

★ Roll Call Number

Agenda Item Number

61

Date May 18, 2009

Request from Dan Parker, on behalf of David and Kelsey Parker, requesting an amendment to the Zoning Ordinance which they believe necessary for the financing and sale of their home at 1331 Mattern Avenue.

Moved by _____ to

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VCLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

Rauh, Diane I.

From: councilSpeak@dmgov.org
Sent: Wednesday, May 13, 2009 5:00 PM
To: parker9000@msn.com
Subject: Request to Speak
Attachments: City Attorney Letter Page 1.jpg

Registration Form to Speak at City Council Meeting

To: The Honorable Mayor and Members of the City Council
City of Des Moines, IA
C/O City Clerk

I/We *Dan Parker on behalf of David and Kelsey Parker*, hereby request permission to speak at the Des Moines City Council Meeting of *Monday, May 18, 2009*, regarding

Current setback requirements preventing the sale of primary residence. Requesting a variance on a future event, but current policy does not allow variance on FUTURE event.

Name: David Parker

Address: 1331 Mattem Ave

Daytime Phone: (515) 707-7883

Email Address: parker9000@msn.com

Procedural Rules of Des Moines City Council

Part III. Agenda

Rule 16. Citizen Agenda Requests.

Any citizen may request the right to have an item placed on the Agenda (including a request to speak) by filing such request in writing with the City Clerk prior to noon on the Wednesday preceding the Council meeting.

Part V. Citizen Participation

Rule 27. Citizen's Right to Address Council.

Persons other than Council Members shall be permitted to address the Council only upon specific Agenda Items.

Rule 28. Manner of Addressing Council.

A person desiring to address the Council shall step to the podium, state his or her name, address, and group affiliation (if any) and speak clearly into the microphone.

Rule 29. Time Limit on Citizen's Remarks.

Citizens shall be limited to five minutes speaking time per item, unless additional time is granted by the presiding officer. Total citizen input on any subject under Council consideration can be limited to a fixed period by the presiding officer. A majority vote of the Council may extend the time limitations of this rule.

March 19, 2007

Dave Nelson
WHITFIELD & EDDY, PLC
213 North Ankeny Blvd, Suite 100
Ankeny, IA 50023

Re: Nonconforming zoning status of 1331 Mattern Avenue

Dear Mr. Nelson:

The property at 1331 Mattern Avenue in the City of Des Moines is a 50 foot wide by 51 foot deep parcel containing a single family dwelling that was constructed in, or about, 1923. The property is considered legal non-conforming under the City of Des Moines zoning regulations. That means that the property and the dwelling thereon are believed to have conformed with the zoning regulations in existence at the time the parcel was created and the dwelling was constructed, but the parcel and dwelling do not conform with the current zoning regulations.

The property is zoned to the "R1-60" Single-Family Low-Density Residential District. The regulations for that District impose the minimum requirements for a single family dwelling identified below. However, the property at 1331 Mattern Avenue qualifies as a "lot of record" created prior to July 16, 1965, and is eligible for the benefit of the special exception to the normal district regulations under Section 134-1296 of the Zoning Ordinance. The relevant requirements for a single-family dwelling in the "R1-60" District and for this particular lot under the special exceptions under Section 134-1296 are as follows :

Bulk Regulation	"R1-60" District Regulations	Sec. 134-1296 Regulations
Minimum Lot Area	7,500 sq feet	no minimum
Minimum Lot Width	60 feet	no minimum
Minimum Front Yard	30 feet	30 feet
Minimum Side Yards	7' each side -15' total	5' each side - 15' total
Minimum Rear Yards	30 feet	10.2 feet

When the minimum front, side and rear yards are removed from the parcel at 1331 Mattern Avenue, it leaves a maximum building envelope that is 35 feet wide (50' - 15'), and 10.8 feet deep (51' - 30' - 10.2'). This building envelope is too small for a new single family dwelling. Any single-family dwelling constructed in the City of Des Moines under a permit issued after August 27, 1984, must have minimum horizontal dimensions of 20 feet. See, Sections 134-342(1)(a) & 134-412(1). The special provisions for a "lot of record" do not alter this requirement.

March 19, 2007
page 2

For the reasons set forth above, the Community Development Staff correctly determined that if the existing single family dwelling at 1331 Mattern Avenue was ever destroyed to an extent of 60% or more of its replacement cost at the time of destruction, it could not be rebuilt "by right" without complying with the current front, rear and side yard setbacks. See. Section 134-1352(c). Furthermore, since any dwelling constructed upon the parcel in compliance with the required setbacks would violate the 20 foot minimum horizontal dimension requirement, the Community Development Staff correctly determined that the parcel at 1331 Mattern Avenue cannot be redeveloped "by right" with a new single family dwelling.

I have used the term "by right" in the summary above to distinguish what a property owner is allowed to do in every case by obtaining an administratively approved building permit, and what can be done by seeking appropriate relief from the Board of Adjustment. Under Iowa Law and the Zoning Ordinance of the City of Des Moines, the Board of Adjustment is empowered to grant variances from the regulations in the Zoning Ordinance where necessary to avoid unnecessary hardship. This power is specifically addressed in Section 123-64 of the Zoning Ordinance as follows:

Sec. 134-64. Powers and duties.

The board of adjustment shall have the power and duty to:

(2) Grant a variance in the regulations of this chapter that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the regulations will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. To establish unnecessary hardship a property owner must show all of the following elements:

- a. The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use.
- b. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the land in question and not to general conditions in the neighborhood.
- c. The use to be authorized by the variance will not alter the essential character of the locality of the land in question.

In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with this chapter. . . .

If the existing dwelling at 1331 Mattern Avenue were ever destroyed to an extent of 60% of its replacement value, the owner could still seek a variance to permit the dwelling to be reconstructed. To obtain the variance the owner must demonstrate that the standards for issuance of the variance are satisfied. If, for example, if the dwelling was substantially damaged by an accidental fire, those standards would apply as follows:

- a. It is difficult to imagine how the property at 1331 Mattern Avenue could be placed to any productive use in conformance with the current zoning standards. Under such circumstances, the property could not yield a reasonable return from any use permitted by the zoning regulations, unless a variance is granted allowing the dwelling to be repaired or replaced.
- b. Assuming that the fire was accidental, the plight of the owner would due to unique circumstances not of the owner's own making.
- c. It could be reasonably argued that the use of the property for the reconstruction of the existing dwelling, or the construction of a new single-family dwelling will not alter the essential character of the locality of the land in question. The property has contained a single-family dwelling since 1923, and is surrounded by other single-family dwellings.

Although approval of a variance cannot be guaranteed, in my opinion it is reasonable to believe that a variance could be obtained for the reconstruction of the existing single-family dwelling at 1331 Mattern Avenue in the event the dwelling were damaged in the future by accidental fire or other cause outside the owner's control.

The provisions under Iowa law and the City Zoning Ordinance for allowance of a variance exist in part to prevent a "taking" of property without just compensation. The City of Des Moines does not intend for the application of its Zoning Ordinance to result in a taking of all economic use of property that would trigger an obligation to pay compensation.

Please feel free to call me if you have any questions about this matter.

Sincerely,

Roger K. Brown
Assistant City Attorney
515/283-4541

cc: Mike Ludwig, Zoning Administrator
Sue Donovan, Deputy Zoning Enforcement Officer

C:\Rog\Zoning\Administration\Ltr - Variance required for rebuild.doc

Polk County Assessor 

[Home] [General Query] [Legal Query] [HomeOwner Query] [Book/Page Query] [Commercial Query] [Res Sales Query] [Comm Sales Query] [Help]

District/Parcel	GeoParcel	Map	Nbhd	Jurisdiction	Status
110/05523-000-000	7924-35-278-002	0588	DM89/Z	DES MOINES	ACTIVE
School District	Tax Increment Finance District	Bond/Fire/Sewer/Cemetery			
1/Des Moines					
Street Address			City State Zipcode		
1331 MATTERN AVE			DES MOINES IA 50316-2061		

Click on parcel to get new listing

Get Bigger Map

1912	1915	1912	140	1403	1403
1910	1911	1908			
1904	1905	1904			
1900	1903	1900	1400	1406	1410
189	148.15	148.15	50	"	"
1820	148.15	148.15	50	"	"
1818	1817	1816	50	"	"
1814	1815	1812	140	1400	1411
1812	1811	1808	50	"	"
1810	1807	1804	50	"	"
1802	1801	1800	50	"	"
1726	1725	1724	50	"	"



Approximate date of photo 10/28/2008

Mailing Address
DAVID L PARKER 1331 MATTERN AVE DES MOINES, IA 50316-2061

Legal Description
E 50 F LOT 186 UNION ADDITION

Ownership	Name	Transfer	Book/Page	RevStamps
Title Holder #1	PARKER, DAVID L	2001-12-20	9075/667	143.20

Assessment	Class	Kind	Land	Bldg	AgBd	Total
Assmt Roll	Residential	Full	6,600	99,100	0	105,700

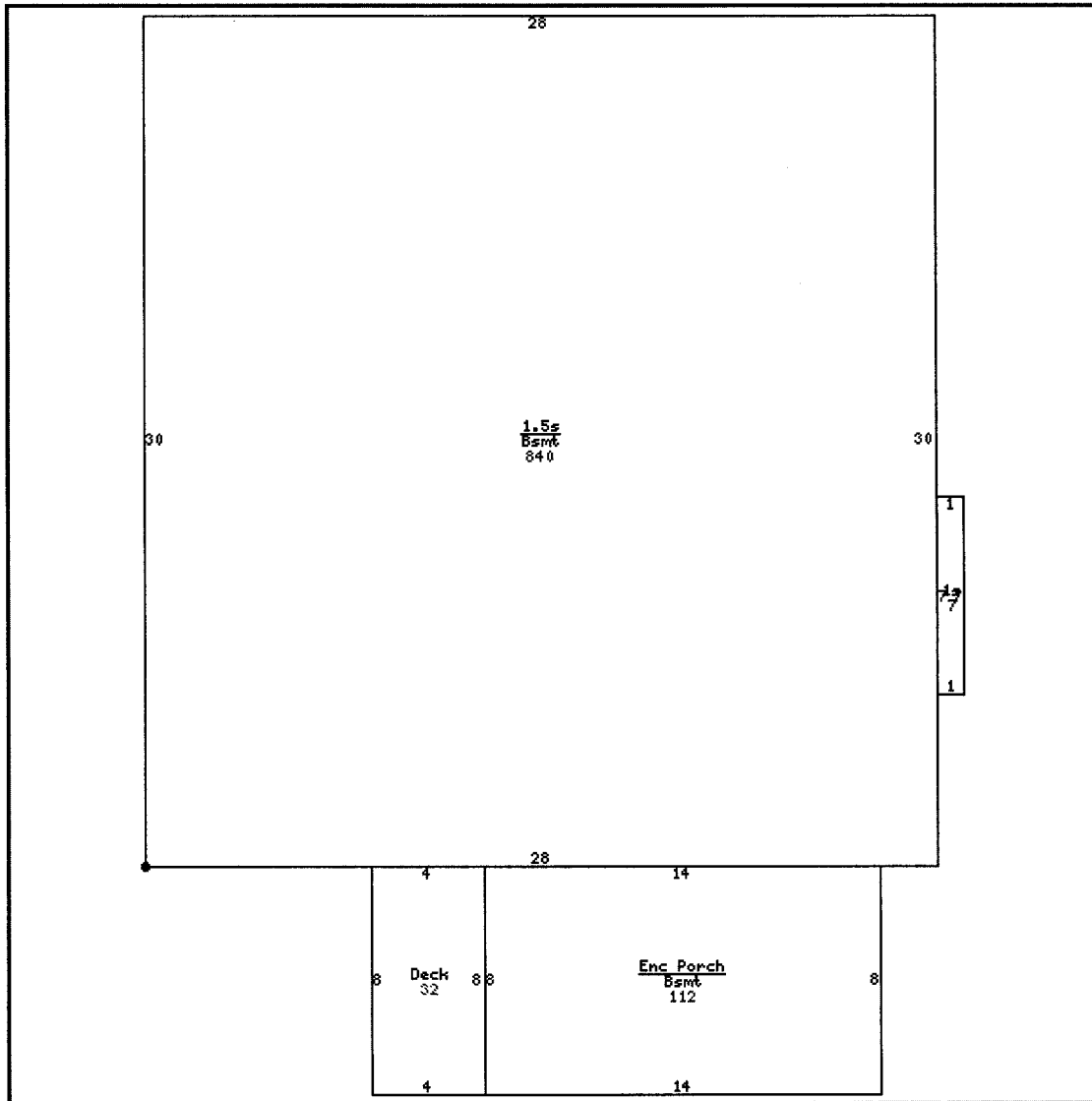
[Market Adjusted Cost Report](#)
[Assessment Roll Notice](#)
[Estimate Taxes](#)
[Polk County Treasurer Tax Information](#)
[Pay Taxes](#)

61

Zoning	Description	SF	Assessor Zoning
R1-60	One Family, Low Density Residential District	2550	Residential
*Condition	Docket_no 14361		
Source: City of Des Moines Community Development Published: 2008-11-25 Contact: Planning and Urban Design 515 283-4200			

Land					
SQUARE FEET	2,550	FRONTAGE	50.0	DEPTH	51.0
ACRES	0.059	SHAPE	RC/Rectangle	TOPOGRAPHY	N/Normal

Residence # 1					
OCCUPANCY	SF/Single Family	RESID TYPE	SH/1.5 Stories	BLDG STYLE	CV/Conventional
YEAR BUILT	1923	YEAR REMODEL	1993	# FAMILIES	1
GRADE	4	GRADE ADJUST	+05	CONDITION	VG/Very Good
TSFLA	1,410	MAIN LV AREA	847	UPPR LV AREA	563
BSMT AREA	952	ENCL PORCH	112	DECK AREA	32
FOUNDATION	M/Masonry	EXT WALL TYP	MT/Metal Siding	ROOF TYPE	GB/Gable
ROOF MATERL	A/Asphalt Shingle	FIREPLACES	1	BSMT GAR CAP	1
HEATING	A/Gas Forced Air	AIR COND	100	BATHROOMS	1
TOILET ROOMS	1	BEDROOMS	3	ROOMS	7



Seller	Buyer	Sale Date	Sale Price	Instrument	Book/Page
SHELTON, LISA E	PARKER, DAVID L.	2001-12-11	90,000	D/Deed	9075/667
MOHLER, CRAIG W	SHELTON, LISA E.	1999-06-08	84,200	D/Deed	8236/714
SECRETARY OF HUD	MOHLER, CRAIG W	1993-01-07	23,500	D/Deed	6708/510
FLEET REAL ESTATE FUNDING CORP	SECRETARY OF HUD	1992-05-15	46,530	D/Deed	6593/744

Year	Type	Status	Application	Permit/Pickup Description
1995	U/Pickup	CA/Cancel	1994-04-27	Air Conditioning

1994	U/Pickup	CP/Complete	1994-02-25	Remodel
1993	U/Pickup	CP/Complete	1992-08-25	Reinspection

Year	Type	Class	Kind	Land	Bldg	AgBd	Total
2007	Assessment Roll	Residential	Full	6,500	97,200	0	103,700
2005	Assessment Roll	Residential	Full	4,800	106,000	0	110,800
2004	Assessment Roll	Residential	Full	4,120	92,530	0	96,650
2003	Assessment Roll	Residential	Full	4,120	92,530	0	96,650
			Adj	4,120	77,170	0	81,290
2001	Assessment Roll	Residential	Full	3,360	74,260	0	77,620
			Adj	3,360	58,900	0	62,260
1999	Assessment Roll	Residential	Full	5,490	58,840	0	64,330
			Adj	5,490	43,480	0	48,970
1997	Assessment Roll	Residential	Full	5,040	54,030	0	59,070
			Adj	5,040	38,670	0	43,710
1995	Assessment Roll	Residential	Full	4,490	48,140	0	52,630
			Adj	4,490	32,780	0	37,270
1994	Assessment Roll	Residential	Full	4,010	42,980	0	46,990
			Adj	4,010	27,620	0	31,630
1993	Assessment Roll	Residential	Full	4,010	29,620	0	33,630
1991	Assessment Roll	Residential	Full	4,010	38,580	0	42,590
1991	Was Prior Year	Residential	Full	4,010	37,290	0	41,300

email this page

Room 195, 111 Court Avenue, Des Moines, IA 50309
 Phone 515 286-3140 / Fax 515 286-3386
polkweb@assess.co.polk.ia.us