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Title: Memorializing City Council action taken on October 16, 2013 denying the appeal by David M. King to modify the conditions of a variance granted for property at 1075 Lombard Avenue.

Sponsors: Dave Thune

Indexes:

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Attachments:

Date	Ver.	Action By	Action	Result
11/18/2013	1	Mayor's Office	Signed	
11/13/2013	1	City Council	Adopted	Pass

Memorializing City Council action taken on October 16, 2013 denying the appeal by David M. King to modify the conditions of a variance granted for property at 1075 Lombard Avenue.

WHEREAS, in 2011, the Board of Zoning Appeals ("BZA") in BZA File No. [11-253290 <tel:11-253290>](#) granted a rear-yard setback variance to David M. King for property commonly known as 1075 Lombard Avenue in order to construct a new two-car attached garage accessed from the alley. The variance was granted subject to conditions which in pertinent part included that "the existing driveway and curb cut in the front yard must be completely removed and replaced with a new curb and gutter. . . . The front yard must then be sodded with grass." King built the new garage and removed the original front driveway and garage door. However, King did not remove the curb cut and replace it with a curb and gutter as ordered. Instead, King proceeded to reconstruct a new front-yard parking space accessed by the Lombard curb cut. In a letter dated July 1, 2013 King was ordered to remove the curb cut and front-yard parking space by August 15, 2013; and

WHEREAS, thereafter, in BZA File No. [13-222492 <tel:13-222492>](#), a modification of the variance was requested pursuant to Leg. Code § 61.108 which permits the BZA to revoke variances or impose additional conditions, modify existing conditions, or delete conditions placed on variances which are deemed by the BZA to be unnecessary, unreasonable or impossible of compliance; and

WHEREAS, on September 16, 2013, the BZA, pursuant to Leg. Code § 61.601, duly conducted a public hearing on the modification application where all interested persons were afforded the opportunity to be heard; and

WHEREAS, at the closed of the September 16, 2013 public hearing, the BZA, based upon evidence presented at the public hearing, as substantially reflected in the minutes, duly moved to deny the modification request based upon the following findings of fact set forth in BZA Resolution No. [13-222492 <tel:13-222492>](#):

1. The original driveway lead to a legal parking space which in this case, was the tuck-under garage. This use was legal under the zoning code. However, once the legal parking space (the tuck-under garage) was removed, the driveway became illegal because it no longer leads to a legal parking space. Therefore, the nonconforming use section cited by the applicant is not applicable in this case.

2. At the 2011 BZA public hearing for the garage variance, the applicant argued against the proposed condition to remove the driveway and install a new curb and gutter as a condition of approval of the variance. After hearing the applicant's testimony, the BZA moved to approve the variance with that condition attached. The applicant did not appeal the BZA's decision.

3. The applicant constructed the new garage, removed the tuck-under garage, regraded the front yard and constructed a new parking space where the original driveway was located in the front yard, even though it did not meet the condition of the variance granted.

WHEREAS, on September 24, 2013, in BZA File No.13-236560 and pursuant to Leg. Code § 61.702(a), King duly filed an appeal with the City Clerk from the BZA's determination and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA in this matter; and

WHEREAS, on October 16, 2013 and pursuant to Leg. Code § 61.702(b) the City Council duly conducted a public hearing on the King appeal where all interested parties were given an opportunity to be heard and the Council upon the close of the hearing and after deliberating on the matter having heard all the statements made and having considered the applications and reports of staff and all the records, minutes and resolutions of the BZA in this matter does hereby

RESOLVE, the Council hereby affirms the BZA's September 16, 2013 decision denying King's request to modify the conditions of the 2011 variance in this matter as King has failed to show any error in fact, finding, or procedure in this matter and, accordingly, the Council adopts the BZA's findings in this matter as its own
FURTHER RESOLVED, that King's appeal be and is hereby denied; and, be it

FINALLY RESOLVED, the City Clerk shall mail a copy of this resolution to David M. King, Brian D. Alton, Esq., the Zoning Administrator, the Planning Commission and the BZA.