

BOARD OF ZONING APPEALS STAFF REPORT

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TYPE OF APPLICATION: Minor Variance **FILE #**11-007586

APPLICANT: Tuan J. Pham

HEARING DATE: March 7, 2011

LOCATION: 231 ISABEL STREET WEST

LEGAL DESCRIPTION: Irvines Addition To W St Paul Subj To St Lots 7 Thru Lot 10
Blk 198

PLANNING DISTRICT: 3

PRESENT ZONING: RT1; RC-4 **ZONING CODE REFERENCE:** 61.601
Westside Special Sign District

REPORT DATE: January 25, 2011 **BY:** Yaya Diatta

DEADLINE FOR ACTION: March 29, 2011 **DATE RECEIVED:** January 20, 2011

A. **PURPOSE:** 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 proposed for a variance of 30 feet.

B. **SITE AND AREA CONDITIONS:** This is an irregularly shaped lot of about 54,283 square feet with no alley located on the bluff line.

Surrounding Land Use: Primarily single family homes.

C. **BACKGROUND:** In November of 2010, an inspector from the Department of Safety and Inspections (DSI) responded to a complaint regarding a structure built in the rear yard of this property. The inspector saw a structure, which can be best described as a statue, in the rear yard located within 40 feet of the bluffline. River Corridor setback standards require all development to take place at least 40 feet landward of the bluffline. The applicant subsequently contacted DSI and requested a meeting which was held on November 3, 2010. At the meeting the applicant was informed about the River Corridor setback standards and was given options to bring the property into compliance with the setback standards. Another inspection was done on November 8, 2010, by DSI inspectors along with the applicant. All concurred that the structure did not meet the bluffline setback requirements. On January 4, 2011, a letter was sent to the applicant ordering him

to correct the violation by either moving the structure to meet the setback requirements or apply for a variance to allow the structure to remain at the current location. The applicant chose to apply for the variance.

D. CODE CITATIONS:

Sec.68.402(b)(4)

Bluff development shall take place at least forty (40) feet landward off all bluff lines.

Sec.205. D. Definition

Development. The construction of a new building or other structure on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.

Development (river corridor only). The making of any material change in the use or appearance of any structure or land including, but not limited to: a reconstruction, alteration of the size, or material change in the external appearance, of a structure or the land; a change in the intensity of use of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples); mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; or the dividing of land into two (2) or more parcels.

Sec. 68.601. - Variances. *[for variances in the River Corridor]*

(a) Applications for variance to the provisions of this chapter may be filed as provided in section 61.600. The burden of proof shall rest with the applicant to demonstrate conclusively that such variance will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment; such proof may include soils, geology and hydrology reports which shall be signed by registered professional engineers. Variances shall be consistent with the general purposes of the standards contained in this chapter and state law and the intent of applicable state and national laws and programs.

E. FINDINGS:

1. *The property in question cannot be put to a reasonable use under the strict provisions of the code.*

This condition is not met. The primary use of this property is a single family dwelling. Because a reasonable use of this property has been established consistent with the code, there is no undue hardship here to support a request for a variance.

2. *The plight of the land owner is due to circumstances unique to this property, and these circumstances were not created by the land owner.*

This condition is not met. The property owner should have contacted the city prior to constructing the structure within the bluffline setback area. The landowner has not demonstrated that the location of the structure is compelled by circumstances unique to this property. In this case, the circumstances were created by the current land owner.

3. *The proposed variance is in keeping with the spirit and intent of the code, and is consistent with the health, safety, comfort, morals and welfare of the inhabitants of the City of St. Paul.*

This condition is not met. Leg.Code Sec.68.601(a) requires the applicant for River Corridor variances to demonstrate conclusively that the variance will not result in a hazard to life or property and will not adversely affect the safety, use, or stability of a public way, slope or drainage channel or the natural environment. The applicant has not produced any evidence conclusively demonstrating that the structure in question will not violate these conditions.

The property owner has also stated that this is a work in progress and when the project is completed, he would like to allow access to the public free of charge for visitation, prayer or special events. This could create traffic concerns in the neighborhood and would not be consistent with the goals of the Comprehensive Plan.

The requested variance is not in keeping with the spirit and intent of the code and could affect the safety or welfare of the area inhabitants.

4. *The proposed variance will not impair an adequate supply of light and air to adjacent property, nor will it alter the essential character of the surrounding area or unreasonably diminish established property values within the surrounding area.*

This condition is met. The structure is in the applicant's back yard far away from any adjacent residences. The structure will not affect the supply of light or air to the adjacent properties. The structure does not significantly change the character of the neighborhood.

5. *The variance, if granted, would not permit any use that is not permitted under the provisions of the code for the property in the district where the affected land is located, nor would it alter or change the zoning district classification of the property.*

This condition is met. The requested variance would not change the zoning classification of the property.

6. *The request for variance is not based primarily on a desire to increase the value or income potential of the parcel of land.*

This condition is met. The requested variance is not based primarily on a desire to increase the value or income potential of the parcel of land.

- E. **DISTRICT COUNCIL RECOMMENDATION:** Staff has not received any correspondence from District 3.
- F. **CORRESPONDENCE:** Other than the material submitted by the applicant which includes a petition signed by approximately 34 residents in the neighborhood in support of the variance request, staff has not received any additional correspondence.
- G. **STAFF RECOMMENDATION:** Based on findings 1 through 3, staff recommends denial of the variance.