

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-4604

Date: November 27, 2009

Applicants: Robert & Molly Whitmore

Address of Property: 2440 Cedar Lane

Contact Person and Phone: David Erotas, 952-401-4330

Planning Staff and Phone: John Smoley, Ph.D., 612-673-2830

Date Complete Application Received: October 21, 2009

Publication Date: November 27, 2009

Hearing Date: December 3, 2009

Appeal Period Expiration: December 14, 2009

End of 60 Day Decision Period: December 20, 2009

Ward: 7 Neighborhood Organization: Cedar - Isles - Dean

Existing Zoning: R1/Single Family District and SH/Shoreland Overlay District

Proposed Variances: Erotas Building Corporation, on behalf of Robert and Molly Whitmore, has applied for two variances:

- A variance to permit a wall greater than 3 feet high in the required front yard
- A variance to permit a patio greater than 50 square feet in area in the required front yard

at 2440 Cedar Lane. This property is located in the R1/single family district and SH/shoreland overlay district.

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

Background: The subject property is a single-family home located on a corner lot. The required front yard in the R1 district is 25 feet. On this lot, the established front yard is 26.5 feet due to the positioning of the residence to the north of the subject parcel. This established setback thus increases the required setback on the subject property, creating a 26.5-foot deep required front yard.

Although the subject parcel is a corner lot that includes a side lot line adjacent to the street that is substantially a continuation of the front lot line of the adjacent property to the rear, the rear lot line is

also the City of Minneapolis' border with the City of St. Louis Park, thus the parcel is not subject to the Zoning Code's standards for reverse corner lot.

On September 4, 2008, the Applicants received an approved site plan review to construct the current residence, subject to conditions of approval. Condition #4 stated, "Proposed retaining walls shall be no greater than 3' in height." Condition #5 stated, "Walkways shall be no more than 4' and no less than 3' in width."

On September 9, 2009, a City inspection disclosed conditions not in compliance with this approval. A patio 320 square feet in area exists in the required front yard along Cedar Lane. Additionally, the retaining walls/fences along Cedar Lane exceed three feet in height in the required front yard, being 5.5 feet above original grade at their highest point. Like all retaining walls that do not retain the natural grade of the land, this wall is subject to Zoning Code standards for fence height.

Analysis: The proposed work complies with the City of Minneapolis' Zoning Code in all areas but the required front yard area standards and fence height standards.

Public Comment: Staff received no public comment on the project, but this enforcement case was initiated by a public request.

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.**

The subject property can be put to a reasonable use under the conditions allowed by the official code without causing undue hardship. While installing large retaining walls/fences and patios in the required front yard may be desirable to the current property owners, their absence would still allow this property to be put to a reasonable use and would not create hardship. The home on the lot prior to this had neither feature yet the owners managed to reasonably use their property for 57 years.

In their application, the owners claim that staff incorrectly approved a 140 square foot patio in the required front yard, and that the owners then increased its impervious surface beyond what was depicted in the approved plans. While the latter assertion is true, the former is not. The approved plans depict a front walkway 4 feet, 5 inches in width (reduced to no more than 4 feet in width by the conditions of approval) immediately adjacent to a patio 135.73 square feet in area, 49 square feet of which lies in the required front yard. Zoning Code section 535.90(b) and table 535-1 require residences to maintain a 3-4 foot wide walkway extending from the main entrance to the sidewalk through the required front yard. To count any or all of this walkway area toward maximum patio area could technically be done, but would be a disservice to applicants seeking to connect their front yard patio with their walkway, as 2440 Cedar Lane's owners wished to do. Staff didn't err in approving the patio as depicted on the approved plans, staff chose to consider the walkway separate from the patio area to the applicant's benefit.

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.**

The circumstances requiring the variances have been created by the Applicants. The Applicants did not construct their patio and retaining walls/fences in accordance with their approved plans. The Applicants not only built retaining walls/fences above height limitations, they also added new walls/fences, changed the configuration of walls/fences, added retaining walls to support light wells (one of which is in the front yard and exceeds the Zoning Code's 16 square foot maximum, if the retaining walls/fences that it is made of are permitted to remain), and made other changes not directly related to walls/fences. The Applicants not only increased the area of their front yard patio, they also increased the area of a patio at the rear of the home, changed the area of a patio on the corner side of the residence, eliminated flagstone paths, added flagstone paths, and made other changes not directly related to patios and walkways.

The subject parcel is unique in that it enjoys greater development rights than most other corner lots configured in this manner. Numerous other property owners within the City of Minneapolis must abide by strict Zoning Code's standards for reverse corner lots because their side lot lines that are adjacent to the street are substantially a continuation of the front lot line of the adjacent property to the rear. While 2440 Cedar Lane possesses similar conditions, the rear lot line is also the City of Minneapolis' border with the City of St. Louis Park, thus the parcel is not subject to the Zoning Code's standards for reverse corner lot. These owners actually enjoy greater development rights (in terms of required yards) than many other corner lot property owners.

In their application the owners contend that reducing the height of the walls and area of the patio would constitute an undue hardship because the cost would be excessive, but they have not provided cost estimates of the residence or the Zoning-Code required revisions to back up this assertion. Additionally, reductions in the height of the walls and area of the patio would still permit a reasonable use of the property.

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.**

The granting of the variances will not be in keeping with the spirit and intent of the ordinance. The established front yard setback provision in the Zoning Code helps ensure that pedestrians have a predictable, aesthetically pleasing experience along Minneapolis' residential streets. The granting of the requested variances will alter the essential character of the locality by expanding the forward profile of a residence on a lot that already enjoys greater development rights than comparable corner lots within the City.

The granting of the variances will not be injurious to the use or enjoyment of other property in the vicinity. While increased wall heights and patio areas do reduce the aesthetic experience of passers-by, they do not deviate enough to damage adjacent property use and enjoyment. Photos submitted by the applicant indicate that nearby properties possess similar walls.

- 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.**

The proposed variances 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. The walls/fences and patio will not result in the creation of increased parking, second dwelling units or new construction exempt from safety provisions in adopted Building and Fire codes.

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** variances to permit a wall greater than 3 feet high in the required front yard and permit a patio greater than 50 square feet in area in the required front yard at 2440 Cedar Lane in the R1/single family district and SH/shoreland overlay district.

Attachment A: Vicinity Map (provided by staff)

Attachment B: Application and Photographs (submitted by Applicants)

Attachment C: Approved Landscape and Site Plans (submitted by Applicants)

Attachment D: As Built Landscape and Site Plans (submitted by Applicants)

Attachment E: Letter to Councilmember and Neighborhood Group (submitted by Applicants)

Attachment F: Photographs (provided by staff)