

FILE
12-101884

CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 12-071778
DATE: July 23, 2012

WHEREAS, Alan C. Young has applied for a variance from the strict application of the provisions of Sections 63.105(a) & 63.316 of the Saint Paul Legislative Code in order to legalize the enlarged deck in the front yard and the new larger driveway. This requires two zoning variances. 1) The new deck has a front yard setback of 36 feet measured from the street; a 44 foot front setback (measured from the street) is required for a variance request of 8 feet. 2) For one-family through four-family dwellings, driveways in front yards shall be no more than 12 feet in width; the applicant constructed an 18 foot wide driveway for a variance of 6 feet, in the R3 zoning district at 654 California Avenue East. PIN: 202922120164; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on July 23, 2012 pursuant to said application in accordance with the requirements of Section 61.601 of the Legislative Code; and

WHEREAS, the Saint Paul Board of Zoning Appeals based upon evidence presented at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

This finding is met for the deck. The applicant states that the original deck was such in bad shape that it became a safety concern for the family. He states that he was unaware that a building permit is required to replace an existing deck and proceeded with the rebuilding of the new deck in order to provide peace of mind for his family.

The new deck is 7 feet-5 inches from grade to the top of the railing, which according to the applicant, is the same height as the original deck. Just like the original deck, the new deck wraps around the north and west sides of the building. The new deck has two staircases on the west side.

The applicant has already applied for the required building permit. Provided that the deck is approved by the Building Inspector, it would provide a sense of security for the family consistent with the purpose of the code to promote and protect the public health and safety.

This finding is not met for the driveway width. The applicant states that the request for a larger driveway is due to the parking needs for his family since there is currently no garage or an off-street parking space on the property. Front yard parking is not consistent with the purposes and intent of the zoning code to maintain a uniform streetscape and to promote and protect the aesthetics, economic viability and general welfare of the community.

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

This finding is met for the deck. Although slightly larger than the original dilapidated deck, the new deck is an improvement of the property and a positive addition to the neighborhood. The Housing Chapter of the Comprehensive Plan encourages the renovation and rehabilitation of existing housing stock.

This finding is not met for the driveway width. The request for such a wide driveway for the purpose of parking as stated by the applicant counteracts the goal of the Comprehensive Plan to promote the aesthetics of the community.

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.*

This finding is met for the deck. The applicant states that the expansion of the deck is needed in order to cover the existing retaining wall which prevents rain water from getting into the basement. The newly constructed deck is a replacement of the original deck that was too old to be functional. This is a practical difficulty in complying with the provision which prevents the applicant from constructing the deck to protect the patio built for his family's enjoyment of the home. The applicant's request is reasonable and not driven solely by financial reasons.

This finding is not met for the driveway width. The applicant states that he has a large cargo van that he is required to have for work at Roto Rooter which takes up nearly half of the driveway, leaving little space for his wife's car. While this may be an inconvenience, it is not a practical difficulty to justify the request for such a large driveway.

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

This finding is met for the deck. This home was built in 1969 and the applicant has only owned it for the last four years. The expansion of the deck to cover the existing retaining wall which prevents water from getting in the basement is a circumstance unique to the property not created by the current landowner.

This finding is not met for the driveway width. The applicant has not demonstrated that there are unique circumstances that would make compliance with the driveway width requirement impractical or unreasonable.

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

This finding is met for both the deck and the driveway width. The requested variances, if granted, would not change or alter the zoning classification of the property.

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

This finding is met for both variance requests. Although slightly larger, the newly constructed deck does not appear out of character in the neighborhood since it is a replacement of the original deck. This request will not alter the essential character of the area. Property owners three houses to the east at 670 California Avenue East and owners of the adjacent parcel at 1650 Payne Avenue are comfortable with the applicant's request and have expressed their support by signing the applicant's petition recommending approval of the variance request for the deck. The applicant's variance application also includes two additional letters signed without a property address recommending approval of the variance.

There are a number of larger driveways in the immediate area which, unlike the applicant's driveway, lead to a garage. Nevertheless, those driveways are used for parking as intended by the applicant. Provided that the driveway work in the right-of-way is approved by the Department of Public Works, this request would not change the character of the area.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the provisions of Section 63.105(a) are hereby waived to allow a new deck with a front yard setback of 36 feet measured from the street, ***subject to the condition that the construction is approved by the Building Inspector***, on property located at 654 California Avenue East; and legally described as Ufton Grove Plat 1 Vac Alley Accruing & Lot 23 Blk 6; in accordance with the application for variance and the site plan on file with the Zoning Administrator.
IS HEREBY APPROVED.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Section 63.316 to allow an 18 foot wide driveway, on property located at 654 California Avenue East; and legally described as Ufton Grove Plat 1 Vac Alley Accruing & Lot 23 Blk 6; in accordance with the application for variance and the site plan on file with the Zoning Administrator.
IS HEREBY DENIED.

MOVED BY: Bogen

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SECONDED BY: Courtney
IN FAVOR: 6
AGAINST: 0

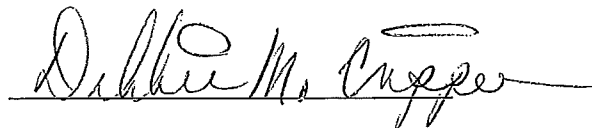
MAILED: August 21, 2012

TIME LIMIT: No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two (2) years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of the approval, unless the zoning or planning administrator grants an extension not to exceed one (1) year.

APPEAL: Decisions of the Board of Zoning Appeals are final subject to appeal to the City Council within 10 days by anyone affected by the decision. Building permits shall not be issued after an appeal has been filed. If permits have been issued before an appeal has been filed, then the permits are suspended and construction shall cease until the City Council has made a final determination of the appeal.

CERTIFICATION: I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on approved minutes of the Saint Paul Board of Zoning Appeals meeting held on July 23, 2012 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

SAINT PAUL BOARD OF ZONING APPEALS



Debbie M. Crippen
Secretary to the Board

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MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, AUGUST 20, 2012

CONTINUED FROM 7/23/12

PRESENT: Mmes. Bogen, Porter and Morton; Messrs. Courtney, Ward, and Wilson of the Board of Zoning Appeals; Mr. Diatta, Ms. Lane and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Joyce Maddox*

*Excused

The meeting was chaired by Gladys Morton, Co-Chair.

Alan C. Young (#12-071778) 654 California Avenue East: The applicant is requesting a variance in order to legalize the enlarged deck in the front yard and the new larger driveway. This requires two zoning variances. 1) The new deck has a front yard setback of 36 feet measured from the street; a 44 foot front setback (measured from the street) is required for a variance request of 8 feet. 2) For one-family through four-family dwellings, driveways in front yards shall be no more than 12 feet in width; the applicant constructed an 18 foot wide driveway for a variance of 6 feet.

The public portion of the hearing was closed at the previous hearing and it was not reopened.

Mr. Diatta reviewed the case history recommending approval of the variance for the deck, subject to the condition that the construction is approved by the Building Inspector. Staff further recommends denial of the variance for the driveway width based on findings 1 through 4.

Ms. Morton requested that Mr. Diatta update the Board. Mr. Diatta replied that he visited the site and included a copy of the updated site plan is on page 28 of the handout packet for 654 California Avenue East.

Ms. Bogen and Mr. Diatta discussed the required 6 foot side yard setback, the width of the paved driveway. Ms. Bogen stated that the neighbors would need to be notified, if the applicant were allowed to park within the 6 foot side setback, he would need another variance application to establish a parking.

Mr. Ward and Mr. Diatta discussed the front portion of the deck that needs the variance. Ms. Lane explained that the building permit was issued for the side portion of the deck, that portion of the deck was inspected and approved by the building inspector.

Ms. Bogen moved to approve the variance and resolution based on findings 1 through 6, for the front deck, subject to the condition that the construction is approved by the Building Inspector and she moved to deny the variance for the driveway width based on findings 1 through 4.

Mr. Courtney seconded the motion, which passed on a roll call vote of 6-0.

Submitted by:

Approved by:

YaYa Diatta

Gloria Bogen, Secretary

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12-161884

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, JULY 23, 2012

PRESENT: Mmes. Maddox, Bogen, Porter and Morton; Messrs. Courtney and Wilson of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Diatta, Ms. Lane and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Daniel Ward*

*Excused

The meeting was chaired by Joyce Maddox, Chair.

Alan C. Young (#12-071778) 654 California Avenue East: The applicant is requesting a variance in order to replace and enlarge the existing deck in the front yard. The new deck would have a front yard setback of 36 feet measured from the street; a 44 foot front setback (measured from the street) is required for a variance request of 8 feet.

Mr. Diatta showed slides of the site and reviewed the staff report with a recommendation for approval of the variance for the deck, subject to the condition that the construction is approved by the Building Inspector. Staff further recommends denial of the variance for the driveway width based on findings 1 through 4.

Eight letters and one petition (670 California) were received supporting the variance request from neighbors at 647, 655, 659, 665, 671, 676, 677 California Avenue East and 1650 Payne Avenue.

No correspondence was received from District 5 regarding the variance request.

Mr. Courtney and Mr. Diatta discussed the width of the driveway and how he arrived at the 15 foot width and whether it was grandfathered in at the 15 foot width.

The applicant **ALAN C. YOUNG**, 654 California Avenue East, was present. Mr. Young stated that the City's website is pretty vague about the driveway requirements and he did not see anything that required a 12 foot width. He stated that his property is surrounded by driveways that are wider than the 12 foot requirement, some as large as 21 feet and 30 feet wide. Mr. Young stated that he has a lot of water issues and when he dug down for the deck footings, there was water at 2.5 feet down, so that is why he had to put concrete over the area.

Mr. Wilson asked Mr. Young if when he replaced the driveway he had contacted the City to find out what the requirements were. Mr. Young stated that he had contacted the City Inspection Department and asked if he needed a permit and was told that he did not need a permit for a driveway. Mr. Wilson asked if Mr. Young had asked about width requirements. Mr. Young replied no he did not ask about width requirements as the driveway was already 15 feet wide. He stated that the driveway was already 15 feet and he added another three feet to the width so that they could park two cars and have room to walk between them.

Ms. Bogen asked Mr. Young if he intended to park cars in the driveway right in front of the house. Mr. Young replied yes, there are a lot of cars in the area parked in the driveways in front of the homes on the street so it should not be an issue.

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Ms. Bogen and Mr. Diatta discussed the zoning code as it relates to parking in a front yard. Ms. Lane further clarified that if the driveway leads to a legal parking space the code allows parking in the driveway in a front yard.

Mr. Wilson asked if the driveway had to lead to a garage. Ms. Lane stated that generally it leads to a garage or a parking space.

Ms. Bogen and Mr. Young discussed that there is no alley access in the back of the property, the fence in the photos was put up by a previous property owner and it separates his property from the neighbors yard behind his property, the alley is vacated.

Mr. Courtney and Ms. Lane discussed the parking code that allows people to park as many cars as will fit in a driveway as long as it leads to a legal parking space.

Ms. Bogen and Ms. Land discussed that the parking requirements for the zoning code had changed a few years back while Ms. Bogen was not a member of the Board of Zoning Appeals.

Mr. Wilson and Mr. Diatta discussed that a permit was not required for a driveway, however, work in the public right of way does require approval of the Public Works Department. According to Public Works that approval has not been granted yet and needs to be worked out with the applicant if this is approved.

Richard Nicks, 2299 Orchard Lane, stated he is Mr. Young's son. Mr. Nicks submitted photos of other driveways on the block that are wider than the 12 foot requirement. He contended that during work on the driveway there were city inspectors in the area almost every day either for his property or for his neighboring properties and at no time had any inspector told him that he was doing anything wrong. He contacted all the neighbors and nobody had any problems with the driveway. Mr. Nicks stated that grass had grown over the sides of the driveway 1.5 feet so it looked like it was 15 feet when in reality the driveway was 16.5 feet wide originally.

Mr. Young stated that the house was moved onto the lot from Shoreview and the lot is not large enough to accommodate a garage and the required setbacks for a garage. However, there is a parking space in the rear. Ms. Maddox and Mr. Young discussed that the driveway leads to the parking pad.

Ms. Bogen and Mr. Diatta discussed the legality of the parking pad and whether the driveway should be the same width as the parking pad. Ms. Lane clarified that parking could be established in a non-required side yard. Ms. Bogen asked if there were a 6 foot side yard setback next to the driveway, it looks like it goes right to the fence.

Ms. Porter asked if the deck encroached on the driveway. Mr. Diatta replied no it does not, the driveway was reduced at the stairway for the deck.

There was no opposition present at the hearing.

Mr. Wilson suggested continuing the matter to allow the applicant time to legalize a parking space so the driveway could stay.

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Mr. Warner stated that the problem here is that the Board does not have enough information to make a decision. This is a project that was done without building permits, we do not know what inspectors were out at the property or their expertise, the City has all kinds of inspectors that look for all kinds of different things and they are not qualified to look at other stuff. Whatever the applicant was or was not told is largely not helpful, we never had people on the ground that knew what to do in the first place because the applicant never got permits for the work. Mr. Warner stated that the site plan on page 30 of the BZA packet does not come close to the work that he is seeing from the photos. He suggested that the proper DSI inspector visit the site and figure out what is there today, whether there is a legal parking space or not. Staff can take the information of what is out there at present and figure out what is the permissible amount of paving could be in the front yard.

Ms. Bogen stated that she thinks there is an issue with the side yard setback if you can park a car there but cannot open the car door as stated by the applicant, which would not be six feet wide, the width of the required side yard setback.

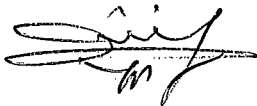
Mr. Courtney asked Mr. Warner and Mr. Diatta if the Board had enough information to vote on the deck. Mr. Diatta stated that the building permit for the deck was pulled after the fact, it has not been approved pending this variance request. Mr. Warner stated that is why he thinks that the project needs to go back to the beginning and get all the proper site plan approvals, if the Board is going to approve a variance for a deck it might as well be a deck that meets the building code standards so that if they sell the home the proper permits were pulled for the addition.

Hearing no further testimony, Ms. Maddox closed the public portion of the meeting.

Mr. Courtney moved to continue the matter for 2 weeks until August 6, 2012.

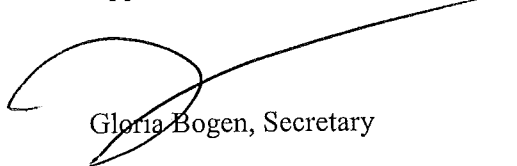
Ms. Bogen seconded the motion, which passed on a roll call vote of 6-0.

Submitted by:



YaYa Diatta

Approved by:



Gloria Bogen, Secretary

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