

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0620R

RESOLUTION CLARIFYING RESOLUTION 12-0415R, AFFIRMING THE GRANTING OF A VARIANCE TO THE SHORELAND SETBACKS OF 44, 34, AND 25 FEET TO PARK POINT PROPERTIES.

CITY PROPOSAL:

RESOLVED, that resolution 12-0415R, approved on August 13, 2012, is amended to read as follows:

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

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

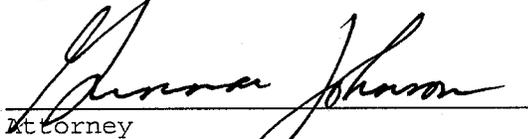
(c) The authority to issue a building permit for the construction of a duplex pursuant to this variance shall expire one year from the date of the approval of this resolution unless a one year extension is granted as provided in Section 50-37.1.K;

(d) 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;

(e) 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.

Approved as to form:


Attorney

PC/PLNG SR:CS 12/6/2013

STATEMENT OF PURPOSE: This resolution clarifies the city council's intent when they approved resolution 12-0415R, related to a shoreland variance (PL 12-083 at 3129 Minnesota Avenue). As 12-0415R was written, it has two different, competing standards. One standard, identified in stricken section (a), limits the footprint of the structure but allows it to be built anywhere on the lot so that it is no more than 25 feet from the Ordinary High Watermark. The second standard, identified in section (f) above, does not limit the footprint of the structure, but does place higher distance restrictions (from three different sides of the lot, 44 feet, 34 feet, and 25 feet respectively).

The resolution also clarifies that the variance granted by the City Council was intended to expire within one year, unless a one year extension was granted per the normal process identified in the Unified Development Chapter.

As City staff are not certain to the council's intent, a clarifying resolution is requested to clearly establish what the Council intended to establish as shoreland setback limits for the new structure.



CITY OF DULUTH
CITY CLERK'S OFFICE
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Duluth, Minnesota 55802-1189
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Phone (218) 730-5500

JEFFREY J. COX
City Clerk

August 16, 2012

Park Point Properties, LLC
2536 Minnesota Avenue
Duluth, Minnesota 55802

Re: Certified copy of Resolution 12-0415

Enclosed is a certified copy of Resolution 12-0415 which was adopted by the Duluth City Council at their August 13, 2012, meeting entitled:

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.

Sincerely,

MARTHA A. OSWALD
Assistant City Clerk

MAO/jkmr
enc 1

cc: Planning
Building Safety

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 12-0415

ADOPTED: AUGUST 13, 2012

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

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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;

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(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.

Resolution 12-0415, as amended, was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Larson, Stauber and President Hartman -- 7

Nays: Councilor Krug -- 1

Absent: Councilor Krause -- 1

Approved August 13, 2012

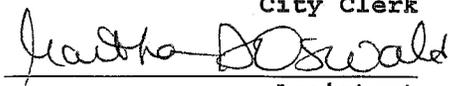
DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 13th day of August, 2012, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 16th day of August, 2012.

JEFFREY J. COX
City Clerk

by



Assistant

CITY OF DULUTH, MINNESOTA