

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, SEPTEMBER 3, 2014

PRESENT: Mmes Bogen and Porter; 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: Joyce Maddox\*  
\*Excused

The meeting was chaired by Gloria Bogen, Co-Chair.  
Ms. Bogen had to leave early, Thomas Saylor, Secretary, chaired the remainder of the meeting.

**Steven L. Virkus (#14-315255) 814 Grand Avenue:** Two variances of the parking and setback requirements in order to legalize the use of the garage as a dwelling unit. 1) One of the three required off-street parking spaces was removed when the garage was converted into a dwelling unit without prior approval by the previous property owner. The applicants are requesting a variance because a replacement parking space cannot be provided. 2) In the T2 zoning district in which this property is located, a side yard setback of 6 feet is required for structures with windows facing a side yard, 3 feet is existing from the east property line and 4 feet is existing from the west property line for variances of 3 feet and 2 feet respectively.

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

Three letters were received opposing the variance request from neighbors at 57 Avon Street, 803 & 809 Lincoln Avenue.

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

Mr. Ward asked staff if the use of a bike rack could be used to satisfy the parking requirement here which staff verified as not being possible for just one space.

Mr. Ward and Mr. Diatta discussed how many off street parking spaces are required for the T2 property. The front building is commercial with a residential use in the rear and upstairs, the garage also has one residence, each dwelling unit needs 1.5 off-street parking spaces for a total of 3 spaces.

Mr. Courtney and Mr. Diatta discussed that there are windows on the east side of the property that would need a variance or they need to be removed. They also discussed that to rezone the property the neighbors within 350 feet of the building must be notified there is a public hearing at the Planning Commission level as well as City Council level. Mr. Courtney asked Mr. Warner what type of finding has to be made to rezone a property. Mr. Warner stated that typically the finding has to show that the character of the neighborhood has changed so that the zoning is no longer applicable to the needs of the property, generally speaking a zoning classification is deemed to be permanent.

**JOE CROSBY**, legal council, 952 Grand Avenue, was present representing the applicant **JENNY VIRKUS**, 937 Lincoln Avenue. Mr. Crosby asked if the findings in the staff report were final. Ms. Bogen explained that the findings are staff's recommendation. He argued that his clients did not do the expansion; the construction was done before the Virkuses purchased the property. The Virkuses purchased the property back in 2011 and have been working with the City since then to make sure everything was done properly. In 2012 the Virkuses had the fire inspector out and found out the

conversion of the garage residence was done without permits or City approval, they had relied on the Truth in Housing report. DSI (Department of Safety & Inspections), staff suggested the Virkuses to either de-convert the garage or get construction permits and get the property rezoned. Ms. Virkus got the property rezoned and they are willing to do whatever they need to do to legalize this property. He contended that it is impractical for the Virkuses to cut 2 feet off the east side of the building. Mr. Crosby stated that the decorative windows on the east side of the building can be sealed off, light comes in from the south so there is plenty of light in the building.

Mr. Courtney asked if they could get the parking space back. Mr. Crosby replied that the construction was complete when they purchased the property and do not know where the parking space was. The garage holds two cars.

Mr. Ward asked staff if the windows on the east side are eliminated would that satisfy the side yard condition. He further questioned whether a bicycle rack could be substituted for the required third off-street parking space. Mr. Diatta stated that assuming that there are no windows on the west side and they are willing to block off the windows on the east side that would satisfy the 6 foot side yard setback in the T2 district.

Ms. Bogen asked if there is a window in the kitchen? Ms. Virkus stated that the kitchen window is the one facing the alley next to the door.

Mr. Courtney asked where the tenants in the front building park. Mr. Crosby stated that they park on the street. He explained that Mr. Virkus runs a business out of the front building and he parks on Grand when he is there, but most of the time he is out in the field. Mr. Courtney stated that his reading of the letters, is saying that everyone is parking in the alley and it is a mess and during the winter it is more of a mess. Is it a mess or not? Ms. Virkus stated that there was an issue with someone parking in front of the garage. As the owners of the property, they put a sign up saying no parking in the alley, the last that she heard was that they were getting parking tickets for parking there. She stated that they were unaware that anyone was parking there no one was in the office notifying them.

Mr. Courtney stated that because this variance is about parking, what is the parking like on that section of Grand Avenue? Mr. Crosby stated that his law office is located right on Grand, although his office has a parking lot, people prefer to park on Grand rather than use the parking lot. Mr. Courtney stated that the question is, can parking be found on Grand Avenue there and is it consistent throughout the day. Mr. Crosby replied with the exception of Grand Old Days it is easier during the day to find parking on the street because the students are gone or at work. Ms. Virkus stated that they have two parking passes from the city that they received when they purchased the property and she gave them to the tenants. She stated that they live close enough to the property that they can walk to work.

Mr. Ward and Ms. Virkus discussed that the front building has commercial space in the front and a residence in the rear of the store front and above it. The office space is occupied by the Virkus contracting business. If the property were legal the tenants could take their lease to get additional parking from the City. They use of the two parking spaces in the garage, but they have more than one car per unit.

Mr. Courtney and Ms. Virkus discussed that the area is permit parking because of the parking issues in the area.

There was no opposition present at the hearing.

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

Mr. Ward questioned staff if the parking permits could be considered for the required parking space. Mr. Diatta replied that on street parking does not qualify as off-street parking. Mr. Ward further questioned whether a lease for a parking spot, or renting a garage nearby would satisfy the parking requirement. Ms. Lane stated it has to be within 300 feet of the property, it also has to be in the same district or in a district that allows the use, which is why the Virkuses are applying for a variance. The on street permit parking might be a justification for a variance here, but it does not substitute for an off-street parking space.

Mr. Courtney questioned where the third parking space went to. Ms. Lane and Mr. Diatta explained that the third parking space was used for the living unit to add a stair case to the second floor. Mr. Courtney questioned whether there is any parking available for the applicants in the area. Mr. Diatta replied that on the property there is no additional area for a parking space.

Mr. Saylor asked Mr. Warner if it is possible to lay the matter over for two weeks to allow the applicant time to find an off-street parking space. Mr. Warner replied that the layover is reasonable. The zoning administrator will need to decide if contract parking will satisfy the requirement. Mr. Warner explained that two things are going on here; the applicant will have to find a parking spot, then they will have to show the spot to the zoning administrator who will need to determine if the parking spot will meet the requirements of the code. Ms. Lane stated that the property directly south of this property across the alley, on Lincoln is a single family home and even if they were to obtain a lease agreement in a two car garage of one of the single family homes, that would not meet the zoning code requirements, that it be within the same zoning district or a district in which the existing use is allowed, the uses to the south would not allow that. If there is additional parking that they could obtain along Grand Avenue she would be surprised.

Mr. Courtney stated that this is about parking, even if it does not conform the Board can still grant the variance, because whatever they have for parking is what they have. He stated that he would grant the side yard setback variance, nobody is complaining about that. He thinks that the parking is a legitimate issue, everybody is complaining about that, on the one hand they have got permits to park, however, nobody is parking in this two-car garage, the spots they have are not being used.

Mr. Ward stated that even if the two parking spaces become available and the garage is cleaned out so the tenants can park there, the requirement is for three off-street parking spaces. The other problem here is that the property is zoned T2 rather than R1, R4, or RT1 and the requirements are in total conflict of the T2 zoning district. Mr. Ward asked Ms. Lane if all of Grand is T2. Ms. Lane and Mr. Ward discussed that the zoning along Grand Avenue is very mixed but not very compatible to the T2 zoning of the applicants' property. A B2 or B3 zoned property would work but it would need signage to designate the parking just for the Virkluses.

Mr. Courtney moved to continue the matter for two weeks to allow the applicant time to find an off-street parking space to satisfy the parking requirements.

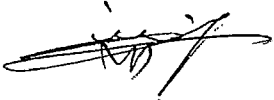
Mr. Ward seconded the motion, which passed on a roll call vote of 4-0.

Mr. Crosby questioned staff that he needed to find a parking spot that is in the B2 or B3 zoning district,

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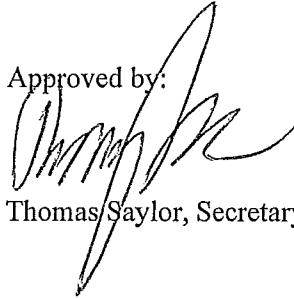
would a parking permit from one of the neighbors be acceptable. Ms. Lane explained that no, the code requires off-street parking and a permit to allow on-street parking in the area would not substitute for the required off-street parking.

Submitted by:



YaYa Diatta

Approved by:



Thomas Saylor, Secretary

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
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ST PAUL, MINNESOTA, OCTOBER 13, 2014

Continued from 9-15-14

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ABSENT: Gloria Bogen\*, Buzz Wilson\*

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Mr. Diatta reviewed the case history from the previous hearing with a recommendation for denial.

Ms. Maddox and Mr. Diatta discussed that the public portion of the hearing had been closed and the Board was waiting to hear if the applicant had found an off-street parking space that could be leased to meet the requirement.

Mr. Courtney and Mr. Diatta discussed that there had been three off-street parking spaces in the garage the conversion of the 2<sup>nd</sup> floor of the garage to a living unit took away one parking space for the property.

Ms. Maddox questioned whether the tenants are parking in the garage. Mr. Diatta replied that it is his understanding that there are two parking spaces in the garage but he is not sure if they use it for parking or not. What he is hearing from the neighbors is that they are not parking in the garage but using it for storage.

No further correspondence was received regarding the variance request.

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

The applicant **JOE CROSBY**, 952 Grand Avenue, was present with Miriam Sivula, 952 Grand Avenue. Mr. Crosby stated that at the previous hearing they were asked to see if they could find an off-street parking space to lease for the property within 300 feet of the property and they could not find anything. He stated that Miriam and he had contacted all the business owners within 300 feet of the building and spoke with the managers and owners of the buildings to inquire about leasing an off-street parking space but there was no off-street parking space to be found. He contended that when the Virkus purchased the property the previous owner had indicated that everything was up to code and in fact it was not and the previous owner did not have a permit to build above the garage. There are no windows on the west side of the garage and the only windows on the east side of the garage are 18 feet up and are decorative windows and can easily be covered up. He contended that the Virkus have permits to allow their tenants to park on the street.

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Mr. Courtney and Mr. Crosby discussed why the 3<sup>rd</sup> off-street parking space cannot just be put back.

There was no opposition present at the hearing.

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

Ms. Maddox and Mr. Ward discussed that the variances could be separated and voted on separately.

The Board discussed finding four that the property is unique in that the building faces the alley not the street and the windows are up 18 feet and are only on the east elevation people will not be looking into anything.

Mr. Courtney moved to approve variance 2 regarding the side yard setbacks, based on findings 1 through 6.

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

Mr. Saylor moved to deny the variance regarding the off-street parking space, based on findings 2 and 4.

Mr. Ward and the Board discussed that the applicants had tried to find off street parking but nothing is available, the hope was that they would find a space, that section of Grand Avenue has a severe lack of available off-street parking.

Mr. Courtney and Mr. Ward discussed that the Board is concerned about this one off-street parking space, and the problem here is not so much the parking space as the fact that the tenants are not using the available off-street parking spaces in the garage, but are using the garage for storage and parking in the alley or on the street. When they park in the alley in the winter it hinders the plowing. Mr. Ward stated if the tenants had moved the car from the alley into the garage the neighbors would not have complained and it would not have been brought up to the City, the property owners could have continued to use the property and the City would not have known that they may be in violation of the parking requirements.

Mr. Diatta discussed that the applicant had gone through the re-zoning of the property to try and get this property legalized. When the Fire Inspector went out for the C of O inspection he found that the 3<sup>rd</sup> off-street parking space was missing from the property. At this point the applicant had already received the rezoning to allow the 2<sup>nd</sup> dwelling unit on the lot, but then they got stuck with the parking issue. The zoning code requires another off-street parking space for the additional unit on the lot. If the applicants get denied the variance it will affect the 2<sup>nd</sup> unit on the property.

Mr. Ward asked staff if a bike rack would suffice for the 3<sup>rd</sup> off-street parking space. Mr. Diatta replied that Mr. Ward had asked that at the first hearing and a bike rack will not work here for the 3<sup>rd</sup> off-street parking space.

Mr. Saylor stated that he is sympathetic to the property owner, however, as the findings state it is the buyer's responsibility to do their due diligence prior to the purchase of any property he can be sympathetic, however, this is an issue with the previous property owner and the use of the property as it is constructed. He stated that he does not think that the matter rests with the Board, but with the previous property owner and the current property owner.

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Mr. Ward stated that the reason that this is being denied are the reasons brought up in the staff report, not because the applicant could not find an off-street parking space to lease for the property.

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

Submitted by:

Approved by:

YaYa Diatta

Thomas Saylor, Secretary