 ft. (6,000 sq. ft.) and consists of a one and one-half story single family dwelling on a corner lot. The property owner operates an in-home daycare out of the dwelling.

In 2006, the Hennepin County Department of Housing, Community Works and Transit completed a Risk Assessment for the subject property and found lead hazards on the property. With assistance from the

Sheridan Neighborhood and the City of Minneapolis lead program, a portion of the property was covered with cement and a mat play area to keep the children from exposure to any lead on the property. A portion of the mat play area is located in the required front yard along California Street NE. The mat play area exceeds 50 sq. ft., therefore, it is not a permitted obstruction in the required front yard and the applicant has applied for a variance. Some of the moveable play equipment is located on the cement patio and mat play area. Play equipment is not a permitted obstruction and must therefore be granted a variance to be located in the required front yard.

The applicant has recently constructed a new 6 ft. vinyl fence in the front and corner side yard. The maximum height of an opaque fence in the front yard is 3 ft. The maximum height of an opaque fence on the corner side yard up until the point of intersection (see fig. 535-1) towards the front of the property is 3 ft. The fence was constructed at 6 ft. along the front of the property on California Street for approximately 50 ft. and along 16th Avenue NE for approximately 67 ft. Therefore, the applicant is requesting a variance to increase the maximum height of an opaque fence in the front and in the corner side yard from 3 ft. to 6 ft. The applicant has stated that the purpose of having a 6 ft. privacy fence was to include the only door that accesses the rear of the property, which is located on the north side of the dwelling. In addition, the applicant has a home day care business and the fence was constructed for the safety of the children.



Staff has not received correspondence from the Sheridan Neighborhood Association for the project. Staff will forward comments, if any are received, to the Board of Adjustment at their regular meeting.

Findings Required by the Minneapolis Zoning Code:

VARIANCES to reduce the required front yard for a patio and play equipment

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

Patio: In 2006, the Hennepin County Department of Housing, Community Works and Transit completed a Risk Assessment for the subject property and found lead hazards on the property. With assistance from the Sheridan Neighborhood and the City of Minneapolis lead program, a portion of the property was covered with cement and a mat play area to keep the children from exposure to any lead on the property. A portion of the mat play area is located in the required front yard along California Street NE. The mat play area exceeds 50 sq. ft., therefore, it is not a permitted obstruction in the required front yard and the applicant has applied for a variance. Typically, patio areas located in the rear yard would comply with all of the required yards. The rear yard has been found to have unsafe levels of lead. Staff believes that practical difficulties of the parcel exist that have not been created by the applicant.

Play equipment: In 2006, the Hennepin County Department of Housing, Community Works and Transit completed a Risk Assessment for the subject property and found lead hazards on the property. With assistance from the Sheridan Neighborhood and the City of Minneapolis lead program, a portion of the property was covered with cement and a mat play area to keep the children from exposure to any lead on the property. Some of the moveable play equipment is located in the required front yard along California Street NE. Playground equipment is allowed as permitted obstructions in the required rear yard only. The rear yard has been found to have unsafe levels of lead. Staff believes that practical difficulties of the parcel exist that have not been created by the applicant.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

Both variances: Based on the submitted information staff believes that the location of the patio and playground equipment accessory to the existing single family home are reasonable uses of the property. The purpose of required yards is to provide for orderly development and use of land and to minimize conflicts among land uses by providing adequate light, air, open space and separation of uses.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

Both variances: Staff is generally concerned about patios and this type of equipment in the front yard; however, staff believes this proposed variance will not be injurious to the use of the adjacent property, because the location of the playground equipment will have less impact to the adjacent neighbor as it is located at least 40 ft. away from the adjacent dwelling. The applicant could set the patio and playground equipment outside of the required front yard; however, the playground equipment will be located in the rear yard, which is an unsafe area for children to play. The patio and play equipment are not located entirely to the front of the existing structure. The materials and design of the patio and play equipment are durable and front yard gathering spaces add additional visual surveillance and increase opportunities to connect with neighborhoods. The proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

VARIANCES to increase the maximum height of a fence in the front and corner side yard

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

The subject property is a standard corner lot and the maximum fence height in the front and corner side yard for an opaque fence is 3 ft. (or 4 ft. for an open and decorative fence). The applicant operates a daycare in her home and has the fence for security and privacy. Prior to the construction of the 6 ft. opaque fence, a 5 ft. chain-link fence with slats and hedges were located on the property. Staff believes that the circumstances for which the variance is sought have been created by the applicant and that complying with the height requirements does not create a practical difficulty.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

The applicant is seeking variance to increase the maximum fence height in the front and corner side yards from 3 ft. to 6 ft. in order to allow for security and privacy for her in-home daycare. The purpose of regulating fencing is to promote the public health, safety and welfare, encourage an aesthetic environment and allow for privacy while maintaining access to light and air. The fence is located along the entire front yard and corner side yard to the point of intersection. The regulations for fence height in these locations are to ensure that sight lines are not created and to allow views in and out of the property to encourage crime prevention through environmental design (CPTED). Staff believes that the proposed fence height, in these locations, is not a reasonable use of the property.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

Staff believes that the granting of the variance will alter the essential character of the surrounding neighborhood and may be injurious to the use or enjoyment of other property in the vicinity. The purpose of regulating fencing is to promote the public health, safety and welfare, encourage an aesthetic environment and allow for privacy while maintaining access to light and air. The fence is located along the entire front yard and corner side yard to the point of intersection. The regulations for fence height in these locations are to ensure that sight lines are not created and to allow views in and out of the property to encourage crime prevention through environmental design (CPTED). However, staff does not believe that a 6 ft. fence will be detrimental to the public welfare or endanger the public safety by preventing views around the corner for traffic and pedestrians.

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 **approve** the variance to reduce the minimum required front yard to allow for an existing patio accessory to an existing single- family dwelling located at 1602 California Street NE in the R2B Two-Family District, subject to the following condition of approval:

1. The patio shall not be expanded beyond its current configuration and the north half of the front yard shall remain as turf or landscaped area.

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 **approve** the variance to reduce the minimum required front yard to allow for children’s play equipment accessory to an existing single- family dwelling located at 1602 California Street NE in the R2B Two-Family District.

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 fence in the required front and corner side yards from 3 ft. to 6 ft. for an existing single-family dwelling located at 1602 California Street NE in the R2B Two-Family District.

Attachments:

- 1) Written descriptions and findings submitted by the applicant
- 2) Copy of e-mail sent to Sheridan Neighborhood Association and CM Hofstede
- 3) Neighborhood correspondence
- 4) Zoning map
- 5) Site plan
- 6) Photographs