



Legislation Text

File #: RES 12-958, **Version:** 1

Memorializing City Council action taken on April 11, 2012 denying the appeal by Walter Jirik of a decision of the Board of Zoning Appeals granting two variances for the establishment of a parking lot at 1170 Selby Avenue, and imposing additional conditions on these variances for the health, welfare, and safety of the public pursuant to Leg. Code § 61.704.

WHEREAS, on or about November 22, 2011, J.J. Haywood, d/b/a Pizza Luce ("Luce"), under Board of Zoning Appeals ("BZA") File No. 11-306845, applied to the BZA for two variances from the strict application of Leg. Code §§ 63.310 and 63.312 for property commonly known as 1170 Selby Avenue and legally described as Anna E Ramsey Add Ex Ave Lot 3 Blk 10. [PIN: 032823110133]; and

WHEREAS, Luce sought two variances in order to build a parking lot across the street from its existing Selby Avenue restaurant. The first variance requested pertained to vehicle access to the proposed lot. Zoning code § 63.310(b) requires parking lot access to be setback 25-feet from the nearest residential zoning district. Luce proposed a 0-foot setback from the residential zoning district abutting the west side of the proposed lot for a variance of 25-feet. The second variance pertained to sideyard setbacks. Zoning code § 63.312 requires parking lots to have a 4-foot setback from any front or sideyard line. Luce proposed a 1-foot sideyard setback for a variance of 3 feet; and

WHEREAS, pursuant to the said application and in accordance with the requirements of Leg. Code § 61.601, the BZA duly conducted a public hearing on Luce's application on December 27, 2011 where all interested persons were given an opportunity to be heard; and

WHEREAS, at the close of the said public hearing, the BZA, based upon all the records and the testimony presented during the public hearing, as substantially reflected in the BZA's meeting minutes, granted the requested variances upon the following findings of fact as set forth in BZA resolution No. 11-306845, dated December 27, 2011, which shall be incorporated herein by reference:

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

This finding is met. The variances would allow Pizza Luce to provide additional off-street parking for its customers and reduce the number of customers that currently park in the neighborhood on the street. Pizza Luce is not required to provide additional parking under the 2006 variance.

The reduced setback for the parking spaces will not result in any negative impacts on the commercial property to the east. The building to the east does not have any windows facing the parking lot and there is a parking lot behind the building. However, without the standard 4' setback, cars could hit the wall of the adjacent commercial building unless a bumper guard is provided. Therefore to be consistent with the intent of the zoning code a condition should be added that requires a bumper guard.

The setback of the driveway from the adjacent residential property is consistent with the purposes and intent of the zoning code because it allows the parking spaces to be further from the residential property and this will reduce the impact of the parked cars. The wooden privacy fence reduces the impact of the driveway.

2. The variance is consistent with the comprehensive plan.

This finding is met. The comprehensive plan supports providing adequate parking for commercial uses to reduce their impact on the neighborhood.

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.

This finding is met. The lot is only 40' wide and this prevents the lot from being used as a parking lot without the variances that have been requested.

- The dimensional standards in the zoning code require that a parking lot with a single row of parking and a drive lane must be at least 38' wide; therefore, the lot is not wide enough to accommodate the parking and the required 4' setback.

- The entrance to the parking lot cannot be located 25' from the adjacent residential property as required by the zoning code. The entrance could be located 20' from the adjacent residential property if it was moved to the east side of the lot. But Public Works has concerns about sight lines and traffic safety if the driveway is located on the east side. Also, locating the driveway on the east side would move the parking spaces to the west side of the lot where they would have more impact on the adjacent residential property.

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

This finding is met. Pizza Luce has been trying to provide additional off-street parking since they opened in 2006. This lot is the only property in the immediate area that is zoned correctly for parking and that is available.

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

This finding is met. Accessory parking lots that are located within 300' of the business they serve are a permitted use in the B3 zoning district. The accessory parking lot at 1170 Selby Avenue is located 115 feet from Pizza Luce at 1183 Selby Avenue.

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

This finding is met. The variances will allow the site to be used for parking and will not alter the essential character of the surrounding area. The parking lot will be screened from adjacent residential property and landscaping (ornamental fence, hedge and a tree) will be provided between the front of the parking lot and the public sidewalk.

WHEREAS, the said variances were granted subject to the following conditions imposed by the BZA:

- 1) Bumper guards shall be installed on the east side of the parking lot to keep parked cars from hitting the commercial building to the east; and,
- 2) The applicant obtains site plan review approval prior to obtaining a building permit for any construction or grading on the site.

WHEREAS, on or about January 3, 2012 and pursuant to Leg. Code ' 61.702(a), Walter Jirik, 1184 Dayton Avenue, duly filed an appeal with the City Clerk under BZA File No. 12-000964 from the BZA's determination in this matter and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, Acting pursuant to Leg. Code ' 61.702(b), an upon notice to affected parties a public hearing was duly conducted by the City Council on February 15, 2012 and upon the conclusion of the public hearing, the matter was laid over to March 14, 2012 for the purpose of determining whether a mutual agreement could be reached between the parties; and

WHEREAS, on March 14, 2012, upon the report that Luce had filed a written waiver of its procedural rights under Minn. Stat. § 15.99, and to allow the parties additional time to discuss the matter, the Council moved to lay the matter over until April 11, 2012; and

WHEREAS, on April 11, 2012, it was reported that there had been progress in the discussions regarding additional conditions to be placed on the operation of the new parking lot had been agreed to by Luce and, therefore, the City Council, having heard the public testimony and having considered the variance application, the report of staff, the record, minutes, BZA Resolution No. 11-306845, and with the agreement of Luce to certain additional conditions to be placed on the said variance application does hereby;

RESOLVE, that the Council of the City of Saint Paul does hereby upholds the decision of the BZA in this matter and finds that the BZA did not commit any error in its facts, findings, or procedures and, accordingly, adopts as its own, the findings supporting the said variances as set forth BZA Resolution No. 11-306845; and

BE IT FURTHER RESOLVED, that the Council, pursuant to Leg. Code § 61.702 and based upon the agreement of Luce to additional conditions on the variances for the proposed lot, hereby imposes the following additional conditions on the approved variances for the purposes of protecting the public, health, welfare and safety through the imposition of conditions intended to regulate the flow of traffic within the parking lot, regulate vehicular traffic entering or existing the lot, and for the protection of adjacent property owners:

1. Install and maintain a closed circuit camera to monitor the turnaround space and to discourage vehicles from backing out of the lot and into traffic on Selby.
2. Install a speed bump and install signage in the lot, as specified by City staff, in order to regulate and reduce vehicle speeds within and especially when exiting the lot.
3. The lot shall be closed for use no later than 11:00 p.m. each day

AND, BE IT FURTHER RESOLVED, that the appeal of Walter Jirik be and is hereby denied; and, be it

FINALLY RESOLVED, That the City Clerk shall mail a copy of this resolution to appellant Walter Jirik, JJ Haywood of Pizza Luce, the Zoning Administrator, the Planning Commission and the BZA.