



## Legislation Details (With Text)

**File #:** RES 15-887    **Version:** 1

**Type:** Resolution    **Status:** Passed  
**In control:** City Council  
**Final action:** 5/20/2015

**Title:** Memorializing the City Council's April 15, 2015 decision granting Cheryl Fogarty's appeal of a decision of the Board of Zoning Appeals granting a variance for property located at 2146 Grand Avenue.

**Sponsors:** Russ Stark

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
5/26/2015	1	Mayor's Office	Signed	
5/20/2015	1	City Council	Adopted	Pass

Memorializing the City Council's April 15, 2015 decision granting Cheryl Fogarty's appeal of a decision of the Board of Zoning Appeals granting a variance for property located at 2146 Grand Avenue.

WHEREAS, on January 6, 2015, Dennis D. Gudim, Jr., in DSI Zoning File No. 15-000893, made application to the Board of Zoning Appeals ("BZA") for a variance from the strict application of Legislative Code § 67.703's minimum distance requirements between student dwellings in order to legalize a dwelling located at 2146 Grand Avenue [PIN No. 052823410098] as a student dwelling; and

WHEREAS, Leg. Code § 67.702 requires a student dwelling to be located at least 150 feet from another student dwelling. The applicant proposed a 40-foot separation from an existing student dwelling to the east at 2138 Grand Avenue and a zero-foot setback from an existing student dwelling to the west at 2150 Grand for variances of 110 feet and 150 feet respectively; and

WHEREAS, the BZA, in accordance with the requirements of Leg. Code § 61.601, duly conducted a public hearing on February 2, 2015 where all persons interested were afforded an opportunity to be heard and, at the close of the public hearing, based upon the staff report dated January 13, 2015 which recommended denial of the variance together with the hearing testimony, a motion was made to deny the variance; and

WHEREAS, on a 2-2 vote the said motion to deny failed; and

WHEREAS, with only four BZA commissioners present and in light of Leg. Code § 61.203(b)'s requirement that all BZA actions require four affirmative votes at a minimum, the BZA duly moved to lay over to February 18, 2015 when more BZA members would be present; and

WHEREAS, on February 18, 2015, the BZA continued the said matter to March 2, 2015; and

WHEREAS, on March 2, 2015, the BZA, with five commissioners present, the said matter was again taken up whereupon the BZA, at the close of testimony moved to grant the requested variance based upon the following findings of fact as set forth in BZA Resolution No. 15-000893:

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

This property is located within the Student Housing Neighborhood Impact Overlay District. Saint Paul has nine universities and colleges and five of those institutions are located within or in proximity to the student housing overlay district. The ordinance is intended to: "ameliorate the impact of dedicated student housing within and preserve the character of predominantly one- and two-family dwelling neighborhoods". This property is located between two registered student dwellings (40 feet from 2138 Grand Avenue and zero feet from 2150 Grand Avenue).

The proposed student dwelling is a 4-bedroom single family dwelling occupied by four University of Saint Thomas students. According to the applicant, this request is in harmony with the intent of the zoning code because his student rental property was in existence prior to the establishment of the student dwelling ordinance. The applicant also claims that he did not receive any notification pertaining to the student dwelling registration during the registration period in 2012.

Existing student dwellings were allowed to remain providing they had a fire certificate of occupancy or provisional fire certificate of occupancy before the date of the ordinance adoption (June 27, 2012) and must have had three or four undergraduate college students living in the unit any time within the 18 months preceding the effective date of the ordinance (August 8, 2012). This property had a certificate of occupancy for a non-owner occupied single family dwelling but the property owner never registered it as a student dwelling within the registration period.

The study found that students are generally "a transient population with respect to the area they inhabit, and so have less connection to the long term well-being of that neighborhood than more permanent residents may". As a result, noise and inattention to property appearance and litter tend to be an issue. The applicant states that he has been renting the property to students since 2002 and can provide records to prove it. In this case, the request would not negatively impact a purpose and intent of the zoning code to improve the quality of life in the neighborhood. This finding is met.

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

The applicant states that this property has been managed well since he started renting it to students in 2002 and has worked with the University of Saint Thomas and the neighborhood in order to minimize any disruptive behaviors from tenants at this location.

Although the student dwelling study found that "students tend to live at higher concentrations of adult residents as compared to rental housing as a whole", resulting in higher traffic and parking impacts, this property has been rented to students for a long time. As a result, the impacts of parking and traffic in the area are no more worse currently than they were prior to the adoption of the ordinance.

Allowing a well-managed property in the neighborhood to be registered and used as a student dwelling is not inconsistent with keeping with Policy H 2.1 of the Comprehensive Plan which states that the City must "Maintain the vitality and high quality of life in existing stable neighborhoods." 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 applicant's difficulty is that the building is within proximity to the University of St Thomas and has been rented to students since it was purchased in 2002. It would be difficult to rent it to non-students. This finding is

met.

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

The location of the house within proximity of the University of St. Thomas is a circumstance unique to the property not created by the applicant. 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.*

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.*

Since the property has been rented to students for a long time, this request would not increase the concentration of allowed student dwellings in this area. This finding is met."

WHEREAS, on March 12, 2015, Cheryl Fogarty, pursuant to Leg. Code § 61.702, duly filed an appeal under DSI Zoning File No.15-021639 from the determination made by the BZA in this matter and requested a public hearing before the City Council for the purpose of considering the BZA's action in this matter; and

WHEREAS, on April 15, 2015, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing where all interested parties were given an opportunity to be heard and upon the close of the hearing, the Council, having heard the statements made and having considered the variance application, the January 13, 2015 staff report, and all the records, minutes, and BZA Resolution No. 15-000893 in this matter, does; HEREBY

RESOLVE, that the Council of the City of Saint Paul reverses the decision of the BZA in this matter, based upon the following findings of the City Council:

The Council notes that the BZA's staff report dated January 13, 2015, wherein it recommended denial of the requested variance upon factual findings that the subject variance application did not meet five of the City's six standards for granting variances. the However, the Council finds that the BZA's record does not demonstrate how the BZA was able to find that the variance application now met all six of the City's standards for granting variances in contrast to the staff basis for recommending denial of the application. The Council finds that the BZA's decision in this matter, based upon the records before it, tends to reflect the BZA's will rather than its judgment. Accordingly, the Council finds that the BZA erred in its findings No's 1 - 4 and 6 as set forth in BZA Resolution No. 15-000893 as its basis for approving the requested variance.

AND, BE IT FURTHER RESOLVED, for the reasons noted above, the appeal of Cheryl Fogarty and is hereby granted; and, be it

FURTHER RESOLVED, that the Council finds that findings and the recommendation contained the BZA staff report dated January 13, 2015 accurately reflect the factual circumstances and the application of those circumstances to the City's standards for granting variances. Accordingly, the Council adopts these staff findings as its own basis for granting this appeal and denying Mr. Gudim's requested variance; and, be it

FINALLY RESOLVED, That the City Clerk shall immediately mail a copy of this resolution to zoning applicant Dennis D. Gudim, Jr., appellant Cheryl Fogarty, the Zoning Administrator, the Planning Commission and the Board of Zoning Appeals.