



CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

COMMERCE BUILDING  
8 Fourth Street East, Suite 200  
St Paul, Minnesota 55101-1024

Telephone: 651-266-9090  
Facsimile 651-266-9124  
Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

March 21, 2011

Council Research  
310 City Hall  
St Paul, MN 55102

Dear Mary Ericksson:

I would like to confirm that a public hearing before the City Council is scheduled for April 6, 2011 for the following zoning case:

Appellant: Tuan Joseph Pham

Zoning File #: 11-007586

Purpose: An appeal of a decision of the Board of Zoning Appeals (BZA) denying 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 existing. A variance of 30 feet was requested to the BZA by the appellant.

Location: 231 Isabel Street West.

Staff: Recommended denial

District: No recommendation

Board: Recommended denial

I have confirmed this date with the office of Council Member Dave Thune. My understanding is that this public hearing request will appear on the agenda of the City Council at your earliest convenience and that you will publish notice of the hearing in the Saint Paul Legal Ledger.  
Thank you!

Sincerely,

Yaya Diatta  
Zoning Specialist



APPLICATION FOR APPEAL

MAR 16 2011

Department of Safety and Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101
651-266-9008

Zoning office use only

File no. 11-11033P

Fee \$440.

Tentative hearing date:

4-06-11

APPLICANT

Name TUAN JOSEPH PHAM
Address 231 Isabel St. W.
City Saint Paul St. MN Zip 55107 Daytime phone 651-303-5746
Name of owner (if different)

PROPERTY LOCATION

Address 231 Isabel St. W. Saint Paul, MN 55107
Legal description:
(attach additional sheet if necessary)

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

- Board of Zoning Appeals
City Council

under the provisions of Chapter 61, Section 301 Paragraph (c) of the Zoning Code, to appeal a decision made by the Board of Zoning Appeals on MARCH 7 2011 File number: 11-0075P6

GROUND FOR 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 Board of Zoning Appeals or the Planning Commission.

Please, Se attach all documents

(attach additional sheet if necessary)

Applicant's signature Tuan Pham Date 3/16/11 City agent

I believe strongly the Board of Zoning has made an error in denying the variance for the Statue of Jesus to remain in its place at 231 Isabel Street W., St. Paul.

We would like to invite the City Council member if feasible to visit the site to have better judgment.

1. Where it stands right now, within feet of the over towering pine tree and other massive oak trees, does not in any way bring hazard to life or property and will not adversely affect the safety, use or stability of a public way.
2. The proposed variance is very much in keeping with the spirit and intent of the code, and is consistent with the health, comfort, morals and welfare of the inhabitants of the City of St. Paul. The enclosed petition showed 45 neighbors' signatures who believe it enhances and adds to the value of the surrounding areas. They love what's been done to the property and they've shared enjoyment of the beauty it exudes daily. My verbalized wishful thoughts stated in the report should not be used against me.

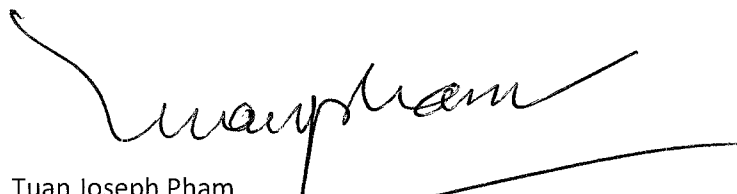
I escaped from my birth place to start a new life with nothing 30+ years ago to find the freedom in the land of America. The freedom we treasure most is to practice our religion. After many years rebuilding my life in MN, I am now a retiree in St. Paul where I spent the last 20+ years being an exceptional citizen – trouble free and one that did great for society. I have enclosed a few recognitions to share with you: Plaques "A Good Neighbor" from the Land Family, "St. Paul Neighborhood Honor Roll", and Certificate of Recognition from the Thomas Dale Planning Council for contributing to the quality of life of the neighborhood I lived in.

I really want to retire in peace and enjoy the fruit of my labor in my own backyard. My one and true intention of having this praying garden is to express thanks and reflect daily the power that has gotten me to where I am today. It will be my legacy left for my children and grandchildren - the story of our lives reflected in the garden.

- Our neighbors loved what we've done
- the District Council recommendation was neutral which means there are no concerns whatsoever
- At the public hearing on February 7, 2011, one of the Zoning board member asked why the 40 feet setback rule, Mr. YaYa Diatta, DSI Inspector responded, "I don't know."

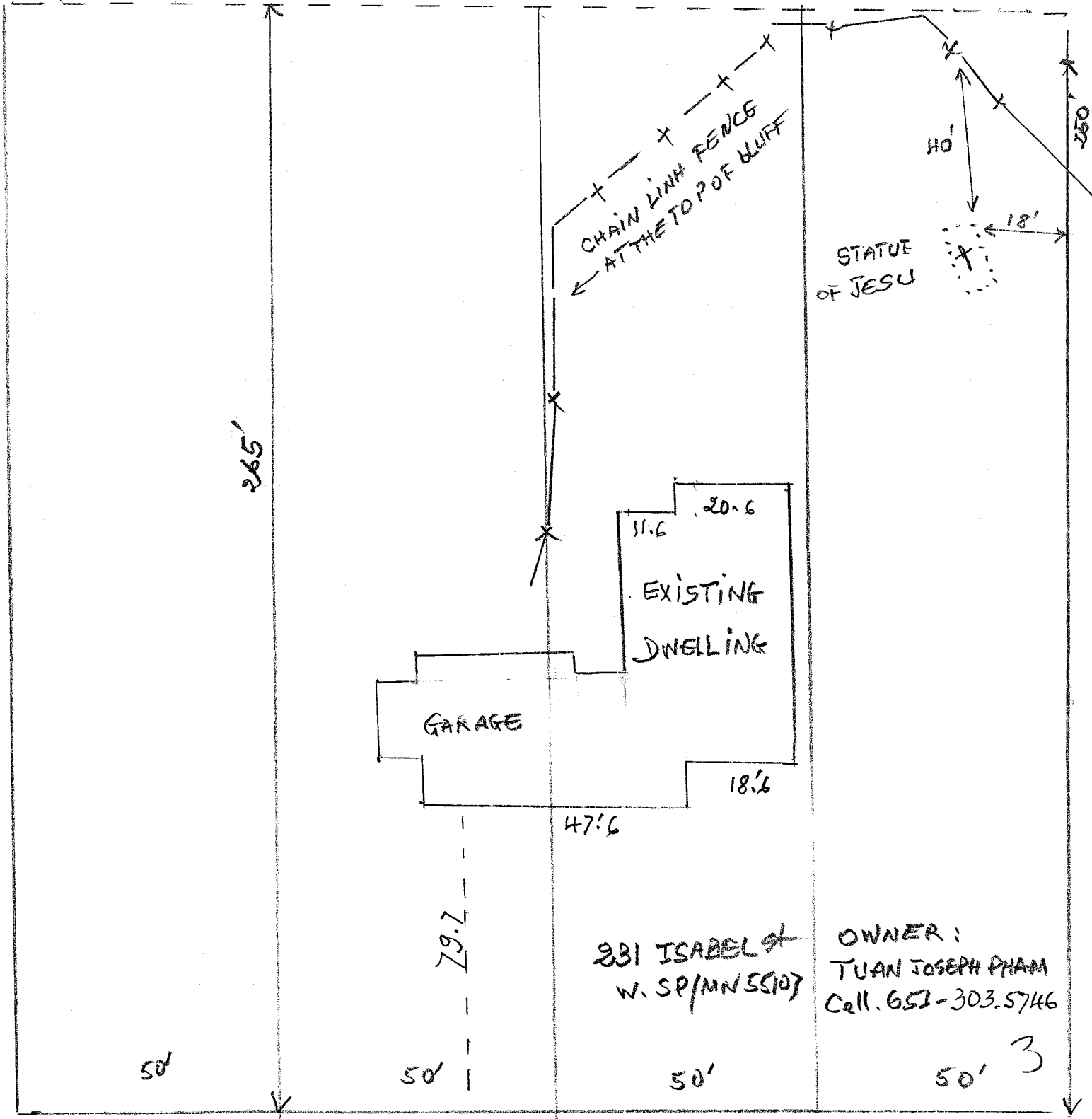
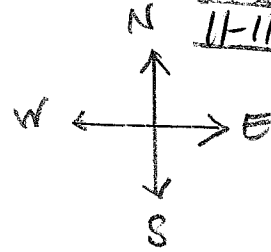
There is no real reason why the City Council would not approve the variance.

Regards,



Tuan Joseph Pham

FILE  
11-110338

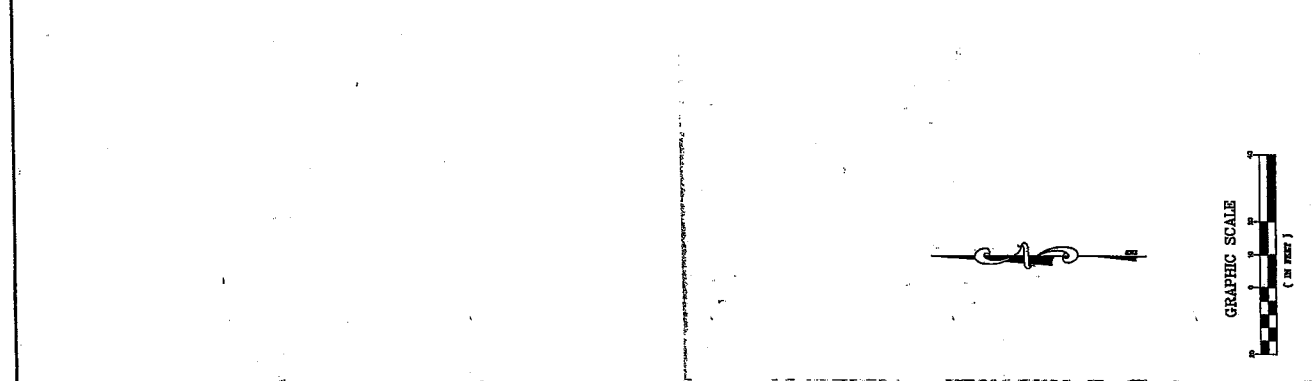
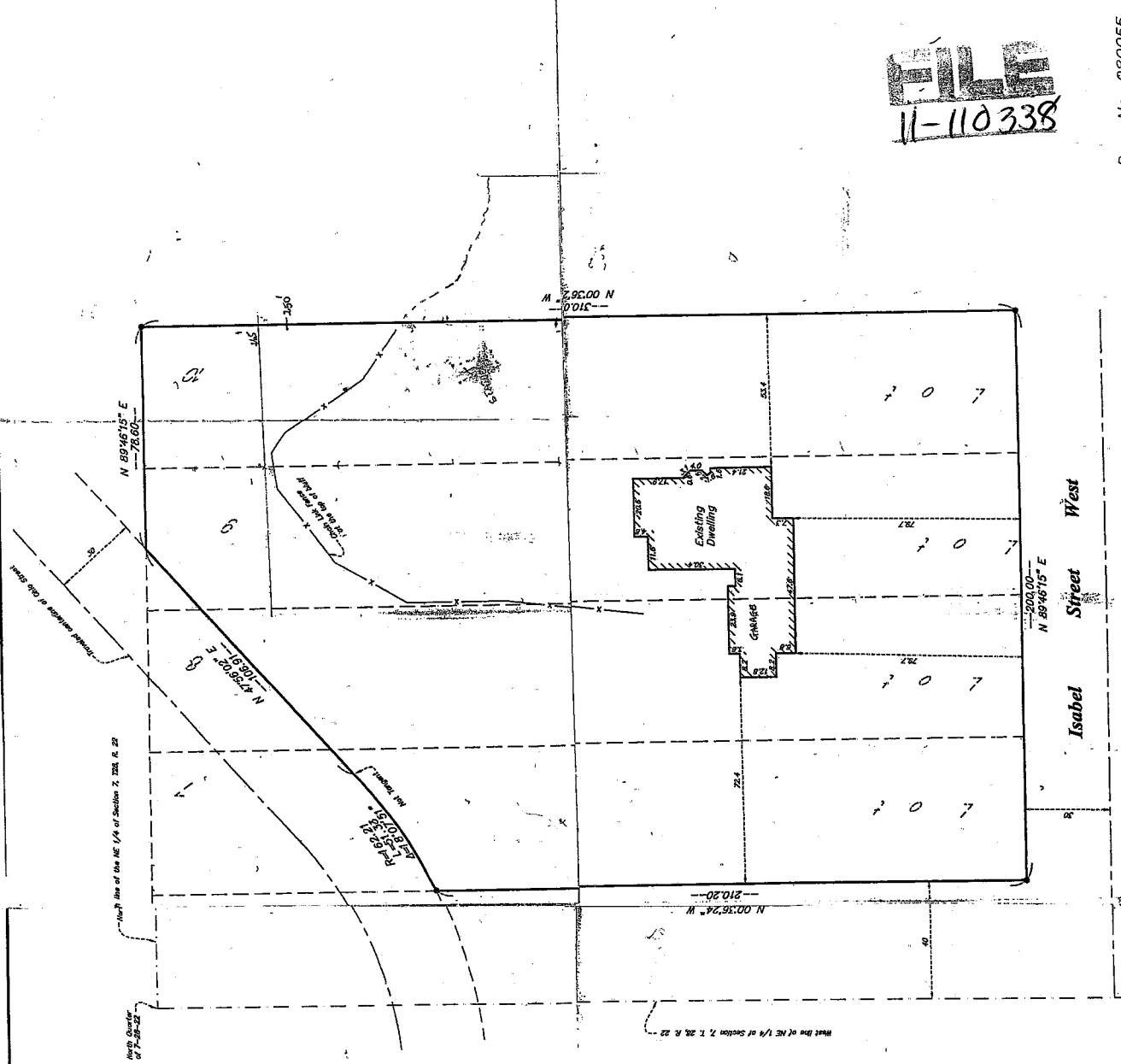


231 ISABEL ST  
W. SP/MN 55107

OWNER:  
TUAN JOSEPH PHAM  
Cell. 651-303.5746

ISABEL ST. W.

FILE  
11-110338



3022 TUAN, PHAM  
**LANCE SURVEYING & ENGINEERING CO.**  
 P. No. 01 Minneapolis, MN 55345 Phone (952) 474-7964 Fax (952) 474-8267  
 SRE: **PHAM TUAN**  
 DE: March 19, 2008  
 DRAFTED: March 20, 2008

**DESCRIPTION:**  
 Block 198 Invas's Addition to West St. Paul, Ramsey County, Minnesota, subject to  
 the plat of the NE 1/4 of Section 7, 28, R. 22  
 The length and direction of boundary lines of the above legal description. The  
 services does not include determining what you own, which is a legal matter,  
 & the legal description with your records or consult with competent legal counsel,  
 to make sure that it is correct, and that any matters of record, such as easements, that  
 you, on this survey, have been shown.  
 The location of existing improvements we deemed important.  
 any all description except for the easements to mark the corners of the property.  
 of Ohio Street and offset that 30 feet, that is where we monumented our boundary. If  
 seems to you please supply us with the correct documentation and we can revise the  
 plat.

**CONVENTIONS:**  
 1) SWERDOL'S & CONVENTIONS;  
 2) 1/2" ID pipe with plastic plug bearing State License Number 9233, set, unless  
 stated.

If this plan, specification, report or survey was prepared by me or  
 under my direct supervision and I am a Licensed Professional Engineer and  
 Surveyor under the laws of the State of Minnesota.  
**4 H O G A**  
 License P.E. & F.S. No. 9233

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**Petition to keep the Statue of Jesus**

**In its current location on the property of**

**Tuan Joseph Pham, 231 Isabel Street, West St. Paul, MN  
55107**

We, the undersigned, neighbors of Tuan Pham, petition the St. Paul Department of Safety and Inspections, to grant a variance of the forty (40) foot setback requirement at 231 Isabel Street. We make this petition for the following reasons:

Tuan Pham moved to our neighborhood two and one half years ago and has contributed many improvements to the area. He built a Freedom Garden (which features the Statue of Liberty) in his front yard. All of us have congratulated Mr. Pham for this beautiful addition to our neighborhood.

Three months ago, Mr. Pham added a Prayer Garden, complete with many Christian marble sculptures. These sculptures provide a beautiful addition to our neighborhood. The lighting of the Freedom Garden and the Prayer Garden is not only beautiful but also enhances the safety and security of our neighborhood.

The statue of Jesus is the only sculpture that requires a variance from city code. The sculpture does not impair an adequate supply of light and air to the adjacent property nor does it alter the essential character of the surrounding area nor does it diminish established property values within the surrounding areas. On the contrary, it enhances and adds to the values within the surrounding areas.

We recognize and appreciate that Mr. Pham has contributed to our neighborhood, our community and our city for many years. He will continue to keep our neighborhood clean, beautiful and safe. We stand together with Mr. Pham in requesting a variance for this sculpture. We, Mr. Pham's neighbors, hereby make this petition:

<u>Ray Dick</u>	<u>1/8/11</u>	
<u>Sally Dick</u>		
<u>Robert C. DeSpain</u>	<u>236 W. ISABEL</u>	
<u>Justin M. Helgeson</u>		
<u>Joseph M. Toback</u>	<u>228 Isabel St W.</u>	<u>651-291-1662</u>
<u>Michael S. Neal</u>	<u>225 Isabel St. W</u>	
<u>Maureen Neal</u>	<u>225 Isabel St. W.</u>	
<u>Ann J. Kell</u>	<u>224 Isabel St. W</u>	<u>651-776-6081</u>
<u>Jay Kest</u>	<u>224 Isabel St. W</u>	<u>651-776-6081</u>
<u>Ronald W. Gispennung</u>	<u>215 W. Isabel St W</u>	<u>651-228-1984</u>
<u>Bruce Earley</u>	<u>210 W. ISABEL</u>	<u>651 224 8037</u>

Page two: Petition for Variance:

Cathy Earley	210 W. Isabel St.	651 224 8034
Jessica Koharek	204 W Isabel St,	651. 235. 2635
Anna Marie Elter	207 W. Isabel	651-221-0307
Mary Altman	478 Ohio, ST PAUL, MN	651-224-7312
Robert Harriman	457 Ohio St. St. Paul	551-7 651-292 8436
Paul Smith	456 OHIO ST ST PAUL MN	55107 651-229-0203
Leslie Stoy	216 Isabel St. W. St Paul MN	55107 651-747-7025
Tony Stoy	216 Isabel St. W St Paul MN	55107 612-919-1184
Holly Sobczak	200 Isabel St. W. St. Paul MN	55107 651-697-9363
Steve Loggans	190 Isabel St. W St Paul MN	651 422 1435
Drew Wro	167 Duane St S	55107 651-224-0155
Tom Coffee	184 Isabel St W #2	651-387-5164
SPANT FORSE	182 PROSPECT BLVD	651 603 0767
FOR FOR	"	"
FOR	731 LINCOLN AVE	651 246-5646
Fisun Joseph Pham	237 Isabel St. W. SPAN	651-303-5746
Mai Thi Vu	"	"
Marcel Chevrette	215 Ohio St SAINT PAUL MN	651-226-1471
Michael Chevrette	215 Ohio St ST Paul MN	651-592-6449
Ken A Chevrette	215 Ohio St ST Paul MN	651-291-8791
Cindy Vang	210 Ohio St ST Paul MN	651-291-8062
Brian Karpis	218 Ohio St ST Paul MN	651-291-8662
Kick Subsbury	" " " " " "	" " " "
Jung Bang	" " " " " "	" " " "
KEN BERRES	" " " " " "	" " " "
Joe Mitt	201 OHIO ST.	651-224-5733
Artem	201 Ohio St St. Paul MN	651-224-5733
Chick	201 Ohio St. St Paul MN	651-224-5733
William	201 Ohio St. St Paul MN	651-224-5733
Regan Mann	201 Ohio St, St Paul MN	651-224-5733
GEORGE HUNKINS	220 ISABEL ST ST PAUL MN	651 224 8733
Nella Hunkins	" " " "	" " " "
Huy Pham	58 Prospect Blvd St Paul 55103	651.967.7161
Anne Ternes	201 OHIO Street St Paul 55107	651-224-5733

11-110338

## A Good Neighbor



For: Tuan Pham



It is said; "The reason for America's social decline is due to a lack of neighbors."

The person next door seems to relate only to those who look like him or share the same economic status.

Sad but true diversity is a word used to describe those who are less fortunate.

If America didn't have men like Mr. Tuan Pham to keep the American spirit alive, hope and opportunity would be the wrong words to associate with this country.

Mr. Tuan Pham,

thanks for caring about your community.

Who is a good neighbor? Anyone whose heart beats for the good of their neighborhood.

A tribute

From The Land Family

2003

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# Certificate of Recognition

This is to certify that

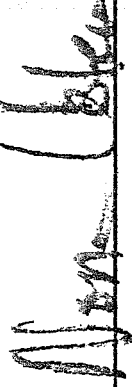
**Tuan J. Pham**

was added to the Saint Paul  
Neighborhood Honor Roll in recognition of contribution  
to the quality of life of the neighborhood, by the

**Thomas Dale Planning Council  
(District 7)**

at the February 20, 1999 Neighborhoods' Assembly,

Neighborhoods:  
Some Assembly Required IV



Norm Coleman, Mayor

11-110338



CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220  
St Paul, Minnesota 55101-1806

Telephone: 651-266-8989  
Facsimile: 651-266-9124  
Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

11-110388

February 15, 2011

Tuan J. Pham  
231 Isabel St. W.  
Saint Paul, MN 55107-2112

Re: Variance application for 231 Isabel St. W, Zoning File # 11-007586

Dear Mr. Pham:

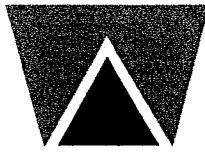
Your application for a variance of the River Corridor setback standards in order to allow an existing statue structure in the rear yard on the bluff side of this property to remain was received on January 12, 2011.

Minnesota Statutes 15.99 requires that all city action on zoning applications be completed within 60 days of the date the application is made, but allows the City to extend this period for an additional 60 days (total 120 days). In order to allow time for the City to meet the deadlines established by state law, we are hereby extending the deadline for action for the setback variance (11-007586). The new deadline for action is May 12, 2011. If you have any questions regarding this matter you may contact me at 651-266-9080.

Sincerely,

Yaya Diatta  
DSI Inspector

FILE  
11-110338



**WEST SIDE CITIZENS ORGANIZATION**

127 West Winifred Street  
Saint Paul, MN 55107

February 15, 2011

City of Saint Paul  
Zoning Board of Appeals

**Re: 231 Isabel Street West**

On January 27, 2010, the West Side Citizens Organization (WSCO) Riverfront and Development Committee reviewed the application for a 30-foot variance to the River Corridor setback standards.

In considering the matter, we reviewed the petitions that were submitted in support of Mr. Pham's variance request and had a discussion regarding the potential long-term implications of granting the variance request on the bluff line.

While it appeared that many of the neighbors appreciated Mr. Pham's efforts to beautify the community, the committee was concerned that granting the variance would set a precedent, resulting in a gradual erosion of the enforcement of the zoning code.

At the end of the meeting, the Riverfront and Development Committee *did not* make any formal recommendation on the matter.

Please feel free to contact me if you have any questions.

Sincerely,

Elena Gaarder  
Executive Director  
West Side Citizens Organization

**CITY OF SAINT PAUL**  
**BOARD OF ZONING APPEALS RESOLUTION**  
**ZONING FILE NUMBER: 11-007586**  
**DATE: March 7, 2011**

WHEREAS, Tuan J. Pham has applied for a variance from the strict application of the provisions of Section 68.402(b)(4) of the Saint Paul Legislative Code pertaining to 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 bluff line is required, 10 feet is proposed in the RT1 zoning district at 231 Isabel Street West. PIN: 072822120088; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on March 7, 2011 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 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 bluff line 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.

File #11-007586  
Resolution

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.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Section 68.402(b)(4) in order to allow an existing statue structure in the rear yard to remain within 10 feet from the bluff line, on property located at 231 Isabel Street West; and legally described as Irvines Addition To W St Paul Subj To St Lots 7 Thru Lot 10 Blk 198; in accordance with the application for variance and the site plan on file with the Zoning Administrator.

***IS HEREBY DENIED.***

**MOVED BY: Bogen**

**FILE**  
11-110338

File #11-007586  
Resolution

**SECONDED BY:** Morton  
**IN FAVOR:** 7  
**AGAINST:** 0

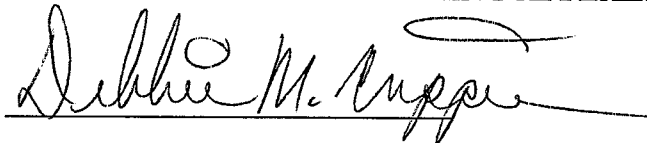
**MAILED:** March 8, 2011

**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 March 7, 2011 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

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FILE  
11-110338

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, FEBRUARY 7, 2011

PRESENT: Mmes. Maddox, Bogen, Linden and Morton; Messrs. Courtney, Ward, and Wilson of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Diatta, Mr. Beach, and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: None

The meeting was chaired by Joyce Maddox, Chair.

Tuan J Pham (#11-007586) 231 Isabel Street West: 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 existing for a variance of 30 feet.

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

No correspondence was received opposing the variance request.

No correspondence was received from District 3 regarding the variance request.

The applicant **TUAN J. PHAM, 231 ISABEL STREET WEST**, was present. Mr. Pham stated that he was sorry that he had not come to the City for advice before building his statue structure. However, when he moved into the City 20 years ago he remodeled a building in the City and he had applied for many permits to do that job and has remodeled many other houses in the City pulling permits for all the jobs. He further stated that he wants to obey the law and the zoning code because he came here for freedom and he knows he needs to obey the laws in order to be free. He stated that his neighborhood loves his statue. Mr. Pham stated that he wants to participate in building up the City, so it becomes a great City. He stated that when he was remodeling the house the zoning code required a 10 foot setback, he thought maybe that was a small thing. According to the Zoning Code if the proposed accessory structure is less than 1,000 square feet, no permit is needed to build it. He acknowledge his confusion on how to measure the setback from the bluffline and he thought since he is not building a house or anything significant, it would not be a problem. He stated that he wants to leave something for his children and grandchildren when he is gone. Mr. Pham asked that the Board do him a favor and approve the variance as he does not think that it would hurt anyone else. He stated that most of his neighbors agree with him and support him with their presence here today. For finding number three, Mr. Diatta was at his house asking if other people would be allowed to visit his display, or to pray. He told Mr. Diatta that he is not a selfish person and he thinks it is better if people come to pray rather than fight and shoot, but if it causes problems he will not allow people to visit the site. He stated that he is not doing this only for himself but for future generations. He does not think that this statue is going to hurt anyone, as it has been built to withstand tornado winds of up to 500 mph. He stated that if he has to move it, he worries that it might crack or break. He brought the statue from Vietnam without cracking it; he is not worried about the money involved but the statue itself. He stated that it has a special significance to his family and his people.



FILE  
11-110338

Mr. Courtney questioned that it is a work still in progress as stated in the staff report, how much more is there to be done? Mr. Pham stated that it is 95% done, there is just a little more he has to do. Mr. Courtney further questioned what the District Council said? Mr. Pham stated that he did not know about the District Council.

Joseph Tokack, 228 Isabel St. West, stated that he lives across the street from Mr. Pham and that the statue is beautiful. He fully supports what Mr. Pham has done and thinks it is a wonderful thing for the City.

Joe Matt, 201 Ohio Street, stated he lives down the bluff from Mr. Pham. He agrees with the beauty of the structure, it is not that massive and it is far enough away from the bluff that it is not going to harm anybody. He stated that there are garages and sheds on the bluff. He stated that if you circle around then, he thinks that the statue is much less intrusive or hazardous than the other structures built right on the bluff and he thinks that they should be looked at. He questioned what are you limited to putting in your back yard? He stated that this is not massive, it is far enough from the bluff that it is not going to hurt anyone. It seems to him that the Board of Zoning Appeals(BZA) could only be in favor of this because it does not detract from the neighborhood at all. Ms. Maddox stated that she is not going to go through the code citations but when you live on the bluff you have to follow certain rules and that is why we are here today. Mr. Matt stated he understands that but he would like to know what defines a structure. He asked: "If he puts up a ten foot post, is that a structure?" Ms. Maddox stated if it is within 40 feet of the river bluff. Mr. Matt asked: anything? He argued that Mr. Pham would not have access to the rear 40 feet of his yard according to this. Ms. Maddox stated the Board is not going to go into that here. Mr. Matt argued that the City needs to look into what defines a structure.

Ms. Linden questioned that if there are people that are going to be able to walk around this and utilize this as Mr. Pham would like to do in that 40 feet does he not understand the danger? Mr. Matt stated that he understands that but he does not think that should be an issue on a private property in his back yard. He stated that maybe the City could approve it with the condition that nobody can come there publicly, but that should not interfere with the use of his property.

Ms. Maddox asked that Mr. Diatta to shed some light on the subject here. Mr. Diatta replied that the river corridor standards state that any structure placed in the 40 foot setback would not be permitted. Mr. Diatta clarified that a structure that is 120 square feet or less does not require a building permit but that does not mean that you can place anything within that setback. You don't need a permit because it is less than 120 square feet, but you need to get City approval because the bluff has its own regulations. Mr. Matt stated that to him it seems that Mr. Pham does not own his own back yard. Ms. Maddox stated that we are going to move on here; we cannot get into this kind of a discussion we need to stay on track here. Mr. Matt asked if the Board understood what he was saying. Ms. Maddox stated she understood but we need to stick to the findings here.

Roy Dick, 1099 Scarboral Lane, stated that Mr. Pham has addressed finding number three because he is willing to not allow the public into his back yard. For finding number two it says Mr. Pham did not contact the City before constructing the structure, but then the City contacted him and said he could either move the structure or apply for a variance, which is what he is doing here. Ms. Maddox stated that what we need to look at on finding number two, is whether "the plight of the land owner is due to circumstances unique to the parcel of property and were not created by the land owner." So we have to

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say why it is unique. Mr. Dick stated that if there were a tree where Mr. Pham wanted to place the statue, then you could say he had a compelling reason to put it somewhere else. Mr. Dick stated that Mr. Pham has some beautiful structures that he placed all around his yard and he supposes that the City could compel Mr. Pham to put them all in one little spot, but that does not seem reasonable to him. He continued to finding number one regarding reasonable use for a single family. Mr. Dick stated that Mr. Pham has some marble structures in his yard and it seems to him that if it is his family he should have the right to decide what to place in his back yard. It has to be a reasonable use of the property and he does not see how that could be an unreasonable use of the property.

There was no opposition present at the hearing.

Mr. Courtney asked staff: did anything happen at the District Council? Mr. Diatta stated that nothing has been received from the District Council. Mr. Courtney stated his second question relates to the whole river corridor and the 40 foot setback requirement. He asked whether there is any reason the 40 foot requirement that comes into play here: is there some erosion, is the bluff going to fall down or do we just have a rule here and we are going to enforce it? Mr. Diatta stated he does not know, he does not know why the code is written that way. He can only say that any structure within that 40 foot setback is not allowed.

Mr. Wilson asked how many of these structures are within that 40 feet. He stated that he drove by the address, went down Ohio Street, he didn't see anything and if he could see it from Isabel Street, it might detract from driving. He questioned how many more of those structures are within the 40 foot bluff line. Mr. Diatta stated that this is the only one within the 40 foot setback.

Ms. Maddox invited Mr. Pham back. Mr. Pham stated that he meets the 40 foot setback from Ohio Street but on the Isabel side he is short. He stated that the back of the statue is to the valley with nothing but trees down the bluff and from Ohio Street he is at least 100 feet back. He contended that if someone pushed it down it would not go anywhere just stay in his back yard.

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

Mr. Courtney stated that he was advised by Legal Counsel that: "The objective of standards and criteria is to maintain the aesthetic integrity of the natural environment of the river corridor in conformance to the Saint Paul Mississippi River Corridor plan by reducing the effects, etc. It has to do with the aesthetic integrity and natural environment."

Mr. Courtney stated that he would be interested in knowing what the District Councils opinion is. Ms. Bogen stated that she had asked her neighbor who is on the Board and it was never heard by the District Council.

Mr. Courtney stated that he is sympathetic to the applicant and he thinks that the District Council should speak to this: "If we are talking about aesthetic integrity, the District Council should be speaking to that rather than us." Ms. Bogen stated that the District Council has a specific River Corridor Task Force Committee that would probably be the one entity on the westside that could give an opinion of exactly what effect this might have on the bluff. They are very worried about what happens on the bluff.

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Ms. Maddox questioned whether there is time to continuing this for one month so the District Council could hear it. She stated that she thought that it would be helpful in making a decision to know what the District Council's opinion is from a neighborhood perspective. Ms. Bogen stated that the statue is not going to fall down off the bluff but it is seen from below.

Ms. Linden questioned if anyone knew when the Taskforce met? Ms. Maddox stated no, that is why she is suggesting a month layover.

Mr. Wilson wondered how the BZA could get past the definition of development, where no development is allowed including building a statue structure or any changes to the land itself. Mr. Courtney stated that Mr. Pahn is not appealing the decision, he is asking for a variance. He is not challenging the broad definition of development he is asking for a variance to build within 10 feet instead of 40 feet.

Mr. Ward stated that it is not the development piece. From the east side it does not meet the guidelines but from the west side it does. On the east side he is missing a few feet, but he is very close. He contended that the Board would be in error not to send it back to the District Council because they have a specific task force to look at these issues and to have some type of community input and involvement into this.

Ms. Bogen stated that would put the case beyond the deadline for action and asked if the applicant would be willing to continue the matter for a month? Ms. Maddox explained to the applicant that the BZA needed to make a decision and explained that what the BZA would like to do with this motion is to extend the time so that Mr. Pham can appear before the District Council so council can take a look at the bluff there as they are very familiar with what goes on in the bluff area and they can come back to us in a month and present their findings. You will have a chance to talk with them at their meeting. Without that if you choose not to sign the continuance request then we would be forced to make a decision today. She asked Mr. Pham if he is willing to sign a continuance to delay the decision for a month. Mr. Pham stated that he thinks that this Board has enough authority to make the decision right now. He contended that they were still discussing back and forth and not coming to a decision. Secondly he stated that his property is over 1,000 feet from the river: "they require a 40 foot setback so that nothing falls off the bluff". Ms. Maddox questioned whether Mr. Pham has gone before the District Council. You have not gone before the District Council. Mr. Pham stated that he wanted the Board to make their decision today; he thought that they had enough authority to make the decision and that this is a small issue. Ms. Maddox stated that Mr. Pham response was a no, he does not want to go to the District Council; it would be nice if we had more people looking at this.

Mr. Warner stated that because of the 60 day rule the Board has to make a decision within the 60 days. "You do have the option to extend that for an additional 60 days for a total of 120 days. We, as City Staff, advise you that when we build in our time lines for hearing matters, we fudge a little on the time and compress it a little so there is adequate time for City Council to hear an appeal. It would be useful to have some input from the Westside Neighborhood Organization on that. If you do ask them for their input, I suggest that the Board give them a specific question as to weather or not they feel that this application and the applicant's structure fit within the variance criteria that is set fourth in the City's Ordinance. It is not going to help you if they come in and say great neighbor, great statue go forward and do good work. That is not going to help you deal with the law. So you need to ask them for their opinion as they understand the River Corridor Bluff land regulations and they are familiar with what the

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policy purposes are behind these regulations. But you might want to pointedly ask them how they feel about this application in particular and how it would apply and the impact of it generally speaking. I am not sure that the applicant understands the subtle technicalities of the 120 day rule that the legislature has imposed on us. So my advice would be, despite the applicant's request that the Board act today it is a sufficiently important matter to me and his neighbors, so you can take on their own volition and extend out the time. We do not know when WESCO meets, so I would suggest that this matter be set out to the end of the 60 day period and on Day 59, staff will extend it for an additional 120 days. If the matter has to go to the City Council for appeal, either from the applicant, another neighbor or anyone, we can simply work with the applicant to work the time out. I think that is a good way to work out the matter.

Mr. Ward moved to continue the matter for approximately 4 weeks to allow the District Council to hear the case and make their recommendations to the Board concerning the bluff line question.

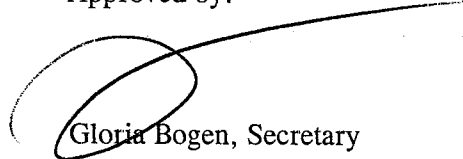
Mr. Wilson seconded the motion, which passed on a roll call vote of 7-0.

Submitted by:



YaYa Diatta

Approved by:



Gloria Bogen, Secretary