

Department of Community Planning and Economic Development – Planning Division
Variance
BZZ-5541

Date: May 24, 2012

Applicant: Titus Contracting

Address of Property: 3948 40th Avenue South

Contact Person and Phone: Scott Rajavouri, (952) 454-0545

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

Date Application Deemed Complete: April 13, 2012

End of 60-Day Decision Period: June 12, 2012

Ward: 12 **Neighborhood Organization:** Longfellow Community Council

Existing Zoning: R1A Single-family District

Zoning Plate Number: 34

Legal Description: Not applicable

Proposed Use: Egress window well for basement bedroom in a single-family dwelling

Concurrent Review: Variance to reduce the north interior side yard requirement from 5 feet to approximately 2 inches to allow an egress window well that was installed for a single-family dwelling.

Applicable zoning code provisions: Chapter 525, Article IX Variances, Section 525.520 (1) “To vary the yard requirements, including permitted obstructions into required yards not allowed by the applicable regulations.”

Background: The subject property is approximately 40 feet by 128 feet 6 inches (5,140 square feet) and is occupied by an existing single-family dwelling and detached garage. The property owner installed an egress window and window well a few years ago to legalize a bedroom in the basement of the existing single-family dwelling without a building permit. The new egress window was identified by a Housing Inspector during a routine rental inspection.

A legal egress window well is required to be at least 3 feet deep and 3 feet wide, per the building code and the applicant must obtain a building permit prior to construction. The egress window well was constructed at 3 feet 3 inches deep and 4 feet wide. In the R1A district, the zoning code minimum interior side yard requirement is 5 feet. Egress window wells not exceeding 16 square feet in area are permitted obstructions in the required interior side yard provided they are at least 2 feet from the interior side lot line. The existing dwelling is located 3 feet 5 inches from the north interior side lot line. The well is located 2 inches from the side lot line. Therefore, the applicant is requesting a variance to reduce the north interior side yard requirement from 5 feet to 2 inches.

As of the writing of this report, staff has not received any correspondence from the Longfellow Community Council. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

VARIANCE

Findings as Required by the Minneapolis Zoning Code for a Variance:

- 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.**

Practical difficulties do not exist in complying with the ordinance due to circumstances unique to the property. The applicant has stated that this is the only location available for an egress window and window well. They have stated that to locate the egress window and window well to the opposite side would interfere with the existing floor plan, require a complete relocation of the sidewalk adjacent to the structure and create a greater change to the existing exterior finishes. The property is 40 feet wide by 128 feet 6 inches deep and complies with the minimum lot width (40 feet) and lot area (5,000 square feet) required for a single-family dwelling. Although the dwelling is nonconforming to the north interior side yard requirement, an egress window well could have been installed on the south or east sides of the dwelling where it would have complied with all yard requirements.

- 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.**

In general, yard controls are established to provide for the orderly development and use of land and to minimize conflicts among land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses. Policies of the comprehensive plan also support the purpose of the yard ordinances. The Minneapolis Code of Ordinances Table 535-1, Permitted Obstructions in Required Yards, was amended in December of 2005 to include a provision for egress windows as permitted obstructions. The purpose of the amendment was to allow egress window wells up to 16 square feet in area as a permitted obstruction. For window wells in the interior side yard, a two foot setback was required to help maintain a clear and unobstructed walking area from the front to the rear of a dwelling without encroaching onto an adjacent property.

The window well was installed along the north side of the dwelling. There is an existing glass block window in the basement bedroom on the south side of the dwelling. Because an egress window well could have been installed on the south or east sides of the dwelling where it would have complied with all yard requirements, the request is not reasonable and is not consistent with the intent of the ordinance and the comprehensive plan.

- 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.

Granting the variance would not likely affect the character of the area or negatively affect nearby property owners. Staff does have concerns that if an adjacent owner of the property of 3944 40th Avenue South were to construct a fence directly adjacent to the property line, the existing location of the egress window and window well may be detrimental to the health, safety or welfare of those within the dwelling if they cannot exit the window safely in an emergency.

RECOMMENDATION

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 above findings and **deny** the variance to reduce the north interior side yard requirement from 2 feet to approximately 2 inches to allow an egress window well that was installed accessory to an existing single-family dwelling located at 3948 40th Avenue South in the R1A Single-Family District.

Attachments:

1. Written descriptions of findings submitted by the applicant
2. Copies of e-mails and letters sent to CM Colvin-Roy and Longfellow Community Council
3. Zoning map
4. Site plan
5. Floor plans
6. Photos