

**CITY OF SAINT PAUL  
BOARD OF ZONING APPEALS RESOLUTION  
ZONING FILE NUMBER: 16-047716  
DATE: July 6, 2015**

WHEREAS, Patrick Lindmark for owner William H. Gilliland has applied for a variance from the strict application of the provisions of Section 66.231 of the Saint Paul Legislative Code pertaining to the required rear yard setback. The applicant is again proposing to remove the existing detached garage and construct a three-car garage addition connected to the rear of the house by a new enclosed breezeway. Once connected, the garage becomes part of the house and must meet the rear yard setback required for the house. A rear yard setback of 25 feet is required, a setback of 4.5 feet is proposed from the rear property line for a variance of 20.5 feet in the RT1 zoning district at 975 Lincoln Avenue. PIN: 022823310095; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on July 6, 2015 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.*

The property currently has a three-car detached garage with alley access. The homeowner wants to remove the garage and construct a three-car garage addition connected to the rear of the house by a new enclosed breezeway. Once connected, the garage becomes part of the house and must meet the required 25 foot rear yard setback for the house. The applicant is proposing a setback of 4.5 feet, hence, the requested rear yard setback variance.

The applicant states that the dilapidated condition of the existing garage and the topography of the adjoining parcels, which cause rain water accumulation in the homeowners' yard, necessitate a new garage connected to the house via a breezeway. He contends that the homeowners have a mobility issues that also necessitates an enclosed structure so that they can use the garage at all times and away from the elements such as snow and rain.

The applicant recognizes that among a purpose and intent of the zoning code is to promote the health and safety of the community and to ensure adequate light, air, privacy and convenience of access to property.

However, the purpose and intent of the zoning code in requiring setbacks is to also provide for yard area around structures, to ensure adequate privacy, natural light, air and sunlight access to buildings and to provide space for landscaping. Connecting the garage and the house with a breezeway would result in creating a building obstructing 107.5 feet of this 150

35

foot deep lot. This request is not in keeping the purpose and intent of the code. This finding is not met.

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

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). This finding is met.

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.*

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.

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

The applicant contends that rain water from the adjoining parcel to the east, drains into this lot. However, city records also indicate that this lot slopes slightly from the front of the house towards the alley. The homeowners could regrade the rear yard in order to resolve this drainage issue. This could be a better alternative than an attached garage. The requested variance is a result of the applicant’s intent to connect both structures. It is not due to any practical difficulty. In this case, the plight of the landowner is self-created. This finding is not met.

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

An attached garage is permitted in this zoning district. The requested variance if granted will not change the zoning classification of the property. This finding is met.

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

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 met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Section 66.231 to allow a rear yard setback of 4.5 feet on property located at 975 Lincoln Avenue and legally described as Summit Park Addition Tost Pa

Lot 15 Blk 26; in accordance with the application for variance and the site plan on file with the Zoning Administrator.  
***IS HEREBY DENIED.***

**MOVED BY:** Bogen  
**SECONDED BY:** Albert  
**IN FAVOR:** 4  
**AGAINST:** 0

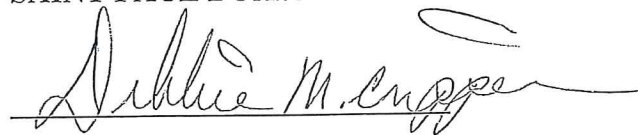
**MAILED:** July 7, 2015

**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 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 July 6, 2015 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

SAINT PAUL BOARD OF ZONING APPEALS



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

37



**BOARD OF ZONING APPEALS STAFF REPORT**  
=====

**TYPE OF APPLICATION:** Major Variance **FILE #**16-047716  
**APPLICANT:** PATRICK LINDMARK for owner WILLIAM H. GILLILAND  
**HEARING DATE:** July 6, 2015  
**LOCATION:** 975 LINCOLN AVENUE  
**LEGAL DESCRIPTION:** Summit Park Addition Tost Pa Lot 15 Blk 26  
**PLANNING DISTRICT:** 16  
**PRESENT ZONING:** RT1  
**ZONING CODE REFERENCE:** 66.231  
**REPORT DATE:** June 22, 2016 **BY:** Yaya Diatta  
**DEADLINE FOR ACTION:** August 11, 2016  
**DATE RECEIVED:** June 13, 2016

---

A. **PURPOSE:** The applicant is again proposing to remove the existing detached garage and construct a three-car garage addition connected to the rear of the house by a new enclosed breezeway. Once connected, the garage becomes part of the house and must meet the rear yard setback required for the house. A rear yard setback of 25 feet is required, a setback of 4.5 feet is proposed from the rear property line for a variance of 20.5 feet.

B. **SITE AND AREA CONDITIONS:** This is an 89 by 150-foot lot with alley access to a three-car detached garage. This site is located in the National and State Hill Historic District.

Surrounding Land Use: Commercial uses across the alley to the north and various residential uses on the remaining sides.

C. **BACKGROUND:** On May 9, 2016, the BZA denied a similar variance request (File # 16-016804) submitted by David Klun, the contractor for the new garage project.

D. **ZONING CODE CITATION:**

38

**Sec.66.231.** Residential District Dimensional Standards table requires a minimum rear yard setback of 25 feet from the rear property line.

**E. FINDINGS:**

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

The property currently has a three-car detached garage with alley access. The homeowner wants to remove the garage and construct a three-car garage addition connected to the rear of the house by a new enclosed breezeway. Once connected, the garage becomes part of the house and must meet the required 25 foot rear yard setback for the house. The applicant is proposing a setback of 4.5 feet, hence, the requested rear yard setback variance.

The applicant states that the dilapidated condition of the existing garage and the topography of the adjoining parcels, which cause rain water accumulation in the homeowners' yard, necessitate a new garage connected to the house via a breezeway. He contends that the homeowners have a mobility issue that also necessitates an enclosed structure so that they can use the garage at all times and away from the elements such as snow and rain.

The applicant recognizes that among a purpose and intent of the zoning code is to promote the health and safety of the community and to ensure adequate light, air, privacy and convenience of access to property.

However, the purpose and intent of the zoning code in requiring setbacks is to also provide for yard area around structures, to ensure adequate privacy, natural light, air and sunlight access to buildings and to provide space for landscaping. Connecting the garage and the house with a breezeway would result in creating a building obstructing 107.5 feet of this 150 foot deep lot. This request is not in keeping the purpose and intent of the code. This finding is not met.

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

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). This finding is met.

*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.*

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.

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

The applicant contends that rain water from the adjoining parcel to the east, drains into this lot. However, city records also indicate that this lot slopes slightly from the front of the house towards the alley. The homeowners could regrade the rear yard in order to resolve this drainage issue. This could be a better alternative than an attached garage. The requested variance is a result of the applicant's intent to connect both structures. It is not due to any practical difficulty. In this case, the plight of the landowner is self-created. This finding is not met.

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

An attached garage is permitted in this zoning district. The requested variance if granted will not change the zoning classification of the property. This finding is met.

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

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 met.

F. **DISTRICT COUNCIL RECOMMENDATION:** Staff received has not received a recommendation from District 16.

G. **CORRESPONDENCE:** Staff has not received any correspondence.

H. **STAFF RECOMMENDATION:** Based on findings 3, 4 and 6, staff recommends denial of the requested variance.



MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, JULY 6, 2015

PRESENT: Mmes. Albert, Bogen, Maddox; Messrs. Rangel Morales of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Diatta and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Thomas Saylor\*, Daniel Ward\*, Diane Trout-Oertel  
\*Excused

The meeting was chaired by Joyce Maddox, Chair.

**Patrick Lindmark (#16-047716) 975 Lincoln Avenue:** The applicant is again proposing to remove the existing detached garage and construct a three-car garage addition connected to the rear of the house by a new enclosed breezeway. Once connected, the garage becomes part of the house and must meet the rear yard setback required for the house. A rear yard setback of 25 feet is required, a setback of 4.5 feet is proposed from the rear property line for a variance of 20.5 feet.

Mr. Diatta showed slides of the site and reviewed the staff report with a recommendation for denial based on findings 3, 4 and 6.

One letter was received from the neighbor at 972 Lincoln Avenue supporting the variance request.

One letter was received from District 16 regarding the variance request.

The applicant **PATRICK LINDMARK, for BASIL & RHONDA GILLILAND**, 100 Fifth Street South, Suite 2500, was present with the contractor Dave Klun, P. O. Box 25884 Woodbury, MN. Mr. Lindmark stated that whether the variance is granted or not a breezeway will be built with the new garage. The question here is whether it connects to the house or if it stops 7 feet from the house. From Chatsworth floor to ceiling windows will be seen and some landscaping. All the neighboring homes are at a higher elevation than this property, it will not obstruct anybody's light or air and there are no privacy concerns. There will be a water garden included with the landscaping to try and alleviate some of the water problem. Regrading the back yard will not solve the water problem because all the water in the area runs down into this property, creating a real problem in winter when everything ices over. This will also free up parking on Chatsworth as there are two handicapped parking spaces in front of this property that nobody else can park in. Without this breezeway, half the time this yard is full of water and then frozen in the winter making it impossible for the homeowner to park in the garage. Mr. Lindmark contended that for finding three staff ignored the paperwork that they submitted as practical difficulties and concludes that there are no practical difficulties in complying with the setback requirement, arguing again that the reason is the flooding, freezing and mobility issues of the homeowners. He stated that they have had a number of contractors look at the site and there is not a lot that can be done to alleviate the water issues because of the runoff from the neighboring properties. Only so much can be done with grading to fix that area. Mr. Lindmark stated that moving the garage up to the house and connecting it that way would cause the need for many more variances and the large three car garage would be in the middle of the back yard. He contended that constructing a breezeway that stops 7 feet short of the house is not practical, it looks unsightly and unfinished, will not enable the home owners to access their garage in inclement weather and when the back yard is frozen.

Mr. Lindmark stated that there have been a number of similar BZA requests to take a detached garage and either tear it down and rebuild the garage and attach it to the main structure or to attach it with a

breezeway. On May 9, 2016 case #16-030378 was a similar case where the applicant asked for a 14 foot setback variance and the stated purpose was that they had three young daughters and did not want them playing in a rear yard with the garage so 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 achieve that goal. This request was granted unanimously and it is very similar to what we are asking. On June 22, 2015 there was another request to remove another detached garage and car port and construct a new two car attached garage with a studio for teaching harp and music lessons, to minimize the likelihood of damage to the harp from slip and falls during the winter months that was case #15-125451. They requested a 20.5' rear set back variance which is more than what is being requested here. Mr. Lindmark stated that the problem they were trying to eliminate here is the exact problem we are trying to eliminate; we are not concerned about a harp but handicapped owners and tenants from slipping and falling on icy sidewalks. He contended if the harp owner met finding three then they certainly should have also. On September 9, 2014 BZA case #14-327956. Ms. Maddox interrupted Mr. Lindmark explaining that the Board does not set precedent with each case. She asked that he address the findings. Mr. Lindmark stated that he is trying to lay some background that this is not something that is an extraordinary request that is being made as staff and the district council is making it sound like, this is something that is routinely granted. He argued that the findings are met in these other cases and somehow they are not met in our case when we are asking for the same thing. For finding four the staff report says that the plight of the land owner was self-created because they want a garage that is attached to the house rather than circumstances unique to the property. He contended that the need for the breezeway is necessitated by the unique typography and the layout of the parcel. It is not so much that he wants an attached garage it is more that his yard floods and is frozen over for half the year making the access to the garage impassable. They can regrade the property add rain gardens but those will not correct the problem when the property is the low spot on the block and all the water drains to this yard. For finding six the staff report states that none of the neighboring properties have attached garages, therefore, attaching this garage will alter the character of the whole neighborhood. They have presented 3-4 letters from neighboring property owners that support this project and think it will look nice. He argued that the construction materials were more relevant to whether the structure fits into the neighborhood than whether the garage is attached or not. None of the neighbors have been in opposition to this variance request.

Ms. Maddox asked whether an engineering report had been submitted. Mr. Lindmark replied no just the elevations and the site plan were submitted. Ms. Maddox further questioned that they have not had an engineer out to look at the problem. Mr. Lindmark replied no, contactors have been out to look at it and there is only so much that can be done with grading.

Ms. Bogen asked if there were any thought of building a slightly raised porous walkway from the house to the garage? Mr. Klun stated that they had talked about that as well as a heated sidewalk, however, it is still exposed to the elements and still get a buildup of snow and rain. Ms. Bogen asked Mr. Klun if he had considered just an open walkway with just a roof over the sidewalk without walls or windows. Mr. Lindmark replied that they were trying to split the difference there with keeping the roof low and installing windows so it could be seen through. Ms. Bogen stated that she asked if it were an option to just have a roof over the walkway without any walls or windows. Mr. Klun stated that he hears what she is saying, however, with the elements of the blowing snow and rain it all builds up and the property owners have not used their garage for quite some time. That is why they have the handicapped parking along Chatsworth it is a short distance to walk from the street to the house than from the garage to the house. Because of the yard conditions the walk from the garage to the house is even worse. A roof over the walkway will keep the rain off when it is coming down but it does nothing for the drifting snow that builds up.

42



Ms. Albert stated that when this case was first heard the question of whether the homeowners would be able to have ADA(American Disabilities Act) compliance related to the renovations and she wanted to know if they had an opportunity to explore that. Mr. Lindmark stated that the ADA requirements for reasonable use accommodations doesn't really apply to this scenario because it is a private residence if this were a four-plex that is being rented out and it prohibited dogs in general and someone coming in has a seeing-eye-dog, that is the type of situation that nobody else can have pets, but a reasonable accommodation has to be made for this individual. When it is a private residence there is no path forward, it is something that they did explore but it is not what they are seeking here, this is a building variance issue not an ADA issue.

Ms. Maddox asked Mr. Lindmark if he was at the land use committee meeting for the district council. Mr. Lindmark replied yes. Ms. Maddox asked what the discussion was there, because they did vote to oppose it. Mr. Lindmark replied correct. He thinks that when this was started Mr. Klun was of the opinion that this was a rubber stamp, that the application had to be filled out and it would be approved so not a lot of thought was put into the six findings and they were not addressed and the district council denied it the first time. We have gone back and tried to address the findings and some of the concerns. When we represented this to the district council he thinks that the council members expressed concerns about voting for it because they had already voted against this in the previous meeting. Arguing that it seemed that the councilmembers felt that they could not change their position on the case the second time it was presented. Mr. Lindmark stated that there has not been any opposition from the immediate neighbors.

Ms. Bogen asked if moving the garage really close to the house had been considered. Mr. Lindmark replied that yes, they had considered that, however, it would create the need for more variances than they are currently requesting. They would be too close to the side yard, would still need the rear setback issue and it would not be possible to move the garage up far enough to meet the rear setback requirement. Mr. Klun stated that it would be only a few feet from the master bedroom bump out, and would be looking at a stucco wall from that window. Mr. Lindmark stated that because of the alley access there would be the need for a driveway from the alley to the garage that would be up against the house. This would reduce the amount of green space because it would place a three car wide garage in the middle of the yard and the driveway that would run the length of the yard.

Mr. Rangel Morales asked if they had gotten any opinions as to how much grading would help. Mr. Lindmark asked the grading or the breezeway? Mr. Rangel Morales replied both, he is asking about the alternative methods of trying to deal with the water issue. He stated that the Board does not have anything to support what is being stated. He would like to see some actual opinion of what will occur with the instillation of the water garden and how much the grading is anticipated to alleviate the water issue, because Mr. Lindmark and Mr. Klun are saying that grading and the water garden are not going to help. Mr. Lindmark state that it will help some but his point is that it is never going to be addresses fully by simply grading within the allowed elevation changes for the building code. Which is why we went back to the breezeway so it is either going to be a 100 foot breezeway or 107 foot breezeway. Otherwise you will still have the walkway exposed to the elements.

There was opposition present at the hearing.

Hearing no further testimony, Ms. Maddox closed the public portion of the meeting.

Ms. Maddox asked Mr. Rangel Morales if he was asking for an engineering report to say that the breezeway is the only option for this property. Mr. Rangel Morales stated yes, he would like to know

43

more about how much installing a porous walkway that has the ability to absorb some of the moisture as well as how much grading and the garden may help this situation.

Ms. Bogen stated that she thinks that there are too many other options that could have been used to address this rather than this walled in piece of property that will extend the whole length of the property from the garage to the house.

Ms. Bogen moved to deny the variance and resolution based on findings 3, 4 and 6.

Ms. Albert seconded the motion, which passed on a roll call vote of 4-0.

Submitted by:

Approved by:

YaYa Diatta

Thomas Saylor, Secretary