



Legislation Details (With Text)

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Title: Memorializing City Council action taken on September 2, 2015, granting the appeal of D.J. Thees from a decision of the Board of Zoning Appeals regarding a side-yard lot line variance at 1916 Fairmount Avenue.

Sponsors: Chris Tolbert

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
9/24/2015	1	Mayor's Office	Signed	
9/23/2015	1	City Council	Adopted	Pass

Memorializing City Council action taken on September 2, 2015, granting the appeal of D.J. Thees from a decision of the Board of Zoning Appeals regarding a side-yard lot line variance at 1916 Fairmount Avenue.

WHEREAS, on June 1, 2015, Inga S. Oelschlager ("Applicant"), in DSI Zoning File No. 15-126189, made application to the Board of Zoning Appeals ("BZA") for a variance from Leg. Code § 66.231's fifty (50) foot minimum lot-width requirement for a parcel zoned R3 and commonly known as 1916 Fairmount Avenue which is legally described as Underwoods First Addition to Lots 7 and Lot 8 Blk 3, [PIN No. 042823340052]; and

WHEREAS, the 1916 Fairmount parcel at present is 99.99 feet wide on the street side and 100.17 feet wide on the alley side. The Applicant is seeking the variance in order to divide the parcel in two to create a new, separate, and buildable parcel in the east portion of the existing parcel; and

WHEREAS, the Applicant proposed that the side-yard lot line which would divide what would become the "old" westerly lot - the site of an existing home - from the "new" easterly lot, would contain, approximately 28 feet back from the front-yard lot line, a 9 foot wide x 36 foot long "jog." The purpose of this jog is to preserve's the old lot's side-yard setback requirements specifically for the existing home's sunroom and thereby eliminating any need to remove the sunroom which would otherwise encroach into the side-yard setback area; and

WHEREAS, the westerly side-yard lot line jog also results in the width of the “new” easterly lot being reduced below the minimum 50-feet required for R3 zoning lots to 40.98 feet along the length of the jog. The jog therefore required a side-yard lot line variance of 9.02 feet. Exhibit 1, entitled “Certificate of Survey,” prepared for and submitted by the Applicant in DSI Zoning File 15-126189, delineates the proposed side-yard lot line jog; and

WHEREAS, on June 22, 2015, the BZA duly conducted a public hearing on the said variance application where all persons interested were afforded an opportunity to be heard and, upon the close of the hearing and following discussion of the matter where it was argued that the Applicant’s variance request met the six findings required under Leg. Code §§ 61.601, a motion to grant the lot-width variance was duly made and then failed on a 3-3 roll call vote; and

WHEREAS, again on June 22, 2015, the BZA continued to debate the matter and upon further discussion a subsequent motion was made to deny the requested variance for the reasons stated the BZA’s staff report dated June 9, 2015 which recommended denial of the variance because it failed to meet the findings required under Leg. Code §§ 61.601(c) and .601(f) which motion, likewise, failed on a 3-3 roll call vote; and

WHEREAS, the BZA then duly moved to leave the matter open and continued it to its July 6, 2015 meeting so that all seven BZA members could be present to consider the matter; and

WHEREAS, on July 6, 2015, the full BZA took up the Applicant’s variance request and additional testimony both for and against the said application was offered. The public hearing was then closed and a motion to deny the variance for the reasons set forth in the BZA’s June 9, 2015 staff report was duly made which failed on a 3-4 roll call vote; and

WHEREAS, again on July 6, 2015, the BZA continued to debate the matter and upon further discussion together with proposed amendments to the findings required under Leg. Code §§ 61.601(c) and .601(f) that the application met all the findings required, a subsequent motion was duly made to grant the variance which was approved on a 4-3 roll call vote for the following reasons as set forth in BZA Resolution No. 15-126189, dated July 20, 2015:

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

This site currently consists of two lots running north - south. The applicant is proposing to subdivide the property and create a new parcel on the east side of the existing house, suitable for a single-family home. For the purpose of this variance, staff has labeled the site as Parcel "A" and "B". Parcel "A" is 50 by 124-feet and would be the location of the existing house. Parcel "B" is 40.98 by 124-feet and would eventually be the site of a future single family dwelling for the owner and his elderly mother. Elevation plans were provided for the future single family dwelling as part of the variance application. His intent is to sell the existing dwelling once he moves into the new one.

The subdivision would result in a conforming Parcel "A" and a nonconforming Parcel "B" that is 40.9 feet wide (50 feet required) in the mid-section. The applicant is requesting a variance of the lot width for parcel "B".

The R3 one-family residential district is intended to "provide for an environment of predominantly low-density, one-family dwellings." This request would allow the creation of an infill lot that would be developed for a single family dwelling. This request is consistent with a purpose and intent of the Zoning Code Sec. 60.103 to provide housing choice. This finding is met.

2. The variance is consistent with the comprehensive plan.

This proposed north-south lot split would be consistent with the pattern of this block. Creating new housing units on infill lots is consistent with goals of the Housing Chapter of the Comprehensive Plan which in Strategy 3.4 states: [Infill housing should meet] "... design standards so that infill housing fits within the context of existing neighborhoods and is compatible with the prevailing pattern of development". The infill house proposed would fit into the neighborhood character. This finding is 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.

The existing house on Parcel "A" encroaches over Parcel "B" by 3 feet. Although the lot can be split evenly north - south without a variance, it would require the removal of the one-story sunroom located on the east side; an enormous expense and unreasonable action that would unnecessarily alter the character of the house. The proposed jog is a creative way to retain the sunroom and the integrity of the house. These are practical difficulties in complying with the code. This finding is met.

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

Had the existing house been constructed within the confines of the Parcel "A", the lot could have been subdivided without the requested variance. This is a circumstance unique to the property not created by the applicant. This finding is met.

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

A single family dwelling is a use permitted in this zoning district. The requested variance if granted would 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.

The new proposed lot meets the required lot width in the front and the rear of the building except in the middle;

this request will not visually alter the character of the area. This finding is met.”

WHEREAS, on July 23, 2015, Daniel J. Thees, pursuant to Leg. Code § 61.702(a), duly filed under DSI Zoning File No.15-144105, an appeal from the BZA’s determination in this matter and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, on September 2, 2015, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on the said appeal where all persons interested were given an opportunity to be heard; and

WHEREAS, The City Council, having heard the statements made, and having considered the variance application, the BZA staff report, the minutes and record of the BZA’s hearings as well as the findings contained in BZA Resolution No. 15-126189, does hereby

RESOLVE, that the Council of the City of Saint Paul reverses the decision of the BZA in this matter, based upon the following findings of the City Council:

The Council finds that the BZA erred by approving the requested variance specifically based upon its findings under Leg. Code § 61.601(c) regarding economic considerations and Leg. Code § 61.601(f) regarding the character of the neighborhood as set forth in BZA Resolution No. 15-126189. The Council instead finds that the BZA’s staff report and recommendation dated June 9, 2015 are better fact-based conclusions and the Council hereby adopts them as its own in support of its decision. For example, the BZA’s finding no. 3 [Leg. Code § 61.601(c)] is objectively premised alone on economic considerations: the “enormous” expense of removing the sunroof in order to comply with the zoning code’s side-yard setback requirements. Economic considerations alone do not constitute practical difficulties. Further, under the circumstances, whether or not the home’s character would be altered by removing the sunroom is subjective at best. In contrast, the staff report’s finding no. 3 properly recognizes that the Applicant’s desire to retain the sunroof is driven by choice, not practical difficulty.

AND, BE IT FURTHER RESOLVED, for the reasons noted above, the appeal of Daniel J. Thees and is hereby granted; and, be it

FINALLY RESOLVED, That the City Clerk shall immediately mail a copy of this resolution to the Applicant Inga Oelschlager, to the appellant Daniel J. Thees, to the Zoning Administrator, the Planning Commission and the BZA.