

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0414

RESOLUTION AFFIRMING THE DECISION OF THE PLANNING
COMMISSION TO DENY THE APPLICATION FOR A VARIANCE
BY PARK POINT PROPERTIES 50-18.1. OF THE DULUTH
CITY CODE

CITY PROPOSAL:

RESOLVED, that the city council finds as follows:

(a) Park Point Properties, agend Paul Kellner's property is located at 3129 Minnesota Avenue and the proposed structure is within 50 foot setback from the Ordinary High Water level;

(b) On May 7, 2012, Park Point Properties applied for a variance that would allow them to construct a 1400 square foot duplex to be setback 25 feet from the Ordinary High Water level (Planning File No. 12-083);

(C) A public hearing was held by the planning commission at its June 12, 2012, meeting to allow for a neighborhood meeting. At this meeting the commission voted to deny the request. The basis for the commission's decision was its conclusion that:

(1) Section 50-37.9.C(b) of the City Code prohibits the granting of a variance that does not demonstrate a practical difficulty which is unique to the property and not caused by the landowner required by Section 50-18.1.D of the City Code;

(2) If the city granted the requested variance it would have the effect of authorizing a lesser degree of shoreland protection than is required by Section 50-18.1.D of the City Code;

(3) Such a variance is prohibited by Section 50-37.9.L of the City Code;

(d) Park Point Properties was provided written notice of the commission's action on July 11, 2012;

(e) Park Point Properties filed an appeal of the commission's decision to the city council on July, 2011 and pursuant to Section 50-37.1.0(4) of the City Code;

(f) The city council heard the appeal at its August 13, 2012, meeting of the planning and economic development committee and the matter was considered at the August 13, 2012, council meeting.

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

(a) Park Point Properties property located at 3129 Minnesota Avenue is within the shoreland setback;

(b) The following sections of the City Code are applicable to construction within shoreland setback and relevant to this matter:

(1) Section 50-37.9.L provided as follows: "Variances to the shoreland setback in Section 50-18.1 shall only be granted in compliance with the limitations in this subsection D";

(2) Section 50-37.9.L provides as follows: No variance shall authorize that results in adverse consequences to the environment by Section 50-18.1.D";

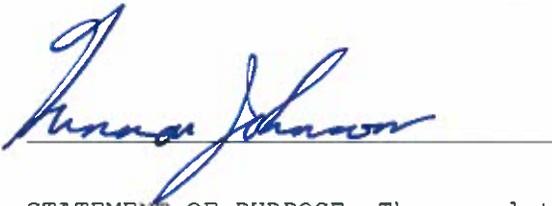
(c) Park Point Properties seeks a variance that would authorize the construction of a duplex 1400 square feet that would be within the 50 foot shoreland setback as required by Section 50-18.1;

(d) In addition to meeting the standards applicable to construction within the shoreland setback 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 1400 square foot duplex within the 50 foot shoreland setback will produce adverse effects to the environment and the shoreland protection zone;

(f) Pursuant to the limitations of the Section 50-37.9.K(2)(a), the City Code does not have authority to grant the variance requested.

Approved as to form:

A handwritten signature in blue ink, appearing to read "Anna Johnson", is written over a horizontal line.

STATEMENT OF PURPOSE: The resolution affirms the decision of the planning commission to deny the application by Park Point Properties to construct a duplex of 1400 square feet within the 50 foot shoreland setback as required by the Section 50-18.1 of the City Code.