PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0446R

RESOLUTION REVERSING THE DECISION OF THE PLANNING COMMISSION TO DENY THE APPLICATION FOR A VARIANCE BY RORY BLAZEVIC FROM THE FLOOD PROOFING AND FLOOD PROTECTION REQUIREMENTS OF SECTION 50-18.1.C OF THE DULUTH CITY CODE.

BY COUNCILOR STAUBER:

RESOLVED, that the city council finds as follows:

(a) Rory Blazevic's property is located at 102 131st Avenue West and is within a flood fringe district of a flood plain;

(b) On July 1, 2011, Mr. Blazevic applied for a variance that would allow him to construct an 832 square foot garage without elevating the lowest floor of the structure above the regulatory flood protection elevation (Planning File No. 11-102);

(c) A public hearing was held by the planning commission at its August 9, 2011, meeting. The commission voted to deny the request. The basis for the commission's decision was its conclusion that:

(1) Section 50-37.9.K(2)(a) of the City Code prohibits the granting of a variance that authorizes a lesser degree of floodproofing and flood protection than is required by Section 50-18.1.C of the City Code;

(2) Sections 50-18.1.C(3)(a)(i)&(iii) of the City Code provide floodproofing and flood protection standards and require the lowest floor of a structure exceeding 500 square feet to be elevated above the regulatory flood protection elevation;

(3) If the city granted the requested variance it would have the effect of authorizing a lesser degree of floodproofing and flood protection than is required by Section 50-18.1.C of the City Code;

(4) Such a variance is prohibited by Section 50-37.9.K(2)(a) of the City Code;

(d) Mr. Blazevic was provided written notice of the commission's action on August 17, 2011;

(e) Mr. Blazevic filed an appeal of the commission's decision to the city

council on August 15, 2011, and pursuant to Section 50-37.1.O(4) of the City Code;

(f) The city council heard the appeal at its August 29, 2011, meeting of the planning and economic development committee and the matter was considered at the August 29, 2011, meeting.

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

(a) Mr. Blazevic's property located at 102 131st Avenue West is within a flood fringe district of a flood plain;

(b) Mr. Blazevic seeks a variance that would authorize the construction of a garage larger than 500 square feet without providing for elevation of the lowest floor above the regulatory flood protection elevation as required by Section 50-18.1.C(3)(a)(i);

(c) The following sections of the City Code are applicable to construction within a flood fringe district of a flood plain and relevant to this matter:

(1) Section 50-37.9.K provides as follows: "Variances to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K";

(2) Section 50-37.9.K(2)(a) provides as follows: "No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C";

(3) Section 50-37.9.K(2)(b) provides as follows: "Variances shall not produce any adverse effects to the flood capacity or efficiency of the watercourse";

(4) Section 50-18.1.C addresses the standards for construction within a flood plain and in Section 50-18.1.C(3)(a)(i) provides as follows: "All structures, including accessory structures, shall be elevated so that a structure's lowest floor is above the regulatory flood protection elevation. The structure's design and as-built condition in relation to the regulatory flood

protection elevation must be certified by a professional engineer or architect licensed in Minnesota";

(5) Section 50-18.1.C(3)(a)(iii) provides as follows: "As an alternative to elevation, accessory structures that constitute a minimal investment and that do not exceed 500 square feet may be internally floodproofed in accordance with Section 18.1.C(2)(c)(iv) and (v) above";

(d) In addition to meeting the standards applicable to construction within a flood fringe as identified in paragraph c, above, the city code requires an applicant for a variance to demonstrate the requirements for a variance provided in Section 50-37.9.C of the City Code;

(e) Granting a variance that allows for the construction of an 832 square foot garage without requiring the lowest floor to be constructed at an elevation above the regulatory flood protection elevation will not produce adverse effects to the flood capacity or efficiency of the watercourse if the structure is internally floodproofed as required by Section 50-18.1.C(3)(a)(iii);

(f) Mr. Blazevic has demonstrated the existence of a hardship and the standards necessary to support a variance as provided in Section 50-37.9.C of the City Code;

(g) Therefore, pursuant to the authority to grant variances as provided in Section 50-37.9.K the application for a variance by Rory Blazevic is granted subject to the following conditions:

(1) The garage structure is limited to 832 square feet;

(2) The structure shall be internally floodproofed as required by Section 50-18.1.C(3)(a)(iii) of the City Code;

(3) Mr. Blazevic shall comply with all applicable zoning and building code regulations;

(4) The authority to issue a building permit for the construction of a garage pursuant to this variance shall expire one year from the date of the approval of this resolution.

Approved as to form:

Attorney

CCREQ/ATTY/PLNG AL:eu 8/18/2011

STATEMENT OF PURPOSE: The resolution reverses the decision of the planning commission to deny the application by Rory Blazevic to construct a garage exceeding 500 square feet in a flood fringe without providing for the elevation of the structure as required by Section 50-18.1.C(3)(a)(i) of the City Code and imposes conditions on the approval of the variance.