



Legislation Text

File #: RES 19-1621, **Version:** 2

Memorializing the City Council's decisions in the matter of the Appeals from the Planning Commission's procedures regarding the applications by the Twin Cities German Immersion School for zoning variances and site plan approval to construct a school facility at 1031 Como Avenue.

WHEREAS, on October 23, 2018, the Twin Cities German Immersion School (hereinafter, "School"), submitted a zoning site plan application for approval by the department of safety and inspections (hereinafter, "DSI") under DSI Zoning File No. 18-117-556; and

WHEREAS, the School's site plan application pertained to its proposal to construct a three-story, 23,000 square-foot building containing classrooms, a gymnasium and cafeteria space (hereinafter, "Project") on property owned by the School, commonly known as 1031 Como Avenue and legally described as Warrendale Subj To Esmt, Vac Alley Accruing And Fol, Beg At The Nw Cor Of Lot 19 Thence Sely On The Nely Lot Line 60 Ft Thence S 78 Ft To Pt 48.5 Ft E At Ra From W Line Of Sd Lot Thence Swly 41.4 Ft To Pt On S Line 25 Ft E At Ra From W Line Thence Wly On SD LINE 28 FT TO SW COR THENCE N 130.7 FT TO POB BEING PT OF LOT 19 ALSO ALL OF LOTS 10 THRU LOT 15 & LOTS 20 THRU LOT 23 BLK 4. [PIN No. 262923220173]; and

WHEREAS, DSI staff reviewed the School's site plan for the Project and determined that the site plan, as submitted, required certain zoning variances and, accordingly, DSI staff informed the School that it must also apply for and receive approval of these zoning variances as well as its site plan; and

WHEREAS, on November 26, 2018, the School submitted a separate application for the zoning variances needed to approve the Project's site plan for review by department of planning and economic development (hereinafter, "PED") staff under PED Zoning File No. 18-126-865; and

WHEREAS, having received both site plan and variance applications for the Project, staff determined to present both zoning applications to the Planning Commission (hereinafter, "Commission") for its consideration and determination; and

WHEREAS, so that the decision as to each zoning application and the appeals filed regarding each of them is easily ascertained, this Resolution, for administrative convenience, is divided into three (3) parts:

Part I addresses the School's zoning applications before the Commission and its Zoning Committee and is itself divided into six subparts:

- Subpt. A pertains to the site plan application under DSI Zoning File No. 18-117-556 and the recommendation of Commission staff regarding the site plan application;
- Subpt. B pertains to the variance applications under PED Zoning File No. 18-126-865 and the recommendation of Commission staff regarding the variance applications;
- Subpt. C pertains to the Zoning Committee's December 20, 2018 actions regarding both the variance and site plan applications;
- Subpt. D pertains to the Zoning Committee's actions of January 17, 2019 in which it voted to recommend that the variance applications, as well as the site plan application, be denied for the

reasons stated; and

- Subpt. E pertains to the Commission's January 25, 2019 action regarding the Zoning Committee's January 17, 2019 recommendations; and
- Subpt. F pertains to the Commission's February 8, 2019 action regarding its January 25, 2019 voting procedures.

Part II addresses the appeals taken from the Commission's various actions on the variance and site plan applications; and

Part III addresses the City Council's decision regarding the Commission action and the Council's decision as to each of the School's underlying zoning applications:

PART I.

ACTIONS OF THE PLANNING COMMISSION

WHEREAS, on December 20, 2018 the Commission's Zoning Committee (hereinafter, "Committee") duly conducted a lengthy public hearing on the site plan application [DSI Zoning File No. 18-117-556] and the variance applications [PED Zoning File 18-126-865] at which all persons interested were afforded an opportunity to be heard: and,

Subpt. A

DSI Zoning File No. 18-117-556: Site Plan Application Report and Staff Recommendation

WHEREAS, as noted above, on October 23, 2018, the School, under Zoning File No. 18-117-556, applied to DSI for site plan approval of its Project; and

WHEREAS, in a report from DSI staff dated December 13, 2018, the entirety of which shall be incorporated herein by reference, staff recommended that the Commission approve the School's site plan application based upon the findings set forth therein and incorporated herein by reference as Exhibit 1; and

WHEREAS, the said site plan report further recommended the imposition of the following conditions on the recommended site plan:

1. Approval of variances for building height and lot coverage, or submittal of an updated site plan that meets Zoning Code density and dimensional standards.
2. Approval of a variance for minimum off-street parking.
3. No net loss of off-street parking within the property. A parking area to replace the seven (7) off-street parking spaces proposed for removal shall be subject to Zoning Code standards and design and receive Zoning Administrator review and approval.
4. Provide an obscuring wood fence at least 80% opaque and 6' in height along the east property line to buffer the abutting properties.
5. Acceptance of the Traffic Impact Study by the Public Works Transportation Planning and Safety Division.

Subpt. B

PED Zoning File No. 18-126-865: Variance Application Report and Staff Recommendation

WHEREAS, as noted above, on November 26, 2018, under Zoning File No. 18-126-865, the School applied for the variances needed to approve the Project's site plan as submitted under DSI Zoning File 18-117-556;

and

WHEREAS, in a report prepared by PED staff dated December 14, 2018, Commission staff recommended approval of the following variances requested by the School on November 26, 2018: (1) Building Height; 30 ft. allowed, 33.1 ft. proposed. (2) Lot Coverage; 35% allowed, 36% proposed. (3) Minimum off-street parking; 86 spaces required, 50 spaces proposed, based upon the findings set forth therein and incorporated herein by reference as Exhibit 2; and

WHEREAS, the said staff report for the requested variances further recommended that the following conditions be imposed on the variances:

1. Final plans for this use must be approved by the Zoning Administrator. Those plans shall include seven (7) additional off-street parking spaces but shall otherwise be in substantial compliance with the plan submitted and approved as part of this application.
2. The applicant shall submit a traffic impact study (TIS) for final review and approval by Public Works, and the implementation of any recommendations therein contained is required.
3. Approval of and monitoring by the Zoning Administrator of a shared parking agreement with the owners of the property at 1040 Como Avenue for 15 off-street spaces is required.
4. Twin Cities German Immersion School shall have no more than 86.5 full-time equivalent employees at 1031 Como Avenue.

Subpt. C

Zoning Committee's Actions of December 20, 2018 regarding the Variance and Site Plan Applications

WHEREAS, on December 20, 2018, the Committee, after closing the public hearing and following a discussion of the applications, the reports and recommendations of Commission staff, and all the testimony offered regarding the applications, and having obtained from the School's representative an extension of time for making a decision, duly moved to lay over making recommendations to the Commission for both applications until January 17, 2019 and, in addition, directed staff to provide the Committee with additional information regarding traffic, pedestrian safety, parking and a traffic impact study for the Project; and

Subpt. D

Zoning Committee's Actions of January 17, 2019 regarding the Variance and Site Plan Applications

WHEREAS, on January 17, 2019, the Committee again took up the School's variance and site plan applications and, following updated reports from staff regarding the additional information requested by the Committee on December 20, 2018, which resulted in staff making minor changes to each of its reports with respect to the recommended conditions for both the variance and site plan applications, staff continued to recommend approval of the School's respective applications with the following revisions to the recommended conditions:

A. VARIANCES

1. Final plans for this use must be approved by the Zoning Administrator. Those plans shall include seven (7) additional off-street parking spaces but shall otherwise be in substantial compliance with the plan submitted and approved as part of this application.
2. The applicant shall submit a traffic impact study (TIS) for final review and approval by Public Works, and the implementation of any recommendations therein contained is required. Acceptance of the

Traffic Impact Study by the Public Works Transportation Planning and Safety including, a marked pedestrian crossing on Como Ave at Oxford St and time-of-day parking restrictions, shall be implemented as part of the site plan. Public Works Traffic Engineering and the applicant shall assess additional operational and engineering solutions to improve safety; the school shall implement prescribed solutions as directed by Public Works.

3. Approval of and monitoring by the Zoning Administrator of a shared parking agreement with the owners of the property at 1040 Como Avenue for 15 off-street spaces is required. If the shared parking agreement is terminated for any reason, the school shall immediately notify the Zoning Administrator in writing and apply for a 15-space off-street parking requirement variance.
4. Twin Cities German Immersion School shall ~~have no more than 86.5 full-time equivalent employees~~ not increase future student enrollment above the proposed 648 students such that it would require additional parking at 1031 Como Avenue.

B. SITE PLAN

1. Approval of variances for building height and lot coverage, or submittal of an updated site plan that meets Zoning Code density and dimensional standards.
2. Approval of a variance for ~~minimum 34~~ off-street parking spaces, or submittal of a plan that meets Zoning Code off-street parking requirements.
3. ~~No net loss of off-street parking within the property. A parking area to the replace the seven (7) off-street parking spaces proposed for removal shall be subject to Zoning Code standards and design and receive Zoning Administrator review and approval.~~
4. Provide an obscuring wood fence at least 80% opaque and 6' in height along the length of the east property line to buffer the abutting properties.
5. Acceptance of the Traffic Impact Study by the Public Works Transportation Planning and Safety Division. Traffic Impact Study solution recommendations requiring changes to the public realm, including a marked pedestrian crossing on Como Ave at Oxford St and time-of-day parking restrictions, shall be implemented as part of the site plan. Public Works Traffic Engineering and the applicant shall assess additional operational and engineering solutions to improve safety; the school shall implement prescribed solutions as directed by Public Works.

WHEREAS, having considered staff's continuing recommendations to approve the variance and site plan applications contained in their reports as updated above, as well as all the testimony from the December 21, 2019 public hearing, the Committee, following additional discussion of the matters, duly moved on a 5-1 vote to recommend to the Commission that it deny the variance applications under PED Zoning File No. 18-126-865 based upon the failure of the applications to meet the following findings:

Finding 3(b). The requested variances are inconsistent with the comprehensive plan's historic preservation goal of protecting undesignated property. Staff's recommendation to approve the variances improperly elevates the comprehensive plan's policies with respect to new school construction or school building remodeling over the comprehensive plan's policy regarding the preservation of older buildings and, in this instance especially, a building that defines the character of the immediate neighborhood.

Finding 3(d). The three variances requested by the School are created by the School's growth policy decisions which impact an undersized lot and are not caused by circumstances unique to the lot.

Finding 3(f). Most of the School's students arrive and depart from the premises by private vehicles and this creates traffic, parking, and safety issues in and around the School which alters the essential character of the area surrounding the School.

WHEREAS, the Committee, next duly moved to recommend denial of the site plan application submitted

under DSI Zoning File No. 18-117-556, also on a 5-1 vote, based upon its previous recommendation to deny the zoning variances necessary to approve the Project's site plan application because the site plan, without the necessary height, lot coverage, and parking variances requested under PED Zoning File No. 18-126-865, cannot meet Finding No. 2 under DSI Zoning File No. 18-117-556 which requires site plans to comply with the applicable zoning ordinances of the City; and

Subpt. E

Planning Commission's January 25, 2019 Action on the Recommendations of its Zoning Committee

WHEREAS, on January 25, 2019 the Committee's January 17, 2019 recommendations to deny the Project's variance and site plan applications were presented to the Commission for its consideration; and

WHEREAS, following discussion of each application and acting separately as to each, the Commission first moved the Committee's recommendation to deny the variance applications for the reasons provided by the Committee. The vote resulted in a 6-6 tie whereupon the Commission Chair, stating that the Chair could vote to break tie votes, indicated that the Chair was against the motion to deny the variance applications at which time a motion was made to approve the staff recommendation to grant the variance applications, with conditions, as set forth in the staff report dated December 14, 2018. The vote again resulted in a 6-6 tie and the Commission Chair again stated that upon a tie vote the Chair was entitled to break the tie vote and so voted in favor of the motion to approve the variance applications; and

WHEREAS, the Commission next considered the Project's site plan application and the Committee's recommendation that the site plan application also be denied. Following discussion of that matter, the Commission moved the Committee's recommendation to deny the site plan for the reasons stated in the record with that motion failing on a 5-7 vote. The staff recommendation to approve the site plan, with conditions as set forth in the staff report dated December 13, 2018, was then approved for the reasons stated therein on a 7-5 vote; and

WHEREAS, the City Attorney's Office (hereinafter, 'CAO') was subsequently informed of the Commission's voting procedures. Consequently, the CAO informed the Commission's Chair that the Commission's January 25, 2019 voting procedures were defective and that the matters should be reconsidered at the next Commission meeting so that a decision as to each application could be made by the Commission; and

Subpt. F

Planning Commission's February 8, 2019 Action on its January 25, 2019 voting procedures

WHEREAS, on February 8, 2019, the Commission was informed of its defective voting procedures of January 25, 2019 whereupon a motion was made to reconsider the matters but that motion failed and, as a result, the Commission's defective voting procedures of January 25, 2019 now constituted the Commission's last actions regarding the School's variance and site plan applications.

PART II

APPEALS FROM THE ACTIONS OF THE PLANNING COMMISSION

WHEREAS, on February 15, 2019, Kevin W. Anderson, under Zoning File No. 19-012422 and pursuant to Leg. Code § 61.702(a), duly filed appeals from the Commission's action of January 25 and February 8, 2019 alleging that the Commission's procedures and resulting actions were in error and requested a hearing before the City Council to consider these procedures and actions; and

WHEREAS, on February 19, 2019, the District 10 Community Council, under Zoning File No. 19-012-718

likewise filed an appeal pursuant to Leg. Code § 61.702(a) and requested a hearing before the City Council to consider the Commission's February 8, 2019 procedures; and

WHEREAS, the said appeals were set for public hearing before the City Council on March 6, 2019 under Zoning Appeal File No. 190012422 and;

WHEREAS, prior to the March 6, 2019 public hearing before the City Council, the Environmental Quality Board ("EQB"), by letter dated February 26, 2019, notified the City of its receipt of a Petition for an Environmental Review of the Twin Cities German Immersion Charter School Expansion Project and further informed the City, as the appropriate governmental unit, to determine the need for an Environmental Assessment Worksheet ("EAW") for the Project; and

WHEREAS, certain governmental decisions and approvals are prohibited while an environmental "need" assessment determination is pending and, accordingly, the City continued the March 6, 2019 public hearing until the City made its assessment review determination for the Project; and

WHEREAS, on April 9, 2016, the City issued its decision on the need for an environmental review of the Project, provided the required notice of this decision, and then set a new public hearing date before the City Council for the said appeals for June 5, 2019; and

PART III

CITY COUNCIL ACTIONS ON THE APPEALS

WHEREAS, on June 5, 2019, the Council of the City of Saint Paul was finally able to conduct the requested public hearings on the said appeals; and

WHEREAS, as an initial matter, the Council finds that the Commission's January 25, 2019 voting procedures regarding the School's zoning applications were defective and, as a result, the Council finds that the Commission's votes to approve the School's variance and site plan applications were improper and, therefore, the Commission's votes on them are of consequence regarding these appeal proceedings; and

WHEREAS, the Council further finds that the Commission's February 8, 2019 action to not reconsider its defective voting procedures from January 25, 2019 effectively results in the Commission having taken no action to approve or deny the School's zoning applications for its site plan or the variances required to approve its site plan; and

WHEREAS, given the defective voting procedures of the Commission and in keeping with the preceding paragraph's finding, the Council further finds that the Council has now properly before it the following: the staff reports prepared for the Commission which recommend approval of the School's variance application dated December 14, 2018, as amended on January 17, 2019; the staff reports prepared for the Commission which recommend approval of the School's site plan application dated December 13, 2019, as amended on January 17, 2019; the ample oral and written testimony record both for and against the Project received by the Commission's Zoning Committee during its December 20, 2019 public hearing; the Zoning Committee's January 17, 2019 recommendation to deny the applications for the reasons stated therein; and, the final amended versions of the staff reports for the School's site plan and variance applications dated June 5, 2019 which continue to recommend approval of the respective applications as follows:

A. Site plan application under DSI Zoning File No. 18-117-556: approved based upon the following findings with conditions:

"1. The city's adopted comprehensive plan and development or project plans for sub-areas of the city.

The site plan meets this finding. The Saint Paul Comprehensive Plan provides mixed guidance with policies supporting preservation of historic resources, collaboration with schools, and redevelopment.

The HPC has found that the former St. Andrew's Church meets the legislative criteria (Sec. 73.05) for designation, indicating the value of the church as an historic resource. The Historic Preservation Chapter includes the following specific provision:

- 4.3. Protect undesignated historic resources.

The proposed site plan is consistent with the Land Use Chapter of the Saint Paul Comprehensive Plan. The area is a mix of residential and institutional uses and a K - 8 school is a permitted use within the R4 Zoning District. Zoning Code does not differentiate by type of school, e.g., public, private, immersion, neighborhood. Minnesota charter schools are public schools and part of Minnesota's public education system.

The Land Use Chapter of the Comprehensive Plan acknowledges the importance of education institutions in providing "opportunities for Saint Paul and its residents as well as for those who work in the city." It also acknowledges that "education facilities often provide an identity for specific areas of the city." The Land Use Chapter includes the following specific provision:

- LU 1.55: Collaborate with public and private elementary and secondary schools in conjunction with construction or major remodeling.

The proposed development is consistent with the Como Park Community Plan Goals:

- The stable, residential quality of the neighborhood will be maintained with limited, sensitive development and re-development that enhances the residential quality of the neighborhood.
- The neighborhood will be home to a variety of small and medium sized businesses and institutions offering desirable products and services close to home.
- The introduction to the Housing and Land Use chapter identifies that based on the lack of vacant land, "opportunities for development and re-development will by necessity involve the re-use or replacement of current structures."

2. Applicable ordinances of the City of Saint Paul.

The site plan as proposed requires variances to meet this finding. The following standards in the R4 zoning district for density, setbacks, height, parking, and design apply:

- §66.216 - Intent, R4 one-family residential district.
- §66.230 - Residential District Density and dimensional standards.
- §66.232 - Maximum lot coverage.
- §63.207 - Parking requirements by use.
- §63.110 - Building design standards.

Type of Use: Schools are a permitted use. The R1-R4 one-family residential districts provide for an environment of predominantly low-density, one-family dwellings along with civic and institutional uses, public services and utilities that serve the residents in the districts.

Setbacks: The site plan meets the minimum setbacks. In R4 the minimum front and rear setback is 25'. The minimum side setback requirement is 9' for non-residential uses.

Height: The site plan does not meet the maximum building height of 3 stories and 30' in a R4 district. Building

height is measured from the established grade to the top of the roof deck. The project is proposing a variance for a building height up to 33' 1".

Lot Coverage: The site plan does not meet the maximum 35% lot coverage in a residential district. The project is proposing a variance to allow 36% lot coverage (30,290 sf building area / 83,491 sf lot area including half the alley).

Parking: The site plan does not meet the minimum off-street parking requirement based on one space per Full Time Equivalent (FTE) employee. The project is proposing a 34 space parking variance based on expected 86.5 staff FTEs (fractional spaces including .5 are disregarded). The site plan includes: 1) 25 existing surface off-street vehicle parking spaces, 2) addition of 3 off-street parking spaces in the existing west parking lot; 3) removal of 7 off-street parking spaces in the east parking lot, 4) one required bicycle parking space plus excess bicycle parking of 36 spaces, which allows for a 10% parking reduction, and 5) proposed shared parking for 15 off-street parking spaces with an adjacent church at 1040 Como Ave.

Design standards: Staff has reviewed the site plan in relation to the building design standards and found that all relevant standards are met.

3. Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.

The site plan meets this finding. The proposed use is permitted in a R4 one-family residential Zoning District, which provides for uses that serve the residents in the districts. The existing Aula (former church) structure is proposed for removal as part of the site plan. At this time the property is not currently designated as historical.

At an HPC public hearing on November 5, 2018, the Commission voted that the former St. Andrew's church is eligible for local designation as a Saint Paul Heritage Preservation Site. The application is in progress with a final decision to be determined by the Saint Paul City Council.

4. Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.

The site plan meets this finding. The effect of this specific proposed building on neighboring properties is reasonable. Specific to the findings:

- The stormwater system meets City standards for run-off rate control. The system will consist of pipes buried below grade located on the east side of the building in the proposed play area. In addition, roof drainage shall meet plumbing code requirements.
- The building addition is oriented to the south side of the property towards the street frontage. The building's proposed setbacks meet or exceed the zoning requirement, providing a reasonable distance from the abutting homes.
- The proposed site plan adheres to §63.110 - Building design standards, including delineation of a primary entrance, direct pedestrian connection to the street, building materials, minimum window and door openings, and reducing visual impact of rooftop equipment.
- The setback area to the east is proposed to replace parking with a play area and coniferous trees along the street frontage. Existing boulevard trees will be protected where possible and new boulevard trees will be planted as required.
- The east property line is currently screened with a wood fence along the alley and chain link fence along the play area. The proposed development offers an opportunity to provide a more durable, opaque fence of sufficient height and density to visually separate the screened activity from adjacent property and to

help improve the existing sound and sight buffer. Any fence will need to meet minimum Zoning Code requirements for a visual screen and site triangle requirements for vehicles using the alley.

- Off-street parking is proposed to increase from existing based on a Shared Parking Agreement with the adjacent church at 1040 Como Ave and additional bicycle parking. Refuse and recycling will continue in its existing location with alley pick-up.

5. The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected.

The site plan meets this finding. The existing use is a K - 8 school with 585 current student enrollment. The building addition will allow for classroom space for up to three sections per grade level (648 students). The total staff FTE is expected to increase from 80.5 to 86.5.

As a buffer to abutting residential properties, the building addition is centered in the middle of the parcel with a 25' front setback and side yard setbacks of approximately 75' to the east and 80'+ to the west. Fencing along the east and landscaping along the southeast property lines will visually separate the building and play area from the abutting property.

6. Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.

The site plan meets this finding. A new building addition shall meet current building and energy codes. The building is oriented to the south corner of the site and exceeds the minimum amount of glazing on all sides, allowing the building to gain solar heat.

The proposed development is located within two blocks of minor arterial streets (Lexington Pkwy and Como Ave) with good public transit and off-street bicycle paths, and adjoining Van Slyke Ave is an enhanced bicycle route making the area conducive to walking, biking, and using public transit rather than driving.

7. Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.

The site plan meets this finding. A Traffic Impact Study (TIS) was prepared by Spack Consulting; Public Works Transportation Planning and Safety Division is in general agreement with the results of the TIS dated 1/15/2019. Implementation of the TIS recommendations are in progress between City Staff and TCGIS.

The school's traffic operations are an existing concern. Regardless of whether the building expansion happens or not, underlying issues with traffic and pedestrian safety remain; the school, District 10 Como Community Council, and City will need to work together to optimize safety on an ongoing basis. Furthermore, there is no one answer, but rather a continuous improvement process with multiple incremental changes to be made, assessed and modified as needed to improve operations in and around the site.

TIS recommendations that require changes to the public realm, including a marked pedestrian crossing on Como Ave at Oxford St and time-of-day parking restrictions, shall be implemented as part of the site plan. Public Works Traffic Engineering staff have an existing and ongoing role working with schools to assess and implement changes to improve safety.

The site plan includes an existing surface parking lot with 25 spaces, proposed bike racks for at least 37 bicycles, and accessible sidewalks along Como Avenue. The proposed removal of an existing parking lot and curb cut on the east side of the building reduces potential pedestrian and vehicle conflicts on site. On-street parking is permitted on adjoining and nearby streets.

The proposed development is located within two blocks of minor arterial streets (Lexington Pkwy and Como

Ave) with good public transit and off-street bicycle paths, and adjoining Van Slyke Ave is an enhanced bicycle route, making the area conducive to walking, biking, and using public transit rather than driving.

8. The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development.

The site plan meets this finding. The utility connections are shown on Sheet C2. Water, Sanitary and Storm sewer services are available in Como Avenue.

Stormwater from the building addition will be piped to a new underground detention system. There's an existing stormwater system under the west parking lot for run-off of the existing site. Stormwater shall go out to the public storm sewer in Como Ave at a controlled rate that meets City standards. Drainage maps and HydroCAD modeling to meet the City's stormwater run-off rate control standards were reviewed and approved.

9. Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.

The site plan as proposed requires an off-street parking variance to meet this finding. The site plan does not meet the minimum off-street parking requirement based on one space per Full Time Equivalent employee (86 spaces required, 34 space deficiency). However, off-street parking is proposed to increase from existing based on a Shared Parking Agreement with the adjacent church at 1040 Como Ave and additional bicycle parking.

The setback areas to the southeast shall be landscaped and the east will be used for a play area and stormwater management. A new obscuring fence is proposed along the east property line to visually separate the play areas from the abutting property. Existing boulevard trees will be protected where possible and new boulevard trees planted as required.

10. Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.

The site plan meets this finding. The plan proposes accessible parking that meets ADA standards. Required accessible entrances and routes shall be provided per accessibility code. The public sidewalks have accessible crossings.

11. Provision for erosion and sediment control as specified in the ``Ramsey Erosion Sediment and Control Handbook."'

The site plan meets this finding. The site plan includes an erosion and sediment control plan that meets this standard.

Together with the following conditions to be imposed upon the approved site plan:

1. Approval of requested variances for building height and lot coverage.
2. Approval of the requested variance for 34 off-street parking spaces, or submittal of a plan that meets Zoning Code off-street parking requirements.
3. Install a solid obscuring fence at least 80% opaque and 6'- 7' in height along the length of the east property line to buffer the abutting properties.
4. Traffic Impact Study solution recommendations requiring changes to the public realm, including a marked pedestrian crossing on Como Ave at Oxford St and time-of-day parking restrictions, shall be implemented as part of the site plan. Public Works Traffic Engineering and the applicant shall assess additional operational and engineering solutions to improve safety; the school shall implement prescribed solutions as directed by Public Works.

B. Variance applications under PED Zoning File No. 18-126-865 be approved based upon the following findings with conditions:

1. Twin Cities German Immersion School ("TCGIS") has stated that proposed building on their site will allow growth in their enrollment that will require 6 additional employees. This will bring the total number of employees to 86.5, and an off-street parking requirement of 86 spaces. The projected increase in employees is necessary to accommodate the planned expansion of enrollment to 3 sections for each grade, K-8. According to the applicant, the current enrollment of the school is 585 students and the projected future enrollment is 648 students.

In 2013, TCGIS received site plan approval for construction of a new school building connecting an existing school building on the site to the existing former St. Andrews Church building, and for changes to parking and landscaping, resulting in a net loss of approximately 8 off-street spaces on the site and the addition of play areas and landscaped areas. At the time of that approval, TCGIS reported 32 employees, for an off-street parking requirement of 32 spaces; the site plan approved in 2013 included 33 off-street spaces.

2. The applicant is proposing to meet the off-street parking requirement of 86 spaces through an existing 26-space surface lot that will be enlarged and restriped to accommodate 28 spaces, providing 37 secured bicycle parking spaces (1 required) to reduce the required amount of off-street parking by 10%, a shared parking agreement with a neighboring property for 15 off-street spaces, removal of an existing 7-space lot, and a 34-space variance of the off-street parking requirement.

3. Section 61.601 states that the Planning Commission shall have the power to grant variances from the strict enforcement of the provisions of this code upon a finding that:

(a) The variance is in harmony with the general purposes and intent of the zoning code. For variances of maximum building height and maximum lot coverage, this finding is met. The magnitude of those variances is small, and they are reasonable accommodations for an allowed use that requires larger buildings than other uses permitted in the zoning district. This finding can be met for the variance of minimum off-street parking, provided the applicant does not further reduce the amount of off-street parking provided on-site. The proposed site plan would result in the loss 7 off-street parking spaces currently located to the east of the former church. A requirement to limit student enrollment at TCGIS to a total of nine grade levels and three sections or classrooms per grade should be a condition of approval of the off-street parking variance. The variance is consistent with the comprehensive plan. Policy 1.55 of the Land Use Chapter of the Comprehensive Plan calls for the City to "collaborate with public and private elementary and secondary schools in conjunction with construction or major remodeling". The requested variances are reasonable to accommodate the proposed school building height and total lot coverage, and to accommodate the projected student enrollment and corresponding staffing needs as described by the applicant.

The proposed variances are also consistent with the Como Park Community Plan, which calls for the neighborhood to be home to institutions offering desirable services close to home. The requested variances help facilitate the construction of a new building that meets the needs of TCGIS for projected enrollment and staffing.

(b) 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 for the variances of maximum building height and maximum lot coverage. The proposed new building would occupy a similar though slightly larger footprint as the existing former church, and will be of similar mass and slightly lower height than the existing building. The requested variance of maximum lot coverage is small relative to the size of the property, and reducing the footprint of the proposed new building to meet the maximum lot coverage requirement, while potentially feasible, would have a minimal impact on the overall site plan while potentially

negatively impacting the functionality of the proposed building for its intended use.

The school is an allowed use, and the configuration of buildings on the lot does not provide sufficient area to construct additional, new parking sufficient to meet the off-street parking requirement. While the applicant proposes removing 7 existing off-street spaces, this is a reasonable way to achieve needed, usable green space on the site, and the project will result in a net increase in off-street parking provided that the proposed shared parking agreement with a neighboring property is implemented. This finding can be met for the variance of minimum off-street parking, provided the applicant does not further increase the off-street parking requirement. A requirement to limit student enrollment at TCGIS to a total of nine grade levels and three sections or classrooms per grade, and a requirement to establish and maintain a shared parking agreement for 15 off-street spaces at 1040 Como Avenue should be conditions of approval of the off-street parking variance.

(c) The plight of the landowner is due to circumstances unique to the property not created by the landowner. This finding is met for the variances of maximum building height and maximum lot coverage. The proposed new school building is an allowed use and will, if approved, occupy a similar though slightly larger footprint as the existing former church, and will be of similar mass and slightly lower height than the existing building. The former church building, which will be replaced by the proposed school building, was built long prior to the current owner's control of the site.

This finding can be met for the variance of minimum off-street parking, provided the applicant provides all proposed parking and does not further increase student enrollment so as to increase the off-street parking requirement at 1031 Como Avenue. The proposed site plan would result in the loss 7 off-street parking spaces currently located to the east of the former church. In 2014, the applicant constructed a new building connecting an already existing school building on the property with the former church building. At that time, surface parking to the south and west of the existing school building was removed to accommodate the new school building and an outdoor play space. Based on review of a 2011 aerial photo of the site, it appears that a least 24 off-street parking spaces were removed. Also at that time, according to site plan records, the former rectory building, to the west of the former church was demolished and replaced by a new 26-space parking lot, and the existing parking lot to the east of the former church was reduced in size by 10 spaces, from 17 to the current 7. The net impact to off-street parking on the site was a loss of 8 spaces. The net loss of 8 off-street spaces at the time of the 2014 expansion can be off-set by a shared parking agreement for use of 15 spaces with the owner of the neighboring property at 1040 Como Avenue. A requirement to limit student enrollment at TCGIS to a total of nine grade levels and three sections or classrooms per grade, and a requirement to establish and maintain a shared parking agreement for 15 off-street spaces at 1040 Como Avenue should be conditions of approval of the off-street parking variance.

(d) 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. Elementary and middle schools are allowed uses in the R4 one-family residential district, and the proposed variances do not change the use.

(e) The variance will not alter the essential character of the surrounding area. This finding is or can be met for all proposed variances. The proposed building will be similar in mass to the existing building proposed for removal, and the use already exists in the area. The variances will allow increased enrollment and employment at TCGIS, increasing traffic to and from the site. The applicant has provided a traffic impact study (TIS) for review by Public Works, and Public Works has accepted the TIS. Implementation of the TIS recommendations and of any operational or engineering solutions subsequently identified by Public Works as necessary to improve public safety should be a condition of approval of the off-street parking variance.

Together with the following conditions imposed upon the approved variances:

1. Site plan approval.

2. Traffic Impact Study solution recommendations requiring changes to the public realm, including a marked pedestrian crossing on Como Ave at Oxford St and time-of-day parking restrictions, shall be implemented. Public Works Traffic Engineering and the applicant shall assess additional operational and engineering solutions to improve safety; the school shall implement prescribed solutions as directed by Public Works.
3. Establishment and maintenance of a shared parking agreement for 15 off-street parking spaces at 1040 Como Avenue, to be approved and monitored by the Zoning Administrator. If the parking agreement is terminated for any reason, Twin Cities German Immersion School shall immediately notify the Zoning Administrator in writing and apply for a 15-space off-street minimum parking requirement variance.
4. Twin Cities German Immersion School student enrollment shall be limited to no more than nine total grade levels and three sections or classrooms per grade level.”

And, WHEREAS, given the Commission’s express duty to approve or deny zoning applications as set forth under the zoning code, the Commission’s defective voting procedures, and the Council’s ability to exercise the powers provided by the code to the Commission, the Council hereby finds that it will act upon the appeals by Kevin W. Anderson and the District 10 Community Council by exercising its authority to approve or deny the School’s zoning applications as if these applications were being considered for the first time by the Commission at its meeting of January 25, 2019, with the additional benefit of the Council now having all the files, reports, records, and testimony produced before the Commission, the findings and recommendations contained in the revised staff reports as set forth above and all the testimony received by the Council during its public hearing on the said appeals; **NOW, THEREFORE**,

BE IT RESOLVED, that the Council hereby finds, as noted above, that the Commission’s January 25, 2019 voting procedures to approve the School’s variance and site plan applications for the Project were conducted in error; and

BE IT FURTHER RESOLVED, that the Commission’s failure to address these procedural errors by reconsidering the underlying zoning applications on February 8, 2019, resulted in no decision on the School’s variance and site plan applications for the Project, has been made by the City; and

BE IT FURTHER RESOLVED, that Kevin Anderson’s appeal regarding the Commission’s procedures with respect to the School’s variance and site plan applications will be granted and in so doing, the Council, in granting this aspect of Mr. Anderson’s appeal, will consider the School’s variance and site plan applications and render a decision as to each application as if each application is being considered by the City for approval or denial for the first time with the additional benefit of having the Commission’s Zoning Committee January 17, 2019 recommendations to deny the applications; and

BE IT FURTHER RESOLVED, having found that the Commission’s procedural processes regarding the School’s variance and site plan applications were defective and therefore are of no effect, the Council, taking notice that the City must approve or deny zoning applications within the time prescribed by Minnesota law, hereby acts on the School’s variance and site plan applications utilizing the Commission’s powers; and

BE IT FURTHER RESOLVED, that the Council, having closed the public hearing and having considered the variance applications, the reports of staff as to these applications, the recommendation of the Zoning Committee, and all the oral and written testimony submitted through the record and during the public hearing before it, the Council hereby approves the School’s variance applications for the Project based upon all the findings recommending approval of the variance applications for building height, lot coverage and off-street parking, as set forth in the report of staff dated January 17, 2019 and the amended staff report of June 5, 2019, in PED Zoning File No. 18-126-865, together with the conditions of approval recommended by staff as set forth above and as contained in the said amended staff report; and

BE IT FURTHER RESOLVED, that the appeal of Kevin Anderson, to the extent that it applied to the

underlying recommendation to approve the said variances, is hereby denied, there being no showing by Mr. Anderson that the staff recommendations were in error as to their facts or findings as set forth in the staff report dated January 17, 2019 and the amended staff report of June 5, 2019, under PED Zoning File No. 18-126-865, which the Council hereby adopts as its own in support of this decision; and

BE IT FURTHER RESOLVED, that the Council, having closed the public hearing and having considered the site plan application, the report of staff as to these applications, the recommendation of the Zoning Committee, and all the oral and written testimony submitted through the record and during the proceeding before it, the Council hereby approves the School's site plan application for the Project based upon all the findings recommending approval of the site plan application as set forth in the staff report dated January 17, 2019 and the amended report of staff dated June 5, 2019, under DSI Zoning File No. 18-117-556, together with the conditions of approval recommended by staff in its report of June 5, 2019; and

BE IT FURTHER RESOLVED, that the appeal of Kevin Anderson, to the extent that it applied to the underlying recommendation to approve the said site plan, is hereby denied, there being no showing that the staff recommendation was in error as to its facts or findings, as set forth in the staff report dated January 17, 2019 and the amended staff report dated June 5, 2019, under DSI Zoning File No. 18-117-556, which, the Council hereby adopts as its own in support of this decision; and

BE IT FURTHER RESOLVED, that during the June 6, 2019 public hearing, appellant District 10 Community Council's representative indicated that should the Council approve the School's variance and site plan applications, including the imposition of conditions on the approval of the School's zoning applications, as set forth in the respective reports of staff dated June 5, 2019, that the District 10 Community Council, would withdraw its appeal in this matter; and

BE IT FURTHER RESOLVED, that the Council, having approved the School's zoning applications including the conditions contained in respective staff reports as adopted by the Council above, and based upon the comments of the District 10 Community Council representative indicating its desire to withdraw its appeal in this matter based upon these actions by the Council, that the appeal by the District 10 Community Council in this matter is hereby withdrawn and stricken; and

BE IT FURTHER RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to appellant Kevin Anderson, the District 10 Community Council, the Planning and Zoning Administrators, the Building Official and the Planning Commission; and

BE IT FINALLY RESOLVED, that staff provide for the required filing and handling of the zoning variances and site plan approvals granted herein.