



Legislation Details (With Text)

File #: RES 20-1749 **Version:** 1

Type: Resolution **Status:** Passed

In control: City Council

Final action: 12/16/2020

Title: Memorializing the Council's decision to grant an appeal by Suebue LLC from a decision of the Board of Zoning Appeals which had denied SueBue LLC's request for rear-yard setback and lot coverage variances in order to construct a new single-family home at 1493 Highland Parkway.

Sponsors: Amy Brendmoen

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Date	Ver.	Action By	Action	Result
12/28/2020	1	Mayor's Office	Signed	
12/16/2020	1	City Council	Adopted	Pass

Memorializing the Council's decision to grant an appeal by Suebue LLC from a decision of the Board of Zoning Appeals which had denied SueBue LLC's request for rear-yard setback and lot coverage variances in order to construct a new single-family home at 1493 Highland Parkway.

WHEREAS, on August 31, 2020, Michael Buelow, d/b/a Suebue LLC ("Applicant"), duly applied to the Board of Zoning Appeals ("BZA") under BZA File No. 20-069826 for variances from the strict application of the Legislative Code in order to construct a one-story, single-family dwelling with an attached garage on the Applicant's property commonly known as 1493 Highland Parkway and legally described as Harkness Sunnyslope Lot 34 [PIN: 102823330150]; and

WHEREAS, the Applicant's property is zoned R4 and is located planning district 15. The Applicant's building plan, as proposed, required two variances: (1) Rear-yard setback. 25-feet required; 1 foot proposed for a variance of 24 feet. [Leg. Code § 66.231]. (2) Lot coverage. 40% maximum; 40.2% proposed for a variance of 0.2% (17.8 square feet). [Leg. Code § 66.232]. In a report dated September 9, 2020, which was provided to members of the BZA and the Applicant, BZA staff recommended approving both variances for the reasons stated therein; and

WHEREAS, on September 21, 2020 the BZA, in accordance with Leg. Code § 61.601, duly conducted a public hearing on the Applicant's variance applications, the said hearing being conducted remotely pursuant to the various Executive and Emergency Orders in effect at the time as it had been deemed, due to the Covid-19 pandemic, neither practical nor prudent to conduct "in-person" hearings and, accordingly, as provided by law, members of the BZA and BZA staff in attendance participated remotely as did the Applicant with members of the public being afforded the opportunity to be heard by submitting, no later than noon of the said hearing date, written testimony for the BZA's consideration and inclusion in the hearing record and, further, were also afforded the opportunity to audibly monitor the hearing proceedings as well as provide verbal testimony which was duly recorded and retained as required by law by the BZA's secretary; and

WHEREAS, following the close of the September 21, 2020 hearing, the BZA considered the Applicant's variance requests and, following its discussions and deliberations on the hearing testimony, the report and recommendation of staff and the Applicant's submissions, the BZA, on a 4-3 vote, denied the Applicant's requested variances based upon the following reasons stated under findings No. 3 and No. 6, as set forth below and in BZA Resolution No. 20-069826 which is incorporated herein by reference:

"1. The variance is in harmony with the general purposes and intent of the zoning code. The requested variances to allow the proposed one-story, single-family dwelling that will be setback 1' from the rear property line with a lot coverage that is 0.2% larger than allowed will create a building that will have matching aesthetics with several other properties on this block. The previous house on the lot required variances of the sidewall articulation and side yard setback requirements in order to construct the proposed addition. The new house conforms more to the zoning code than the previous house did since it incorporates the required sidewall articulation and meets the side yard setback without the need for a variance. The reconstruction also improves the economic viability of the neighborhood and the city and aligns with Sec. 60.103 of the Zoning Code to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community and to conserve and improve property values. This finding is met for both variance requests.

2. The variance is consistent with the comprehensive plan. The reconstruction of this single-family dwelling is an improvement to the property, which is consistent with Strategy 2 of the Housing Plan in the 2030 Comprehensive Plan that aims to reinvest and develop properties in order to maintain desirability. This finding is met for both variance requests.

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 applicant elected to remove the foundation of the building on the site when the applicant chose to demolish the building entirely. Accordingly, there no longer is a practical difficulty in constructing the newly proposed building in a manner that meets required setbacks. Avoiding inclement weather when entering or leaving a property is not a practical difficulty. This finding is not met for both variance requests.

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

Towards the sound end of the property (which is the front of the house), the grade slopes downward towards the front property line, with an approximate 9.4% change in grade. The change in grade towards the front of the property coupled with the homeowner's need for an accessible entryway, house, and garage with covered entry are unique circumstances to the property not created by the landowner. This finding is met for both variance requests.

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 with an attached garage are a permitted use in this zoning district. The requested variances will allow a slightly larger house to be constructed closer to the rear property line than allowed. No unpermitted uses will be created with the requested variances. This finding is met for both variance requests.

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

The applicant's proposal will alter the essential character of the neighborhood: no other home in the area surrounding the proposed house has a garage with a 1-foot setback. This finding is not met for both variance requests."

WHEREAS, on October 1, 2020, the Applicant duly filed an appeal from the BZA's September 21, 2020 decision pursuant to Leg. Code § 61.702(a) alleging errors on the part of the BZA when it denied Applicant's variance requests based on Findings No. 3 and No. 6 as set forth in BZA Resolution No. 20-069826 and requested a public hearing before the City Council; and

WHEREAS, the said appeal was assigned Council File No. ABZA 20-6 and set on for a public hearing before the Council on October 21, 2020; and

WHEREAS, on October 21, 2020, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on the Applicant's appeal which, again pursuant to various Executive and Emergency Orders in effect at the time due to the Covid-19 pandemic, was conducted remotely as it had also been deemed neither practical nor prudent to conduct "in-person" city council hearings: accordingly, as provided by law, Council members and City staff attending the hearing did so remotely with City Staff presenting the matter to the Council and the Appellant and all members of the public desiring to do so being afforded the opportunity to submit, no later than noon the day before the said hearing date, written testimony for the hearing record and for the Council's consideration, in addition to also being afforded the opportunity to audibly monitor the Council's hearing proceedings; and

WHEREAS, following the conclusion of the October 21, 2020 public hearing, the Council duly moved to continue its deliberations on the matter to October 28, 2020 in order to further review all the files, recommendations and the testimony that had been submitted in this matter; and

WHEREAS, on October 28, 2020, the Council took up its consideration of the Applicant's appeals and, following discussion and deliberation on the matter, the Council of the City of Saint Paul DOES HEREBY

RESOLVE, that the Council of the City of Saint Paul finds that the Applicant has met its burden of demonstrating that the BZA had erred in its denial of the Applicant's variance requests based upon findings No. 3 and No. 6 in BZA Resolution No. 20-069826. The record shows that the findings required to approve the Applicant's variance applications were supported by the facts and findings set forth in the September 9, 2020 BZA staff report which had recommended approval of both variances based upon the reasons stated. Accordingly, the BZA's denial of the requested variances based upon the reasons stated under findings No. 3 and No. 6 of its Resolution were, under the circumstances of this application, in error; AND,

BE IT FURTHER RESOLVED, for the foregoing reasons, the Applicant's appeal is hereby granted and the Council, to support this decision, adopts as its own the reasoning and recommendation set forth in the BZA staff report dated September 9, 2020 BZA and incorporates them herein reference, thereby approving all the

variances requested by the Applicant in its August 31, 2020 variance application; AND

BE IT FINALLY RESOLVED, that upon adoption and approval, a copy of this Memorialization Resolution shall be immediately provided to the Applicant, to the BZA, and to the Zoning and Planning Administrators.