



**Application for Appeal**  
 Department of Safety and Inspections  
 375 Jackson Street, Suite 220  
 Saint Paul, MN 55101  
 General DSI Line: 651-266-9008

**Zoning office use only**  
 File # 19-029437  
 Fee \$ 462  
 Tentative hearing date:  
MAY 1 2019

**Appellant**

Name Virginia Kraus and Joseph Westwater, and others listed below  
 Address c/o McClay-Alton, PLLP, 951 Grand Avenue  
 City St. Paul St. MN Zip 55105 Daytime phone 651-290-0301  
 Name of owner (if different) \_\_\_\_\_

**Property Location**

Address 5 Heather Place  
 Zoning file name Jeffrey S. Arundel  
 Legal description: Attached  
 \_\_\_\_\_  
*(attach additional sheet if necessary)*

**Type of Appeal:** Application is hereby made for an appeal to the:

- Planning Commission**, under the provision of Chapter 61, Section 701, Paragraph C of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator
- City Council**, under the provision of Chapter 61, Section 702, Paragraph A of the Zoning Code, of a Decision made by the Planning Commission
- Board of Zoning Appeals (BZA)**, under the provisions of Chapter 61, Section 701, Paragraph C of the Zoning Code, to appeal a decision made by the BZA on 3/25/19 File Number 19-016696  
*(date of decision)*

**Grounds of 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 Planning Commission, City Council, or BZA.

Appellants. The appellants and their addresses are:

- Virginia Kraus and Joseph Westwater, 520 Grand Hill.
- Patrick and Christine Donovan, 514 Grand Hill.
- Scott Endres, 1 Heather Place.
- Maurice and Shawne Monahan, 500 Grand Hill, #4.

The Appellants all live adjacent to, or across the street from, 5 Heather Place.

SEE ATTACHMENT

Appellant's signature

Brian D. Alton, A. Horney, for Appellants

Date

4/4/19

City agent

[Signature]

MCCLAY · ALTON, P.L.L.P.  
ATTORNEYS

ROBERT M. MCCLAY  
BRIAN D. ALTON\*

951 GRAND AVENUE  
ST. PAUL, MN 55105  
FAX: 651-290-2502  
651-290-0301

\*Also Licensed in Wisconsin

RECEIVED IN D.S.I.

April 4, 2019

APR 04 2019

Yaya Diatta  
ZONING ADMINISTRATOR  
City of St. Paul  
Department of Safety and Inspections  
375 Jackson St, Suite 220  
St. Paul, MN 55101-1806

RE: 5 Heather Place  
Board of Zoning Appeals File No.: 19-016696

Dear Mr. Diatta,

Enclosed is an Application for Appeal in the above referenced matter filed on behalf of the Appellants listed on the Application, all owners of nearby or adjacent property.

Also enclosed is the filing fee of \$462.00.

Please file this Application for Appeal in the usual manner and notify our office of the date of the hearing before the City Council. Thank you for your consideration.

Very truly yours,



Brian D. Alton

BDA:mm

cc: Shari Moore, City Clerk

Enc.

19-029380

Attachment to Application for Appeal  
5 Heather Place  
April 4, 2019

**Grounds of Appeal.** This appeal of the decision of the Board of Zoning Appeals is based on the following grounds.

**The BZA erred in granting the variances and made inadequate or incorrect findings to grant the variances.**

The BZA granted two variances to accommodate the desire of the owner of the property at 5 Heather Place to split the lot. The first variance was a setback variance of 19.9 feet for an existing accessory building. The second variance was a setback variance of 3 feet for a potential new garage to be built if the lot split is granted. There were inadequate or incorrect findings for either variance. The second variance should not have been considered.

The BZA based its decision on an incorrect determination that the front yard of the house at 5 Heather Place is actually Grand Avenue. The property has street frontage on both Heather Place and Grand Avenue. But the address, front door, and primary access are all on Heather Place. The BZA should have considered Heather Place to be the front lot line (not rear).

**REQUIRED FINDINGS WERE NOT MET**

1. *The variance is in harmony with the general purposes and intent of the zoning code.*  
This finding was incorrect.

- The variances **would not** increase housing choices. There is no evidence that housing choices would change.
- The variances **would not** lessen congestion in the public streets by providing off-street parking. The first variance and lot split would result in losing the parking for 5 Heather Place. As a result there would be no off street parking for 5 Heather Place, contrary to the requirements of the zoning code for a single family residence to have off street parking. See City Code Section 63.207.
- The second variance could possibly accommodate adding more off street parking, but the applicant has no plans and only a concept for building a garage. Any new structure would require approval of the Heritage Preservation Commission.
- There is **no evidence** that the variances would conserve and improve property values. In fact the opposite could be true if a valuable and historic property is split in two, property values could decrease.

2. *The variance is consistent with the comprehensive plan.*  
This finding was incorrect.

The variances are **not consistent** with the comprehensive plan. See Strategy 2.1 of the Housing Plan. The variances are contrary to the stated actions of:

- Continue to enforce City codes, and
- Preserve properties designated historic.

Also Strategy 4 of the Historic Preservation Chapter is to Preserve and Protect Historic Resources. 5 Heather Place is an historically significant house located in the Historic Hill District. The BZA appears not to have considered this.

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 was incorrect.

Splitting off the 3 car garage/dwelling unit from the main house, creating non-conformities, is not a use of the property in a reasonable manner.

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

The decision of the owner to split the lot created the plight. There are no unique circumstances other than an apparent desire to sell off a part of the property.

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

6. *The variance will not alter the essential character of the surrounding area.* This finding was incorrect.

The BZA heard from neighbors that the variances that would allow a lot split and potentially a new garage would have a negative effect on this small unique neighborhood in an historic district containing many significant historic homes.

#### **SECOND VARIANCE SHOULD NOT HAVE BEEN GRANTED**

The BZA granted a setback variance of 3 feet for a potential new garage to be built if the lot split is granted. The only information about the proposed new garage was from a revised site plan that sketched in the outline of a possible garage that might be built. The applicant stated that the plan was not accurate and was not intended to show precisely where the proposed new garage was to be located in reference to the existing principal structure and existing lot lines. Further, he was unable to describe to the BZA where within the parcel the new garage might be located.

The variance application submitted by the applicant did not request this second variance. The BZA should not have either considered or granted it.



CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

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Saint Paul, Minnesota 55101-1806

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Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

April 9, 2019

Brian Alton  
Mcay-Alton, P.L.L.P.  
951 Grand Avenue  
St. Paul, MN 55105

RE: Notice to extend the time limit for decision under Minnesota Statute 15.99 (5  
Heather Place – BZ File# 19-016696)

Dear Mr. Alton:

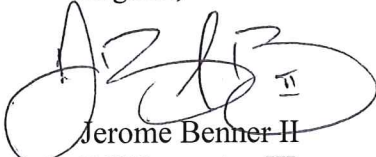
On April 4, 2019, an appeal was submitted regarding the variances that were granted by the Board of Zoning Appeals on March 25, 2019, to allow a lot split for a new single family dwelling and an accessory structure for the purposes of providing off-street parking.

MN Statute 15.99 requires the City of Saint Paul to approve or deny zoning applications within 60 days of submission. Accordingly, the City's present deadline to act on your appeal application is May 2, 2019.

If the City Council cannot reach a decision at the hearing scheduled for May 1, 2019, the 60-day deadline would expire the following day, May 2, so the City must extend its review period an additional 60 days per Minnesota Statute 15.99. The additional 60-day period takes effect immediately upon the expiration of the initial 60-day period. Therefore, the deadline to make a final decision on your appeal is July 1, 2019.

If you have any questions regarding this matter, please contact me at 651-266-9080 or [jerome.benner.ii@ci.stpaul.mn](mailto:jerome.benner.ii@ci.stpaul.mn).

Regards,



Jerome Benner II  
DSI Inspector III