

BOARD OF ZONING APPEALS STAFF REPORT
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TYPE OF APPLICATION: Major Variance **FILE #**14-315255
APPLICANT: Steven L. & Jenny Virkus
HEARING DATE: September 15, 2014
LOCATION: 814 GRAND AVENUE
LEGAL DESCRIPTION: Summit Park Addition Tost Pa Lot 4 Blk 17
PLANNING DISTRICT: 16
PRESENT ZONING: T2; Sign-Grand
ZONING CODE REFERENCE: 63.207 & 66.331(k)
REPORT DATE: August 11, 2014 **BY:** Yaya Diatta
DEADLINE FOR ACTION: September 25, 2014
DATE RECEIVED: July 28, 2014

A. **PURPOSE:** 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.

B. **SITE AND AREA CONDITIONS:** This is a 40 by 150-foot lot with alley access to a two-car detached garage in the rear yard.

Surrounding Land Use: A mix of commercial and residential uses.

C. **BACKGROUND:** There are two buildings on the property. The first building, which faces Grand Avenue, is used as a mixed commercial/residential structure. The second two-story building which is located along the alley was a three-car garage that had studio space above. According to city records, the garage was constructed under permit but there is no record of approval for the studio space.

Somehow, the second floor of the rear building was converted into a dwelling unit prior to the applicants purchasing the property in 2011. A portion of the garage was used to provide a staircase for access to the second floor resulting in the loss of a parking space in the garage. This conversion was illegal for two reasons: 1. The property was zoned B2, business zoning district at that time and a new separate dwelling unit was not permitted. 2. The conversion resulted in the loss of one required parking space although two parking spaces remained in the garage. Consequently, staff from the Department of Safety and Inspections (DSI) issued orders (see letters dated February 28, 2013, August 28, 2013 & February 27, 2014) to the applicants requiring them to bring the property into compliance with the zoning code by either removing the dwelling unit in the garage or applying for a rezoning of the property from a B2 business zoning district to a T2 traditional neighborhood zoning district. The applicants applied for and were granted the rezoning request in 2013 and they are now applying for variances of the side yard setback and parking requirements in order to legalize the conversion of a portion of the building into a dwelling unit.

D. CODE CITATIONS:

Sec.63.207. - Parking requirements by use.

A one- and two-family dwelling unit require 1.5 off-street parking spaces per unit and a commercial use requires 1 parking space.

Sec. 66.331. Density and dimensional standards table.

k) No side or rear yards are required along the interior lot lines except as otherwise specified in the building code; provided, that if walls of structures facing such interior lot lines contain windows or other openings, yards of not less than six (6) feet shall be provided.

E. FINDINGS:

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

This property is located in the T2, traditional neighborhood zoning district. This district permits a varied mix of residential and commercial uses. Grand Avenue is a major commercial corridor and there are mixed residential and commercial uses both east and west of the parcel. The intent of the T2 district is to encourage a variety of uses and housing types, with careful attention to the amount and placement of parking and transitions to adjacent residential neighborhoods.

This structure was a three-car garage and there are still two parking spaces remaining after the conversion to a dwelling unit. A dwelling unit with windows facing a side yard in this zoning district requires a 6 foot setback from the side property lines. The requested variances in order to legalize the conversion of the garage into a dwelling

unit are in keeping with the above intent of the T2 district. This finding is met for both variance requests.

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

The Housing Density of the Summit Hill/District 16 Neighborhood Plan which is an addendum to the Comprehensive Plan is as follows: "Ensure that the impact of any increased density conforms to zoning and building requirements, and that the City considers the development's adverse impact on existing municipal services including, but not limited to, traffic and parking." The increased density created by adding a dwelling unit on this parcel and the removal of required parking are not in keeping with this vision or a goal of the Comprehensive Plan to lessen congestion in the public streets. This finding is not met for both variance requests.

- 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.*

The existing setback from the west property line is 4 feet and existing setback from the east property line is 3 feet. In order to meet the 6 foot side yard setback requirement, the applicant would have to either cut off the building on both sides or simply remove the windows. None of these options is practical or reasonable because a residential building requires windows. Since the removed parking space was turned into a dwelling unit, there is no other alternative for additional parking. Similarly, it would be impractical to get rid of windows of a dwelling unit in order to meet the setback requirement. These are practical difficulties in meeting the setback and parking requirements. This finding is met for both variance requests.

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

It is a buyer's responsibility to do their due diligence prior to the purchase of any property. In this case, the purchaser apparently failed to investigate the approved use of the property and the plight was self-created by the applicants. This finding is not met for both variance requests.

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

This request will not alter the zoning classification of the property. This finding is met for both variance requests.

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

Allowing a building converted into a dwelling unit prior to 2011 to remain will not alter the character of the area. This finding is met for both variance requests.

- F. **DISTRICT COUNCIL RECOMMENDATION:** Staff has not received any recommendation from District 16.
- G. **CORRESPONDENCE:** Staff has received letters from property owners at 57 Avon Street South, 803 and 809 Lincoln Avenue in opposition of the variances.
- H. **STAFF RECOMMENDATION:** Based on findings 2 and 4, staff recommends denial of the requested variances.

CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 14-315255
DATE: September 3, 2014

Deadline for Action: 09-25-14

WHEREAS, Steven L. & Jenny Vikus have applied for variances from the strict application of the provisions of Section 63.207 & 66.331(k) of the Saint Paul Legislative Code pertaining to the parking and setback requirements in order to legalize the use of the garage as a dwelling unit. 1) The applicants removed one required off-street parking space by converting a portion of the existing detached garage into a dwelling unit without prior approval and 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 of a in the T2 zoning district at 814 Grand Avenue. PIN: 022823420159; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on August 18, 2014 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 T2, traditional neighborhood zoning district. This district permits a varied mix of residential and commercial uses. Grand Avenue is a major commercial corridor and there are mixed residential and commercial uses both east and west of the parcel. The intent of the T2 district is to encourage a variety of uses and housing types, with careful attention to the amount and placement of parking and transitions to adjacent residential neighborhoods.

This structure was a three-car garage and there are still two parking spaces remaining after the conversion to a dwelling unit. A dwelling unit with windows facing a side yard in this zoning district requires a 6 foot setback from the side property lines. The requested variances in order to legalize the conversion of the garage into a dwelling unit are in keeping with the above intent of the T2 district. This finding is met for both variance requests.

2. The variance is consistent with the comprehensive plan.

The Housing Density of the Summit Hill/District 16 Neighborhood Plan which is an addendum to the Comprehensive Plan is as follows: "Ensure that the impact of any increased density conforms to zoning and building requirements, and that the City considers the

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development's adverse impact on existing municipal services including, but not limited to, traffic and parking." The increased density created by adding a dwelling unit on this parcel and the removal of required parking are not in keeping with this vision or a goal of the Comprehensive Plan to lessen congestion in the public streets. This finding is not met for both variance requests.

- 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.*

The existing setback from the west property line is 4 feet and existing setback from the east property line is 3 feet. In order to meet the 6 foot side yard setback requirement, the applicant would have to either cut off the building on both sides or simply remove the windows. None of these options is practical or reasonable because a residential building requires windows. Since the removed parking space was turned into a dwelling unit, there is no other alternative for additional parking. Similarly, it would be impractical to get rid of windows of a dwelling unit in order to meet the setback requirement. These are practical difficulties in meeting the setback and parking requirements. This finding is met for both variance requests.

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

It is a buyer's responsibility to do their due diligence prior to the purchase of any property. In this case, the purchaser apparently failed to investigate the approved use of the property and the plight was self-created by the applicants. This finding is not met for both variance requests.

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

This request will not alter the zoning classification of the property. This finding is met for both variance requests.

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

Allowing a building converted into a dwelling unit prior to 2011 to remain will not alter the character of the area. This finding is met for both variance requests.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Sections 63.207 & 66.331(k) in order to legalize the conversion of the existing garage into a dwelling unit on property located at 814 Grand Avenue and legally described as Summit Park Addition Tost Pa Lot 4 Blk 17; in accordance with the

application for variance and the site plan on file with the Zoning Administrator.
IS HEREBY DENIED

MOVED BY:
SECONDED BY:
IN FAVOR:
AGAINST:

MAILED: September 16, 2014

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 September 3, 2014 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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