MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, DECEMBER 19, 2016
Continued from December 5, 2016

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

ABSENT: Gloria Bogen*
*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 reviewed the case history from the previous hearing with a recommendation for denial based on findings 1b, 2, 3, 4 and 6. He explained that the applicants attended the District Council meeting the night after our last hearing and the letter from the District Council is on page 82 of the packet, they state that they voted to support the variance request. Ms. Maddox stated that she did see the letter, unfortunately some of the District Councils elaborate and some just say yes or no. Mr. Westenhofer stated that there are no additional notes to the District Council response. He stated that he did try to reach out to the District Council but has not received a call back from them. Ms. Maddox stated that the letter does not tell the Board why they voted to approve, it would have been really helpful, a lot of the district councils will tell the Board the details of the vote and the discussion and go down the findings which makes it more helpful for the Board.

No further correspondence was received opposing the variance request.

One letter was received from District 5 supporting the variance request.

Ms. Maddox recalled the applicant asking if he had anything new to add.

The applicant **Gnia D. Kong**, 312 Wheelock Parkway East, was present. Mr. Kong stated that he attended the District Council meeting with his wife and told them exactly what he has told the Board. Mr. Kong submitted photos of the cement slab showing that it was in place since the home was built. The second page shows the 16.5 by 20 foot area once the cement was removed. He explained that they purchased the home in 1989 and it was already a rental duplex. There was no parking space in the rear yard there was a gravel space with a gravel drive to access the rear. They converted the garage into living space in 1990. They added asphalt in the rear yard to park three cars. Then in 2000 his son-in-law built the garage in the rear yard. They replaced a window three or four years ago, during all this time nobody told them that they should not be parking in the front yard. Five times they have applied for permits to work on the home and they were never told that they were not allowed to park in the front yard. In September of this year, 2016, when the construction came through putting in the new sidewalk and bike path and nothing was wrong until October 27, 2016, when we removed the cement from the front yard. Ms. Maddox stated that we have already heard all of this. We were just wondering what the District Council had to say. Mr. Kong stated that he told the District Council what he has told this Board and the

District Council asked him questions which he answered, they then made a motion and approved his request to keep the front yard parking.

Ms. Maddox asked Mr. Kong how many people were in attendance at the District Council meeting. Mr. Kong replied probably more than in attendance here today (we had around 20-30 people in the audience.)

There was no opposition present at the hearing.

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

Mr. Ward stated that one of the things that the Board was discussing last time was that this whole process seemed to fall through the cracks. We know what the ordinances are but it seemed that every single time something changed at this particular residence ordinances were passed after the fact rather than before. Mr. Ward stated that he thought that Ms. Lane was going to check to see when the ordinance passed that no longer allowed parking in a front yard unless the parking space lead to a legal parking space. What date did that change? Ms. Lane stated that the permit was taken out in 1990 to de-convert the garage to living space and at that time the code had the same regulations, that parking was not allowed in a front yard unless it lead to a legal parking space. She continued that she did not check to see when the section of code was changed to say parking can be allowed if it is on an approved driveway leading to a legal parking space. She is not sure when that was changed. She does not remember that specific question. Ms. Maddox stated that she thinks that the question might have been when the applicant's applied the person that they applied with at the City did not tell them that they would not be able to park in the front yard once the garage was converted to living space. Mr. Ward stated he may have been wrong. Ms. Lane stated that there was not any condition added to the permit that required them to remove the driveway. We now tell applicants when converting a garage to living space that they have to remove the driveway and can no longer park in the front yard.

Mr. Ward stated that the asphalt shown in the photo on the second page submitted by the applicant is as wide as the driveway leading into the property. It is his understanding that there is a bicycle pathway that is going in front of the house and is part of this whole Ground Round Project on Wheelock Parkway. He asked what part of this is driveway and what part is access. Ms. Lane stated that the second page is what was done after the public works crew came through and redid the driveway and the applicant requested the removal of the cracked cement, they wanted new material in that location because it was cracked. However, the contractor just removed the cement. Part of the curb cut and driveway does lead around the front of the house to the parking in the back yard down the hill. Mr. Ward asked if it was part of the City contract to replace the driveway and access. Ms. Lane replied that is correct. Mr. Ward asked if the area to the right of the driveway where there is Class IV is that going to be landscaped and it has nothing to do with the driveway. Ms. Lane stated that she is not sure what the applicant intends to do with that space. Mr. Ward stated had the applicants left the cement in place it could have stayed. Ms. Lane stated that when a City street reconstruction project goes through, DSI (Department of Safety & Inspections) staff does go out to make sure that the curb cuts that are in existence leads to legal parking spaces. This property was one that was identified as parking in a front yard that did not lead to a legal parking space. DSI staff did inform the Public Works staff that this property was a problematic property. Mr. Ward stated that what he gets from this is that even if the cement had not been removed, this would still might have been brought before this Board, but maybe at a later date, because of the existing ordinance today. Ms. Lane replied correct. Mr. Ward stated that sheds a whole lot of new light on this.

Mr. Saylor moved to deny the variance and resolution based on findings 1b, 2, 3, 4 and 6.

Ms. Porter asked about the letter from the District Council, is this Board taking the letter into account. Ms. Maddox stated that we always take into account the District Council's recommendation. Some District Councils really point out why they approved the variance request. If they go through the findings and give this Board findings as to why it should be approved it makes things a whole lot easier and if they do not the Board still has to go with what we feel is right in our findings and staff's findings. We have to be able to come up with findings and that is the problem here.

Mr. Ward stated for discussion every time something was done on this property the driveway access to the rear yard, the building of the garage the applicant was not informed of any of the changes to code. He stated that he is very sympathetic to the applicant's plight and his condition because it seems that everything fell through the cracks. The fact that the workers that were contracted by the City, when the homeowner asked them if they would remove the cement and took money from the homeowners to do this complicates this. He thinks this might be much easier if the pad was still in place and the Board would hear this like we have heard many others and they have been required to remove the parking pad. But in this case it has happened in reverse that pad that was there they want to keep, but they were not informed and it seems that the Board is being punitive but we are not. He stated that he is torn about which way to vote.

Mr. Saylor stated that he shares Mr. Ward's frustration with this, however, at the same time he needs information that allows him to get beyond findings 1b, 2, 3, 4, and 6 all recommending denial. He feels that he has to go with the staff recommendation unless someone can override those findings.

Mr. Ward seconded the motion, which passed on a roll call vote of 4-3(Porter, Rangel Morales, Ward).

Submitted by:

Sean Westenhofer

Approved by:

Thomas Saylor, Secretary