**Staff Report**

**Application:** Variance request to allow a 5-unit planned unit development (PUD) on less than the minimum requirement of 2.5 acres and to allow less than 50% open space as required by ordinance.

**Applicant:** Robert Bugher

**Owner:** Highpoint Homes and Alexandria Homes, Inc.

**Agenda Item:** 4(a)

**Background Information:**

* **Proposal:** The applicants are proposing to create a planned unit development (PUD) to include five detached single family units on what are currently four previously platted lots intended for one single-family unit each. The PUD would be located on a total of 1.64 acres, which is less than the 2.5 acre minimum required by ordinance for a PUD.

A second variance is requested regarding the amount of "open space" required by ordinance. The proposal would result in approximately 29% open space, where 50% is required.

All other requirements related to impervious coverage, setbacks to the roads and adjacent residential areas, and the number of dwelling units allowed are met by the proposed development.

* **Location:**
  + Property address: None
  + Sec/Twp/Range: 3-128-37
  + Parcel number(s): 03-0200-140, 03-0200-135, 03-0200-130, and 03-0200-125
* **Zoning:** Urban Residential (UR)
* **Lot size:** Approx. 1.64 acres according to provided survey

Existing Impervious Coverage:

* None

Proposed Impervious Coverage:

* + Buildings and driveways on lots: About 16,146 sq ft (23.08%)
* **Septic System Status:** The property is served by ALASD sewer.
* **Natural Features:** There are no significant natural features.
* **Permit History:** The original plat of Le Homme Dieu Estates was approved in 1998.

**Applicable Statutes/Ordinances:**

**Minnesota Statutes**

**462.357 (2011) OFFICIAL CONTROLS: ZONING ORDINANCE.**

Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section [216C.06, subdivision 14](https://www.revisor.mn.gov/statutes?id=216C.06#stat.216C.06.14), when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

**Alexandria Township/Douglas County Regulations**

I. VARIANCES.

1. Criteria for Granting of Variances.

a. The Board of Adjustment shall have the exclusive power to order the granting of variances from the terms of this Ordinance, including restrictions placed on nonconformities. Variances shall only be permitted when the following criteria have been met, as determined by the Board of Adjustment:

i. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan.

ii. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

iii. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner~~,~~; and the variance, if granted, will not alter the essential character of the locality.

iv. Economic considerations alone do not constitute practical difficulties.

v. A variance may not permit any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.

vi. The Township may impose conditions in the granting of variances provided it is directly related to and bears a rough proportionality to the impact created by the variance.

vii. Variances shall be issued to the property and are not transferable.

**ALEXANDRIA TOWNSHIP COMPREHENSIVE PLAN**

**Goals & Policies - Land Use**

The property is identified in the Alexandria Township Comprehensive Plan's Future Land Use Map as "Urban Residential." The purpose of this category is as follows:

**Urban Residential**

The purpose of this land use category is to provide opportunities for urban density housing in areas that are most readily served by urban infrastructure and services. This category is intended for areas that are currently served by Alexandria Area Sanitary Sewer District (ALASD) infrastructure or are within the identified future service area of ALASD. Within these areas, new residential development will be reviewed to ensure that the proposed density, dimensions, and layout of lots will allow for the efficient use of public infrastructure and the cost-effective provision of public services. A gross urban density of two to three dwelling units per acre or higher is intended for these areas. Proposed subdivisions that would create oversized lots would be reviewed to allow for a transition to urban densities of housing in an orderly and efficient manner. This may be accomplished through ghost platting, conservation subdivision designs that cluster homes on urban-sized lots, provision of urban sewer or road infrastructure at the time of development, or by other appropriate means.

Typical “lot-block” or “conservation” subdivision designs are both considered appropriate in these areas. Where sensitive or unique natural or cultural resources, such as wetlands, shoreland, etc. are present, a conservation subdivision design with lower densities that protects these resources may be required. Long-term commercial/industrial uses that are incompatible with residential uses should not be allowed in this district.

**ALEXANDRIA TOWNSHIP ZONING ORDINANCE**

SECTION IV. PLANNED UNIT DEVELOPMENT

C. ZONING USE DISTRICT REGULATIONS

2. Other Zoning Districts (UR, C-U, C-R, I)

A planned unit development may be allowed in the UR, C-U, C-R and I districts, provided a conditional use permit has been approved by the Town Board. Developments must contain a tract of land 2.5 acres or larger and have a minimum lot width of three hundred (300) feet.

D. REQUIREMENTS AND REGULATIONS.

2. General Requirements and Regulations.[[1]](#footnote-1)

a. Maintenance and Design Criteria.

(2.) Open Space Requirements.

Planned unit developments must contain open space meeting all of the following criteria:

(a.) For residential and commercial (shoreland) and single-family (non-shoreland) PUDs, at least fifty (50) percent of each tier (where applicable), and of the total project area must be permanently preserved as common open space. At least thirty-three (33) percent of the common open space shall be retained in a contiguous area and at least fifty (50) percent of the common open space must be upland. The Township shall consider whether the proposed open space meets the purpose and intent of this ordinance and shall require amended plans if it finds that it does not.[[2]](#footnote-2)

For multi-family and non-residential PUDs (non-shoreland), at least twenty-five (25) percent of the total project areas must be permanently preserved as common open space. Such open space shall be contiguous as much as possible and must be approved by the Township, which shall consider whether the space meets the purpose and intent of this ordinance.[[3]](#footnote-3)

(b.) All land within 25 feet of any structure and any road right-of-ways or public road easements shall not be included in the computation of common open space. A ten (10) foot buffer, which cannot be considered open space, must be placed around all existing and proposed impervious surfaces.[[4]](#footnote-4)

(c.) Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries.

(d.) Open space may include outdoor recreational facilities for use by owners of dwelling units or sites by guests staying in commercial dwelling units or sites and by the general public. Open space must not include commercial facilities or uses.

(e.) Open space may include sub-surface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems.

(f.) The appearance of open space areas, including topography, vegetation and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means.

(g.) The shore impact zone, based on normal structure setbacks, must be included as open space. At least fifty (50) percent of the shore impact zone area of existing developments or at least seventy (70) percent of the shore impact zone area of new developments must be preserved in its natural or existing state.

**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the Board of Adjustment:

1. **Can the property in question be put to a reasonable use if used under the conditions allowed by this Ordinance?**

**Needs discussion.** The property is currently platted as four separate lots, each intended for a single-family dwelling. If a PUD were not allowed at all, this would be the use that would be permitted. Due to the requirement that the lot for a PUD be at least 2.5 acres and the lot does not meet this requirement, there is no use of the property as a PUD without a variance. Further, if the open space requirements for the PUD were required to be met, the lot would support fewer than four dwellings on the property, but would allow for at least that use.

1. **Is the plight of the landowner due to circumstances unique to the property not created by the landowner?**

**Needs discussion.** The restricted amount of acreage available for the proposed PUD is the consequence of the original 1998 plat as presented and approved by Douglas County. The inability to meet the open space requirement is a consequence of changes to the Zoning Ordinance made by Alexandria Township that resulted in a more restrictive method for calculating open space (if the PUD were to follow the less restrictive calculation of open space in the Douglas County ordinance, it would contain more than 50% open space). In addition, the desires of the applicant for five units are part of the reason for the needed variances.

1. **Is the variance necessary to secure a right or rights enjoyed by other owner(s) in the same area?**

**Needs discussion.** Other owners in the same area include the owners of single family homes directly to the west and throughout most of the immediate area. The property owners to the east (that property was developed as a PUD by the same applicant) have use of their property as a similarly designed PUD – with the exception that that PUD contains mostly attached townhomes and the current proposal is for detached townhomes.

The current proposal presents a somewhat unique situation, in that without any new proposal, they could be used for up to four single family homes and the total acreage is a large part of the issue at hand – not the use of the property.

1. **Will the variance, if granted, alter the essential character of the locality?**

**Needs discussion.** The essential character of the area is single-family residential dwellings. Mostly, the area contains detached single-family homes, with the land across the road to the east containing a PUD involving attached townhomes. Overall, the proposal appears to be consistent with the nearby land uses and character and represents somewhat of a "transition" between the townhomes to the east and the single-family units to the west.

1. **Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?**

**No.** The primary reason for these variances is not economics, but rather the limited amount of acreage and the manner in which open space requirements are calculated.

1. **Will the variance allow a use that is prohibited in the zoning district in which the subject property is located?**

**No.** The use of the property will remain single family residential, which is a permitted use in the Urban Residential zoning district.

**Board of Adjustment Direction:** The Board of Adjustment can approve the request, deny the request, or table the request if additional information is needed. If the decision is for approval or denial, findings of fact should be cited.

**Staff Comments:**

1. Lot size issues:
   1. It is clear that the lot does not meet the minimum required to create a PUD. As such, it is difficult to justify a variance to allow for a PUD on less than 2.5 acres as the primary argument for a practical difficulty (i.e. "we don't have 2.5 acres) could be used by every property owner who doesn't have 2.5 acres).
   2. However, there is a unique situation here where the applicant for this PUD was also the applicant for the approved PUD across the road to the east. If this current proposal is treated as an extension of the previous development, it could be argued that the development, as a whole, meets the minimum requirement for 2.5 acres (the other property is approx. 3.49 acres in size by itself).
2. Open space issues:
   1. It is clear, that by the Township's method for calculating open space, the proposal does not meet the minimum required (29% vs. required 50%). As such, it is difficult to justify a variance to allow for lesser open space because the primary argument for a practical difficulty (i.e. "there is no reasonable way for us to achieve 50% open space without eliminating proposed dwelling units to the point where it doesn't make sense for the development to occur") could be used by every property owner that doesn't meet open space requirements.
   2. However, there are several relevant factors that could be discussed as potential justification for a variance:
      1. The Township Zoning Ordinance calculation that excludes 25 feet around all structures and along public right-of-way is more restrictive than Douglas County’s ordinance which does not make this exception in the open space calculation. The County would not require a variance.
      2. The purpose of the Township's more restrictive open space calculation, in Staff's recollection, was to ensure that open space was primarily made of large contiguous areas that would serve a purpose for recreational use, wildlife habitat, septic systems, etc. This particular property would not likely create significant recreational areas or wildlife habitat and does not need area for septic systems – regardless of whether it met the 2.5 acre minimum or not.
      3. The requirements for open space in PUDs come largely from DNR regulations, which requires open space as a way to help protect wildlife habitat, sensitive natural features, or to provide large recreational areas. The property where the PUD is proposed is not within a shoreland area (it is more than 1,800 feet from the nearest lake) and there are no significant natural features on the property that would need special protection.
      4. As discussed above, if the current proposal is treated as an extension of the "Lakecrest Townhome" development across the road, the total combined amount of open space using the Township's required method would equate to 36% open space (min. 50% required). At the time that the "Lakecrest Townhomes" development was approved however, the requirement for open space appears to have only been 25% instead of the current 50% requirement (Staff will be confirming the history of amendments relating to open space prior to the public hearing).
   3. General comments:
      1. The primary concern of Staff with this application is that, even if the Township feels the development is consistent with what it is seeking in development of properties in this area and should be approved, it is difficult to show how this property – on its own – meets the criteria required for a variance approval. Granting a variance to the minimum lot size and open space requirements would appear to set a precedent that would make it difficult to deny similar applications in the future on other properties.
      2. Considering the development an extension of the "Lakecrest Townhomes" development to the east could address the minimum lot size issue, but would not address the open space requirement.
      3. The Township could consider an approval of a variance related to lot size (using the fact that it is essentially an extension of the original "Lakecrest Towhomes" PUD development), but deny the variance related to the open space requirement (due to a lack of an established practical difficulty).
      4. If the Township feels that its method for calculating open space is too restrictive, or the amount of open space required is too restrictive (particularly given that the property is not in a shoreland area), the Town Board, the Planning Commission or the applicant, could initiate a separate process to amend the ordinances so that at the time the applicant requests approval of the actual PUD and plat, it would have a variance for the lot size and not need a variance for the open space (if it complied with any amended ordinance requirements). So long as any resulting ordinance were at least as restrictive as Douglas County, there would be no need to have such an application go through a County approval process.

**Staff Recommendation:** Based on the criteria by which the ordinance requires review of variance requests to the Subdivision Ordinance, Staff would recommend the following options:

1. **Option 1: Deny both requested variances** due to lack of an established practical difficulty that is unique to the property itself and because the current landowners would still have reasonable use of their property without the variance (the construction of single-family homes). Approving the variance would create a precedent that would be unacceptable to the Township and would make the requirements for minimum lot size and open space meaningless.
2. **Option 2:** **Approve both requested variances** because;
   1. Lot size: The style and layout of the homes is consistent with the character of the other homes in the subdivision and because the proposed PUD effectively serves as an extension of the original "Lakecrest Townhomes" development which would mean that, in effect, the minimum lot size requirement has been met.
   2. Open space: Though it is less than what the ordinance requires according to the criteria for calculating open space, it is consistent with the county standard and the applicant has no way to create the PUD without a variance to this requirement.
3. **Option 3**: **Approve the lot size variance, deny the open space variance and initiate an ordinance amendment hearing to consider amendments to how open space is calculated and/or how much open space is required.** The lot size variance could be approved based on the findings noted above in Option 2a, while the open space requirement is denied for the reasons stated in Option 1. A separate discussion could be initiated to gather public input and decide if a less restrictive way of calculating open space or how much open space is required is acceptable to the Township (likely limiting the lesser restrictions to areas outside of shoreland).

1. Amended 5/21/2007 (Resolution #07-06) [↑](#footnote-ref-1)
2. Amended 12/17/2007 (Resolution #07-20) [↑](#footnote-ref-2)
3. Amended 5/21/2007 (Resolution #07-06) [↑](#footnote-ref-3)
4. Amended 12/17/2007 (Resolution #07-20); Amended 12/15/08 (Resolution #08-16) [↑](#footnote-ref-4)