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Zoning office use only  
File # 13-255-654  
FEE: 440  
TENTATIVE HEARING DATE  
1-15-2014



APPLICATION FOR APPEAL

DEC 06 2013

Department of Safety and Inspections  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101  
651-266-9008

APPLICANT Name Bill BERGMANN  
Address 2153 40th Av S  
City Mpls St. MN Zip 55400 Daytime phone 612 867 6141  
Name of owner (if different) Drs. Josh B. Colton & Tisha Chirico Colton

PROPERTY LOCATION Address 576 Lincoln Avenue St Paul MN 55107  
Legal description: TERRACE PARK ADDITION TO THE C E  
1/2 OF LOT 28 AND ALL OF LOT 29  
(attach additional sheet if necessary)

TYPE OF APPEAL: Application is hereby made for an appeal to the:  
 Board of Zoning Appeals  City Council  
under the provisions of Chapter 61, Section 60, Paragraph 9-6 of the Zoning Code, to appeal a decision made by the BOARD OF ZONING APPEALS EG1-702  
on Nov. 25, 2013. File number: 13-2478-76  
(date of decision)

GROUND(S) FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Board of Zoning Appeals or the Planning Commission.  
In brief, the BZA has already granted variances to a larger and identical project in the same zoning district a few blocks from this proposal. We do not feel, nor do a majority of our neighbors, that our proposal will impact traffic or parking burden significantly. It will NOT alter the present physical character or the spirit of the neighborhood.  
(attach additional sheet if necessary) Please see attached documents for more detail.

Applicant's signature Bill Bergmann Date 12/6/13 City agent \_\_\_\_\_

W2  
D16

We feel the Board of Zoning Appeals denial of the requested variances is unfair, constitutes a taking of property and denial of equal protection under the Minnesota and United States Constitutions and ignores the St. Paul Comprehensive Plan for the following reasons:

1. The BZA granted variances to a larger but identical project in the same zoning district a few blocks from this proposal.
2. The BZA finding that a condition was placed on the garage that it not be used as a living unit is inaccurate. The previous owners merely stated that they understand that their permit is to build a garage only, and the space above the garage cannot be converted into an accessory dwelling unit without first applying for the appropriate variances (which is what we are doing presently)
3. The BZA determinations that the request is not in keeping with the zoning code because it creates a non-conforming use is a misapplication of Zoning Ordinance Section 61.601, establishes a condition for a variance not in the zoning code or Minnesota Statutes and would preclude any variance request under the Zoning Ordinance because a variance by definition creates a non-conforming use.
4. As previously found by the BZA Staff, *see* Attachment A, the plight of the landowners is due to circumstances unique to the property and the circumstances were not created by the landowners because of the size and style of the house and garage and the placement of the house and garage on the lot are not circumstances created by the applicants, but by previous owners.
5. As previously stated by the BZA in granting a virtually identical variance request, *see* Attachment B, the irregular size of the lot, found by the Staff Report in this instance to be relevant and weighing in favor of a variance, and its long and narrow nature, are circumstances unique to the property not created by the landowner requiring the variance.
6. Contrary to the finding of the BZA, whether there is an exterior staircase is not determinative of whether the variance alters the essential character of the surrounding area. Other exterior staircases exist in the area, in fact even on the same block and directly across the alley, and some of them are for separate dwelling units. As the previous staff report found, *see* Attachment A, and relied on by the BZA in granting a virtually identical variance request, *see* Attachment B, this proposal is consistent with the current zoning and extremely more intensive uses exist in the area including large, three story, multiple family apartment buildings, including one on the adjoining lot, and this lot could be used for those uses without variances. This proposal serves the purpose of the zoning code by conserving and improving the area by buffering uses, expanding use consistent with the current zoning while not converting it to greatly expanded uses like a multi-family apartment building or a larger footprint for the garage, all uses allowed without variance.
7. In fact, the St. Paul Comprehensive Plan, Housing, section 2.17, encourages this type of use as recognized by the Summit Hill Association's decision to approve the request, Attachment C, and many neighbors who testified and expressly acknowledged that the planned use would increase property values by improving and conserving the area.
8. The BZA decision based on the BZA Staff Report is arbitrary given that the Staff Report contradicts both in stated facts and conclusions in a previous Staff Report draft, Attachment A, from a variance request from 2000 for construction of an identical dwelling unit. The prior Staff Report applied the same variance standard and recommended that the variances be granted. For all the reasons stated in the prior staff report the variance should be granted.

Withdrawn

BOARD OF ZONING APPEALS STAFF REPORT

- 1. **APPLICANT:** Robert Roscoe, for Mary Bell & Garrett Bradley      **FILE #** 00-132924
- 2. **CLASSIFICATION:** Major Variance      **DATE OF HEARING:** 07-10-00
- 3. **LOCATION:** 576 Lincoln Ave.
- 4. **LEGAL DESCRIPTION:** Terrace Park Addition to The City of St. Paul, Ramsey Co.,  
Minn., East 1/2 of Lot 28 and All of Lot 29, Block 6
- 5. **PLANNING DISTRICT:** 16
- 6. **PRESENT ZONING:** RM-2      **ZONING CODE REFERENCE:** 61.101
- 7. **STAFF INVESTIGATION AND REPORT DATE:** 07-03-00      **BY:** John Hardwick
- 8. **DEADLINE FOR ACTION:** 08-19-00      **DATE RECEIVED:** 06-19-00

A. **PURPOSE:** Three variances in order to construct a "Carriage House" structure in the rear yard. 1). Side yard setbacks of 9 feet are required and a setback of 4 feet is proposed on the west side, for a variance of 5 feet. 2). A rear yard setback of 25 feet is required and a setback of 4 feet is proposed, for a variance of 21 feet. 3). A 30 foot setback between the two principal structures is required and a setback 22 feet is proposed, for a variance of 8 feet.

B. **SITE AND AREA CONDITIONS:** This is a 75 by 150 foot parcel with alley access in the rear to a detached garage. The existing single family home on the site is a large two- and a half-story structure.

Surrounding Land Use: Mixed residential uses.

C. **BACKGROUND:** The existing garage on the site is dilapidated and needs to be replaced. The applicants would like to replace it with a new garage/carriage house structure.

D. **FINDINGS:**

- 1. *The property in question cannot be put to a reasonable use under the strict provisions of the code.*

The applicants feel that a carriage house structure would be more in keeping with the architectural style of the house and the historic character of the area than a conventional garage. A conventional garage of the same dimensions as the proposed carriage house, although with somewhat less height, could be constructed without the need for variances. However, this would not preserve character of the neighborhood or the architectural style

of the house. This property is zoned for multi-family use and the lot is large enough to accommodate a multi-family apartment building, but the applicants believe that maintaining the existing single family home and adding a carriage house would be more in keeping with the character of the area. The size of the existing house and the location of the house on the lot make constructing a carriage house on the site impossible without a variance.

2. *The plight of the land owner is due to circumstances unique to this property, and these circumstances were not created by the land owner.*

The size and style of the house and the placement of the house on the lot, are circumstances that were not created by the applicants.

3. *The proposed variance is in keeping with the spirit and intent of the code, and is consistent with the health, safety, comfort, morals and welfare of the inhabitants of the City of St. Paul.*

Although this block of Lincoln Ave. is zoned for multi-family use, there are several large single family homes along the block. Also, across the alley to the south is an area of large single family homes. The proposed variances will allow the applicants to maintain the appearance of the property as a large single family home with a carriage house that is common in this area and also serve to act as a buffer between the existing apartment buildings and the single family homes.

4. *The proposed variance will not impair an adequate supply of light and air to adjacent property, nor will it alter the essential character of the surrounding area or unreasonably diminish established property values within the surrounding area.*

The existing single family home on this property could be converted to a multi-unit apartment building without the need for variances. A garage with an even larger footprint than the proposed carriage house could also be constructed without the need for variances. The proposed structure will be located in the rear yard that abuts other rear yards and will have setbacks that exceed the setback requirements for accessory structures. It will not significantly affect the supply of light or air to adjacent properties.

The architectural design of the proposed carriage house will be compatible with the main house and will augment the traditional architecture of the area.

5. *The variance, if granted, would not permit any use that is not permitted under the provisions of the code for the property in the district where the affected land is located, nor would it alter or change the zoning district classification of the property.*

A second principal structure for a total of two dwelling units on the property is a permitted use in this zoning district. The proposed variances, if granted, will not change or alter the zoning classification of the property.

6. *The request for variance is not based primarily on a desire to increase the value or income potential of the parcel of land.*

The applicants could establish apartment units in the existing house without the need for variances. However, their primary desire is to create an accessory structure that is architecturally compatible with the existing house as well as the traditional style of other homes in the area.

- E. **DISTRICT COUNCIL RECOMMENDATION:** As of the date of this report, we have not received a recommendation from District 16.
- F. **STAFF RECOMMENDATION:** Based on findings 1 through 6, staff recommends approval of the variances.

## Mary Bell & Garret Bradley

576 Lincoln Ave.  
St. Paul, MN 55102

August 28, 2000

Tom LeClair, Chief Plumbing Inspector  
Licenses, Inspections and Environmental Protection  
City of St. Paul  
300 Lowry Professional Bldg, Suite 300  
350 St. Peter Street  
St. Paul, MN 55102

Re: plumbing permits for 576 Lincoln Ave.

Dear Mr LeClair:

Per your agreement last Friday with Steven Madole of Architrave Design & Remodeling Inc., our Contractor :

We, Mary Bell & Garret Bradley, owners of the property at 576 Lincoln Ave., St. Paul, hereby acknowledge that approvals by the City of St. Paul to install a floor drain and laundry tub/utility sink in our garage, currently under construction, and to connect them to the City sewer and water systems do not constitute approval or permission to convert our garage to another dwelling unit. We understand that under current City zoning regulations, a variance would be required to convert the garage to a dwelling unit. We promise that if, in the future, we wish to convert our garage or a portion thereof to a dwelling unit, we will first apply for the appropriate variances and permits and abide by them and any special conditions. We further acknowledge and understand that we have not been led to believe that the City is predisposed to approve any such variances for the conversion of use, but will instead judge any future requests for changes of use according to their merits and through the normal processes by which these requests are handled.

We understand that upon receipt of this letter, you will issue the necessary permits to PipeRight Plumbing, the plumbing sub-contractor, without any further delay.

Thank you for your cooperation.

Sincerely,



Mary Bell & Garret Bradley

Cc: Wendy Lane, zoning  
Steve Madole, Architrave Design & Remodeling Inc.

**CITY OF SAINT PAUL  
BOARD OF ZONING APPEALS RESOLUTION  
ZONING FILE NUMBER: 12-059776  
DATE: June 11, 2012**

WHEREAS, Jet Construction & Remodeling for Stacey Johnson owner has applied for variances from the strict application of the provisions of Section 66.231 of the Saint Paul Legislative Code pertaining to the dimensional standards in order to construct a separate additional dwelling unit with a three-car attached garage at the rear of the lot. 1) A minimum side yard setback of half the height of the building is required. The height of the proposed building is 19 feet which requires a setback 9.5 feet. The applicant proposes a setback of 7 feet from the west property line and 4 feet from the east property line for a variance of 2.5 feet and 5.5 feet respectively. 2) A rear yard setback of 25 feet is required, the applicant proposes a setback of 12 feet for a variance request of 17 feet, in the RM2 zoning district at 555 Grand Hill. PIN: 012823320019; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on June 11, 2012 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 finding is met. The proposed building is a two-story structure that will look like a carriage house with a two-bedroom accessible unit on the second floor and a three-car garage on the first floor. The building would be located behind the existing four-unit historic house and accessed from the existing driveway which runs between the house and the retaining wall at the east property line. The existing two-car detached garage located at the north end of the existing driveway will be removed to allow the existing driveway to be connected to the new building. Two surface parking spaces will be constructed on the west side of the driveway along the existing building. The construction project includes two retaining walls: one along the east side of the proposed building and one between the north wall of the proposed building and the west property line. The north end of the existing driveway will be widened to the full width of the new building and the existing driveway may be replaced with a new driveway.

Since the property is located in a Heritage Preservation District, the applicant worked with the Heritage Preservation Commission (HPC) staff to come up with a building design that would provide enough living space, allow access and parking while fitting on the lot without too much land disturbance from carving into the slope at the rear of the lot. The building design has been reviewed and approved by the HPC subject to the following conditions:

1. The front door shall be paneled wood with no grids between the glass.
2. The entry column shall be a larger scale to visually carry the weight of the structure above. The column should be simple but have a base and cap detail. If a synthetic material is used, it shall have a painted finish.
3. Consider adding banding or varying the siding pattern to add interest and to help break up the massing of the structure while keeping the utilitarian character.
4. All siding and trim shall have a smooth texture.
5. The retaining walls shall be constructed with rock-faced block with a cap.
6. Windows and doors shall be reviewed to be more compatible with the size, profile and details of the mullions and frames of the main house and placement of windows shall be revised and reviewed by HPC staff.
7. All final details shall be submitted to staff for final review and approval.
8. There was no deck or stairs proposed on the rear at the sliding doors. Final details shall be submitted to staff for approval.
9. The HPC stamped approved construction plans shall remain on site for the duration of the project.
10. Any revisions to the approved plans must be submitted to staff and reviewed by the HPC and/or staff.
11. This approval is contingent upon review and approval of variances by the Board

Provided that the building meets the conditions of the HPC approval, it would improve the appearance of this property and will have a positive impact in the neighborhood consistent with the purposes and intent of the code in conserving and improving existing property values.

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

This finding is met. The proposed second dwelling would accommodate the property owner's aging 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. The applicant's request to construct an additional building on the same lot in order to care for her elderly parents is consistent with the above stated intent of the comprehensive plan.

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 finding is met. The applicant states that the proposed building is 46 feet wide, which is necessary for the interior staircase and wheelchair- sized elevator to access the second floor living space; this is the reason for the side yard setback variance request. Due to the configuration of the driveway at the north end to allow easy maneuvering, it is necessary to construct the new building closer to the north property line which results in the rear yard setback variance request. The applicant's request to construct a second dwelling unit to accommodate the owner's aging parents is a reasonable request not driven by financial reasons.

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

This finding is met. The request for variances is due to the irregular shape of the lot at the northeast corner and the construction of a building that meets accessibility requirements. Additionally, this lot is 187 feet deep but only 55 feet wide. It is relatively narrow for a 46 foot wide building that meets the required side yard setback of 9.5 feet. These are circumstances unique to this property not created by the landowner.

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

This finding is met. A second separate dwelling unit is a use allowed in this zoning district. The requested variances if granted, will not change the zoning classification of the property.

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

This finding is met. The proposed building would be located in the rear yard and tucked between the existing house and the hill on the north side of property; it would not be significantly visible from the street. The closest structure to the proposed building is a garage to the north. Due to the steep grade at the back of the lot, the garage is at a much higher elevation than the grade of the proposed building. The building is designed to maintain the historic character of existing homes and the applicant has received approval from the HPC.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the provisions of Section 66.231 are hereby waived to allow: 1) A side yard setback of 9.5 feet is required, 7 feet is proposed from the west property line for a variance of 2.5 feet, and 4 feet is proposed from the east property line for a variance of 5.5 feet. 2) A 25 foot rear yard setback is required, 12 feet is proposed for a variance of 17 feet, ***subject to the HPC conditions: 1. The***

*front door shall be paneled wood with no grids between the glass. 2. The entry column shall be a larger scale to visually carry the weight of the structure above. The column should be simple but have a base and cap detail. If a synthetic material is used, it shall have a painted finish. 3. Consider adding banding or varying the siding pattern to add interest and to help break up the massing of the structure while keeping the utilitarian character. 4. All siding and trim shall have a smooth texture. 5. The retaining walls shall be constructed with rock-faced block with a cap. 6. Windows and doors shall be reviewed to be more compatible with the size, profile and details of the mullions and frames of the main house and placement of windows shall be revised and reviewed by HPC staff. 7. All final details shall be submitted to staff for final review and approval. 8. There was no deck or stairs proposed on the rear at the sliding doors. Final details shall be submitted to staff for approval. 9. The HPC stamped approved construction plans shall remain on site for the duration of the project. 10. Any revisions to the approved plans must be submitted to staff and reviewed by the HPC and/or staff. 11. This approval is contingent upon review and approval of variances by the Board, on property located at 555 Grand Hill; and legally described as Thurstons Subdivision Of lot 7 Private Alley N Of And Adj And Lot 4 And E 7 74/100 Ft Of Lot 5 Blk 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:** 7  
**AGAINST:** 0

**MAILED:** June 12, 2012

**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

File #12-059776  
Resolution

**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 June 11, 2012 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.**

**SAINT PAUL BOARD OF ZONING APPEALS**

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

# Summit Hill Association

District 16 Planning Council  
860 Saint Clair Avenue  
Saint Paul, Minnesota 55105  
Telephone 651-222-1222  
Fax 651-222-1558  
www.summithillassociation.org  
e-mail: summithill@visi.com

November 22, 2013

Board of Zoning Appeals  
Yaya Diatta, Staff  
375 Jackson St., Suite 220  
St. Paul, MN 55101

**RE: Zoning File Number #13- 247876**

Dear Members of the Board:

The Zoning and Land Use Committee (ZLU) of the Summit Hill Association (SHA) - District 16 Planning Council held a local public hearing on Thursday, November 21, 2013 to review an major variance application submitted to the City of St. Paul by Bill Bergmann, representative for the owners of the property at 576 Lincoln Ave. – Joshua and Tisha Colton.

The applicant wants to remodel the attic space of the existing two-car detached garage in the rear yard into a dwelling unit which would result in two principal single family buildings on the property. The zoning code allows a second dwelling on a lot in a multiple family residential zoning district providing it meets a 4' side yard setback, is at least 12' from the main house and has a 25' setback from the rear property line. Additionally, two dwelling units on one lot require a total of 3 off-street parking spaces. The side setback and separation from the house are met, but the applicant is requesting two zoning variances: 1) The rear yard setback is 4 feet requiring a variance of 21 feet. 2) Two off-street parking spaces are available within the garage for a variance of one parking space.

The Zoning and Land Use Committee had solicited input from the surrounding property owners and tenants within 350 feet. SHA received four email comments – two in opposition and two in support of this application including a support letter from the property owner immediately west of the property in question. There were several nearby property owners at the hearing in support of the application.

During the hearing, the ZLU Committee discussed the application with both Mr. Bergmann and the Coltons; and referenced the *City of St. Paul Zoning Code - Chap. 61.601 – Variances* in its deliberations. The Committee also reviewed the November 6, 2013 BZA Staff Report by YaYa Diatta on this case.

The Committee heard a brief presentation from Mr. Bergmann regarding his application. He noted that the current garage had been built in 2000 and that the upstairs space would be perfect for an additional dwelling for their elderly parents when they visit. One of the parents will eventually move out of her present home and the Coltons would like to provide living space for her in this proposed new dwelling when necessary. Some mention was made to a previous owner applying for a similar variance to construct a dwelling above the garage in that year, but that the application at that time was withdrawn for some unknown reason according to city records. Mr. Bergmann went on to explain that the only remodeling necessary on the outside of the garage would be creating an outside staircase and entrance door on the east side. In terms of off-street parking, the Coltons noted that neither set of parent drive when they come to visit.

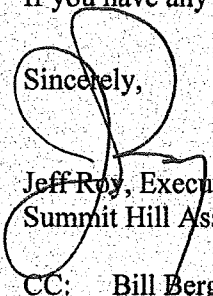
One ZLU Committee member was concerned that if the variances were approved and the new dwelling created, the variances would stay with the property no matter who owned it or who lived in the new dwelling in terms of future parking issues or even in terms of the new dwelling being rented out. In response to the BZA Staff report indicating that Variance Findings #1, 4 and 6 were not met as per *Sec. 61.601* of the City's zoning code; testimony taken during the Nov. 21<sup>st</sup> hearing noted that the proposed second dwelling would be in keeping with the general character of the local neighborhood; that the need for more and varied housing options outweighs the concerns about "non-conformity"; and that parking will not be an issue given the parents will not be driving and on-street parking is typically available anyway.

In light of this discussion and testimony from the applicant, owners and surrounding neighbors, a motion was made and seconded to recommend approval of the variance based on the ZLU Committees interpretation of *Sec. 61.601*.

The vote was called, and the motion to recommend approval to the BZA was passed on a vote of 3 ayes, 0 nays and 1 abstention. According to SHA policies, as an SHA Board meeting does not occur prior to the Nov. 25, 2013 BZA hearing, the Committee's recommendation serves as the recommendation of the Summit Hill Association/District 16 Planning Council.

If you have any questions about this recommendation, please contact me at 651-222-1222.

Sincerely,

  
Jeff Roy, Executive Director  
Summit Hill Association/District 16 Planning Council

CC: Bill Bergmann  
Josh and Tisha Colton  
Councilmember Dave Thune