



Legislation Text

File #: RES 12-2210, **Version:** 1

Memorializing City Council action taken October 3, 2012 granting an appeal by Alan C. Young of a decision of the Board of Zoning Appeals which denied a driveway width variance at 654 California Avenue East.

WHEREAS, on or about June 19, 2012, Alan C. Young, made application to the Board of Zoning Appeals ("BZA") in DSI-Zoning File No. [12-071778 <tel:12-071778>](#) for two variances from the provisions of the zoning code under Leg. Code §§ 63.105(a) and .316 in order to legalize a new deck and a new driveway constructed without building permits on property commonly known as 654 California Avenue East, (PIN No. [202922120164 <tel:202922120164>](#)) and legally described as Ufton Grove Plat 1 Vac Alley Accruing & Lot 23 Blk 6); and

WHEREAS, the requested variances were necessitated because the applicant constructed the new deck within the property's required front-yard and constructed the driveway at a width too wide for a front yard under the zoning code. The deck was constructed with a 36-foot setback as measured from the street. The zoning code requires a 44-foot setback. This necessitated the applicant's request for an 8-foot setback variance for the deck. The driveway was constructed in the front yard at a width of 18-feet. The zoning code limits the width of driveways in the front yard to 12-feet. This necessitated the applicant's request for a 6-foot driveway width variance; and

WHEREAS, the BZA duly conducted a public hearing on July 23, 2012, where all persons interested were given an opportunity to be heard. Upon closing the hearing, the BZA determined that additional information was required from the applicant as well as the need for an inspection by City staff to determine whether the deck and driveway, built without proper building permits, complied with the building code. Accordingly, the matter was duly laid over to August 6, 2012 to afford the applicant an opportunity to provide the BZA with additional information and to permit an inspection of the property for building code compliance; and

WHEREAS, on July 31, 2012, the additional information had not yet been obtained and this matter, with written notice to the applicant, was further continued to August 20, 2012; and

WHEREAS, on August 20, 2012, based upon all the evidence presented at the public hearing as substantially reflected in the minutes, staff report, and the requested additional information, the BZA moved to approve the 8-foot front-yard setback variance for the deck but deny the variance requested for the driveway based upon the following findings of fact set forth in BZA Resolution No. [12-071778 <tel:12-071778>](#) which is incorporated herein by reference:

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

This finding is met for the deck. The applicant states that the original deck was such in bad shape that it became a safety concern for the family. He states that he was unaware that a building permit is required to replace an existing deck and proceeded with the rebuilding of the new deck in order to provide peace of mind for his family.

The new deck is 7 feet-5 inches from grade to the top of the railing, which according to the applicant, is the same height as the original deck. Just like the original deck, the new deck wraps around the north and west sides of the building. The new deck has two staircases on the west side.

The applicant has already applied for the required building permit. Provided that the deck is approved by the Building Inspector, it would provide a sense of security for the family consistent with the purpose of the code to promote and protect the public health and safety.

This finding is not met for the driveway width. The applicant states that the request for a larger driveway is due to the parking needs for his family since there is currently no garage or an off-street parking space on the property. Front yard parking is not consistent with the purposes and intent of the zoning code to maintain a uniform streetscape and to promote and protect the aesthetics, economic viability and general welfare of the community.

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

This finding is met for the deck. Although slightly larger than the original dilapidated deck, the new deck is an improvement of the property and a positive addition to the neighborhood. The Housing Chapter of the Comprehensive Plan encourages the renovation and rehabilitation of existing housing stock.

This finding is not met for the driveway width. The request for such a wide driveway for the purpose of parking as stated by the applicant counteracts the goal of the Comprehensive Plan to promote the aesthetics of the community.

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.*

This finding is met for the deck. The applicant states that the expansion of the deck is needed in order to cover the existing retaining wall which prevents rain water from getting into the basement. The newly constructed deck is a replacement of the original deck that was too old to be functional. This is a practical difficulty in complying with the provision which prevents the applicant from constructing the deck to protect the patio built for his family's enjoyment of the home. The applicant's request is reasonable and not driven solely by financial reasons.

This finding is not met for the driveway width. The applicant states that he has a large cargo van that he is required to have for work at Roto Rooter which takes up nearly half of the driveway, leaving little space for his wife's car. While this may be an inconvenience, it is not a practical difficulty to justify the request for such a large driveway.

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

This finding is met for the deck. This home was built in 1969 and the applicant has only owned it for the last four years. The expansion of the deck to cover the existing retaining wall which prevents water from getting in the basement is a circumstance unique to the property not created by the current landowner.

This finding is not met for the driveway width. The applicant has not demonstrated that there are unique circumstances that would make compliance with the driveway width requirement impractical or unreasonable.

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

This finding is met for both the deck and the driveway width. The requested variances, if granted, would not change or alter the zoning classification of the property.

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

This finding is met for both variance requests. Although slightly larger, the newly constructed deck does not appear out of character in the neighborhood since it is a replacement of the original deck. This request will not alter the essential character of the area. Property owners three houses to the east at 670 California Avenue East and owners of the adjacent parcel at 1650 Payne Avenue are comfortable with the applicant's request and have expressed their support by signing the applicant's petition recommending approval of the variance request for the deck. The applicant's variance application also includes two additional letters signed without a property address recommending approval of the variance.

There are a number of larger driveways in the immediate area which, unlike the applicant's driveway, lead to a garage. Nevertheless, those driveways are used for parking as intended by the applicant. Provided that the driveway work in the right-of-way is approved by the Department of Public Works, this request would not change the character of the area; and

WHEREAS, on August 30, 2012, the applicant, pursuant to Leg. Code § 61.702(a), duly filed an appeal with the City Clerk requesting a public hearing before the City Council for the purpose of considering the BZA's action denying the front-yard driveway width variance; and

WHEREAS, on October 3, 2012, pursuant to Leg. Code § 61.702(b) the Saint Paul City Council duly conducted a public hearing on the matter where all interested parties were given an opportunity to be heard; and

WHEREAS, the Council, having heard the statements made, having considered the variance application, the staff report, the record, minutes and the resolution does hereby;

RESOLVE, to reverse the decision of the BZA in this matter based upon the following findings of the Council:

The Council finds that the BZA erred in its findings No.'s 1, 2, 3, and 4 regarding denial of the driveway width variance. The Council finds, on balance, that granting the requested driveway width variance at this address will not undermine the general purpose and intent of the zoning code under finding No. 1. The driveway variance will facilitate off-street parking and therefore reduce demand for on-street parking especially during snow emergencies. Under finding No. 2, the Council finds that, consistent with the comprehensive plan, the driveway's width is not out of character with the scale of other driveways in the surrounding neighborhood. As off-street parking is required in all zoning districts, the applicant's addition of 2-feet to the existing 14-foot wide driveway facilitates the driveway's purpose of fulfilling the zoning code's off-street parking requirements in a reasonable manner consistent with finding No. 3. Finally, if an attached standard double garage were added to the existing home at the logical location, the zoning code permits driveways to be 4-feet wider than the garage door within 30-feet of the garage door. The applicant purchased the home as located. If the applicant or any other person were to build an attached standard double garage at the logical location, the vast majority of the driveway can be constructed within the required front yard at the same width constructed by the applicant without the need for a variance. This provision of the zoning code largely negates the necessity to meet this condition. Therefore, the Council finds that this circumstance, uniquely created by the zoning code and not by

the applicant, meets the spirit and intent of finding No. 4.

AND, BE IT FURTHER RESOLVED, that the appeal of Alan C. Young be and is hereby granted; and

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Mr. Young, the Zoning Administrator, the Planning Administrator and the Board of Zoning Appeals.