



## Legislation Text

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**File #:** RES 16-1957, **Version:** 1

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Memorializing the Council's decision to grant the appeal by Keith Eklund from a decision of the BZA to grant variances to construct a single family home at 492 Bay Street.

WHEREAS, on June 13, 2016, Shannon Ingham ("Applicant"), duly applied to the Board of Zoning Appeals ("BZA"), in BZA File No. 16-047761, for several variances from the strict application of the zoning code for the purpose of constructing a new, single-family dwelling on a vacant lot zoned RM1 and located at the southeast corner of Bay and Randolph which is commonly known as 492 Bay Street, legally described as Scheffers Addition W 2 Ft Of Lot 7 And All Of Lot 8 Blk 2. [PIN No. 112823410039]; and

WHEREAS, Applicant's dwelling, as proposed, required the following variances: (1) Leg. Code § 66.231(a) requires 4-foot sideyard setbacks: Applicant proposed a 2.5-foot setback from the west property line and a 1-foot setback from the east property line requiring, respectively, variances of 1.5 feet and 3 feet. (2) Leg. Code § 66.231(a) requires a 25-foot rear yard setback: Applicant proposed a 22-foot setback which required a variance of 3-feet. (3) Leg. Code § 66.233 requires the building width on any side of a single-family dwelling to be at least 22-feet wide: Applicant's proposed home was 20.2 feet wide which required a building-width variance of 1.8 feet; and

WHEREAS, on July 6, 2016, the BZA, with four members present, duly conducted a public hearing on the said application where all persons interested were afforded an opportunity to be heard and, upon the close of the public hearing and further discussion of the matter a motion was made to deny the variances as recommended in the BZA's staff report dated June 15, 2016 which is attached hereto and incorporated herein by reference as Exhibit A; and

WHEREAS, that motion failed for a lack of a second whereupon a motion was duly made which resulted in the matter being continued to July 18, 2016 when more than four BZA members would be present; and

WHEREAS, on July 18, 2016, the BZA, with six members present, reopened the public hearing on the matter in light of the Applicant's design change that eliminated the need for the rear yard variance because the new design moved the proposed dwelling forward on the lot and removed a second story bay window from the rear of the dwelling; and

WHEREAS, upon the close of the said public hearing, the BZA, based upon all the evidence presented at the public hearing, as substantially reflected in the minutes and upon discussing the findings necessary to support granting the two remaining variances [the two side yard variances and the building width variances as identified above], duly moved to approve the said variances subject to conditions, on a 4-2 vote based upon the following findings of fact, as set forth in BZA Resolution No. 16-047761, adopted on August 1, 2016:

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

The applicant is proposing to construct a new, two-story single family dwelling and a two-car attached garage

accessed from Bay Street on this vacant lot. This is a legal nonconforming lot that had a house that appears to have been built in 1888 but has been vacant since 2007 when the house was removed. For zoning purposes, Randolph is the front yard.

This property has 25.7' of lot frontage on Randolph Avenue and 119.7' of frontage on Bay Street. All of the residential lots on this block face, between Bay Street and Osceola Avenue to the east, are at least 40 feet wide.

The zoning code requires that a single family dwelling in this zoning district be set back at least 4' from the side lot lines, and also specifies that any side of a single-family dwelling be at least 22' wide.

The proposed house would be set back 2.5' from the west property line, 1' from the east property line and would be 20.2' wide, hence the requested variances.

The proposed house meets the required front yard setback on Randolph Avenue. There is a tool shed under construction on the property, which the applicant intends to finish if the requested variances are approved. The requested variances would allow a new house and a two-car garage to be constructed, consistent with a purpose and intent of Leg. Code § 60.103 of the zoning code to provide housing opportunities and off-street parking in order to lessen congestion in the public streets. This finding is met for both variance requests.

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

The West 7th Street/Fort Road District 9 Area Plan, adopted by the City Council on 7/17/13 as part of the Comprehensive Plan includes strategies to:

Maintain a diversity of households in regard to income, age, and race/ethnicity and maintain existing housing stock while developing new housing.

This request is consistent with the District Plan and also with Strategy 1.1 of the Comprehensive Plan to increase housing choices across the city to support economically diverse neighborhoods. This finding is met for both variance requests.

*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.*

There is no other way to construct a single family dwelling on this lot. With a lot width of 25.7' and with a 4' side setback on each side, only 17.7' is available for the width of the house. The minimum house width requirement is 22'. In order to build a house on this property, either the side setbacks or the house width, or both, must be reduced. In this case, the applicant is requesting that both the side setbacks and building width be varied. This is a practical difficulty preventing the construction of a reasonable single family dwelling without the requested variances. This finding is met for both variance requests.

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

This is an existing lot of record and its relatively narrow size is a circumstance unique to the property not created by the applicant. This finding is met for both variances requests.

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

A single family dwelling is a use permitted in this zoning district. The requested variances if granted will not change the zoning classification of the property. This finding is met for both variance requests.

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

Because there was a house on this property for over a hundred years, a new house will not alter the essential character of the area. This finding met for both variance requests.”

WHEREAS, on August 5, 2016, pursuant to the provisions of Leg. Code § 61.702(a), Keith Eklund (“Appellant”) duly filed under BZA File No.16-067062, an appeal with the City Clerk from the BZA’s determination and requested a public hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, on September 21, 2016, pursuant to Leg. Code § 61.702(b) and upon notice to all affected parties, a public hearing was duly conducted by the City Council where all interested parties were given an opportunity to be heard; and

WHEREAS, upon closing the public hearing the Council, having heard the statements made, and having considered the variance application, the report of staff, all the records and minutes, and BZA Resolution No. 16-047761; does hereby

RESOLVE, that the Council of the City of Saint Paul finds that Appellant has demonstrated that the BZA erred with respect to Findings No.1, 3, and 4 as set forth in BZA Resolution No. 16-047761 and that the original recommendation by BZA staff to deny the requested variances for the reasons set forth in the report of BZA staff dated June 15, 2016 is hereby adopted. Accordingly, the Council hereby overturns the BZA’s decision in this matter and grants Appellant’s appeal; AND

BE IT FURTHER RESOLVED, that the Council, in support of its decision to grant Appellant’s appeal, hereby adopts as its own Finding’s No.s 1, 3, and 4 as set forth in the staff report to the BZA dated June 15, 2016; AND

BE IT FURTHER RESOLVED, based upon the Finding’s referenced above, that the variances requested by Shannon Ingham in BZA File No. 16-047761 are hereby denied for those reasons set forth in the BZA staff report dated June 15, 2016 and incorporated herein by reference; AND

FINALLY RESOLVED, that the City Clerk shall mail a copy of this resolution to the Applicant Mr. Ingham, to the Appellant Mr. Eklund, the Zoning Administrator, the Planning Commission and the BZA.