COON CREEK WATERSHED DISTRICT  
PERMIT REVIEW  

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<th>MEETING DATE:</th>
<th>October 10, 2016</th>
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<td>FILE NUMBER:</td>
<td>15-030</td>
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<td>ITEM:</td>
<td>Catcher’s Creek 2nd Addn Variance Request</td>
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<td>RECOMMENDATION:</td>
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**APPLICANT:**  
Mark Smith  
2120 Otter Lake Dr  
St Paul MN 55110

**PURPOSE:**  
Request for a variance to the 100 ft. ditch easement for backyard adjacent to Coon Creek (CD-57), Andover.

**LOCATION:**  
South East of the intersection of Prairie Road and 145th Ave. NE  
North of the main branch of Coon Creek (CD-57), Andover
APPLICABILITY:
1. Any work within or adjacent to a Public Ditch within the Watershed District.
2. Any work in or adjacent to wetlands, lakes or water courses.
3. One or more cumulative acres of land disturbance.
4. The lands and water that have been, or may be covered by the regional flood.
5. Activities upstream from land that is dependent upon removal of water from the soil profile for their continued use (Drainage Sensitive Uses)
6. High water table, outwash and organic soils.
7. Highly erodible soils
8. Endangered, Threatened or Special concern species, elements of communities.

EXHIBITS:
1. Plan set by Randy Hedlund; dated 02/16/15; received 2/25/15
2. Stormwater Management Report by Randy Hedlund; dated 2/2015; received 2/25/2015
3. Wetland Delineation by Kjolhaug Environmental Services; dated 10/15/2014; received 10/16/2014
4. Wetland permit application by Kjolhaug Environmental Services; dated 2/25/2015; received 3/3/2015
5. Stormwater Report by Landform; dated 6/24/2015; received 6/24/2015
7. Coon Creek Variance Request by Larkin Hoffman Attorneys; dated 9/26/16; received 9/28/16
**HISTORY & CONSIDERATIONS:**
The Catcher’s Creek 2nd Addn project was last seen by the Board at the July 13, 2015 Board meeting where it was approved with four stipulations. Mr. Smith submitted a request for a variance on September 28, 2016 from the 100’ easement from Coon Creek for Lots 14 and 15, Block 3.

Variances are intended to provide relief where strict compliance with the rules, regulations, and policies of the District create an undue hardship.

The applicant has provided an alternative for the proposed project. The alternative showed an additional 40’ easement on Lots 1-7, Block 3, however the additional easement is in the floodplain mitigation area surrounding Wetland 5.

Coon Creek (Ditch 57) was last cleaned in 1994-1995 and prior to that in 1973. The District routinely inspects the public ditch systems on a five year cycle to assess the maintenance needs.

**Wetlands:** No wetland impact is proposed.

**Ditches:** Project drains to Coon Creek.

**Maintenance:** The proposed project approved by the CCWD Board on July 13, 2015 includes a 200 ft. ditch maintenance easement (100 ft either side of the centerline) for Coon Creek.
FINDINGS: The applicant is requesting a variance of a proposed easement. The proposed easement would be 60 ft from the centerline of Coon Creek upon platting of the Catcher’s Creek 2nd Addn development.

1. The strict enforcement of the rules would cause undue hardship because of circumstances unique to the property under consideration.

The applicant indicated that failure to grant the variance would result in undue hardship because the District’s 100 ft easement precludes future residents from being able to place decks, fencing, playground equipment, patios, sheds, pools or structural landscaping in the easement area without violating the easement making a large portion of the lot unusable.

In the District there are many developments where residents cannot have decks, playground equipment, patios, sheds, pools or structural landscaping in the easement area without violating the easement. The developers plat the lots with only enough area for the home. The way in which the developer has proposed to plat the lot has created this hardship. The District does allow fences as long as they are removable and/or if the District needs to remove them it is at the resident’s expense. However, the City has its own rules as where fences can be located and should be contacted to determine if they would allow it.

There are approximately 5 to 15 ft between the easement and back of building for Lot 15, Block 3. It is unclear why Lot 14, Block 3 would not be able to place decks, fencing, playground equipment, patios, sheds, pools or structural landscaping outside the easement area.

2. It is demonstrated that such action will be in keeping with the spirit and intent of the District rules, regulations and policies.

The applicant states the reduced easement for Lots 14 and 15 will still provide adequate access along Coon Creek for any modern excavation and dredging equipment and spoils can be placed in the additional 40 foot easement area.

During District review it was noted that the easement in this area will include a city trail. Ditch 57 is 15 feet from centerline (30 feet wide), the trail and backhoe require 35 feet, and the spoil pile requires a minimum 50 foot base (15+35+50=100).

The current spoil piles extend from centerline up to 90 feet adjacent to proposed lots 14/15 and 60 feet along the south ditch bank as indicated by LiDAR, 2 foot contours and the 2014 routine ditch inspection. The current spoil piles indicate a minimum of 45 feet is necessary to deposit spoil material and that there are local constraints on the type of equipment and how maintenance is completed (e.g. visibility, wetland/floodplain fill, access, bank erosion, channel meandering…).
It should also be noted that the floodplain mitigation within the easement further restricts the space to deposit spoil material.

Based on a review of aerial photos the meander belt is approximately 650 feet in width. Because this is an unarmored channel, Ditch 57 wants to naturally migrate to its old meander pattern resulting in a loss of soil and channel migration.

The slopes in this section of the ditch, as depicted by the picture below, are steep and mostly shaded reducing the ability for vegetation to grow on the existing spoil piles. With the intense, fragmented rain events the District has been experiencing this type of slope is susceptible to bank failure.

3. **The proposed activity for which the variance is sought will not adversely affect the Public Health, Safety, or Welfare.**

*The applicant states the 60 foot easement will accommodate any maintenance or dredging activities as well as a City trail, and the additional 40 foot easement on the adjacent properties to the west will provide sufficient area to place any dredging spoils without significant cost to the District.*
The District needs at a minimum 100 feet in this area to safely maintain and dredge Coon Creek. The 40-foot easement the applicant is proposing for ditch maintenance is floodplain mitigation. Spoil piles cannot be placed in this area. Without the 100 foot easement, the District would have additional costs from having to transport the spoils to this area versus the typical practice of placing the spoils directly adjacent to the backhoe as the operator cleans the ditch.

The variance would create a public safety issue for the District’s contractor as it has been determined that 100 ft is the minimum needed in this stretch of the ditch to adequately clean and maintain it.

**Waiver Is Minimum Necessary, Considering the Purposes Stated, To Afford Relief:**
The applicant stated that the variance is the minimum necessary, considering the purposes stated to afford relief because of site constraints. It is unclear why the lots are not considered buildable since the District has many other developments with the same lot constraints.

(1) **Is the variance in harmony with purposes and intent of the District's rules?**
The variance is not in harmony with the purpose and intent of the District Rules. The Purpose of these rules is to enable the District to evaluate, permit and monitor activities affecting the water and related land resources of the District in an orderly and informed fashion.

The intent of these rules is to:

- Manage the watershed's water and related land resources so they remain clean.
  - Prevent public health and safety hazards.
  - Prevent property damage.
  - Promote beneficial uses.
  - Reduce the discharge of pollutants from stormwater to the maximum extent practicable (MEP)
  - Identify waterways, floodplains and wetlands in which land disturbance activity should be restricted, and, in appropriate cases, prohibited.

- Give due consideration to alternatives and creative solutions in planning and using the water and related land resources of the watershed to encourage and pursue low impact development.

- Where no feasible and prudent alternative exists, the use shall be accomplished in a manner which assures the protection and safety of persons and property, public and private and which as nearly as possible:
  - Preserves and protects the natural environment; and
  - Will not result in the degradation of waterways, floodplains and wetlands.
(2) Is the variance consistent with the District's comprehensive/watershed management plan?
Give due consideration to alternatives and creative solutions in planning and using the water and related land resources of the watershed to encourage and pursue low impact development.

Where no feasible and prudent alternative exists, the use shall be accomplished in a manner which assures the protection and safety of persons and property, public and private and which as nearly as possible:
   a. Preserves and protects the natural environment; and
   b. Will not result in the degradation of waterways, floodplains and wetlands

(3) Does the applicant's proposal to reduce the required ditch easement area put his property to use in a reasonable manner?
The District’s statutory requirement is to clean and maintain the County ditch system. The variance would create a public safety issue for the District’s contractor as it has been determined that 100 ft is the minimum needed in this stretch of the ditch to safely and adequately clean and maintain the ditch.

(4) Are there circumstances unique to the applicant's property? (Lots 14 and 15?)
In the District there are many developments where residents cannot have decks, playground equipment, patios, sheds, pools or structural landscaping in the easement area without violating the easement. The developers plat the lots with only enough area for the home. The District does allow fences as long as they are removable and/or if the District needs to remove them it is at the resident’s expense. However, the City has its own rules as where fences can be located and should be contacted to determine if they would allow it.

(5) Will the variance maintain the essential character of the locality?
It will set precedence for neighboring property owners to encroach into the 100 foot easement on their property. It is not an existing nonconforming use that has neighboring properties closer to the ditch than the easement allows.

The District needs at a minimum 100 feet in this area to safely maintain and dredge Coon Creek.

CONCLUSIONS:
The permit review policy and rule states that the applicant must satisfy all 4 of the criteria.

1. The applicant has not provided either evidence of calculations as to why adherence to the easement dimensions presents an undue hardship. In the District there are many developments where residents cannot have decks, fencing, playground equipment, patios, sheds, pools or structural landscaping in the easement area without violating the easement. The developers plat the lots with only enough area for the home.
2. The variance request is not in keeping with the spirit and intent of the District’s, Rules, Regulations and Policies.
   a. During District review it was noted that the easement in this area will include a city trail. Ditch 57 is 15 feet from centerline (30 feet wide), the trail and backhoe require 35 feet, and the spoil pile requires a minimum 50 foot base (15+35+50=100).
   b. The current spoil piles extend from centerline up to 90 feet adjacent to proposed lots 14/15 and 60 feet along the south ditch bank as indicated by LiDAR, 2 foot contours and the 2014 routine ditch inspection. The current spoil piles indicate a minimum of 45 feet is necessary to deposit spoil material and that there are local constraints on the type of equipment and how maintenance is completed (e.g. visibility, wetland/floodplain fill, access, bank erosion, channel meandering…).
   c. It should also be noted that the floodplain mitigation within the easement further restricts the space to deposit spoil material.
3. The requested variance will adversely affect the public welfare by adding unneeded cost and adding time to drain excavated soil and transport it to the adjacent area where the applicant proposes the District fill floodplain mitigation.
4. The applicant has not shown or discussed any alternatives showing that this request is the minimum needed.

OPTIONS:
1. Deny the Request for Variance
2. Table the Variance request pending:
   a. Revised responses to criteria including submittal of alternatives analysis showing request is minimum needed.

RECOMMENDATION:
1. Deny the Request for Variance