

(K) 54116



APPLICATION FOR APPEAL

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

RECEIVED

JUL 08 2016

By: City of St Paul DSI

Zoning office use only

File no. 16-057947

Fee 453

Tentative hearing date:

08/03/06

YDIATTA

APPLICANT

Name Patrick Lindmark
Address 100 South Fifth St, Suite 200,
City Minneapolis St. MN Zip 55402 Daytime phone 612-332-1080
Name of owner (if different) Basil & Rhonda Gilliland

PROPERTY LOCATION

Address 975 Lincoln Ave, St. Paul, MN 55105
Legal description: Summit Park Addition Tract Pa, Lot 15, Block 26
(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 July 6, 2006, File number: 16-04774
(date of decision)

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 7-8-16 City agent

The Gregory Group, Inc.
d.b.a.
LOT SURVEYS COMPANY
Established in 1962
LAND SURVEYORS

REGISTERED UNDER THE LAWS OF STATE OF MINNESOTA
7601 73rd Avenue North
Minneapolis, Minnesota 55428 (763) 460-3093
Fax No. 560-3522

Surveyors Certificate
Existing Conditions Survey For:
ORGANIC COMPASS LLC

Property located in Section
2, Township 28, Range 23,
Ramsay County, Minnesota

Property Address: 975 Lincoln Avenue
St. Paul, MN

INVOICE NO. 84752
F.B.NO. 1086-22
SCALE: 1" = 20'

16-047716

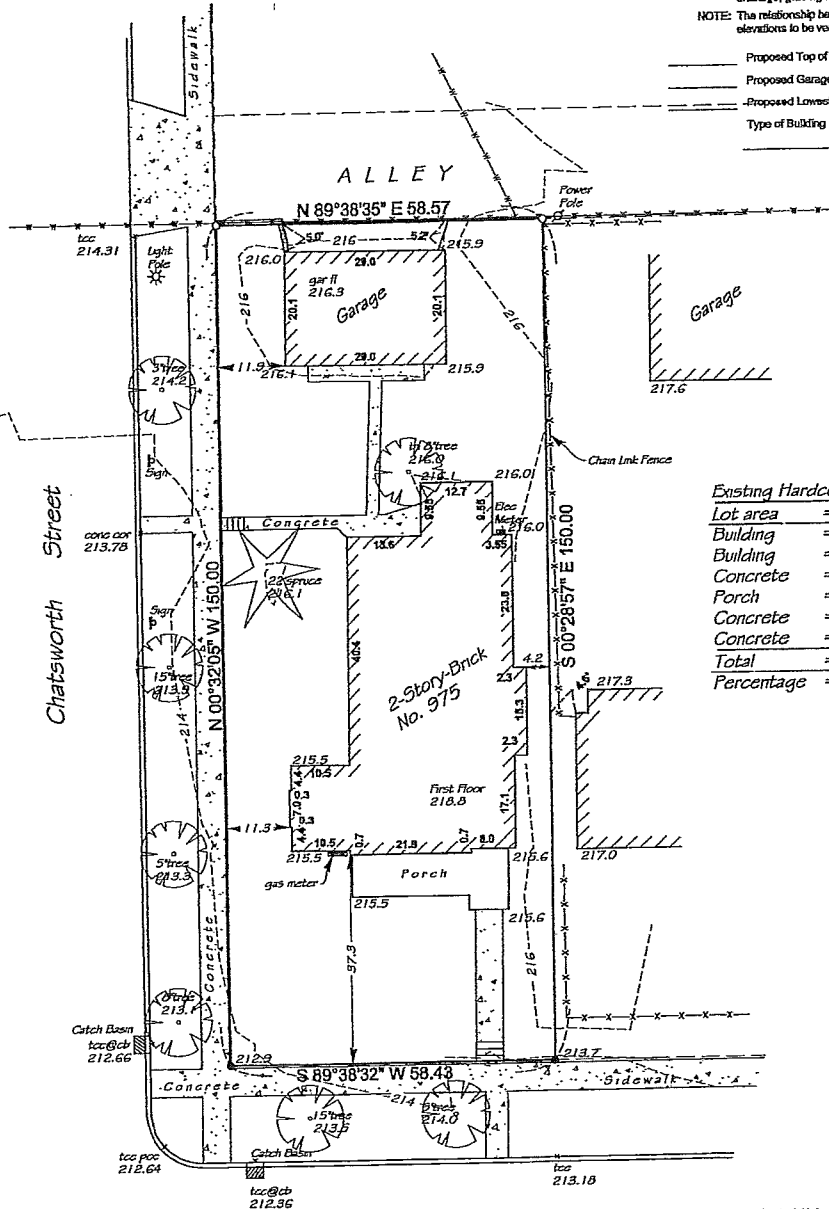
Basis for bearings is assumed

- Denotes Found Iron Monument
- Denotes Iron Monument
- ⊠ Denotes Wood Hub Set for excavation only
- ~ Denotes Existing Contours
- - - Denotes Proposed Contours
- x000.0 Denotes Existing Elevation
- 000.0 Denotes Proposed Elevation
- Denotes Surface Drainage

NOTE: Proposed grades are subject to results of soil tests. Proposed building information must be checked with approved building plan and development or grading plan before excavation and construction. Proposed grades shown on this survey are interpolations of proposed contours from the drainage, grading and/or development plans.

NOTE: The relationship between proposed floor elevations to be verified by builder.

- Proposed Top of Block
- Proposed Garage Floor
- - - Proposed Lowest Floor
- Type of Building



Existing Hardcover

Lot area	= 8,775 sq ft±
Building	= 2,013 sq ft±
Building	= 584 sq ft±
Concrete	= 144 sq ft±
Porch	= 239 sq ft±
Concrete	= 230 sq ft±
Concrete	= 132 sq ft±
Total	= 3,342 sq ft±
Percentage	= 38.09%

The only easements shown are from plats of record or information provided by client.

I certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota. Surveyed this 25th day of January 2015.

Lincoln Avenue

Lot 15, Block 26, Summit Park Addition to St. Paul
Ramsay County, Minnesota

Rev	Drawn By	J. Merson
	File Name	spa-15-26fb108622inv84752.dwg

Signed *Gregory R. Frasca*
Gregory R. Frasca, Minn. Reg. No. 24992

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FILE
16-057947

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Surveyors Certificate
Site Plan Survey For:
ORGANIC COMPASS LLC

INVOICE NO. 84752
F.B.NO. 1086-22
SCALE: 1" = 20'

Basis for bearings is assumed

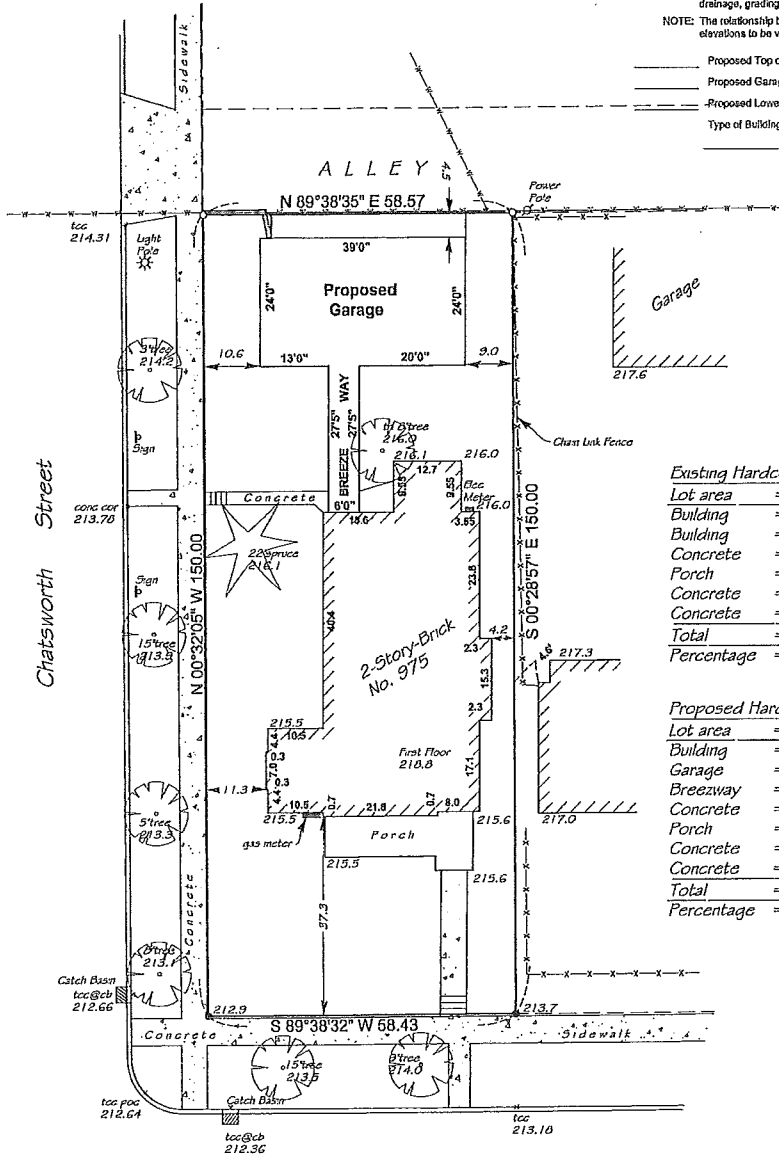
Property located in Section 2, Township 28, Range 23, Ramsey County, Minnesota
Property Address: 975 Lincoln Avenue St. Paul, MN

- Denotes Found Iron Monument
- Denotes Iron Monument
- Denotes Wood Hub Set for excavation only
- Denotes Existing Contours
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- Proposed Top of Block
- Proposed Garage Floor
- Proposed Lowest Floor
- Type of Building



Existing Hardcover

Lot area	= 8,775 sq ft±
Building	= 2,013 sq ft±
Building	= 584 sq ft±
Concrete	= 144 sq ft±
Porch	= 239 sq ft±
Concrete	= 230 sq ft±
Concrete	= 132 sq ft±
Total	= 3,342 sq ft±
Percentage	= 38.09%

Proposed Hardcover

Lot area	= 8,775 sq ft
Building	= 2,013 sq ft
Garage	= 936 sq ft
Breezeway	= 165 sq ft
Concrete	= 144 sq ft
Porch	= 239 sq ft
Concrete	= 230 sq ft
Concrete	= 132 sq ft
Total	= 3,859 sq ft
Percentage	= 43.98%

The only easements shown are from plats of record or information provided by client. Lincoln Avenue

Lot 15, Block 26, Summit Park Addition to St. Paul Ramsey County, Minnesota

I certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota Surveyed this 26th day of January 2016.

Rev 2-29-16 garage size	Drawn By S. Munson
3-3-16 shifted garage	File Name
	spa-15-26inv04752 site plan.dwg

Signed *Gregory R. Pasch*
Gregory R. Pasch, Minn. Reg. No. 24992

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Application for Appeal of Denial of Variance Request #16-047716

I. Introduction

On July 6, 2016 the St. Paul Board of Zoning Appeals (“BZA”) denied the zoning variance application #16-047716 for 975 Lincoln Avenue, which requested a rear yard setback variance of 20.5 feet in order to construct a breezeway that attached the dwelling to the garage. The St. Paul BZA’s decision should be reversed by the City Council because it was based on erroneous findings of fact, contrary to the undisputed evidence presented to the BZA, and the decision was arbitrary and capricious. The stated reasons for denying the variance request are without factual support and instead blatantly disregard the overwhelming evidence supporting the six factor test used to determine whether a zoning variance should be granted.

II. Background on Variance Requested:

Mr. and Mrs. Gilliland are applying for a variance from the strict application of the provisions of Section 66.231 of the St. Paul Legislative Code pertaining to the rear yard setback requirement in order to replace the existing detached garage with the same sized garage, which will be connected to the rear of the house by a new enclosed breezeway consisting of a wall of large windows with a roof and floor. Pursuant to Section 63.501, once the garage is constructed within six feet of the principal structure, it is considered attached for the purposes of meeting setback requirements.

Under the current zoning requirements, the Gillilands can rebuild the garage and construct a breezeway that runs from the new garage up to the house as long as it stops more than 7ft away from the home (anything closer than 7ft and it is considered attached, which necessitates the zoning variance). Constructing a breezeway that is almost attached to the house, but stops 7ft short, however, defeats the purpose of the breezeway in the first place, which is to provide a safer walkway to the garage for the Gillilands who are handicapped and have mobility problems, and it will look unsightly.

Accordingly, the Gillilands are proposing to construct an attached breezeway (see Exhibit A Site Plan), rather than one that stops more than 7ft from the house (see Exhibit B Site Plan). The attached breezeway is much more visually appealing and functional given the unique challenges of the parcel and will better serve the homeowners in accessing their garage in the winter and spring when the yard is flooded, or frozen over, from the all of the water runoff from the adjoining properties.

Currently, a rear yard setback of 25 feet is required in a RT1 zoning district, and the current location of the detached garage with alley access is 4.5 feet. Accordingly, the Gillilands are requesting a rear property line setback variance of 20.5 feet.

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III. BZA Errors in Findings of Fact

1. *The BZA erred in finding that the variance is not in harmony with the general purposes and intent of the zoning code.*

Under Section 60.103 of the Code, part of the intent the zoning regulations is to:

To promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community; to ensure adequate light, air, privacy and convenience of access to property; and to conserve and improve property values;

The BZA found that the variance is not in harmony with the general purposes and intent of the zoning code because connecting the structure would result in a building “obstructing 107.5 feet of this 150 foot deep lot” and there would not be enough yard area, natural light and air/sunlight access to buildings or areas to landscaped. The BZA’s finding is a clear error and arbitrary and capricious.

The property currently has a three-car detached garage with alley access. There are a number of reasons why a new garage and breezeway are needed. The existing garage is dilapidated and is no longer usable because of structural concerns. Neither the Gillilands, nor the tenant in the duplex, can utilize the alley garage because of its condition. Consequently, the garage must be torn down and a new structure constructed.

However, even with a new garage, the topography of the adjoining parcels results in significant rain water and snow melt runoff settling on the Gillilands’ property that in turn floods the area in the spring and summer, and significant ice buildup in the winter. Because of these unsafe conditions, the Gillilands, who are both handicapped and have limited mobility, cannot use the garage in the winter because of ice buildup and often times cannot navigate their way to the garage in the spring and summer because of flooding. (See Exhibit C pictures of backyard).

As a result of these conditions, the Gillilands currently have two assigned handicapped parking spots on Chatsworth Street and enter the house from the side entrance, which is extremely inconvenient and also reduces the amount of on-street parking in the area for other homeowners and their guests because no one else can use those two parking spots. The Gillilands, and their tenants, would prefer to simply park in a safe garage and be able to utilize the sidewalk up to the rear entrance of the house but given their handicaps and the treacherous footing in the area, the breezeway will provide a safe, visually appealing, enclosure to access the house from the garage without the danger of slipping or dealing with the elements as they slowly walk from the garage to the house.

As part of the construction, the Gillilands are also regrading the backyard and installing a raingarden in an attempt to mitigate the water and ice problems they currently experience as a result of their unique location and the topography of the adjoining parcels. Additional

landscaping using native plant species will be installed alongside the breezeway to improve the visual appearance of the structure, and large floor to ceiling windows will line both walls thereby minimizing any light or line-of-sight impediments when looking at the backyard from the street. The construction of a breezeway that is connected to the home rather than one that runs from the garage and stops more than 6 feet from the home, which is the alternative if the variance is not granted, is also much more visually appealing as well as functional.

Accordingly, the construction of a new structurally sound garage and breezeway is in harmony with the general purposes and intent of the zoning code because the improvements will promote and protect the public health and safety, vastly improve the aesthetics of the lot which is currently an eyesore because of the flooding and inability to grow grass. It will also ensure adequate and convenient access to property for both the Gillilands and their tenants without the need to use the handicapped parking on Chatsworth. Finally, the new garage and breezeway will improve property values by creating a usable accessory structure, where currently none exists, and allowing for safe and convenient access from the garage to the house.

The BZA's finding that construction of the breezeway will limit the amount of yard area, access to light and air, and provide for long structure of more than 107 feet disregards the evidence presented in the application and at the hearing. These "findings" are all moot and not relevant because some type of breezeway will be constructed regardless of whether the variance is granted. The issue is whether the breezeway will be connected, or stop 7 feet short of the home. Either version of the breezeway, connected or not, will have the exact same impact on yard area, access to light and air, and the appearance of one continuous structure. In addition, any impact on light and air access is mitigated by the fact that the walls will be floor to ceiling windows, the structure will only be a single story, and the adjoining property owners all sit at a higher elevation and lookout over the top of the breezeway. In addition, the addition of the breezeway actually provides more areas to landscape alongside the structure.

In addition, the BZA ignored the other purpose and intent of the zoning code which is to promote the health and safety of the community. This is precisely what the breezeway will do, and the BZA failed to acknowledge those facts or take them under consideration in determining that this factor was not met. Accordingly, the BZA's decision that the variance is not in harmony with the general purposes and intent of the zoning code is clearly erroneous and their decision to ignore the undisputed evidence presented at the hearing was arbitrary and capricious. The evidence presented clearly demonstrates that this factor is met.

2. *The BZA erred in finding that the applicant had not 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.*

In determining that this factor was not met, the BZA found that:

The house was constructed in 1923 with a detached garage. The applicant has not demonstrated that there are any difficulties making it impractical or unreasonable to construct a detached garage. This finding is not met.

This finding is not only erroneous and ignores the undisputed evidence presented at the hearing, but is also arbitrary and capricious because it fails to treat the applicant in the same manner as other applicants similarly situated. As discussed above, there are a number of challenges on this parcel. The topography of the parcel, and more importantly the parcels adjoining the Gillilands' house, result in a significant amount rain runoff and flooding in the summer and freezing in the winter.

Because of the size and location of the house on the lot, it is impossible to regrade the entire lot to provide for effective water management, and it is also impossible to construct an attached garage because of the location of the house along Chatsworth. The Gillilands would much rather use their garage as a parking structure rather than continue to park on Chatsworth in their assigned handicapped parking spots, but the practical problems with their limited mobility and the dangers present in the yard necessitate the use of an enclosed structure to access the house from the garage.

Constructing breezeway that runs from the garage to an area of the yard that is more than 7 feet away from the house not only defeats the functional purpose of having an enclosed breezeway but also makes for a visually unappealing structure that will not look finished from the street. The Gillilands have considered all other alternatives to solving the problems this parcel faces, but every contractor that has reviewed the site has concluded the same thing, with the amount of water the site holds from draining of adjoining properties there will always be problems and flooding.

In addition, moving the garage up to the house to attach it would actually cause a bigger problem because we would need side yard and rear yard setbacks; and they would lose even more yard and open space than they would with the breezeway. Constructing a breezeway that stops 7ft short of the house is also not practical because it would look unsightly and unfinished, and also not stop the problem of freezing and flooding. Allowing the Gillilands reasonable and safe access to their garage in the alley without walking through a flooded or frozen over yard when they have limited mobility is a reasonable request and amenity for a residential dwelling. The house is also a duplex, so this will provide safe and convenient access for the tenant to access the garage as well.

These conditions are practical difficulties that are unique to the Gillilands' parcel and prevent them from conveniently and safely accessing their garage, which is a reasonable amenity for a residential dwelling. The BZA has repeatedly granted similar variances to individuals in the same or similar situation as the Gillilands.

Other Similar Requests:

- On May 9, 2016, a similar request to take an existing detached garage, tear it down and build an attached garage needing a 14ft setback variance was heard (#16-030378); There the stated purpose by the homeowner was that they have three young girls and they didn't want them playing back in the yard with a garage that was close to the alley and felt it would be safer if the garage were attached; they also wanted a bigger yard and moving the garage would also achieve that goal

- This request was granted unanimously and is very similar to what is being proposed here and has similar rationale for needing the variance.

- On June 22, 2015 there was another request to remove an existing detached garage and carport and construct a new two car attached garage with a studio for teaching harp and piano lessons (#15-125451) and was requesting a 20.5 rear setback variance.

The owners wanted the additional room in the garage because their current house lacked the space necessary for storing their harp and teaching music classes and having the garage attached allowed for a functional music studio that would "minimize the likelihood of damage to the harp from slip and falls especially during winter months" Finally, it would prevent the loss of substantial yard space by allowing the construction in the proposed area

- This Request for a variance was also granted. The BZA found that factor three was met because it was reasonable to provide safe and convenient access to the garage.

- This is the exact same issue we are having and trying to remedy, except we are concerned about aging handicapped people falling and getting hurt, not someone dropping their harp on the way to music lessons

- On September 29, 2014 the BZA approved application #14-327956 which requested a variance from side and front yard setbacks to construct a new two car garage that was connected to the house via a breezeway.

In that case, the homeowner wanted to expand their kitchen into what was then the garage area, and then construct a new garage attached to the house via a breezeway.

- The BZA found that factor 3 was met because the site had challenges and with the expansion of the kitchen, it was not practical to have the garage in the back of the house and instead was better suited in the front and side yard; the staff report found that constructing a new garage connected by the breezeway for ease of use was a reasonable amenity for a residential dwelling and approved the variance.

Time and time again, the BZA has found that homeowners similarly situated to the applicants met factor 3 (along with all of the other factors) when proposing to construct an attached garage where no attached garage presently existed. Each time, there was a finding that complying with the zoning code proved practically difficult because of the wishes of the homeowner, whether it was for building a harp and piano lesson studio, expanding the kitchen, or providing for a different backyard layout for 3 young kids. This request is no different than those which the BZA have already unanimously approved. Treating this request any differently ignores the facts presented at the hearing and is arbitrary and capricious.

3. *The BZA erred in finding that the plight of the landowner is due to circumstances created by the landowner rather than unique to the property.*

The BZA found that the plight of the landowner in this case is self-created by their desire to have a garage that is attached to the home rather than circumstances unique to the property.

The BZA's findings wholly fail to address any of the evidence presented at the hearing. In addition, the BZA's findings incorrectly frame the issue. The need for the garage attached by a breezeway is necessitated by the unique topography and layout of the property, not simply that the homeowner wants an attached garage.

The BZA incorrectly found, without a shred of evidence, that simply regarding the lot will solve the problem with flooding and freezing water across the lawn. If it were that easy, the homeowners would not be spending all of the additional money to construct the breezeway. The undisputed evidence presented demonstrated that due to the size of the lot, the topography of the adjoining parcels, and the location of the house on the site, there are no alternatives to constructing the proposed garage and breezeway addition without variances.

As discussed above, the garage is not usable because of flooding and ice buildup as a result of runoff from adjoining properties. Regrading the rear yard and installing the raingarden will not entirely fix this problem. In addition, because the Gillilands are handicapped and have limited mobility they cannot safely navigate the path to the garage without an enclosure or the garage being attached the home. Because of the layout of the house on the lot, it is impossible to construct a garage that is attached to the house without needing a larger variance for side and rear setback requirements. In addition, a breezeway that stops more than 7 feet from the house, which is the only alternative given the challenges with the lot, is not a practical solution to the unique challenges facing this parcel.

Looking again at the other three examples highlighted earlier, which had the exact same set of circumstances that were being solved by the attaching the garage to the dwelling, the BZA approved all of these variances for attached garages that were previously detached and the homeowners simply wanted an attached garage because it made the home and space more functional. All of these that were approved shared the same issue that this house does: the yard layout and oftentimes topography was such that the only practical way to build the attached garage was to obtain a variance on the setback requirements.

None of the other proposed uses were something that the parcel created, but rather they were all a result of homeowners wanting to make a more useful dwelling that fit better with their lifestyle.

- For instance, the fact that the homeowner wanted to give piano and harp lessons in a studio not in the home and wanted people to be able to get to the garage without going outside was not a hardship and plight created by the parcel, it was based the self-created want of the homeowner to have a connected garage

- The same is true of the homeowner that wanted to expand their kitchen by moving into the existing carport area and then building a new garage attached with a breezeway. That was not a hardship or plight created by the parcel; it was a challenge that the homeowner faced when they wanted to build a bigger kitchen.

Accordingly, the BZA erred in finding that the applicant failed to demonstrate that the plight of the landowner is due to circumstances unique to the property not created by the landowner. The need for an attached garage is a result of the poor draining and topography of the site. Again, the breezeway will be constructed regardless, it is just whether it is connected to the home or stops a few feet short.

4. The BZA erred in finding that the variance will alter the essential character of the surrounding area.

The BZA found that “although there are attached garages in the area as stated by the applicant, there is no house connected to a garage on the north side of Fairmount on this block. This Request could alter the character of the surrounding area.” This finding is not only unsupported by the evidence, but also ignores the intent of this factor.

First, the standard that must be used is not whether the essential character of the area “could” be altered. Rather, there must be a finding that the essential character of the area “will” be altered by the variance. This is an important distinction and one that was entirely ignored by the BZA.

Second, the finding is disingenuous because it ignores the fact that there is a house north of Fairmount one block to the east (on the corner of Milton and Goodrich, see Exhibit D enclosed photo) that has the exact type of breezeway that is now being requested, with one critical

difference: that breezeway is solid stucco whereas the Gilliland's would be floor to ceiling windows allowing more light and air to pass through.

Third, there are a number of properties in the surrounding area that have accessory structures in the backyard that cover much, and sometimes all of, the rear yard. These additions, which were not part of the neighborhood when it was originally constructed, have sometimes resulted in almost the entire backyard being lost. Finally, there are also a number of homes that have built pools, sport courts, and other impermeable surface structures on the same block that have contributed to additional runoff creating the unique problem that now faces the Gillilands.

The breezeway will absolutely not alter the essential character of the area. Indeed, great steps have been taken to ensure that once finished, the garage and breezeway will look like it has always been a part of the structure. The garage and breezeway will be constructed using high-end materials that will match the main house, which has been there since 1923, and also exists throughout the neighborhood. Utilizing these building materials, as well as the installing a raingarden and additional landscaping to improve the ability of the yard to handle the additional water runoff will not alter the existing character of the neighborhood. The Gillilands have discussed the plans to add the breezeway with surrounding neighbors and none have raised any objections and a number of them have endorsed the plan. Rather, the neighbors support the construction of the structure and submitted letters to the BZA laying out their support. (See also Exhibits E and F)

Accordingly, the construction of the attached breezeway will not alter the character of the neighborhood given that other homes in the area have the same structure, or similar accessory buildings, and the structure will be built using neighborhood appropriate materials and methods that will result in a visually appealing structure, backyard, and landscaping that not only creates a functional and usable garage but also adds to the value of the property.