

Provo City Planning Commission

Report of Action

November 9, 2022

ITEM #2 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:

DENIED

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

Reasons for Denial: 1. That the staff has proposed a water line alternative that does not impact 30% slopes; 2. That the applicant stated he proposed another water line alternative that does not impact 30% slopes; 3. That the variance request is contrary to the public interest; and 4. That with other alternatives available, the original variance proposal is an economic hardship and a self-imposed hardship.

Motion By: Melissa Kendall

Second By: Raleen Wahlin

Votes in Favor of Motion: Melissa Kendall, Raleen Wahlin, Jeff Whitlock, Andrew South, Robert Knudsen, 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 recognized that the applicant had submitted documentation for Preliminary Subdivision approval. Further engineering and documentation would be needed to Final Subdivision approval.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was not required nor held on the request for a variance, however, staff received many letters and email from the public in opposition to approval of the variance.

NEIGHBORHOOD AND PUBLIC COMMENT

- Six members of the public spoke to the Planning Commission. Concerns raised included the following:
 - Sharon Memmott voiced opposition to the variance because an alternative had been identified that did not require a variance. Mrs. Memmott also read a letter from Morgan Sparenborg which is attached to this Report of Action.

- Angela Mourik voiced opposition to the variance and she read a letter from Tanei Henry, which is also attached to this ROA.
- Boyd Loveless was supportive of the applicant's right to develop his property but did not agree that the 30% slopes should be impacted.
- Debbie Schwarting, who lives in The Preserve on Canyon Road stated how important the debris basin is to the safety of The Preserve.
- 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 COMMENTS

The applicant stated that the city staff is dishonest and that the staff water line alternative is a stall tactic. He claimed that the staff's alignment was proposed by the applicant months ago and it was rejected by staff. The applicant believed that the staff's proposal was not real because Utah County had not given permission for the water line to be on property located in unincorporated Utah County. The applicant stated that the staff's water line alternative would cost ten times more than the applicant's variance proposal. The applicant acknowledged that he submitted to the city an alternative that would not impact 30% slopes. The applicant stated that the debris basin that was constructed for The Preserve was illegal because approval had not been obtained from State Dam Safety.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The Planning Commission asked questions regarding the staff proposal verses the variance proposal.
- That if the applicant's opposition to the staff's proposal is that it would cost more than the variance alignment, then the applicant's hardship is economic, which cannot be considered as a hardship.
- That two alternatives were discussed that would not impact 30% slopes; one by the staff and one by the applicant. If other alternatives exist than impacting 30% slopes is not in the public interest.



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, 445 W Center Street, 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: Julie Hollingworth
Sent: Wednesday, November 2, 2022 8:44 AM
To: DS Public Hearings
Subject: Item for next Planning Commission meeting

November 2, 2022

Dear Planning Commission, City Council, and Mayor Kaufusi,

Two years ago, Provo City council passed the Critical Hillside Overlay Zone. We pushed for this as residents to ensure that our area remains safe. This is a critical law now and it should remain firmly in effect and not allow for exceptions because of the geological problems in those areas that would put structures built on and structures already below these areas at risk!

On September 28th the following item is coming up before the Planning Commission:

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

Bob Jones has violated a lot of the ordinances already without any punishment. We beg you to not allow him further exceptions and to start heavy fines and return of vegetation destroyed as punishment for violation in the future. We want responsible builders who will follow laws and plan with the city officials and the community for the good of us all. We are not opposed to new construction, only the violation of laws, ignoring of infrastructure needs, ignoring desires of the community, and the impact it all has on our environment.

Thank you,
Julie and Brian Hollingworth
523 E 4300 N

November 1, 2022

Dear Friends & Neighbors,

Thank you for your interest and participation regarding the North Timpview Area Neighborhood and surrounds.

To follow up, the following Planning Commission Meeting agenda item (*Wed. November 9th*) will potentially affect our neighborhood. It is good to engage and **make your voice heard**.

It is our understanding that at the end of the last planning commission meeting, the commission asked the city to try and secure a solution for water access for the developer that would not damage or undermine the sensitive/critical hillside. This request was followed through with and a potential solution found.

Therefore, we find that, again, a variance request should **not be granted**. We ask that the city preserve and protect the sensitive hillside and CHOZ ordinance, as this helps to secure safety for residents now and for precedent in the future.

Please write or call your city representatives and let them know you want them to honor the sensitive hillside ordinance and the CHOZ and not make exceptions to this rule.

You may refer to the previous letter in regards to the last planning commission meeting.

Again, neighborhood voice and participation is important and **is being heard**.

Thank you for your engagement! We all benefit.

Peter & Angela Mourik

council@provo.org

michelle@provo.org

dspublichearings@provo.org

Item 2	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
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September 20, 2022

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 jblarsen@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 the city to 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

2 November 2022

Provo City Planning Commission

dspublichearings@provo.org

Attention: jblarsen@provo.org – (Commission Meeting November 9th 2022)

Brandon Larsen (801) 852- 6408

To Whom it May Concern:

My name is **H. Carl Mackay**, my wife and I have lived at **4885 North Canyon Road, Provo** for over **40 years**. I am writing today to again address the proposed variance for Mr. Bob Jones to develop residential homes on slopes exceeding 30-percent along the foothills approximately 379 East 4900 North.

We have just experienced Halloween when people dress up to be something they are not. Unfortunately, I believe Mr. Jones often appears before City leaders as a person different from what he really is, for example:

- 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, nor has he restored the flood basin he destroyed
- 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

As a result, my wife and I strongly OPPOSE any variance for development by Mr. Jones in this area of our city. We ask that the city preserve and protect the sensitive hillside and CHOZ ordinance, as this helps to secure safety for residents now and for precedent in the future. We request that you honor the sensitive hillside ordinance and the CHOZ and not make exceptions to this rule. While we recognize that the City desires appropriate growth for economic purposes, it must do so in an orderly manner consistent with approved engineering and not repeat the problems impacting homes moving on slopes already developed in parts of the City.

We sincerely request that the Planning Commission and City Council **DENY AND REJECT ANY FURTHER DEVELOPMENT OF THIS AREA BY MR. JONES.**

Thank you

H. Carl and Carolyn Mackay



Hillside Variant Request Hearing
November 9, 2022

This letter is concerning unpermitted and proposed work in the area east of The Preserve in an environmentally compromised hill side location. At the Provo City Planning hearing on September 28th the Developer was ordered to revisit and check all other possible alternates in getting water to the sight. The Developer was asked to consult with the neighbors in the area about the proposed plans. The City questioned whether an Environmental Impact, and a Geologic Hazard Study needed to be done. Has any of this been done? What were the outcomes? If none of this has occurred why are we now revisiting this topic?

A reminder of our concerns:

1. Without permits, nor any approval that we are aware of, the Developer cut the toe out of the cemetery hill along the Smith Ditch, causing it to become an unstable slope and in doing so the Developer destroyed the service road around that toe including the foundations for some of the power line poles. It's also our understanding that the Developer has been ordered to restore this area, but that still hasn't occurred. All of this happened before, after, and during the issuance of a number of stop work orders.
2. In approximately the same time frame the Developer proceeded to do work not permitted nor approved on the debris/catch basin to the east of The Preserve. The Developer breached the west and south abutments compromising the function of the debris/catch basin, and has been ordered to restore it; the west abutment, but not the south, was restored. In addition to that numerous truckloads of sand and gravel have been dumped blocking the drainage covert and further compromising the function of the basin. Though ordered, this situation still has not been rectified.
3. Even while all of this was going on the Developer start excavation in the gully that they are now requesting a Hill Side Slope Variance. This gully has been used as a dumping sight for the Cemetery in which all kinds of objects have been dumped including organic debris, miscellaneous sand and gravel, and loose unconsolidated fill material causing an unstable situation for any project unless it's restored to the natural slope with all fill materials removed.

4. This area is called the Bonneville shore line and is full of unstable sand and gravel beach deposits. What considerations are you “The City of Provo” making to address these issues? Along with this we would like to know what environmental impact and fault mapping studies have been done in this area? I’m not aware of any Western States that do not require Geological Hazard or Environmental Impact Studies to be done before the City would approve a project that could have long term ramifications and liabilities. Have any of these plans been submitted to the State for review? The question arises that if this Hill Side Slope Variance is approved and we have an incident what plan is in place to protect the area from water and damages?
5. Addressing the elephant in the room – reviewing the sight plans it’s been noted that there is a 12” water line truncated at the north end of the Cemetery’s. Isn’t a 12” pipe oversized for a 15 home project?
6. This is a large problematic project—who is creating the design for this hillside area, who is going to develop it, and who will be held accountable for caring this out correctly? I have not seen anything from the Developer or the City that would give the surrounding neighbors any confidence in this project. Bottom line—*Who would bare the responsibility when, not if, there is a problem?*

NO TO THE SLOPE VARIANT

Warmest Regards,
Ric and Debra Schwarting
339E 4900 N
Provo, UT 84604

Greg R. and Jo Rita Nielsen
4883 N 350 E
Provo, Utah
November 7, 2022

To the Provo City Mayor, City Council, and Planning Commission and Staff:

Re: Public Hearing November 9, 2022: Request for a variance through the Planning Commission 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, PLPSUB20210136.

We live at 4883 N 350 E, directly west of the proposed development to which this variance request relates and urge the Provo Planning Commission to **deny the variance request** for the following reasons:

1. At the September 28, 2022 hearing before the Planning Commission, a decision on Developer's application for a variance was put on hold pending further studies to determine the geological stability of the area (see Provo City Code Sections 15.05.020 and 15.05.50), the potential for storm water run off flooding and proposed mitigation (see Provo City Code Section 15.05.030), and alternative water sources. Developer was also to meet with the affected land owners and home owners to further explain the proposed development and discuss possible solutions. To our knowledge, none of these actions has occurred, so this rehearing is premature and should, at a minimum, be further postponed until all facts are determined and made available to the public.
2. Developer is requesting a variance to the requirements of Provo City Code Section 15.05.160, prohibiting development on undisturbed hillside areas having a slope greater than 30%. Developer does not meet the standards under Utah Code 10-9a-702 relating to variances (the "**Utah Variance Code**"), and the request is also inconsistent with the purposes and objectives of the Critical Hillside Overlay Zone, Provo City Code Chapter 14.33A (the "**CHOZ**") and the requirements of the Sensitive Lands Ordinance, Provo City Code Chapter 15.05 (the "**SLO**"). In determining if Developer qualifies for a variance, the Planning Commission should be aware of the following.
 - a. Crap to Cash LLC is the current owner of the property proposed for development (the "**Property**"), having acquired the Property from From the Rear LLC by warranty deed, recorded on **April 14, 2021**, Entry No. 70192-2021.
 - b. The CHOZ was originally adopted and approved by the Mayor and city Counsel on **June 30, 2020**, several months **before** Developer acquired the Property.
 - c. The SLO has been in effect for several years **prior to** Developer's acquisition of the Property.
 - d. Developer acquired the Property with full knowledge of the requirements of both the SLO and CHOZ, and consequently cannot now argue that he is being denied a substantial property right possess by other property in the same zone or that there are special circumstances attached to the Property that do not generally apply to other properties in the same zone (see Sections (2)(a)(ii) and (a)(iii) of the Utah Variance Code).
 - e. Since Developer acquired the Property post CHOZ and SLO, the variance is not permitted under Utah Variance Code Section 2(b)(ii), which prohibits granting of a variance where the hardship is "self-imposed", since Developer was fully aware of the CHOZ and SLO requirements before making a decision to purchase the Property, yet proceeded with the purchase.

3. Flooding of down slope areas is a major concern. At the September 28th hearing, Developer stated that flooding would be mitigated by flood control retention structures to be constructed up slope from the Property. However, to our knowledge, Developer does not own or control the property where the flood control structures would be constructed and thus cannot control when or if such structures will be constructed or whether they will adequately serve the Property and surrounding down slope areas. Until such flood control measures are in place, no development should be considered or allowed on land that is down slope, on gullies, such as that for which the variance is requested, that would channel flood water into existing developments such as the Preserve or other properties in the Canyon Road corridor, particularly since developer proposed to remove the current retention basin walls on the Property.
4. The undeveloped hillside areas protected by the CHOZ represent a valuable and unique amenity for the citizens of the North Timpview Neighborhood, the citizens of Provo City, and the many visitors to our area. These hillside areas are a natural and important gateway to Provo Canyon and should be preserved, as is intended by the CHOZ. This application for a variance represents the first significant challenge to the CHOZ, is not warranted by the facts and circumstances presented, and would establish a dangerous precedent for future development requests.

For the foregoing reasons, we respectfully request that the request for variance be denied.

To Whom It May Concern:

I am a Provo resident, and am writing with regards to the proposed amendments to the zone map in order to change the boundaries of the residential conservation zone, as was scheduled to be addressed during tonight's public hearing meeting. Though I was unable to attend tonight, I do want to take a moment to speak out against the proposed changes. Our foothills are a valuable component of the ecosystem and our community, and it is of the utmost importance that we hold the boundary necessary to protect them.

As a Provo citizen who herself lives within walking distance to the foothills and spends a significant time in them, I know firsthand what a treasure this natural resource is. Please prioritize the care of our fragile foothills and do not approve zoning changes that would encroach upon the protected space.

Thank you,

Dania Ellingson

Hello all,

I am quickly sending this your way as it looks like my husband and I will be stuck in the operating room completing a few more surgeries this evening and will miss tonight's meeting. I'm sorry it's last minute before hand, but I hope what I share will be considered.

I understand this area has been zoned for residential development and Bob Jones would love to develop and get return from his investment. I completely can understand of course while he would want to do this, and I think yes some of the area on the more level areas right near where current homes are, should be permitted to be developed if he can indeed get water safely to these properties. We've watched this gentleman this past year bring in many many truck loads of sand to dump in the back area of the property, we also have watched him continue to work without a permit, digging and unearthing the hillside of East Lawn Cemetery. It is a little worrisome about how secure building on sand will be. I'm also a little nervous and sad about the idea of seeing the hillsides completely develop, there's a family of owls that lives in the trees just beyond our neighborhood and it will be sad to see that tree go and their home. It's also been sad to see the trails back there get dug up and to see what used to be areas for walkers and bikers now not accessible. It's great to see Provo, develop, develop, develop, but why don't we leave these very very difficult and somewhat dangerous to develop areas to be something that could be used as recreation space. We keep expanding, more housing, more people, and keep taking away from where people can go and recreate locally.

It would be nice if somehow the steeper slope/canyon areas could be purchased and turned into community recreation opportunity. Thank you for your time, I appreciate it.

Respectfully,

Morgan Sparenborg

Hello, Decision makers-

Thank you for your service to our community. I recognize that you each take time from your life to review this information and make tough decisions.

I attended the Provo City Planning hearing on September 28th where the Developer was instructed to revisit and check on alternative water routes to the building site. Has that happened? What was found?

Also, I am curious about the environmental impact, and geologic hazard in the case of this variance being requested.

Further, a statement of concern. I am a future resident of The Preserve on Canyon Road and a current citizen of the Maeser Neighborhood, where I have lived for the past 10.5 years. At the Provo City Planning hearing on September 28, my future neighbors made their statements and some were about the water basin that had previously been built at the city's behest by former owner, David Brotherson ahead of the building of The Preserve phase 1. Then the Developer's Attorney stood and explained that the former owner (David Brotherson) had built the water basin on someone else's property. This timeline that the attorney stated was inaccurate and it matters as to whether the developer was informed of the risks at the time of purchase. All signs point to this information was easily available.

When I bought my lot in August 2020, there were hopes of a phase 2 from the developer at the time. David Brotherson (the developer at the time) mentioned to us then that there were some complications and they were unsure about whether a phase two would be permitted and built out. David Brotherson was the owner then.

As the next owner bought the land, then the water basin was on a different owners' property. So, the attorney's statement that the former owner had built the water basin on another's property should be questioned as that water basin does matter to those of us in The Preserve Phase 1.

There are other alternatives to getting water to the site requesting the variance. If they are no longer available to the Developer, why is that? I ask because this seems to be something the Developer has control over without a variance being granted. If that is no longer an option, perhaps that is part of the risk the Developer knowingly took.

Thanks for hearing me out,

Tanei Henry