

The public may attend the meeting in person or view it online at
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**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE
TUESDAY, OCTOBER 11, 2022
7700 MISSION ROAD
COUNCIL CHAMBERS
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF BZA MINUTES - July 12, 2022

III. PUBLIC HEARINGS

BZA2022-02 Variance of Required Side Setback
7431 Belinder Ave.
Zoning: R-1B
Applicant: Anthony Fiorello

IV. OTHER BUSINESS

V. ADJOURNMENT

Plans available at City Hall if applicable
If you cannot be present, comments can be made by e-mail to
cityclerk@pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, JULY 12, 2022**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, July 12, 2022, at 6:30 p.m. in the Council Chambers of the Municipal Building at 7700 Mission Road. Chair Patrick Lenahan called the meeting to order at 6:30 p.m. with the following members present: Jonathan Birkel, Greg Wolf, Melissa Brown, Nancy Wallerstein, and Jeffrey Valentino.

The following individuals were present in their advisory capacity to the Board of Zoning Appeals: Chris Brewster, Multistudio; Nickie Lee, Deputy City Administrator; Greg Shelton, Council Liaison; Adam Geffert, City Clerk/Board Secretary.

APPROVAL OF MINUTES

Mr. Wolf moved for the approval of the minutes of the September 14, 2021, Board of Zoning Appeals meeting as presented. Mrs. Wallerstein seconded the motion, which passed 6-0.

PUBLIC HEARINGS

BZA2022-01 Variance of Required Site Setback
5106 W. 69th Terrace
Zoning: R-1A
Applicant: Michael and Kelly Simonett

Mr. Brewster stated that the applicant was requesting a variance from Section 19.06.015 to allow an addition to be built closer than 14' to an existing building on an adjacent lot. The development standards for R-1A lots require a side setback that is:

1. At least 7' on each side
2. At least 20% of the lot width on both sides
3. At least 14' from any adjacent building

The existing house on the subject lot and the house on the adjacent lot were each built in 1947. The lot is 9,995.58 square feet (70' x 142') and the existing house is approximately 13.6' from the west side lot line and 19.6' from the east side lot line. The proposed addition

would change those distances to 8.5' from the west side lot line, and 7' from the east side lot line.

While this would meet the side setback standards for both the minimum (7') and the overall percentage (20% of width), due to the location of the house on the east adjacent lot the proposed addition would be approximately 11.8' from that house, which sits on a corner lot and is 4.8' from the side lot line, a preexisting non-conforming situation. In this circumstance it would require that any new building in the vicinity of the adjacent structure be setback 9.2', rather than the minimum required 7'. All other requirements of the R-1A district and accessory building standards would be met.

Mr. Brewster noted that if the variance were approved, it should be subject to the following conditions:

1. That the variance be granted only to the extent shown on the submitted plans
2. The variance be recorded with the County Register of Deeds within one year of approval

He added that zoning regulations required the Board to find that all five of the following "golden factors" be met to grant a variance:

1. Uniqueness - That the variance requested arises from such condition which is unique to the property in question, and which is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or the applicant.
2. Adjacent Property - That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.
3. Hardship - That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.
4. Public Interest - That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
5. Spirit and Intent of the Regulation - That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

Applicant and property owner Mike Simonett was present to discuss the variance.

Board members reviewed each golden factor and determined that the proposed addition met all requirements.

Mr. Wolf made a motion to approve the variance with the conditions proposed by staff. Mr. Birkel seconded the motion, which passed 6-0.

OTHER BUSINESS

Mr. Wolf made a motion to reelect the current slate of officers:

- **Mr. Lenahan, Chair**
- **Mr. Birkel, Vice-Chair**
- **Mr. Geffert, Secretary**

The motion was seconded by Mrs. Wallerstein and passed 6-0.

ADJOURNMENT

Chair Patrick Lenahan adjourned the meeting of the Board of Zoning Appeals at 6:45 p.m.

**Adam Geffert
City Clerk/Board Secretary**

STAFF REPORT

TO: Prairie Village Board of Zoning Appeals
FROM: Chris Brewster, Multistudio, Planning Consultant
DATE: October 11, 2022

Application: BZA 2022-02

Request: Variance to the side yard setback to allow an egress window well to extend more than 50% into the required side yard setback.

Action: *A variance request requires the Board of Zoning Appeals to evaluate facts and weigh evidence, and a majority of the Board must find that all 5 criteria for a variance have been met in order to approve the request.*

Property Address: 7431 Belinder

Applicant: Anthony Fiorello

Current Zoning and Land Use: R-1B Single-Family Residential - Single-Family Dwelling

Surrounding Zoning and Land Use: **North:** R-1B Single-Family Residential – Single-Family Dwellings
East: R-1B Single-Family Residential - Single-Family Dwellings
South: R-1B Single-Family Residential - Single-Family Dwellings
West: R-1B Single-Family Residential – Institution / School

Legal Description: COUNTRY CLUB VEIW LOT 174 PVC 1685

Property Area: 0.13 acres (5,779.13 s.f.)

Related Case Files: None

Attachments: Application, variance request, lot plans, photos, and sketches

General Location Map



Aerial Map



Aerial Site



Birdseye View



Street View



Looking east Belinder at the side lot line condition (subject property on the right).

COMMENTS:

The applicant is requesting a variance from Section 19.08.015 to allow an egress window well to encroach more than 50% into the required 6-foot side setback. The property is zoned R-1B. The development standards require a side setback that is (1) at least 6' on each side; (2) at least 20% of the lot width on both sides; and (3) at least 12' from any adjacent building. [\[19.08.015\]](#). Section 19.44.020, Yard Exceptions also allows window wells to project into the required yards by 4 feet, but all encroachments are limited to no more than one-half the required setback. [\[19.44.020\(c\)\(3\) and \(5\)\]](#)

In this case the egress window well would be limited to a 3-foot encroachment, and the well being no closer than 3' to the property line. The applicant is proposing a 3-foot encroachment, and the well being placed 2 feet from the adjacent property line – This is consistent with the encroachment allowance, but due to the nonconforming situation results in a variance of 12 inches from the resulting location and a variance of 6 inches from the permitted 50% exception when applied to the *existing actual* setback. The request is associated with remodeling of an existing house and an existing building foundation.

The applicant had a neighborhood meeting on September 14, 2022 as required by the Prairie Village Resident Participation Policy and has supplemented the application with background on that meeting.

ANALYSIS:

Section 19.54.030 of the Zoning Ordinance requires the Board to find that **all five** of the following conditions are met in order to grant a variance. If the Board finds that even one of these conditions is not met, a variance should not be granted:

A. Uniqueness

That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.

In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape, or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.

The building and lot are legal non-conforming situations. The lot is 40 feet wide (60 feet required) and was platted in 1923 prior to zoning and subdivision standards; the building is approximately 4.9 feet from the side lot line on the north side (6 feet required) and was constructed in 1940 – before the zoning ordinance, and prior to 2016 the side setback in R-1B was changed from 4 feet to 6 feet. There is a shared driveway on the south side of the house that paves nearly all of the area between the two adjacent houses to allow access to detached rear garages and parking areas.

B. Adjacent Property

That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.

The proposed egress well is not placing any above ground structures in closer proximity to the nearest neighbor. It is on a side area that is low traveled due to the narrowness, the location of building adjacent mechanical equipment, and the fact that each house has shared access to their rear yards and parking areas via shared drives on the opposite side boundary.

C. Hardship

That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

The 36-inch egress well is the minimum code requirement for an egress window well. Egress window wells are required by the building code to enable habitable spaces in below-ground levels. To have habitable spaces in the existing homes lower level of this house the egress well would need to either be on the front or rear, by in the south side (which would eliminate the shared driveway), or in the

October 11, 2022

proposed location. Due to the constraints of the narrow lot, and the configuration of the existing building and site, the proposed egress well location is a reasonable option except for the code requirement limiting encroachments to 50% of the required yard area.

D. Public Interest

That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Side setbacks standards can ensure that all lots have buildable areas subject to building code requirements and can help establish a rhythm of buildings along the streetscape in neighborhood settings. The existing houses along the proposed side setback line are approximately 10 feet apart (not counting eaves) and there is no above grade expansion to the existing building that impacts this current situation. The proposed variance will not bring structures closer in proximity and will not effect the appearance of buildings along the streetscape.

E. Spirit and Intent of the Regulation

That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

The side setback is used to manage the relationships of adjacent buildings and to help moderate the scale of buildings proportionate to the lot size. Additionally, on smaller lots, side setbacks can be used to maintain access to equipment, rear yards, or other elements of maintenance. The proposed encroachment is below grade and it adds functionality to an existing building that is small scale, and below the massing of what could otherwise be built on this property according to the standards. This property has access to the rear area by a shared drive on the opposite side lot line, and the property to the north has a similar situation with its other adjoining property. Additionally, the proposed 36-inch egress well is the minimum required by code and it does meet the limit of “no greater than 50% of the *required* side yard” (which would be 3 feet in this case); however due to the nonconforming situation of the existing lot and building, the proposed location is more than 50% of the *existing actual* side yard and beyond the otherwise allowed setback encroachment.

EFFECT OF DECISION:

After reviewing the information submitted and considering the testimony during the public hearing, if the Board finds that **all five conditions** can be met as required by state statutes and Section 19.54.030 of the Prairie Village Zoning Ordinance, then it may grant the variance. If the Board does approve the variance, it should be subject to the following conditions:

1. That the variance be granted only to the extent shown with the submitted application, sufficient to allow the minimum required egress window well of 36 inches deep.
2. The variance, if approved, be recorded with the County Register of Deeds within 1 year of approval.

VARIANCE APPLICATION
BOARD OF ZONING APPEALS

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No: _____

Filing Fee: _____

Deposit: _____

Date Advertised: _____

Public Hearing Date: _____

APPLICANT: Anthony Fiorello PHONE: 816-808-3722
ADDRESS: 7431 Belinder Ave. ZIP: 66208
OWNER: Anthony Fiorello PHONE: 816-808-3722
ADDRESS 7431 Belinder Ave ZIP: 66208
LOCATION OF PROPERTY: 7431 Belinder Ave.
LEGAL DESCRIPTION: _____

Variance Requested Extension of 50% of side yard projection for an egress window
well. 36 inch projection is 6.5 inches past the assumed 50% side yard allowance.

ADJACENT ZONING AND LAND USE:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>Single Family Home</u>	<u>R1-B</u>
South	<u>Single Family Home</u>	<u>R1-B</u>
East	<u>Single Family Home</u>	<u>R1-B</u>
West	<u>Global Montessori Academy</u>	<u>R1-B</u>

Present use of Property: Single Family Home

Proposed Use of Property: Single Family Home

Utility lines or easements that would restrict proposed development:
None

Please complete both pages of the form and return to:

City Clerk
City of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208

Please indicate below the extent to which the following standards are met, in the applicant's opinion. *Provide an explanation on a separate sheet for each standard which is found to be met.*

1. *UNIQUENESS* x Yes ___ No

The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

2. *ADJACENT PROPERTY* x Yes ___ No

The granting of the variance will not be materially detrimental of adversely affect the rights of adjacent property owners or residents.

3. *HARDSHIP* x Yes ___ No

The strict application of the provision of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be sufficient reason by itself to justify the variance.

4. *PUBLIC INTEREST* x Yes ___ No

The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

5. *SPIRIT AND INTENT* x Yes ___ No

Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.

6. *MINIMUM VARIANCE* x Yes ___ No

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

SIGNATURE:  DATE 9/20/2022

BY: Anthony Fiorello
TITLE: Homeowner

1. Uniqueness

This situation is unique because the area in question barely misses the necessary size to include an egress window well without a variance. The assumed side yard of my property is 59 inches on the north side. A 50% limit would put the projection limit at 29.5 inches. 6.5 inches short of the required 36 inch egress window well. Of the 7 surrounding single family homes (7421, 7425, 7433, 7437 Belinder and 7420, 7430, 7440 Springfield), the only side yards that would have this zoning regulation interfere with a 36 inch egress window is the area in question. The side yard between 7425 and 7431 Belinder.

2. Adjacent Property

The adjacent property at 7425 Belinder would not be adversely effected by a 36 inch egress window well being installed. It would project less than the current air conditioning unit. I have also talked to the owners of 7425 Belinder (Kerry and Meghan Williams) and they have said multiple times they have no issue with an egress window being installed in the planned spot. They were also at the neighborhood meeting for all owners within 200' of my property where Kerry signed the attendance sheet with a comment of "Okay with it".

3. Hardship

With the newly finished basement area of my property including an office, bathroom and children's playroom, not having a secondary emergency exit could cause extreme hardship in the event of an emergency.

4. Public Interest

A new egress window well will not adversely effect any public interest. Without getting within 4 feet of the well, the public would not even know there was any change to the zoning variance or the existing window well. It will not impair the adjacent property in any way. It would not effect any light or air access or supply.

5. Spirit and Intent

I believe the spirit and intent of this zoning regulation is to prevent property owners building large, looming structures that encroach too close to an adjacent property. A below grade window well that is 6 inches past the 50% rule would not oppose the spirit and intent of the zoning regulation.

6. Minimum Variance

The proposed 36 inch egress window well would project past the 50% line by 6.5 inches exactly. This variance request is for 6.5 inches and no more. It is the minimum variance required for the instillation of a 36 inch egress window.

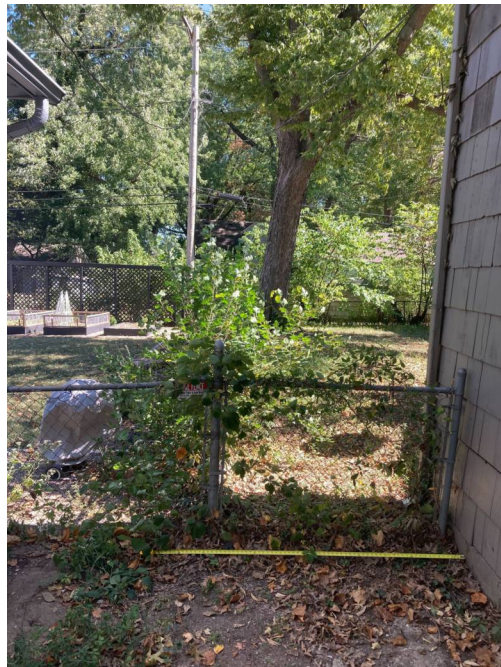
Pictures and Plan



Foundation to foundation: 118 inches



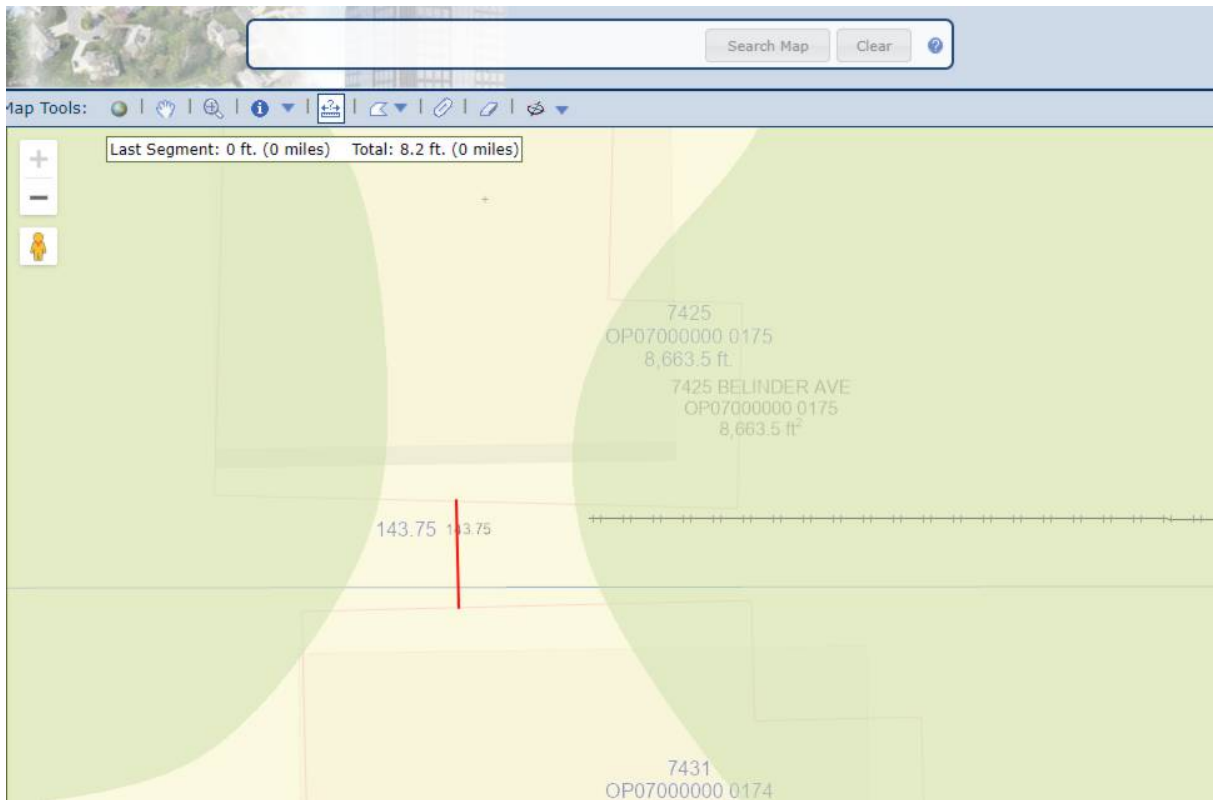
Foundation to fence line: 59 inches



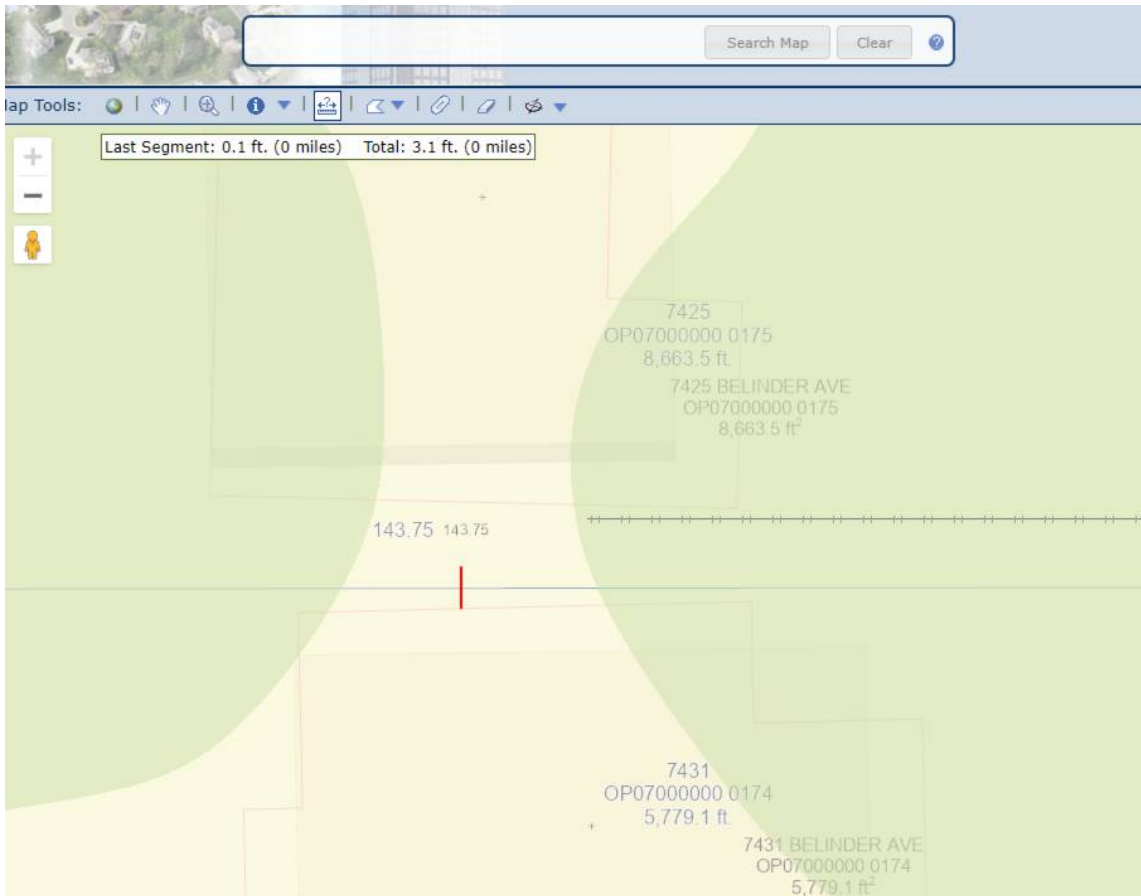
Proposed egress window outline compared to 50% of fence line.



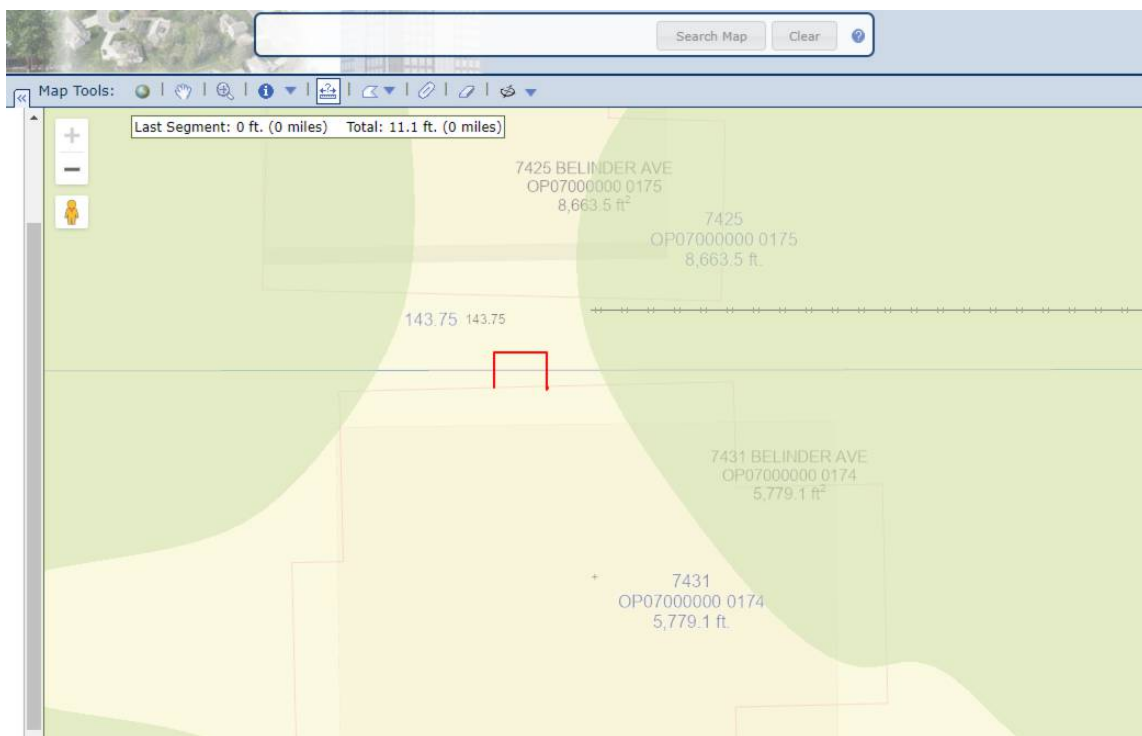
AIMS distance between houses



AIMS 36 inch projection



AIMS proposed egress window



7431 Belinder Avenue
Prairie Village, KS 66208
Sept. 6, 2022

Dear Neighbor,

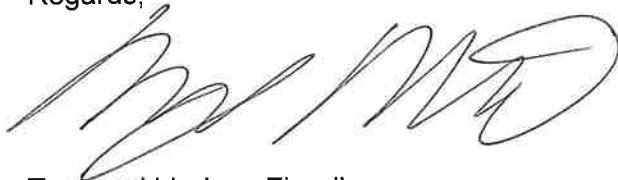
I am writing to make you aware of our plans to install an egress exit on our property located at 7431 Belinder Avenue. We are almost complete with finishing our basement and we are planning on replacing the current basement window well in the next couple months.

Our contractor informed us that a 36 inch egress window well on the north side of our property will not comply with the current Prairie Village zoning regulations. Under these regulations, any new work must not protrude from the current house into the side yard by more than 50% of the current property area. The side yard on the north side of our house is exactly 5 feet. So, according to the regulations, we can only build out 30 inches instead of the required 36 inches for the egress exit. I have attached pictures of the current property line (orange) along with a line denoting 50% of that distance (also orange). There is a blue line for the planned egress well.

We have applied to the City of Prairie Village Planning Commission for approval to install the 36 inch egress exit well in the exact same position of the current window well. The Planning Commission requires us to provide an opportunity for our neighbors to raise any questions or concerns regarding the placement of the new egress.

This letter is to make you aware of a meeting that we are holding on Wednesday, September 14 at 6pm in front of our house at 7431 Belinder Ave. You are invited, but not required, to attend and to express any concerns you may have. We will submit a record of the meeting to the Prairie Village Planning Commission. This record will identify attendees and will document any concerns that may be expressed.

Regards,



Tony and Lindsay Fiorello

Meeting Summary – BZA2022-02

We did hold the meeting. No one showed up. I did run into Kerry at 7425 Belinder (house directly north) about 30 minutes before in our back yards and he signed the attendance sheet but had to leave before the meeting actually started.

Tony Fiorello