
To: Board of Managers
From: Mike Kinney
Subject: 21-001 Timber Ridge II Variance Request

Date: March 8, 2021

Background

The applicant, TRFL II, LLC, has applied for a variance from District Rule 4.3.1, which requires a vegetated native buffer of specified minimum width adjacent to wetland.

The property to be developed contains a large portion of a 11 acre densely vegetated wetland complex receiving runoff from surrounding residential development. The land adjacent to the wetland where development will occur will be provided with vegetated buffer in accordance with all requirements of the buffer rule, Rule 4.0. However, within the wetland, and on the applicant's property, there is an upland island about 0.5 acres in area ("Butterfly Island") that is connected to the "mainland" by a walking bridge. The applicant intends to create a passive recreational amenity here for tenants, with a wood chip walking trail and limited improvements such as benches or picnic tables.

As Rule 4.0 is written, the buffer requirement applies as well to the circumference of the island. By the nature of the island's small size and configuration, a 25-foot buffer would occupy a substantial part of the island. The applicant is proposing, instead, a buffer adjacent to a circumferential walking trail that would be at least five feet wide at all points and average something less than 10 feet. To mitigate any reduced water quality protection as compared with a 25-foot buffer, the applicant proposes a legally binding prohibition on placing any building, shelter or any other hard surface on the island.

Variance Standard

Pursuant to District Rule 11.0, the Board of Managers may consider a request for a variance from strict application of a District Rule where strict enforcement would create a "practical difficulty" for the applicant. In granting a variance, the Board may include conditions that it concludes are necessary for the variance criteria to be met.

To grant a variance, the Board of Managers must find that:

- The difficulty results from special conditions that apply to the land in question and do not apply generally to other land in the District.
- The special conditions causing the difficulty were not created by the landowner, the landowner's agent or representative, or a contractor.
- The difficulty is not just a matter of diminished economic return from use of the property.
- The variance will not merely serve the convenience of the applicant.
- The variance is consistent with the spirit and intent of the rules.
- The applicant has met the requirement to the degree feasible.

It is a matter for the Board's judgment to evaluate these factors, and to decide to grant or deny a variance. Staff briefly reviews relevant factual and technical considerations to assist the Board in its consideration.

Special condition: The special condition in this case is that the land in question is a small island within the wetland, such that the buffer would occupy much of the island's upland area. This condition was not created by the applicant, as it is a pre-existing, natural condition. While the rule by its terms applies a buffer to the island, there is nothing in the rule that was drafted specifically to address the rule's application to a small island. It is true that application of the buffer requirement could have a similar disproportionate outcome for other land configurations (e.g., a narrow peninsula). Nonetheless, such configurations are unusual in the District's history of applying the rule.

Nature of difficulty: By the District engineer's calculation, a 25-foot buffer would cause the buffer to occupy approximately 57% percent of the upland on the island. The applicant asserts that this proportion of buffer would frustrate its intended use of the island as a tenant amenity. While the absence of the amenity could affect the applicant's return on its development investment, the Board, if it accepts the applicant's claim, could find that this difficulty is not simply economic in nature and that the variance is not merely to serve the applicant's convenience.

Consistency with spirit and intent of the rule: Section 4.1 sets forth the purposes of the buffer rule. These include:

- Bank and shoreline stabilization;
- Erosion prevention;
- Filtration of nutrients, sediments and other pollutants from storm flows;
- Mitigation of downstream flooding through moderation of peak flows into the resource;
- Preservation of aquatic and terrestrial habitat;
- Protection of scenic resources;
- Maintenance of property values.

Maintenance of a buffer of a specified minimum width will allow for purposes relating to wetland bank protection - stabilization, erosion prevention, protection of riparian aquatic habitat - to be achieved. Because the upland will be used for passive recreation and will not have paved surfaces, the generation of pollutant loads or accelerated runoff will be limited, and so the reduced function of the buffer with respect to these purposes, in the District engineer's judgment, will be minimal. And, if in fact the island cannot be established as a tenant amenity absent the variance, then the variance also will have the effect of affording an opportunity for residents to engage in passive recreation involving connection with the wetland and related resources.

Meeting requirement to degree feasible: Rule 4.3.6 allows buffer width for an overall site to be averaged, provided the minimum buffer width is no less than half the required average width. Therefore, the applicant could meet the rule by establishing a 12.5-foot-wide buffer on the island and providing for the remaining buffer area by expanding buffer on the "mainland" development. However, from the District engineer's review, available locations for added buffer width would involve extending the buffer beyond 200% of the required average width, and therefore under the rule could not be used for buffer averaging.

The applicant has not offered a rationale for the precise amount of buffer width proposed outside of a desire to maximize the utility of the island for outdoor use by the residents. It is not clear to staff, and probably it can't be said, that another foot, or several feet, in particular locations would not be feasible. Ultimately a width needs to be selected. Staff expects that the applicant will reason that the prohibition on hard surface is more effective in limiting pollutant load to the wetland than another small increment of buffer width. The applicant may wish to speak to this at the meeting.

Finally, staff notes that tenant use of the island also could result in pet litter, and maintenance of the area might involve application of fertilizer or herbicide. But it may not be practical for the District to impose or, on an ongoing basis, monitor compliance with conditions to address these.

Conclusion

The variance decision is within the judgment of the Board, based on its evaluation of the five criteria set forth above.

Suggested Motion (if Board decides to approve variance): Manager _____ moves, seconded by Manager _____, to approve the requested variance, on the condition that the recorded perpetual buffer declaration prohibits a building, shelter or other hard surface on the island, and on the determination of the District engineer that the declaration establishes a variable width vegetated buffer at least five feet in width at all points along the edge of the island.

If the Board is not prepared to approve the requested variance: It should take no action, and instead direct that the administrator return with a draft resolution of findings for further Board discussion.

Attachments:

- 21-001 Engineer's Report
- 21-001 Variance Request
- 21-001 Butterfly Island Exhibit

Timber Ridge II Luxury Apartments
c/o TRFL II, LLC
6770 Stillwater Blvd N, Suite 110
Stillwater, MN 55082

Timber Ridge II Variance Request

By: TRFL II, LLC

February 17, 2021 (revised March 4, 2021)

Introduction

TRFL II, LLC, a Minnesota limited liability company (“Applicant”) formally petitions the Board of Comfort Lake Forest Lake Watershed District for the following variance related to permit application 21-001:

Variance 1 – Width of Buffer Requirement for the area called “Butterfly Island” - for a revision to the Rule 4.0 Buffer Requirements to establish that a buffer area which consists of all area below the wood chip trail and adjacent to the wetland on the small upland area known as “Butterfly Island” - as depicted on the attached Exhibit A - is appropriate to protect and improve the water quality, flow regime and habitat of water resources in the Comfort Lake Forest Lake Watershed District (the “District”). Applicant has discussed this request with District Staff including the Administrator and Applicant will commit to not add any impervious surfaces on Butterfly Island if the Board is willing to grant this variance to the buffer width. The two requirements noted above (buffer area and no addition of impervious surface) will be incorporated into the Declaration to be executed and recorded by Applicant as part of this permit. Strict compliance with the standard 25’ buffer would cause practical difficulties in creating a usable and attractive recreation space for the Applicant’s residents, due to the special conditions and unique topography of Butterfly Island and the surrounding wetlands. An upland island of that size simply loses too much usable square footage (approx. 58%) to a 25’ buffer in strict compliance – particularly considering that a 25’ buffer size does not provide any more protection to the watershed than the Applicant’s proposal under this variance request.

Standard of Review for this Variance Request

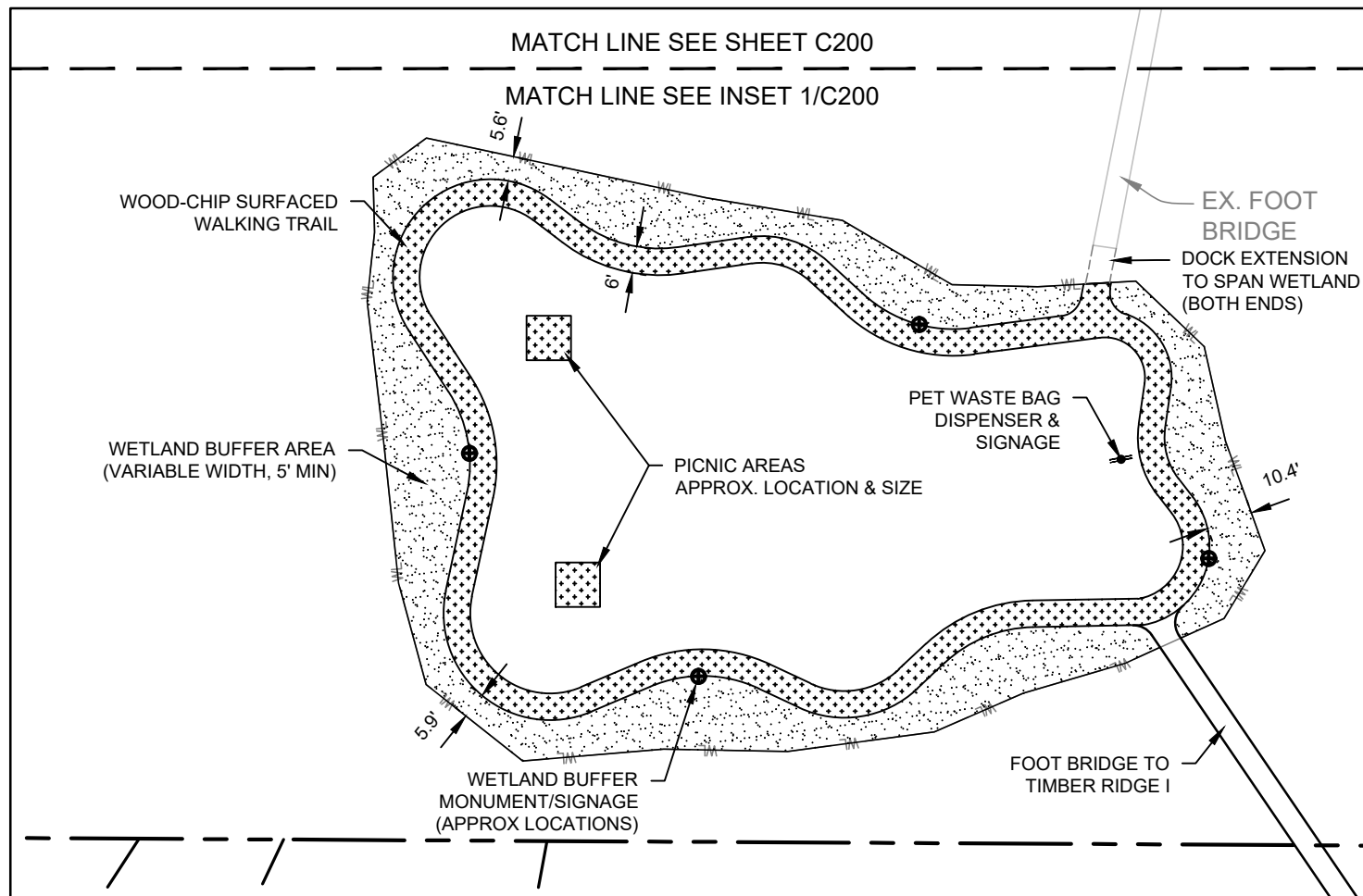
The unique nature of Butterfly Island and the special conditions of the land on the Applicant’s site cause a practical difficulty in creating a cohesive, useable space for residents of the Applicant’s project without flexibility in enforcement of the buffer rules. The Applicant’s proposal, to not add impervious surface to Butterfly Island, is in keeping with the spirit and intent of the District’s rules and contains conditions to prevent or mitigate any adverse impacts.

Conclusion

The Applicant respectfully requests the above variance to the buffer requirement on the Butterfly Island portion of the property. The plan proposed by the Applicant is consistent with the District's interest in avoiding undue disturbance in littoral and riparian zones, as it is more protective than a standard buffer under a strict enforcement of Rule 4.0. Thank you very much for your consideration.

EXHIBIT A

Butterfly Island Plan



1
C200

BUTTERFLY ISLAND AREA

SCALE 1" = 40'