

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, SEPTEMBER 16, 2013

PRESENT: Mmes. Maddox, Bogen and Morton; Messrs. Courtney, Ward, Saylor 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: None

The meeting was chaired by Joyce Maddox, Chair.

**David M. King (#13-222492) 1075 Lombard Avenue:** The applicant had a front driveway leading to a tuck-under garage. In 2011, he was granted a variance by the BZA for a rear yard setback to construct a new two-car attached garage accessed from the alley. The variance was granted subject to conditions including: "The existing driveway and curb cut in the front yard must be completely removed and replaced with a new curb and gutter. All work on curbs, driveways, and sidewalks within the public right of way must be done to City Standards and Specifications by a licensed and bonded contractor under a permit from Public Works Sidewalk Section (651-266-6120). The front yard must then be sodded with grass." The applicant built the garage and removed the original front driveway and garage door but constructed a new parking space in the front yard. Because compliance with this condition has not been met, staff is requesting that the Board of Zoning Appeals review the case under Section 61.108 of the Zoning Code which permits the BZA to revoke the variance or impose additional conditions, modify existing conditions, or delete conditions which are deemed by the Board to be unnecessary, unreasonable or impossible of compliance.

Mr. Diatta showed the site plan as pictures were not available due to technical difficulties and reviewed the staff report with a recommendation based on findings 1 through 3, staff recommends that the BZA not delete the condition of approval of the variance (File # 11-253290) which states: "The existing driveway and curb cut in the front yard must be completely removed and replaced with a new curb and gutter. All work on curbs, driveways, and sidewalks within the public right of way must be done to City Standards and Specifications by a licensed and bonded contractor under a permit from Public Works Sidewalk Section (651-266-6120). The front yard must then be sodded with grass."

Two letters were received supporting the variance request.

No correspondence was received from District 16 regarding the variance request.

The applicant **DAVID M. KING**, 1075 Lombard Avenue, was present. Mr. King went over the history of the property contending that the driveway is historically significant to the property, because it is mentioned in an architectural book. He claimed that the conditions placed on the previous variance are unreasonable.

Mr. Ward asked Mr. King if he were aware that there was no parking allowed in the front yard when he purchased the property, or did his contractor tell him. Mr. King replied no. Mr. Ward instructed that as a home owner in the City of St. Paul it is his responsibility to research and find out what ordinances are involved with any improvements or work done on the property, or any changes to be made to the property. Mr. Ward continued that the current ordinance says that there is no parking in the front if you have a garage in the rear yard with alley access. The variance was given to allow the garage in the back yard, it stated that there was no parking and the driveway was to be removed, and Mr. King left the driveway in

place. Mr. King replied yes he did. Mr. Ward asked Mr. King why he would do that. Mr. King contended that parking is limited on this street and the driveway has been in place for over 90 years, claiming that there is historic significance behind it. There is documented published showing the significance behind that. Mr. Ward stated that what he is hearing Mr. King say is that he chose to voluntarily ignore the conditions of removing the driveway and replacing it with sod. Mr. King argued that there are only 10 days to appeal the variance, the variance was approved in August of 2011 and the work did not get done until August 2012. The driveway was used during the construction project, making him feel that the driveway is necessary. Mr. Ward asked if Mr. King why he did not come back to the City and request the conditions be removed. Mr. King stated that he thought he would have to come back to the City sooner or later. Mr. Ward commented and now is later. Mr. King replied yes.

Ms. Bogen asked Mr. King about the August 8, 2011 resolution that also has the condition that the exterior finish of the new garage match the exterior finish of the house, she questioned that if one year after getting the variance if he decided that he did not want to finish the addition to match the exterior of the house, whether he would have finished the addition exterior any way he wanted. Mr. King stated that there could have been money issues, or problems with the materials. Ms. Bogen asked Mr. King if he was aware of his right to appeal the condition. Mr. King stated that is why he is before the Board now asking for deletion of condition 3.

Mr. Saylor asked Mr. King why he did not appeal the condition before he completed the construction and is now presenting the Board with a "fait accompli". Mr. King stated that he thinks it is hard to visualize this, and it is hard to visualize where this driveway is, he wanted how this would look to be seen, that it was not an offensive structure or driveway.

Ms. Bogen asked Mr. Warner if one of the options the Board has here is to amend the conditions and say that the driveway has to come out but the front yard has to be sodded, or could have a rain garden, or could have bushes and it is up to the home owner. Mr. Warner stated that what has to be done under the zoning code is set out on page 45 of the BZA packet, under section 61.108. The zoning code says that the Board has the ability to modify existing conditions; or modify existing conditions, or delete conditions which are deemed by the Commission or Board to be unreasonable or impossible to comply with. For the first part of the question, can the condition that requires the removal of the driveway be modified or deleted, the Board could certainly do that but the Board would have to find that the original condition that was imposed is unnecessary, unreasonable, or impossible to comply with. Ms. Bogen stated that she does not want to leave the driveway there, but wants to change the sod requirement. Mr. Warner stated that yes the Board could modify the condition, if the applicant says the condition says grass and he wants to put in prairie grass he suspects that would be acceptable because it is reasonable and is consistent with the underlying intent which is to remove the driveway.

Mr. Courtney stated that he is not sure he is going to be persuaded to vote in favor of this, but if he was going to be persuaded, he should be hearing from the applicant that it is difficult to park in the area, everybody else parks in their front yard and he has not heard anything about the neighbors. Mr. King stated that everyone does park in the front, they all have driveways along there. There is no alley way for the south side of the street they all have driveways along there. Mr. Courtney stated that Mr. King is on the north side, it is far more relevant to hear what the neighbors on the north side of the street are doing in the front yard. Mr. King stated that some of the neighbors on the north side have driveways and some of them don't. Mr. Courtney further questioned Mr. King that the only letter of support he submitted comes from the neighbor across the street. Mr. King stated that he would have gotten more letters but thought that this

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needed to stand on its own. He stated that his neighbors like what he has done and everyone compliments him on it. Mr. Courtney asked if his neighbors are in attendance to speak in support of the project.

Ms. Bogen stated that Mr. King stated that there are driveways along the south side of the street, but the garages are all in their back yards, they drive past their house to park. Mr. King contended that they are all driveways. Ms. Bogen stated correct, but the driveways lead to a legal parking space. Mr. King stated some do not have garages, the woman across the street does not have a garage. Ms. Bogen asked if she has a parking pad in the back. Mr. King replied no, it is right in the front and does not go to the back yard.

Mr. Ward asked Mr. King about the relevance of why he has to have the driveway in the front yard. Mr. King replied historic significance and ease of use. Mr. Ward asked Mr. King to talk about the north side of the street. Mr. King had stated that there are other property owners on the north side of the street that also have driveways in the front yard. Do the neighbors' driveways lead to garages that are tuck-under. Do the neighbors also have a garage in the rear yard. The north side of the street has an alley the south side does not. Mr. King replied some have garages, some do not. Mr. Ward continued for the neighbors that have garages, does the driveway lead to a garage off the alley or a garage in the front of the house. Mr. King replied a garage in the front of the house. He stated that there are some that turn and go all the way to the back. Mr. King stated that was a design that he could have done, but he would have had to take out trees and he felt that it would not be in keeping with the historic character of the house. He continued that his contractor suggested placing the driveway all the way to the back but he felt that was not aesthetically pleasing with the historic significance of the driveway that has been in place for 90 years. Mr. Ward stated that Mr. King's architect suggested this, did the architect also research zoning code. Mr. King replied that they did not talk about it. He stated that he feels he is being punished for being honest about his intention to no longer use the garage as a garage and is now being forced to remove the driveway.

Patricia McMorrow, 904 Fairmount Avenue, stated that she lives 4 block north of Mr. King, she also was before this Board on April 29, 2013, regarding a request to remove a condition that was unnecessary and unreasonable, the Board voted to remove the condition from her property. She is asking that the Board vote in favor of Mr. King's request as it is a very expensive undertaking.

There was opposition present at the hearing.

Jeff Roy, District 16 Community Council, stated that the District 16 Community Council has not changed their position on the variance with the original conditions proposed by Mr. Diatta in 2011. He thanked Mr. King on the beautiful job he has done on the property, however, he and the Community Council have problems with this. Why was it not appealed within the appeal period, it could have been, but it was not done in a timely manner and the excuse provided by Mr. King is not a sufficient response. Mr. Roy stated that the landscaping and pavers look very nice and it makes the block look very nice, it adds to the value of the house and adds value to the block. That is all very nice but for some reason it feels self serving, that there was an intention on some level for Mr. King to ignore his responsibilities and agreement. The District Council did not agree to this without the conditions that were proposed. Given that the extra information that Mr. King has provided about the rear yard and the landscaping in the front yard seems irrelevant to the fact that 1) Mr. King did not appeal the conditions, and 2) Mr. King has chosen to not follow code. What is the purpose of code unless it is there so we can have some predictability and consistency in neighborhoods, commercial areas and so forth. As a District Council member, we are required to look to the code on our deliberations on any kind of zoning/licensing matter, what is the point of using that if it is going to be ignored by an applicant after the variance has already been approved.

Mr. Courtney asked Mr. Roy to give some background on this, did the District Council revisit this case since last time. Mr. Roy stated the District Council did not hold a meeting on this, he did send this information out in an e-mail out to all the Boardmembers of the Land Use Committee, asking if anyone had changed their minds from their position in 2011 regarding this variance and to let him know. Mr. Roy stated that nothing was returned to him in regard to this request, Summit-Hill Association has not changed their opinion.

Mr. Courtney and Mr. Roy discussed what he knew of the area and the parking situation.

Mr. King contended that almost everyone on the block parks in their front yard and this is not uncommon. He stated he does not park there but wants it there for aged parents and visitors to his house.

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

Mr. Ward stated that he has all kinds of problems with this. He understands Mr. King's situation, but how he got here is not how it should have happened. The variance was voted and approved, the conditions were ignored and not met. There was ample time to appeal the decision, it was not taken advantage of, a whole year expired. Then Mr. King decided to proceed with the project the way he wanted to anyway, rather than come back to the City and explain to DSI that there was some historic significance to the driveway that was not taken into account. He understands that might be important to Mr. King, however, to every other citizen of the City, if they get a variance that gets voted on and approved, and they change their mind later, they don't have the authority, to decide to do it another way and come back after the fact and tell the Board they want the Board to find error with the way that it was voted on originally, wants the Board to look the other way because they live in an area that is historically significant, it is aesthetic, there is no parking on the south side of the street and this is the way he wants it to be. Mr. Ward stated the law does not work that way and he has problems with that.

Mr. Wilson stated that the variance was given in 2011, with the understanding that Mr. King would comply with the conditions of the removal of the driveway and the replacement of curb. When he was here that was where he stood, if he did not agree at that time he should have appealed the decision then. He received the variance that he wanted with the conditions that the driveway be removed and the curb be replaced.

Ms. Bogen stated that she read the minutes from the last hearing and there was mention by Mr. King during the previous hearing about the historic significance of the driveway, he was going to use pavers because it was one of the first tuck-under garages and he wanted to keep the windows and kind of keep it looking like a tuck-under garage. There was plenty of information from him at the time, there is nothing really new here today. She stated that the appeal process is what has her, there is a period of time to appeal so there is some finality to some of these things that we do, so people are not coming back two years later and saying now I want to appeal this. In the legal system if you have that happening nothing would ever get done, laws would not get changed everything would be a mess. This reminds her of someone who goes out and builds a huge garage and does not get permits, they get it built and someone sees it and reports it and they have to come in and get a variance after the fact. Ms. Bogen does not appreciate variances after the fact.

Ms. Bogen moved to deny the variance and resolution based on findings 1 through 3, as staff recommends that the BZA not delete the condition of approval of the variance (File # 11-253290) which states: "The existing driveway and curb cut in the front yard must be completely removed and replaced with a new curb and gutter. All work on curbs, driveways, and sidewalks within the public right of way must be done to

City Standards and Specifications by a licensed and bonded contractor under a permit from Public Works Sidewalk Section (651-266-6120). The front yard must then be sodded with grass.”

Ms. Maddox asked Ms. Bogen about her comment about the front being planted with something other than grass. Ms. Bogen stated she think Mr. King can go to DSI if he wants to change that.

Mr. Courtney stated he is not as concerned about the rules, but if the applicant wants to break the rules than he needs to bring in the neighbors, because this is about the neighborhood, does it fit in the neighborhood, is the District Council in agreement, the answer is no, without that, the Board cannot ignore the rules and the staff recommendation just because it has historical significance. It is about the neighborhood and that is why he is voting against it.

Mr. Wilson stated that there is a traffic problem there, he drove by today and had to back up twice into someone’s driveway to let someone go by.


Mr. Ward seconded the motion, which passed on a roll call vote of 7-0.

Submitted by:



YaYa Diatta

Approved by:



Gladys Morton, Secretary