

**BOARD OF ZONING APPEALS STAFF REPORT**

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**TYPE OF APPLICATION:** Major Variance **FILE #**11-146148  
**APPLICANT:** Sean Sellers for owner Dave Hartman  
**HEARING DATE:** June 13, 2011  
**LOCATION:** 674 HAWTHORNE AVE E  
**LEGAL DESCRIPTION:** Stone Mortons Addition Lot 7 Blk 4  
**PLANNING DISTRICT:** 5  
**PRESENT ZONING:** RT1 **ZONING CODE REFERENCE:** 66.231  
**REPORT DATE:** June 5, 2011 **BY:** Yaya Diatta  
**DEADLINE FOR ACTION:** July 4, 2011 **DATE RECEIVED:** May 25, 2011

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- A. **PURPOSE:** A variance of the side yard setback in order to construct a deck with a stairway to the second floor of this duplex on the west side of the property. A nine (9) foot setback is required, three (3) feet is proposed for a six (6) foot side yard setback variance.
  
- B. **SITE AND AREA CONDITIONS:** This is a 40 by 125 foot lot with alley access and a one-car detached garage.  
  
Surrounding Land Use: A mix of duplexes and single family homes.
  
- C. **BACKGROUND:** The applicant is requesting a side yard setback variance in order to construct a deck with a stairway to the second floor of this duplex on the west side of the property.
  
- D. **CODE CITATION:**  
  
Sec.66.231. Residential District Dimensional Standards table requires a minimum side yard setback of 9 feet from the property line.
  
- E. **FINDINGS:**  
  
  1. *The variance is in harmony with the general purposes and intent of the zoning code.*

Finding 1, which states that the variance is in harmony with the general purposes and intent of the zoning code is met. This is a legal duplex built in 1903 on a substandard sized lot. The building had a fire in 2009 and sustained considerable damage which resulted in the structure becoming a vacant building. The applicant obtained the permits necessary to renovate the building as part of the required code compliance inspection for vacant buildings. While remodeling the building, the applicant noticed that the interior back stairway leading to the second floor does not meet current building code standards because it is too narrow. The applicant decided that he might as well correct the stairway deficiency as long as he is remodeling the building. There is no room to widen the interior back stairway and the applicant decided to provide a new stairway that meets current building code standards on the west side of the property. The proposed stairway is not a requirement from the code compliance inspection; it would be provided to address a safety concern from the property owner. The proposed stairway would extend from the side of the building over the sidewalk and into the side yard 8.9 feet. That would leave only 3 feet of side yard setback and 9 feet is required for a duplex. The height of the stairway from grade to the surface of the deck is 10.5 feet. The applicant stated that the existing interior stairway will remain. Constructing the exterior stairway as an alternate access will provide safety and a sense of security for the occupants. The requested variance is in harmony with the general purposes and intent of the code.

2. *The variance is consistent with the comprehensive plan.*

Finding 2, which states that the variance is consistent with the comprehensive plan is met. The proposed stairway will significantly improve this property. Maintaining existing housing stock is a goal of the comprehensive plan.

3. *The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.*

Finding 3, which states that the applicant has established that there are practical difficulties, other than only economic considerations, in complying with the provision and that the property owner proposes to use the property in a reasonable manner not permitted by the provision is met. This house was built in 1903 prior to the zoning code. There is a porch leading to the existing interior stairway in the rear and it is not feasible to provide an exterior stairway on that side. There is no room to provide a stairway on the east side of the property. The lack of an alternative to building the stairway in the required side yard is a practical difficulty and the proposed variance is a reasonable request that cannot be established under the strict application of the code.

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

Finding 4, which states that the plight of the landowner is due to circumstances unique to the property not created by the landowner is met. Current standards require a lot width of 50 feet and a side yard setback of 9 feet for a duplex. This house was built on a substandard sized lot that is only 40 feet wide and this lot is a lot of record in existence prior to the zoning code. This is not a circumstance created by the current land owner.

5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

Finding 5, which states that the variance will not permit any use that is not allowed in the zoning district where the affected land is located is met. This is a duplex located in a RT1 zoning district where both duplexes as well as single family dwellings are allowed.

6. *The variance will not alter the essential character of the surrounding area.*

Finding 6, which states that the variance will not alter the essential character of the surrounding area is met. The new stairway is a safety feature that would enhance the property and will not change or alter the essential character of the area.

- F. **DISTRICT COUNCIL RECOMMENDATION:** As of the date of this report, staff has not received any correspondence from District 5.
- G. **CORRESPONDENCE:** Other than the material submitted by the applicant, staff has not received additional correspondence.
- H. **STAFF RECOMMENDATION:** Based on findings 1 through 6, staff recommends approval of the variance.