



Legislation Text

File #: 17-0616R, **Version:** 1

RESOLUTION AFFIRMING THE DECISION OF THE PLANNING COMMISSION TO DENY A VARIANCE TO REDUCE THE REQUIRED MINIMUM LOT FRONTAGE FROM 250 FT TO 0 FT TO CONSTRUCT A DWELLING IN THE RR-1 ZONE DISTRICT BY EDWARD BARBO JR AND CANDACE BARBO

CITY PROPOSAL:

RESOLVED that the city council finds as follows:

(a) On May 25, 2017, 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 17-082 (see staff report in Attachment 1), at its July 11, 2017 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 8-0 to deny the variance based on the following findings:

1. The request is not in harmony with the purposes and intent of the zoning code related to the planned and orderly development within the city, as reflected by the minimum lot frontage requirements on public rights of way in RR-1 zones, such requirements are to ensure safe and efficient provision of city services and limitation of development in areas lacking adequate current or future infrastructure to support increased public or private use; and

2. The request is inconsistent 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

3. The applicant has not established practical difficulty because:

i. The plight of the landowner is not due to topographic or geographic conditions unique to the property, and that applicant's predecessors bear responsibility for the present need for the variance; and

ii. Current or future street access or improvement is possible, but is costly given the nature and location of the proposed use; and

iii. The difficulty is more economic than practical in nature, which, standing alone, does not constitute practical difficulty; and

4. Previous parcel subdivisions within the larger tract created the need for the requested variance; and

5. The facts reflect that the lack of street frontage (and resulting limitations related to future development) have been historically contemplated and understood by the applicant and predecessors-in-interest; and

6. The request is not in harmony with the general purposes or intent of the City's zoning code or comprehensive plan for all the reasons previously stated; 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 on July 13, 2017, pursuant to Section 50-37.10 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 28, 2017 meeting.

RESOLVED FURTHER, that the decision of the planning commission to deny the application for the variance is affirmed on the findings listed above.

Statement of Purpose: The resolution affirms the decision of the planning commission to deny a variance allowing the construction of a home on a parcel of land with no street frontage.

The applicant purchased the 5-acre parcel lacking street frontage after it was subdivided from a larger parcel. The subject property is one of the most remote areas of the city. The property is at the end of a 1,700-foot (0.32 mile) private driveway. From the property to Boundary Avenue is 2.6 miles. No municipal utilities are provided or planned to be provided in this area.

The applicant currently has legal access to the property via easement. If the applicant's request for a variance is granted, the applicant plans to petition the City Council for establishment of a cartway pursuant to Minn. Stat. §§ 435.37 and 164.07 in the location of the existing easements.

The applicants obtained a building permit in 1991 to erect a 30 foot by 45 foot horse pole barn. The 1991 building permit made clear that an improved street was required to allow a house to be constructed on the parcel which was acknowledged in a letter by Mr. Barbo (see building permit and letter in the attached staff report).

The circumstances causing the need for the variance are neither unique to the property nor beyond the landowner's control. They were created when the parcel was severed by a predecessor-in-interest from a larger parcel that had frontage on Gogebic Street.

The applicant states in the variance application that "the conditions that create a need for a variance are that the applicants' lot is surrounded by City of Duluth lots, private lots and rocky terrain so streets for purposes of complying with minimum lot frontage requirements cannot be constructed adjacent to the applicants' lot." Planning staff disagree. Future street improvements are possible, but the location and terrain make such improvements costly. Economic factors alone, however, do not constitute a practical difficulty.

The property has been put to a reasonable use (a horse barn), given the lack of street access. The applicant is proposing to use the property in a manner that is a permitted use in the RR-1 zone district, but is nevertheless inconsistent with orderly development principles supported by minimum lot frontage requirements in the code.

Minimum lot frontage requirements are established to promote the orderly development of the city. Together, with other zoning tools, they direct development to places where streets can be extended as development occurs. These streets maintain the health, safety, and welfare of the community by limiting development to those areas where the government can efficiently and safely provide sanitation, public safety, and other services. Without street access, the City cannot safely provide public services to the proposed development site.

Granting the variance could result in additional landowners in the area requesting similar variances and cartway extensions. There are 40 acres of privately-owned RR-1-zoned land north of Gogebic Street and west of 100th Ave. W.

Variance Petition Received: July 13, 2017
Action Deadline: September 22, 2017