

**CITY OF SAINT PAUL  
BOARD OF ZONING APPEALS RESOLUTION  
ZONING FILE NUMBER: 13-247876  
DATE: November 25, 2013**

WHEREAS, Bill Bergmann has applied for two variances from the strict application of the provisions of Section 66.207 & 66.231 of the Saint Paul Legislative Code pertaining to the parking and rear yard setback requirements in order to remodel the attic space of the existing two-car detached garage in the rear yard into a dwelling unit which would result in two principal single family buildings on the property. The zoning code allows a second dwelling on a lot in a multiple family residential zoning district providing it meets a 4' side yard setback, is at least 12' from the main house and has a 25' setback from the rear property line. Additionally, two dwelling units on one lot require a total of 3 off-street parking spaces. The side setback and separation from the house are met, but the applicant is requesting two zoning variances: 1) The rear yard setback is 4 feet requiring a variance of 21 feet. 2) Two off-street parking spaces are available within the garage for a variance of one parking space. in the RM2 zoning district at 576 Lincoln Ave PIN: 012823320092; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on November 25, 2013 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.*

The homeowners purchased this property 6 years ago and are proposing to remodel the existing two-car garage into a second dwelling unit for their parents. Prior to constructing the existing garage in 2000, the previous homeowners applied for variances in order to construct a carriage house dwelling but subsequently withdrew their request. The garage was constructed under permit with a condition that it is not used as an additional living space or for commercial purposes.

However, it was constructed with a design that could lend itself for an additional unit on the property. It has a dormer with door cutouts, windows, heat, electricity, plumbing and sewer but has no access to the second floor. The applicant intends to build an exterior staircase to provide access to the second floor as part of the remodeling project and create a dwelling unit.

As a garage, the structure meets the required setback. However, the request to remodel the garage located 4 feet from the rear property line into a dwelling unit constitutes a principal structure and triggers the 25 foot rear yard setback requirement. This request would result in a nonconforming a rear yard setback for the proposed additional dwelling. It is not in

keeping with a purpose and intent of the zoning code for the elimination of nonconforming uses of land in the city. This finding is not met for the rear yard setback variance.

There are currently two parking spaces available in the garage and according to the homeowners, their parents will not have a car while living on this property. Since the property is within walking distance of Grand Avenue where transit is available, additional parking is not necessary. This finding is met for the parking variance request.

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

The proposed second dwelling unit would accommodate the property owners' parents to provide convenient access for their care. Chapter 2.17. of the Comprehensive Plan calls for exploring, via a zoning study, the potential for accessory units in existing neighborhoods as a solution for the changing demographics, allowing the elderly to age in place while providing more affordable housing opportunities for singles and couples. Although the garage does not meet the required 25 foot setback, it already exists. This request to convert an existing building into living space for the homeowners' parents is consistent with the goal of the Comprehensive Plan stated above. This finding is met for the rear yard setback variance.

The Comprehensive Plan encourages providing off-street parking in order to lessen congestion the public streets. Since the homeowners' parents would not have a car while living on this property, the additional parking space is not necessary. This finding is met for the parking variance.

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 garage is existing and there is no place on the lot where it could be relocated without a variance to meet the required 25 foot rear setback. The requested variance is reasonable and is based upon a desire to maximize the use of the accessory structure. This finding is met for rear yard setback variance.

In order to provide the additional off-street parking space, the playground would have to be removed, creating a difficulty for the homeowners to enjoy their rear yard. Additionally, the homeowners are concerned that adding more paved surface for parking could cause more water flowing into the alley where drainage issues already exist. These are practical difficulties in complying with the parking requirement without a variance. This finding is met for the parking variance request.

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

Had the property owners checked with the city prior to purchasing the property, they would have been informed about the condition of approval listed on the garage building permit which prevents the structure from being used as additional living space. The requested parking variance was triggered by the homeowners' desire to create the additional dwelling unit. These are circumstances created by the current homeowners and this finding is not met for both variance requests.

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

The requested variances if granted will not change the zoning classification of the property. This finding is met for both variance requests.

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

There are no garages in the immediate area with an exterior staircase leading to a dwelling unit above a garage and it appears that there are no dwelling units in garages in the immediate area. This request could change the character of the surrounding area. This finding is not met for the setback variance.

The applicant states that the homeowners would most likely be driving their parents around while they are living in the new unit, therefore, the parking variance request will not change the character of the area and this finding is met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Section 66.207 & 66.231 to allow a second principal building on property located at 576 Lincoln Avenue; and legally described as Terrace Park Addition To the C E 1/2 Of Lot 28 And All Of Lot 29 Blk 6; in accordance with the application for variance and the site plan on file with the Zoning Administrator.

***IS HEREBY DENIED.***

**MOVED BY:** Saylor  
**SECONDED BY:** Courtney  
**IN FAVOR:** 5  
**AGAINST:** 0

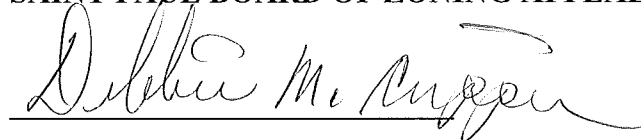
**MAILED:** November 27, 2013

**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 November 25, 2013 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

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, NOVEMBER 25, 2013

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

ABSENT: Joyce Maddox\*, Gladys Morton\*, Daniel Ward\*  
\*Excused

The meeting was chaired by Gloria Bogen, Co-Chair.

**Bill Bergmann (#13-247876) 576 Lincoln Avenue:** The applicant wants to remodel the attic space of the existing two-car detached garage in the rear yard into a dwelling unit which would result in two principal single family buildings on the property. The zoning code allows a second dwelling on a lot in a multiple family residential zoning district providing it meets a 4' side yard setback, is at least 12' from the main house and has a 25' setback from the rear property line. Additionally, two dwelling units on one lot require a total of 3 off-street parking spaces. The side setback and separation from the house are met, but the applicant is requesting two zoning variances: 1) The rear yard setback is 4 feet requiring a variance of 21 feet. 2) Two off-street parking spaces are available within the garage for a variance of one parking space.

Mr. Diatta showed slides of the site and reviewed the staff report with a recommendation for denial, based on findings 1, 4 and 6, staff recommends denial of the requested variances.

Four letters were received supporting the variance request, three letters were received opposing the variance request. One petition was also submitted supporting the variance request signed by 15 neighbors.

Mr. Courtney asked Mr. Diatta the purpose of the required 25 foot setback. Mr. Diatta replied the purpose is to create yard space so that houses are not stacked next to each other. Mr. Courtney asked why that setback is required for a garage in the back yard? Mr. Diatta replied that it is because a garage is an accessory use on the property not a principal use.

One letter was received from District 16 supporting the variance request.

The applicant **Bill Bergmann**, contractor, 2153 40th Avenue South, MPLS, was present with Seth Colton, North Oaks, Josh & Lissa Colton, property owners, 576 Lincoln Avenue.

Mr. Bergmann argued that although the structure is used as a garage it was clearly intended to resemble a carriage house. Everything is in place, the plumbing, heat, the dormer is in place with a clear cutout for the door that will lead to the proposed staircase. He stated that the surrounding area has a number of rental properties, with dwelling units on the second floor, however, he did not find a dwelling above a garage in the area. Mr. Bergmann submitted photos of other staircases leading to other second floor dwellings and a staircase leading to a space above a garage, not a dwelling, but it is a physical feature on the building. Mr. Bergmann explained that originally he referred to this as a carriage house and was referred to the Planning Commission for a conditional use permit. He argued that the garage was built as a garage, however, it was intended to be a carriage house and if this were the original carriage house attached to the property then the requirement to apply for a conditional use permit would have applied.

Lissa Colton, stated that she and her husband are both Doctors and wish to continue to live in the City. She stated that her parents live in the Philippines and when they visit they stay for months, converting this to a second dwelling will allow her parents to stay longer, spend more time with their grandchildren and make their stay more affordable. She continued that Josh's father is living in a memory care facility, his mother is in her 80s and is still capable of living alone, but she is slowly becoming less independent. Josh's mother would like to stay with them in her remaining years after experiencing the indignities of a nursing home her husband has had to live with.

Mr. Courtney asked Ms. Colton to address the parking situation, explaining that the Board must make decisions about the property in perpetuity not just in the short term while their parents are around. Mr. Josh Colton stated that it is a city, parking is always an issue, people always seem to find parking. He continued that if this garage is ever rented the renter probably will not have a car, the space is small, there are many apartment buildings on the block and their one unit will be pretty small compared to that.

Seth Colton, 1 Shadow Lane, North Oaks, stated air and light are not an issue on this property or the neighbors, the parking issue has been dismissed in the staff report and he has never had a problem parking in the area, having attended many events in the area. He argued that what is being proposed here is consistent with the Comprehensive Plan, however, the findings that are negative are based on misconceptions about the property. This type of variance has been granted by this Board on previous cases with variances that exceeded the variances requested here. Mr. Colton argued that the Board must grant the variance for this property, because a much larger variance was granted by the Board on Grand Hill in 2012. He argued that the Board wants community involvement and there is a large amount of support for this project, many neighbors are in attendance to support this project, the Summit-Hill Association is also in support of this project.

Mr. Seth Colton stated that in 2000 the property owners at that time withdrew the variance application for the carriage house/garage and built it as a garage, water and a sink were placed in the building and a letter was submitted to the City, stating that they did not intend to use the garage as a separate dwelling. He argued that changes in the comprehensive plan now encourage this type of in-fill building. He contended that the findings for the case that was withdrawn were all in favor of granting the variance request.

Ms. Bogen stated that the Board does not set precedence, each case is decided on its own unique circumstances as codes and findings change as well as what the Board looked at has changed over the last few years, just because the Board granted a variance down the block 13 years ago does not imply that the board has to approve a similar variance now. Mr. Seth Colton argued that the decisions may not be precedential however, he feels that they should be influential.

Mr. Seth Colton argued that the staff report is stating that the variance request is not in harmony with the general intent and purposes of the zoning ordinance, he contended that if that is the standard that has to be met no variances would be granted. He argued that the Board has to look at whether this property meets or is like the surrounding community. The photos submitted by Mr. Bergmann show that this staircase in the rear yard is similar to what is in the area. It is similar in type of use, it allows a slight increase of use in a RM2 area that allows this type of use. Mr. Colton argued that given the approval of the Grand Hill variance the previous year with similar circumstances to this variance, request should be granted also.

Bill Strusinski, 11 Crocus Hill, stated that he is in attendance to support the variance request, he lives behind the subject property and is the property owner most affected by the variance request. He stated that he and his wife do not have any problems with someone living on the second floor of the Colton's garage. Mr. Strusinski stated that the neighbors in the area are used to a lot of events in the area, Grand

Old Days, Crashed Ice, and all those events that impact parking in the area. He argued that they do not complain about the parking because it is part of the charm of living in the City that we are inconvenienced occasionally. During snow storms people from Lincoln park on Crocus Hill and it is ok, there are always places for people to park.

Roger Anderson, 592 Lincoln Avenue, stated that they have commuters that park on their block and take the bus to save on parking. During Winter Carnival a lot of people park on Lincoln and during Grand Old Days Lincoln is blocked off for the 5K run, parades assemble on Lincoln, parking is a non-issue, people always seem to find a place to park. Restaurant patrons from Grand Avenue park on Lincoln and walk to the restaurant.

Bonnie Blodgett, 1 Crocus Hill, stated her support for this project.

Judy Altobell, 584 Lincoln Avenue stated her support for this project.

There was opposition present at the hearing.

Beth Andrews, 10 Crocus Hill, stated that she lives immediately behind this property and the window in the garage directly overlooks her yard. She contended that Mr. Strusinski has a garage in the rear yard blocks the view of his yard. She stated that they are concerned about the long run, they do not have a problem with the Coltons' use of the space for an aging parent, however, she does not understand how an aging parent is supposed to get up all the stairs to the unit above the garage. This building was built as a garage not as a carriage house, it was built with the condition that a dwelling unit not be above the garage. Ms. Andrews stated that they are the owners of the garage that has a staircase up to the second floor which is a storage space for tools not for anything else. The reason for this variance request is not the staircase but because the applicant wants to make the space above the garage into a dwelling unit and a dwelling unit requires a 25 foot setback for a variety of reasons that have not been met here. There are three findings that have not been met and as she understands the process all the findings must be met in order for the BZA to grant the variance. Ms. Andrews stated that if this variance is granted under these circumstances, it is gutting the whole intent of the rear setback requirement. She stated that the Coltons knew when they purchased the house that the garage could not be used as a dwelling unit, the previous owners had wanted to put a nanny over the garage. As Mr. Courtney stated this is for perpetuity, we do not know how anybody else might want to use the property, the circumstances could change obviously tomorrow, it is something that has to be considered in the long view of the character of the neighborhood. She contended that there is a balancing of interests in this area of home owners who are trying to maintain and improve their properties and stay in the area and maintaining the character so that nobody is not living on the alley. The parking is different depending on who lives there and anyone other than an elderly family member living there would have a car, there is some parking in the back now and she thinks that would be an issue in the future.

Bill Bergmann, 2153 40th Avenue South, stated that this is a RM2 zoning district and there are rental properties on the block, diagonally across from 10 Crocus Hill is an apartment building and anyone on the third floor can easily look into Ms. Andrews' back yard. The neighbors have stated that this is the nature of the neighborhood, it is RM2 and there are people right on top of each other. There are people in multi unit apartment buildings that can look out their windows into the neighbors back yards making privacy a non issue because of the nature of the neighborhood. He argued that with the apartment buildings on the block, the parking variance the applicant is requesting is one parking space maybe two he does not see how this would be a problem.

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

Mr. Saylor asked if the variance could be limited to the property owners. Mr. Warner stated that the variance goes with the property so it could not be limited to the current owner.

Mr. Saylor moved to deny the variance and resolution based on findings 1, 4 and 6.

Mr. Wilson asked if there were any questions about a conditional use permit. Mr. Warner stated no, conditional use permits traditionally go to buildings that were originally built to house domestic servants. Mr. Wilson asked about conditioning the use to the applicants. Mr. Warner stated that would be an amortized use and that is not allowed in Minnesota.

Mr. Courtney stated that he is in agreement with Mr. Saylor, he would also like to allow the homeowners to bring their parents in, however, there are findings here that are not met, he thinks that the staff recommendations are correct.

Mr. Courtney seconded the motion, which passed on a roll call vote of 5-0.

Submitted by:



YaYa Diatta

Approved by:



Gladys Morton, Secretary