

Department of Community Planning and Economic Development – Planning Division Report**Variance Request
BZZ-2477**

Date: August 4, 2005

Applicant: William Walters, on behalf of Wawa, LLC

Address of Property: 3825 West 40th Street

Date Application Deemed Complete: July 11, 2005

End of 60 Day Decision Period: September 9, 2005

Appeal Period Expiration: August 15, 2005

Contact Person and Phone: Williams Walters, 612-926-2906

Planning Staff and Phone: Molly McCartney, 612-673-5811

Ward: 13 **Neighborhood Organization:** Linden Hills Neighborhood Council

Existing Zoning: R1A, Single-family District

Proposed Use: Construction of a second story addition and an expansion of a porch to a single-family dwelling.

Proposed Variance: A variance to decrease the minimum corner side yard setback from eight ft. to zero ft. for a second story addition and expansion of a porch to a single-family dwelling in the R1A Single-family District located at 3825 West 40th Street.

Zoning code section authorizing the requested variance: 525.520 (1)

Background: The subject property is 5,376 sq. ft. (42 ft. by 128 ft.) and consists of a one-story, single-family dwelling with an open porch and a detached garage. The dwelling is setback from the north corner side yard property line 3 ft., which projects into the required corner side yard. The open porch has the dimensions of approximately 7 ft. by 28 ft. and extends into the public right of way. The interior boulevard between the sidewalk and property line is 8 ft., the structure is 11 ft. from the sidewalk, and the existing porch is approximately 4 ft. from the sidewalk. There exist stairs from the porch that end approximately within 1 ft. of the sidewalk. The porch has an encroachment permit and received a building permit, both in 1986, but there is no record of a variance to reduce the corner side yard setback.

The applicant is proposing to add a second story to the dwelling and to expand the porch to wrap around the northeast corner of the dwelling. The addition to the dwelling requires a variance to reduce the setback to 3 ft. and a variance to reduce the setback to 0 ft. to allow for the expansion of the open porch.

The Zoning Code does not have an enumerated variance to reduce the setback in order to build in the public right of way. The applicant has started the process to amend the existing encroachment permit with the Right of Way Office in Public Works.

The applicant has begun construction work on the dwelling and has not received building permits for this work. The roof has been removed from the dwelling as well as the porch and the interior is also being worked on. A permit was pulled to build a new garage.

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 applicant has requested a variance to reduce the required corner side yard setback from 8 ft. to 3 ft. to allow for the construction of an addition to a single-family dwelling and to expand a 6 ft. deep, open porch into the public right of way in the R1A District. The R1A District requires an 8 ft. corner side yard setback for the building and does permit an open porch, not more than 6 ft. deep, to project into the required corner side yard. Strict adherence to the code would require the building addition to meet the 8 ft. setback. A second-story addition is permitted in the residential districts and staff believes that the second story addition to the structure is a reasonable use.

Strict adherence to the code allows an open porch that is 6 ft. deep can project into the required yard, which would require at least a setback of 2 ft. from the property line. The existing porch received an encroachment permit and a building permit for the work, but not a variance. The Zoning Code does not have an enumerated variance that allows for a variance to build in the public right of way. The expansion into a wrap around porch will add an additional 10 ft. of porch in the public right of way as well as the corner side yard setback. Strict adherence to the code requires that the porch be no more than 6 ft. deep and be at least 2 ft. from the property line. Staff does not believe that the expansion of a porch in the public right of way is a reasonable use of the property.

- 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 conditions upon which the setback variance for the building addition is requested are unique to the property due to the location of the dwelling and the distance to the property line. The house was built in 1925 and the open porch was built in 1986. The second story addition will follow the line of the dwelling up and will not project any closer than the existing dwelling. The location of the dwelling and reduced setback is not a circumstance created by the applicant. The conditions upon which the setback variance to the porch expansion is requested are not unique to the property and have been created by the applicant. The proposed expansion of the porch will

add 10 more feet of porch in the public right of way. Staff believes that the expansion of the porch is a circumstance created by the applicant.

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.**

Staff believes that the proposed second-story addition to the structure will be keeping with the spirit and intent of the ordinance and will not alter the essential character of the surrounding neighborhood if the open porch is not expanded in the public right of way or the corner side yard setback. The second story addition meets the height and story maximum in the residential districts. With the renovations, the first floor of the structure that faces France Avenue South will meet the minimum 15 percent window requirements. The first floor of the side of the structure that faces West 40th Street does not meet the minimum 15 percent window requirement.

The proposed expansion of the porch does not meet the setback requirements and projects into the public right of way. Many corner lots have a typical 6 ft. to 8 ft. interior boulevard and this boulevard is 8 ft. The property to the east across the alley of the subject site does not have any encroachments similar to the porch. Staff believes that expanding the porch will impact the surrounding area because the porch will be in the right of way and very close to the public sidewalk.

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.**

Granting the corner side yard setback variance for the second story addition would likely have no impact on the congestion of area streets or fire safety, nor would the proposed addition be detrimental to the public welfare or endanger the public safety. The proposed porch will enlarge an obstruction in the required setback and public right of way, which can have an impact to pedestrians along West 40th Street.

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 decrease the minimum side yard setback from **eight ft. to three ft.** to allow for a second story addition and to **deny** the variance to reduce the corner side yard setback from 8 ft. to zero ft. for the expansion of an open porch to a single-family dwelling in the R1A Single-family District located at 3825 West 40th Street.

1. That the Planning Division review and approve the final site and elevation plans that measure to an architectural or engineering scale.