

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0415R

AS AMENDED

RESOLUTION REVERSING THE DECISION OF THE PLANNING COMMISSION TO DENY THE APPLICATION FOR A VARIANCE BY PARK POINT PROPERTIES FROM THE SHORELAND SETBACK OF SECTION 50-18.1 OF THE DULUTH CITY CODE.

CITY PROPOSAL:

RESOLVED, that the city council finds as follows:

(a) Park Point Properties agent Kellner's property is located at 3129 Minnesota Avenue and the proposed structure is within the 50 foot shoreland 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 1,400 square foot duplex to be set back 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. The commission tabled the request until their July 10, 2012, meeting. The commission tabled the request until their July 10, 2012, meeting. The commission tabled the request until their July 10, 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 20, 2012, 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, meeting.

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

(a) Park Point Properties' property located at 3129 Minnesota Avenue is within the 50 foot shoreland setback;

(b) Park Point Properties seeks a variance that would authorize the construction of a duplex of 1,400 square feet to be located within the 50 foot shoreland setback at a distance of 25 feet from the ordinary high water level;

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

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

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

(d) In addition to the meeting the standards applicable to construction within the shoreland as identified in subparagraph (c) above, the City Code requires an applicant for a variance to demonstrate the requirement 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 1,400 square foot structure within the 50 foot setback from the shoreland, but no closer than 25 feet from the ordinary high water level;

(f) Park Point Properties 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.

RESOLVED FURTHER, that, pursuant to the authority to grant variances as

provided in Section 50-37.9.L, the application for a variance by the Park Point Properties is granted subject to the following conditions:

(a) The duplex is no larger than 1,400 square feet and no closer to the ordinary high water level than 25 feet;

(b) Prior to construction, a plan for the operation and maintenance of the pervious pavers and rain garden be approved by the city engineer;

(c) That the driveway apron be designed according to the city engineer's standards;

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

(e) The finding of a hardship due to the constrictions placed on the reasonable use of the lot by the 50 foot setbacks from the ordinary high water mark that is measured from three different locations due to the irregular shoreline;

(f) The setbacks were reduced from 50 feet from the ordinary high water mark to - 44 feet from the rear or southwest side of the lot, 34 feet from the southeast side and 25 feet from the northwest side of the ordinary high water mark.

STATEMENT OF PURPOSE: This resolution reverses the decision of the planning commission to deny the application by Park Point Properties to construct a duplex of approximately 1,400 square feet within the 50 foot shoreland setback from the ordinary high water level, at a 25 feet setback from the ordinary high water level, as required by Section 50-18.1 of the City Code and imposes conditions on the approval of the variance.