

MOTION TO AMEND RESOLUTION 18-0649

BY COUNCILORS SIPRESS AND FORSMAN:

We move to amend Resolution 18-0649 as follows (proposed amendment **in red**):

RESOLVED, that Resolution No. 18-0612 is hereby amended to read as follows (new language underlined):

RESOLVED that the city council finds as follows:

(a) On June 22, 2018 Edward Barbo Jr. and Candace Barbo applied for a variance to the required 250-foot minimum lot frontage requirement to construct a dwelling on their property located at 10013 West Skyline Parkway; and

(b) The planning commission considered the request as outlined in file number PL 18-086 (see staff report in Attachment 1), at its July 10, 2018 meeting (see minutes in Attachment 2) after holding a public hearing on the matter, such hearing having been noticed as required by Chapter 50 of the Duluth Legislative Code, and voted 6-2 to deny the variance based on the following findings:

1. The applicant has not established practical difficulty. The variance request is more economic than practical in nature, which, standing alone, does not constitute practical difficulty.

2. The plight of the landowner is not due to topographic or geographic conditions unique to the property, and the applicant's predecessors created the plight related to the request for the variance.

3. Denial of the variance does not eliminate reasonable use of the property.

4. The request is not in harmony with the purposes and intent of the zoning code that relate to the encouragement of planned and orderly development within the city, as reflected by the minimum lot frontage requirements on public rights of way in RR-1 zones. It is not consistent with the comprehensive plan (Preservation future land use), which calls for

low-intensity private or public uses subject to sufficient use and design controls (such as, e.g., minimum lot frontage requirements); and

(c) Greg Gilbert, agent for applicants Edward Barbo Jr. and Candace Barbo, filed an appeal of the planning commission's decision to the city council, pursuant to Section 50-37.1.O of the Duluth Legislative Code, on the grounds that the planning commission failed to properly apply the ordinance to the application for variance; and

(d) The city council heard the appeal to the denial of the variance at its August 27, 2018 meeting.

RESOLVED FURTHER, that the decision of the planning commission to deny the application for the variance is reversed on the following grounds:

1. That because of the exceptional topography of the property, the topography of platted Gogebic Street, the only platted road access to the property, and its proximity to the Magney-Snively DNAP, the strict application of the requirements of the UDC would result in practical difficulties to the property owner.

2. The conditions referenced in Paragraph 1 above are due to circumstances unique to the property and were not created by the property owners or their predecessors.

3. The property owners' proposed use of the property is a reasonable use of the property, albeit not permitted under the UDC.

4. That the relief requested may be granted without substantially impairing the intent of the UDC as it affects the subject property and surrounding properties.

FURTHER RESOLVED, that grant of variance approved herein shall be subject to the following requirements and conditions:

(a) The development of one single family house on the subject property shall be subject to all other requirements of the UDC. The front yard, for purposes of

interpreting UDC requirements for building setbacks in the RR-1 Zoning District, is determined to be the subject property's east property line.

(b) Prior to issuance of a building permit, the access easement driveway surface and design type shall be evaluated and modified or improved by applicant as required by the city engineer or fire marshal to maintain public safety to the subject property.

(c) Prior to issuance of a building permit, the site shall be evaluated for presence of wetlands, and a wetland delineation completed, if required by the land use supervisor.

(d) Prior to issuance of a building permit, applicant shall provide a current copy of property title, easement documentation, and any other agreements for maintenance of access easement, to the community planning office, to be incorporated into the file for PL 18-086.

(e) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the land use supervisor without further action by the planning commission; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.