



## Legislation Details (With Text)

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**Title:** Memorializing the City Council's decision to grant the appeal by Wayne Fischer of a decision of the Board of Zoning Appeals denying a variance needed for a 1,251 square foot detached garage in the rear yard of the property commonly known as 1560 Lincoln Avenue.

**Sponsors:** Chris Tolbert

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
6/13/2017	1	Mayor's Office	Signed	
6/7/2017	1	City Council	Adopted	Pass

Memorializing the City Council's decision to grant the appeal by Wayne Fischer of a decision of the Board of Zoning Appeals denying a variance needed for a 1,251 square foot detached garage in the rear yard of the property commonly known as 1560 Lincoln Avenue.

WHEREAS, Wayne Fischer, on or about December 20, 2016, applied to the Board of Zoning Appeals ("BZA") under BZA File No. 16-109677 for a variance from the strict application of Legislative Code § 63.501(f) which limits the maximum size of accessory structures to 1,000 square feet; and

WHEREAS, Mr. Fisher desired to construct a 1,251 square-foot detached garage in the rear yard of his duplex property commonly known as 1560 Lincoln Avenue, [PIN No. 032823320111] and legally described as Summit View Lot 8 Blk 6 Macalester-Groveland; and

WHEREAS, on January 18, 2017, the BZA was unable to conduct the duly noticed public hearing because it lacked the required quorum whereupon the matter was reset for hearing on January 30, 2017; and

WHEREAS, on January 30, 2017, the BZA, in accordance with the requirements of Leg. Code § 61.601, duly conducted a public hearing on the said application where all persons present were afforded an opportunity to be heard and, at the close of the public hearing and following discussion on the matter, a motion to approve the requested variance was made which failed on a 3-1 vote as there were only 4 BZA commissioners in attendance and Leg. Code § 61.203(b) provides "that no [BZA] action may be taken unless at least four (4) members vote in favor of such action" whereupon the BZA moved to continue the matter to February 13, 2017 although staff advised that it was likely that the February 13, 2017 meeting would only have four commissioners present; and

WHEREAS, on February 13, 2017, the BZA continued the matter to February 27, 2017; and

WHEREAS, on February 27, 2017, the public hearing was reopened which time the applicant advised regarding contacts with the neighborhood district council and the BZA discussed its previous layovers whereupon the public hearing was closed and the BZA discussed the matter further including the lack of previous meeting minutes whereupon the BZA duly moved to continue the matter to March 13, 2017; and

WHEREAS, on March 13, 2017, the matter was taken up by the BZA and, based upon all the facts, files and evidence including the report and recommendation of staff, the BZA moved to deny the requested variance based upon the following findings of fact, as set forth in BZA Resolution No. 16-109677 and adopted herein by reference:

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

The building on this parcel is a legal nonconforming duplex with a two-car detached garage and surface parking next to the detached garage in the rear yard. The applicant is proposing to remove the existing garage and construct a new 1,251 square foot, three-car garage that would include space for storage. The proposed accessory structure would be located in the rear yard, with the garage doors facing south and would meet the three-foot setback requirement from the east and west property lines. However, it would be 251 square feet over the maximum 1,000 square feet is allowed under the zoning code for accessory buildings, hence the requested variance.

According to the applicant, the new accessory structure would be used for parking and storage, but it would have no heating, plumbing or amenities that would make it more easily converted for commercial purposes. Furthermore, the applicant has indicated that it will not be used for commercial purposes. The proposed accessory structure would be constructed to complement the existing house. Provided the proposed new attached garage matches the exterior finish of the house, provided gutters and downspouts are installed on the east and west side of the new attached garage to direct water runoff away from the adjacent properties and provided the new attached garage is constructed as shown on the plans submitted with this application, the proposed garage would be an improvement of the property consistent with the purpose and intent of the zoning code to conserve and improve property values. This finding is met.

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

The requested variance is consistent with the goals of the Comprehensive Plan by allowing the existing property owner in a “stable and affluent neighborhood” to reinvest in their property by maintaining its vitality, preserving and promoting an established neighborhood (Strategy 2.1 of the Housing Plan) and to provide off-street parking in order to lessen congestion in the public streets. 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.*

According to the applicant, there are two challenges in providing parking elsewhere. The first is that there is a two-hour parking restriction on both sides of Lincoln Avenue. The second is the existence of a boulevard bump-out in front of the house.

However, this property is a duplex; only three off-street parking spaces are required. Two spaces are available in the existing detached garage and a third space in the rear yard next to the garage. Therefore, there is no practical difficulty to support this finding. This finding is not met.

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

Building a larger accessory building is a choice not a circumstance unique to the property. 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.*

An accessory structure is a use permitted in all zoning districts. The requested variance if granted would not change the zoning classification of this property. This finding is met.

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

The majority of properties on the block have two-car garages; two properties have three-car garages at 1539 Lincoln Avenue and 1545 Goodrich Avenue. A three-car garage would not change or alter the character of the surrounding area and this finding is met.”

WHEREAS, on March 15, 2017, and pursuant to Leg. Code § 61.702(a), Mr. Fischer duly filed with the City Clerk under Council File No. 17-019853, an appeal from the BZA’s determination and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, on April 5, 2017, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on the said appeal where all interested parties were given an opportunity to be heard and, the City Council, upon closing the public hearing and having heard all the testimony and having considered the variance application, the report of staff, and all the records and minutes in the file, including BZA Resolution No. No. 16-109677, does hereby

RESOLVE, that the Council of the City of Saint Paul hereby finds that the BZA erred in its findings No.’s 3 and 4, as set forth in BZA Resolution No. 16-109677, as follows:

1. With respect to BZA Finding No. 3, the Council finds as follows: The applicant has established that there are practical difficulties in complying with the 1000 sq. ft. limit on accessory structures in R4 districts. This owner-occupied duplex is fronted by Lincoln Ave which is designated one-way and has a City-installed street “bump-out” in front of the property so that street parking in front of the duplex is prohibited. The subject property also abuts church campus and is located nearly at the intersection of Snelling and Lincoln where, on the west side of Snelling, is located a large college campus. Although the zoning code requires a minimum 3 parking spaces for this duplex, it is not unusual that the occupants of a residential unit will have two or more vehicles. The impact of the nearby institutional uses on parking, together with the “bumpouts” on Lincoln, together serve to reduce parking availability for this duplex which, based upon its location relative to these impacts, constitutes a practical difficulty for this particular property. Accordingly, the Council finds that the BZA erred in its finding No. 3.

2. With respect to BZA Finding No. 4, the Council finds as follows: The applicant has established that there are circumstances unique to this property regarding complying with the 1000 sq. ft. limit on accessory structures in R4 districts that were not created by the applicant. The lack of available on-street parking for this property, as noted in Finding No.3, was not created by the applicant and constitutes a circumstance unique to this property that was not created by the applicant. The applicant’s desire to provide additional garage space for parking, shelter and security is a slightly larger structure is reasonable in light of the noted lack of on-street parking and the parking congestion. Accordingly, the Council finds that the BZA erred in its finding No. 4.

AND, BE IT FURTHER RESOLVED, for the reasons set forth above, the appeal by Wayne Fischer from the BZA’s decision set forth under BZA File No. 16-109677 is hereby granted; and

BE IT FURTHER RESOLVED, that the variance requested by Mr. Fischer to construct a 1,251 square foot detached garage on property commonly known as 1560 Lincoln and as legally described in the file is hereby granted based upon the six findings set forth in BZA Resolution 16-109677 with finding’s no.’s 3 and 4 to be

modified as noted above and further provided that the garage is built in conformance with the application for variance and the site plan on file with the Zoning Administrator; and

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Wayne Fischer, the Zoning and Planning Administrators, the Planning Commission and the BZA.