



Legislation Text

File #: RES 17-574, **Version:** 1

Memorializing the appeal denial of Gnia Dua Kong to a decision of the Board of Zoning Appeals denying a front yard parking variance application for the property commonly known as 312 Wheelock Parkway East.

WHEREAS, Gnia Dua Kong, on November 14, 2016, duly applied to the Board of Zoning Appeals (“BZA”) under BZA File No. 16-099004, for a variance from the strict application of Saint Paul Legislative Code § 63.501(2) as it pertains to front-yard parking for that property legally described as Kavanagh Dawsons Addt To Stp No Part of Vac St And Fol Lots 17 18 Lot 19 Blk 1, [PIN: 192922110033] and commonly known as 312 Wheelock Parkway East which is located in an RT1 zoning district; and

WHEREAS, as a part of the City’s Grand Rounds Project, the said property was found to have a paved surface parking area in its front yard and that this parking area did not lead to a legal parking area which is, therefore, prohibited under the zoning code; and

WHEREAS, in a letter dated November 3, 2016, Ms. Kong was advised that the said front-yard parking area was illegal and that a variance would be required in order to render the parking space legal; and

WHEREAS, on December 5, 2016, the BZA pursuant to Leg. Code § 61.601, duly conducted a public hearing on Ms. Kong’s variance request and after extensive testimony, the BZA moved to lay the matter over until December 19, 2016 so that Ms. Kong could attend a district council meeting and report the district council’s recommendation back to the BZA; and

WHEREAS, at the BZA’s December 19, 2016 public hearings, Ms. Kong’s variance request was again taken up by the BZA and, upon the close of the said hearing and after considerably deliberation, duly moved to deny the said variance application in light of all the evidence presented at the public hearing including the report of staff, based upon the following findings of fact as set forth in BZA Resolution No. 16-0990044 as follows:

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

This variance request is in keeping with the Guidelines for Variance Requests to Allow Parking within a required yard adopted on February 6, 2012, by the Board of Zoning Appeals as follows:

a) *If the parking space is already there, the parking space has been in existence and used continuously for the past ten (10) years.*

The driveway has been in existence since 1957 when the duplex was built with an attached two-car garage. The existing surface of the driveway is asphalt. This finding is met.

b) *The applicant can demonstrate hardship in that there is no feasible alternative location for the parking space. For the purpose of this condition hardship shall include: a disability by a resident of the property that qualifies for a State Handicap Parking Permit, topography that makes rear yard parking impossible, the lack of alley access to the property, or insufficient lot size to provide off-street parking in a non-required yard.*

The applicant states that this duplex is half rental and half owner occupied. One of the two units has been a rental since the current owner bought the property in June of 1989. There is an unimproved alley along

the east side of the lot, but access to the rear yard parking is by an asphalt driveway on the applicant's property that is accessed from Wheelock Parkway. The rear parking area behind the duplex has the capacity to store 6 vehicles in a stacked position, plus one in the garage. This is a reasonable alternative to the parking in the front yard. This finding is not met.

- c) *The applicant submits a petition signed by 2/3 of property owners within 100 feet of the property along either side of the subject property and from property across the street stating that they have no objection to the parking.*

The applicant was required to obtain 5 signatures and they received 8. The applicant has submitted a sufficient number of signatures. This finding is met.

- d) *The parking space is paved or the applicant agrees to pave the space within 120 days.*

The asphalt for the parking space in front of the duplex was removed by the street contractor at the request of the applicant, who expected that it would be replaced. The applicant intends on paving the portion of the driveway that was removed in the Spring of 2017. This finding is met.

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

The applicant already meets the goal of the Comprehensive Plan to lessen congestion on public streets because they already have parking availability for up to 7 spaces in the rear yard behind the duplex. The applicant's request to maintain the front yard parking is for convenience only. This finding is not 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.*

This building is a legal conforming duplex. The use requires three off-street parking spaces and the parking located in the rear of the property can accommodate at least 6 vehicles in a stacked position. Currently there is sufficient room for the homeowner and tenants to park in the rear yard behind the duplex. There is no practical difficulty to support this finding and this finding is not met.

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

There is currently parking in the rear available for more than the minimum number of space required. There are no unique circumstances to this property to justify the requested variance. 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.*

Off-street parking is a use permitted in this zoning district. The requested variance if granted will not change the zoning classification of the property. This finding is met.

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

There are other properties within the surrounding area that also have existing parking in the front yard. However, these properties have driveways leading to garages in the front or have parking that leads to the sides of the house. Parking in a driveway that leads to legal parking is allowed under the zoning code.

The applicant's property would be the only one located on this block face that has front yard parking, which could change the character of the area. This finding is not met."

WHEREAS, on December 27, 2016 and pursuant to Leg. Code § 61.702(a), Ms. Kong duly filed with the City Clerk an appeal from the BZA's determination in this matter under BZA File No. 16-110774 and requested a hearing before the City Council for the purpose of considering the actions taken by the said Board; and

WHEREAS, on January 18, 2017 a public hearing was set on before the City Council. However, as the matter had been calendared by mistake and no one appeared to be heard either for or against the appeal, the matter was duly continued to February 1, 2017; and

WHEREAS, on February 1, 2017 the matter was again considered by the Council and again no one appeared to be heard either for or against the appeal and the matter was again continued for a public hearing on March 1, 2017; and

WHEREAS, on March 1, 2017, a public hearing on the said appeal was finally conducted by the Council pursuant to Leg. Code § 61.702(b) whereby all interested parties were given an opportunity to be heard and, upon the close of the public hearing, the Council, having heard the statements made, and having considered the variance application, the report of staff and all the records, and minutes; does hereby

RESOLVE, that the Council of the City of Saint Paul hereby upholds the decision of the BZA in this matter there being no showing by the Appellant, Ms. Kong that the BZA erred in its decision to deny Ms. Kong's variance application and the Council, in support of its decision, hereby adopts as its own and incorporates by reference, the findings of the BZA as set forth in BZA Resolution No. 16-110774; and

BE IT FURTHER RESOLVED, that the appeal of Gnia Dua Kong, based upon the Council's findings above, is hereby denied; and

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to the Appellant Ms. Kong, the Zoning Administrator, the BZA, and the Planning Commission.