

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

09-0621R

RESOLUTION REVERSING THE ACTIONS OF THE PLANNING COMMISSION AND DENYING A SPECIAL USE PERMIT AND VARIANCE TO INDEPENDENT SCHOOL DISTRICT 709 AS AUTHORIZED BY CHAPTER 51, ARTICLE III, OF THE CITY OF DULUTH LEGISLATIVE CODE FOR PROPERTY LOCATED AT 301 NORTH 40TH AVENUE EAST (UNNAMED EASTERN HIGH SCHOOL PROJECT)).

BY COUNCILOR STAUBER:

RESOLVED, that the city council makes the following findings of fact:

(a) On July 28, 2009, Independent School District 709 (ISD 709) submitted its application for a special use permit for grading, filling and/or excavating of more than 50 cubic yards of earth in a shoreland zone for the purposes of constructing a track and athletic field and related access drives at the new, as yet unnamed, eastern high school site located at 301 North 40th Avenue East. This application was submitted to the planning division and assigned File No. 09044;

(b) On July 28, 2009, Independent School District 709 (ISD 709) submitted its application for a variance from the setback requirements applicable to a shoreland zone for the purposes of constructing a retaining wall as part of the track and athletic field complex and related access drives at the new, as yet unnamed, eastern high school site located at 301 North 40th Avenue East. Portions of the site are located within a shoreland zone and subject to the setback requirements of Section 51-29(e) of the Code. ISD 709 sought a variance from the 150 foot setback applicable to those portions of a proposed retaining wall needed to support the track and athletic field and located within the 150 feet setback of the ordinary high watermark of the 40th Avenue East Creek. This application was submitted to the planning division and assigned File No. 09045;

(c) Both applications were considered by the planning commission (commission) at its September 8, 2009 meeting and pursuant to Section 51-9 of the Code;

(1) The commission found that ISD 709 submitted sufficient information with its application to demonstrate that it met all of the applicable

development standards for the proposed grading, filling and excavating as provided in Section 51-29 of the Code and approved the application for special use permit (File No. 09044);

(2) The commission found that ISD 709 submitted sufficient information with its application to demonstrate that it met the applicable standards for a variance as provided in Section 51-30 of the Code and approved the application for a variance (File No. 09045);

(d) The decisions of the commission have been appealed to the council pursuant to sections 51-9 and 51-10(d) of the Code by Brian Ronstrom whose property is located adjacent to the site;

(e) The appeal was considered at a meeting of council committee 2 (planning and economic development committee) held on October 12, 2009, and at the October 12, 2009, regular council meeting;

(f) Ronstrom has demonstrated that his property interests are uniquely impacted by the proposed construction and that he is an aggrieved person and has standing to assert this appeal as required by Section 51-10(d) of the Code;

(f) The city, by its planning commission, previously conducted an environment review of the project pursuant to the Minnesota Environmental Procedures Act and pursuant to Section 2-41 of the City Code. The project reviewed included the proposed track and athletic field. On July 14, 2009, the city issued its negative declaration after concluding that the project did not have the potential for significant environmental impacts (Planning File No. 09030). No appeal challenging the decision was initiated and the 30 days statute of limitations has run. That determination is now final;

(g) A special use permit for the proposed grading, excavating and filling is required for the proposed project pursuant to Section 51-28 of the city of Duluth Legislative Code (Code);

(1) The standards applicable to a special use permit are found in sections 51-9 and 51-29 of the Code. These standards do not require a showing

of hardship for purposes of granting a special use permit for grading, filling and/or excavating of more than 50 cubic yards of earth;

(2) The use of the site for school purposes is an allowable use in the zone and the use of the site for a track and athletic field is an allowable auxiliary use to the school. Accordingly, the requirements of Section 51-9 of the Code that requires any special use under Chapter 51 to be permitted uses under Chapter 50 of the Code is met;

(3) The record fails to demonstrate that ISD 709 has met all of the applicable development standards for the proposed grading, filling and excavating as provided in Section 51-29 of the Code. The following standards have not been met:

(A) *(NOTE: Upon conclusion of the committee hearing and public hearing, and based upon the record, the council is required to identify those standards that have not been met in order to reverse the decision of the Commission.);*

(h) The standards applicable to the requested variance are provided for in Section 51-30 of the Code and require that a hardship must exist to support the granting of a variance. In addition, Section 51-30 provides that no variance may be granted that "compromises the general purposes or intent" of Chapter 51, Article III, of the Code or "results in adverse consequences to the environment";

(1) The term "hardship" is defined in Section 51-2 of the Code as follows: "[t]he property in question cannot be put to reasonable use under the conditions allowed by the regulations set forth in this Chapter; the plight of the landowner is due to circumstances unique to [the] property, not created by the landowner. Economic considerations alone shall not constitute a hardship";

(2) Based upon the entire record, ISD 709 has failed to demonstrate the existence of a hardship for the following reasons:

(A) The track and athletic field, are allowable uses pursuant to Chapter 50 of the Code; therefore, the proposed use is a reasonable use of the site;

(B) ISD 709 has failed to demonstrate that the proposed location and orientation of the track and athletic field is controlled by the topography or other natural conditions of the site that are unique to the site as opposed to being a location and orientation based upon convenience and economic considerations;

(C) Given the city's prior negative declaration, no evidence in the record before council supports a conclusion that the proposed location of the retaining wall compromises the general purposes or intent of Chapter 51 of the Code or results in adverse consequences to the environment.

RESOLVED FURTHER, that the actions of the commission related to planning division file nos. 09044 and 09045 are reversed and ISD 709's application for a special use permit (09044) and application for a variance (09045) are denied.

Approved as to form:

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Attorney

CCREQ/ATTY      MAL:blj      10/2/2009

STATEMENT OF PURPOSE: This resolution reverses the actions of the planning commission related to planning division file nos. 09044 and 09045 and denies ISD 709 its requested special use permit and variance as specified by the planning commission. These files are applications by ISD 709 for a special use permit for grading, excavating and filling in a shoreland (09044) and a variance from the building setback requirements from the ordinary high watermark of the 40th Avenue East Creek shoreland (09045).

The action deadline on these applications is November 25, 2009.

*Note: The affirming or reversing actions on the two applications have been joined in one resolution as a matter of convenience. The council may divide the issues and render its decision on each application without regard to its decision on the other application.*