

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

Variance Request

BZZ-4778

**Public Hearing:** June 17, 2010

**Applicant:** Cori Kuechenmeister of Shea Incorporated, on behalf of Henry & Herman's Hidden Hideaway LLC

**Address of Property:** 1900 and 1924 Marshall Street NE

**Project Name:** Psycho Suzi's Deck and Patio Expansion

**Contact Person and Phone:** Cori Kuechenmeister, (612) 612-919-7517

**Planning Staff and Phone:** Jacob Steen, (612) 673-2264

**Date Application Deemed Complete:** May 17, 2010

**End of 60 Day Decision Period:** July 16, 2010

**Ward: 3      Neighborhood Organization:** Bottineau Neighborhood Association

**Existing Zoning:** C2 Neighborhood Corridor Commercial District, MR Mississippi River Critical Area Overlay, and SH Shoreland Overlay Districts

**Proposed Use:** The addition of a 6,800 square foot deck/patio and refuse storage enclosure to a restaurant with general entertainment.

**Proposed Variance:** A variance to allow for a deck addition and refuse storage enclosure within 40 feet of the top of a steep slope, and within 50 feet of the ordinary high water mark at 1900 Marshall Street NE in the C2 Neighborhood Corridor Commercial District, MR Mississippi River Critical Area Overlay, and SH Shoreland Overlay Districts.

**Zoning code section authorizing the requested variance:** 525.520 (17), 525.520 (18)

**Background:** The subject property consists of a two adjacent parcels with a combined lot area of 44,789 square feet. The structure is a two-story restaurant with a gross floor area of 14,850 square feet, approximately 7,180 square feet dedicated to customer area. The parcel is currently accessible via four existing curb cuts along Marshall Street NE. To the north of the property is Gluek Park, which is owned by the Minneapolis Park and Recreational Board; to the south is an industrial property; and along the western edge of the site is the Mississippi River. The rear of the structure opens to a large existing patio built along the top of the existing bluff which slopes downward towards the River. The bluff averages an approximately 65% slope and drops 18' from the existing patio and parking lot to a beach area along the

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water. The remainder of the site is covered by an asphalt parking lot which runs from the top of the bluff to the edge of the sidewalk with virtually no landscaping.

The applicant is proposing to replace the existing patio with a 6,800 square foot deck and ground level patio built upon the existing bituminous surface parking area to the west of the structure. To comply with the zoning ordinance, the applicant is also constructing an enclosure where the existing dumpsters are currently located. To minimize soil disturbance near the bluff, the applicant is proposing to remove bituminous surface only in the areas required for footings or landscaping. The deck will run approximately 150' adjacent to the bluff, varying in width from 10' to 55'. The height of the deck will vary from 1' to 2' above grade and provide a six foot privacy fence on both the north and south ends. Along the western edge, adjacent to the river, a 6' wire-cable guard rail will provide protection to deck patrons while minimizing the visual impacts from the river. As part of this project, although not a trigger for a variance, the applicant is proposing a number of site improvements including tree islands, retention swales, and a 10' landscaped yard along Marshall, all as part of a comprehensive storm water management plan. The proposed improvements will result in a net reduction of impervious surface coverage of approximately 4,200 square feet for the 44,789 site.

In the Shoreland Overlay and the Mississippi River Critical Area Overlay Districts a variance is required for development on a steep slope or within 40 feet of the top of a steep slope, or within 50 feet from the ordinary high water mark. The proposed deck and trash enclosure are at the top of a steep slope, within 50 feet of the ordinary high water mark and require a variance.

Development on or within 40 feet of a steep slope or bluff, or within 50 feet from the ordinary high water mark of any protected water must comply with the following criteria:

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.*

Approximately a third of the entire site currently exists either on or within 40 feet of the top of a steep slope along the Mississippi River. This includes a portion of the parking lot, a portion of the restaurant structure, the existing patio, retaining walls, and landscaping, which are all classified as development.

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

The applicant has submitted documentation from a Professional Engineer from Ericksen Roed & Associates to confirm that the applicant has multiple options for foundation construction that will be adequate for the slope condition and type. These options include both helical and traditional pier footings, either of which is suitable for the proposed project.

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

The applicant has provided an erosion control and storm water management plan developed by Master Engineering. The erosion control plan includes a silt fence to mitigate the effects of runoff towards the river during construction. The existing slope will only be disturbed minimally

and the existing asphalt surface will be disturbed only where necessary for deck footings and storm water management improvements.

*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.*

The proposed patio expansion and trash enclosure will be located in an area currently used for vehicle parking and an existing patio. The expanded patio has been designed to be less visible than the vehicles that currently park along the top of the bluff. This is due to the low profile design of the deck, which is constructed to rise only one to two feet above grade with an open wire-cable guard rail along the side nearest the river. Due to the height of the slope and the amount of existing vegetation on site, large portions of the site are screened from view, depending from the vantage point along the river.

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

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

The applicant is seeking a variance to allow development on or within 40 feet of the top of a steep slope and within 50 feet of the ordinary high water mark in the Shoreland Overlay and the Mississippi River Critical Area Overlay Districts. Currently, a portion of the restaurant, the parking lot, an asphalt pathway, the existing deck and patio, and retaining walls all exist within 40 feet of the top of the slope, and ranging from 25 to 35 feet from the ordinary high water mark. The location of existing dumpster storage is also currently within 40 feet of the top of the steep slope. The applicant is not proposing to relocate the trash storage area, only to enclose and screen it to come into compliance with the zoning ordinance. Under the requirements of the Shoreland Overlay and Mississippi River Critical Area Districts, any development or improvements to the site, including the construction, reconstruction, relocation or enlargement of any of the structures that already exist within 40 feet of the top of a steep slope, or within 50 feet of the ordinary high water mark would be prohibited without a variance.

Additionally, expanding the deck and patio elsewhere on site or relocating the location for the refuse storage would result in an increased reduction of parking compared to the proposed plan, forcing the site to become out of compliance with the City of Minneapolis off-street parking regulations and resulting in a need for a parking variance. Staff believes that constructing the proposed deck expansion along with the refuse storage enclosure, which complies with all other zoning regulations, is a reasonable use of the property.

- 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 circumstances are unique to the parcel of land and have not been created by any persons presently having an interest in the property. The existing patio, a portion of the building and many other site improvements are already located within 40 feet of the top of the steep slope and have been so since the structure was constructed in 1968. The proposed deck and patio are to be constructed on top of the existing bituminous parking area that currently exists within 25 to 35 feet from the ordinary high water mark. The refuse storage enclosure is located in the same location that the Gabby's dumpsters are currently kept but the enclosure is required by Planning Staff to comply with the zoning ordinance. This parcel is particularly unique in that any additional development that would take place on the entire western portion of the site, even those improvements required for compliance with the zoning ordinance, would require a variance.

**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 minimize the visual impact of development from protected waterways and reduce the effects of erosion and runoff. The applicant has demonstrated that the necessary precautions will be taken to control erosion during the construction of the site and many of the site improvements proposed are intended to improve storm water management and result in an increase in the quality of runoff that reaches the Mississippi River.

The proposed deck and patio will be constructed in the location of an existing parking lot, which is not currently screened. The new deck and patio will be only one to two feet in height and the railing will be designed with wire cable to reduce visual impact. The applicant is proposing a 12 foot by 22 foot canopy that is integrated into the deck structure. The canopy is open on all sides and will be constructed of wood and corrugated metal and has been designed to be incorporated into the overall aesthetic plan to reduce visual impact from the river. The applicant is not currently proposing any temporary structures, such as umbrellas, to offer shading to patrons on the deck and patio. However, Planning Staff believes that the umbrellas currently in use by Gabby's are the most visible aspect of the patio when viewed from the river. Staff proposes that, as a condition of approval, all temporary canopies or umbrellas erected in the future are constructed of materials that reduce visual impact from the river, such as the thatched "tiki style" umbrellas that are used at the current Psycho Suzi's site.

The trash enclosure is located in the same location that dumpsters are currently kept but will be screened to come into compliance with the zoning ordinance. The slope along the western edge of the parcel, below the proposed deck and patio, is partially wooded which will reduce the visual impact from the Mississippi River. The few parking spaces that will remain near the slope will be stepped back from the slope by approximately ten feet from the current location and landscaping will be added to increase storm water management and screen the view of vehicles from the River. Staff believes that the granting of this variance would be in keeping with the spirit and intent of the ordinance and would not negatively alter the essential character of the area.

This parcel is included in the geographic area addressed in the City of Minneapolis' Above the Falls Plan adopted in 2000. The Above the Falls plan includes the following language regarding the area from Gluek Park to the Burlington Northern Bridge:

“In the middle of the expanded park, Gabby’s Saloon and Eatery brings hundreds of people to the riverbank each week. The enlarged patio fills at sunset, and nearby steps lead patrons down to the banks of the Mississippi. Frequently boaters dock and climb the stairs to dine. South of Gabby’s the river can be experienced on either the formal trails at the upper level or along the sand bank at water’s edge.”

Additionally, the concept map from the Parks and Urban Design Plan section of the Above the Falls plan shows a potential future bike and pedestrian path crossing this site along the eastern edge of the site near Marshall. Presumably this alignment was chosen because of the potential complications for a trail presented by grade issues along the northern portion of the site, where the subject site abuts Gluek Park. The sand bank at the water’s edge will not be disturbed as part of this project and will continue to remain undeveloped for access when water levels allow. The granting of this variance would not conflict with the Above the Falls plan and would be keeping with the intent and spirit of the adopted policy language.

- 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 plans have been through the City of Minneapolis' Preliminary Development Review (PDR) process for the site and have been reviewed for safety and compliance by the Fire Department and Public works in regards to traffic, street design, and right of way issues. The entire building, including the patio and deck areas will be designed to meet the most current building and fire codes. The applicant is also proposing to close two of the site’s four existing curb cuts to improve traffic flow in the immediate vicinity along Marshall Street. Staff believes that granting the variance to allow the proposed development within 40 feet of the top of a steep slope and within 50 feet of the ordinary high water mark would likely result in a decrease in congestion of the public streets, reduce the danger of fire, and improve public welfare and public safety.

**Findings required by the Minneapolis Zoning Code for development in the Shoreland Overlay District:**

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

Staff believes that the proposed project will prevent soil erosion and other possible pollution during construction by utilizing the described soil erosion mitigation measures. The existing bituminous surface near the top of the slope will only be disturbed when it is necessary to accommodate either the footings for the decking or storm water management enhancements. The proposed expansion is part of a larger package of proposed improvements that are intended to dramatically increase storm water management on site and minimize the disturbance of the soils and vegetation along the slope leading to the river.

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

Staff believes the proposed development will permit limited site lines from the Mississippi River. The proposed plan is designed to screen the deck and patio area from the adjacent properties to the north and south. Planning staff believes the proposed project has been adequately designed to be no more visible than the vehicles that currently park along the slope and the existing patio. Where vehicles continue to park near the slope, they will be stepped back ten feet from the current parking lot edge to accommodate additional landscaping. The refuse storage enclosure will be constructed in approximately the same location as dumpsters are currently stored but will be less conspicuous due to the wooden screening. The slope leading to the river is also wooded and helps to limit the views of the subject property from the river. Staff believes that the condition of approval regarding the use of visually compatible umbrellas or canopies on the patio in the future will help to ensure that the project complies with this finding.

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

The subject site has an existing foot path leading from the narrow rocky beach along the river's edge up to the parking lot. This path will be able to sustain the current minimal foot traffic. There are no alterations proposed to the existing path as part of the existing project. If the applicant were to propose changes in or near the river to encourage watercraft, additional land use applications would be required at that time.

**Recommendation of the Department of Community Planning and Economic Development - Planning Division:**

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and approve a variance to allow for a deck addition and refuse storage enclosure within 40 feet of the top of a steep slope, and within 50 feet of the ordinary high water mark at 1900 Marshall Street NE in the C2 Neighborhood Corridor Commercial District, MR Mississippi River Critical Area Overlay, and SH Shoreland Overlay Districts with the following conditions:

1. CPED-Planning review and approval of the final site plan, elevations and landscaping plans.
2. All canopies, umbrellas, or similar temporary structures used on the deck reduce visual impact from the river, including but not limited to the thatched "tiki style" umbrellas currently used.

**Attachments:**

- 1) Written descriptions and findings submitted by the applicant
- 2) Copy of e-mail sent to neighborhood organizations and CM
- 3) Zoning map
- 4) Site Plan
- 5) Floor plans
- 6) Building elevations
- 7) Correspondence from Engineer
- 8) Photographs