

**Department of Community Planning and Economic Development – Planning  
Division**

Conditional Use Permits and Variances

BZZ-2677

**Z&P Date:** June 8, 2006

**Applicant:** Dan Radunz, 8951 Mariago Circle, Bloomington, MN 55438, (952) 210-8582

**Addresses of Property:** 5912 Girard Avenue South

**Project Name:** Radunz Residence

**Contact Person and Phone:** Dan Radunz, 8951 Mariago Circle, Bloomington, MN 55438, (952) 210-8582

**Planning Staff and Phone:** Becca Farrar, (612)673-3594

**Date Application Deemed Complete:** October 4, 2005

**End of 60-Day Decision Period:** December 3, 2005

**End of 120-Day Decision Period:** On November 2, 2005, Staff sent the applicant a letter extending the decision period to no later than February 1, 2006. The applicant has signed various further extensions of time. The most recent extension signed by the applicant extended the decision period to no later than August 1, 2006.

**Ward:** 13      **Neighborhood Organization:** Kenny Neighborhood Association

**Existing Zoning:** R1 (Single-family) district, SH (Shoreland) Overlay District

**Proposed Zoning:** Not applicable for this application.

**Zoning Plate Number:** 36

**Lot area:** 6,365 square feet or .14 acres

**Legal Description:** See attachment.

**Proposed Use:** A new single-family home in the R1 district.

**Concurrent Review:**

- Conditional Use Permit to locate development within 50 feet of any protected water (wetland) and to allow development within 40 feet of the top of a steep slope.

- Variance to permit development in the Shoreland Overlay District within 50 feet of a protected water and within 40 feet of the top of a steep slope.

**Applicable zoning code provisions:** Chapter 525, Article VII, Conditional Use Permits, Chapter 525, Article IX, Variances & Chapter 551, Article VI, SH Shoreland Overlay District.

**Background:** The applicant proposes to construct a new single family home northeast of Grass Lake on the property located at 5912 Girard Avenue South. The property is currently vacant but densely vegetated, zoned R1 and is located within the SH (Shoreland) Overlay District.

Due to the proximity of the property to Grass Lake and the surrounding wetland, the grades on site and the location within the SH Overlay District, the proposed development requires a conditional use permit to allow development within 50 feet of any protected water (wetland) and to allow development within 40 feet of the top of a steep slope. A variance is also required in the SH Overlay District in order to permit development within 50 feet of any protected water (wetland) and within 40 feet of the top of a steep slope. The SH Overlay District defines a steep slope as land having an average slope of 18 percent or greater measured over a horizontal distance of 50 feet or more.

The initial proposal involving the conditional use permit and variance applications, heard at the November 14, 2006, City Planning Commission hearing was denied. The applicant appealed that decision to the Zoning and Planning Committee during the 10-day appeal period. Since the appeal was filed, the application was continued numerous times in order to allow the applicant to attempt to address the concerns outlined in the original staff report by the City. Among other recommendations, Staff recommended that the applicant consider an alternative design that significantly increased the distance between the dwelling and protected water. For background purposes, the initial proposal was to construct an approximately 45 foot wide single-family home. With the inclusion of the proposed covered porch which appeared to wrap around the side of the proposed home, the structure would have been 50 feet wide. The structure as proposed would have met the required setbacks per the R1 district from the property lines. The property would not have been subject to a front yard increase (546.160), as the adjacent residential property to the north is located 21 feet 7 inches from the east property line which is less than the 25 foot minimum district requirement. The home was proposed at 2 ½ stories and 35 feet tall with a walkout basement. There are wetlands located on the south side of the property. The home proposed originally would have wrapped around the northern edge of the delineated wetlands and at the closest point would have been constructed approximately 1 foot from the delineated boundary.

The new proposal before the Zoning and Planning Committee, is a single-family home that has been modified to allow greater separation between the proposed residence and the delineated wetlands on site. The structure has been modified to a width of 28 feet. Per Section 535.90, the minimum width of single-family residential structures is 22 feet.

The structure appears to meet all applicable setback requirements in the R1 district. The open porch on the front of the structure is a permitted obstruction in the front yard. As proposed, the home would be located approximately 15 feet at the closest point from the delineated wetlands located on the south side of the site. A driveway is located on the south side adjacent to the wetland area, and at the closest point is approximately 2 feet from the delineated boundary. The proposed structure as shown, is considered a 3-story structure, even though it does not exceed the maximum height allowance of 35 feet. Staff will require as a condition of approval that the structure be modified to meet the 2 ½ story or 35 foot height limitation within the Shoreland Overlay District. Should the Planning Commission approve the applications, the applicant would be required to attain a separate permit for the single-family dwelling which would be required to meet all applicable requirements, inclusive of Chapter 530 requirements as they pertain to single and two-family dwellings (530.280). The proposed structure would not meet the design standards (point system). Additionally, the applicant has indicated that approximately 95 cubic yards of fill would be needed to level out the driveway and further, will need to cut and grade approximately 55 cubic yards for the foundation. The applicant has stated that while doing so, they will comply with all requirements from section 551.510. Grading or filling involving more than ten (10) cubic yards where the slope of the land is toward a protected water requires the submittal of a grading and erosion control plan approved by the city engineer and the zoning administrator.

A wetland delineation report was prepared by a private consulting firm and has been attached for reference. The report states that the wetland boundary was delineated along a slight rise in topography due apparently to historic fill. The report further states the Hennepin County Soil Survey has not mapped the soils in this portion of the county because it is urban land. Additionally, the applicant has also provided a survey which identifies the trees currently located on site which has been attached for reference. Based on the applicant's proposal, it would appear that the majority of the trees on site would be removed in order to construct the proposed structure.

Staff has received correspondence from the Kenny Neighborhood Association stating a position on the applications. The Kenny Neighborhood Association and residents in attendance at the 12/13/05 meeting unanimously do not support the applications. Neighborhood letters have been attached for reference.

**CONDITIONAL USE PERMIT** – (1) to permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland) (2) to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope

**Findings as Required by the Minneapolis Zoning Code:**

The Department of Community Planning and Economic Development – Planning Division has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

**1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Wetland protection at various levels of government is based on a consensus that there is a strong public interest in the preservation of the quality and quantity of wetlands. The design and configuration of the structure as proposed would be located approximately 15 feet at the closest point from the delineated on-site wetland. The driveway leading to the attached garage on the northwest side of the property would be located approximately 2 feet at the closest point from the delineated boundary. Staff would expect that the design of the proposed home would likely not have a detrimental impact on or endanger the public health, safety, comfort or general welfare. Staff will recommend as a condition of approval that the driveway be constructed of pervious pavers to further reduce the impacts on adjacent wetland area.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Staff does not generally believe that allowing the proposed development within 40 feet of the top of a steep slope would endanger the public health, safety, comfort or general welfare. The structure as proposed and designed would be generally located within the area categorized as a steep slope. It is important to note that any development on the site would interfere with the steep slope and it is Staff's position that the revised proposal has been designed to minimize the potential detrimental impacts.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Staff believes that the structure as proposed would likely not be injurious to the use and enjoyment of other property in the vicinity and would likely not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Staff believes that the proposed development located within 40 feet of the top of a steep slope and constructed within the steep slope will likely not be injurious to the use and enjoyment of surrounding property and would likely not impede the normal development of the surrounding area. The development as proposed would likely result in alteration to the property as it currently exists, both in regard to vegetation removal as well as grading and filling impacts. However, the modified design of the structure and configuration on site has been designed to minimize these impacts as much as possible.

**3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

The applicant would be required to work closely with the Public Works Department, the Plan Review Section of the Inspections Department and the various utility companies during the duration of the development to ensure that all procedures are followed in order to comply with city and other applicable requirements.

**4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

The parking requirement for the proposed development would be 1 off-street parking space. The applicant is proposing to provide 2 spaces in an attached garage located on the northwest side of the property. The garage would be accessed off of Girard Avenue South. Staff believes that adequate measures would be provided.

**5. Is consistent with the applicable policies of the comprehensive plan.**

According to the *Minneapolis Plan*, the site is located in a predominately low density residential area. According to the Principles and Policies outlined in the *Minneapolis Plan*, the following apply to this proposal:

***Policy 9.5 Support the development of residential dwellings of appropriate form and density.***

Staff would argue that the development as proposed is appropriate in regard to form should the proposal be modified to meet the 2 ½ story height allowance in the Shoreland Overlay District. It was Staff's position on the last application that a proposal inclusive of a home at or near the minimum width requirement of 22 feet instead of a 50 foot wide home would potentially be supportable as the home would be located substantially further from the on-site wetland area and would arguably impact the on site steep slopes less as well.

***Policy 7.4 Minneapolis will encourage the planting and preservation of trees and other vegetation.***

Staff would argue that allowing the development to move forward as proposed would not result in the preservation of trees and other vegetation currently on the site. Based on the submitted tree survey provided by the applicant, Staff would expect the majority of the trees to be removed to make way for the proposed home. In an attempt to mitigate the removal of on-site trees, Staff would recommend as a condition of approval that additional tree plantings, specifically adjacent to the wetland areas on site be provided upon submittal of final plans as required by Section 551.520 of the Zoning Code.

***Policy 7.5 Minneapolis will protect and sustain its water resources.***

**Implementation Steps:**

- **Preserve and restore wetlands for their irreplaceable contributions to water quality, control of floodwater rates and volumes, wildlife habitat and aesthetic purposes.**
- **Undertake community-based and citywide measures to protect lake water quality by managing storm runoff, employing erosion control measures and other best management practices.**

Staff would argue that the revised proposal which provides separation between the structure and the protected water, is in conformance with this policy and implementation steps.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located.**

With the approval of the conditional use permits and variances, as well as compliance with the single-family home design requirements and the Shoreland Overlay District requirements, this development would appear to meet the applicable requirements of the R1 zoning district. The applicant must comply with the grading and filling regulations of Section 551.510, including employing best management practices to prevent erosion and trap sediment. Additionally, removal of vegetation on the steep slope shall be prohibited except as authorized by the zoning administrator in section 551.520 of the zoning code.

**ADDITIONAL FINDINGS FOR CONDITIONAL USES (551.490) –**

**A. Evaluation Criteria**

**1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.**

The applicant would be required to prevent soil erosion and possible pollution of public waters, both during and after construction. The applicant would be required to install a silt fence during construction and would be required to follow all applicable City requirements to prevent any type of pollution.

**2. Limiting the visibility of structures and other development from protected waters.**

It is difficult to predict the potential for visibility as the majority of the vegetation on site would likely be removed and the structure as proposed, even with modifications to meet the 2 ½ story height limitation, would likely be approximately 35 feet tall.

**3. The suitability of the protected water to safely accommodate the types,**

**uses and numbers of watercraft that the development may generate.**

Not applicable for the proposed development.

**B. Uses Allowed – development within 50 feet of a protected water (wetland) and within 40 feet of the top of a steep slope**

**1. The foundation and underlying material shall be adequate for the slope condition and soil type.**

The applicant has verified that the underlying material would be adequate for the existing slope conditions and soil types as an engineering report was done and soil samples taken and the underlying material was deemed adequate for the slope condition and soil type for a single family residence. The existing slope would likely not remain intact as some filling and grading of the site would likely be necessary in order for it to be buildable. Further, the slope on site would likely be disturbed throughout the construction process.

**2. The development shall present no danger of falling rock, mud, or uprooted trees or materials.**

The applicant has verified that the development would not present any danger of falling rock, mud or uprooted trees and other materials. Silt fencing would be required to be placed at both the top and bottom of the steep slopes subject to City requirements.

**3. The view of the developed slope from the protected water shall be consistent with the natural appearance of the slope, with any historic areas, and with surrounding architectural features.**

Staff believes that the view of the developed slope from the protected water would be relatively consistent with the natural appearance of the slope and with the surrounding architectural features, should the plans be revised to reflect a 2 ½ story home. The applicant contends that they will be maintaining the slope as close to its natural appearance as possible and that the view from the protected water will be consistent with the stipulations above. In attempt to further mitigate view of the structure from the protected water, Staff will require that additional trees be planted adjacent to the wetland area on the south of the site as required by Section 551.520 of the Zoning Code.

**VARIANCES** - (1) to permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland) (2) to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope.

**Findings as Required by the Minneapolis Zoning Code for the Variances:**

**1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): It would be unlikely that the property could be put to a reasonable use under the conditions allowed and with strict adherence to the regulations of the zoning code. If required to develop at least 50 feet away from the delineated wetland boundary on site, only 15 square feet of buildable area would remain with adherence to the interior and rear yard setback requirements. Due to the site constraints, Staff believes that the house as proposed is a reasonable use of the property. It is Staff's position that the modified proposal incorporating a house near the minimum width requirements could be deemed reasonable.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: It would be difficult to put the property to a reasonable use under the conditions allowed and with strict adherence to the regulations of the zoning code. The top of the steep slope on site is based on the existing contours of the site and is therefore, irregular. The buildable area would be substantially reduced and would require that the majority of any new construction be located adjacent to the rear lot line. It is likely that the home as proposed would require alterations to the existing property. Staff would argue that the revised proposal is reasonable and arguably impacts the steep slopes on site less than the original proposal.

**2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): The circumstances could be considered unique as there are wetlands that are delineated on the south side of the property. It is Staff's position that that the proposed development constitutes a hardship as the lot in question, is a lot of record. A house near the minimum width requirement of 22 feet would arguably have much less of an impact on the wetland area located on the property and could potentially be supported as opposed to the former proposal which incorporated a house, with a walkout basement within 1 foot of a delineated wetland and at a width of nearly 50 feet.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: The circumstances requiring a variance to allow development within 40 feet of the top of a steep slope are somewhat unique to the site. Staff would argue that the proposal does constitute a hardship.

**3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Staff would conclude that granting the variance to construct a new 28 foot wide, single-family home within 15 feet of a delineated wetland on a lot of record is in keeping with the spirit and the intent of the ordinance. The Shoreland Overlay district was established to preserve and enhance the environmental qualities of surface waters and the natural and economic values of shoreland areas within the city. Further the district provides for the efficient and beneficial utilization of those waters and shoreland areas and protection of the public health, safety and welfare. Staff would argue that this modified proposal could be considered to be in keeping with the spirit and intent of the ordinance, and further will likely not alter the essential character of the locality as long as the structure complies with applicable height limitations, R1 district and Shoreland Overlay district standards.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Granting a variance to construct the proposed home would be in keeping with the spirit and intent of the ordinance and would likely not alter the essential character of the area. As previously noted, any development on site would likely have impacts on the property as the majority of the on site vegetation would likely need to be cleared to accommodate any home. Any development proposal would also likely require significant grading and filling.

**4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Granting a variance to allow development within 15 feet of a wetland area would likely not result in a substantial increase in the congestion of the public streets, danger of fire or be detrimental to the public welfare or endanger the public safety.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Granting the setback variance to allow development within 40 feet of the top of a steep slope would likely not result in a substantial increase in the congestion of the public streets, danger of fire or be detrimental to the public welfare or endanger the public safety.

**RECOMMENDATIONS:**

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the application for a conditional use permit to allow development within 50 feet of a protected water for property located at 5912 Girard Avenue South subject to the following conditions:

1. Submittal of final plans for the single-family home that meets the 2 ½ story or 35 foot height limitation as defined by the Zoning Code as well as the design standards in Section 530.280 of the Zoning Code.
2. Pervious pavers must be utilized for the driveway and for the turnaround.
3. The turnaround adjacent to the south lot line shall be adjusted to provide a 5 foot buffer adjacent to the south lot line.
4. Submittal of a grading and erosion control plan as required by Section 551.510 of the Zoning Code.
5. Final plans must detail plantings on site, specifically adjacent to the wetland areas located on the south side of the site as required by Section 551.520 of the Zoning Code.
6. Installation of a walkway connecting the principal entrance of the structure with the driveway or public sidewalk as applicable.

**Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the application for a conditional use permit to allow development within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

**Recommendation of the Department of Community Planning and Economic Development– Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance to permit development in the Shoreland Overlay District within 50 feet of a protected water for property located at 5912 Girard Avenue South.

**Recommendation of the Department of Community Planning and Economic Development– Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

**Attachments:**

1. Statement of use and description of project
2. Findings
3. Correspondence
4. Letter from Minnehaha Creek Watershed District
5. Wetland Report
6. Zoning map
7. Plans – survey, site and proposed residence elevations
8. Neighborhood letters