COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: November 14, 2016
AGENDA NUMBER: 9
ITEM: Catcher’s Creek 2nd Addition Variance Request

AGENDA: Policy

ACTION REQUESTED
Approve revised grading plan and request for Lot 15, Block 3 of Catcher’s Creek 2nd Addition.

BACKGROUND
On July 13, 2015 the Board of Managers approved Catcher’s Creek 2nd Addition. The approved plans were dated 6/23/15.

On 11/2/16 the District received a revised grading plan for Lot 3, Block 3 and a request for a 15 foot variance from the preliminary platted easement of 100 feet to an easement of 85 feet.

There are several issues and concerns the Board needs to be aware of and address before any official action is taken on this request and revision

ISSUES/CONCERNS

Significant Material Change to Grading Plan: Review of the plans indicate a “material change” from the grades approved in July, 2015. The change involves a re-contouring of Lot 15, Block 3 by pulling the 880 contour south to the easement boundary to an area immediately adjacent to the floodway of Coon Creek (Ditch 57). While originally seen as potentially significant, the District Engineer has determined that the combination of the downstream choke point of Prairie Road, the existence of floodplain mitigation upstream from Prairie Road, although below the proposed impact, and the extent of the floodplain upstream from the proposed impact does not present a significant alteration or present a significant risk to flooding or potential flood damage in the area affected by the proposed fill.

Buildability of Lot 15: The applicant and the City of Andover have indicated that the Andover ordinance requires a 110’ set back from the front corner post for a lot to be buildable. Under current policy and preliminary platted easements the lot would be unbuildable. To make lot 15 meet the City standard of 110’ buildable, the District would need to grant a variance of 15’. The revised plan on Lot 15 shows an 85 foot drainage easement and includes a request for a variance of 15 feet from the District standard of 100 feet.
**Presence, Nature and Extent of the Easement:** The District rules require the dedication of an easement of 200 feet (100 feet either side of the center line of the ditch) on all new plats and developments.

Upon review of a 15 foot (versus a 40 foot) variance of the easement for Lot 15, the District Engineer, Operations and Maintenance Coordinator and Administrator believe there would not be significant additional cost or difficulties to the public of an 85 foot easement.

**Concern of Preclusion of Reasonable Uses of the Property:** The applicant expressed concern about future use of the easement by the Watershed District and the City of Andover, potential damages to the new land owner and residents unable to place decks, fencing, playground equipment, patios, sheds or pools in the easement area without violating the easement.

In a meeting between the applicant, City and District the District noted that almost all of the identified uses would be allowed within the easement (except in-ground pools – pools and floodplain are not a good mix because the high waters and saturated soil conditions tend to lift the pool as well as accelerate concrete cracking due to soil settlement below the pool) provided that they can be moved or taken down so that, if need be, they do not interfere with maintenance of the creek.

The applicant and District have agreed to monument that provision as well as the need of the property owner to apply to the District for a permit to place a fence or other semi-permanent objects within the easement.

**Nature of a Variance:** Mr. Smith is requesting for Lot 15 a variance of 15 feet from the adopted standards of the District.

A variance is basically a change in the District’s standards or a varying of what the District needs, at a minimum, to accomplish the statutory goals with which the District is charged to pursue. However, circumstances certainly exist (called Hardships) where varying of the standards is entirely appropriate and the District rules provide for that as follows:

“The Board of Managers may grant a variance from the literal provisions of the District’s rules, regulations, and policies in special circumstances. To avoid setting precedent or be involved in continual rule amendments and standard setting the Board has opted to grant variances when:

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

ii. It is demonstrated that such action will be in keeping with the spirit and intent of the District rules, regulations and policies.
iii. The proposed activity for which the variance is sought will not adversely affect the public health, safety or welfare."

FINDINGS: The applicant is requesting a variance of a proposed easement for Lot 15. The proposed easement would be 85 ft from the centerline of Coon Creek upon final 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 District has concluded that “Undue hardship” exists because the purpose of the proposed land use is housing and without a variance from the existing standard of 100 feet the entire lot becomes unbuildable.

2. It is demonstrated that such action will be in keeping with the spirt and intent of the District rules, regulations and policies.
During review of the grading plan it was noted that an 85 foot easement in this area will include a city trail and is reasonable, leaving sufficient room to maintain the ditch without creating a risk to the District contractor or requiring additional cost or time involved in working in cramped conditions.

3. The proposed activity for which the variance is sought will not adversely affect the Public Health, Safety, or Welfare.
A variance of 15 feet will leave sufficient separation from permanent structures and temporary or permanent deposition of material to protect the public health, safety and welfare.

4. Waiver Is Minimum Necessary, Considering the Purposes Stated, To Afford Relief:
The City of Andover has indicated that 15 feet is all that is needed to make the lot buildable.

5. Is the variance in harmony with purposes and intent of the District's rules?
The variance is 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. A variance of 15 feet with the District retaining as 85-foot easement in this area would allow the District to accomplish the rules purpose.

6. Is the variance consistent with the District's comprehensive/watershed management plan?
Yes. The 15 foot variance, with the City’s collaboration implements the “regulate only to the degree needed” provision of the plan and rules.
7. Does the applicant's proposal to reduce the required ditch easement area put his property to use in a reasonable manner?
Yes. The variance request of 15 feet ensures that the lot is buildable, the provision and monumentation that movable structures and uses within the easement that can be dismantled or moved, if needed achieves a balance between the private use of property and the public need for access to inspect and repair the ditch.

8. Are there circumstances unique to the applicant/s property? (Lots 15)
Yes. See Nos. 1, 2.

9. Will the variance maintain the essential character of the locality?
Yes. The 15 foot variance, with the City’s collaboration, implements the “regulate to the degree needed” provision of the plan and rules, while retaining the essential residential character of the locality.

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

   1. The applicant has provided evidence as to why adherence to the easement dimensions presents an undue hardship.
   2. The variance request is in keeping with the spirit and intent of the District’s, Rules, Regulations and Policies.
   3. The requested variance will not adversely affect the public welfare by adding unneeded cost and adding time to handle and transport excavated soil.
   4. The applicant has shown that this request is the minimum needed.

PRIOR DECISIONS/APPLICATION
1. July 13, 2015 Grading and stormwater plan approved with 4 stipulations

2. October 10, 2016 Board tabled request for a 60 foot variance from the easement and setback approved in 2015 pending clarification of City of Andover building and lot standards.

3. October 24, 2016 Board tabled action on the request for a 60 foot variance pending clarification and further analysis of changes in the grading plan, analysis of potential floodplain impacts and discussion with the City of Andover on Lot 15.

4. November 2, 2016 District receive applicant’s amended variance application requesting a 15-foot variance the would result in an 85-foot ditch easement on Lot 15.
OPTIONS

Board
1. Approve the variance request and revised grading plan for Lot 15.

2. Deny approval of the variance request and revised grading plan. The Board needs to act at its November 14 meeting to meet the 60 day rule. If the Board chose to extend the review an additional 30 days, which is its prerogative, the Board could deliberate for two additional meetings and act by its December 12 meeting.

RECOMMENDATION
1. Approve the request for variance and revised grading plan for Lot 15, Block 3.