



## Legislation Text

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**File #:** RES 11-1528, **Version:** 1

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Memorializing the July 20, 2011 decision of the City Council granting the appeal of the District 5 Planning Council of a decision of the Board of Zoning Appeals granting a side-yard setback at 674 Hawthorne Street East.

WHEREAS, on or about May 23, 2011, Sean Sellers, d/b/a Hart Sell LLC at 1288 Galtier St., Saint Paul, MN 55117, on behalf of the listed owner, Dave Hartman, of that property commonly known as 674 Hawthorne Avenue East and legally described as Stone Mortons Addition Lot 7 Blk 4 (P.I.N. 202922430193), applied to the Board of Zoning Appeals (hereinafter the "BZA") in BZA File No. 11-146148, for a variance from the strict application of Leg. Code § 66.231, for the purpose of constructing in the side-yard setback area on the west side of this existing a duplex, stairway leading to the second floor and attaching to it a second story deck: nine-foot side-yard setback required, three-feet proposed for a variance of six feet; and

WHEREAS, the BZA, having provided notice of a public hearing on the said variance application, in accordance with the requirements of Leg. Code § 61.601, duly set the matter on for hearing on June 13, 2011, and on that date, the BZA conducted a public hearing where all persons interested were afforded an opportunity to be heard; and

WHEREAS, upon the recommendation of staff and all the records and evidence presented at the June 13, 2011 public hearing, as substantially reflected in the minutes of the said hearing, the BZA granted the requested variance based upon the following findings as set forth in BZA Resolution No. 11-146148:

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

Finding 1, which states that the variance is in harmony with the general purposes and intent of the zoning code is met. This is a legal duplex built in 1903 on a substandard sized lot. The building had a fire in 2009 and sustained considerable damage which resulted in the structure becoming a vacant building. The applicant obtained the permits necessary to renovate the building as part of the required code compliance inspection for vacant buildings. While remodeling the building, the applicant noticed that the interior back stairway leading to the second floor does not meet current building code standards because it is too narrow. The applicant decided that he might as well correct the stairway deficiency as long as he is remodeling the building. There is no room to widen the interior back stairway and the applicant decided to provide a new stairway that meets current building code standards on the west side of the property. The proposed stairway is not a requirement from the code compliance inspection; it would be provided to address a safety concern from the property owner. The proposed stairway would extend from the side of the building over the sidewalk and into the side yard 8.9 feet. That would leave only 3 feet of side yard setback and 9 feet is required for a duplex. The height of the stairway from grade to the surface of the deck is 10.5 feet. The applicant stated that the existing interior stairway will remain. Constructing the exterior stairway as an alternate access will provide safety and a sense of security for the occupants. The requested variance is in harmony with the general purposes and intent of the code.

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

Finding 2, which states that the variance is consistent with the comprehensive plan is met. The proposed stairway will significantly improve this property. Maintaining existing housing stock is a goal of the

comprehensive plan.

*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.*

Finding 3, which states that the applicant has established that there are practical difficulties, other than only economic considerations, in complying with the provision and that the property owner proposes to use the property in a reasonable manner not permitted by the provision is met. This house was built in 1903 prior to the zoning code. There is a porch leading to the existing interior stairway in the rear and it is not feasible to provide an exterior stairway on that side. There is no room to provide a stairway on the east side of the property. The lack of an alternative to building the stairway in the required side yard is a practical difficulty and the proposed variance is a reasonable request that cannot be established under the strict application of the code.

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

Finding 4, which states that the plight of the landowner is due to circumstances unique to the property not created by the landowner is met. Current standards require a lot width of 50 feet and a side yard setback of 9 feet for a duplex. This house was built on a substandard sized lot that is only 40 feet wide and this lot is a lot of record in existence prior to the zoning code. This is not a circumstance created by the current land owner.

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

Finding 5, which states that the variance will not permit any use that is not allowed in the zoning district where the affected land is located is met. This is a duplex located in a RT1 zoning district where both duplexes as well as single family dwellings are allowed.

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

Finding 6, which states that the variance will not alter the essential character of the surrounding area is met. The new stairway is safety a feature that would enhance the property and will not change or alter the essential character of the area."

AND, WHEREAS, on June 24, 2011, pursuant to the provisions of Leg. Code '61.702(a), the Payne Phalen District 5 Planning Council duly filed with the City Clerk under BZA File No. 11-246013, an appeal from the said determination made by the BZA and requested a hearing before the City Council for the purpose of considering the action taken by the BZA; and

WHEREAS, pursuant to Leg. Code '61.702(b) and upon notice to affected parties, a public hearing was duly conducted by the Saint Paul City Council on July 20, 2011, where all interested parties were given an opportunity to be heard; and

WHEREAS, the City Council, having heard the statements made and having considered the variance application, the report of BZA staff, the resolution of the BZA, and all the records, minutes, and testimony presented to the Council at the July 20, 2011 public hearing; does hereby

RESOLVE, that the Council of the City of Saint Paul reverses the decision of the BZA in this matter based upon the Appellant's showing that the BZA erred in granting the variance requested in BZA File based upon

the following findings of the City Council:

The Council finds that the BZA, in its Resolution No. 11-146148, erred with respect to the findings No's 1, 2, 3, and 4, for the following reasons:

Finding No. 1: The BZA's finding that the requested variance was in harmony with the general purposes and intent of the zoning code is in error. The Council notes that the proposed stairway and deck is not required under either the building code or the code compliance inspection made following the fire at this property. The existing interior stairway provides access to the second story and meets code standards for nonconforming structures. The Council also notes that viable options exist to allow constructing access and a deck at the back of the structure which do not require variances. Accordingly, the Council finds that the variance is not in harmony with the general purposes and intent of the zoning code.

Finding No.2: The BZA's finding that the requested variance is consistent with the Comprehensive Plan is in error. Meeting the general goal of house maintenance in this instance ignores the impact of the variance on the existing pattern of housing construction surrounding the house. The evidence shows that the side-yards of the homes in this neighborhood do not have projections like exterior stairways leading to second floors or elevated deck structures constructed and projecting into the airspace of side-yard setbacks. The variance for the proposed steps and deck into the required side-yard would disrupt this pattern of development. Because the stairs and deck would encroach into the side-yard space that it typically free from encroachments in this neighborhood, the subject property would have a negative impact on the adjacent property by creating an encroachment that does not exist for the other homes in the immediate neighborhood.

Finding No. 3: The BZA's finding that the variance applicant had established that there were practical difficulties in complying with the code and that the variance applicant proposed to use the property in a reasonable manner not permitted by the code was in error. The Council finds that the property owner has failed to demonstrate any practical difficulties. As noted in the Council's Finding No. 1, the owner is not required to build the stairway in order to comply with the building code or any other ordinance. Denying the setback variance does not deprive the owner from accessing the second floor of the property because the owner already has access to the second floor through the interior stairway. The proposed deck is also not required by the building code nor is it required for any safety consideration. The record showed a range of alternatives for the owner to improve his property with a deck that does not need a variance.

Finding No. 4: The BZA's finding that the land owner's plight is due to circumstances unique to the property and not created by the landowner is in error. The proposed location of the stairs and deck are not dictated by any circumstance unique to this property. As noted in the previous Findings, the property owner's desire to add stairs and a deck to his property can be accommodated on this lot outside of the area needing a side-yard setback variance. The property owner has failed to demonstrate that there are unique areas of his property which compel placing the proposed improvements in the side-yard setback area. The requested variance is driven by circumstances that were created by the property owner and not the owner's property.

AND, BE IT FURTHER RESOLVED, that the appeal of Payne Phalen District 5 Planning Council be and is hereby granted for the reasons set forth above; and, be it

FINALLY RESOLVED, that the City Clerk shall mail a copy of this resolution to Sean Sellers, d/b/a/ Hartsell, LLC, Dave Hartman, Payne Phalen District 5 Planning Council, the Zoning Administrator, the Planning Commission and the BZA.