

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, FEBRUARY 7, 2011

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

ABSENT: None

The meeting was chaired by Joyce Maddox, Chair.

Tuan J Pham (#11-007586) 231 Isabel Street West: A variance of the River Corridor setback standards in order to allow an existing statue structure in the rear yard on the bluff side of the property to remain. A setback of 40 feet from the bluffline is required and 10 feet is existing for a variance of 30 feet.

Mr. Diatta showed slides of the site and reviewed the staff report with a recommendation for denial.

No correspondence was received opposing the variance request.

No correspondence was received from District 3 regarding the variance request.

The applicant **TUAN J. PHAM**, 231 ISABEL STREET WEST, was present. Mr. Pham stated that he was sorry that he had not come to the City for advice before building his statue structure. However, when he moved into the City 20 years ago he remodeled a building in the City and he had applied for many permits to do that job and has remodeled many other houses in the City pulling permits for all the jobs. He further stated that he wants to obey the law and the zoning code because he came here for freedom and he knows he needs to obey the laws in order to be free. He stated that his neighborhood loves his statue. Mr. Pham stated that he wants to participate in building up the City, so it becomes a great City. He stated that when he was remodeling the house the zoning code required a 10 foot setback, he thought maybe that was a small thing. According to the Zoning Code if the proposed accessory structure is less than 1,000 square feet, no permit is needed to build it. He acknowledge his confusion on how to measure the setback from the bluffline and he thought since he is not building a house or anything significant, it would not be a problem. He stated that he wants to leave something for his children and grandchildren when he is gone. Mr. Pham asked that the Board do him a favor and approve the variance as he does not think that it would hurt anyone else. He stated that most of his neighbors agree with him and support him with their presence here today. For finding number three, Mr. Diatta was at his house asking if other people would be allowed to visit his display, or to pray. He told Mr. Diatta that he is not a selfish person and he thinks it is better if people come to pray rather than fight and shoot, but if it causes problems he will not allow people to visit the site. He stated that he is not doing this only for himself but for future generations. He does not think that this statue is going to hurt anyone, as it has been built to withstand tornado winds of up to 500 mph. He stated that if he has to move it, he worries that it might crack or break. He brought the statue from Vietnam without cracking it; he is not worried about the money involved but the statue itself. He stated that it has a special significance to his family and his people.

Mr. Courtney questioned that it is a work still in progress as stated in the staff report, how much more is there to be done? Mr. Pham stated that it is 95% done, there is just a little more he has to do. Mr. Courtney further questioned what the District Council said? Mr. Pham stated that he did not know about the District Council.

Joseph Tokack, 228 Isabel St. West, stated that he lives across the street from Mr. Pham and that the statue is beautiful. He fully supports what Mr. Pham has done and thinks it is a wonderful thing for the City.

Joe Matt, 201 Ohio Street, stated he lives down the bluff from Mr. Pham. He agrees with the beauty of the structure, it is not that massive and it is far enough away from the bluff that it is not going to harm anybody. He stated that there are garages and sheds on the bluff. He stated that if you circle around then, he thinks that the statue is much less intrusive or hazardous than the other structures built right on the bluff and he thinks that they should be looked at. He questioned what are you limited to putting in your back yard? He stated that this is not massive, it is far enough from the bluff that it is not going to hurt anyone. It seems to him that the Board of Zoning Appeals(BZA) could only be in favor of this because it does not detract from the neighborhood at all. Ms. Maddox stated that she is not going to go through the code citations but when you live on the bluff you have to follow certain rules and that is why we are here today. Mr. Matt stated he understands that but he would like to know what defines a structure. He asked: "If he puts up a ten foot post, is that a structure?" Ms. Maddox stated if it is within 40 feet of the river bluff. Mr. Matt asked: anything? He argued that Mr. Pham would not have access to the rear 40 feet of his yard according to this. Ms. Maddox stated the Board is not going to go into that here. Mr. Matt argued that the City needs to look into what defines a structure.

Ms. Linden questioned that if there are people that are going to be able to walk around this and utilize this as Mr. Pham would like to do in that 40 feet does he not understand the danger? Mr. Matt stated that he understands that but he does not think that should be an issue on a private property in his back yard. He stated that maybe the City could approve it with the condition that nobody can come there publicly, but that should not interfere with the use of his property.

Ms. Maddox asked that Mr. Diatta to shed some light on the subject here. Mr. Diatta replied that the river corridor standards state that any structure placed in the 40 foot setback would not be permitted. Mr. Diatta clarified that a structure that is 120 square feet or less does not require a building permit but that does not mean that you can place anything within that setback. You don't need a permit because it is less than 120 square feet, but you need to get City approval because the bluff has its own regulations. Mr. Matt stated that to him it seems that Mr. Pham does not own his own back yard. Ms. Maddox stated that we are going to move on here; we cannot get into this kind of a discussion we need to stay on track here. Mr. Matt asked if the Board understood what he was saying. Ms. Maddox stated she understood but we need to stick to the findings here.

Roy Dick, 1099 Scarboral Lane, stated that Mr. Pham has addressed finding number three because he is willing to not allow the public into his back yard. For finding number two it says Mr. Pham did not contact the City before constructing the structure, but then the City contacted him and said he could either move the structure or apply for a variance, which is what he is doing here. Ms. Maddox stated that what we need to look at on finding number two, is whether "the plight of the land owner is due to circumstances unique to the parcel of property and were not created by the land owner." So we have to say why it is unique. Mr. Dick stated that if there were a tree where Mr. Pham wanted to place the statue, then you could say he had a compelling reason to put it somewhere else. Mr. Dick stated that Mr. Pham has some beautiful structures that he placed all around his yard and he supposes that the City could compel Mr. Pham to put them all in one little spot, but that does not seem reasonable to him. He continued to finding number one regarding reasonable use for a single family. Mr. Dick stated that Mr. Pham has some marble structures in his yard and it seems to him that if it is his family he should have the right to decide what to place in his back yard.

It has to be a reasonable use of the property and he does not see how that could be an unreasonable use of the property.

There was no opposition present at the hearing.

Mr. Courtney asked staff: did anything happen at the District Council? Mr. Diatta stated that nothing has been received from the District Council. Mr. Courtney stated his second question relates to the whole river corridor and the 40 foot setback requirement. He asked whether there is any reason the 40 foot requirement that comes into play here: is there some erosion, is the bluff going to fall down or do we just have a rule here and we are going to enforce it? Mr. Diatta stated he does not know, he does not know why the code is written that way. He can only say that any structure within that 40 foot setback is not allowed.

Mr. Wilson asked how many of these structures are within that 40 feet. He stated that he drove by the address, went down Ohio Street, he didn't see anything and if he could see it from Isabel Street, it might detract from driving. He questioned how many more of those structures are within the 40 foot bluff line. Mr. Diatta stated that this is the only one within the 40 foot setback.

Ms. Maddox invited Mr. Pham back. Mr. Pham stated that he meets the 40 foot setback from Ohio Street but on the Isabel side he is short. He stated that the back of the statue is to the valley with nothing but trees down the bluff and from Ohio Street he is at least 100 feet back. He contended that if someone pushed it down it would not go anywhere just stay in his back yard.

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

Mr. Courtney stated that he was advised by Legal Counsel that: "The objective of standards and criteria is to maintain the aesthetic integrity of the natural environment of the river corridor in conformance to the Saint Paul Mississippi River Corridor plan by reducing the effects, etc. It has to do with the aesthetic integrity and natural environment."

Mr. Courtney stated that he would be interested in knowing what the District Council's opinion is. Ms. Bogen stated that she had asked her neighbor who is on the Board and it was never heard by the District Council.

Mr. Courtney stated that he is sympathetic to the applicant and he thinks that the District Council should speak to this: "If we are talking about aesthetic integrity, the District Council should be speaking to that rather than us." Ms. Bogen stated that the District Council has a specific River Corridor Task Force Committee that would probably be the one entity on the westside that could give an opinion of exactly what effect this might have on the bluff. They are very worried about what happens on the bluff.

Ms. Maddox questioned whether there is time to continuing this for one month so the District Council could hear it. She stated that she thought that it would be helpful in making a decision to know what the District Council's opinion is from a neighborhood perspective. Ms. Bogen stated that the statue is not going to fall down off the bluff but it is seen from below.

Ms. Linden questioned if anyone knew when the Taskforce met? Ms. Maddox stated no, that is why she is suggesting a month layover.

Mr. Wilson wondered how the BZA could get past the definition of development, where no development is allowed including building a statue structure or any changes to the land itself. Mr. Courtney stated that Mr. Pahm is not appealing the decision, he is asking for a variance. He is not challenging the broad definition of development he is asking for a variance to build within 10 feet instead of 40 feet.

Mr. Ward stated that it is not the development piece. From the east side it does not meet the guidelines but from the west side it does. On the east side he is missing a few feet, but he is very close. He contended that the Board would be in error not to send it back to the District Council because they have a specific task force to look at these issues and to have some type of community input and involvement into this.

Ms. Bogen stated that would put the case beyond the deadline for action and asked if the applicant would be willing to continue the matter for a month? Ms. Maddox explained to the applicant that the BZA needed to make a decision and explained that what the BZA would like to do with this motion is to extend the time so that Mr. Pham can appear before the District Council so council can take a look at the bluff there as they are very familiar with what goes on in the bluff area and they can come back to us in a month and present their findings. You will have a chance to talk with them at their meeting. Without that if you choose not to sign the continuance request then we would be forced to make a decision today. She asked Mr. Pham if he is willing to sign a continuance to delay the decision for a month. Mr. Pham stated that he thinks that this Board has enough authority to make the decision right now. He contended that they were still discussing back and forth and not coming to a decision. Secondly he stated that his property is over 1,000 feet from the river: "they require a 40 foot setback so that nothing falls off the bluff". Ms. Maddox questioned whether Mr. Pham has gone before the District Council. You have not gone before the District Council. Mr. Pham stated that he wanted the Board to make their decision today; he thought that they had enough authority to make the decision and that this is a small issue. Ms. Maddox stated that Mr. Pham response was a no, he does not want to go to the District Council; it would be nice if we had more people looking at this.

Mr. Warner stated that because of the 60 day rule the Board has to make a decision within the 60 days. "You do have the option to extend that for an additional 60 days for a total of 120 days. We, as City Staff, advise you that when we build in our time lines for hearing matters, we fudge a little on the time and compress it a little so there is adequate time for City Council to hear an appeal. It would be useful to have some input from the Westside Neighborhood Organization on that. If you do ask them for their input, I suggest that the Board give them a specific question as to whether or not they feel that this application and the applicant's structure fit within the variance criteria that is set fourth in the City's Ordinance. It is not going to help you if they come in and say great neighbor, great statue go forward and do good work. That is not going to help you deal with the law. So you need to ask them for their opinion as they understand the River Corridor Bluff land regulations and they are familiar with what the policy purposes are behind these regulations. But you might want to pointedly ask them how they feel about this application in particular and how it would apply and the impact of it generally speaking. I am not sure that the applicant understands the subtle technicalities of the 120 day rule that the legislature has imposed on us. So my advice would be, despite the applicant's request that the Board act today it is a sufficiently important matter to me and his neighbors, so you can take on their own volition and extend out the time. We do not know when WESCO meets, so I would suggest that this matter be set out to the end of the 60 day period and on Day 59, staff will extend it for an additional 120 days. If the matter has to go to the City Council for appeal, either from the applicant, another neighbor or anyone, we can simply work with the applicant to work the time out. I think that is a good way to work out the matter.

Mr. Ward moved to continue the matter for approximately 4 weeks to allow the District Council to hear the case and make their recommendations to the Board concerning the bluff line question.

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

Submitted by:

Approved by:

YaYa Diatta

Gloria Bogen, Secretary