

**Department of Community Planning and Economic Development – Planning Division**  
Conditional Use Permit, Variance  
BZZ-3171

**Date:** August 28, 2006

**Applicant:** Ron Emert

**Address of Property:** 5637 Clinton Ave S

**Project Name:** 5637 Clinton Ave S

**Contact Person and Phone:** Paul Kothrade (763) 522-2118

**Planning Staff and Phone:** Tara Beard, (612) 673-2351

**Date Application Deemed Complete:** July 31, 2006

**End of 60-Day Decision Period:** September 29, 2006

**End of 120-Day Decision Period:** Not applicable

**Ward:** 11      **Neighborhood Organization:** Hale, Paige, Diamond Lake Neighborhood Association

**Existing Zoning:** R1 Single Family District, SH Shoreland Overlay District

**Zoning Plate Number:** 37

**Lot area:** 17,732 square feet

**Proposed Use:** Add a rear deck to a single family home

**Concurrent Review:**

- A Conditional use Permit to allow development within 40 feet of the top of a steep slope in the Shoreland Overlay District
- A variance to allow development within 40 feet of a steep slope in the Shoreland Overlay District

**Applicable zoning code provisions:** Chapter 525: Article VII Conditional Use Permits; Article IX Variances – Chapter 546: Residential District – Chapter 551: Article VI SH Shoreland Overlay District.

**Background:** Paul Kothrade, on behalf of Ron Emert, has submitted a request to build a deck off the rear of the house within 40 feet of a steep slope at the property at 5637 Clinton Ave S. The property is adjacent to Diamond Lake, and is therefore in the Shoreland Overlay District. The slope of the site is such that the proposed deck is within 40 feet of the top of a steep slope.

The house is a rambler with a walk out basement in the rear due to a slope that continues down to the body of water to the west, Diamond Lake. The proposed deck is 31 feet by 12 feet and is not in any required yard setbacks. The deck would be off the main floor of the house, and 8 feet high from the lower level walk out with stairs down to a brick paved patio underneath. The deck would be made with a combination of treated lumber and red cedar.

At this time staff has received no written comments from the Hale, Paige, Diamond Lake Neighborhood Association. Staff has received one letter of support from a neighbor that is attached to this report.

### **CONDITIONAL USE PERMIT -**

#### **Required Findings for the Conditional Use Permit:**

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

There is no evidence that the construction of a rear deck will adversely affect the public health, safety, comfort or general welfare. The deck would not be visible from the public right of way.

- 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.**

There is no indication that the proposed location and size of the new deck would negatively affect the use and enjoyment of other property in the vicinity. The deck would not be located in any required yards and the slope between the proposed deck and Diamond Lake should not be negatively impacted.

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

Utilities, access roads, and other measures would not be affected by the proposed deck.

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

The construction of a new deck would have no impact on traffic in the public streets.

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

The proposed development does not appear to conflict with any policies of *The Minneapolis Plan*.

According to principles and polices outlined in *The Minneapolis Plan*, the following apply to this proposal:

*The Minneapolis Plan*, Chapter 7.5 states: “Minneapolis will protect and sustain its water resources.” This section includes the implementation step to “preserve and restore wetlands for their irreplaceable contributions to water quality, control of floodwater rates and volumes, wildlife habitat and aesthetic purposes.” Review of the applicant’s proposed minor addition to the home is necessary to ensure the protection of the neighboring steep slope and water body: Diamond Lake. Because of the distance from the new construction to the lake, the presence of native vegetation to absorb runoff between the structure the lake, the fact that a large portion of the slope toward the lake is not steep, and the small scale of the addition, staff does not feel that this project would negatively impact the water quality, control of floodwater rates and volumes, wildlife habitat and aesthetic purpose of Diamond Lake and its steep shoreline.

**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.**

In addition to the Conditional Use Permit, the applicant must obtain a variance to allow construction within 40 feet of a steep slope to be in full compliance.

**Additional Findings for the Conditional Use Permit per the Shoreland Overlay District:**

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

Soil erosion on the site is and will continue to be protected by landscaping. The proposed additions occur more than 200 feet from the lake shore. The proposed addition is located within 40 feet of a steep slope as illustrated in attachment 5.

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

Because of the distance from the lake and the extent of the vegetation between the house and the lake, staff does not expect the new deck to be visible from the lake.

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

The proposed deck should have no impact on the types, uses, and numbers of watercraft that occupy the Lake.

**VARIANCE – 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.**

**Findings Required by the Minneapolis Zoning Code for the Proposed Variance:**

**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 vast majority of the site is within 40 feet of the top of a steep slope, and no expansion of the house could occur without the need for this variance. A rear deck off a single family home 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 steep slope conditions on the property were not created by any persons having an interest in the property. A steep slope is not uncommon to properties adjacent to Diamond Lake.

- 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 spirit and the intent of the ordinance are to protect vulnerable watersheds and steep slopes. The proposed project does not negatively impact Diamond Lake or the steep slope leading to it from the property. The granting of the variance will therefore be in keeping with 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.

- 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 will have no impact on street congestion, danger of fire, or public welfare and safety.

### **RECOMMENDATION:**

#### **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 the building of a rear deck within 40 feet of the top of a steep slope at 5637 Clinton Ave S, subject to the following condition:

1. As required by Chapter 551.490 (1), soil erosion or other possible pollution of public water, both during and after construction, will be prevented.

#### **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 and City Council adopt the above findings and **approve** the variance to allow development within 40 feet of the top of a steep slope at 5637 Clinton Ave S.

**Attachments:**

1. Statement of use
2. Findings
3. Correspondence
4. Site Plan, Floor Plans, Elevations, & Zoning map
5. Contour Map
6. Photos