



APPLICATION FOR APPEAL

Department of Safety and Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
651-266-9008

RECEIVED

AUG 25 2016

By: City of St Paul DSI

Zoning office use only

File no. 16-073565

Fee 453.00

Tentative hearing date: 9/21/16

APPLICANT

Name Summit Hill Association
Address 860 St Clair Avenue
City St. Paul St. MN Zip 55125 Daytime phone 651.222.1222
Name of owner (if different)

PROPERTY LOCATION

Address 210 Victoria Street S.
Legal description: Single family home.
(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 61.702, Paragraph (a) of the Zoning Code, to appeal a decision made by the Board of Zoning Appeals on August 15th, 20016. File number: 16-058086

GROUND 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.

Please see attached.

(attach additional sheet if necessary)

Applicant's signature [Signature] Date 8/25/2016 City agent

# Summit Hill Association

District 16 Planning Council  
860 Saint Clair Avenue  
Saint Paul, Minnesota 55105  
Telephone 651-222-1222  
[www.summithillassociation.org](http://www.summithillassociation.org)  
[info@summithillassociation.org](mailto:info@summithillassociation.org)

August 25, 2016

ATTN: Saint Paul City Council  
15 Kellogg Blvd. West, 310 City Hall  
Saint Paul, MN 55102

RE: Appeal of Variances Granted By the Board of Zoning Appeals for a Proposed Garage at  
210 Victoria Street South, File #16-058086

The Summit Hill Association District 16 Planning Council ("SHA"), as named Appellant, brings this appeal due to clear errors of fact, finding and procedure behind the approval by the Board of Zoning Appeals ("BZA") of this proposed garage. We request that our appeal be granted and the variances requested by Chris Carlson be denied.

## EXECUTIVE SUMMARY

This is an appeal to reverse a BZA decision to allow variances to construct an attached front-yard garage at 210 Victoria Street S. If the BZA's decision is allowed to stand, the resulting garage would cause an obstruction of views and sight lines, clutter from parked cars on the driveway which would, of necessity, be in the front yard, and potential problems with drainage, run-off and damage to the existing retaining wall separating the lot from the neighboring property. Allowing the construction would also be inconsistent with City process because a required Environmental Assessment Worksheet ("EAW") has not occurred.

The fact that the legal elements necessary for granting the variances have not been met is underscored by City staff and the BZA's own findings with respect to a variance request brought in 2012 by the owner of the property next door, located at 208 Victoria Street S. In that case, the owner was denied the variance under almost identical circumstances. At that time, the same City staff person who wrote the report for this project found, and the BZA agreed, that—among other things—**"The intent of the zoning code is to maintain a uniform streetscape and to promote and protect the aesthetics, economic viability and general welfare of the community. The proposed garage will be out of character in the neighborhood and counteract the above stated intent of the code because it does not meet the standards found in the area."**

After it was purchased by the current owner/applicant in October, 2014, the subject property at 210 Victoria Street S. was being marketed for sale as a teardown property within four months. After failing

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to sell it as such, it has been sitting empty. It raises the question that the owner may have an economic interest in adding an attached garage. However, allowing the applicant to do so would be unacceptable under the City's Zoning Code because, like the neighbor next door at 208 Victoria Street S., the owner has not satisfied the necessary elements for the requested variances under Section 61.601 of the Saint Paul City Zoning Code. The City codes must be upheld consistently and treated like the set of laws that they are, or they will be rendered moot.

### VARIANCES GRANTED BY BZA

The initial application read:

*The applicant is requesting variances in order to construct a new, two-car garage attached to the front of the existing house. 1) The code requires that garages be set back from the front lot line at least as far as the house; the applicant is requesting a variance from this requirement. 2) A front yard setback of 30 feet is required from the front property line; a setback of 16 feet is proposed for a variance of 14 feet.*

City staff recommended the following conditions: *1) The garage is constructed as shown on the plans submitted with this application. 2) The garage complies with recommendations the HPC staff may make as to the necessity to undertake an environmental review. 3) Decorative garage windows and side lights are installed. 4) No second story addition or rooftop deck is constructed on the top of the garage. 5) Landscaping and proper drainage be provided and the trash container be stored in the garage.*

At its meeting of August 15, BZA approved the requested variances with the suggested conditions. (See Appendix A—Board of Zoning Appeals Resolution August 15, 2016.)

### ERRORS IN FACT

The BZA relied upon, promulgated or failed to be given the following pertinent information:

1. City staff did not inform BZA commissioners of the findings and outcome of an almost identical application from late 2012 for the neighboring house at 208 Victoria Street S. ("208"). In that case, where the applicant wanted to build a garage in front of the house and required variances to do so, SHA recommended denying the variances, as did the same City staff person who was assigned to this property at 210 Victoria Street S. ("210"), and the request was denied by BZA. (See Appendix B—208 Victoria Street S. Findings and Recommendations.) Conditions and circumstances have not changed, and from the standpoint of consistency and precedent, City staff should have recommended against the variances for 210, as well. This will be addressed in more detail in the next section of this appeal.
2. Related to this, the City staff report for 208 noted that the property was for sale, and that the request for a garage was driven by economic considerations, which rendered the finding around Variance Criteria #3—which states that economic considerations alone do not constitute a practical difficulty—as not being met. This was specifically stated in the Background section of the City staff report for this property. However, there was no such section in the City staff report for 210, which was purchased by the applicant in October, 2014 for \$245,000. Shortly afterward, in February, 2015, the property was offered for sale as a teardown, with the existing house replaced by a newly constructed house with two garages, for \$899,000. After it failed to sell, it was relisted in June, 2015 for \$679,000, again as a teardown. It was removed from the



market in January, 2016; it has been sitting empty the entire time since its purchase by the applicant. The applicant does not live at this property and there is no evidence that he will live in it once it is renovated, or remain there even if he does move in. As one of the neighbors opposed to these variances has stated, adding a garage will most certainly result in a substantial increase in the value of this property, with a clear economic benefit. (See Appendix C—Listing Activity and Plans for 210 Victoria Street S. Since 2014.)

3. The City staff report fails to mention that this house was built in 1909 and further, that there has never been a garage on this site. The rationale given by the applicant for this variance neglects to mention in his application that the associated conditions surrounding his rationale for having the variances granted have existed, apparently without issue, for over 100 years. (See Appendix D—BZA Commissioner Packet, 210 Victoria Street S., File #16-058086, page 9)
4. The City staff report states that the front yard setback variance required is 14 feet based upon a proposed 16 foot setback. However, the drawings submitted do not indicate all the measurements needed to determine if this is, in fact, the correct proposed setback nor the variance needed. Furthermore, the drawings indicate that the depth of the garage is, in fact, 18 feet, not 16 feet, which would indicate the need for a larger setback variance than cited if the main house already has a 30 foot front yard setback. (See Appendix D—BZA Commissioner Packet, 210 Victoria Street S., File #16-058086, pages 6 and 7.)
5. Several other relevant City Zoning Code citations were not referenced in the City staff report for 210 that would also necessitate variances for the proposed garage to be built on this property:
  - a. 63.501(b)(2)—Off-street parking spaces shall not be located within the front yard.  
NOTE: This was a Zoning Code Citation in the City staff report for 208. It is relevant not only to the proposed garage, but to the non-garage spaces which would be facilitated by the proposed garage's driveway/apron.
  - b. 63.501(b)(4)—Except in the rear yard, garage doors that face a public street shall be no more than nine (9) feet in height and shall not exceed sixty (60) percent of the width of the principal structure facing the same street. NOTE: The drawings submitted by the applicant did not include sufficient information to determine if this condition is met. (See Appendix D—BZA Commissioner Packet, 210 Victoria Street S., File #16-058086, pages 6 and 7.)
  - c. 63.501 (e)-- In any residential area, accessory buildings shall not exceed fifteen (15) feet in height; provided, however, that accessory buildings with a flat or shed roof style shall not exceed twelve (12) feet in height. Carriage house dwellings shall not exceed twenty-five (25) feet in height. NOTE: The drawings submitted by the applicant did not include sufficient information to determine if this condition is met. (See Appendix D—BZA Commissioner Packet, 210 Victoria Street S., File #16-058086, pages 6 and 7.)
6. Commissioner Trout-Oertel pursued a line of questioning at the 8/1 BZA meeting about other garages on that particular block which face Victoria Street: *Ms. Trout-Oertel asked if Mr. Diatta had any more photos of the houses at the north end of the block there are several garages that face the street. Mr. Diatta replied no. There are several garages that are closer to the street but they are rear yard garages from houses that face Osceola on the north side of the block, but their garages face Victoria Street. Ms. Trout-Oertel stated that this house is unusual because it faces Victoria Street. Mr. Diatta replied that there are only two houses on this block of Victoria that face Victoria the rest face Osceola. Ms. Trout-Oertel stated that the point is that there are several garages on this block that face Victoria. (See Appendix D—BZA Commissioner Packet, 210 Victoria Street S., File #16-058086, page 25.)* SHA objects to this implied conclusion, because the other garages do not belong to houses which are on Victoria Street. It ignores the fact that the Zoning Code does not allow front yard garages; the garages she references are for

houses which are on Linwood and Osceola Avenues and are allowed by the Zoning Code. (See Appendix E—Ramsey County Parcel Report and Maps of 210 Victoria Street S. and the Surrounding Area.)

7. The City staff report states, in its justification that the requested variances meet the Variance Criteria #2 which state that the variances are consistent with the City's comprehensive plan: *Provided no second story addition or rooftop deck is constructed on the garage, the requested variance is consistent with the Comprehensive Plan by allowing the existing property owner in an "established neighborhood" to reinvest in his property, maintain its vitality and preserve and promote the neighborhood (Strategy 2.1 of the Housing Plan).* Commissioner Ward perpetuates this in his questioning of one of the neighbors in opposition to the variances at the August 1 BZA meeting: *Mr. Ward stated that is part of the City's comprehensive plan that everybody is allowed to improve their property to provide off-street parking.* In fact, Strategy 2.1 ("Maintain the vitality and high quality of life in existing stable neighborhoods by engaging in a variety of actions") says nothing that would relate directly or indirectly to these variances other than item C—"Continue to enforce City codes." (See Appendix D—BZA Commissioner Packet, 210 Victoria Street S., File #16-058086, pages 3 and 26, and City of St. Paul website: <https://www.stpaul.gov/sites/default/files/Media%20Root/Planning%20%26%20Economic%20Development/web%20Housing%20Plan%202-18-10.pdf> on page 16 and 17.)

#### ERRORS IN FINDING

Section 61.601 of the Saint Paul City Zoning Code sets forth:

The board of zoning appeals and the planning commission shall have the power to grant variances from the strict enforcement of the provisions of this code upon a finding that:

- (a) The variance is in harmony with the general purposes and intent of the zoning code.
- (b) The variance is consistent with the comprehensive plan.
- (c) 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.
- (d) The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- (e) The variance will not permit any use that is not allowed in the zoning district where the affected land is located.
- (f) The variance will not alter the essential character of the surrounding area.
- (g) The application for a historic use variance under title IX, city planning, at section 73.03.1 of this Code, as authorized by Minn. Stats. § 471.193, subd. 3(6), shall be granted only to a property that is a locally designated heritage preservation site and the use variance is the minimum needed to enable the property to be used in a manner that will have the least impact upon its historic character and the character of the surrounding area.

In granting a variance, the board or commission shall make written findings stating the grounds upon which the variance is justified. Inadequate access to direct sunlight for solar energy systems constitutes a practical difficulty in finding (c) above.



Applicants who seek to avoid strict enforcement of the Code must demonstrate that they can satisfy the condition of the multifactor test. Here, as set forth below, conditions (a), (c), (d) and (f) are not satisfied. Conditions (b) and (e) are satisfied and condition (g) is not applicable.

Thus, because the applicant cannot satisfy all of the necessary conditions, there is no legal basis for a variance from the Code provisions.

1. **The BZA erroneously found that the variance is in harmony with the general purpose and intent of the Zoning Code.**

The City staff report for 210 concludes this finding was met. However, after stating: *The intent of the zoning code is to maintain a uniform streetscape and to promote and protect the aesthetics, economic viability and general welfare of the community*, it goes on to say: *Although located in front of the house and only 16 feet away from the front property line, the proposed garage would be tucked into the hill and most of the exterior walls along the side and rear would be below ground. The project would result in the removal of a boulevard tree. Landscape plantings would be provided in the front yard to soften the visual impact of the garage.*

This is both contradictory and at odds with the testimony of neighbors opposing the variance, who cite the protrusion of a garage that would result in obstruction of views and sight lines, clutter from parked cars on the driveway, and potential problems with drainage, run-off and damage to the existing retaining wall separating the lot from the neighboring property. The report also acknowledges that, as part of a National Historic District, this property is subject to a EAW but that the determination for this had not been done. In fact, the HPC was not even notified of this case until after the BZA had made its decision.

Furthermore, the finding for 210 for this condition is in direct conflict with that of City staff's own conclusion for 208 from 2012 for a nearly identical project: *There are seven properties adjoining the street on both sides of S. Victoria between Linwood and Osceola and four of them have garages with access off of Victoria. Although the garages face the street, all of them are located in rear yards, not front yards. The proposed garage would be located in the front yard 4 feet away from the front sidewalk and 1 foot from the south property line. The intent of the zoning code is to maintain a uniform streetscape and to promote and protect the aesthetics, economic viability and general welfare of the community. The proposed garage will be out of character in the neighborhood and counteract the above stated intent of the code because it does not meet the standards found in the area.*

Thus, this requirement was not met.

2. **The BZA found that the variances are consistent with the comprehensive plan.**

While the justification for 210 is erroneous in its citation of Strategy 2.1 of the Housing Plan, as noted above, SHA had no issue with this finding, nor was it inconsistent with that of the finding for 208 in the City staff report for that project.

This requirement was met.

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3. The BZA erroneously found that 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 City staff report for 210 concludes that this requirement was met, stating: *The challenge in constructing a garage that meets the setback and location requirements is that the property has no alley access, there is insufficient space on either side for a driveway and there are significant grade changes from the front to the rear yard, making access to a garage from the street impractical. Consequently, there is no other alternative but the proposed location. These are practical difficulties preventing the construction of a reasonable garage without the requested variances. This finding is met for both variance requests.*

However, SHA in its letter to BZA disagreed, stating: *Although there are challenges that exist, a garage is not a necessary structure on the property, and the home was constructed in such a manner, was purchased in such a manner, and has existed as such since 1909.*

The City staff report for 208 also found that this finding had not been met, noting that the applicant had lived without a garage for six years, and had also noted separately that this house had existed back to its construction (in 1914) without a garage. It also cited economic reasons which were a factor behind the request for variances vs. practical difficulties.

As noted in the previous section, SHA also believes that economic factors, which were not acknowledged in the City staff report for 210, are strong motivating factors for this applicant, and feels that the practical difficulties cited have not been adequately justified to the extent that explains the continuous use of this property up until the applicant purchased it in 2014 with the intent to tear it down, apparently with a plan to provide a 2-car garage in a manner that did not result in a variance request prior to electing to reverse course on that plan.

Thus, this requirement has not been met.

4. The BZA erroneously found that the plight of the landowner was due to circumstances unique to the property not created by the landowner.

The City staff report for 210 stated: *The lack of alley access and off-street parking are circumstances unique to the property not created by the landowner. This finding is met for both variance requests. City staff also reached the same conclusion for 208 in 2012, albeit for different reasons: The narrow side yards prevent the construction of a garage in the rear yard. This is a circumstance unique to the property not created by the landowner.*

SHA disagreed, stating in its letter to BZA: *As the property was recently purchased by the landowner, and was purchased with the knowledge that there was not a garage, the request for a variance was a circumstance created by the landowner.*

Further, the fact that the applicant had other plans for the property when it was purchased, and felt he could create a 2-car garage without variances on the property, speaks to his awareness regarding the realities of the property.

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Thus, this requirement was not met.

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

SHA had no issue with this finding, nor was it inconsistent with that of the finding for 208 in the City staff report for that project.

This requirement was met.

6. The BZA erroneously found that the variance will not alter the essential character of the surrounding area.

The City staff report for 210 stated: *The proposed flat roofed garage would be 9' tall to the highest point from the front of the proposed garage. It would not significantly alter the residential character of the area.*

This response does not even address the central point. There is no debate that the variances would alter the residential character of the neighborhood. The issue is that, in a historic neighborhood—which the City comprehensive plan's Housing Plan explicitly supports preserving—a front yard, flat-roof garage is completely out of character.

It also evades what City staff said at the August 1 meeting in response to questioning by Commissioner Trout-Oertel in that none of the garages on Victoria were front-yard garages.

The City staff report for 208 from 2012 acknowledged this in its finding that this requirement was not met for that project, which was also for a flat-roof, front-yard garage, albeit not attached: *This finding is not met. There are no garages located in the front yard on this block and this request is not in keeping with the neighborhood norm.*

As was also stated in that report, as noted earlier: The proposed garage will be out of character in the neighborhood and counteract the above stated intent of the code because it does not meet the standards found in the area.

SHA was unequivocal in its letter to BZA, stating: *Allowing the variance will allow a garage in front of a residence, which is not consistent with the historical character of the surrounding homes in the neighborhood, and will alter the character of the surrounding area.*

This was also a strong theme in all of the neighborhood opposition: in letters, as well as oral testimony at the SHA's Zoning and Land Use meeting and at the BZA public hearing.

Thus, this requirement was not met.

#### ERRORS IN PROCEDURE

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The following issues have raised concerns regarding errors by BZA in procedures that call into question the validity and basis of the vote on August 15.

1. The City staff report for 210 was dated 7/22/2016 and it recommended approval of the variances with four conditions, one of which was: *The garage complies with recommendations the HPC staff may make as to the necessity to undertake an environmental review.* An EAW is extensive in its scope and takes significant amounts of time for fact-finding, analysis and recommendation. Consequently, the information provided can be important in evaluating proposed variances, especially in historic districts such as Summit Hill. The City staff report noted, in its findings regarding variance condition (a) The variance is in harmony with the general purposes and intent of the zoning code, the following: *Such determination has not been made at this moment.* When SHA asked HPC about this case, we were told that City staff did not send the plans to HPC until the week of August 15—on or after when BZA took its vote--nor (as of 8/19) had they had a chance to do an initial review them. It's common knowledge that HPC has a significant backlog, and it's very disturbing that City staff did not send the initial application when it was received on 7/11/2016. This would potentially have allowed HPC to determine if an EAW would be required and begin work on it. The file for 210 has a Deadline for Action of 9/8/2016, and it is highly unlikely that HPC will be able to respond by then, doing an extreme disservice to those affected by this variance appeal. Equally disturbing is that there was not even an attempt by BZA to extend the agenda on this item, nor a question about the status.
2. There were significant metrics missing in the plans filed by the applicant which, as noted in the sections above, call into question the accuracy of the conclusions drawn by City staff in its report, from the variances required to how variance conditions were met, as well as the recommendations made by City staff. Equally disturbing is the fact that BZA appeared to accept the plans by the applicant and the associated City staff report, despite its deficiencies and omissions.
3. It is unclear why City staff and BZA would not automatically send the following to the District Council:
  - a. City staff reports, once they are available; currently, District Council staff must request them specifically, despite having no way of knowing if and when they are available. In this particular case, it meant that SHA's Zoning and Land Use committee did not have it to refer to when they met and heard the applicant and public comment on 7/26/2016.
  - b. Unapproved minutes (with the understanding that they are not final) of BZA meetings were issues affecting the District Council are heard. It impedes the ability of the District Council to inform its constituents and other interested parties, nor respond as appropriate to decisions which are made that will impact those in the district. In instances like this where an item is continued or laid over, it is difficult to respond appropriately without knowing the reason for the continuance or layover.
  - c. Lack of timely, complete and publicly-available information about BZA commissioners makes it impossible to ascertain where conflicts of interest might exist, leaving it up to BZA commissioners, themselves, to make this judgment. This is poor practice and the lack of transparency can lead to votes being cast that are inappropriate.
4. There was no acknowledgement or discussion of the SHA's letter and recommendations, based upon the minutes of the August 1 and August 15 meetings. The lack of even a basic level of consideration of those affected by this decision who provided input, much less respect of the position of the District Council which is charged with providing advice and guidance on zoning-related matters, was disturbing. When asked, at the August 15 meeting, about whether or not

they had even received the letter from SHA dated 8/1/2016, since it was reflected in the City staff report that no input had been received from the District Council, none of the BZA commissioners was able to answer affirmatively until they referred to their packets. It calls into question of whether BZA is fulfilling its duty to consider citizen input into their decisions.

5. There was a notable lack of questioning by City staff and BZA commissioners of clear omissions of the necessary information required to make accurate recommendations and informed decisions, as noted in earlier sections. As a result, it is questionable about whether this plan requires more variances than originally presented, or whether the applicant meets the criteria for the variances that were recommended and granted.
6. The BZA commissioners asked more questions of neighbors in opposition to the variances than they did of the applicant, who was not held accountable for statements made that were not backed by data or substantiating evidence, nor asked critical questions about whether alternatives had been pursued. At the SHA Zoning and Land Use meeting, we asked more questions than BZA did, e.g., why they could not do a tuck-under garage that would have required no variances, or if an easement had been pursued with the owner of 208 to construct a common driveway leading to back-yard garages, which would be congruent with the Zoning Code. Responses along the lines of, "We looked into it and it can't be done," should not be acceptable nor serve as the basis of decisions with long-term and irreversible impacts on neighbors and the district.
7. Related to this, the BZA did not pursue clear red flags that were raised by neighbors in opposition, such as those related to drainage, runoff, how the existing retaining wall would be addressed, and other issues. There was a clear theme regarding the incongruity of the proposed garage with the character of the neighborhood. These are valid and significant concerns that should have been taken into account, and discussed in a meaningful manner, to determine the validity and feasibility of the applicant's variance requests. Given the Deadline for Action of 9/8/2016 in this case, there was adequate time to require the applicants to come back with information and plans responsive to those concerns.
8. The line of questioning at the August 1 BZA meeting by Commissioner Ward of Kevin Fenelon, one of the neighbors who was opposing the variances who would be directly impacted by them, was combative, inappropriate, often irrelevant, and could easily be perceived as intimidating. Aside from being a deterrent to open and honest discussions, this behavior went well beyond the scope of what was needed for BZA to make a decision based upon the facts of the case. Per the approved meeting minutes: *Mr. Ward asked if Mr. Fenelon saw the rendering of the proposed garage. Mr. Fenelon replied yes, he has seen it. Mr. Ward asked if Mr. Fenelon liked the rendering. Mr. Fenelon replied it looks ok. Mr. Ward asked if he would have a problem with this. Mr. Fenelon replied he would prefer not to have the garage there it would block their view. Mr. Ward asked if Mr. Fenelon had a garage. Mr. Fenelon replied yes. Mr. Ward asked where Mr. Carlson should park. Mr. Fenelon replied on the street. Mr. Ward asked if he is ok with that. Mr. Fenelon stated that the applicants are proposing a garage in the front yard and there has not been one and he prefers that their not be a garage there. Mr. Ward stated so there is no way the applicant could put a garage there that would satisfy Mr. Fenelon. Mr. Fenelon replied not at that height. Mr. Ward asked if it were shorter, only eight feet would that work. Mr. Fenelon replied he would have to see it he is not sure. Mr. Ward stated that is part of the City's comprehensive plan that everybody is allowed to improve their property to provide off-street parking. He continued that Mr. Fenelon has the benefit of a garage and can get his car off the street in inclement weather, however, Mr. Carlson does not have a garage. There are plenty of neighborhoods, particularly north of this location in the Hamline Area where they have a lot of properties with front facing garages, and what they do is put decks on top of the garages. The*

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*Board here is saying that they cannot add a structure with walls or a deck on top of the front facing garage. The Board is just allowing him to build a garage so he can get his car off the street.*

**CONCLUSION**

Because of these errors in fact, finding with respect to Section 61.601 of the Saint Paul City Zoning Code, and procedure as laid out above, we request that you mind in favor of us, the Appellant, and deny the variances granted by BZA in this case.