

City of Columbus
Public Hearing – Sanctuary at Howard Lake Preliminary Plat Variance (PC-18-102)
January 17, 2018

The January 17, 2018 Public Hearing to receive testimony regarding a request for variances to Chapter 7E of the Columbus City Code to reduce the setback from the Ordinary High Water Level (OHWL) of Howard Lake from 150 to 50 feet and to reduce the Shore Impact Zone from 75 feet to 50 feet for development in the Community Retail (C/R) zoning district was called to order at 8:58 p.m. by Chair Garth Sternberg at the City Hall. Present were Commission members: James Watson, Pam Wolowski, Jesse Preiner, and Jody Krebs; City Administrator Elizabeth Mursko; Planner Dean Johnson; Attorney Jacob Steen, and Recording Secretary Karen Boland.

Also in attendance were City Councilmembers Bill Krebs and Denny Peterson; City Staff Jim Windingstad, Lorie Lemieux, and Jessica Hughes; Jason Spiegel, Dan Mike, Jay Gustafson, and Wayne Jacobson.

Sternberg: Public Hearing and discussion for Sanctuary at Howard Lake Preliminary Plat Variance, pages 1 through 19, and pages A9 through 20, in the, uh, enclosure. And, at this time, I'd like to ask the recording secretary to read the Notice as published.

Notice was read at this time by the recording secretary.

Sternberg: Thank you Karen. And if I didn't thank you earlier, thank you for reading that one too. At this time, if the applicants could please come forward and . . . And if you could just state your names and addresses for the record, and then give us some background on what it is you're asking.

Gustafson: Uh, Jay Gustafson with Howard Lake Development, 11044 Zumbrota Court in Blaine.

Jacobson: Wayne Jacobson. I'm the owner of Jacobson Environmental in Brooklyn Center, Minnesota.

Sternberg: Thank you. And, do you want to take it away or . . .? Do you want to give us a little background on what it is you're asking--the variance request?

Gustafson: Uh, the variance request, uh, primarily is requesting, um, a variance to the 150-foot setback from the ordinary high-water line to be 50 feet from the ordinary high-water line, which would also then, uh, subsequently request a, uh, a variance to the, um, uh, the lakefront, um, impact zone. Uh, which is 50, uh, 50 percent of the setback from the OHW was 75 feet; we would be requesting that also be 50 feet.

Sternberg: Any questions for the applicant?

Watson: No sir.

Wolowski: No sir.

Sternberg: Okay, I'm going to open the hearing to the public. Anyone here from the public? If you guys want, you can take a seat, and we'll let the public come forward.

Spiegel: My name is Jason Spiegel. I'm the North Metro Area Hydrologist for the Minnesota Department of Natural Resources. Uh, due to statutory requirements, we are included in the comments that, er, the, uh, notification for the variance that's sent out, and we have a right to comment. So I'm here representing DNR for comments tonight.

Sternberg: Did you state your name and address?

Spiegel: Jason Spiegel. Uh, my address would be Minnesota DNR, 1200 Warner Road, Saint Paul, Minnesota.

Sternberg: Thank you.

Spiegel: That is my office. Uh, first I'd like to start out by, um, you know, saying thank you to the Commissioner and, uh, the Commissioners and the Chairman for, for allowing us to have this public hearing. I would like to offer you an opportunity to ask me any questions that you may have about my comment letter that was submitted last week, uh, to the City. I believe that was the first part of your packet regarding this variance, the first--

Sternberg: Any questions on the DNR letter?

Spiegel: Okay. With that said, I'll move on to—this afternoon I received the staff report and a memo from the City Attorney. Uh, so tonight my comments are going to be directed to the findings, uh, that the Commission is considering in a separate part of their packet. I'll let my comment letter stand, uh, from my original comments. So, first I'd like to start off by addressing the City Attorney's memo. Uh, I just want to clarify that, um, we agree with the attorney's assessment that DNR's authority in this matter is not to grant or deny a variance. Right. That lies solely with the City. Our role is purely as a member of the public, to provide comment and, uh, direction to the city when a variance is requested. Um, statewide shoreland rules require local governments to send those notices to us, and that we make a comment if we have concerns. We generally only comment when we see that a proposed variance does not meet the statutory criteria for granting variances, and poses a threat to public waters that the shoreland rules are intended to protect. In this particular case, the requested variance would result in extreme deviation from the statewide shoreland standards, and the City's adopted shoreland ordinance, and would undermine the protections of Howard Lake that those shoreland standards and city ordinances provide. So, in going into the staff report—I just took a quick read of it this afternoon—I want to address three specific topics within that, that were addressed: the reasonable manner section, the practical difficulties and uniqueness, and the essential character. For reasonable manner, nowhere in the City ordinance or the statewide shoreland rules is there any, is there any reference to the visible water line for determining setbacks from lakes. The reference for setbacks is and always has been the Ordinary High-Water. The City should have known this and communicated it to developers early on in the

process. Furthermore, wetland fringe abutting a lake is, is hydrologically connected to part of the lake and is susceptible to water-quality impact from the development, as is the lake. Particularly if vegetation and the land within the shore impact zone is removed, and or altered, as is proposed. Moving on to practical difficulties and uniqueness. The staff report states that the applicant had no control over the establishment of shoreland development standards that affect the property, nor any control over the natural features on the property, and that the fact the property has so many wetlands is unique. The fact that this property has wetlands is not unique. Many lakes have wetlands that surround them. The site was known to contain many wetlands, and to be subject to shoreland regulations before the development was proposed. As such, the applicant should have been made aware of these limitations, and the development should have been designed accordingly. There appear to be other opportunities within this development area to provide greater density outside of the shore-impact zone and the setback area. What is not clear is that the developer has considered or proposed other design alternatives that would provide the needed density for MUSA, and prov--which is the, uh, the standards of the Metropolitan Council, and in your Comp Plan--and better meet the required shoreland standards. Moving on to essential character. The staff report mentions that the proposed development is compatible with the Community Retail and Suburban Residential Overlay, but it does not make a mention of the Shoreland Overlay District, which is kind of what we're talking about tonight. The extensive vegetation move will land disturbance within the shore impact zone and number of structures proposed within the required setback are not compatible with the Shoreland Overlay and will essentially alter the character of the sensitive shoreland area. And this was not addressed, um, in the essential character portion of the findings, uh, that were shared with the Council. Um, moving on, I would like to, to make quick mention of the other two, as well, in my letter. Um, specifically, I addressed in somewhat detail, the Comprehensive Plan, and I, I want to just highlight, uh, to the City, that you have goals both for growth and you have rules to, or goals to protect environmental and natural systems. There's ways that development can occur that absolutely satisfies both of those. Um, and, approving a variance that reduces the required setback by your ordinance by a third, doesn't appear to be attempting to do that. Um, so I would like to highlight that the Comprehensive Plan does have goals that are in conflict with the proposed variance. And, and then talking about the harmony and intent of the ordinance. So, the purpose and intent of greater setback for natural environment lakes versus general development or other systems, as adopted by the City of Columbus, is to provide additional protection to public waters that are more susceptible to negative impact from development occurring in the shoreland area. Due to high nutrient loading, Howard Lake was listed by the Minnesota Pollution Control Agency as an impaired water body in 2006. This is on page three of my comment letter if you want to find it. Uh, due to management activities by DNR, Rice Creek, and other agencies, the lake, uh, has improved significantly in habitat and water quality, to the point where it was removed from the impaired waters list in 2014. It is the only lake within the Rice Creek Watershed—a large portion of which is within the City of Columbus—that has improved enough to be removed from this impaired waters list. So, the purpose and intent of the ordinance is to provide protections, and this system has shown in the past that it is in need of those protections. So, I just want to highlight that for the City, and, uh, with that, I'll take any questions or comments.

Sternberg: Any questions?

Watson: No sir.

Wolowski: Nope.

Sternberg: Thank you sir.

Spiegel: Oh, and I did have one follow-up.

Sternberg: Go ahead.

Spiegel: Is this . . . I wasn't clear from the materials I received, is this being considered as a variance to a plat or is it still under the PUD? I'm not clear which way the City processed the application. Is this a PUD or just a preliminary plat?

Johnson: Uh, this is a variance to our own shoreland ordinance.

Spiegel: Right.

Johnson: And it is limited to the dimensional standards of the OHWL and the shore impact zone. The plat does not trigger that review by itself.

Spiegel: Okay.

Johnson: But the, um, Planned Unit Development conditional use permit, which then would allow all of the structures which are consistent with the City ordinance, it is inconsistent with the shoreland provisions of the ordinance.

Spiegel: Correct. So, so this process is a Planned Unit Development, is that correct?

Johnson: In, in the sense that exceptions within the OHWL setback on a plat--a lot does not create an exception. It is the structure. So, I'm answering your question the best way I can. We are accepting or allowing consideration for variances to the standards of the shoreland ordinance for those two dimensional standards in our review of the, um, conditional use permit to allow the development.

Spiegel: Okay.

Johnson: Which is the Planned Unit Development.

Steen: Mr. Chair, Dean, if I may add, I think what you're asking is, 'Is this deviation being processed as part of the PUD?'

Spiegel: Correct.

Steen: And that is not. We had originally approved it that way; we understood that the DNR did not approve of that approach. We agreed to recommend that the applicant come back and apply for a variance separate from those P, PUD deviations. So, this is being processed as any standard variance would be.

Spiegel: Okay.

Johnson: Thanks for the clarification.

Sternberg: Anybody else from the public? Anybody else? Okay, I'm going to close the hearing with the right to reopen.

Hearing closed at 9:10 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary