Department of Community Planning and Economic Development—Planning Division
Variances and a Conditional Use Permit, BZZ-2741

Hearing Date: 1/9/06

Date Application Deemed Complete: 11/18/05

End of 60-Day Decision Period: 1/17/06

End of Second 60-Day Period: Extended by a letter dated 12/8/05 to no later than 3/18/06.

Applicant: Robert Levine, 1300 Mount Curve Ave., Mpls., MN 55403, 612-377-1300

Address of Property: 1300 Mount Curve Ave., Mpls., MN 55403

Contact Person and Phone: Kevin Busch, 2402 University Ave., Suite 501, St. Paul, MN 55114, 651-645-6675

Staff Contact Person and Phone: J. Michael Orange, Principal Planner. Phone: 612-673-2347; facsimile: 673-2728; TDD: 673-2157; e-mail: michael.orange@ci.minneapolis.mn.us

Ward: 7 **Neighborhood Organization:** Lowry Hill Residents, Inc.

Existing Zoning:
- R2, Two-family District
- Shoreland Overlay District

Zoning Plate Number: 18

Proposed Use: Application by Robert Levine to construct a 191 sq. ft. cabana as an accessory structure to be built at 1300 Mt. Curve Ave.

Prior approvals: The Minneapolis Heritage Preservation Commission (HPC) approved the proposed cabana and other proposed improvements and additions on 10/25/05 (Attachment 7)

Concurrent Review:
- Variance to increase the maximum permitted area of accessory structures
- Variance and conditional use permit to allow development within 40 feet of the top of a steep slope or bluff.

Applicable zoning code provisions:
- **Conditional use permit:** Chapter 551.470 (2) requires a conditional use permit for development that is within the Shoreland Overlay District and located within 40 feet of the top of a bluff or steep slope.
- **Variances:**

Attention: If you want help translating this information, call - **Hmong** - Ceeb toom. Yog koj xav tau kev pab txhais cov xov no rau koj dawb, hu 612-673-2800; **Spanish** - Atención. Si desea recibir asistencia gratuita para traducir esta información, llama 612-673-2700; **Somali** - Ogow. Haddii aad dooneyso in lagaa kaalmeeyo tarjamadda macluumaadkani oo lacag la' aan wac 612-673-3500

- The Zoning Code at 551.490(b)(1) requires a variance for development that is within the Shoreland Overlay District and located within 40 feet of the top of a bluff or steep slope per 525.420 (17).
- Since the existing 2,958 sq. ft. garage exceeds the 1,000 sq. ft. limit in the Zoning Code for accessory structures, the proposed 191 sq. ft. cabana requires a variance to increase the maximum permitted area of accessory structures[1] per 525.420 (3).

BACKGROUND

The applicant provided the following project description:

> The existing home was built on the property in 1903. The home is listed on the National Historic Register and is designated by the Minneapolis Heritage Commission as a Historic Home. The proposed building project includes a new deck which will extend from the west side of the house on the main level of the house. Extending west from the southwest corner of the house is a new retaining wall which will replace the original retaining wall that is in poor condition. The existing retaining wall and steps have been inching their way down the bluff for many years. The final components of the project include a residential sized pool (22 x 38) and a related cabana to house a kitchenette and restroom.

The site slopes steeply down to the northwest and the location of the cabana is within 40 ft. of the top of this steep slope but still on property that currently has pavers and retaining walls. This location triggered the need for the conditional use permit and one of the variances listed above.

The house included a horse barn located behind the house and below the main level of the house. There is a landscaped terrace on top of this structure. It is now used as a garage and is considered an accessory structure. It is 51 ft. X 58 ft. (2,958 sq. ft.) This existing accessory structure far exceeds the 1,000 sq. ft. limit in the Zoning Code for accessory structures. As such, this horse barn would eliminate the possibility for other accessory structures on the site unless the applicant obtains the subject variance. The Minneapolis HPC approved the proposed cabana and other proposed improvements and additions on 10/25/05 (Attachment 7).

Neighborhood response: Staff have received no response from the neighborhood at this time. The neighborhood group is expected to review the project at its 1/4/06 meeting.

<u>CONDITIONAL USE PERMIT in the SHORELAND OVERLAY DISTRICT</u>

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[1] 537.60. Maximum floor area. (a) *In general.* The floor area of any accessory structure shall be included in the total allowable floor area permitted on the zoning lot.
(b) *Accessory uses and structures located in the residence and OR1 Districts.*
(1) *Single and two-family dwellings.* The maximum floor area of all detached accessory structures, and any attached accessory use designed or intended to be used for the parking of vehicles, shall not exceed six hundred seventy-six (676) square feet or ten (10) percent of the lot area, whichever is greater, not to exceed one thousand (1,000) square feet. Detached accessory structures greater than six hundred seventy-six (676) square feet in area shall utilize primary exterior materials that match the primary exterior materials of the principal structure and the roof pitch shall match the roof pitch of the principal structure.

Findings as required by the Minneapolis Zoning Code for the Conditional Use Permit:

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 applicant submitted the following information: "All components of the project are to be built on private land and not open or available to the general public. The conditional use would allow construction of a retaining wall, deck, pool, and cabana on the bluff top adjacent to the existing house. (The existing house and horse barn were built on the bluff originally.) This new construction is replacing existing construction which has deteriorated over many years. The existing construction included a retaining wall, trellis, and stairs. The trellis had been removed years ago but the retaining wall and stairs remain – they are in poor shape – they have eroded, cracked and been moved from there original location. We believe the new construction will help stabilize the bluff top and prevent future erosion or movement of the bluff."

   Large single family residences on large lots and more recently built town homes are the predominant land use in the area. Staff concur with the applicant's statement and conclude that the proposed cabana will be compatible with the other uses in the area. The proposal to rebuild the retaining walls and areas with pavers will improve existing drainage conditions and minimize the potential for soil erosion.

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.**

   The applicant submitted the following information: "The uses planned for the new construction including pool, deck, and cabana would be permitted uses in most residential areas. Construction of the deck, retaining wall, pool and cabana should not have any affect on neighboring properties. There is adequate space on the site for the proposed project. It is believed that the new construction will stabilize the bluff top which should be a benefit to neighboring properties. It is not likely that the new construction will impede the development of neighboring properties as all are long-time, residential properties similar to 1300 Mount Curve. The project is low in profile, and will be barely visible from any neighboring property."

   Staff concur with the applicant's statement, and, as stated above, conclude that the proposed cabana will be compatible with the other uses in the area.

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

The applicant's statement follows: "All utilities will be connected with the existing home utilities. The project requires no new access roads. The existing access road (driveway) provides access to the property as needed. We think drainage will be improved as it will be possible to better control the natural run-off with the new construction."

Staff concur with the applicant's statement, and, as stated above, conclude that the proposed retaining walls will improve existing drainage conditions and minimize the potential for soil erosion.

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

The applicant's statement; "Traffic in the vicinity of the project is expected to remain the same – we don't believe this project will have any influence on traffic."

The project will have no effect no traffic.

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

a) City's Eight Goals:

Goal 1: Increase the City's population and tax base by developing and supporting housing choices city-wide through preservation of existing housing and new construction.

b) The Minneapolis Plan (adopted by the City Council in 2000):

Policy 4.11: Minneapolis will improve the availability of housing options for its residents.

Implementation Steps (selected):

- Increase the variety of housing styles and affordability levels available to prospective buyers and renters.
- Provide and maintain areas that are predominantly developed with single and two family structures.
- Encourage the rehabilitation and sensitive reuse of older or historic buildings for housing including affordable housing units.

Policy 9.4: Minneapolis will promote preservation as a tool for economic development and community revitalization.

Implementation Steps (selected):

- Protect designated structures, sites and districts from demolition, neglect or inappropriate modifications.

- Preserve artifacts from structures and sites that are historically, architecturally or culturally significant and seek to reintroduce these artifacts into the city's streetscape and building interiors.

c. Petition's Consistency with City Plans and Policies: The following describes how the petition relates to the above goals and policies:

Through the proposed retaining wall and paver improvements and cabana construction, the project will likely improve erosion control and help retain and increase the aesthetic appeal and the value of this historic property. This is consistent with the above City Goal and Policies 4.11 and 9.4.

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.

The applicant statement follows: "We believe the Conditional Use conforms to all applicable regulations, with one exception. And that is the cabana which is requiring a variance. The variance is required because the existing house has an accessory structure and the addition of the cabana would exceed the allowed square footage for accessory structures. A Variance has been applied for and we believe there is due hardship because of the age of the home, size of the property, and the nature of original accessory structure."

The following sections of this report that deal with the other required findings and permit applications address how the project conforms to the other applicable regulations governing this district.

ADDITIONAL FINDINGS FOR CONDITIONAL USES 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. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.

The nearest body of water is Spring Lake located 600 ft. to the northwest of the site. The project will have no effect on stormwater flows to the lake and its immediate surrounding area. As stated above, the replacement and strengthening of the existing retaining walls and pavers will help to prevent slope and soil erosion. The applicant will comply with best management practices for erosion control during construction.

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

Intervening structures and trees block the view of the site, the existing residence, and the proposed cabana from the protected waters of Spring Lake.

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

Not applicable.

VARIANCES

Findings as Required By the Minneapolis Zoning Code for the Variance for the Development Within the Shoreland Overlay District

The Board of Adjustment and Planning Commission shall not vary the regulations of the zoning code, unless it makes each of the following findings based upon the evidence presented to it in each specific case:

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's statement follows:

> 1300 Mount Curve Avenue is on the National Historic Register and the Minneapolis Heritage Preservation Commission's list of historic homes. The home was constructed in 1903 in the Italian Renaissance Revival style. The home has a large, formal, front yard that was part of the original design. Much of the remainder of the site is severely sloped and heavily wooded.
>
> Horses were the prime mode of transportation when the house was built, and a horse stable and livery area was constructed on the north side of the house. The structure is attached to the house.
>
> This "horse barn" is located behind the house and below the main level of the house. There is a landscaped terrace on the top of the structure. It is now used as the garage and is considered an accessory structure. The size of the structure is about 51' x 58' or about 2,958 square feet.
>
> Mr. Levine wishes to build a cabana to serve a new swimming pool area. The cabana would contain a restroom and a kitchenette. The size is 22 feet by eight-foot-eight- inches. Total footprint is 191 square feet.
>
> The cabana would serve the pool area with a restroom and a kitchenette.
>
> Both of these functions are important to the use and enjoyment of the pool area. Because of the size of the property, the distance of the pool from the home, and

the way the house was designed, it is nearly impossible to obtain these functions from the home. Therefore, the requirement for the accessory structure.

The hardships include:

1. The site: The site is severely sloped and placement of the pool area must occur on a portion of the sloped hillside. The pool deck cannot be placed to coincide with either the main level of the house or the basement level. Thus stairs are required to gain access to the house.
2. Entrances: There are four entrances into the house that are adjacent to the pool area, three existing and one proposed new.
    a. Entrance one is the main entrance to the home. To gain access to the entrance from the pool area, one would have to leave the enclosed pool area before accessing the house. We think this is unacceptable on many levels.
    b. Entrance two is a new entrance that will be constructed on the west side facing the pool. One must ascend stairs prior to arriving at the deck and door. After going through the doorway, you are in a formal parlor – hardly the type of space you would desire for people with wet suits to be using. The one must traverse through the grand entrance and stairway before arriving at the kitchen.
    c. Entrance three is on the main level of the house on the north side. This is the back door. To access this entrance from the pool, one must go down steps and then back up steps to reach the door. This is neither direct nor easy to traverse, especially for elderly.
    d. Entrance four is on the basement level. To access this doorway one must travel down stairs and enter into the "breezeway" that at one time separated the main house from the horse barn. Then one must still find's one way into the house and find the restroom and kitchen, the kitchen being upstairs.
3. Historic Status: Because of the historic status of the house, it is difficult to add a small structure to the house, in the location that it would be desired, and still receive a Certificate of Appropriateness for the project. The layout of the house and location of existing openings make this nearly impossible.

4. The House: The house was not designed to accommodate pool guests in an acceptable way nor are the rooms that pool users need convenient to the pool area.

As stated above, the reason for the conditional use permit and the variance is the location of the cabana within 40 feet of the top of a steep slope. Staff concur with the thrust of the applicant's above statement, especially those arguments that rely on the historic status of the house and the limits that status places on additions. The staff of the Minneapolis Heritage Preservation Commission has reviewed and approved the project including the proposed cabana location. There is not a viable alternative location for the cabana that both enables it to serve its purpose adjacent to the pool and that is further than 40 feet from the top of the steep slope.

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.

Refer to the staff response to the prior finding.

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 applicant's statement follows: "We believe that the granting of this variance will be within keeping of the spirit of the ordinance. The present attached accessory building is well hidden from view – is totally hidden from street view and only when one is on the property itself can one actually see it. The present structure also has a landscaped terrace atop it. The top appears more like a back yard rather than the roof of a structure. Also, the proposed new structure is small. It is not highly visible from the street or neighbors, and does not appear to be able to block views, light, or breezes from neighboring properties."

As stated above, Planning staff believe that this project will have no adverse impact on surrounding uses. At only 191 sq. ft. and surrounded by vegetative screening and walls, it will be barely visible from adjacent uses.

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.

As stated above, the project will have no impact on congestion, the risk of fire, or the public welfare or safety.

ADDITIONAL FINDINGS FOR THE VARIANCE FOR DEVELOPMENT WITHIN 40 FEET OF THE TOP OF A STEEP SLOPE

Findings as Required By the Minneapolis Zoning Code for the Variance for Development Within 40 Feet of the Top of Steep Slope

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

As stated above, the replacement and strengthening of the existing retaining walls and pavers will help to prevent slope and soil erosion. The applicant will comply with best management practices for erosion control during construction.

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

Refer to the prior response.

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

   Construction of the deck, retaining wall, pool and cabana should not have any affect on neighboring properties. The improvements will help to prevent slope and soil erosion and preserve the historic appearance of the yard, and the HPC has approved the improvements for this historic building.

Findings as Required By the Minneapolis Zoning Code for the Variance for the Accessory Structure

The Board of Adjustment and Planning Commission shall not vary the regulations of the zoning code, unless it makes each of the following findings based upon the evidence presented to it in each specific case:

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.**

   As stated above, the house included a horse barn located behind the house and below the main level of the house that is now used as a garage (51 ft. X 58 ft., 2,958 sq. ft.). This existing accessory structure far exceeds the 1,000 sq. ft. limit in the Zoning Code for accessory structures. As such, this historic horse barn would eliminate the possibility for other accessory structures on the site unless the applicant obtains the subject variance.

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 applicant's statement in response to the first variance finding for building near the top of a steep slope addresses the unique aspects of the site including the steep slope, the existing access points on the historic house and former horse barn, and the expansion limitations placed on historic properties.

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.**

   Refer to the response to finding #3 in the above analysis regarding the variance for building within 40 ft. of the top of a steep slope. The Minneapolis HPC found the proposal to be

compatible with the historic character of the home and approved the proposed cabana on 10/25/05 (Attachment 7).

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.

Refer to the response to finding #4 in the above analysis regarding the variance for building within 40 ft. of the top of a steep slope.

RECOMMENDATIONS

Recommendation of the Department of Community Planning & Economic Development – Planning Division for the conditional use permit application to allow a structure that is within the Shoreland Overlay District and located within 40 feet of the top of a steep slope to be built at 1300 Mount Curve Ave.:

The Department of Community Planning & Economic Development – Planning Division recommends that the City Planning Commission **approve** the conditional use permit application to allow a structure that is within the Shoreland Overlay District and located within 40 feet of the top of a steep slope to be built at 1300 Mount Curve Ave. Structural improvements and additions include the following: A 191 sq. ft. cabana to house a kitchenette and restroom, a new deck which will extend from the west side of the house on the main level of the house, replacement retaining wall and steps, and a residential sized pool (22 ft. x 38 ft.).

Recommendation of the Department of Community Planning & Economic Development – Planning Division for the variance application to allow a structure that is within the Shoreland Overlay District and located within 40 feet of the top of a steep slope to be built at 1300 Mount Curve Ave.:

The Department of Community Planning & Economic Development – Planning Division recommends that the City Planning Commission **approve** the variance application to allow a 191 sq. ft. cabana that is within the Shoreland Overlay District and located within 40 feet of the top of a steep slope to be built at 1300 Mount Curve Ave. Structural improvements and additions include the following: A 191 sq. ft. cabana to house a kitchenette and restroom, a new deck which will extend from the west side of the house on the main level of the house, replacement retaining wall and steps, and a residential sized pool (22 ft. x 38 ft.).

Recommendation of the Department of Community Planning & Economic Development – Planning Division for the variance application to increase the maximum permitted area of accessory structures at 1300 Mount Curve Ave.:

The Department of Community Planning & Economic Development – Planning Division recommends that the City Planning Commission **approve** the variance application to increase the maximum permitted area of accessory structures at 1300 Mount Curve Ave. to allow the construction of a 191 sq. ft. cabana.

Attachments:

1. Zoning and lot lines in the vicinity
2. Primary and Overlay districts
3. Aerial photos
4. Project drawings and renderings:
5. Information from the applicant
6. Photos of the site
7. HPC action