BOARD OF ZONING APPEALS STAFF REPORT

TYPE OF APPLICATION:	Minor Variance	**FILE** #16-099004
APPLICANT:	Gnia D. Kong	
HEARING DATE:	December 5, 2016	
LOCATION:	312 WHEELOCK PARKWAY EAST	
LEGAL DESCRIPTION:	Kavanagh Dawsons Add To Stp No Part Of Vac St And Fol Lots 17 18 Lot 19 Blk 1	
PLANNING DISTRICT:	5	
PRESENT ZONING:	RT1	
ZONING CODE REFERENCE:	63.501 (2)	
REPORT DATE:	November 18, 2016	**BY:** Sean Westenhofer
DEADLINE FOR ACTION:	January 12, 2017	
DATE RECEIVED:	November 14, 2016	

A. **PURPOSE:** In conjunction with the Wheelock Ground Round street reconstruction project, this property was found to have parking in the front yard that is not allowed under the zoning code. The applicant is proposing to keep the existing front parking although there is already three surface spaces and a one-car detached garage in the rear yard. The applicant is requesting a variance from the zoning code requirement to allow the front yard parking to remain.

B. **SITE AND AREA CONDITIONS:** This is a 110 by 125-square foot lot occupied by a duplex dwelling with a detached one-car garage.

Surrounding Land Use: The surrounding land uses are predominately single family dwellings with some multi-family dwellings to the south and east of the subject property. A gas station and I-35 E to the west of the property.

C. **ZONING CODE CITATION:**

63.501 (2)
2) Off-Street parking spaces shall not be located within the front yard.

D. FINDINGS:

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

   This variance request is in keeping with the Guidelines for Variance Requests to Allow Parking within a required yard adopted on February 6, 2012, by the Board of Zoning Appeals as follows:

   a) *If the parking space is already there, the parking space has been in existence and used continuously for the past ten (10) years.*

      The driveway has been in existence since 1957 when the duplex was built with an attached two-car garage. The existing surface of the driveway is asphalt. This finding is met.

   b) *The applicant can demonstrate hardship in that there is no feasible alternative location for the parking space. For the purpose of this condition hardship shall include: a disability by a resident of the property that qualifies for a State Handicap Parking Permit, topography that makes rear yard parking impossible, the lack of alley access to the property, or insufficient lot size to provide off-street parking in a non-required yard.*

      The applicant states that this duplex is half rental and half owner occupied. One of the two units has been a rental since the current owner bought the property in June of 1989. There is an unimproved alley along the east side of the lot, but access to the rear yard parking is by an asphalt driveway on the applicant's property that is accessed from Wheelock Parkway. The rear parking area behind the duplex has the capacity to store 6 vehicles in a stacked position, plus one in the garage. This is a reasonable alternative to the parking in the front yard. This finding is not met.

   c) *The applicant submits a petition signed by 2/3 of property owners within 100 feet of the property along either side of the subject property and from property across the street stating that they have no objection to the parking.*

      The applicant was required to obtain 5 signatures and they received 8. The applicant has submitted a sufficient number of signatures. This finding is met.

   d) *The parking space is paved or the applicant agrees to pave the space within 120 days.*

      The asphalt for the parking space in front of the duplex was removed by the street contractor at the request of the applicant, who expected that it would be replaced. The applicant intends on paving the portion of the driveway that was removed in the Spring of 2017. This finding is met.

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

The applicant already meets the goal of the Comprehensive Plan to lessen congestion on public streets because they already have parking availability for up to 7 spaces in the rear yard behind the duplex. The applicant's request to maintain the front yard parking is for convenience only. This finding is not met.

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 building is a legal conforming duplex. The use requires three off-street parking spaces and the parking located in the rear of the property can accommodate at least 6 vehicles in a stacked position. Currently there is sufficient room for the homeowner and tenants to park in the rear yard behind the duplex. There is no practical difficulty to support this finding and this finding is not met.

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

   There is currently parking in the rear available for more than the minimum number of space required. There are no unique circumstances to this property to justify the requested variance. This finding is not met.

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

   Off-street parking is a use permitted in this zoning district. The requested variance if granted will not change the zoning classification of the property. This finding is met.

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

   There are other properties within the surrounding area that also have existing parking in the front yard. However, these properties have driveways leading to garages in the front or have parking that leads to the sides of the house. Parking in a driveway that leads to legal parking is allowed under the zoning code. The applicant's property would be the only one located on this block face that has front yard parking, which could change the character of the area. This finding is not met.

E. **DISTRICT COUNCIL RECOMMENDATION:** Staff has not received a recommendation from District Council 5.

F. **CORRESPONDENCE:** Staff has not received any correspondence.

G. **STAFF RECOMMENDATION:** Based on findings 1b, 2, 3, 4 and 6, staff recommends denial of the requested variance.