



## Legislation Text

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**File #:** RES 14-451, **Version:** 1

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Memorializing City Council action taken on January 15, 2014 to reverse the decision of the BZA and grant the appeal of Bill Bergmann on behalf of the owners of 576 Lincoln Avenue for two variances in order to convert the second floor of an existing two-car, two-story detached garage into a dwelling unit.

WHEREAS, Bill Bergmann, d/b/a/ Chatemac LLC, on behalf of the owners of certain real property legally described as Terrace Park Addition To the C E 1/2 Of Lot 28 And All Of Lot 29 Blk 6 [PIN: 012823320092] and commonly known as 576 Lincoln Avenue, duly applied to the Board of Zoning Appeals ("BZA") in BZA File No. 13-247876 for two variances from the strict application of Leg. Code § 66.231 (rear-yard building setback regulations) and Leg. Code § 63.207 (parking regulations) in order to convert the second floor of an existing two-car, two story detached garage into a dwelling unit; and

WHEREAS, the subject property is located in a RM2 zoning district which permits the establishment of a second residential dwelling unit on the same lot, provided; that the second residential unit structure maintains at least a 4-foot side-yard setback, maintains at least 12-feet of separation from the main dwelling unit structure, and is setback no less than 25-feet from the lot's rear property line. The zoning code (Leg. Code § 63.207) requires lots with two dwelling-units to provide at least three off-street parking spaces; and

WHEREAS, the garage/proposed second dwelling unit meets the zoning code's side-yard setback and main house separation requirements. However, because the garage is only setback 4-feet from the property's rear-yard line, a 21-foot rear-yard setback variance is required; and

WHEREAS, the two off-street parking spaces in the two stall garage does not meet the zoning code's 3 off-street parking space requirement and the applicant requested a one-car parking variance; and

WHEREAS, on November 25, 2013 and pursuant to Leg. Code § 61.60, the BZA duly conducted a public hearing where all persons present were afforded an opportunity to be heard and, upon closing the public hearing, the BZA, upon all the files and evidence presented at the hearing, as substantially reflected in the BZA's minutes which are incorporated herein by reference, moved to deny the requested variances based upon the following findings of fact set forth in BZA Resolution No. 13-247876 which shall also be incorporated herein by reference:

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

The homeowners purchased this property 6 years ago and are proposing to remodel the existing two-car garage into a second dwelling unit for their parents. Prior to constructing the existing garage in 2000, the previous homeowners applied for variances in order to construct a carriage house dwelling but subsequently withdrew their request. The garage was constructed under permit with a condition that it is not used as an additional living space or for commercial purposes.

However, it was constructed with a design that could lend itself for an additional unit on the property. It has a dormer with door cutouts, windows, heat, electricity, plumbing and sewer but has no access to the second floor. The applicant intends to build an exterior staircase to provide access to the second floor as part of the remodeling project and create a dwelling unit.

As a garage, the structure meets the required setback. However, the request to remodel the garage located 4 feet from the rear property line into a dwelling unit constitutes a principal structure and triggers the 25 foot rear yard setback requirement. This request would result in a non-conforming a rear yard setback for the proposed additional dwelling. It is not in keeping with a purpose and intent of the zoning code for the elimination of nonconforming uses of land in the city. This finding is not met for the rear yard setback variance.

There are currently two parking spaces available in the garage and according to the homeowners; their parents will not have a car while living on this property. Since the property is within walking distance of Grand Avenue where transit is available, additional parking is not necessary. This finding is met for the parking variance request.

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

The proposed second dwelling unit would accommodate the property owners' parents to provide convenient access for their care. Chapter 2.17 of the Comprehensive Plan calls for exploring, via a zoning study, the potential for accessory units in existing neighborhoods as a solution for the changing demographics, allowing the elderly to age in place while providing more affordable housing opportunities for singles and couples. Although the garage does not meet the required 25 foot setback, it already exists. This request to convert an existing building into living space for the homeowners' parents is consistent with the goal of the Comprehensive Plan stated above. This finding is met for the rear yard setback variance.

The Comprehensive Plan encourages providing off-street parking in order to lessen congestion the public streets. Since the homeowners' parents would not have a car while living on this property, the additional parking space is not necessary. This finding is met for the parking variance.

*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 garage is existing and there is no place on the lot where it could be relocated without a variance to meet the required 25 foot rear setback. The requested variance is reasonable and is based upon a desire to maximize the use of the accessory structure. This finding is met for rear yard setback variance.

In order to provide the additional off-street parking space, the playground would have to be removed, creating a difficulty for the homeowners to enjoy their rear yard. Additionally, the homeowners are concerned that adding more paved surface for parking could cause more water flowing into the alley where drainage issues already exist. These are practical difficulties in complying with the parking requirement without a variance. This finding is met for the parking variance request.

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

Had the property owners checked with the city prior to purchasing the property, they would have been informed about the condition of approval listed on the garage building permit which prevents the structure from being used as additional living space. The requested parking variance was triggered by the homeowners' desire to create the additional dwelling unit. These are circumstances created by the current homeowners and this finding is not 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.*

The requested variances if granted will not change the zoning classification of the property. This finding is met for both variance requests.

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

There are no garages in the immediate area with an exterior staircase leading to a dwelling unit above a garage and it appears that there are no dwelling units in garages in the immediate area. This request could change the character of the surrounding area. This finding is not met for the setback variance.

The applicant states that the homeowners would most likely be driving their parents around while they are living in the new unit, therefore, the parking variance request will not change the character of the area and this finding is met.”

WHEREAS, on December 6, 2013, Bill Bergmann, under BZA Zoning File No. 13-255-654 and pursuant to Leg. Code § 61.702(a), duly filed with the City Clerk an appeal from the BZA's November 25, 2013 decision and requested a hearing before the City Council for the purpose of considering the action taken by the BZA; and

WHEREAS, on January 15, 2014, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on Bergmann's appeal where all interested parties were given an opportunity to be heard; and

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

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

The Council finds that the BZA erred in its findings number 1 and 6 as they relate to the rear-yard setback and finding number 4 regarding the rear-yard setback and the parking variance. The Council finds no error in BZA findings number 2, 3, and 5 and hereby adopts those findings as its own for the purposes of this resolution.

With respect to BZA findings 1 and 6, the Council finds that requiring the existing garage to meet the RM2 25-foot rear-yard setback would result in a structure location that is inconsistent with the existing pattern of development in this neighborhood which is overwhelmingly characterized by garages located at the rear of the lots and generally abutting the alley. In this context, the requested 4-foot rear-yard variance to permit a second dwelling-unit on this property is not inconsistent with the general purpose and intent of RM2 zoning which is specifically intended “to provide for more extensive areas of multiple-family residential development” and the overall intent of the Zoning Code which includes “promoting and protecting the . . . aesthetics . . . of the community.” Reasonably analyzed, because this existing two-story garage will continue to serve the lot’s principal dwelling in its capacity as an “accessory structure,” the essential character of this garage is not diminished by the conversion of its existing second-story space into a second dwelling unit. On balance, the essential character of the neighborhood is not altered by access to the garage’s second-story via an exterior stairway whether the second story is used for a residential purpose or any other permitted purpose. The Council therefore finds that findings number 1 and 6 have been met.

With respect to finding number 4, notwithstanding the “condition” purportedly placed on the garage’s building permit in 2000 that “prevents the structure from being used for additional living space,” the Council notes that Leg. Code § 66.241 specifically allows for multiple residential buildings on the same zoning lot. While the 2000 building permit may have been originally obtained for the purpose of constructing a “carriage house,” for reasons not relevant here, a “carriage house” was not constructed: a two story garage was constructed instead. The Council therefore finds that the applicant’s subsequent purchase of this home with an existing two-story garage, located as it is on the lot and in a zoning district permitting more than one principal dwelling unit on the same zoning lot, to constitute a circumstance unique to the property not created by the applicant. The Council therefore finds that finding number 4 has been met.

With respect to the parking variance, the council finds that it is noteworthy that there is adequate room on the property to provide the required third parking space. In that light, granting a parking variance at this time does not foreclose the reality that the circumstances of the present occupants of this property will change or that the occupants of this property in the future will be different. Therefore it is entirely likely that the desire to add a third parking space will become expedient to whoever the occupants may be for any number of reasons. The Council finds that the subject property’s ability to comply with the present parking requirement in the future constitutes a reasonable basis upon which to conclude that there are circumstances unique to this property which allows the parking requirement to be met when doing so becomes expedient or beneficial without creating the types of hardship the BZA noted when it found that the requested variances met finding number 3.

AND, BE IT FURTHER RESOLVED, based upon the council’s new findings noted above, that the appeal of Bill

Bergmann be and is hereby granted for all the reasons set forth herein; and, be it

FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Bill Bergmann, the Zoning Administrator, the Planning Commission and the BZA.