MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, DECEMBER 5, 2016

PRESENT: Mmes. Albert, Bogen, Maddox, and Trout-Ortel; Messrs. Rangel Morales, Ward of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Westenhofer, Ms. Lane and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Thomas Saylor* had to leave early.
*Excused
The meeting was chaired by Joyce Maddox, Chair.

Gnia D. Kong (#16-099004) 312 Wheelock Parkway East: 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.

Mr. Westenhofer showed slides of the site and reviewed the staff report with a recommendation for denial based on findings 1b, 2, 3, 4 and 6.

No correspondence was received opposing the variance request.

No correspondence was received from District 5 regarding the variance request.

The applicant **BLEA & GNIA D. KONG**, 312 Wheelock Parkway East, was present. Mr. Kong stated that they are going to meet with the District 5 Community Council tomorrow, Wednesday, house was built in 1957 and he purchase it 1989 and the front yard parking was already there. He applied to convert the garage into a two bedroom apartment and nobody told him he should not have the front yard parking there that was 1990. When he purchased the home the back was gravel and he applied to put in asphalt to make it parking for three cars for the tenant. That is not for the front, nobody told him he should not be parking in the front. About ten years ago the tenant was his son and he built the garage for himself and when he was down to get the permit nobody told him that they should not be parking in the front yard. He kept parking there because there was the cement parking pad right there. When the construction crew came through his wife thought that the parking space was already there and it was ok to use. They needed to replace the cement slab and she went out and talked with the construction supervisor and he agreed to take out the worn and broken concrete slab for $450 which they paid him and he removed the cement so they could replace it with new. After the contractor took out the cement they were not allowed to put the cement back in. He called Public Works and the supervisor Kevin Nelson, came out and asked them why they took out the cement. Mr. Kong stated that he assumes that he cement slab had been in place since 1950 when the house was constructed. When they purchased the house in 1989 the parking slab was already in existence. He stated that he took the application to the DSI (Department of Safety & Inspections) Office and Sean Westenhofer asked why he took out the slab. He explained that they did not know that they could have just left it in place as it was and there would not have been a problem. His wife wanted to put new cement on the parking slab and we paid $450 to have it removed. Mr. Kong stated that he visited his neighbors to get signature of approval and everybody signed off in approval for him to keep the front yard parking. He stated he wished that he could get them to attend but they are all working. He stated that they have been parking in the front yard for 27 years and now after the construction came through this is what happened. Just because we removed the cement, otherwise we

would not be in attendance here. He stated that the parking in the back has to have the space for a car to enter and exit the garage. There is room for three cars, there has to be room for a car to exit the garage. He stated that his tenant has three cars. He has one car, his daughter-in-law has a car and his son has one car, they all work. Mr. Kong stated that he is a retired police officer, he is 60 years old and needs this parking in the front yard. It is getting harder for him to go to the back of the property. If he goes to the back there are three cars parked back there and there is no space for him to park.

Ms. Maddox asked Mr. Kong if he understood that he created this situation because he converted the attached garage into living space. There was a garage there so people could park in the front of that garage, it was a driveway leading to a garage. Once the garage was converted into living space you can no longer have a parking pad in the front yard. Mr. Kong stated that he does not know, he went to the City to get permission to convert the garage and nobody said anything to him about no longer being able to park in the front yard. He asked why nobody came out and told him that he had to remove his front yard parking. Somebody should have told him that or when he applied to convert the garage, then he would have known.

Mr. Ward addressed staff, all of the last year and the previous year the Board has had similar situations where there were garages that the applicants wanted to turn into living space or they wanted to continue to park in the front yard. If he remembers correctly the code says that it must lead to a viable parking location. The only way that they can establish that of keep it is if they have some sort of waiver, is that correct. Ms. Lane replied no, there is not and exception for a handicapped space. A handicapped space is allowed to be in a required yard that is an exception. But Mr. Ward is correct that if somebody removes an attached garage they are removing a required parking space. If they are going to remove a required parking space than they have to have another required parking space somewhere else like off of the alley or a driveway leading into the rear yard leading to a legal parking space. When we get an application in to convert an attached garage into living space then the applicant should be telling us where parking is going to be. Apparently that did not happen in 1994. Mr. Kong stated no, he converted the garage in 1990, in 1992 he put the asphalt in. Ms. Lane stated that nothing in the file says that in 1990 when they converted the garage that then needed to remove the driveway. But there have been other cases to do exactly that.

Ms. Bogen stated that although she understands that where the parking was is not part of this, there is a garage in the back so could they park in the side yard since there is a garage back there now. She does not think that where the parking spaces were a part of that driveway going to the rear yard. She was wondering if there is a way to widen their driveway and park in the side yard. Ms. Lane stated that it is a legal driveway leading to a legal parking space in the back yard. They could park on the driveway but it would be tandem and in order to get the cars out from the back yard the cars in the driveway would have to be moved. The site plan submitted indicate that the driveway is only 12 feet wide. There is an unimproved alley to the east of this site but she thinks that the neighbor is currently using that. Mr. Kong replied yes, a lot of the neighbors are doing the same thing. All the neighbors along there are parking in the front yard, his house is 57 years old, but some of the neighbor's homes are new and they are still parking in the front yard. He stated that he had to prove that the parking space has been in use for the last 10 years continuously, in finding one. Mr. Kong submitted a photo showing the parking space in existence for 57 years. He stated that he has been parking in the front yard for 27 years since he converted the garage in 1990. Ms. Bogen stated that the staff finding did find that the parking space has been there for at least 10 years. That is not a problem. There are just other findings that are not met here. Mr. Kong stated that the parking in the rear yard is for the tenant who live downstairs, not for the upstairs. The three tenant cars are parked in the rear yard, before the city came through the driveway was 16 feet wide so he could park two cars there and one car in the back. Right now we have to squeeze into the back

there and we have to call each other to move the cars in order to get out of the parking area. This has become a very hard condition for them. His request is to be allowed to put the parking slab back in because it will not change anything in the area. The parking has been there for 59 years and he has lived there for 27 years and nobody has complained about it.

There was no opposition present at the hearing.

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

Ms. Maddox asked what the maximum width of an allowed driveway. Ms. Lane replied that we do not have a maximum width, the minimum is eight feet, but the maximum width of a curb cut is 12 feet unless it is closer than 30 feet to an attached garage, than it can be the width of the garage and four feet wider on each side than the width of the garage if the garage is not within 30 feet than the driveway has to narrow down to 12 feet.

Mr. Ward stated that he understands their plight, it seems that they were caught in a whole lot of circumstances. The applicant has been here for a really long time, this isn't something new. The Board is going to see more of these because of this Ground Round deal. He is going through this himself is seems that the improvement to his property was allowed but at that time the code did not have a provision for parking in the front yard. The applicant has been parking there and has continued to park there and it was not an issue, nobody would have seen it, or found it until this happens. Unfortunately he took it out thinking he was doing the right thing but he wound up hurting it.

Ms. Bogen stated that she wants to ask staff about the letter from Karen Zacho to the applicant, which is in the file, said that when they got rid of the garage, City policy require that they remove parking in front of the area previously used for the garage to be eliminated. She is wondering if there is anything in the file that shows that there was anything sent to them, or handed to them telling them about this policy. Ms. Lane stated that this is a policy today, but she does not think that anybody thought about it back when the conversion was made. There isn't any evidence that anyone told the applicant as a part of that permit and they should have. Back then she does not think that staff that were looking at the plans were thinking that far ahead. Ms. Bogen stated that on the site plan that was approved on 11-13-1992 said that there were three spaces so possibility the front yard did not have the front yard spaces at that point. Ms. Lane replied that is correct. Ms. Albert commented that she heard the applicant stated that they were going to meet with the District Council 5, she is wondering of the outcome from that hearing will help the Board in its decision here to get feedback from the Council. Ms. Bogen stated maybe we should continue this for two weeks. Mr. Ward stated he has a real problem with the City's hiring a contractor and then the contractor talking to the homeowner, they have already been contracted by the City and it had nothing to do with the homeowner, and they are taking money from the residents that is creating a hardship, the property owner paid the contractor cash. That is why his initial question was who paid for this, the homeowner paid for this. This whole Ground Round thing is forcing homeowners to deal with this in a way that is causing major problems. He stated he is going for this himself and he can totally sympathize with the homeowner who was trying to do the right thing. He does not think that the contractor should have done this and should have left this alone, he could have done this after this job is completed.

Mr. Ward moved to continue the matter for 2 weeks until 12-19-16 so the applicants can attend the District Council meeting. Ms. Maddox instructed the applicant's to attend the District Council meeting tomorrow, 12-6-16 and come back in two weeks with the Council's recommendation.

Ms. Albert seconded the motion, which passed on a roll call vote of 6-0.

Submitted by:

Sean Westenhofer

Approved by:

Thomas Saylor, Secretary