Legislation Text

File #: RES 19-989, **Version:** 1

Memorializing the City Council decision to deny an appeal by Virginia Kraus and Joseph Westwater from a decision of the Board of Zoning Appeals approving rear and side-yard variances associated with a petition to split a zoning lot for property commonly known as 5 Heather Place.

WHEREAS, on March 4, 2019, Jeffrey S. Arundel ("Applicant"), under File No. 19-016696, duly applied to the Board of Zoning Appeals ("BZA") for variances from the zoning code's residential lot standards pertaining to rear and side-yard setbacks (Leg. Code § 66.231) and for accessory buildings (Leg. Code § 63.501(b)) in order to split an existing zoning lot commonly known as 5 Heather Place [PIN: 012823320119] being legally described as GOODKING TERRACE PART OF LOTS 3 & 4 ELY OF FOL DESC L BEG AT NELY COR OF SD LOT 3 TH SELY ALONG ELY L THEREOF 53.06 FT TH SLY AT AN ANGLE OF 153 DEG 43 MIN 56 FT TO CENTER OF TOP STONE OF STAIRWAY TH WLY ALONG TOP OF SD STAIRWAY L THEREOF THE SLY ALONG SD; and

WHEREAS, there are two buildings on the subject lot: a principal residential structure and an accessory structure which, in addition to containing its own residential unit, also provides required parking for the principal structure. The Applicant proposes to split the subject lot into two separate lots - Parcel "A" - the lot on which the existing principal structure is located and Parcel "B" - the lot on which the existing accessory structure is located; and

WHEREAS, upon splitting the subject lot into two sperate parcels, what was the original lot's [Parcel A] principal structure will remain a principal structure and what had been the lot's accessory structure will now become the principal structure on the newly created lot [Parcel B] and, in becoming the principal structure on Lot B, must meet all setback requirements for lots in an R2 zoning district; and

WHEREAS, to meet the R2 zoning district setback requirements for the principal structure on Parcel B, the Applicant requested the following variance: Rear-yard setback. 25-foot minimum required: 5.1-foot existing, 19.9-foot variance requested; and

WHEREAS, with the loss of parking for the principal structure on Parcel A through the creation of Parcel B, the Applicant requested an additional variance for Parcel A to construct a new accessory building - a garage - on Parcel A. In R2 zoning districts, accessory buildings or uses must not be established in a required yard except a rear yard. The Applicant proposed to construct a garage in what would become the side-yard of Parcel A. The Applicant therefore requested the following variance: Side-yard setback. 8-foot minimum required. 5-feet proposed for a variance request of 3-feet; and

WHEREAS, on March 25, 2019, the BZA, pursuant to Leg. Code § 61.601 duly conducted a public hearing on the said variance applications where all interested persons were afforded an opportunity to be heard; and

WHEREAS, upon the conclusion of the hearing and following discussion of the matter, the BZA based upon all the records including the staff report dated March 18, 2019 which recommended approval of the variances and all the evidence presented during the public hearing, as substantially reflected in the minutes, the BZA duly moved to approve the requested variances based upon the following findings as set forth in BZA Resolution No. 19-016696 which is incorporated herein by reference:

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

This property is located in a R2, single family zoning district, where only one principal building is allowed on a zoning lot. Currently, there are two buildings on this lot; one is a detached accessory building that includes a three-car garage that provides parking for both buildings. The other structure is the principal building that is connected via a skyway to another dwelling on the abutting lot to the west, 7 Heather Place.

The applicant is proposing to subdivide the lot north-south so that each building is on its own separate parcel. The accessory building would be on the lot labeled as “Parcel A”, and the principal building on the lot labeled as “Parcel B” on the site plan. As a result of the proposed lot split, the accessory building on “Parcel A” would now be considered a principal building. Additionally, the applicant is proposing to construct a detached, two-car garage accessed from Heather Drive for building on Parcel B.

The zoning code requires a minimum rear yard setback of 25’ for principal buildings. The structure on Parcel A has an existing setback of 5.1’ from the rear property line, resulting in the requested rear yard variance.

Additionally, an accessory structure may not be established in a required yard except a rear yard. There is a required minimum side yard setback of 8’ and the proposed garage would be set back 5’ from the side property line, resulting in the requested variance for Parcel B.

The proposed lot split is in harmony with the general purposes and intent of the zoning code Sec. 60.103 to:

1. Increase housing choices.
2. Lessen Congestion in the public streets by providing off-street parking.
3. Conserve and improve property values.

This finding is met for all requested variances.

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

The requested variances are 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 for all requested variances.

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.*

Currently, this parcel has two structures, both of which contain dwelling units. The proposed lot split would result in the creation of a new single family structure on Parcel A. Both lots would have sufficient lot area and frontage that would not be compromised as a result of the lot split. Because the existing accessory building is already established, it is difficult to create a new lot that meets all the zoning code requirements without the variance request.

Furthermore, the purpose of setbacks is to provide adequate access to light and air between properties. The rear property line of the proposed Parcel A shares the side yard of the abutting condominium apartments at 500 Grand Hill to the east.

There is an attached garage to the condominium building that sits lower than the residential portion of the

building and the accessory building on Parcel A; it will not affect the light and air access between the structures or negatively impact the livability of the units on the west side of the condominiums. This is a reasonable variance request that cannot be accomplished without the requested variance.

The existing principal building on Parcel B has a significant change in grade from the front of the house to the rear. Ideally, garages are constructed in the rear yard along an alley. There is no available alley to this property and the significant changes in grade make it difficult to construct a garage anywhere else on the property.

This finding is met for all requested variances.

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

   The location of the existing accessory building on Parcel A and its relation to the rear property line and the grade changes on Parcel B are circumstances unique to the property not created by the landowner. This finding is met for all requested variances.

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

   The proposal would not result in a use that is not permitted in the R2, single family residential zoning district. This finding is met for all requested variances.

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

   The requested variances resulting from the proposed lot split will not alter the essential character of the neighborhood. Any additions or modifications to the exterior of the property must comply with all Heritage Preservation Commission's guidelines."

AND, WHEREAS, on April 4, 2019, Virginia Kraus and Joseph Westwater ("Appellants"), in File No. 19-029437 and pursuant to Leg. Code § 61.702(a), duly filed an appeal from the BZA's March 25, 2019 decision and requested a hearing before the City Council regarding the BZA's grant of the said variances; and

WHEREAS, on May 1, 2019, the Council of the City of Saint Paul, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing as requested by the Appellants where all persons interested were afforded an opportunity to be heard; NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of Saint Paul, based upon all the files and records in this matter together with all the testimony received during the public hearing hereby denies the Appellants' appeal in this matter. The Council finds that the Appellants have not met the burden of demonstrating that the BZA committed any error regarding its facts, findings, or proceedings in this matter in approving the Applicant's requested variances. Accordingly, the Council hereby adopts as its own the findings of the BZA, as set forth in BZA Resolution No. 19-016696, in support of this decision; and

BE IT FURTHER RESOLVED, that the City Clerk shall immediately mail a copy of this Resolution memorializing the Council's decision to deny the Appellant's appeal to the Applicant, the Appellants, the Planning Commission, the Heritage Preservation Commission, the Zoning Administrator and the Board of Zoning Appeals.