

Provo City Planning Commission

Report of Action

September 28, 2022

Item #4 Bob Jones requests a variance through the Planning Commission to impact slopes exceeding 30 percent (Section 15.07.010) for a proposed residential subdivision, located at approximately 379 E 4900 N in the R1.10 zone. North Timpview Neighborhood. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLPSUB20210136

The following action was taken by the Planning Commission on the above described item at its regular meeting of September 28, 2022:

CONTINUED

On a vote of 6:0, the Planning Commission voted to continue the above application.

Reasons for Continuance: 1. Applicant must submit to Public Works data that has been requested including a plan for impacted slope restoration, 2. Geotechnical report for slope stability, 3. Confirmation from the State regarding dam safety, 4. To allow staff time to consider boring for the water line as an alternative, and 5. A statement from the property to the north as to the feasibility of a water line.

Motion By: Jeff Whitlock

Second By: Andrew South

Votes in Favor of Motion: Jeff Whitlock, Andrew South, Melissa Kendall, Robert Knudsen, Raleen Wahlin, Lisa Jensen
Lisa Jensen was present as Chair.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

CITY DEPARTMENTAL ISSUES

- The Public Works Department had concerns with the requested action. The proposed action would cut into an existing 30% slope. No information had been provided to show how the slope will be restored to a natural condition. No Geotechnical Report showing slope stability had been submitted. Requests for State approval for dam safety had not been satisfied.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was not required nor held on the request for a variance.

NEIGHBORHOOD AND PUBLIC COMMENT

- Nine members of the public spoke to the Planning Commission. Concerns raised included the following:
 - * Destruction of the detention basin that was built for Phase I of the subdivision (The Preserve on Canyon Road)
 - * Problems with grading already performed by the applicant without city permits
 - * The need for a detention basin due to the amount of water that comes off the hillside during heavy rain
 - * That there are other options that would not impact 30% slopes
 - * That the hardship is partially created by the land and partially created by the applicant

- * Approval of this variance would create an inequity with other developers who follow the rules
- * The applicant cannot be trusted because he has repeatedly graded the hillsides without permits
- * This approval would violate the Critical Hillside Overlay Zone
- In addition to these comments, the city received many letters from citizens that were forwarded to the Planning Commission. Those letters are attached to this report of action.

APPLICANT RESPONSE

The applicant was represented by legal counsel who generally agreed with the analysis and recommendation of the staff report. Counsel pointed out that the hardship with the property was with its elevation and inability to obtain water service from existing infrastructure, like Phase I. Counsel, however, took exception with a statement on page three of the staff report which suggested that the widest point of the limits of disturbance was all 30% slope, when in actuality only a small portion of this area was 30% slopes or greater. Counsel also took exception with the statement that other alternatives for a water line were possible and he took exception with the hardship being anything other than the land, itself.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Questions were asked regarding when the ordinance prohibiting impact to 30% slopes was adopted, when the property was purchased and when the Critical Hillside Overlay Zone was adopted.
- A question was asked regarding the boundary between the city and the county for property to the north.
- In response to a statement made by a Planning Commission member, the city attorney clarified that all of the criteria for a variance must be met in order for a variance to be approved.
- The Planning Commission asked about the feasibility of a water line to the north that would not impact 30% slopes.
- Staff suggested a continuance of this item before the Planning Commission asked any questions or had any discussion specific to the variance criteria.



Planning Commission Chair



Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Community and Neighborhood Services Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

From: Sharon Memmott
Sent: Wednesday, September 28, 2022 11:09 AM
To: DS Public Hearings
Cc: Brandon Larsen
Subject: Item 4 - 30% slope disturbance variance request

Planning Commission Members,

Thank you for your service.

I'm writing in regards to the requested 30% slope disturbance variance request. I have looked at the topography maps included in the staff report. It appears to me that this is as simple as moving where the applicant would like to put the water line so it does not encroach on a possibly sensitive hillside area. By moving one or 2 proposed homes or lots slightly east the line could be run and paved over (as the public works department prefers for access) also allowing the possibility of future foot traffic or road access for future developments in the area. It is possible that moving those lines may require changing the size of some of the proposed homes. This is not a hardship that the city of Provo is required to make up the difference for a developers speculation in an area whose topography he knew would in some way affect how building would proceed.

Staff presents that this variance should be granted to 'create a more favorable environment for the citizens of Provo' but that is actually why so many people worked so hard to create the Critical Hillside Overlay Zone just two short years ago - to create protection for the already magnificent environment that Provo now enjoys. The CHOZ was created to protect exactly this sensitive hillside area.

The applicant has known for years that this project was not feasible without more water. It was explained years ago that proceeding with any development here would require creating a new water storage tank in the area. I don't see in the report where/what this water line will actually tie into. Has the new water tank been created for this line to even go to yet? Public works has suggested that it would be best for the line to go somewhere else. (These are the people who have to be able to access these lines to work on them in the future). It says the variance will be for an eight inch water line but that the area of disturbance at it's widest will be 300 feet! - is that a typo? Even if 300 feet is a reference to the length of the trench, we are still talking about an almost football field size hole in a critical hillside area. Why create a hole of that size to disturb a sensitive area for a water line that may or may not have a destination yet. A football size width hole in a critical hillside sensitive area to lay an eight inch pipe does not sound like a reasonable request.

You all work so hard for the benefit of the future of Provo as a whole. I ask you at this time not to grant this request for a variance to the CHOZ standard which was created to protect not only the beauty of the area but the safety of the future residents in that area. Let's take time to decide where exactly would be best in the long term for the needed infrastructure for safety, future accessibility for public works and protection of this sensitive area as outlined in the CHOZ code.

Thank you again for sharing your time with me,
Sharon Memmott
Provo

From: Logan Wolf
Sent: Wednesday, September 28, 2022 10:27 AM
To: DS Public Hearings
Subject: Input for North Timpview Neighborhood Project

Dear Planning Commission,

I live at 1202 Dover Dr. in Provo and am adamantly opposed to the proposed project being considered for approximately 379 E 4900 N in the R1.10 zone, North Timpview Neighborhood. Please do not approve this project.

Logan Wolf, Th.M.
CrossPoint Church

From: BetteJo McLelland
Sent: Tuesday, September 27, 2022 3:14 PM
Subject: Please Vote NO! Variance request #4 Planning Committee

Dear Mayor, Council Members and Planning Commission,

We were saddened when informed that the same developer who proposed developing our precious foothills and was defeated two and one-half years ago when record numbers of neighbors attended public meetings objecting to his plan for development is once again scheduled to ask for a variance on the very issue we fought against. At that time, the Critical Hillside Overlay Zone was put in place to guard our sensitive hillside from further erosion and compromise.

The developer has dug a road from East Lawn to his property without permission. That's a violation of CHOZ. He was given to cease and desist orders and nothing appears to have happened to stop him from ignoring these orders. He should have been fined and ordered to make reparations. Giving him a variance at this point seems to us to be a reward for his ignoring ordinances and laws put in place to protect us, the citizens who fought to stop him from developing in the first place. We elected you to represent us. Please do not ignore us now.

Our neighborhood has been plagued by mudslides and homes being condemned because of the shifting earth that destroys the foundation these homes have been built on. Homes on Mile High Drive stand empty or have been torn down because of this phenomenon. That is why the Critical Hillside Overlay Zone was established. Has the city done anything to help with this mess? There are other digging and construction projects that seem to slip under the radar of this planning commission and city council as well. Who will enforce the laws if our elected representatives do not?

The Critical Hillside Overlay Zone was put in place to protect the foothills of Provo. This zone can only protect us if it is enforced and exceptions to the rule (variances) are not granted. Please represent your constituents and protect what is left of our beautiful city.

We are requesting that members of this elected ruling body visit the site of the illegal road that has been built and see for themselves what is at stake if this developer is allowed to continue with his plans. Please study the proposals and the violations.

Respectfully,

BetteJo McLelland
945 Windsor Drive
Provo, Utah

From: Joe Cardon
Sent: Monday, September 26, 2022 4:12 PM
To: DS Public Hearings
Cc: Brandon Larsen
Subject: Critical Overlay

All,

This is Joe Cardon from 515 e 4750 n in Provo.

This is in reference to item 4 on the planning commission meeting this Wednesday. In reference to a variance requested at approximately 379 E 4900 N for slopes greater than 30%. This is on the hillside behind my house.

I am against granting the variance because the hillside is steep and I know that others in Provo in the past have had very large problems that cost a lot of money to address issues caused by digging into the steep hill sides along the foothills. The sand bars developed by lake bonneville are problematic to deal with and can be hard to control. I believe that area is unstable and should be left alone.

Also, some work was already done to to that area and it was not approved to cut in a road back there from what I was told by Provo city inspector.

He came over last year after they were grading a road behind my house and they hit an 8 inch pipe. He told me he did not think that was a place that should ever be dug into.

When someone has property they would like to develop and the ground is actually suitable to develop I am in support of doing what you want with it.

But in this case I don't think that land is suitable to develop and the variance should not be granted.

Regards,

Joe Cardon

From: Susan Christensen

Sent: Tuesday, September 27, 2022 3:55 AM

Subject: Please Say No to the Variance on Item #4 at the Planning Committee

Dear Mayor, Council Members and Planning Commision,

We are sad to see that the same developer we fought two and a half years ago is back again after asking for a variance from the planning committee. The Critical Hillside Overlay Zone was such a victory and now we are talking about changing it.

The developer has dug a road from East Lawn to his property without permission. That's a violation of CHOZ. He was given two cease and desists but what was done about that? Let us not reward him by now making an exception and granting his variance?

The reason it is a Critical Zone is houses in our neighborhood of Sherwood Hills have not done well when built on steep grades. Mudslides, avalanches and shifting homes have ruined lots on Mile High Drive. Who is going to clean up the mess up there?

The Critical Hillside Overlay Zone was written to protect the foothills of Provo. A zone is only as strong as exceptions that are not made. Please protect what is left of our beautiful city.

We are asking that the planning committee please go to where the preliminary road was built and see what is at stake. Please study the proposals and violations. This is a big deal.

It's discouraging to someone being rewarded who broke the rules.

Sincerely,

Craig and Susan Christensen

From: Wilford Baird
Sent: Tuesday, September 27, 2022 9:47 AM
To: DS Public Hearings
Subject: Variance request

Dear planning commission,

My name is Wilford Baird. I have lived on 4750 North and have lived there over 40 years. I often walk in the foothills in the area that is asking for an adjustment to the slopes to build some houses. I have observed that when the vegetation is removed from the hill and it rains, then the dirt washes away. The 30° rule must be for a reason and in the case of my opinion, should not be changed.

Wilford Baird

From: Julie Hollingworth
Sent: Monday, September 26, 2022 7:55 AM
To: DS Public Hearings
Subject: Please stop Bob Jones!

To whom it may concern:

Bob Jones has been getting away with doing many things in my neighborhood. I am appalled that he has violated so many ordinances and never gets more than a verbal reprimand. He should be required to replace soil and vegetation that he has destroyed in the past and should not be granted more privilege!

I am very concerned to find out that he has applied for a variance that we worked so hard to put in place in order to thwart his building in unstable areas, creating problems for traffic and water and sewage that he has no intention on resolving (in his words "that would be the city's problem to address infrastructure!")

Please do not give in to his requests and PLEASE start giving him costly punishments when he blatantly ignores the law!

Sincerely,
Julie Hollingworth
523 E 4300 N
Provo, Utah
84604

Item 4 Bob Jones requests a variance through the Planning Commission (see Subsection 15.07.010, Provo City Code) to impact slopes exceeding 30-percent for a proposed residential development, located at approximately 379 E 4900 N in the R1.10 zone. North Timpview Neighborhood. Brandon Larsen (801) 852-6408 jb Larsen@provo.org PLPSUB20210136

From: April Baird

Sent: Monday, September 26, 2022 12:46 PM

To: DS Public Hearings

Subject: Proposed variance

Dear Planning Commission,

I am writing in regards to Bob Jones requests for a variance to build on slopes exceeding 30 percent at about 379 E 4900 N, North Timpview Neighborhood.

I have been a residence of 4750 N for over 19 years. I was in favor of CHOZ, which was passed to help us protect these foothills. Mr. Jones and the Grows have violated this not once, but multiple time. The foothills should be protected, not only to preserve them, but to prevent homes from having the problems we have after they are built.

We get runoff coming into our yards, enough that it has flooded at least two homes. The land has already started to bring dirt down into our yards, covering cement and changing the slope, especially at 393 E. We have to make trenches in between homes to take the water from the back yard, which is sloped away from our houses, to the street. This happens when we have a large snow melt and/or a heavy rain. The land slopes from the hills, to the homes in the preserve (back yard) and into our back yards. Changing the slope further could be disastrous for us.

I would encourage you, before you make a decision, to go and take a look at what Mr. Jones is asking. Check out Mr. Jones and Grows violations, which have affected our homes and will continue too in the future. See the slope of the land, see the foothills, see why CHOZ was passed, and get a better understanding as to why it is so important for these foothills to be protected and why the first variance asked upon it should not pass. We should not make an exception to CHOZ, or what purpose did it have to begin with? Help us protect our houses and foothills from potential disaster.

Thank you for your time!

April Baird

From: Andrew Wilson
Sent: Thursday, September 22, 2022 6:25 AM
To: Brandon Larsen
Subject: CHOZ variant request

Bob Jones is requesting a variance thru the Planning Commission for development at approximately 379 east 4900 north. I feel this is ill advised. I request that Provo honor the CHOZ.

Thank you
Andrew Wilson

From: William Taylor
Sent: Thursday, September 22, 2022 2:50 PM
To: DS Public Hearings
Subject: Item 4 Bob Jones

Dear Planning Commission:

Bob Jones had the detention basin above The Preserve illegally removed without any permits and did other grading activities as well without a permit and without any repercussions from the city.

How can a man who has been known to not follow the law be trusted to do anything the right way?

Also, he can still get water to his project from the south. It is not the city's problem if someone can't get the easement. He can make it work, it is up to him to figure it out, not for the city to just allow a variance to make a developer's life easier.

If this is approved, then there must be significant oversight from city engineering as Bob Jones has proven he can not be trusted throughout his life. A simple Google of his name turns up a lot of things that make one question Bob Jones' character.

Cheers!

Will

From: hc mackay
Sent: Wednesday, September 21, 2022 3:45 PM
To: DS Public Hearings; Brandon Larsen
Subject: Planning Commission Hearing 28 Sept 2022

21 Sept 2022

Provo City Planning Commission

Attention: jblarsen@provo.org PLPSUB20210136

Brandon Larsen (801) 852- 6408

To Whom it May Concern:

Thank you for the postcard notification of:

***Item 4** Bob Jones requests a variance through the Planning Commission (see Subsection 15.07.010, Provo City Code) to impact slopes exceeding 30-percent for a proposed residential development, located at approximately 379 E 4900 N in the R1.10 zone. North Timpview Neighborhood. Brandon Larsen (801) 852- 6408 jblarsen@provo.org PLPSUB20210136*

My name is **H. Carl Mackay**, my wife and I have lived at **4885 North Canyon Road, Provo** for over **40 years**. We are **OPPOSED** to any variance for Mr. Bob Jones associated with **item # 4 on the 28 September 2022 agenda**.

We take this position for the following reasons:

- Mr. Jones has circumvented the rules and standards of the Provo City Zoning and Planning in the past
- Mr. Jones unauthorized excavation of the hills below the cemetery required police action and an order to cease and desist
- The hillside he cut into without permits, below the cemetery, has a sandy component in the soil structure
- His actions have already caused irreparable damage and potential for devastating flooding or mudslides
- He seems to feel he can do anything he desires and then seek forgiveness from the city without consequences
- There has not been a resolution of the current water pressure issues in the Preserve Subdivision, or water storage requirements, which will be exacerbated by this development.
- The future DANGERS FROM CUTTING AWAY THE HILLSIDE AT GREATER THAN 30 PERCENT are not a question of if but when flooding and mudslides will impact the entire neighborhood down to Canyon Road and beyond

We sincerely request that the Planning Commission **DENY ITEM # 4 AND REJECT ANY FURTHER DEVELOPMENT OF THIS AREA BY MR. JONES.**

Thank you

H. Carl and Carolyn Mackay



From: Angela Mourik

Sent: Tuesday, September 20, 2022 11:09 AM

To: Michelle Kaufusi; George Handley; David Shipley; Bill Fillmore; Travis Hoban; Shannon Ellsworth; Rachel Whipple; Isaac Paxman; Bill Peperone; Brandon Larsen; DS Public Hearings; Katrice Mackay

Subject: Item #4: Planning Comm. Meeting Sept. 28th

Dear Planning Commission, City Council, and Mayor Kaufusi,

About two years ago Provo City Council passed the CHOZ (Critical Hillside Overlay Zone).

The foothills continue to be a geologically sensitive area. Nothing has changed.

This zoning is to prevent ill-placed development and potential geologic hazards and unforeseen repercussions that often result from development in geologically sensitive areas.

We call to your attention the following request coming before the planning commission Wednesday September 28th:

Item 4 Bob Jones requests a variance through the Planning Commission (see Subsection 15.07.010, Provo City Code) to impact slopes exceeding 30-percent for a proposed residential development, located at approximately 379 E 4900 N in the R1.10 zone. North Timpview Neighborhood. Brandon Larsen (801) 852-6408 jb Larsen@provo.org PLPSUB20210136

We think as Provo residents and officials we should be VERY concerned with this variance request.

1. The CHOZ and hillside ordinances were established in part to prevent certain things from NOT occurring. The very first test of the validity of the CHOZ should not be an 'exception' to the rule.
2. Mr. Jones has already violated the CHOZ by digging a preliminary 'road' from East Lawn Cemetery to his property last year. The city had to order a 'cease and desist' ruling at least twice for unauthorized grading. No reparations were done on the violated hillside.
3. If this request would be approved, consequences could be potential landslides, rewarding violations, and economic disaster as the bottom line for profit doesn't add up after such risky and expensive infrastructure.

We ask that the city honor the CHOZ.

We also ask that the planning commission **physically go to the site** in question below East Lawn Cemetery and see for themselves the property, the hillside, and study the history of the proposals, the violations, and the CHOZ and how it is intended to be upheld going forward. Their decision will set an *important precedent* for the future use of the CHOZ.

We personally ask to NOT allow this variance request.

With kind regards,

Peter & Angela Mourik

5163 N Canyon Road