

BOARD OF ZONING APPEALS STAFF REPORT

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TYPE OF APPLICATION: Major Variance **FILE #**13-247876

APPLICANT: BILL BERGMANN

HEARING DATE: November 25, 2013

LOCATION: 576 LINCOLN AVENUE

LEGAL DESCRIPTION: Terrace Park Addition Tothe C E 1/2 Of Lot 28 And All Of Lot 29
Blk 6

PLANNING DISTRICT: 16

PRESENT ZONING: RM2 **ZONING CODE REFERENCE:** 66.207 & 66.231

REPORT DATE: November 6, 2013 **BY:** Yaya Diatta

DEADLINE FOR ACTION: January 2, 2014 **DATE RECEIVED:** November 4, 2013

A. **PURPOSE:** The applicant wants to remodel the attic space of the existing two-car detached garage in the rear yard into a dwelling unit which would result in two principal single family buildings on the property. The zoning code allows a second dwelling on a lot in a multiple family residential zoning district providing it meets a 4' side yard setback, is at least 12' from the main house and has a 25' setback from the rear property line. Additionally, two dwelling units on one lot require a total of 3 off-street parking spaces. The side setback and separation from the house are met, but the applicant is requesting two zoning variances: 1) The rear yard setback is 4 feet requiring a variance of 21 feet. 2) Two off-street parking spaces are available within the garage for a variance of one parking space.

B. **SITE AND AREA CONDITIONS:** This is an irregularly shaped parcel of about 12,350 square feet with alley access to a two-car detached garage in the rear yard. The existing single family home on the site is a two-and a half-story house. A playground is located in the rear yard which is screened with a wooden privacy fence.

Surrounding Land Use: Mixed residential uses.

C. **CODE CITATIONS:**

Sec.66.231. Residential District Dimensional Standards table requires a minimum rear yard setback of 25 feet.

Sec.63.207. - Parking requirements by use.

A one- and two-family dwelling unit require 1.5 off-street parking spaces per unit.

D. FINDINGS:

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

The homeowners purchased this property 6 years ago and are proposing to remodel the existing two-car garage into a second dwelling unit for their parents. Prior to constructing the existing garage in 2000, the previous homeowners applied for variances in order to construct a carriage house dwelling but subsequently withdrew their request. The garage was constructed under permit with a condition that it is not used as an additional living space or for commercial purposes.

However, it was constructed with a design that could lend itself for an additional unit on the property. It has a dormer with door cutouts, windows, heat, electricity, plumbing and sewer but has no access to the second floor. The applicant intends to build an exterior staircase to provide access to the second floor as part of the remodeling project and create a dwelling unit.

As a garage, the structure meets the required setback. However, the request to remodel the garage located 4 feet from the rear property line into a dwelling unit constitutes a principal structure and triggers the 25 foot rear yard setback requirement. This request would result in a nonconforming rear yard setback for the proposed additional dwelling. It is not in keeping with a purpose and intent of the zoning code for the elimination of nonconforming uses of land in the city. This finding is not met for the rear yard setback variance.

There are currently two parking spaces available in the garage and according to the homeowners, their parents will not have a car while living on this property. Since the property is within walking distance of Grand Avenue where transit is available, additional parking is not necessary. This finding is met for the parking variance request.

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

The proposed second dwelling unit would accommodate the property owners' parents to provide convenient access for their care. Chapter 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. Although the garage does not meet the required 25 foot setback, it already exists. This request to convert an existing building into living space for the homeowners' parents is consistent with the goal of the Comprehensive Plan stated above. This finding is met for the rear yard setback variance.

The Comprehensive Plan encourages providing off-street parking in order to lessen congestion the public streets. Since the homeowners' parents would not have a car while living on this property, the additional parking space is not necessary. This finding is met for the parking variance.

- 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.*

This garage is existing and there is no place on the lot where it could be relocated without a variance to meet the required 25 foot rear setback. The requested variance is reasonable and is based upon a desire to maximize the use of the accessory structure. This finding is met for rear yard setback variance.

In order to provide the additional off-street parking space, the playground would have to be removed, creating a difficulty for the homeowners to enjoy their rear yard. Additionally, the homeowners are concerned that adding more paved surface for parking could cause more water flowing into the alley where drainage issues already exist. These are practical difficulties in complying with the parking requirement without a variance. This finding is met for the parking variance request.

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

Had the property owners checked with the city prior to purchasing the property, they would have been informed about the condition of approval listed on the garage building permit which prevents the structure from being used as additional living space. The requested parking variance was triggered by the homeowners' desire to create the additional dwelling unit. These are circumstances created by the current homeowners and 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.*

The requested variances if granted will not change 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.*

There are no garages in the immediate area with an exterior staircase leading to a dwelling unit above a garage and it appears that there are no dwelling units in garages in the immediate area. This request could change the character of the surrounding area. This finding is not met for the setback variance.

The applicant states that the homeowners would most likely be driving their parents around while they are living in the new unit, therefore, the parking variance request will not change the character of the area and this finding is met.

- E. **DISTRICT COUNCIL RECOMMENDATION:** Staff has not received a recommendation from District 16 Summit Hill Association.
- F. **CORRESPONDENCE:** The applicant's request includes a petition signed by a number of property owners in the immediate area in support of the variance and correspondence from a property owner at 591 Lincoln in support of the variance. Staff also received correspondences from the owner of the property across the street from the applicant's house at 577 Lincoln and a property owner across the alley at 10 Crocus Hill in opposition of the requested variances.
- G. **STAFF RECOMMENDATION:** Based on findings 1, 4 and 6, staff recommends denial of the requested variances.

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