



Larkin Hoffman

8300 Norman Center Drive  
Suite 1000  
Minneapolis, Minnesota 55437-1060

GENERAL: 952-835-3800  
FAX: 952-896-3333  
WEB: [www.larkinhoffman.com](http://www.larkinhoffman.com)

September 12, 2016

Council President Russ Stark and Council Members  
c/o Yaya Diatta  
City of St. Paul  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101-1806

Re: Opposition to Land Use Application for 492 Bay Street (File No. 16-047761)  
Our File #39,748-00

Dear Council President Stark and Council Members:

This firm represents Kathryn Becker, owner and resident of the property at 720 Randolph Street, with respect to the appeal of four variances (the "Variances"), applied for by Shannon Ingham (the "Applicant"), for the property located at 492 Bay Street (the "Property") in the City of St. Paul (the "City"). On behalf of Ms. Becker, we respectfully request that the City Council grant the appeal and deny the Variances. The Property is substantially undersized, the Variances do not meet the requirements of the City ordinance, and approval of the proposed structure would be contrary to the spirit and intent of the ordinance and City's Comprehensive Plan.

The Variances would permit construction of a single-family home that falls well below the standards established in the City's zoning code (the "City Code") with respect to setbacks and the width of a single-family home. Adjacent property owners, including Ms. Becker have invested in this neighborhood with the understanding and belief that the minimum standards of the City Code would be enforced to ensure that high-quality investment in the community. Permitting the four Variances to further reduce the minimum setbacks and building width will be detrimental to the character of the surrounding area. By granting the appeal and denying the Variances, the City Council will further protect not only the character of the community, but the health, safety and general welfare of the neighborhood.

Consistent with City Code Section 61.601, a variance application must meet several findings under Minnesota law. Notwithstanding the approval by the Board of Zoning Appeals the Variances do not satisfy the minimum thresholds to justify granting of a variance.

**1. Variance 1 & 2: Side Yard Setbacks**

The Applicant is requesting variances to reduce both the east and west side yard setbacks from a minimum setback of four (4) feet to one (1) foot and two-and-a-half (2.5) feet respectively. It should be noted that the eaves appear to project approximately 1 foot into the side yard setback,

effectively resulting in a 0-foot setback on the east and a 1.5-foot setback on the west. These requests do not satisfy the findings required for reduction of the side yard setbacks as follows:

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

The finding is not satisfied. The purposes and intent of the City Code in establishing a 4-foot minimum side yard setback includes preventing the overcrowding of land; ensuring an adequate supply of light and air to adjacent property; ensuring sufficient space for maintenance of the building from the same lot; and prevention of damage to adjoining property by runoff from roofs.

Reducing the side yard setbacks to 1 foot on the east and 2.5 feet on the west would be contrary the purpose and intent of establishing a minimum setback. Access to light and air for both the Property and the adjacent property to the east will be substantially limited by the proposed 1-foot setback. As the staff report notes, access to light and air for the future occupants of the Property will be precluded due to the building code prohibition on windows on a building wall located within 3 feet of the property line. The proposed 1-foot setback will also require that the Applicant trespass into the adjacent property during construction and for regular maintenance of the Property. Moreover, the proposed setback would create an increased risk of damage from runoff from the Property to adjacent properties.

Granting the proposed side yard variances will be contrary to the intent of the City Code and will be detrimental to the health safety, and welfare of the public.

*(b) The variance is consistent with the comprehensive plan.*

This finding is not satisfied. The Property is subject to the West 7th Street/Fort Road District 9 Area Plan (the "Area Plan"). The Area Plan contains policies and strategies including the following: "Maintain the character of existing residential areas by keeping zoning appropriate to residential neighborhoods" and "new construction should respect and complement the character of existing housing in the community." Here, however, the proposed Variances will be detrimental to the character of the neighborhood and inconsistent with adjacent development. The proposed structure is lacking any consistency with the character of the neighborhood and consists of unimaginative flat walls with little if any architectural detail and will be inconsistent with the infill called for in the Comprehensive Plan.

The Variances will also virtually guarantee the damage and destruction of two larger trees on the adjacent property inconsistent with Comprehensive Plan policy 3.8 which is to "enhance the city's physical and aesthetic environment by preventing the indiscriminate removal or destruction of trees where practicable and by protecting large trees and exceptional trees." The 1-foot setback from the east property line will virtually guarantee the death of the older-growth trees planted within a few feet of the shared property line on the adjacent property. The root damage and overhead pruning required

to accommodate the 2-story structure will be detrimental to the value of the adjacent properties and cause the unnecessary loss of at least two trees. Requiring the Applicant to meet the 4-foot minimum setback would decrease the likelihood that the trees will be unnecessarily destroyed.

*(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.*

This finding is not satisfied. While it is impossible to construct a house on the Property without several variances, that alone does not constitute a practical difficulty. The Property falls well below the minimum requirements necessary for a single-family home. As the City Code section 61.103 requires, even homes built on nonconforming lots must comply with yard dimensions and other zoning requirements for the underlying zoning district in order to be developable.

The Applicant's request to reduce the side yard setbacks is not reasonable or appropriate for the zoning district, the neighborhood or the Property. The 1-foot and 2.5-foot setbacks are well below the minimum setback of 4-feet, which was established to protect both adjacent properties and future residents of the subject Property. The addition of an approximately 1-foot eave reduces the effective setback to 0 feet on the east, which will result in runoff onto the adjacent property and will require repeated trespasses during construction and maintenance. The Applicant's request is not reasonable.

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

This finding is not satisfied. The reduced side yard variances are the result of the Applicant's desire to shoehorn a structure onto the Property that far exceeds what can appropriately be handled on the lot. While the lot is substandard, the variance applications are driven by the Applicant's desire to build a wider house than is appropriate. The Applicant could modify the design of the Property to satisfy the side yard setback requirements and reduce the number of variances necessary to build on the lot.

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

While a singly family dwelling is a permitted use in the RM1 District, approving the variance will permit the use of the Property by a structure that is inappropriate given the lot size and dimensions.

*(f) The variance will not alter the essential character of the surrounding area.*

This finding is not satisfied. The proposed structure is lacking consistency with the character of the neighborhood and will alter the essential character of the surrounding area. The structure far exceeds the size and scale of structures built on similarly situated parcels and will be inappropriately close to the adjacent property to the east. The 2-story, 53-foot long flat building wall will be only 2.5 feet from the sidewalk at the west, which will create a looming and effect over the sidewalk. The 1-foot setback from the east property will similarly create a looming effect and result in the loss of multiple older-growth trees.

## **2. Variance 3: Rear Yard Setback**

The Applicant is requesting a variance to reduce the rear yard setback from 25 feet to 22 feet. This requests does not satisfy the findings required to warrant a variance to reduce the rear yard setbacks under the City Code as follows:

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

The finding is not satisfied. Reducing the rear yard setback to 22 feet would be contrary the purpose and intent of establishing a minimum setback. The existing house to the south is located only 3.3 feet from the property line. By reducing the setback the Applicant's proposal would create an overcrowding effect on the adjacent property and allow an inappropriately sized structure on the Property.

*(b) The variance is consistent with the comprehensive plan.*

This finding is not satisfied. The reduced side yard contradicts the Area Plan policies that seek to maintain the character of existing residential areas and ensure that new construction should respect and complement the character of existing housing in the community. The proposed variance is required to allow the house to be set back more than 40 feet from the front property line along Randolph Avenue. This setback is unnecessary and inconsistent with the character of the neighborhood in which most of the homes are within 10-15 feet of Randolph Avenue. The proposed variance is not consistent with the comprehensive plan as s a result of the proposed home's inconsistency with the character of the neighborhood.

*(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.*

This finding is not satisfied. There is no practical difficulty in complying with the required rear yard setback as the home could either be shortened to 50 feet in length, or the structure could be moved towards the front property line. The apparent need for the

setback is due to the electrical lines located over the Property. These lines could easily be moved for a fee to the power company. Other than the economic reason that the Applicant desires to not pay the fee, there is no justification for reducing the setback. Given the alternatives available that would not require the variance, the Applicant's request is not reasonable.

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

This finding is not satisfied. The plight of the Applicant is due to circumstances solely created by the Applicant. The Applicant is seeking to reduce the setback because of the desire to not incur the cost of relocating the power lines and desire to construct a 53-foot long building, as opposed to a 50-foot long building that would comply with the City Code.

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

While a singly family dwelling is a permitted use in the RM1 District, approving the variance will permit the use of the Property by a structure that is inappropriate given the lot size and dimensions.

*(f) The variance will not alter the essential character of the surrounding area.*

This finding is not satisfied. The proposed structure is lacking consistency with the character of the neighborhood and will alter the essential character of the surrounding area. The variance allows the structure to be built more than 40 feet from the front property line along Randolph Avenue, despite its orientation towards Randolph. This is inconsistent with the homes in the surrounding area and inconsistent with the frontage of homes along Randolph Avenue. The variance will be detrimental to the essential character of the neighborhood.

### **3. Variance 4: Reduction in Building Width**

The Applicant is requesting a variance to reduce the building width from 22 feet to 20.2 feet. This request does not satisfy the findings required for a variance to reduce the building width under the City Code as follows:

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

This finding is not met. The intent of a minimum building width of 22 feet is to ensure high-quality development, minimum standards of habitability, and represent character consistent with the existing housing stock. As proposed, the structure falls well short of the City Code's intent. The long, narrow building lacks any architectural features or

character consistent with the surrounding area. The flat, featureless walls and narrow shape is not consistent with the spirit or intent of the ordinance.

*(b) The variance is consistent with the comprehensive plan.*

This finding is not satisfied. The reduced side yard contradicts the Area Plan policies that seek to maintain the character of existing residential areas and ensure that new construction should respect and complement the character of existing housing in the community. The proposed structure is a long, narrow structure inconsistent with the character of the existing housing in the community and detrimental to the character of the neighborhood. Granting the proposed building width variance is inconsistent 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.*

This finding is not satisfied. While it is impossible to construct a house on the Property without several variances, that alone does not constitute a practical difficulty. The Property falls well below the minimum requirements necessary to construct a single-family home.

The Applicant's request to reduce the building width is not reasonable or appropriate for the zoning district, the neighborhood or the Property. The minimum building width was established to ensure minimum standards of development and buildings consistent with existing development. The proposed home is lacking in any character and a long, narrow design that is inconsistent with the surrounding neighborhood.

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

While the lot cannot be developed without several variances, the plight of the Applicant is demonstrative of the fact that the lot is not appropriate for development as a single-family home.

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

While a singly family dwelling is a permitted use in the RM1 District, approving the variance will permit the use of the Property by a structure that is inappropriate given the lot size and dimensions.

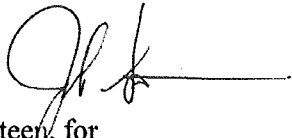
*(f) The variance will not alter the essential character of the surrounding area.*

This finding is not met. The variance would alter the essential character of the surrounding area. The proposed structure is a long, narrow structure inconsistent with the character of the existing housing in the community and detrimental to the character of the neighborhood.

Based on the findings required under the City Code, the Applicant's request for the Variances does not warrant or satisfy the requirements for a variance under the law. The Property is undersized and inappropriate for the proposed structure. The long narrow building lacks any architectural detail and is inconsistent with the character of the surrounding area. For these reasons, I strongly encourage the City Council to approve the appeal and deny the variances.

Please contact me about this letter or any information contained herein.

Sincerely,



Jacob W. Steep, for  
Larkin Hoffman

Direct Dial: 952-896-3239  
Direct Fax: 952-842-1738  
Email: [jsteen@larkinhoffman.com](mailto:jsteen@larkinhoffman.com)

cc: Kathryn Becker  
Keith Ecklund (KEklund@healthcaretechconsultingcorp.com)  
Betty Moran (Betty@fortroadfederation.org)  
Frank Peterson (frankmpetersen@comcast.net)