

**CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 15-188987
DATE: February 17, 2016**

WHEREAS, Manuel J. Cervantes has applied for a variance from the strict application of the provisions of Section 68.402(b)(4) of the Saint Paul Legislative Code pertaining to the River Corridor setback standards. Variances of the River Corridor setback standards in order to construct a two-story garage addition onto the bluff side of the existing detached garage and to legalize an outdoor fireplace constructed in the rear yard without prior approval. A setback of 40 feet from the bluffline is required; a setback of 35.8 feet is proposed for the garage addition and a setback of 26 feet is existing for the fireplace for variances of 4.2 feet and 14 feet respectively in the RT1 zoning district at 310 Ryan Avenue. PIN: 062822320026; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on February 17, 2016 pursuant to said application in accordance with the requirements of Section 61.601 of the Legislative Code; and

WHEREAS, the Saint Paul Board of Zoning Appeals based upon evidence presented at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

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

This property is located in a Heritage Preservation District and consists of a two-story single family dwelling and a one- and one-half story, two-car detached garage and an outdoor fireplace in the rear yard. The rear of the property is adjacent to the bluff along Shepard Road. The applicant wants to construct a 408 square foot (24' x 17'), two-story addition onto the bluff side of the existing garage. According to the applicant, this addition would accommodate studio space on the second floor and additional parking space on the first floor but the original garage would remain as is.

The zoning code specifies that Bluff development shall take place at least forty (40) feet landward of all blufflines. The existing outdoor fireplace was constructed approximately 7 years ago 26 feet from the bluffline and the proposed garage addition would be located 38.5 feet from the bluffline, hence the requested variances.

The garage addition does not require the removal of any trees or vegetation or cause soil disturbance in the bluff area. Additionally, due to the tall pine trees in the rear yard, the proposed garage addition and the fireplace would not significantly visible from the bluff area.

The garage addition and the fireplace conform to the provisions of Section 68.601, the findings necessary for variances in the River Corridor because no water would drain into the bluff area; it will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment.

Since the property is located in a Heritage Preservation District, the applicant is working with the Heritage Preservation Commission (HPC) staff to come up with a building design that meets the historic guidelines.

Among purposes and intent of the zoning code is to promote safety and to protect the existing and potential recreational, scenic, natural and historic resources. Another goal of the zoning code is to promote safety. Provided the a “spark arrester” is installed on the fireplace to protect adjacent properties and provided the building is designed to drain water away from the bluff and away from adjacent properties, this request will not negatively affect these goals.

The construction plans submitted as part of the requested variances indicate that the garage would have a toilet and a sink. However, the zoning code does not allow a garage to be used for commercial purposes or as additional living space. Provided that the garage addition and the outdoor fireplace are approved by the HPC and the garage is not used for commercial purposes or as additional living space, they would be an improvement of the property and will have a positive impact in the neighborhood consistent with the purposes and intent of the Zoning Code Sec.60.103 in conserving and improving existing property values. This finding is met.

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

The applicant states that the family owns several vehicles including a classic car that needs to be stored indoors during the winter. The proposed garage addition allows the applicant to park the family’s cars in a weather-tight structure away from the elements and the fireplace is a necessary amenity for outdoor activities during the cold weather. Both the garage and the fireplace are an improvement of the property and the garage would also provide off-street parking, consistent with the goals of the Comprehensive Plan to lessen congestion in the public streets and to improve property. This finding is 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.*

The requested variances are due to the bluff cutting diagonally across the back of the applicant’s property, thereby creating a practical difficulty to meet the 40 foot setback requirement from the bluffline. This is a reasonable request that cannot be accomplished without the requested variances. This finding is met.

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

The bluff cutting diagonally into the applicant’s property is a circumstance unique to the property not created by the current owner. This finding is met.

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

A garage and an outdoor fireplace are permitted uses in this zoning district. The requested variances 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.*

Most of the building addition would meet the 40 foot required setback from the bluffline except a small area of the garage (a 50 square foot area) due to the bluff slanting landward toward the applicant property. Additionally, due to the tall trees pine trees in the rear yard, the elevation of this property, both the existing fireplace and the garage are barely visible from Shepard Road; the view and the character of the area will not be significantly altered. This finding is met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the provisions of Section 68.402(b)(4) are hereby waived to allow a setback of 35.8 feet from the bluffline for the garage addition and a setback of 26 feet from the bluffline for the outdoor fireplace *subject to the following conditions: 1) The applicant obtains HPC approval and the garage constructed as approved by HPC. 2) The garage is not used for commercial purposes or as additional living space. 3) A "spark arrester" is installed on the fireplace to protect adjacent properties* on property located at 310 Ryan Avenue; and legally described as Riceirvines Add B26 4146 53 Subj To Esmts The Fol; Ex Nely 15 Ft That Part Of Lot 11 Lying Nwly Of A Line Run From A Point On Sw Line Of & 6 Ft Se From Nw Cor Of Lot 11 To A Point On Ne Line Of & 23.1 Ft Se From Ne Cor Of Lot 12 Also Nely 4.86 Ft Of Lot 3; in accordance with the application for variance and the site plan on file with the Zoning Administrator.

MOVED BY: Ward
SECONDED BY: Wilson
IN FAVOR: 4
AGAINST: 0

MAILED: February 18, 2016

TIME LIMIT: No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two

(2) years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of the approval, unless the zoning or planning administrator grants an extension not to exceed one (1) year.

APPEAL: Decisions of the Board of Zoning Appeals are final subject to appeal to the City Council within 10 days by anyone affected by the decision. Building permits shall not be issued after an appeal has been filed. If permits have been issued before an appeal has been filed, then the permits are suspended and construction shall cease until the City Council has made a final determination of the appeal.

CERTIFICATION: I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on approved minutes of the Saint Paul Board of Zoning Appeals meeting held on February 17, 2016 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

SAINT PAUL BOARD OF ZONING APPEALS

**Debbie M. Crippen
Secretary to the Board**