

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ-3305

Date: November 27, 2006

Applicant: Scherer Brothers Lumber Company

Address of Property: 9 Ninth Avenue NE

Project Name: Scherer Brothers Lumber Company

Contact Person and Phone: Tom Egan, 763-559-0808

Planning Staff and Phone: Michael Wee, 612-673-5468

Date Application Deemed Complete: October 27, 2006

End of 60-Day Decision Period: December 26, 2006

End of 120-Day Decision Period: Not applicable in this application

Ward: 3 **Neighborhood Organization:** St. Anthony West

Existing Zoning: I2 Medium Industrial District

Proposed Zoning: N/A

Zoning Plate Number: 14

Legal Description: Not applicable for this application

Proposed Use: Replacement of Dust Collection System

Concurrent Review: Conditional Use Permit for exceeding height limit in the SH Overlay District (Section 551.480); and a variance for the screening requirements of Section 535.70.

Background: The property is located on the north side of the Mississippi River and also within a designated Shoreland Overlay District, Mississippi River Critical Area Overlay District and Flood Plain. The existing dust collector system is approximately 35 feet in height that stores the dust on the ceiling and then discharged into a trash container. As mandated by the State, the existing system has to be replaced with a new dust collector system that brings the dust back to the building and stored in a bin until it is hauled away from the site. The new system is intended to reduce the amount of dust pollution that goes to the air. In an I2 Medium Industrial District, a total height of 4 stories or 56 feet, whichever is lesser, is permitted. The new dust collector system comes in 41 feet in total height, including its base.

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ - 3305

The height would not have needed a conditional use permit under the I2 provision, however, the property is also located in the Shoreland Overlay District, where 35 feet is the maximum height allowed. The new system will be tucked in an existing building corner to the south (see map) where it faces the river. The location is approximately 300 feet from the river and to existing residential dwellings.

A variance is also required as provided for by Section 535.70. The new system is considered as mechanical equipment, which has to be screened. The zoning administrator will allow screening of the system's base up to 10 feet in height.

The proposed project will trigger design and maintenance requirements of Article VII Parking Area Design and Maintenance of Chapter 541 and Section 550.110(c) of the zoning code. In addition to landscaping and screening of parking and loading areas as required by the provisions of the zoning code noted above, landscaping will advance the objectives of Mississippi Rive Critical Area Plan (adopted in June 16, 2006 by the City Council) to screen open storage and parking areas, landscaping of riverbank, and others for the purpose of beautification.

Notices were also mailed out to other agencies (including DNR, National Parks, Minneapolis Park Board, Mississippi River WMO, and Above the Falls Citizens Advisory Committee). No comments from the neighborhood group were received at the time of writing this report. Comments, if any received, will be forwarded to the Commission at the meeting.

CONDITIONAL USE PERMIT: To allow the installation of a dust collection system that exceeds the maximum height limit of 35 feet to 41 feet in the Shoreland Overlay District (Section 551.480)

Findings as required by the Minneapolis Zoning Code:

The 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.

The new dust collection system will reduce the amount of dust pollution by diverting the dust back to the building where it is stored in a bin and then hauled away from site. There is no evidence that the proposed project will be detrimental to the public health, safety, comfort or general welfare of the surroundings provided all building codes are complied with. The existing residential area is located more than 300 feet from the proposed project site. The collector noise usually comes from the cleaning cycle. The new system uses low pressure high volume air for cleaning, and therefore much quieter than the old system that uses high pressure low volume compressed air.

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.

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ - 3305

The proposed project doesn't have any impact to the use and enjoyment of other property in the vicinity. As all machineries make noise, the proposed new system is much quieter than what is currently on site.

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

The site is served by existing infrastructure and deemed adequate. No additional requirements are anticipated with the new installation. The proposed project is a piece of machinery and does not change existing parking or grade line, therefore, the application does not require review from the Minneapolis Development Review.

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

The proposal will have no impact on current traffic conditions in the surroundings.

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

The Minneapolis Plan supports the prevention of pollution as a step in maintaining a healthy physical environment (Policy 7.8). The new dust collection system will reduce the amount of dust into the air by absorbing the dust back into the building where they are collected into a bin which will then be hauled away from the site on a regular basis. While both the Above the Falls and the Critical Area plans call for screening of intrusive existing development, parking and storage, the proposed project does not provide measures to advance this goal. Thus, staff recommendations shall include landscaping along the river bank of the property.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.

With the granting of this conditional use permit and the variance referenced in this report, staff is not aware of any applicable regulations in an I2 District that will conflict with the proposed dust collection system. The conditional use permit sought is for exceeding maximum height of 35 feet in the Shoreland Overlay District.

CONDITIONAL USE IN SH OVERLAY DISTRICT: to increase maximum height from 35 feet to 41 feet in the Shoreland Overlay District.

In addition to the conditional use standards contained in Chapter 525, Administration and Enforcement, the city planning commission shall consider the following:

1. Access to light and air of surrounding properties.

Access to light and air of surrounding properties will not be impacted by the proposed project.

2. Shadowing of residential properties or significant public space.

The nearest residential district is located approximately over 300 feet away from the proposed site of installation. No shadowing of residential properties or significant public space will occur at this location.

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ - 3305

3. The scale and character of surrounding uses.

The project may be out of scale and character to the surrounding residential use, but it is over 300 feet away from these uses and will have no impact on its scale or character when viewed as a whole. Given its visibility from a distance, the new machinery can possibly be used for advertising. As a condition of approval, staff is recommending that any forms of signs and/or advertising on the new dust collector system's surfaces be prohibited. In this manner, it will also be in keeping with neighborhood character.

4. Preservation of views of landmark buildings, significant open spaces or water bodies.

Given the relatively small scale of the equipment, view of landmark buildings, significant open spaces or water bodies will not be impacted from the proposed installation.

In addition to the conditional use standards contained in Chapter 525, Administration and Enforcement, the city planning commission shall consider the following for conditional uses located within SH Shoreland Overlay District:

Conditional uses. *Evaluation criteria.* In addition to the conditional use standards contained in Chapter 525, Administration and Enforcement, the city planning commission shall consider the following:

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

The site is relatively flat in elevation. The proposed installation will not disrupt or cause soil erosion or other possible pollution of public waters, considering it is installed over 300 feet from the river bank.

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

The proposed dust collector system is located more than 300 feet away from the river edge. Given the distance from the river and a height of 41 feet (approximately 6 feet higher than current one), and as wide as 12 feet, staff believes that the granting of the conditional use permit will not substantially increase the visibility of the structure from the Mississippi River.

3. The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.

The proposed installation will not generate any types, uses and numbers of watercraft.

In addition to the conditional use standards contained in Chapter 525, Administration and Enforcement, the city planning commission shall consider the following evaluation criteria for conditional uses located within FP Flood Plain Overlay District:

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

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ - 3305

The site and location where the proposed project will be installed is relatively flat and will have no problem in soil erosion. The project will reduce the amount of dust pollution by diverting it back to the building where dust is stored and hauled away from the site. Applicant will comply with the regulatory flood protection elevation requirements of the Building Code.

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

The proposed project is 41 feet in total height, but it will not block or limit the visibility of structures, if any, from the Mississippi River.

3. The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.

The proposed project will not generate any types, uses or numbers of watercrafts.

In addition to the conditional use standards contained in Chapter 525, Administration and Enforcement, the city planning commission shall consider the following evaluation criteria for conditional uses located within FP Flood Plain Overlay District:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.

The proposed installation will not endanger life and property due to increased flood heights or velocities.

2. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.

Staff doesn't feel that the proposed project will endanger or cause injury to others or block bridges, culverts and other hydraulic structures if the building code is complied with.

3. The proposed water supply and sanitation systems and the ability of these systems to prevent diseases, contamination and unsanitary conditions.

Existing water supply and sanitation systems are not affected by the proposed project.

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

The proposed structure is not susceptible to flood damage.

5. The importance of the services provided by the proposed facility to the community.

The proposed dust collector system will reduce the amount of pollution into the air, thus providing the community a better air quality.

6. The requirements of the facility for a waterfront location.

The facility has been in its current location for many years. There are no changes to its use proposed but only to replace an existing dust collection system.

7. The availability of alternative locations not subject to flooding for the proposed use.

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ - 3305

The facility requiring the proposed dust collection system is currently in the flood plain area. Other locations within the applicant's property are also within the flood plain area.

- 8. The relationship of the proposed use to the floodplain management program for the area.**
Applicant will cooperate to any floodplain management program for the area.
- 9. The safety of access to the property in times of flood for ordinary and emergency vehicles.**
The property can be accessed from Sibley Street NE and seem to have no problem for both ordinary and emergency vehicles.
- 10. The expected height, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.**
There were no history of flooding in the property and its surroundings.
- 11. Such other factors which are relevant to the purpose of this article.**
Staff does not foresee any other factors that have not already been discussed above.

The City Planning Commission may impose such conditions on any proposed conditional use permit and require such guarantees as it deems reasonable and necessary to protect the public interest and to ensure compliance with the standards and purposes of the zoning ordinance and policies of the comprehensive plan, including but not limited to the following:

- 1. Modification of waste treatment and water supply facilities.**
The proposed project does not require nor necessitate modifications of waste treatment and water supply facilities.
- 2. Limitations on period of use, occupancy and operation.**
The proposed project will be used and operated in compliance with the zoning code.
- 3. Imposition of operational controls, sureties and deed restrictions.**
Staff doesn't feel there is a need to impose operational controls, sureties and deed restrictions for the proposed project.
- 4. Requirements for construction of channel modifications, compensatory storage, dikes, levees and other protective measures.**
Staff doesn't feel there is a need to require the construction of channel modifications, compensatory storage, dikes, levees and other protective measures for this project.
- 5. Flood-proofing measures, in accordance with the State Building Code and this zoning ordinance.**
Applicant will comply with Building Code requirements.

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ - 3305

VARIANCE: To allow the installation of a 41 foot dust collection system without screening as required by Section 535.70

Findings Required by the Minneapolis Zoning Code:

- 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.**
The proposed project is replacing an existing dust collector in response to State mandate. The hardship is based on the new dust collector system being manufactured at 41 feet in total height. The existing building where the proposed dust collector system is installed is approximately 30 feet in height. The location of machineries inside the building will most likely not allow the new proposed collector system to be installed inside the building.
- 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.**
Complying with State mandate for a new collector system that comes in 41 foot height is a reasonable hardship unique to the parcel and certainly not created by the applicant.
- 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.**
The intent of Section 535.70 is to screen mechanical equipment, but impractical in this case where 41-foot equipment is installed. Residential uses are more than 300 feet away from the project site. As an alternative, staff is recommending an 8-foot wooden fence to screen the base of the equipment, screening its view from 8th Avenue. Additionally, not less than 14 conifer and/or deciduous trees are recommended to be planted along the property line bordering 8th Street. The applicant is also encouraged to plant trees along the river edge of its property to be consistent with the Mississippi River Critical Area Plan and the Master Plan for the Upper River in Minneapolis.
- 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.**
The project will not impact any of the above.

RECOMMENDATIONS

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

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit and Variance
BZZ - 3305

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit subject to the following conditions:

1. The proposed dust collector shall be painted Torit blue (from a color palette provided) to complement its surroundings and Mississippi River.
2. The new dust collector shall have no signs nor can it be used for advertising.

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 for screening requirements of Section 535.70 subject to the following screening alternative:

1. The applicant shall install an 8-foot wooden fence to screen the system's base to the south.
2. Not less than 14 conifer and/or deciduous trees shall be planted along 8th Street (Section 530.170(b)(3)). The applicant is encouraged to install not less than 26 conifer and/or deciduous trees along the river bank to reduce the potential visual impact of the equipment from the river.
3. Staff to review final landscaping plan and site plan including equipment and fence elevations.

Attachments:

Statement of use
Zoning map
Plans
Photos