

**CITY OF MARQUETTE
BOARD OF ZONING APPEALS
OFFICIAL PROCEEDINGS
March 2, 2023**

MEETING CALLED TO ORDER

A regular meeting of the Marquette City Board of Zoning Appeals was called to order at 7:00 p.m. on Thursday, March 2, 2023, located in Room 103 of the Municipal Service Center, 1100 Wright St.

ROLL CALL

Present: Vice-Chair Ms. Dombrowski, Ms. Hill, Mr. Patrick, Ms. Wright, Mr. Williams, and Mr. Neumann
Absent: None

MINUTES

It was moved by Ms. Wright, seconded by Ms. Hill, and carried 6-0 to approve the minutes of December 1, 2022, as presented.

ADDITIONS TO OR DELETIONS FROM THE AGENDA

It was moved by Mr. Neumann, seconded by Ms. Hill, and carried 6-0 to approve the agenda as presented.

ELECTION OF OFFICERS

Chair – It was moved by Mr. Patrick, seconded by Ms. Wright, and carried 6-0 to elect Ms. Dombrowski as Chair.

Vice-Chair - It was moved by Ms. Wright, seconded by Mr. Patrick, and carried 6-0 to elect Ms. Hill.

PUBLIC HEARINGS

01-VAR-03-23 – Forestville Basin Trail (PIN: 0510156): Bruce Pesola and Cedar Pointe Family Trust are seeking a public road frontage variance from the City of Marquette Land Development Code to allow a private road to front the property at Forestville Basin Trail and to divide the land into 8 new single-family lots and a remainder parcel all only having private road frontage

A. Landers stated that the Board of Zoning Appeals is being asked to review an application for a public road frontage variance from the City of Marquette Land Development Code to allow a private road to front the property at Forestville Basin Trail and to divide the land into 8 new single-family lots and a remainder parcel at Forestville Basin Trail (PIN: 0510156). She also stated that the Land Development Code only allows a private street frontage in an approved Planned Unit Development or with a site condominium that has to meet the exception that there are no other public streets within 1,500 feet of the nearest site

condominium parcel line. She also stated that a site condominium allows for single-family homes on parcels of land similar to a land division or subdivision. This is a way the city would be able to approve the exact survey that was submitted for dividing up the parcel, and that was brought to the applicant's attention with the attached Assessing letter for the denial of the Land Division. She stated there are issues with private roads, and reasons why the City only allows them in an approved Planned Unit Development or with the new amendment of allowing them in a Site Condominium that meets the exception that there are no other public streets within 1,500 feet of the nearest site condominium parcel line. She also stated the Condominium Act requires maintenance agreements for private streets. It would also require a written easement for legal access from a private road within another condominium to get access to this parcel and proposed private road. She stated the city cannot require that outside of the condominium, or conditionally require it, so this is one of the reasons we amended the ordinance to allow for this private road exception for Site Condominiums. She read the background section of the Staff report, and visuals of the staff report, and attachments were shown.

Barbara Wright: Could you explain what is a site condominium?

Andrea Landers: So, a site condominium it looks exactly what you're seeing here except they have to meet the state condominium requirements. They have to go get a master deed. They have to provide all those easements and road requirements through that review. It goes to the planning commission for recommendation to the city commission and then the city commission will review it.

Barbara Wright: So, it could still be single family homes under that?

Andrea Landers: Yep, it would look exactly the same as this but it would be a site condominium.

Barbara Wright: But they're not doing that?

Andrea Landers: No, they do not wish to go through that process so they are asking for a variance of our code requirements. The site condominium is the process they could do to meet our code and City Staff would be able to approve the exact same layout with the private road that through that process.

Barbara Wright: Okay. And the reason for not having single family homes on a private road that is because of snow plowing and fire access, right?

Andrea Landers: Well, the city does not have very many places with private roads within the city limits except for anything that's a planned unit development. And the reason that they did that is because when you go through a planned unit development, which is even greater of a process than the site condominium review process, you're going to the planning commission, city commission, a contract with the city is created, and then you're also doing the master deeds and things like that. It's when we go through that review, the planned unit development, staff is reviewing their road that they're proposing, making sure that it meets certain things and they have those maintenance agreements, etc. through that process.

Barbara Wright: Okay, that's like Harlow Farms PUD, right?

Andrea Landers: Correct, that would be an example of it.

Nathan Williams: How were the other lots in I guess Blue Heron 1 created?

Andrea Landers: Those are condominiums.

Nathan Williams: Okay, those are condo units, all right, thanks.

Kristina Hill: I am assuming that even though this is private and it still needs to be serviced by fire truck and all of that, is that something the city, like the fire department reviews, and even says that this private road access onto it works for their equipment?

Andrea Landers: They would be able to have those review statements during the site condominium process. How does the township take care of the Blue Heron Bluffs condominium right now, things like that, so it would be something that would be a discussion at that time. Through the land division process, they wouldn't have any say so over it.

Kristina Hill: And it does look like part of the turn onto the private road is on the adjacent property, so does that mean is there an agreement with the neighbor to have the turn onto the private road?

Andrea Landers: So, that is something that we cannot require as a condition of approval per the city attorney.

Nathan Williams: I'm not sure if you know this, but I assume Marquette Township does not have the rule of 60 feet front lot width for a private lot?

Andrea Landers: So, through the land division, they're not asking for variances from the lot width sizes or lot area sizes.

Nathan Williams: So, all those properties in Marquette Township are on a private road. Did they have to get a variance for that?

Andrea Landers: That I don't know if the Township allows for private roads or not or what the process was for them to go through them, but they had to go through the condominium process. My guess is the Township reviewed it during that process.

Nathan Williams: So that whole road is condominiums?

Andrea Landers: The Blue Heron Bluffs section is.

Kristina Hill: And just to be clear, we're not discussing the lots. It's really just the access. The lots all meet the low-density zoning requirements.

Andrea Landers: Correct, the only thing that they're requesting a variance for is from the public road frontage requirements.

Nathan Williams: I think I understand, but so everybody else understands it, so it was rezoned as one large lot and now it's looking to be parceled out and it was rezoned to low

density residential-conditional rezoning and that flew because it was on a big lot, right? How could anyone think anyone would ever be able to build a house on this?

Andrea Landers: Well, because during that time, we added the site condominium exception because of a meeting with the applicant's representative so it was this idea that we figured they were going through. If we didn't have this exception in the code, we would have told them at that time so they wouldn't have been going through the rezoning process because they wouldn't have even been able to do it without a public road.

Nathan Williams: Could the city ever have a public road that's accessed only by a private road?

Andrea Landers: No, the public roads have to be connected to each other, so even I'm thinking like Harlow Farms PUD or Picnic Rocks PUD which has private roads off of the public road. They don't provide an only connection to a public road. You know what I mean? Or you're not doing it like a dead end from a public to a private to a public.

The applicant's representative, Jim Conlin, 155 Forestville Basin Trail and formerly 137 West Michigan Street in Marquette, which is the address on the application. As of this past week, we've relocated to 155 Forestville Basin Trail. If there's any discrepancies in the notes, that's why. So, Mr. Pesola is out of state for the next couple of months and his attorney is off dealing with some other things so I'm here to represent Bruce and the family trust as the applicant. You guys have really covered the background pretty well. So, two things that I can at least maybe try and answer as many questions that have come up as possible, but really just also want to highlight a few things of going through the process, getting the parcel rezoned to the low density with conditional rezoning. The developer met those conditions, got everything rezoned and approved, and now this is really the only box that isn't able to be checked is the issue with the public road versus private road, and then that being said, as you've covered, everything that is accessed on the basin is through Forestville Basin Trail, which is the private road. There are two condominiums out there currently, Blue Heron Bluffs I and Blue Heron Bluffs II, and then there are seven private lots that are not part of any condominium out there currently. So, I think the question came up are all the lots out there condo, the answer is no. There's Blue Heron Bluffs I, II, and then seven private lots as well, all serviced from Forestville Basin Trail. So, if you're to look at - and I know you have all studied the map pretty well - it is essentially land-locked from BLP property and Township property, there is no other access to that city property right there and that is it. There's no other access to it currently other than Forestville Basin Trail which is a private road. So, the plan is to just extend Forestville Basin Trail to access all those lots and again those lots, as they are sized, as they're drawn out meet every other criteria within the land development code, except for the access. So therefore, the most streamlined process we feel is to just go through the variance request and move on with the process. The concern that seems to have been brought up is what about maintenance, and to be able to do that, the condominium would require maintenance. There is currently, and some folks back there will probably discuss it later as well, within the developer's agreement to develop this property, or to have it rezoned and then be able to develop it, is a real maintenance agreement in place with Blue Heron Bluffs Association 1 that each deed, when these are split, each deed will have a covenant in it that future owners will have to pay into the current pot that all goes to maintenance of the entire road. So, there will be a maintenance agreement in place as long as this can conform. So, we hope that concern would go away within the agreement between the developer and Blue Heron Bluffs Association because everybody on the private road, from the private owners to Associations I and II all pay to maintain the road from basically Forestville Road to the very end which is kind of like the corner, the top left corner, the city property there. So, even the new owners, when they become new owners of those eight lots, they will all chip

into the road maintenance agreement as well and be responsible for maintaining that private road all the way through.

George Patrick: You call them owners, so that'll be deeded to them?

Jim Conlin: Correct, and it'll be a covenant within the deed that they know going into it that they are not part of an association but they are required to pay into the pot that takes care of the road maintenance.

Barbara Wright: Asked to show the roads that Mr. Conlin is referring to on the map. This was shown.

Barbara Wright: So then go right along the property. And is that triangle area part of it, too? Is that some of the lots or is that where that roundabout's going to be?

Jim Conlin: I believe that's right around where that roundabout will be prior to the eight lots, it's an additional parcel that will just be- and I believe it also abuts- so the owner currently owns that which is the city property, yeah, Andrea, where your mouse is, that's where his residence is. So, he owns the city portion which is outlined and then also north of it he owns the parcel that is currently Township but he owns that and it's 35 acres that a part of this deal, in order for him to- the agreement with the association was to allow him to get rezoned and be developed, limited to the eight, low density. He is donating those 35 acres to the Superior Watershed Conservation.

Chair Dombrowski: Are there any more questions for the applicant or do you have anything else then?

Brad Neumann: I just have one question for staff, so the remainder, the 11 acres, so the property owner would use their available division rights right now. The 11 acres, there it is, presumably could be redivided in 10 years. That's what the land division act says.

Andrea Landers: Correct.

Brad Neumann: And so, access is part of that. You see I guess part of the cul-de-sac where perhaps there could be two new lots. I'm not sure about much more than that. I know it's hypothetical, but that would be a potential for added density there. That's all still low density residential so the minimum requirements would be, besides access, it's a funky shape so it would be hard to necessarily snap that out, but based on what we're seeing, potentially two additional lots could be developed there.

Andrea Landers: Right cause there's nothing in the conditional rezoning agreement that say how many lots.

Brad Neumann: It's just the minimum lot size and having access.

Kristina Hill: And that remainder lot would also, whatever the deed is, would also say if it was developed you would have to cover the cost of maintaining that road? The undeveloped, the remainder, is it in the deed if it was over developed that it would also cover the cost?

Jim Conlin: I can't really speak to that portion. The discussions that I have been a part of has always been 8 lots and the remainder- I think that kind of came about with the official survey through Mike Molasky that he provided and that's definitely part of those conversations so I would be assuming, I don't think the intention was to do anything with that remainder but again I haven't been a part of any of those conversations. It's always been eight lots.

Chair Dombrowski: Are there any other questions for the applicant? Okay, so at this point now we will open the public hearing.

The public hearing was opened.

Correspondence was read into the record that was received prior to the deadline date from John Fagan, 585 Forestville Basin Trail, stating he was the president of the Blue Heron Bluffs Condo Association and his support for the proposed project.

George Patrick: He supports the development, not necessarily the variance request.

Andrea Landers: He states, "I support the proposed project in Forestville Basin Trail. I feel that this development will enhance our association. Our association will enhance the proposed development by Bruce Pesola".

George Patrick: But he's not saying he supports the variance request. He just supports the development.

Andrea Landers: Yes, he did not use the words "support variance request."

Brad Neumann: Mr. Conlin, I don't know if you know the answer to this. Has the owner had conversations with the NTN about development of this property? Presumably the mountain bike trail that runs through there, it was constructed and is being maintained with his permission and so I'm curious about future conversations with the NTN with development of this site.

Jim Conlin: Sure. Specifically, to that question, I'm not aware of, I believe maybe- I do know, however, again not regarding this specific parcel, but other conversations I have had within these very trail friendly, like I said the 35 acres he is donating to the watershed to be undeveloped in perpetuity. I have been to, like I said, mentioned just moved to 155 Forestville Basin Trail which is the second to last and the lot next to me, we have trails running through and the intention right now is to not sell cause there's trails running through it, so I think you can clarify that later, but that that helps.

Brad Neumann: Thanks.

Chair Dombrowski: I'll just ask one other question, is there a reason to not go the condo route where it would conform and be okay?

Jim Conlin: Well, being that this is again the only box I'm not able to check. Timing-wise, cost-wise, it would just be more streamlined to just be able to do the variance request being that there's no way around getting it to be a private road away from Forestville Road to where they're at anyways, so with all the additional, again, state-required hoops to jump through and the legal processes to go through with the condominium act, it would be essentially cost prohibitive to go that route, so to streamline the process and just be able to check that box and then they can put these on these market yet this summer.

Kristina Hill: I'm curious on why the remainder lot, I mean, I looked at the topo and that still seems relatively flat, similar to the other eight, and so it seems like such a big chunk to not- I deal with developers all the time, so in my mind I'm already like this- developers that want to pack lots, like why is it not being used, so it's just peaking my curiosity.

Jim Conlin: I don't know the answer.

Brad Neumann: Maybe he's meaning the maximum number of divisions that he's allowed right now, is that true, Andrea?

Andrea Landers: That's my guess, probably why they went this route. Why they didn't make this all split into eight parcels and not have a remainder lot - why did they design it this way? Is this the question you are asking?

Kristina Hill: Yes, that is what I am asking.

Nathan Williams: It could be geographical or topographical, I'm not sure.

Kristina Hill: There are, but similar to the other eight lots, not severe, like when you start going downhill towards the water.

Chair Dombrowski: Any other questions for the applicant? Okay, so we'll move on now. We invite anybody in the public to come up and speak on behalf of this case. We ask that when you come up to the table you state your full name and address for the record.

Patricia Olsen: Hi, my name is Patricia Olsen. I live at 435 Forestville Basin Trail, so I am in the association that would be grating the access across the road via our easement. With regard to NTN, Bruce has been in conversation with NTN, the executive director, and also the person in charge of the single tract trails. He's talked with Lyle. They've laid out an alternative. It's just one corner of it that's impacted by it, but they have already kind of laid out the alternative path to make sure that the trails aren't interrupted as a result of it. The current impact is minimal but there is an impact, but there is an agreement with NTN before any of this started to bring them out there, talk about what part of the trail was impacted, and then coming up with an alternate that was agreeable to all. In regard to the property, Andrea, if you could bring the piece you have before where that was that other part of the triangle, the 11 acres there, that there was a question on, right there. In the agreement that's being brokered between Blue Heron Bluffs and Bruce for these properties, there are multiple facets to it. Okay, the eight parcels are one piece of it. As Jim said, there's also the fact that we wanted to make sure that the other property that he owned stayed conservancy land and instead of having them maintain it, he will do a full transfer of ownership to Superior Watershed so there's no chance of anything happening, like a bait and switch on any of that. He will relinquish ownership with that property. However, it does still leave- and so that's township property where he tried to kind of draw a line, a logical line there, but there's still that property there that almost 11 acres that is sitting and in this agreement that we are working on with- well, we'll vote on Tuesday and we've already had a pre-discussion on all of it so I think it's just finalizing it on Tuesday evening. But there's a statement in here and I'll read it so you understand what the comments are in that. The developer will also record a restrictive covenant on any property in the city parcel that is not located within the boundaries of the eight lots that prohibit the construction of structures on such property except for recreational structures such as a pavilion, park or patio. So, he has given us assurances here that he will not do any further development on that odd, triangular piece of property there so coming to you for these eight, this is it, and for what it's worth, I've sold a good majority of the lots that have been available, well basically I've listed all the lots in the Blue Heron Bluffs II and then I think everything except for the last lot on the private lots as well. In those transactions, we do make sure we've got easements in place as a part of that closing process for the land- for the use of the land, ownership of the land under the road, etc. So, all of that, whether it's part of a site condominium, a site condominium comes in under the succinct structure but for the lots that were sold as metes and bounds, we had a number of easements even related to wells and things like that that we had to navigate and make our way through and as far as the road goes, we will have a similar document recorded with each one of these

properties as we close on the properties, and for what it's worth, the road access as far as attractiveness of the property doesn't seem to be a deterrent at all. If I have waterfront property, I could still be selling it. I get calls every month from other realtors on do we have any more waterfront property, it's gone, but I can tell you right now I have very strong assurances that I can get three of those sold pretty much almost instantaneously once they are available on the market. Land is difficult to find in Marquette. People want access to the trails. The private road is not a deterrent as far as people looking at the property, looking to find something out there, and I'm in favor of the variance itself. I think for what we're trading off here, the assurances of the rest of it staying conservation for us out there was huge. We love having the trails and everything on the other side. It's just common land and available for us to just enjoy in terms of just silent sports. The thought of building all of it out was absolutely frightening to all of us that live up there so just having the eight lots there and having it locked was a pretty easy decision.

Kristina Hill: I have a question. The private road, if the property adjacent to it wanted to develop, could then they use the private road or do they have to create their own private road on their property?

Andrea Landers: So, a private road is going to be controlled by the property owners adjacent to it, so it depends, like say for example, in the condominium, they're stating that you're doing an agreement that if anyone wanted to use it, they'd have to do an agreement with those property owners. For these 8 lots basically they would be creating this private road which is actually within these properties.

Barbara Wright: So, each property has to have an easement for the next person?

Andrea Landers: That would be correct.

Chair Dombrowski: Would anybody else like to speak on this, and if you would just come up and again state your full name and address for the record, please.

Tom Centko: My name is Tom Centko, 475 Forestville Basin Trail, been out there for 32 years. I know the area quite well. I'm here to support the variance request. I'm on the association since its beginning and I'm a member of the Board of Directors and I want to point out that the Board of Directors voted unanimously to support this agreement and it was negotiated with Bruce Pesola by our attorneys and his attorneys over the last year and a half coming to the details of what we reflected. There are so many items within that document, so just declaration of easements, covenants, conditions that are included that have been reflected here, the application that Bruce submitted as his comments within that application, I re-read it today, quite accurately reflects what we have in this document of our agreement. The Board of Directors voted again unanimously to recommend to the entire membership of the association for them to support this agreement and that will happen. So, I am here to support the variance request

George Patrick: Apparently there's two different types of condominiums. There's the site condominium and what's the other, just a condominium?

Andrea Landers: So, the state act doesn't define them as two different condominiums but the city in a way does and we are currently going through amendments to make that a little bit more clear. We're considering what we're calling a site condominium is where here, you have parcels of land that you're splitting it into. A regular condominium would be if you are dividing up a structure into units.

George Patrick: So, if this was not a site condominium, it was a regular condominium, this would not be an issue?

Andrea Landers: If it was a regular condominium, it would be a structure they would have already built. They had to have had public road frontage, basically, because if the structure would not have been approved.

George Patrick: And exactly what's the variance they're asking for?

Andrea Landers: They're asking for a variance from- so when we review their site condominiums, or even regular condominiums, you're going through the condominium act and that's a different ordinance. They apply to divide the land up so then you're going through the land division requirements by the state and the land division requirements in our land development code. We refer to it as a lot and in our lot definition, we state every lot shall have its frontline abutting a public street. Then in our code, in the land division regulation section we state all parcels, and I'm reading right here, all parcels created as a result of the division of land shall comply with all applicable zoning requirements including minimum lot area, lot width, public road frontage. We amended the ordinance to allow for within the condominium section that this is the only other way that you could apply to divide your land up through the condominium is if you are 1500 feet away from the nearest public road, you can have a private road, or you can go through the PUD process. But when they were zoned conservation and recreation, they could not apply for the PUD as we have a statement in there you can't apply for a PUD when the zoning district is conservation and recreation. So, then there was no way for them, if they were applying for the rezoning at the time, our code then wouldn't have allowed for them to do private streets and this is where the city amended the code to allow for private streets but through the site condominium process.

George Patrick: And where does it say in the requirements to grant a variance, where does it say we do not consider cost? Because that was one of the things you mentioned of a couple of issues with why you were going with this type of site condominium development was what?

Jim Conlin: To avoid going through the condominium act, just to streamline the process.

George Patrick: Right, time and money it was, I believe, it sounded like to me.

Kristina Hill: Just the one thing I didn't hear was kind of back to the safety issue, getting a fire truck on there in that tight turn, that turn is not on the property so is there something in the agreement with adjacent land owner that their private road would be altered for that turn onto the new private road and then it would comply with all fire department access requirements for a private road. That little turn is over the property line. She asked for the survey page showing this to be shown on the screen. That parcel, that turning radius to get onto the private road is on the other property so is there an agreement for that road to be constructed and who would be maintaining that? The other owner or would this private eight lots have to also pay for that? Because that map there doesn't show the property line but the property line is straight. It's not that little turn in the road.

Brad Neumann: Right, so who owns that? Is that a part of the association?

Kristina Hill: And that is not an agreement but it will be constructed, how would a fire truck get onto said private road off of that sharp turn, just from a safety perspective.

Andrea Landers: That is part of the Blue Herons Bluff condominium.

Barbara Wright: There's no way you could get a city-owned road to it.

Andrea Landers: I believe it'll be something where it's probably coming from Marquette township.

Barbara Wright: Okay.

Andrea Landers: It's my guess is that the Marquette Township fire department would respond.

Barbara Wright: But the Forestville Basin Road is a city road? I mean, not the city, but it's in the city.

Andrea Landers: The proposed private road portion is in our jurisdiction.

Barbara Wright: The whole entire road from the very beginning?

Andrea Landers: No, Forestville Basin Trail, that is the township road that they're accessing from, this portion, this property is within the city.

Barbara Wright: Right, okay.

Andrea Landers: So here is the township and then here is this parcel in the city, so this is the line that is the boundary of the city of Marquette and then township here.

Barbara Wright: So, they actually take a township road or a private road through the township?

Andrea Landers: Correct.

Tom Centko: The Marquette Township fire department has been out there with their units on a practical basis to confirm a few years back to make sure total access to each of the units and have turnaround access.

Kristina Hill: But that road, without that little sliver of that, which that is on the other property without it, I don't know how a fire truck would do a 180 without that so I just want to make sure that there's an agreement with adjacent property that would have shown on this variance that little Y part. The little Y part is agreed upon and then who would be maintaining that? Would it be the adjacent property or?

Jim Conlin: I'm still new to being out there, but I believe there's two buckets really it's just shared between them.

Kristina Hill: I guess I just want to make sure that if this is approved that a), it kind of goes a) that the private road that you have to go through to get onto this private road that there would be an easement for this property for these eight people in the blocks and then this little part that's not within this property boundary is something agreed upon or there's some kind of thought about if that can't be built, how do you access that? And maybe that's more for the fire department but when I look at that, it's not on this property.

Andrea Landers: Our fire department won't have any say so on this. They would have had the say so during the site condominium review. They don't through the land division. Say, if you have approved this variance, the city would have no say so.

Kristina Hill: So, can we actually approve in a variance that has information that's not even on this lot? If you drew a property line, it would not include that little Y that they're showing as part of the access to the private road, so can we approve a private road variance using that portion

not on this land.

Andrea Landers: So basically, what the attorney said is that we can't require any conditions that there be, maintenance agreements and what not, because that's all that would be done through the site condominium. So, she stated that the city cannot require that outside of a condominium or conditionally require the maintenance agreement or legal access, so this is one of the reasons why we did the site condominiums for private roads.

Brad Neumann: Essentially we're relying on a private-to-private transaction and someone's word or several people's word that this is going to be done right and it's going to be done in a way that guarantees health safety and welfare, which we have an obligation to uphold in the ordinance, but our hands in a way are tied according to the attorney in terms of our ability to condition that on any approval. It's sort of on one's honor, I guess, is what we would be sitting here hearing and accepting. I think we still have a public hearing over it, too.

Tom Centko: If Blue Heron Bluffs Association designates that as a part of the road, that'll take care of it. That could be happened by board action. Blue Heron Bluffs' board acknowledging that is a part of the road. I understand what you're addressing. If that is a stumbling block from the action point, the Blue Heron Bluffs' Board of Directors, which I'm a member of, would I am positively sure they would vote for changing and acknowledging that if that's what would be to clarify something, because there's no intent not to do it. The intent is to make it work.

George Patrick: So, would that eliminate the need for this variance?

Chair Dombrowski: No, it's a new road. Okay, anybody else from the public like to speak on the request? With that we're going to close the public hearing.

No one else wished to comment, the public hearing was closed.

Chair Dombrowski: Okay, so we as board members are constrained on the board of zoning appeals to always be having all of our discussions referencing the standards, so I don't know if people would like to speak first or if we should just go kind of pinpoint, standard by standard to talk about the case. So I'm not sure if that's what everybody would like to do first or if there's any general discussion.

Andrea Landers: Just to allow for the public to know, so what they're referring to is the zoning board of appeals shall make findings at a practical difficulty has been shown by the applicant by finding that all of the following requirements have been met by the applicant for variance. So, the board has to determine that each of these items are met. If it turns out that one item was not met, then the practical difficulty standard has not been met. These standards were shown on the screen.

Brad Neumann: I recommend we take this standard by standard.

Chair Dombrowski: Okay, all right, so looking at our required standards of review, we'll start off with A, special conditions and circumstances unique to the land structure or building.

Brad Neumann: I think the standard is met. The land is unique, right? It's totally isolated from the rest of the city.

Kristina Hill: It's land-locked. It's not attached to any public road, which I agree it meets that.

Chair Dombrowski: I don't know if there is any other discussion but yeah, I agree.

Nathan Williams: Yeah, its only connection to the city is via water and a huge sandpit.

Chair Dombrowski: Okay so we seem to be accepting condition A. So, moving onto B, right, so similar properties in the same districts, the little interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other similar projects in the same district under the same terms of this ordinance.

Barbara Wright: I think it agrees with that, too, because the people next door have the exact same thing except they had to go through a lot more work to get theirs.

Chair Dombrowski: Because they had chosen the condo route, then it's available to them. That's my understanding of the Blue Heron that's populated, correct, is condo?

Barbara Wright: And I think this would be a little more personal because everybody owns their lot and has their house. They're not in an Association.

Brad Neumann: So, I'm not sure this one is met. I guess I disagree with the comments. I think that in a way this property enjoys more rights and options than most every other property in the city because of the added site condo public street exception, that we heard Andrea mention, over the summer. The code is amended, Section 54.503.(G)(1), right, with that 1500 ft. buffer. Find another property in the city that is farther than 1500 ft. from a public street. There's probably not too many and so in this case, denying the variance, I don't think denies this property, use of enjoyment or the ability to develop the property because they have that other provision and like I said, in a way they almost have an additional right that's different from other parts of the city, given that exception, that distance exception.

Kristina Hill: But if it was in another district, a low density, I can imagine in my neighborhood is low density. If you broke up one of the bigger lots, if there was a road there, they could break it up and it would be fine. But, because they are essentially land-locked and there's no- it goes back to a) they're land-locked. They had no option to but provide a private road.

Chair Dombrowski: Because there's no way to connect it, and I guess that's kind of the way- for me it was similar properties in the low density, where they're located off a private road with nothing else connecting- from the backside, there were no other options that way. But you're a no on that one, Brad?

Brad Neumann: Yeah, I don't see that that one's met. I think there's still rights that are unique here that this property enjoys.

Barbara Wright: Although they're taking- actually the city doesn't have to take care of these lots like they have to take care of all the other lots. These people have to take care of their own. They have to have their water. They have to have their own sewer and they have to spend their money on their own road and the maintenance of it.

George Patrick: Take a look at item E, comparison to other land structures or buildings is not a factor. We've kind of compared it to other buildings and structures when discussing B.

Nathan Williams: Just another thing on B, as you mentioned, there really are no similar properties in the city, and so how can we use that and say that other people with similar properties, that we're depriving applicant of rights commonly enjoyed by other similar properties, if this doesn't take place anywhere else in the city?

Brad Neumann: So, in a way you're saying maybe the standard is not applicable.

Nathan Williams: Kind of.

Brad Neumann: Maybe we can hold on it and move on. I mean, we don't have the ability to waive a standard, but what you're saying is-

George Patrick: Might not be applicable to this case.

Nathan Williams: Right, I don't see how we can't compare it to anything.

Chair Dombrowski: Well, let's move onto the next one which is C, not a result of the actions of the applicant, special conditions and circumstances do not result from the actions of the applicant.

George Patrick: That's the tough one because I would say that this is the result of the actions of the applicant to make it a site condominium development and lay it out in these terms with a common road. That's the toughest one here.

Brad Neumann: So, let's take this one back up to A though, right, so if we read this as special conditions and circumstances, okay, what was the special condition and circumstance we identified? A, it's this isolation. So, when I read the self-created, which is what this is, the self-created standard, it's not the applicant coming before us, but it's what is his or her, what is their property condition as it currently exists? And the isolation, the city boundary, as weird as it is, was no result of the applicant's actions. Let's say they created an earlier land division but then somehow limited the size of the parcel, well that is an affirmative action by the property owner, self-created situation, but I don't think their presence here is self-created item that we're worried about. We're worried about the existing condition of the property. I feel this standard is met.

Nathan Williams: I have one more comment on that, so it's zoned low density residential right now?

Andrea Landers: Low density residential conditional rezoning.

Nathan Williams: Okay so he didn't split it and just wanted to build one house on there, he couldn't do that?

Andrea Landers: He couldn't do that.

Nathan Williams: But he wouldn't turn that one house into a condominium, would he?

Andrea Landers: I mean, he'd still have to create a private road into that one house.

Brad Neumann: It'd be a driveway.

Nathan Williams: Right but driveways as defined by the city are only off public roads.

Andrea Landers: Yeah, cause his lot doesn't front, but it would be an existing lot of record. That's something I'd have to review if he could do a driveway off of that and just put one driveway in there and not do a private road.

Nathan Williams: So, I guess what's the difference here, like these are really just driveways, like it's a driveway to the first house and then a driveway to the second house and then a

driveway to the third house.

Andrea Landers: So, it is different in that, well it has to be a private road which isn't a driveway. There are different standards there, but you're also going across all these parcels and you wouldn't do that with a driveway normally.

Nathan Williams: Like if you had an easement through your neighbor's property to get to your driveway?

Andrea Landers: You wouldn't do it all the way to get to the eight. You'd have to create something on there to allow for fire access, things like that.

Nathan Williams: Sure, but I guess bringing it back to letter C, so the result of an action by the applicant, so that you could always say that by splitting it you're making, that's an action that he's doing but we be having the same conversation if this was just looking to build one house on this property, it seems like.

Chair Dombrowski: I guess for me, I don't know, maybe the actions also had to do with how they decided to create the properties whether it was condo or not, and to me that's an action that they took. They decided there's a way to do it, where they could do it, but the action they took was to not go the condo route. If that's the same kind of action definition, that's why I have a harder time with that one because there is the availability to do it, to have the private road and do that stuff, it would just be through this way, so I don't know what people think about that.

Barbara Wright: I think you're taking away the opportunity to have a single-family home and not have to have an association to go along with it because obviously they have an association. They have rules and stuff, and these would be just a single-family home lot and you can do whatever, you can have your dog out there on a leash or whatever, maybe these other people can't do those kinds of things.

Chair Dombrowski: I don't know for sure, and it's hard for me to trust people saying we'll do this covenant, this deed, in this zone, be attached to this stuff. That's hard for me to trust that part so that's why I just wondered the actions of the applicant, whether or not to do this or that. I don't know, so I'm not saying that it doesn't necessarily meet these standards but my concern is that the action was taken for some reason maybe cost or something but to not do that and I don't know kind of rules, exactly what you have to have or not have, but I know not all of them are bound by the same constrictions that some are but my understanding at least.

Andrea Landers: Yes, the condo, you write the master deed, the property owner works with an attorney for that, so they're going to be the ones creating those associations, bylaws and what not.

Chair Dombrowski: Yes, so that would be created by the developer.

Barbara Wright: So, this is a lot simpler.

Chair Dombrowski: Okay, all right, well I think we've talked about that one. Let's move to item D, special privileges prohibited and grant, the applicant needs special privileges, does anyone have anything?

Brad Neumann: So, I think, I mean we're talking about the low-density residential district, and this would confer a special privilege because everyone else in that district needs to front a public street.

Nathan Williams: Or be part of a site condominium, right?

Brad Neumann: Right.

Andrea Landers: If they meet the exception.

Brad Neumann: If you do a site condo and you're within the 1500 ft. it still has to be a public street. So, it's dedicated to the city, much the same way.

Chair Dombrowski: So, if this was a site condo, it would be more than 1500 right?

Andrea Landers: It's 1,550 ft. away.

Nathan Williams: You measured that?

Andrea Landers: Yes.

Kristina Hill: And how is that measured?

Andrea Landers: It's going from the parcel line down to the road which is Wright Street.

Nathan Williams: So, if he was within 1500 ft. of Wright Street- I'm trying to figure it out, but could you tell me?

Andrea Landers: Then he'd have to do a public road. He wouldn't meet that exception of allowing for a private street in the Site Condominium.

Kristina Hill: And then they wouldn't need the variance. They would just divide the lots and create a public road.

Andrea Landers: That would be an option they would have, yep.

Brad Neumann: And the LDC amendment corresponds with the conditional rezoning. I mean, that standard was created for this property.

Andrea Landers: Correct, which is what the distance we verified that they would meet that. We never would have added that into the ordinance if this hadn't been on our radar.

Barbara Wright: So where would the public road come from then? They couldn't do it?

Andrea Landers: They couldn't do it.

Barbara Wright: Okay, so they couldn't use the land. They can't get the private road unless they went through the condominium?

Andrea Landers: The site condominium process.

Barbara Wright: Right.

Chair Dombrowski: Okay, do we want to talk about comparison to other land structures or buildings not a factor, with non-conforming use of the neighboring lands.

Brad Neumann: I always read this one as no one case is precedence setting. Every case is its own sets of facts so we can say that the standard is met.

George Patrick: That's not applicable.

Chair Dombrowski: Yep. Okay so then the next one, strict compliance is unnecessarily burdensome.

Barbara Wright: And I don't think this has anything to do with it, cause we're talking about area setbacks, height, bulk and density, right?

Chair Dombrowski: Strict compliance with the area setbacks, frontage height, bulk or density would unreasonably prevent the owner from using the property for a committed purpose and thereby render the conformity unnecessarily for other than financial reasons.

Andrea Landers: George, that answers your question about the financial part.

Brad Neumann: And as we've discussed, the applicant does enjoy another development option in this case that benefit of the Section 54.503, the site condo public street exception.

Chair Dombrowski: Do you have anything else, Barbara?

Barbara Wright: Oh, I just think that these people are trying to do something and the unnecessary burden, it would be burdensome to do this, to not give them this. I mean, they'd have to go through like hoops forever. How long is it going to take, two years to do a condo?

Jim Conlin: To start the condo? I've never been through that process so.

Andrea Landers: No, you have your lawyer draw up plans. They've already got the survey to place in the master deed language, you go in front of the planning commission, then you go in front of the city commission.

Barbara Wright: But then we have to get it rezoned?

Andrea Landers: No, to go through the site condominium.

Barbara Wright: But to do that, they're going to have it rezoned to something different then right?

Andrea Landers: No. They already went through the rezoning process.

Kristina Hill: If low density, it would stay low density.

Brad Neumann: Yeah, at this point it's just an attorney to draft up a master deed and now I guess they would have similar language to maintenance of the right-of-way. Thinking about a site condo and back to an earlier question George had, I mean, you don't own the land outright, right? It's like the association owns the land and then you are buying basically a building. It's like ownership within a building. We think of a condominium building or an apartment building, you're basically owning the inside walls. I mean, there is association ownership and then there's unit ownership.

Andrea Landers: Yeah, so instead of like lots the land will be a unit.

Barbara Wright: Okay.

Andrea Landers: So, there would be eight units within that site condominium, but the units would be what they would own.

Barbara Wright: So, everybody doesn't own their lot?

Andrea Landers: Their lot becomes a unit. So, they will own this and then they would have that easement through their unit. This would be the common product, the common or limited area, elements within that condominium. So, nothing changes the look of it. Nothing changes how they- they would have that land as their unit, it's just the deed would be under the site condominium.

Barbara Wright: And they would have their rules though of what they can and can't do whereas a lot you don't have those rules.

Andrea Landers: You would have the city rules, but a lot of condominiums, they have to follow the city rules. If they want to put in additional ones, that's up to the developer if they want to do that.

Barbara Wright: Right but if you want to put your storage shed on this lot, you could do it. If you were in a condo, you might not be able to do it.

Andrea Landers: If that's what they've decided right off, but you have to still meet city code. So, a lot of condominiums just reference you must meet city code.

Brad Neumann: And nothing more.

Chair Dombrowski: Okay, well let's move on to talking about G, substantial justice, variance to do substantial justice to the applicant as well as property owners in their district.

Nathan Williams: I have one more comment on that.

Chair Dombrowski: Oh sure.

Nathan Williams: Like we talked a lot about how it can't be a financial reason but that financial reason is still only talking about area setbacks, frontage, height, bulk, density, right? Or is that just any financial reason?

Barbara Wright: I would say you're right. It's just about exactly what it says. It's just about setbacks, frontage, height, bulk, and density.

Nathan Williams: Or are we talking about frontage, since this is about having 60 ft. of frontage.

Brad Neumann: Frontage is access.

Andrea Landers: Yeah, and it's where the lot frontage requirements we have is that you have frontage on a public road so frontage is the word in there. And then the financial reasons would then tie-in to those.

Nathan Williams: Got it. Okay, thank you.

Chair Dombrowski: Okay, so we talked about F and then talking about G, substantial justice. But it would grant them substantial justice to the applicant as well as property owners in their district.

George Patrick: Well, it depends on how you read that. The variance would do substantial justice to the applicant, yes. As well as to other property owners in the district, no.

Barbara Wright: Well, if the lots are sold, then it would because those people would be able to have homes on it. So, it would give them substantial justice to be able to have a house on their property.

George Patrick: This says to the other property owners in the district, as of now there are no other property owners there. It's all owned by these people.

Brad Neumann: Andrea, can you pull up the block map with those other site condo units that are in the city?

The map was shown.

Andrea Landers: So, they are zoned conservation recreational, just so you know.

Brad Neumann: All right so those five units, and maybe a sixth.

Andrea Landers: 1, 2, 3, 4, 5, and then this one right here.

Brad Neumann: Yeah, that's also a condo unit, right?

Andrea Landers: Yeah.

Brad Neumann: Yeah okay, but that's zoned conservation recreation and I mean, the history of that is just a whole 'another time, different code.

Andrea Landers: So, the history actually is pretty complicated, and this all happened before I got here. I think around 2008 timeline, they found out that these properties were in the city. When the surveyor went through the condominium at first, they stated it all was in Marquette Township so there was a process that the assessor had to do basically to have them be part of the taxes that portion in the city, so their lots go like this and most of their structures around here, I believe there's a couple of them that have structures owned by the city but the conservation recreation zoning district won't allow for that. So, this is like an after the fact thing. The city never did any reviews and anything cause the surveyor made an error that stated it was all within Marquette Township.

Brad Neumann: Okay I see.

Nathan Williams: So those people's houses, those parcels don't even have houses on them?

Andrea Landers: These don't. These, the houses are in the township here. They may have the accessory structures may be in this area but the homes and the lots all go like that.

Nathan Williams: Got it, and that's why it can be conservation recreation.

Patricia Olsen: Oh, I just said they all get two tax bills.

Brad Neumann: I was going to say, do you give principal resident's exemption on your city property, too?

Andrea Landers: Well, that, I don't know. I would think because it's contiguous my guess is you would.

Nathan Williams: That's why it can be conservation recreation cause there's no houses on it?

Andrea Landers: Yeah, they haven't applied for rezoning on there. Oh, I'm sorry, my apologies, there was one during the same process as the parcel we are reviewing tonight, he applied for rezoning here for to be low density residential and that these are conservation recreation.

Brad Neumann: Got it, and I mean they also could be a non-conforming use situation, too. So back to that standard, I know the standard does say district, but I think of those other units, substantial justice, right. So if we're talking about the private road, and again we're relying on a private contract that we have no say in but how can we guarantee those city property owners, I guess, are being served or are receiving justice when we have no say in controlling the maintenance and safe access of those other properties.

Nathan Williams: Are you talking the other properties, the neighboring properties?

Brad Neumann: Right those other units we were just looking at.

Chair Dombrowski: And I guess going back to the applicant's application under their response for substantial justice, it talks about the parcels developed using the site community condominium method, they want to be treated the same as that and it would permit the parcel and the consistent in the surrounding neighborhood, but that also means that the neighborhood next to it went the condo route and has this ability to have the private roading all through that condo route, so that's where I have a hard time of it being the actions, it is a choice by the developer not to do it, and even in their substantial justice they compare it to something that would conform and you could have.

Nathan Williams: Andrea, based on the history of the neighboring parcels, how are those able to have a site condominium planned if the 1500 ft. rule was just established?

Andrea Landers: So, they went through all of that and this is one of those after the fact things that they were not taxed. There were years we weren't gathering taxes because we weren't aware they were actually within the city because the survey said it all had legal descriptions and everything for Marquette Township. I don't know the years but I do know this was quite the situation that took a while for the assessor to work out with the condominiums of that process and then they had to get, I believe they had to get the master deed amended and resurveyed with the correct legals of splitting, showing the city parcels out and not showing them as to all within the Marquette Township area. So, because of that it was all being after the fact, that's how they were able to do it.

Nathan Williams: Do you know why they did the condo route at that time, if this rule wasn't in place that they had to do the condo thing?

Andrea Landers: That I don't know because they thought they were working in the township. I don't know if the township required them to go a condo route for private roads. I don't know what the township's requirements are. They have a lot more private roads so my guess is they don't have the standards like us, but I can't state that for a fact.

Nathan Williams: Got it.

Patricia Olsen: I can maybe help shed some light on that, if that's okay.

Chair Dombrowski: Again, can you state your name?

Patricia Olsen: Oh, Patricia Olsen, 435 Forestville Basin Trail.

Chair Dombrowski: All right.

Patricia Olsen: Part of the driver for the initial two site condominiums as I understand it is we do each own our lots, but we also own as the condo association the common land that's across the road as well. So, we had a collective common property that had to be handled somehow, so if we would have handled them as individual lots, there was that common land that was owned by the association in Blue Heron Bluffs I and Blue Heron Bluffs II, so I think it's 25 acres on one and 23 acres on the other that's common land that's protected. It's owned by the association, can't get built on. It's owned by the group collectively. So, I think that was the other driver for the reason they went down the site condo route on those, so the first one did it and then we developed the second. They set aside another piece of common land, tied that to Blue Heron Bluffs II and then the most recent sale with the last seven, those were just stand-alone lots like what we're proposing here. Because that common land was already allocated, they didn't have kind of this common element to manage so I think that was a key driver in why they went down that route initially.

Nathan Williams: Got it, so going back to what we were talking about which was substantial justice, I read that as like we wouldn't be providing substantial justice to these neighboring condominium groups if we said that this parcel doesn't need a condominium, like that this doesn't need to be a site condominium just like the other ones do, but it sounds like those were a completely different situation. Those weren't granted in any of the same rules or reasons that we're looking at here. So, it's not like they had to go through the site condominium whereas we're going to say this guy doesn't have to go through the site condominium. So, I think we're not taking away justice in any way from anybody, yeah.

George Patrick: ok, so go onto H?

Chair Dombrowski: Sure, so impact.

George Patrick: I think you're free and clear there.

Chair Dombrowski: Yeah.

Brad Neumann: This does refer to public safety, public welfare, again I think about without the guarantee of the private road maintenance agreement, how is the city assured of the maintenance of the road to allow for emergency vehicle access, right, I mean there's two private parties that have said they will engage in a transaction to assure maintenance to the road, but the city being concerned about public safety and welfare, in our decision, we have no way to guarantee that or to conditionally oppose that and if the road becomes inaccessible by a large emergency vehicle.

Kristina Hill: Does the city actually have a list of set standards for maintaining a road?

Andrea Landers: Public roads and things like that we do, but for the site condominium, we state requirements that they have to meet when they're putting them in, because we are going to

want them to be a certain size, things like that, like you can't put in maybe a 12 ft. or a 9 ft. private road where you're going to have a certain size, so we did, when we went through this, and we're not requiring like all the public road standards that we have in the condominium. In that exception, we state certain things that they have to meet in the engineering and design standards.

Kristina Hill: Yeah, so typically most of these that I've dealt with, the engineering and design standards have a lot of requirements, especially radius turns for anything from small trucks to big trucks, whatever it is. In the case that it was reviewed, the private road was reviewed, and it didn't meet the standards, what would happen then? Would they have to change the private road and then potentially those eight parcels don't meet the lot size requirements?

Andrea Landers: So during the review, we have it set up that it's reviewed by engineering, the planning director, the zoning administrator, and then we'd have public works review it and then we would have the fire department review it. So, any of our comments would be stated with that. Depending on what the planning commission would find during that review, they may state that the project site plan be updated to reflect meeting the standards that the staff comments have.

Kristina Hill: So, there is a fail-safe that if this was approved tonight, that there are other people, especially the city engineers that would review.

Andrea Landers: No, that's for the site condominium process.

Kristina Hill: Okay. So, if this was approved tonight, then there's no one else that would be looking at the site access to make sure that it maintained proper safety?

Andrea Landers: If this is approved tonight, they are allowed to go through the land division part of the ordinance. The only people that by law have to review that is the zoning person and assessing. Fire department - No one else reviews it. There are no standards that I would have except for the standards that I point out that are highlighted in the staff report with the public road frontage, things like that.

Barbara Wright: Is the road that they have drawn the size of a city road?

George Patrick: Is 66 ft. wide?

Andrea Landers: Yes, it is 66-ft road.

Patricia Olsen: No, it will not be paved.

Brad Neumann: So, I just searched the LDC, Andrea, and I don't see any private road standards in the LDC.

Andrea Landers: So, in the site condominium we state that they have to meet certain things.

Kristina Hill: But they're not going for a site condominium, right?

Andrea Landers: Yeah, with your first part of the question you asked about site condominiums.

Kristina Hill: So, a site condominium there would be a fail-safe to review the roads, make sure they maintain a safe route and for any emergency?

Andrea Landers: Site condominium is where the city would have a say into the road.

Kristina Hill: I was going to say if it's private, then it's however they decide.

Andrea Landers: As Brad said, the city does not have private road standards.

Andrea Landers: Putting a private road would which is felt to be 66 ft. or they could reduce it.

Andrea Landers: They could reduce it if they wish. There would be no condition that I would be able to put on during the land division application.

Brad Neumann: Something that's in the city code, I mean there's not a separate private road?

Andrea Landers: No, because we don't allow for private roads except for a planned unit development, which we review and have say so or we changed it to add the site condominium which we review and have our say so.

Brad Neumann: Right, okay, so that reinforces my point.

Barbara Wright: But they're giving us this drawing and we're basing our information on the fact that that's exactly what they're going to draw, and you can't change it once they tell you that they're going to do that, right?

Andrea Landers: Yes, just like any other kind of variance that comes before you. If you guys approve it, they can't make any changes.

Barbara Wright: Right, so we've got a 66 ft. road.

Kristina Hill: Yeah, but we can't approve a variance that includes a piece of road on the adjacent property. If that's not built and a fire truck for some reason can't get in safely.

George Patrick: Well, if you have 2 ft. of snow, he's not getting in at all.

Nathan Williams: Well, they have more than 1,000 ft. of hose on a fire truck.

George Patrick: They're going to drag it through 2 ft. of snow?

Nathan Williams: They do it, yeah.

Chair Dombrowski: But specifically talking about that road that cuts in, that's not on this report on the Blue Heron-

George Patrick: Who's the closest neighbors to this?

Andrea Landers: So, to the south, it's like BLP and then the Blue Heron Bluffs.

George Patrick: And how far away is the Blue Heron Bluff?

Andrea Landers: So, the Blue Heron Bluffs are these parcels here. These are the Blue Heron Bluff parcels everything on the Marquette side here. All of this is BLP.

George Patrick: When you sent out the notices, we sent a notice to every property owner within how far?

Andrea Landers: 300 ft.

George Patrick: What did that include?

Andrea Landers: Blue Heron Bluffs and BLP.

George Patrick: All the people of Blue Heron Bluff were notified that this was going to be tonight?

Andrea Landers: These people here, they all are within 300 ft. of this parcel of land.

Kristina Hill: There on the association, which you guys are a part of.

Jim Conlin: I don't live on the property, but they have commented that they got notices.

Tom Centko: And the road that we operate up Forestville Basin Trail is a 66 ft. right-of-way road.

Nathan Williams: With this parcel and the whole driveway comment, there are just in the way that this road may not always be plowed or maintained, people's driveways also may not. And there are driveways within the city that are longer than this proposed road and they may not be shoveled either.

Chair Dombrowski: I guess to me, it's not just the snow load that's on the road, but like if the roads aren't being maintained, like it just goes to pot, like you can't even really drive down the street. That can also happen too, so that's along the lines of talking about public roads.

Nathan Williams: Sure, just as someone's driveway could.

Kristina Hill: But it's private. I mean, if they're driving with potholes.

Chair Dombrowski: Maybe Parcel 8 is not fine with it but they're at the end.

Kristina Hill: But that comes down to the agreement right? That's the agreement through maintenance and all the owners.

Chair Dombrowski: But then I guess it's like theoretical at this point that they're going to do it but it's not in place now.

Barbara Wright: But if you put a half million-dollar house on it, I'm sure you're going to plow your driveway.

Kristina Hill: Or pay somebody to do it.

Chair Dombrowski: You'd be surprised.

Barbara Wright: We do it to Camp, and my Camp isn't like that and we have three people that we work together and we call each other up and say did you go out there? Yep, five miles. [Interposing] I did my five miles.

Chair Dombrowski: I've been on the BZA for a long time and I'll tell you neighbors are not always- they really- so yeah.

Kristina Hill: It's private so it's up to them. We can't dictate it how, I mean-

Chair Dombrowski: But I guess it goes back to the variance does not increase the hazard of floor or fire or endanger public safety so that's kind of speaking towards that.

Brad Neumann: Right, we have a broader public safety concern.

Chair Dombrowski: So, we can move onto minimum variance necessary.

Nathan Williams: I have one more comment on that. It's this is not increasing general public, it's not putting a burden on general public welfare and public safety. The people who live on this are responsible for their own public safety and maintaining the road accordingly. It's not like doing anything to the people of the city to make the city less safe, or the neighbors to make them less safe. It's not making the people who are going to choose to live at these parcels, it's not making their life less safe and so it's up to them to maintain the road in accordance with their own safety I would say.

Chair Dombrowski: Well, we're going to move on from this part here so unless anybody else would like to speak about that, okay, so let's move onto minimum variance necessary.

Kristina Hill: I mean it is the only variance that they need to be able to have these eight lots. They're not asking for anything more than just one private road.

Brad Neumann: That's binary, yeah this was met.

Chair Dombrowski: I think so too, and then meeting the purpose and intent of the land development code.

Barbara Wright: So, the land development code would be the residential, low density residential, right?

George Patrick: And this has been to the planning commission already right?

Andrea Landers: And the city commission for the rezoning portion but the rezoning portion wasn't reviewing what you guys are reviewing. What was brought to them was just rezoning of that parcel from the conservation recreation to the low-density residential and then eventually low density residential conditional rezoning.

Brad Neumann: With the site condo matter of the exception amendment, also tracking in a parallel fashion, all those actions basically being in place for this site. So, what does the LDC say? The LDC in the intent section, purpose and intent, checked health safety welfare, provide for traffic safety, and adequacy of parking and loading of vehicles. There's A through I, not tracking with our standards but purpose and intent. And I'll say it again, I don't think the BZA can be sure that the intent to the ordinance is met if we grant a variance but have no ability to require conditions of road standards and ongoing maintenance. And I'm not talking about snow plowing, I'm talking about road repair when there's a washout, right, heavy rainfall, the road is washed out. Who pays for that? We have no ability to say anything about that. We have to trust two private parties saying that there will be mechanisms to pay into a shared pot for the spending of maintenance on that road, to repair the road, fix potholes, to regrade and address storm water as it affects that over time.

Nathan Williams: I guess if the land development code doesn't have standards for roads, for

private roads.

Kristina Hill: Does the state?

Nathan Williams: It's a private road. It's not private property, like it's barely a road.

Kristina Hill: It's a wide driveway.

Nathan Williams: Yeah, it's gravel on someone's property. So, it says provide for traffic safety. These people really don't have traffic at this point. Their car is on their property or on their neighbor's property and then yeah, I just don't see how we can say that this is a road.

Brad Neumann: So, a future lot owner who pays for city services, right, paying city taxes, living out there with arguably less city service, right, like you said.

Kristina Hill: They're paying taxes but not getting the benefit of plows, that's a big one.

Nathan Williams: Well, they are on the city roads to get.

Kristina Hill: But on their street. I pay taxes and my road is plowed right in front of my house.

Chair Dombrowski: And maintained.

Brad Neumann: So, the road degrades over time.

Kristina Hill: Which includes storm water run-off.

Barbara Wright: They pay storm water run-off, I'm sure.

Brad Neumann: The road degrades over time, and you have a future resident that is concerned about emergency vehicle access, paying high taxes for not having that access. Again, the word is that there will be an agreement in place, and this won't happen but we have no guarantees of that.

Chair Dombrowski: Who do they go to then, do they go to the condo board of the other association then?

Brad Neumann: Right, recourse of one is like eight corners?

Chair Dombrowski: Correct, because they can't go to the city, it's a private road, and that was one of my concerns of it not being one central entity so Lot 7, Lot 8 has a problem, what do they do on this private road?

Nathan Williams: But it sounds like each lot will have an easement through the neighboring properties, back to a public road.

Kristina Hill: Back to another private road.

Nathan Williams: But then that has an easement.

Brad Neumann: All the way out in Forestville Road.

Nathan Williams: Right, like is there a contiguous easement out to a public road?

George Patrick: Yes.

Kristina Hill: This property, or these eight properties all have an easement through each other and then is there an easement in place through the adjacent private property using their private road?

Nathan Williams: So, if each parcel has their own easement back to a public road, they are each responsible for the property within the easement so any one of them is as responsible as any other one of them it sounds like.

Chair Dombrowski: But the Blue Heron are part of an association, or the condo association so they have somebody- they have a board to go to.

Brad Neumann: Right. It's a board that would make decisions about the spending and maintaining of that road.

Nathan Williams: But it sounds like the person who lives at the end of this street, if they were dissatisfied with the road, they have an easement from Forestville public road and it's kind of like the term tragedy of the commons but they can hire a grader themselves and grade the road, and just like a driveway.

Brad Neumann: I don't know. I'm assuming that they'd be limited to doing that, I think.

Kristina Hill: On their own property.

Brad Neumann: Because it's sort of a shared resource.

Nathan Williams: Got it. Is it a shared resource? Like how does it work when you have an easement through someone else's property and that easement might say that you can maintain the road, right?

Andrea Landers: The easement language is important so it can be whatever that language states that you can do.

Kristina Hill: But we have no control over the easement language.

Andrea Landers: Correct.

Nathan Williams: Got it. But it's kind of up to the person buying the parcel of land at the end of the road to make sure that they have easement language in their interest that's going to protect them to maintain the road.

Andrea Landers: It's up to them to do their due diligence is what you're saying?

Nathan Williams: Yeah.

Chair Dombrowski: Okay so part of what we need to do is the required standards of review is making- shall make the findings that a practical difficulty has been shown by the applicant and by finding that, all of the following requirements have been met for a variance so just making sure that when we're going to any next steps or that people are directly talking about these standards of review and then that also addresses that in any form of motion.

Brad Neumann: Right, you're saying it's not one or some, it's all.

Chair Dombrowski: Correct. So, you've got to say it meets A through J. This variance request, not the idea necessarily of a private road or not, but what they're applied for here meets that A through J.

Nathan Williams: Has the city ever dealt with property annexations?

Andrea Landers: Yes, I'm sure throughout the years. I haven't been a part of that.

Nathan Williams: Got it.

George Patrick: Tell me one more time, is this a condominium or a site condominium?

Andrea Landers: This is currently neither. It is a parcel and the reason they're asking for this variance is they want to keep it a parcel and go through the land division act, and in order to do that, in order for the city to be able to approve it, they'd have to be a public road so that's why they're here asking for a variance from that public road requirement. So, if they got the variance approval, then they would apply for the land division again and that's a way the city would be able to approve it, or they can go through their site condominium process which if they meet that exception that allows for a private road.

George Patrick: If they were a site condominium.

Andrea Landers: If they were a site condominium.

George Patrick: We wouldn't be here tonight.

Andrea Landers: Yes, if they wanted to go through that process, correct, yes.

Chair Dombrowski: What are the conditions of the rezoning for the low density

Andrea Landers: The conditions basically were uses. The planning commission didn't want to see all of the uses within the low density residential. The applicant came back with reasonable, lower density selections out of that.

Barbara Wright: So, in their application to the city, and they had that on a number D on special privileges, it says the developer has an agreement to subject each of the lots to restrictive covenant which requires road maintenance fees to be paid to the adjoining condominium association. So, each one of those lots are going to have to pay these people to use their road. Monthly or yearly or whatever to maintain the roads. And it's a restrictive covenant so whoever buys this lot has to agree to the fact that they are going to pay this money.

Kristina Hill: But are those fees going just to private road of the resection, so they have their fees for their private road and then fees again to use your private road so they're not adding extra wear and tear to your portion, if they are, their fees cover safe passage.

Tom Centko: Each of the condominiums currently have an arrangement with a single condominium, Bluff Heron Bluffs, and we contract the service onto Oberstar or O'Dovero, depending on circumstances and it is plowed consistently every day almost, every time it snows, sometimes twice a day, been doing this for 20 years, and if there's work that needs to be done it's graded several times during the year and has calcium chloride put on for dust control, all that kind of stuff, and then everybody pays a unit share of that cost. And there's 30-some

units out there, homes that are worth over \$1 million. Everybody is satisfied. Everybody says oh, it's a little too dusty maybe sometimes, or maybe there's a little too much snow, which is reality up there.

Chair Dombrowski: So, Barbara you were saying that because it's in there that-

Barbara Wright: It's in their covenant, yes.

Chair Dombrowski: They're bound to do that because we're approving this variance with all the language that they write in there.

Barbara Wright: Right.

Chair Dombrowski: All right, I don't know how much more discussion or if there's anything else that people wanted to bring up here. Do we need to go through every single standard one by one or did we want to just make the motion? I don't know what the protocol is for this part.

Andrea Landers: It is however you guys want to do it and you each stated your ideas on there so you can use that discussion as your findings of fact.

It was moved by Mr. Neumann, seconded by Mr. Patrick, and carried 4-2 that after conducting a public hearing and review of the STAFF REPORT/ANALYSIS for 01-VAR-03-23, the Board of Zoning Appeals finds that the request does not demonstrate the standards found in Section 54.1404(B)(5)(a. through j.) of the Land Development Code and hereby denies 01-VAR-03-23 as presented.

Yes: Vice-Chair Ms. Dombrowski, Ms. Hill, Mr. Patrick, Mr. Neumann

No: Mr. Williams and Ms. Wright

NEW BUSINESS

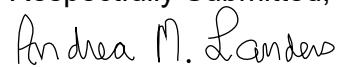
Training - Michigan Court of Appeals Unpublished Opinion

The BZA and staff discussed the opinion.

ADJOURNMENT

The meeting was adjourned at 9:10 p.m.

Respectfully Submitted,



Andrea Landers
Zoning Official
Community Development Department,
For Board of Zoning Appeals
Imediat/kw