

Department of Community Planning and Economic Development – Planning Division

Variance Request
BZZ-4890

Date: August 19, 2010

Applicant: Mark Addicks and Tom Hoch

Address of Property: 2100 James Avenue South

Contact Person and Phone: Laurel Ulland, (612) – 874 1086

Planning Staff and Phone: Robert Clarksen, (612) 673-5877

Date Application Deemed Complete: July 16, 2010

End of 60 Day Decision Period: September 14, 2010

Ward: 7 **Neighborhood Organization:** Lowry Hill

Existing Zoning: R2 – Two Family Residential District, SH Shoreland Overlay District

Proposed Use: A single family residence

Variance: Laurel Ulland, on behalf of property co-owners Mark Addicks and Tom Hoch, has applied for a variance to permit development within 40 feet of the top of the steep slope to allow an addition to the existing front porch and portions of the habitable area of the home, alterations to the site, and the addition of an accessory building to the property at 2100 James Avenue South in the R2 Two-Family Residential Zoning District.

Applicable zoning code provisions: Chapter 525, Article IX Variances, Specifically Section 525.520(17) “to permit development in the SH Shoreland Overlay District on a steep slope or bluff, or within forty (40) feet of the top of a steep slope or bluff.”

Background: The applicant has applied for a variance to permit development within 40 feet of the top of the steep slope to permit a two story living space addition to the southwest side of the existing single family dwelling, construction of an additional accessory structure, removal of vegetation on the slope, and alteration of grade to add new retaining walls, walkways, arbors, and other landscaping features on and near the top of the slope at 2100 James Avenue South in the R2 Two-Family Residential Zoning District. The subject property is an irregularly shaped interior lot situated near the northeast corner of Lake of the Isles measuring approximately 250 x 96 feet at its greatest extent resulting in a parcel of land which is just over 21,000 square feet in area. The property has frontage on both Lake of the Isles Parkway on the west and James Avenue on the east side, and due to the two frontages the site is considered a through lot. According to the survey provided by the applicant, the existing home is approximately 200 feet from the

shoreline of the Lake. The existing structure was originally constructed in 1897 as a Single Family residence exhibiting a Dutch Colonial design. In 1926, a two story addition was built, and in 1931 after the consolidation of an adjacent property, a two stall garage and gardens were added. According to the applicant the property has retained this character since the 1930s.

The applicant proposes a two story living space addition that will add approximately 1,500 square feet of habitable floor area, as well as a single story addition to the existing open front porch that results in a wraparound connection to the expanded kitchen, and provides egress on the south side of the building. Additional alterations include minor additions at either side of a chimney along the north elevation of the house, and an egress window well to be installed off the game room in the basement (west elevation). Although the minor additions are within the restricted development area as described by the Shoreland Overlay District standards, they are not located in a required side yard, and result in a minimal expansion of the footprint or floor area of the building relative to those on the south elevation.

The Shoreland overlay regulations include the following definitions pertaining to development on or near the top of a slope:

Development. The erection, construction, reconstruction, relocation or enlargement of any structure except walkways, stairways, retaining walls, light poles, piers, docks and similar structures where accessory to a public park, unenclosed structures up to four hundred (400) square feet and not more than twenty (20) feet wide used for the storage of watercraft where accessory to a public park and if located at least ten (10) feet from the ordinary high water mark of any protected water, and stairways and seasonal docks not exceeding four (4) feet in width where accessory to any other use.

Steep slope. Land having an average slope of eighteen (18) percent or greater measured over a horizontal distance of fifty (50) feet or more.

Top of steep slope. The contour at which the slope ceases to be eighteen (18) percent or more.

The conditions of the site are such that the slope courses through the property at first parallel to Lake of the Isles Parkway in a southeasterly direction. However, in a location best described as near the middle of the house, the slope turns its course nearly due east from the lake towards James Avenue. The survey provided by the applicant provides few spot elevations for points off the property along the north property line making it difficult to determine the exact location of the top of the slope. Staff approximates the top of the slope is in the vicinity of the 891 contour just north of the home near the jog in the north lot line. In this area there is an existing retaining wall which was an obvious alteration to the natural grade of the slope behind the home. On the south side of the home, the top the slope appears to be near the 880 contour, the result being that the line indicating the top of the slope would nearly bisect the house from the north to south. Beyond the north property line, the top of the slope veers rapidly westward toward the lake. It appears that the majority of the home, especially that portion nearest the north property line, is on the steep slope. Furthermore, the majority of the landscaping on the subject site which occurs in the southern half of the lot is either on the slope or within 40 feet of the top of the slope, and is therefore regulated by the Shoreland Overlay District's standards for steep slope areas.

The site is a through lot with a second frontage along James Avenue which acts as the functional rear of the parcel. An existing 490 square foot detached accessory building is located approximately 20 feet from the James Avenue frontage, and within two feet of the north lot line of the subject property. The applicant intends to add a new accessory structure for storage of garden materials approximately 15 feet west of the existing garage. The proposed accessory structure will meet a 5 foot interior side yard requirement along the north property line, as well as the established setback line for structures on a through lot along James Avenue. A terrace and trellis structure will connect the two accessory buildings, which will be finished with complementary exterior materials as required by chapter 537 of the zoning code. The applicant located the new accessory structure such that front and side setbacks are met. However, the survey fails to indicate where the slope levels to less than 18% north of the subject property, thus complicating whether the proposed location of the accessory building meets the setback from the top of the steep slope according to the shoreland regulations. Staff believes a small portion of the proposed accessory structures are within 40 feet of the top of the steep slope. Nonetheless, these structures are over 50 feet east of the existing dwelling, far enough away from the slope so as not to represent a substantial concern. Therefore, regardless of location, staff believes the location of the proposed accessory structures is consistent with the intent of the shoreland regulations as they should pose no threat to the integrity of the slope.

In the Shoreland Overlay District a variance is required for development on a steep slope or within 40 feet of the top of a steep slope. As described above, the proposed addition to the south side of the home, including the proposed habitable area, the expanded open porch, and the majority of the proposed landscaping of the property are subject to the steep slope regulations, and therefore a variance is required to complete the project.

To apply for a variance to allow for development on or within 40 feet of a steep slope or bluff the following four items must be met:

- 1. Development must currently exist on the steep slope or within 40 feet of the top of a steep slope within 500 feet of the proposed development.*

Development currently exists within 40 feet of the top of the slope the subject property and the adjacent residences. The existing development of the regulated area on the subject property includes the principal structure (a single family dwelling) and two older retaining walls. The slope is currently heavily wooded on the applicant's property and on the adjacent properties to the north.

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

Although the western third of the site has a steep grade, the proposed addition to the principal structure will be located on relatively flat grade at the south side of the existing home. The additions to the north side are also on level grade due to an existing 8 foot retaining wall that creates a flat area near the north property line. The

applicant has provided a foundation and structural plan for the proposed additions which appear to provide adequate support for the proposed improvements.

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

The proposed development should not create any new or additional danger associated with falling rock, mud, uprooted trees or other materials.

4. *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 the surrounding physical contexts.*

Staff is not aware of any historic areas in the vicinity of the subject site. Staff is concerned the view of the developed slope from the protected water may not be consistent with the natural appearance of the slope as compared with adjacent properties to the north, and contrasted with those to the south. The property to the north currently reflects an undeveloped slope, while parcels to the south are landscaped and altered. The applicant proposes a connection to the parkway via the proposed walkway, which would otherwise be permitted in a required front yard.

The landscaping plan submitted by the applicant proposes a series of accessory developments on and within 40 feet of the top of the slope, including:

On the slope:

- 1) Stone pediments and an iron gate at the west lot line.
- 2) The repair of an existing retaining wall near the south property line.
- 3) Two rain gardens near the west side of the building to handle storm water.
- 4) Two stone planters (retaining walls) that provide the addition of new feature trees to be installed on the slope in front of the porch,
- 5) An irregular concrete walkway with 30" stone retaining walls and landings which connect the yard above the slope to Lake of the Isles Parkway.

Within 40 feet of the top of the slope:

- 6) A 22' diameter patio
- 7) A 9'6" tall arbor circling a portion of the patio,
- 8) A reflecting pond adjacent to the patio
- 9) Stone planter walls
- 10) A Stone barbeque feature
- 11) An additional slate walkway (one brick walkway exists) from the dwelling to the gardens in the south side yard,

Staff believes the landscape plan is consistent with the appearance of the properties south of the subject site along the Parkway, while it may not be consistent with those to the north as they retain a heavily wooded appearance. The slope is less severe in front of the adjacent property to the south (2115 Lake of the Isles Parkway) however the principal structure on this site is much closer to the Lake than that of the subject

property. Additionally, the majority of the natural vegetation along the slope the home to the south has been removed in favor of a 4 foot retaining wall along the parkway.

The shoreland regulations are intended to restrict developments that disrupt views of the slope from the lake or which fail to protect natural features such as vegetation. The applicant contends the developed slope will be consistent with these regulations. Staff is concerned about the proposed removal of vegetation and additional landscaping development in the proposed landscape plan. The plan describes the retention of trees described as “significant” but little further detail is provided. Staff believes the landscape plan and related improvements could be revised to provide greater detail regarding the extent of the alterations to the slope. A revised plan should be limited to those developments on or within 40 feet of the top of the slope which better demonstrate consistency with shoreland regulations. A revised plan that restrains the extent of development, especially the proposed improvements within 40 feet of the top of the slope, will provide reasonable access to the public right of way along Lake of the Isles Parkway that is more consistent with the surrounding context, thereby mitigating any negative impacts on views from the protected water or the surrounding context.

Staff received a copy of correspondence from David Weinstein of the Lowry Hill Neighborhood Association in the form of an email to the applicant. The message indicated that the neighborhoods’ Zoning and Planning Committee did not have any stated objections to the application for the variance.

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 applicant is seeking a variance to allow for development within 40 feet of the top of a steep slope in the Shoreland (SH) Overlay District. The subject property is within the R2, Two Family Residential zoning district. Staff estimated the location of the top of the steep slope based on the survey information provided by the applicant. The Shoreland district standards require development on the property be spaced 40 feet from the top of a steep slope as determined by the Zoning Administrator. Strict adherence to the regulations would not permit the proposed addition(s), or the majority of the site alterations shown on the landscape plan, nor would they allow the construction of the existing dwelling, as most of the existing house appears to be located on the steep slope or in the regulated area within 40 feet of this line, which is effectively an additional setback.

The impact of the shoreland regulations substantially decreases the buildable area of the subject property which represents the undue hardship in this case. The base zoning regulations affecting the property increase the front setback to that established along Lake of the Isles Parkway from the minimum 20’ to approximately 47’. The additional setback

required by the shoreland regulations from the top of the steep slope reduce the buildable area on the site an additional 120 feet from the front lot line at Lake of the Isles Parkway, or to approximately 30% of the buildable area were it not for application of the shoreland standards. The regulations result in a condition where the buildable area is 30 feet from the rear of the existing dwelling. Community Planning and Economic Development Staff believe this creates an unusually severe setback and results in an undue hardship. Staff does not believe any reasonable alternatives exist that would permit the applicant to expand the principal structure on the subject property. If the required setback were limited to that established by the adjacent properties, the proposed addition would be permitted as proposed.

In terms of floor area ratio, the zoning code allows principal and accessory buildings to combine to cover up to 50 percent of a standard size lot, or a maximum floor area ratio of 0.5. The subject property is roughly 4 times the size of a standard city lot at 21,156 square feet. Given the size of the parcel, a dwelling constructed on the site may in excess of 10,000 square feet of floor area and still meet these regulations. The existing house is approximately 4,500 square feet, and the applicant proposes a 1,500 square foot addition. The proposed home will attain a gross floor area of approximately 6,000 square feet and a floor area ratio near 30% that meets the standards of the zoning code. Reasonable use of the property would typically allow an addition which complies with standard setbacks, height, gross floor area, and lot coverage restrictions in the zoning ordinance, as this project does. However, there is no addition that could possibly comply with the shoreland overlay standards because of the location of the steep slope. Staff believes the proposed addition to the structure meets the intent of the shoreland regulations regarding development near a slope, as the property cannot be put to a reasonable use under the conditions allowed by those regulations, and strict adherence may cause an undue hardship.

However, staff is concerned the proposed landscaping plan includes several changes which are located within 40 feet of the top of the steep slope that may not be consistent with the intent of the regulations of the Shoreland Overlay District. Specifically, these elements include the proposed reflecting pond, retaining walls surrounding the pond, a patio measuring 22' diameter, a 9'6" tall arbor surrounding portions of the patio, new retaining walls on the slope itself, and curvilinear decorative retaining walls measuring up to 30" in height flanking the proposed walkway. A means of access from the yard at the top of the slope which connects the site to Lake of the Isles Parkway is reasonable. The zoning code permits a walkway and stairs up to 4 feet in width in this area. The proposed stair and walkway follows a meandering path, and the design requires additional retaining wall structures and landings. Staff believes this design is more disruptive to the existing slope than a simpler, direct linear path which reflects a design choice which is unrelated to the condition of the slope. The landscape plan also appears to indicate a substantial amount of the existing vegetation on the slope would be removed. Staff is concerned that the applicant has not documented a legitimate hardship regarding these specific improvements to the site.

In granting the variance, the City must ensure that improvements that do not demonstrate an undue hardship are located out of the regulated area near the top of the slope. Careful consideration of the location of these amenities in a revised site/landscaping plan may allow the applicant an opportunity to retain the natural character of an undeveloped slope to a

greater extent, provide a reasonable means of access from the top of the slope to Lake of the Isles Parkway, and accommodate landscaping amenities in a location on the property which does not require a variance. Staff believes a more restrained approach to landscaping the area on and within 40 feet of the top of the steep slope would provide for reasonable use of the property that is more consistent with the applicable standards of the shoreland overlay district.

- 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.**

The conditions upon which the variance is requested regarding the addition to the dwelling are unique to the parcel of land as the location of the existing dwelling on the subject property is within 40 feet from the top of the steep slope. As determined by the Zoning Administrator, while the majority of the existing home is on the steep slope, and all of the proposed additions appear to be within 40 feet of the top of the slope. No person with any interest in the property is responsible for the location of the existing dwelling or the other unique natural characteristics of the current site. It would be virtually impossible to construct any addition to the existing dwelling on this property without first obtaining a variance given the current regulations, which effectively eliminate 60-70 percent of the buildable area of the subject property.

Although constructing an addition to the existing dwelling is an action of the current property owners, denying the variance and forbidding any additions to the existing dwelling constitutes an undue hardship. The site and elevation plans provided by the applicant demonstrate the proposed improvements to the existing home meet or exceed the standard regulations of the zoning ordinance in terms of height, bulk, gross floor area, front, side, and rear required yards, lot coverage ratios and impervious surface requirements. In order to obtain any additional living space and meet the requirement for a setback from the top of the steep slope, the applicant would have to relocate the existing dwelling approximately 40-50 feet to the east. Relocating the structure in this manner would likely result in an inability to meet the established setback requirements at the functional rear of the property due to the through lot condition of the site, further demonstrating the hardship in this case.

Staff believes a simple means of access from the yard at the top of the slope which connects the site to Lake of the Isles Parkway is reasonable. The zoning code permits a walkway and stairs up to 4 feet in width in this area. However, staff is concerned several of the proposed elements of the landscaping plan reflect the applicant's desire to develop the area within 40 feet of the top of the steep slope in a manner inconsistent with the regulations of the Shoreland Overlay District. Specifically, these items include a reflecting pond, retaining walls surrounding the pond, a patio measuring 22' diameter, a 9'6" tall arbor surrounding part of the patio, decorative retaining walls to frame the feature trees on the slope, and additional curvilinear retaining walls flanking the proposed walkway, as well as a substantial reduction of the existing vegetation on the slope. Staff is concerned the cumulative effect of

these modifications to the site could increase the visibility of the improvements to the subject property from the protected water, which is inconsistent with Shoreland Overlay District regulations. Regarding these aspects of the project specifically, staff is concerned that the applicant has failed to document a legitimate hardship. In granting the variance, the City must ensure the proposed improvements in the regulated area near the top of the slope are limited to developments for which there is no other reasonable alternative. A revised landscaping plan that better demonstrates consideration of the natural character of an undeveloped slope may provide the applicant reasonable access from above the slope to Lake of the Isles Parkway, and accommodate additional amenities in a location where a variance would not be required. Specifically, the proposed plan does not indicate detail regarding the type and number of trees or shrubs removed or replaced as a result of the project. Staff believes a more restrained approach to landscaping the area within 40 feet of the top of the steep slope would provide a reasonable use of the property that is more consistent with the applicable standards of the shoreland overlay district.

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 the ordinance is to preserve the character of the City's natural resources within the built urban environment through efforts to control erosion and protect views to and from protected waters. As the existing dwelling is already located at the top of the slope in plain view from across the lake, the City must consider how to mitigate further negative impacts. The addition to the existing dwelling should not result in further negative impacts on views from Lake of the Isles, so long as the landscaping alterations to the site are muted as described in the findings above. In this case, the proposed addition to the existing home will minimally alter the experience of property owners near the north end of the lake as it will be mostly hidden by the existing vegetation which reaches up off the slope in front of the property. In this manner, granting the variance for the addition(s) to the dwelling maintains the 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.

However, staff is concerned the requested variances would permit development of the slope that are not consistent with the spirit and intent of the ordinance. Access from the dwelling to Lake of the Isles Parkway via a 4 foot walkway and stairs is a reasonable use of the property which would otherwise be permitted by the zoning code in this area. Removal of vegetation that reduces the stability of the slope, or the ability of the soil to retain and filter stormwater on the site may have harmful runoff impacts on the protect water. The proposed landscape plan does not provide adequate details regarding the type and number of trees and shrubs that will be removed for construction, or how new vegetation will replaced that which is lost to ensure screening of the proposed development from view of Lake of the Isles as required by the zoning code. Impacts that reduce the ability of others to use or enjoy the lake as a public amenity should be discouraged where possible. Relocation of these aspects of the proposed development away from the top of the steep slope will mitigate negative impacts and ensure compliance with the shoreland ordinance.

- 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 proposed project should not result in any additional street congestion, danger of fire, or negative impacts on public welfare or safety.

Additional Findings for the Variance per the Shoreland Overlay District:

To apply for a variance to allow for development on or within 40 feet of a steep slope or bluff the following three items must be met:

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

The applicant has submitted a soil erosion control permit to the Public Works department. The majority of the existing home and the additions are located near a level area at the top of the slope. The slope itself should undergo minimal disruptions due to the location of the proposed development in this area, in part because of previous alterations to the site, and natural conditions above the 880' contour. CPED staff does not anticipate any soil erosion or other pollution related to the construction of the buildings proposed in this application (addition to dwelling/ garden shed) provided the project complies with the Metropolitan Council's Urban Small Sites Best Management Practice Manual. As of the writing of this report, staff is awaiting comment from public works staff regarding any concerns with the erosion control permit.

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

The surrounding properties consist primarily of large single-family dwellings located on large, irregular shaped parcels similar to the development of the subject site. The Department of Community Planning and Economic Development – Planning Division believes the proposed addition to the home will not impact the view from the protected waters in a significant negative manner as the existing dwelling is already plainly visible from the Lake.

However, staff is concerned the proposed development of the slope may alter the natural character of the site in a way that negatively impacts the view from the protected water. As vegetation is removed, existing and proposed developments on the property may come into casual view from the lake. A connection of the yard to Lake of the Isles Parkway via a walkway and stairs that involves minimal alteration of the slope or existing vegetation is reasonable. The zoning code permits a walkway and stairs up to 4 feet in width in this area.

Staff is concerned the extent of the proposed landscaping plan and associated developments within 40 feet of the top of the steep slope may be inconsistent with Shoreland development regulations resulting in negative impacts upon the use and enjoyment of surrounding properties. Chapter 551.520 of the zoning code prohibits the removal of vegetation on or

within forty feet of the top of steep slopes except in certain circumstances, provided vegetation shall be restored after any construction project to eliminate surface runoff and provide appropriate screening. A copy of the text of the shoreland ordinance is attached. A revised landscape plan should provide details regarding the type and number of trees and shrubs utilized to ensure screening of the proposed development along the slope from view of Lake of the Isles.

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

The proposed development should have no impact on watercraft usage of Lake of the Isles.

RECOMMENDATIONS

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 Board of Adjustment adopt the above findings and **approve** the variance to permit the following developments within 40 feet of the top of the steep slope:

- 1) Additions to the existing front porch and portions of the habitable area of the home along the north and south elevation of the existing building,
- 2) A structure, consisting of a four (4) foot wide walkway, stairs, landings, and retaining walls, which connects the yard at the top of the slope to Lake of the Isles Parkway, provided the entire structure does not exceed a maximum width of five (5) feet, and the structure utilizes the shortest route possible in order to cause minimal intrusion upon the existing slope.
- 3) The repair of an existing retaining wall near the south property line.
- 4) Two rain gardens near the west side of the building to handle storm water.
- 5) The addition of slate walkway not to exceed four feet in width connecting the dwelling to the gardens in the south side yard,
- 6) An iron gate and stone pediment along the west lot line, provided the standards of the fence height regulations in chapter 535 of the zoning code are met.
- 7) A Stone barbeque feature located within five feet of the proposed addition to the south side of the existing dwelling
- 8) An accessory structure, trellis, patio, and facilities for storage of trash and recycling facilities.

at 2100 James Avenue South in the R2 Two-Family Residential Zoning District, and the SH Shoreland Overlay District, subject to the following conditions:

1. Review and approval of final site and elevation plans by the Department of Community Planning and Economic Development – Planning Division.
2. The applicant shall obtain an erosion control permit from the Public Works department prior to issuance of a building permit.

3. The applicant shall submit an application for administrative review of the proposed accessory structure, trellis, terrace, and trash/recycling area as described in chapter 537.60 (b) of the zoning code prior to obtaining a building permit.

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 Board of Adjustment adopt the above findings and **deny** the variance to permit the following developments within 40 feet of the top of the steep slope:

- 1) Two stone planters (retaining walls) that permit the addition of new feature trees to be installed on the steep slope between the existing front porch and the front property line.
- 2) A patio located at the top of the steep slope measuring 22 feet in diameter.
- 3) A 9’6” tall arbor circling the diameter of the patio at the top of the steep slope.
- 4) A reflecting pond measuring 16 feet in diameter adjacent to the patio at the top of the steep slope.

at 2100 James Avenue South in the R2 Two-Family Residential Zoning District, and the SH Shoreland Overlay District.

Attachments:

- 1) Written descriptions and findings submitted by the applicant
- 2) Correspondence from neighborhood association
- 3) Copy of e-mail sent to neighborhood organizations and CM
- 4) Zoning map
- 5) Site plan indicating the top of the steep slope as determined by the Zoning Administrator.
- 6) Building elevations
- 7) Floor plans
- 8) Photographs
- 9) Aerials
- 10) Full text of Chapter 551 of the zoning ordinance.