

**BOARD OF ZONING APPEALS STAFF REPORT**  
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**TYPE OF APPLICATION:** Minor Variance **FILE #**13-222492  
**APPLICANT:** David M. King  
**HEARING DATE:** September 16, 2013  
**LOCATION:** 1075 LOMBARD AVENUE  
**LEGAL DESCRIPTION:** Slaytons Add To Ridgewood Pk Ex E 25 Ft Lot 12 And All Of Lot 11 Blk 1  
**PLANNING DISTRICT:** 16  
**PRESENT ZONING:** R4 **ZONING CODE REFERENCE:** 61.108  
**REPORT DATE:** September 6, 2013 **BY:** Yaya Diatta  
**DEADLINE FOR ACTION:** October 11, 2013 **DATE RECEIVED:** August 13, 2013

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A. **PURPOSE:** The applicant had a front driveway leading to a tuck-under garage. In 2011, he was granted a variance by the BZA for a rear yard setback to construct a new two-car attached garage accessed from the alley. The variance was granted subject to conditions including: "The existing driveway and curb cut in the front yard must be completely removed and replaced with a new curb and gutter. All work on curbs, driveways, and sidewalks within the public right of way must be done to City Standards and Specifications by a licensed and bonded contractor under a permit from Public Works Sidewalk Section (651-266-6120). The front yard must then be sodded with grass." The applicant built the garage and removed the original front driveway and garage door but constructed a new parking space in the front yard. Because compliance with this condition has not been met, staff is requesting that the Board of Zoning Appeals review the case under Section 61.108 of the Zoning Code which permits the BZA to revoke the variance or impose additional conditions, modify existing conditions, or delete conditions which are deemed by the Board to be unnecessary, unreasonable or impossible of compliance.

B. **SITE AND AREA CONDITIONS:** This is a 120 by 83-foot lot with alley access two a two-car attached garage and a parking space in the front yard.

Surrounding Land Use: Mainly single family dwellings.

C. **CODE CITATION:** Sec. 61.108. - Conditions violated, permit revocation.

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The zoning administrator shall notify the planning commission or the board of zoning appeals when a development covered by a site plan, permit, variance, determination of similar use, or other zoning approval is not in compliance with any of the conditions imposed upon such use approval. The commission or the board may, at a public hearing, following notice to the owner of subject property and other adjacent property owners as specified in section 61.303(c), and upon determination that the conditions imposed by such approval are not being complied with, revoke the authorization for such approval and require that such use be discontinued. The commission or the board, in lieu of revoking the permission, may impose additional conditions, modify existing conditions, or delete conditions which are deemed by the commission or the board to be unnecessary, unreasonable or impossible of compliance.

**Sec. 63.501. Accessory buildings and uses.**

Accessory buildings, except as otherwise provided in this code, shall be subject to the following regulations:

- (b) Accessory buildings, structures or uses shall not be erected in or established in a required yard except a rear yard. The following additional standards shall apply to residential parking:
  - (2) Off-street parking spaces shall not be located within the front yard.
  - (5) Passenger vehicles may be parked on an approved driveway in front or side yards provided the driveway leads to a legal parking space.

**D. HISTORY:**

On August 8, 2011, the Board of Zoning Appeals (BZA) granted a variance (File#11-253290) for a 17 foot rear yard setback to Paul Ormseth, Architect for property owner David King, for a new garage attached to the back of the house by a deck and arbor. Approval was granted subject to conditions including:

The existing driveway and curb cut in the front yard must be completely removed and replaced with a new curb and gutter. All work on curbs, driveways, and sidewalks within the public right of way must be done to City Standards and Specifications by a licensed and bonded contractor under a permit from Public Works Sidewalk Section (651-266-6120). The front yard must then be sodded with grass.

Both the applicant and the property owner were present at the 2011 public hearing. District 16 supported the variance request.

A recent follow up inspection by city staff revealed that the new garage was built.

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However, the original front driveway and garage door were removed and a new parking space constructed in the front yard at the same location as the original driveway. An enforcement notice was subsequently issued to the property owner requiring that the property be brought into compliance with the condition of approval of the variance or a request for a review under Sec.61.108 of the Zoning Code be submitted to the BZA.

The property owner is requesting that the BZA delete the condition of approval of the variance for the reasons as stated:

- The original requirement for a variance only occurred secondary to the unique topography of the rear yard which resulted in the garage building going from a “detached”, not requiring a variance, to “attached” given the need for a walk way from the garage to the first floor of the house.
- The driveway has been in place, with continuous use, since the house was constructed in 1922.
- Safety and ease of use of the property given the unique qualities of Lombard Avenue resulting in limiting street parking, including no north side street parking; on which side my house is located.

The property owner states that the driveway falls within the legal land use as described in the zoning code Sec.62.104.- Nonconforming uses of land, part (f) which states:

An existing off-street parking space for one- and two-family dwellings in a required front or side yard shall be considered a legal nonconforming use provided the parking space was established pursuant to a curb cut permit issued by the department of public works prior to October 25, 1975, and the parking space has existed continuously since the permit was issued or it can be demonstrated by clear and convincing evidence that the parking space has been in existence and used continuously since October 25, 1975. The burden of proof shall be on the property owner.

#### **FINDINGS:**

1. The original driveway lead to a legal parking space which in this case, was the tuck-under garage. This use was legal under the zoning code. However, once the legal parking space (the tuck-under garage) was removed, the driveway became illegal because it no longer leads to a legal parking space. Therefore, the nonconforming use section cited by the applicant is not applicable in this case.
2. At the 2011 BZA public hearing for the garage variance, the applicant argued against the proposed condition to remove the driveway and install a new curb and gutter as a condition of approval of the variance. After hearing the applicant’s testimony, the BZA moved to approve the variance with that condition attached. The applicant did not appeal the BZA’s decision.



3. The applicant constructed the new garage, removed the tuck-under garage, regraded the front yard and constructed a new parking space where the original driveway was located in the front yard, even though it did not meet the condition of the variance granted.

E. **DISTRICT COUNCIL RECOMMENDATION:** Staff has not received a recommendation from District 16.

F. **CORRESPONDENCE:** Staff received a letter from a property owner at 1068 Lombard and former owner of 1075 Lombard recommending that the applicant's request be granted.

G. **STAFF RECOMMENDATION:** Based on findings 1 through 3, staff recommends that the BZA not deleting the condition of approval of the variance (File # 11-253290) which states: "The existing driveway and curb cut in the front yard must be completely removed and replaced with a new curb and gutter. All work on curbs, driveways, and sidewalks within the public right of way must be done to City Standards and Specifications by a licensed and bonded contractor under a permit from Public Works Sidewalk Section (651-266-6120). The front yard must then be sodded with grass."

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