

**BOARD OF ZONING APPEALS STAFF REPORT**  
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**TYPE OF APPLICATION:** Major Variance **FILE #**14-348038  
**APPLICANT:** Ramiro Maya  
**HEARING DATE:** December 8, 2015  
**LOCATION:** 867 6TH STREET EAST  
**LEGAL DESCRIPTION:** W Grubes Sub Of B104 Lymn Day Lot 18 Blk 104  
**PLANNING DISTRICT:** 4  
**PRESENT ZONING:** RT1  
**ZONING CODE REFERENCE:** 66.231  
Dayton's Bluff Special Sign District  
**REPORT DATE:** November 26, 2014 **BY:** Yaya Diatta  
**DEADLINE FOR ACTION:** January 15, 2015  
**DATE RECEIVED:** November 17, 2014

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A. **PURPOSE:** The applicant is requesting variances of the dimensional standards in the zoning code in order to legalize a second unit added in the basement. 1) A minimum lot size of 6,000 feet is required, 5,320 square feet is available for a variance of 680 square feet. 2) A side yard setback of 9 feet is required for a duplex, 3 feet is available on the west side for a variance of 6 feet. 3) A lot width of 50 feet is required, 40 feet is available for a variance of 10 feet.

B. **SITE AND AREA CONDITIONS:** This is a 40 by 123 foot lot with alley access to a two-car detached garage in the rear yard.

Surrounding Land Use: A mix of single family dwellings and duplexes, with a church and school across East 6<sup>th</sup> Street.

C. **CODE CITATION:**

Sec.66.231. Residential District Dimensional Standards table requires a minimum lot width of 50 feet, a minimum lot size of 6,000 square feet and a minimum side yard setback of 9 feet from side property lines for a duplex.

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**D. FINDINGS:**

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

This property is located in the RT1 zoning district, a zoning classification that allows both single family dwellings and duplexes. The applicant recently constructed a second dwelling unit in the basement of this single family home without prior approval and is requesting variances in order to legalize the use of the property as a duplex. However, the property does not meet the minimum lot size of 6,000 feet, the 9 foot side yard setback and the 50 foot width required for a duplex. Therefore, this request cannot be accomplished without the requested variances.

According to the applicant, the purpose of this conversion is to improve the livability and safety of the home in order to accommodate his aging mother who often visits from abroad.

Under the Duplex and Triplex Conversion Guidelines for Zoning Cases adopted by the BZA in 2009, it is stated that:

For proposed conversions of existing single-family structures to duplexes, staff will recommend denial unless, in addition to the required findings for variances contained in §61.601 of the Zoning Code, the following guidelines are also met:

- a. Lot size of at least 5,000 square feet with a lot width or front footage of 40 feet.**

The property meets the minimum lot size of 5,000 square feet and 40 feet or lot frontage. This guideline is met.

- b. Gross living area, after completion of the duplex conversion, of at least 1,500 square feet. No unit shall be smaller than 500 square feet.**

There is about 2,342 square feet of gross living area and there are no units smaller than 500 square feet. This guideline is met.

- c. Three off-street parking spaces (non-stacked) are preferred; two spaces are the required minimum. A site plan showing improved (durable, permanent, dustless surface) parking spaces must be provided.**

Off-street parking is provided in the existing two-car detached garage and one paved surface parking space adjacent to the garage. This guideline is met.

- d. ~~All remodeling work for the duplex is on the inside of the structure unless the plans for exterior changes are approved by the Board of Zoning Appeals as part of the variance.~~**

An egress window was recently on the back of the building for the lower level without first obtaining the required permit. There is a separate entrance to the lower level that appears to be relatively new. This guideline is not met.

- e. **For the purpose of protecting the welfare and safety of the occupants of any structure that has been converted into a duplex without the necessary permits, a code compliance inspection shall be conducted and the necessary permits obtained to bring the entire structure into conformance with building and fire code standards; or the property owner must, as a condition of the approval, make the necessary improvements to obtain the necessary permits and bring the entire structure into building and fire code compliance within the time specified in the resolution.**

The remodeling was done without a permit and no code compliance inspection has been conducted. This guideline is not met.

- f. **Where economic hardship is claimed as one reason for the variance request, an economic feasibility analysis shall be conducted. Applicant should supply city staff with the necessary information.**

Economic hardship has not been claimed as a reason for this request. This guideline does not apply.

This request does not meet guidelines “d” and “e” for the conversion of single family dwellings into duplexes; it is not in harmony with the general purposes and intent of the code. Finding 1 is not met.

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

The proposed second dwelling would accommodate the property owner’s aging parent to provide convenient access for her care. Strategy 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. The applicant’s request to allow an additional dwelling unit in order to care for his ailing mother is consistent with Strategy 2.17 of the Comprehensive Plan. This finding is met.

- 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.*

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It is unclear why it would be impractical or unreasonable for the applicant's mother to share the single family dwelling with the applicant. The health and privacy issues alone do not constitute practical difficulties to meet this finding. This finding is not met.

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

There is nothing unique about the property to justify the requested variance. This finding is not met.

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

A duplex is a permitted use in this zoning district, the requested variances if granted, will not change the zoning classification of the property. This finding is met.

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

The conversion to a duplex does not change the appearance of the building from the street and does not change the character of the surrounding area. This finding is met.

E. **DISTRICT COUNCIL RECOMMENDATION:** Staff has not received a letter from District 4.

F. **CORRESPONDENCE:** The applicant's request includes letters signed by property owners across the alley at 850, 856 and 874 Margaret Street and letters from 5 other people although not identified as owners of the properties they are associated with. They are all in support of the requested variances.

G. **STAFF RECOMMENDATION:** Based on findings 1, 3 and 4, staff recommends denial of the requested variances.

**CITY OF SAINT PAUL**  
**BOARD OF ZONING APPEALS RESOLUTION**  
**ZONING FILE NUMBER: 14-348038**  
**DATE: December 8, 2015**

**Deadline for Action: 01-15-15**

WHEREAS, Ramiro Maya has applied for a variance from the strict application of the provisions of Section 66.231 of the Saint Paul Legislative Code pertaining to the dimensional standards in order to legalize a second unit added in the basement. 1) A minimum lot size of 6,000 feet is required, 5,320 square feet is available for a variance of 680 square feet. 2) A side yard setback of 9 feet is required for a duplex, 3 feet is available on the west side for a variance of 6 feet. 3) A lot width of 50 feet is required, 40 feet is available for a variance of 10 feet in the RT1 zoning district at 867 6th Street East. PIN: 332922220179; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on December 8, 2015 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.*

This property is located in the RT1 zoning district, a zoning classification that allows both single family dwellings and duplexes. The applicant recently constructed a second dwelling unit in the basement of this single family home without prior approval and is requesting variances in order to legalize the use of the property as a duplex. However, the property does not meet the minimum lot size of 6,000 feet, the 9 foot side yard setback and the 50 foot width required for a duplex. Therefore, this request cannot be accomplished without the requested variances.

According to the applicant, the purpose of this conversion is to improve the livability and safety of the home in order to accommodate his aging mother who often visits from abroad.

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**a. Lot size of at least 5,000 square feet with a lot width or front footage of 40 feet.**

The property meets the minimum lot size of 5,000 square feet and 40 feet or lot frontage. This guideline is met.

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- b. Gross living area, after completion of the duplex conversion, of at least 1,500 square feet. No unit shall be smaller than 500 square feet.**

There is about 2,342 square feet of gross living area and there are no units smaller than 500 square feet. This guideline is met.

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An egress window was recently on the back of the building for the lower level without first obtaining the required permit. There is a separate entrance to the lower level that appears to be relatively new. This guideline is not met.

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

The proposed second dwelling would accommodate the property owner's aging parent to provide convenient access for her care. Strategy 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. The applicant's request to allow an additional dwelling unit in order to care for his ailing mother is consistent with Strategy 2.17 of the Comprehensive Plan. This finding is met.

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.*

It is unclear why it would be impractical or unreasonable for the applicant's mother to share the single family dwelling with the applicant. The health and privacy issues alone do not constitute practical difficulties to meet this finding. This finding is not met.

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

The conversion to a duplex does not change the appearance of the building from the street and does not change the character of the surrounding area. 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 66.231 to legalize a second unit added in the basement on property located at 867 6<sup>th</sup> Street East and legally described as W Grubes Sub Of B104 Lymn Day Lot 18 Blk 104; in accordance with the application for variance and the site plan on file with the Zoning Administrator.

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***IS HEREBY DENIED.***

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**MOVED BY:**  
**SECONDED BY:**  
**IN FAVOR:**  
**AGAINST:**

**MAILED:** December 9, 2015

**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 December 8, 2015 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

**SAINT PAUL BOARD OF ZONING APPEALS**

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**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, DECEMBER 8, 2015

PRESENT: Mmes. Maddox and Bogen; Messrs. Courtney, Saylor, Ward 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:

\*Excused

The meeting was chaired by Joyce Maddox, Chair.

**Ramiro Maya (#14-348038) 867 6th Street East:** The applicant is requesting variances of the dimensional standards in the zoning code in order to legalize a second unit added in the basement. 1) A minimum lot size of 6,000 feet is required, 5,320 square feet is available for a variance of 680 square feet. 2) A side yard setback of 9 feet is required for a duplex, 3 feet is available on the west side for a variance of 6 feet. 3) A lot width of 50 feet is required, 40 feet is available for a variance of 10 feet.

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

Three letters were received supporting the variance request from neighbors at 850, 856 & 874 Margaret Street as well as 5 letters from residents that are not property owners.

No correspondence was received from District 4 regarding the variance request.

Mr. Ward asked staff about the discrepancy between the guidelines and the zoning code. Mr. Diatta stated that the RT1 requires that the lot is 6,000 square feet or more and the lot width has to be 50 feet (25 feet per unit). The guidelines say that the property has to be at least 5,000 square feet and 40 feet wide to be considered for conversion. Mr. Ward commented that this project meets guideline "a." Ms. Maddox stated that when the Board set up the Guidelines the idea was that to be considered for approval for conversion of the property had to be at least 5,000 square feet 40 feet wide.

Mr. Courtney asked Mr. Diatta where this came from; how did it come to the City's attention. Mr. Diatta stated that the City found out because someone notified the city that he put in an egress window in the basement without getting a permit. When that was looked into, the Inspector found out about the unit that was created in the basement and that is how it was brought to the City. The Inspector instructed the applicant to get a permit for the work and that is how DSI found out that they needed a variance.

Mr. Saylor asked how long this apartment has been there. Mr. Diatta stated that it was unknown when the unit was constructed.

Ms. Bogen commented that the mother is only here half of the year and she has trouble with stairs but the photos show that she would have to go down the stairs to get into the dwelling. The story does not add up.

Mr. Ward asked staff if the egress window was installed correctly. Mr. Diatta replied yes, it was inspected and approved. Mr. Ward and the Board discussed why the mother could not just live with the applicant in that 2300 square foot single family home. Ms. Bogen and Mr. Diatta stated because they added a kitchen and separate entry it cannot be considered a single family home anymore. They would have to get rid of the kitchen and the entry would have to be through the main entrance to the home. An interior connection will have to be re-created between the two units.

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The applicant **RAMIRO MAYA**, 867 6th Street East, was not present.

There was no opposition present at the hearing.

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

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

Mr. Ward seconded the motion, which passed on a roll call vote of 6-0.

Submitted by:

Approved by:

YaYa Diatta

Thomas Saylor, Secretary