

SEP 18 2019



ZONING APPEAL APPLICATION

To/From Board of Zoning Appeals

Dept. of Safety & Inspections
Zoning Section
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
(651) 266-9008

To / From Planning Commission

Dept. of Planning & Econ. Devt.
Zoning Section
1400 City Hall Annex, 25 W 4th St.
Saint Paul, MN 55102-1634
(651) 266-6583

Zoning Office Use Only	
File #	_____
Fee Paid \$	_____
Received By / Date	_____
Tentative Hearing Date	_____

APPELLANT

Name(s)	Dorian P Nelson			
Address	1946 Wellesley Ave	City	St. Paul	
		State	MN	
		Zip	55105	
Email	dorianfloyd@hotmail.com		Phone	651-492-3086

PROPERTY LOCATION

Project Name	Minor Variance Request for House Addition - 1946 Wellesley		
Address / Location	1946 Wellesley Ave, St. Paul, MN 55105		

TYPE OF APPEAL: Application is hereby made for an appeal to the:

- Board of Zoning Appeals**, under provisions of Zoning Code § 61.701(c), of a decision made by the Zoning Administrator.
- Planning Commission**, under provisions of Zoning Code § 61.701(c), of a decision made by the Planning Administrator or Zoning Administrator.
- City Council**, under provisions of Zoning Code § 61.702(a), of a decision made by the Board of Zoning Appeals or the Planning Commission.

Date of decision September 9, 2019 File Number 19-075934

GROUND FORS APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission or Board of Zoning Appeals. Attach additional sheets if necessary.

See attached document "Grounds for Appeal" and plans that include the west side wall articulation, which were brought to the Board of Zoning Appeals hearing on September 9, 2019.

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If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Appellant's Signature Dorian Nelson Date 9-18-19

Grounds for Appeal

Variance for 1946 Wellesley Avenue

We are appealing the denial of the height variance by the Board of Zoning Appeals (BZA) for 1946 Wellesley Avenue. As our family has grown (4 children ages 10, 8, 6, and 3), we would like to add on to our house to meet the needs of the family. In order to match the character of the neighborhood, we are not tearing down any portions of the current structure. The designs of the addition will give us the bedrooms and bathrooms needed for our children and are intended to also maximize the green space in the backyard and to maintain the roof lines of the existing structure. The requested 1'-10" height variance would be for the roof peak located in the back portion of the building and would not rise above the neighboring structures. The height variance is needed to match the current roof lines while spanning the wider back portion of the addition. Alternative roof designs could have met the maximum height requirement, but we felt these options would not look appealing and would not match the look of the neighborhood. The existing building is also above the 22' maximum height for the zoning district, and many other houses in the neighborhood are also above 22' in height.

We were asking for 3 variances, 1) a height variance of 1'-10", 2) extension of a non-conforming setback, and 3) a sidewall articulation of the west wall which is longer than 35'. We previously had submitted a variance application on August 5th which the zoning inspector (Jerome Benner) denied because there was an error in the site survey square footage provided by M&P Engineering and Surveying Associates. We resubmitted the variance application on August 16th with a revised site survey and with revised plans which reflected a reduction of the garage size from a 2-car to a 1-car garage in order to comply with the lot coverage requirements.

The variance requests were reviewed by the Housing and Land Use (HLU) Committee of the Macalester-Groveland Community Council (MGCC) on September 4th. **The height variance of 1'-10" was unanimously recommended for approval**, the non-conforming side yard setback variance was recommended for approval, and the west sidewall articulation variance was recommended for denial. During the meeting, we discussed with the committee where a suitable articulation on the west side wall could be added in order to comply with the articulation requirement. This seemed to be an acceptable compromise, so we revised the plans to include an articulation along the west side wall, which we brought to the Board of Zoning Appeals on September 9th.

The BZA hearing resulted in rejection of the height variance of 1'-10", approval of the non-conforming side yard setback variance, and rejection of the west sidewall articulation variance. We stated our willingness to comply with the articulation and had plans with us that showed the west sidewall articulation. However, we feel that we were not given the proper opportunity to respond to the board's discussion on the requested height variance. While we stated the case for the height variance during the public portion of the hearing by pointing to pictures of neighboring properties, reiterating the HLU of the MGCC's unanimous approval for this variance, and stating the prevalence of non-conforming neighboring building heights, we were not given the opportunity to respond to the boards discussion regarding evidence that could dispute staff's findings that the height variance did not meet criteria 3 (practical difficulties for compliance) and 4 (circumstances unique to the property). We did not receive the staff report prior to the hearing. Therefore, we were not prepared to respond to these findings.

The project has verbal approval from all surrounding neighbors, and we presented a written letter of support from the adjacent neighbors facing the side wall articulation variance request on the west (1950 Wellesley Avenue). An e-mail was also sent to the zoning staff in support for the project from 1968 Wellesley Avenue. This information was shared at both hearings with the HLU committee of the MGCC and with the BZA.

Evidence to dispute staff's findings on variance items 3 (practical difficulties for compliance) and 4 (circumstances unique to the property).

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

Staff stated that "the additional building height would have a negative impact on the west given that the structure is already has a nonconforming setback of 3.1'. Generally, the maximum height allowed is 22' at a 4' side yard setback. The proposed addition is too massive when considering its proximity to the adjacent property line."

If given a chance to respond to this during the hearing, we could have made multiple points to overturn this finding:

- **We were willing to meet the articulation requirement, which was discussed during the BZA hearing. Therefore, the negative impact of the height due to the proximity to the adjacent property line would be alleviated.**
- **The BZA resolution which was voted on combined the height and the articulation variances. We had requested that all variances be voted on separately, and the board said it is possible to do this. We feel that this was an error in procedure not to vote on these items separately. Again, given our willingness to articulate, the negative impact of the height would be alleviated by the reduced proximity to the adjacent property line.**
- The practical difficulty of the narrowness of the lot led us to our current design. In that design we were trying to maximize the green space in the back yard and match the lines of the current roof. In order to maximize the back yard space and maintain the functionality of the space for our family's needs, we needed a wider span in the back portion of the house. A higher roof peak was needed along this wider span to match the current lines of the roof.
- We are also maintaining the ceiling heights within the house, so the additional height needed in the house is not due to unnecessary design features like higher, vaulted ceilings.
- The house was built in 1923, and we are proposing a design with slightly higher roof in order to maintain the integrity of the historic design and to match the look of the neighborhood.
- The adjacent neighbors on the west side of the property (1950 Wellesley) signed a letter of support for the project.

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

Staff stated that “the placement of the house 3.1’ from the east (should be west) side property line is a circumstance unique to the property not created to the landowner, however, there is no circumstance unique to the property that would warrant a taller building height and a waiver of the articulation requirement.”

If given a chance to respond to this during the hearing, we could have made multiple points to overturn this finding:

- As stated above, we were willing to comply with the articulation requirement, so the negative impact of the building height due to the proximity to the neighboring property would be alleviated.
- The narrowness of the property line is unique to the property and presented design challenges that we were trying to meet with our design in order to preserve the green space in the backyard while building a functional addition.
- The design features of a historic house built in 1923 is unique to the property. We were trying to maintain the look of the house by matching the roof lines of the addition.

Additional errors in fact, procedure or finding by the Board of Zoning Appeals.

- We did not receive the BZA staff report prior to the BZA hearing on September 9th, which is an error in procedure.
 - Since we didn’t receive the BZA staff report before the hearing, we did not have an opportunity to understand staff’s findings and were not given ample opportunity to prepare a response to the findings.
 - The report was written on September 4th, but it was not sent until September 6th.
- The staff report was written on September 4th, before receiving the district council recommendation. This feedback should have been taken into consideration. Again, HLU of the MGCC unanimously recommended approval of the 1’-10” height variance.
- At the BZA hearing we were not given the opportunity to respond to the discussion that findings 3 and 4 were not met for the height variance according to the staff report. This discussion arose after the public portion of the hearing. At the beginning of the hearing, the board stated that they may ask the applicants back up to respond to any additional questions they have after the public statements. The board clearly had questions regarding findings 3 and 4 that we would have been able to respond to, but they decided not to. One of the board members even asked if they are permitted to ask the applicants back up for additional comments on the height. The legal representative on the board said that they were allowed to, but the board still decided not to ask us back up for clarifying comments. We feel strongly that this was an error in procedure that would have allowed us to defend our position against these findings regarding the height variance.

- The staff referred to the size of the garage incorrectly numerous times in the report. We submitted plans with the variance application that included a one-car garage. These errors in fact misrepresent the scale of the overall project and the degree of lot coverage. Here are the 3 instances in the staff report in which the garage was inaccurately depicted:
 - o **A. Purpose:** garage is referred to as a two-car garage
 - o **B. Site and Conditions:** garage is referred to as a two-car garage
 - o **D. Findings 1.:** garage is referred to as a *three-car* garage

- The staff report incorrectly referred to the property location as Planning District 15 in **D. Findings 1.** section of the report. The correct location is Planning District 14.

- In **D. Findings 1.**, the staff report incorrectly stated that “the west sidewall would be articulated, however, there is no sidewall present on the east side”. The submitted plans showed an articulation on the east side, and the west side did not have an articulation. Again, we brought plans to the hearing showing an articulation on the west sidewall and discussed how we were willing to meet this requirement.

- In **D. Findings 3.**, the staff incorrectly stated that “currently, the east sidewall is 26’ in length and with the addition, it nearly doubles the length of the house along a setback that doesn’t comply with today’s standards”. The east side addition does contain an articulation and is not along the non-conforming setback.

- In **D. Findings 4.**, the staff incorrectly stated that “the placement of the house 3.1’ from the east side property line”. It is the west side of the building that is non-conforming.

- In **D. Findings 6.**, the staff report stated that “the construction of this addition would be out of scale with adjacent homes in terms of height”, which we consider to be an error in the findings. We reviewed pictures during the hearing that showed the height would not be out of scale with neighboring properties.

- Although some of these factual errors in the report were minor, it did lead to confusion during the hearing and would have allowed us to have more productive discussions on the findings.

Given the details presented above in how the BZA erred in their fact, procedure and findings, we feel that the decision to overturn the height variance denial is warranted. Based on this evidence, we respectfully request that the Council vote to grant our appeal.



9-18-19

Dorian Nelson

1946 Wellesley Ave