



## Legislation Details (With Text)

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**Title:** Memorializing the City Council's decision regarding the appeal of Dorian P. Nelson from decisions of the Board of Zoning Appeals denying building height and sidewall articulation variances for property at 1946 Wellesley Ave, granting the appeal for the building height variance but denying the sidewall articulation variance appeal.

**Sponsors:** Chris Tolbert

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
12/9/2019	1	Mayor's Office	Signed	
12/4/2019	1	City Council	Adopted	Pass

Memorializing the City Council's decision regarding the appeal of Dorian P. Nelson from decisions of the Board of Zoning Appeals denying building height and sidewall articulation variances for property at 1946 Wellesley Ave, granting the appeal for the building height variance but denying the sidewall articulation variance appeal.

WHEREAS, on August 16, 2019, Dorian P. Nelson ("Applicant"), pursuant to Leg. Code § 61.601, duly applied to the Board of Zoning Appeals ("BZA") under BZA File No. 19-075934 for zoning code variances for property commonly known as 1946 Wellesley Ave [PIN: 092823220087] and legally described as Academy Heights Lot 2 Blk 6, for the purposes of constructing a two-story addition on the rear of the existing single-family home located on the said property which is in an R4 zoning district: and

WHEREAS, the Applicant requested the following variances: (1) Building Height: 23'10" proposed, 22' permitted for a variance of 1'10;" (2) Side-Yard Setback: 3.1 ft. proposed due to its existing "nonconforming" status, 4' required, resulting in a 9' continuation of the 3.1 nonconforming side yard setback; (3) Sidewall Articulation: articulation is required for all sidewalls greater than 35' in length, existing sidewall is 27', 50' sidewall proposed for a variance of 15'; and

WHEREAS, on September 9, 2019, the BZA duly conducted a public hearing on the requested variances where the Applicant and all interested persons were afforded an opportunity to be heard; and

WHEREAS, upon the close of the public hearing and based upon all the evidence presented at the public hearing, including the report and recommendation of the BZA staff dated September 9, 2019, as substantially reflected in the minutes, the BZA duly moved to:

(1) approve the sidewall articulation variance for the west sidewall of the proposed addition based upon the following findings, as set forth in BZA Resolution No. 19-075934, which is incorporated by reference; and

(2) deny the requested height variance as well as the requested east sidewall articulation variance of the proposed addition based upon the following findings, as set forth in BZA Resolution No. 19-075934,

which is incorporated by reference:

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

The applicant is proposing to construct a two-story addition to the rear of an existing single-family dwelling. The proposed project consists of expanding the family and dining rooms along a kitchen on the first floor, and creating a master suite, additional bathroom and bedrooms on the second floor. This proposal also includes the construction of a detached, three-car garage; however, no variances are required for the accessory structure.

For properties zoned R1-R4 in Planning District 15, in which this property is located, sidewalls that are greater than 35' in length must have an articulation in the form of a structural projection of at least one (1) foot in depth and six (6) feet in length, and must extend from grade to the eave.

The existing house is 26' in length and with the addition, the total length of the house would be 50'-10". The west sidewall would be articulated, however, there is no sidewall present on the east side, resulting in the requested variance.

The zoning code states that the minimum required side yard setback is 4'; the house has a nonconforming side yard setback of 3.1' on the west side and the addition would continue along the existing setback, resulting in the requested variance.

The maximum building height allowed for properties zoned R4 in Planning District 14 is 22'. The applicant is proposing a building height of 23'-10" resulting in the requested variance.

This project would be an improvement to the existing house and help meet the needs of a growing family. This is consistent with Sec. 60.103 of the Zoning Code to conserve and improve property values. This finding is met.

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

The proposed addition is an improvement to the property that would support the rehabilitation of Saint Paul's existing housing stock. The requested variance is consistent with the Comprehensive Plan by allowing the existing property owner in an "established neighborhood" to reinvest in his property and maintain its vitality and preserve and promote the neighborhood (Strategy 2.1 of the Housing Plan). 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.*

As stated above, the existing dwelling has a nonconforming west side setback of 3.1'. The addition would need to be set back .9' from the west property line and articulated because the new sidewall would be greater than 35' in length. It would be unreasonable to require a small additional setback and a sidewall articulation on the new addition. Requiring both provisions could compromise the interior layout of the addition and create an undesirable aesthetic on the west exterior wall. This finding is met for the side yard setback.

The intent of the sidewall articulation ordinance is to prevent long, monotonous sidewalls. The west sidewall would be doubling in length without a break, and with the nonconforming setback at 3.1', creates a structure that is out of scale with the adjacent properties. The applicant could propose a design that is more to scale with the surrounding properties and build along the nonconforming setback.

The additional building height would have a negative impact on the west given that the structure already has a nonconforming setback of 3.1'. Generally, the maximum height allowed is 22' at a 4' side yard setback. The proposed addition is too massive when considering its proximity to the adjacent property line.

While the applicant has stated the desire for building a taller addition along a nonconforming side setback without an articulation, there is so practical difficulty that demonstrates the need for a larger addition without any architectural breaks, or a height that meets the requirement. This finding is not met.

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

The placement of the house 3.1' from the east side property line is a circumstance unique to the property not created by the landowner. This finding is met.

However, there is no circumstance unique to the property that would warrant a taller building height and a waiver of the articulation requirement. This finding is not met for the building height and waiver of the articulation requirement.

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

Single family dwellings are an allowed use in the R4, single family dwelling zoning district. This finding is met.

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

There are several different architectural styles of dwellings in this neighborhood. The construction of this addition would be out of scale with the adjacent homes in terms of height and overall building mass, however, it would not alter the character of the neighborhood. This finding is met."

WHEREAS, on September 18, 2019, the Applicant, pursuant to Leg. Code § 61.702(a), duly filed an appeal from the BZA's September 9, 2019 decision and requested a public hearing before the City Council for the purpose reviewing the BZA's decision in this matter; and

WHEREAS, on October 16, 2019, the Council of the City of Saint Paul duly conducted a public hearing on the Applicant's appeal where the Applicant and all interested persons were afforded an opportunity to be heard; and

WHEREAS, upon the close of the public hearing and based upon all the evidence presented during the public hearing, including the Applicant's appeal information, the record before the BZA, the report and recommendation of BZA staff dated September 9, 2019 and BZA Resolution No. 19-075934, as substantially reflected in the BZA's record and minutes, the Council of the City of Saint Paul does

HEREBY RESOLVE, that the Applicant has demonstrated error in BZA findings no.'s 3 and 4 with respect to the requested height variance for the following reasons:

1. With respect to finding no. 3, the Council finds that the Applicant's desire to maintain conformity in ceiling heights between those in the new addition and those in the existing house is a reasonable desire that is prevented by the 22-foot height limit applicable in planning district 14. Because the Applicant's original home was built with a non-conforming side-yard setback and because the Applicant's desires to build a new addition

to the rear of the original non-conforming home, as opposed to tearing down the original home and building a new, larger home in its place, the applicant is unable to take advantage of the zoning code's height rules for side yard setback which allow a 1-foot increase to the height of the home for each one-foot the home is setback from the side yard, up to a maximum of 35-feet. This constitutes a practical difficulty. The Council further finds that the height of the new addition - 23 feet, 10 inches - will not be appreciably noticeable because the increased height of the new addition is considerably set back from the public right of way and will be effectively screened from view when viewed directly from the public street. The Council therefore finds that Applicant has met the requirements under Finding 3 for the requested height variance.

2. With respect to finding no. 4, the Council also finds error in the BZA's decision to deny the requested height variance. The Council again notes that Applicant is seeking a height variance in order to build an addition to an existing home instead of to tearing the existing home down and building a new and larger home in its place. Here again and as noted under the Council's finding no. 3 above, the original siting of the existing home on the subject property is a circumstance that is unique to this property that was not created by the Applicant. The Applicant is unable to avail itself to the height increase allowed based upon side-yard setback because the applicant is bound by the existing circumstances of side-yard setback of the existing home. The Council therefore finds that Finding no. 4 is therefore met with respect to the requested height variance.

AND, BE IT FURTHER RESOLVED, notwithstanding the Council's decision above to grant the requested height variance, the Council also finds that there was no error on the BZA's part in denying the east sidewall articulation variance request. The Council notes that granting the requested east sidewall variance will result in a sidewall that will be approximately 50 feet in length. The Council further notes that reducing the mass and monotony of a 50-foot long sidewall was the intent and purpose of the sidewall articulation requirement under Leg. Code § 66.234 as applied to residential homes in planning district 14. The Council would finally note from the BZA's records that that the homes on either side of the Applicant's property both feature sidewall articulations. For these reasons, the Council denies the requested sidewall articulation variance as the Applicant has failed to demonstrate any error on the part of the BZA as to its facts, findings or procedures as they relate to the east sidewall articulation variance request

AND, BE IT FURTHER RESOLVED, based upon the findings and decisions of the Council in this matter, that BZA Resolution No. 19-075934 shall be amended to reflect the Council's findings as set forth above to grant the Applicant's requested height variance. The Council accordingly also adopts as its own findings no.s' 1, 2, 5 and 6 as set forth in BZA Resolution No. 19-075934 with respect to granting the requested height variance.

AND, BE IT FURTHER RESOLVED, that the Council, based upon its findings above, hereby denies the Applicant's east sidewall articulation variance request and hereby adopts as its own the findings set forth in BZA Resolution No. 19-075934 with respect to denying the east sidewall articulation variance.

AND, BE IT FINALLY RESOLVED, that a copy of this resolution shall be immediately mailed to the Applicant and copies provided to the zoning administrator, the building official, the planning commission and the BZA.