

MINUTES
BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, MARCH 25, 2019

PRESENT: Mmes. Bogen, Swift and Maddox; Messrs. Clarksen, Rangel Morales, Miller and Saylor of the Board of Zoning Appeals; Mr. Benner II, Mr. Diatta and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Diane Trout-Oertel*

*Excused

The meeting was chaired by Thomas Saylor, Chair.

Jeffrey S. Arundel (#19-016696) 5 Heather Place: There are two residential structures on this property; a principal building and an accessory building that includes a three-car garage and dwelling unit. The applicant is proposing to split the zoning lot so that each structure is on its own, separate parcel. Once the lot is split, the accessory building becomes a principal building and must meet all setback and lot coverage requirements. The following variances are being requested: 1) A minimum rear yard setback of 25' is required; a setback of 5.1' is existing for a variance request of 19.9'. 2) Accessory buildings and uses must not be established in a required yard except a rear yard. The minimum required side yard is 8' in the R2, single-family zoning district; The proposed side yard setback for the accessory structure is 5' for a variance request of 3'.

Mr. Benner II presented slides of the site and reviewed the staff report with a recommendation for approval.

Two letters were received opposing the variance request from neighbors at 501 Grand Hill and 1 Heather Place.

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

Ms. Bogen questioned that staff's recommendation usually says what the variances are, she asked if the lot split included the 5.1 setback for a variance of 19.9'. Mr. Benner replied approval of the variance request and to allow for the front yard parking as well.

Mr. Miller stated that staff has mentioned the difficulties as being the grade of the land, the Board has seen driveways switchback up and down hills, is that too unreasonable of a request or would they be running into other issues trying to place the garage in the rear yard off of Grand? Mr. Diatta stated it is very steep. Mr. Benner stated that he believes that it would run into another variance of developing on slopes greater than 12%. He thinks that the HPC (Heritage Preservation Committee) might have something to say about that as well. Mr. Diatta stated that when this appeal came in, prior to this variance, the HPC said that their guidelines would only allow a frontage on Heather Place, because it has historically functioned as the front yard and they want to keep that as the front. For practical reasons this hill is so steep when on Grand Avenue you cannot see the house on the top of the hill. HPC and the Zoning Department agreed that Heather Place would be the front yard.

Mr. Clarksen stated that if the applicant were to put the garage down the hill on the slope somehow, he presumes that they would need a variance to have it between the front lot line on Grand/Oakland Avenue and the principle structure, they would still have a variance and it would not have solved their problem.

Ms. Bogen stated that there is a retaining wall all along Grand Avenue there that would have to be taken down there and it is pretty tall. It is really steep, there is not a slope, it is a drop off.

The applicant **JEFFREY S. ARUNDEL**, 5 Heather Place, was present. Mr. Arundel stated that he had nothing further to add, but would answer any questions.

Mr. Rangel Morales questioned Mr. Arundel, looking at page 100 of the packet, about how far the new garage is from the proposed property line, is there more room to move it closer to the house, is he not allowed to move it closer to the house? Or why is he not moving the garage closer to the house? Mr. Arundel stated that he thinks that there is a setback from the house to the new structure, he thinks may be 10 feet. Mr. Benner stated that the new garage will be 8-feet from the new property line. That setback will be met. However, it is the east wall on the garage that will have a setback of only 5-feet. Mr. Rangel Morales asked if there is a reason it could not be moved up another 3-feet? Toward Heather Place. Mr. Arundel stated he thinks any of those things could be done. This is a tentative first look at a footprint. Mr. Rangel Morales questioned if he says it can be done, then does he need the variance for it? Mr. Arundel stated that part of the confusion might be that the Board is looking at a document that was not prepared for this discussion. It was created a while back as a place holder for the purpose of subdividing 3 Heater Place. In the debate between what is the front yard and the back yard and are we meeting these variances and setbacks or not meeting them. That footprint has not been revisited by them. The answer is we can move it. Mr. Rangel Morales asked staff if the proposed garage at some point starts impeding into the front yard so much that it would require HPC. Mr. Benner stated that Mr. Rangel Morales is suggesting that if the applicant were to move the garage to the west three feet to be compliant with the setback and would not need a variance. The Zoning Code has a rule that any accessory structure must be setback as far as the principle structure and in this case if the applicant were to move the garage 3-feet or so to the west the garage would then project in front of the principle structure. Than another variance would be needed. Mr. Saylor questioned, looking at page 100 of the packet, looking at the existing dwelling, the house sits at an angle, how do we determine projecting forward, he understands at 3 Heather Place, but that house is parallel on the lot. Mr. Rangel Morales stated that following the curve, that would be projecting forward.

Mr. Clarksen stated from his experience when he did this he would look at the center of the lot, determine where the middle of the lot is located and where that line crossed through the dwelling to account for the skew in the position of the front of the house, and use that for purposes of illustrating what the distance from the front lot line out by the circle is, at the foot of Heather Drive back to the house. He might offer as a condition of approval where whatever that distance is, if it is 32-feet that the proposed garage be at least 32-feet back from some extension of the new front lot line so that it is consistent.

Mr. Benner stated that working with HPC trying to determine the best location for the garage, this is the plan that they felt most comfortable with and keeping that side setback. The idea is that the existing house structure would not be covered at all by the garage. From a staff perspective it made sense to set the garage as far back to the east property line in order to maintain a little setback of 5-feet, so that it would be a setback variance of 3-feet from that side yard. Staff did not want the garage to move any closer to any section of the house along that side. Or closer to the front of the house or any section of the house along that side.

Mr. Arundel stated that he is not looking at a copy of the site plan, but there is a corner of the structure and the garage was cited on that corner. To Jerome's point having the garage sited so that it does not encroach in front of the existing house is why it got sited in this location.

There was opposition present at the hearing.

Liz Gibba, 568 Grand Avenue, she had concerns about changing the address and changing the front of the house to the back of the house, there are a bunch of things that happen. Mr. Benner explained that for the purpose of establishing an address that is completely separate from the zoning of the property. Zoning has to establish certain yards, for the purposes of zoning, this property is a through lot, it has a front yard on Heather Place and also on Grand Avenue. That is for the zoning. The address will remain on Heather that is not changing and will remain as required by the HPC, they want to keep the historic context by keeping the address on Heather. Ms. Bogen explained that the BZA does not deal with giving addresses, that is another completely different department within the City. The Board cannot change the number or the street of a property. Ms. Gibba stated that the reason she brings it up is that it seems that it is being used as a tool to allow for a variance. Because if it were the front yard it does not meet the same criteria. She had questions about switching the rear yard to the front, noting the many problems would be caused. She also contended that the building behind the neighboring condominiums garage is not the carriage house it is 502 Grand Hill, contending that the carriage house is behind that. She continued that it would impede the light and air to the homes on Grand Hill 502, 506, & 514. Mr. Rangel Morales stated that Ms. Gibba is saying that the carriage house is behind 502, 506, & 514 Grand Hill and the concern is that if a bigger structure is built on 3 Heather Place that would impede the sun and light on the Grand Hill properties. Ms. Gibba stated that all of this misinformation and questions about this, leads many of the neighbors to question if there are other alternatives that could be considered given that this is a historically significant property. Mr. Rangel Morales questioned whether Ms. Gibba would still have a problem with the lot split if the applicant could get the garage into the rear yard that is facing Grand Avenue. Ms. Gibba stated those are two separate issues. There would be issues with what happens with 3 Heather Place, if variances travel with the property what protection do the homes on Grand Hill have in terms of new construction. Ms. Swift asked about the last case on Heather Place, that was to split the property line, right? Mr. Clarksen stated it was not a variance, it was an appeal and it was not approved. Mr. Rangel Morales asked if the statement from staff that any new development would have to meet HPC standards, there would have to be an independent review before anything gets built, does that ease any of those concerns? Ms. Gibba stated with the proposed lot split we do not know what will happen with that. Mr. Rangel Morales replied he knows that but does the fact that it would have to be an independent process. Ms. Gibba stated that as it stands right now, with HPC in support of this with a lack of clarification of all of this information leaves them feeling very vulnerable.

Mr. Benner stated that the question here is can the Board approve a variance for a rear yard at what would now be the proposed 3 Heather Place and could a garage go in the side yard of the existing 5 Heather Place. Mr. Benner had the photos recalled to the screen, the photo taken from the 500 Grand. Ms. Gibba contended that the photo of 3 Heather Place is 502 Grand Hill. She stated that is an old photo. The audience noted that the photo is 3 Heather Place, the carriage house.

Mr. Clarksen asked where the light and air concern would be. Ms. Gibba stated that if carriage house is altered once there is a new owner of the property, the people who live backed-up to that property would be impacted by a new structure. Mr. Saylor stated that is not what the Board is hearing today. Mr. Clarksen stated that the reason he is asking this question is that the carriage house is not proposed for any change here. If they did propose to make any changes to the carriage house it would require HPC full review and additional building permits and variances and it would be reviewed at a different time. The garage that is part of this discussion today is actually south of the existing carriage house. Where would the light and air be impacted by the proposed garage? Ms. Gibba replied it would not have any impact.

John Kavanau(sp), stated that he has been the caretaker of 500 Grand Hill for 20 years. He stated that their concern is about water issues and particularly the drainage of the properties. Water drains from what is proposed to be 3 Heather Place, the carriage house, into the garage at 500 Grand Hill and they have water damage from that and it is visible in the garage. They are also concerned about the water drainage on Grand Avenue, on a rainy day or snow melting day there will be water running across the sidewalks and the street and it contributes to some incredible potholes. Without any mitigation as the property is those problems continue. He is concerned with adding another structure and paving for the driveway that will exacerbate those problems. He contended that mitigation of those issues should be addressed before any variances or building permits are allowed. Mr. Benner stated if there are existing water run-off problems from the existing building, the Board can condition any approval to address water run-off along the property line, that would be fair.

Mr. Rangel Morales asked Mr. Benner if water run-off would be addressed as part of any site plan review for the garage. Mr. Benner replied yes, that is correct we look into those things when building a new structure, that there are gutters and down-spouts to be sure that water is not draining onto abutting properties. Mr. Diatta stated that typically for a lot that has slope issues, he thinks it would not hurt to condition the approval so that it has more teeth, because occasionally when applicants submit for just a plain garage, staff might not look at the topography to see where the water is draining. But by adding a condition that says any water issues need to be addressed by gutters and down-spouts so that water drains onto the applicants' property rather than the neighboring properties. That will flag the reviewer to look at why the condition to address water issues was placed on the approval.

Virginia Kraus, 520 Grand Hill, stated that her front door is on Heather, she finds it interesting that they can have either a Grand Avenue address or a Heather Place address for zoning purposes. Mr. Benner stated that the Board is not looking at the address for this property, it is simply the frontage that makes a difference here. When the BZA uses "address" in reference to establishing front yards for zoning purposes there is some confusion here. Ms. Kraus stated that it runs into a conflict with front yards for HPC purposed. Because the variance that the applicant is asking for the new proposed garage would be in what the HPC considers the front yard. She stated that she was looking at the findings and thinks what you get from zoning is predictability, harmony and perhaps less of an inclination to monetize the property. She contended that they have a home owner that just purchased the property with a three-car garage that he wants to sell thus creating issues for himself. She contended that approving the requested variance will alter the essential character of the neighborhood. She contended that there are a lot of inconsistencies noting that the pool is in the back yard, why is it not the front yard? Mr. Diatta commented as Mr. Benner stated for zoning, addresses are not relevant. Zoning looks at frontages and setbacks and the built environment. This is in harmony with the Zoning Code, by building a garage and taking cars off the street. The Zoning Code supports that and supports investment in your property. The code does say that the variance cannot be for financial purposes only, building a garage to place a car in, taking it off the street, is in keeping with the Comprehensive Plan, it is in keeping with the intent and purposed of the Zoning Code, yes, it is an investment, but he does not believe that it is the sole reason. Ms. Kraus stated as a rental property that building provided moderate to low income housing in the neighborhood. It was used as housing, it has not been an empty space. She contended that creating a new front yard with no back yard for another family is a little different.

Christine Donovan, 514 Grand Hill, if the lot split is approved then the garage is taken away, a new garage will have to be built. She contended that if the BZA is making a decision on that variance without presenting it to the full HPC Board for approval, she thinks this should go through the HPC approval process before coming to the BZA, rather than just the staff person making the decision. She wants the whole property to go before the HPC Board rather than just the garage. Mr. Benner stated that was his

concern at first as well. However, on Friday he went over to the HPC Office and spoke with George Gause, the HPC supervisor. It makes more sense to see if this Board will even approve the location of the proposed garage prior to any design aspect. When he spoke with the HPC supervisor, he stated that he had not seen any application yet for a garage. Mr. Benner stated that he thinks it is the proper order to go before the BZA to see if it gets the green light, then the applicant can go to the next step which would be the HPC process. There will be a public hearing as a part of that process. It is not an instance of putting the cart before the horse here, it is simply a matter of getting the correct process down, getting the location, if the location is ok, then they can move on to the design aspect. That is the procedure that staff has taken on both sides. Ms. Donovan stated that she disagrees and thinks this needs the whole site looked at for design. Mr. Benner stated that there is also a 60-day clock with this, the BZA has to act within 60-days, in order to keep things moving as required by Legislative Section 15.99. Mr. Saylor stated for the concept, not the design, correct? Mr. Benner replied correct, the concept of the location for the new proposed garage and the lot split.

Mr. Clarksen commented that he worked for a City that did the process just the opposite of St. Paul, things when through HPC first each city does things differently. He thinks what Ms. Donovan should take from this is that when there is an HPC application filed there will be an HPC review and you can then have that conversation. Ms. Donovan questioned will that be in terms of the design or the location. Mr. Clarksen replied probably both.

Scott Endres, 1 Heather Place, stated he is directly across the street from 5 and 7 Heather Place. He is new to the neighborhood and was excited about moving into the neighborhood because of the architecture the neighborhood is full of. He wants a full HPC review of the property as well. He contended that just splitting off the garage will alter the character of the neighborhood, by providing a new residence without a back yard. He also commented that if a garage is built in the proposed location for 5 Heather Place it will be the first garage in the front yard in the entire historic district. He contended that is a precedent that is very concerning. He thinks it is peculiar to change the front and back yards for zoning purposes. Ms. Bogen stated we are not the HPC. Mr. Endres replied he knows that. Ms. Bogen continued that a full HPC Board will look at this. Mr. Endres replied that they will look at it after the BZA vote. Ms. Bogen stated that BZA does not look at what a building is going to look like, that is not our job. Mr. Endres stated he is concerned about how it is going to look, but he is concerned about the precedence it sets. He thinks that this is being pushed through too quickly without looking at what the potential use of the carriage house will be.

Mr. Arundel had nothing further to add.

Hearing no further testimony, Mr. Saylor closed the public portion of the meeting.

Mr. Clarksen asked if it is in the City's interest to add a condition about drainage, including a condition to state the obvious about the HPC process. Mr. Benner replied no, the HPC process will have to take place anyway. It is not necessary. Mr. Clarksen stated that he thinks that Mr. Benner is saying it is not needed because once an application is made to do something with the proposed garage or if someone were to make alterations to the carriage house that would go through the HPC process and there would be an opportunity to talk about it. Mr. Benner stated that not only would a building permit need to be pulled from DSI (Department of Safety & Inspections) but also a permit from the HPC would have to be pulled in order to move forward with any project and Mr. Arundel is very aware of that. Mr. Clarksen stated what the Board is here for today is not to discuss the HPC process or the potential building of anything on the site, what the Board is here to look at is, are the lot lines as proposed on survey acceptable with the variances in mind. Mr. Benner replied that is correct, the location of the lot split and the location of the

proposed garage, which if the HPC does not agree with the garage location. Mr. Clarksen stated it might be a moot point. Mr. Benner replied correct. Mr. Clarksen commented that part of what the Board is here to do is to explain to the public a very complicated situation. In terms of predictability when there are 40-foot zoning lots on a block where all the houses are spaced a certain distance from the front lot line on a street and all the houses have the same general pattern there is the ability through zoning to create a mechanism of predictability and a level of expectations. He does not think that there is a site that is like this anywhere else in the City of St. Paul. It is very difficult and he thinks that is why the Board and neighbors are having this conversation. For staff to understand where the front and back lot lines are which is why they spend so much time talking about it and for members of the public to understand the nuances of zoning is a whole level of different discussion. His point is that this is not a predictable lot.

Mr. Clarksen moved to approve the variance and resolution based on findings 1 through 6, subject to the condition that water run-off is addressed for the new garage so it does not drain on the neighboring properties.

Mr. Rangel Morales stated that with the information provided by the applicant and staff as well as the testimony of the neighbors, while he is inclined to approve the lot split he is not sure that enough information has been provided to say that the proposed garage needs to be located in the side yard as defined by staff. There appears to be enough room to be able to get to the back yard, he does not know what the topography is and whether it would be feasible to create a garage in the rear yard. When Mr. Arundel spoke, he stated that this site plan was not prepared for purposes of this variance. Mr. Rangel Morales stated that he does not agree that the location of the proposed garage has been explored enough or that the Board has heard enough information to conclude that the garage cannot be placed in the rear yard facing Grand. He would vote against the motion.

Ms. Bogen seconded the motion, which passed on a roll call vote of 4-2(Rangel Morales, Miller).

Submitted by:

Approved by:

Jerome Benner II

Daniel Miller