

Department of Community Planning and Economic Development Report
Variances
BZZ-5939

Date: March 21, 2013

Applicant: Rob Thometz

Address of Property: 4840 12th Avenue South

Contact Person and Phone: Rob Thometz, (612) 824-2387

CPED Staff and Phone: Jacob Steen, (612) 673-2264

Date Application Deemed Complete: February 14, 2013

End of 60-Day Decision Period: April 14, 2013

Ward: 11 **Neighborhood Organization:** Field Regina Northrup Neighborhood Group

Existing Zoning: R1 Single-Family District, SH Shoreland Overlay District, AP Airport Overlay District

Zoning Plate Number: 32

Legal Description: Not applicable

Proposed Use: An air-conditioner accessory to an existing single-family dwelling

Proposed Variance: A variance to reduce the interior side yard setback from 6 feet to 1.4 feet to allow for an existing air-conditioner unit located at 4840 12th Avenue South in the R1 Single-Family District, AP Airport Overlay District, and SH Shoreland Overlay District.

Zoning code section authorizing the requested variance: Chapter 525, Article IX Variances, section 525.520(1) “[t]o vary the yard requirements, including permitting obstructions into required yards not allowed by the applicable regulations.”

Background: The subject property is fifty (50) feet by 124 feet (6,202 sq. ft.) and consists of a one-story single family dwelling. In June 2012, the applicant received a permit to install an air-conditioning condenser on a concrete pad on the north side of the dwelling. The permit was approved erroneously by the mechanical inspector at a distance of approximately 1.5 feet from the property line. Pursuant to Table 535-1 Permitted Obstructions in Required Yards, an air-conditioning condenser is permitted in the interior side yard but only if the adjacent structure has central air-conditioning or no windows on the affected elevation. The adjacent structure, 4836 12th Avenue South, does have windows facing the subject property and does not have central air-conditioning; therefore, the condenser is not a permitted obstruction in the required interior side yard.

This application arises out of zoning enforcement orders. In early August 2012, the zoning office received a complaint about the air-conditioning condenser and an inspector visited the property. Due to the limited resources for conducting zoning enforcement inspections, the fact that the air-conditioning unit had received a permit, and the willingness of the property owner to screen the condenser, the Zoning Administrator made a decision to withhold enforcement actions at that time. However, in January 2013, the zoning office received another complaint and the inspector issued a letter to the applicant directing him to relocate the condenser or apply for a variance. After meeting with staff, the applicant submitted this application for a variance.

Staff has not received correspondence from the Field Regina Northrup Neighborhood Group 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:

VARIANCE to reduce the interior side yard setback allow for an existing air-conditioner unit.

- 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.**

Staff recognizes that practical difficulties exist with complying with the ordinance because of circumstances unique to this property. The property is built in a subdivision originally known as Shenandoah Terrace, in which many of the homes are constructed on terraced lots with significant grade changes from the north to south. The grade on the subject property where the air-conditioning condenser is located is approximately five (5) feet below the adjacent grade to the north (4836 12th Avenue South). The home itself is approximately four (4) feet from the north property line, which is too narrow of a separation to allow the applicant to install the unit on the north side of the home. Furthermore, the property is located in the AP Airport Overlay District, an area that experiences much of the Minneapolis-St. Paul Airport traffic overhead. Many of the homes in the area, including the applicant have received funds from the Metropolitan Airport Commission (MAC) to help mitigate the effects of airport noise. The applicant used these MAC funds to help pay for the air-conditioning condenser unit and retrofit the home for air-conditioning. These are circumstances that were not created by persons presently having an interest in the property.

- 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 a variance to reduce the interior side yard setback to allow the existing air-conditioning condenser to remain. The purpose of regulating air-conditioning, heating, and other mechanical equipment in the interior side yard setback is to promote the public health, safety and welfare, encourage an aesthetic environment, and reduce noise pollution while maintaining access to light and air. While the air-conditioning condenser is located only 1.5 feet from the north property

line, staff finds that the significant grade change, along with the condition requiring four (4) foot solid fence to screen of the condenser will mitigate any issues.

The property is located in the AP Airport Overlay District, which is intended to ensure land uses that are appropriately compatible with the nearby MSP airport. Infill and residential additions in the AP Airport Overlay District are required to install central air conditioning to mitigate noise from air traffic. For many of the existing homes, the MAC has provided reimbursement for residential noise mitigation measures, including windows, insulation, and air-conditioning units. The applicant used the MAC reimbursement to pay for some of the costs associated with the air-conditioning installation. For these reasons, staff has concluded that reducing the required interior side yard setback to allow the existing air-conditioning unit to remain in use of the property in a reasonable manner and in keeping with the spirit and intent of the ordinance.

- 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 of the variance will not alter the essential character of the surrounding neighborhood or be injurious to the use or enjoyment of other property in the vicinity. If the adjacent property to the north had central air-conditioning, the existing condenser would be permitted as of right. Though the property to the north does not have central air-conditioning, the structure is set back more than eleven (11) feet from the property line and is approximately five (5) feet above the grade upon which the air-conditioning unit is installed. The difference in grade, in addition to the condition requiring a fence to screen the air-conditioning unit from adjacent properties, will mitigate any noise or other effects of locating the air-conditioning condenser in this location. For these reasons, staff finds that if the variance were to be granted, it will not be detrimental to the health, safety and welfare of the general public or of those utilizing the property or nearby properties.

RECOMMENDATIONS:

Recommendation of the Department of Community Planning and Economic Development:

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt the findings above and **approve** the variance to reduce the interior side yard setback from 6 feet to 1.4 feet to allow for an existing air-conditioner unit located at 4840 12th Avenue South in the R1 Single-Family District, AP Airport Overlay District, and SH Shoreland Overlay District subject to the following condition:

1. The applicant installs a four (4) foot tall solid fence to screen the air-conditioning unit from view adjacent properties.

Attachments:

- 1) Written descriptions and findings submitted by the applicant
- 2) Zoning map
- 3) Site plan
- 4) Photographs
- 5) Correspondence