

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit
BZZ-5336

Date: October 31, 2011

Applicant: John Holmberg

Address of Property: 2136 Marshall Street Northeast

Project Name: Dock and development in the shoreland

Contact Person and Phone: John Holmberg, (612) 408-1223

Planning Staff and Phone: Brad Ellis, (612) 673-3239

Date Application Deemed Complete: September 27, 2011

End of 60-Day Decision Period: November 26, 2011

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

Ward: 03 **Neighborhood Organization:** Bottineau Neighborhood Association

Existing Zoning: R6 Multiple-family District, the SH Shoreland Overlay District, the MR Mississippi River Critical Area Overlay District, and FP Floodplain Overlay District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 9

Legal Description: Lot 11, AUDITOR'S SUBD. NO. 034, City of Minneapolis, Hennepin County, Minnesota and reserving easements of record

Proposed Use: Single-family dwelling with accessory structures

Concurrent Review:

Conditional use permit: to allow for a dock and boat ramp within the floodway and movement of fill within the floodway in the FP Floodplain Overlay District

Variance: to allow development (accessory structures, retaining wall, etc) on or within 40 feet of the top of a steep slope in the MR Mississippi River Critical Area Overlay District and the SH Shoreland Overlay District

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits; Chapter 551, Articles VI, VII, and VIII, the SH Shoreland Overlay District, FP Floodplain Overlay District, and the MR Mississippi River Critical Area Overlay District.

Background: The applicant is proposing to legalize existing modifications to the property, as well as make additional changes as indicated on the site plan submitted. Existing changes include the installation of a dock and boat ramp and movement of fill in the Mississippi River as well as the addition of retaining walls and removal of fill along the steep slope in the rear yard of his property. The site is located within 300 feet of the ordinary high water mark of the Mississippi River and its floodplain; as a result, the property is in the MR Mississippi River Critical Area Overlay and SH Shoreland Overlay Districts. Structures on the property include a single family home, a detached garage, a deck, a series of retaining walls, and the dock and boat launch. The dock is located in the floodway of the Mississippi River and is therefore in the FP Floodplain Overlay District. A conditional use permit is required to permit placement of fill and the dock. There is a substantial grade change in the rear of the lot, with one long, steep slope on the property. The retaining walls, deck, and other development along or within 40 feet of the top of the steep slope require a variance.

The lot as originally platted is approximately 21,200 square feet. Since the lot was originally platted, the back of the lot has been increased by 91 feet due to construction material dumped by the City and by other fill/dredging by the US Army Corps of Engineers in 1962. The City of Minneapolis controls property and an easement on the north side of the property for a storm sewer pipe that empties in to the Mississippi River. In 1993 this pipe failed during a major rain event, washing out material and creating a 50 foot deep, 100 foot wide, and 200 feet long crater in the rear of the lot. The area was reconstructed by Public Works, creating the conditions on site when the applicant acquired the property. According to the applicant, the deck was rebuilt by Public Works after this event. Public Works has reviewed the current plan proposed by the applicant.

The applicant has received several orders from the City regarding the construction and grading changes on the property. The earliest was in March of 2003, and there have been several orders since. Housing assumed all duties relating to the property in 2005, but in April of 2010 requested Zoning Enforcement reinvestigate. Zoning enforcement staff found some of the earlier violations were still in place. The applicant has responded to the continued enforcement actions, and has begun to comply. Part of the requirements for compliance is this application for a conditional use permit and variance.

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.*

The property contains an existing single-family dwelling as well as a detached garage within 40 feet of the top of the steep slope. There are other residential structures to the north and south as well.

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

The applicant's site plan indicates a series of retaining walls and rain gardens to prevent erosion on the property. The soil underneath consists of old construction materials and dredged river fill. The deck has been in the same location for over 13 years, and the remaining development proposed is retaining walls. The proposed project must comply with the City of Minneapolis' and International Residential Code standards and ordinances regarding the erosion control and stormwater regulations. The project area and surrounding properties are currently developed and the foundation and underlying material will be adequate for the slope condition and soil type.

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

There have been some issues with runoff, but the applicant seeded in 2010 in accordance with a City and Court order. The applicant has used rock and concrete from the site to construct the retaining walls, and has left a small berm in place to maintain existing tree roots. The applicant is proposing to add a large amount of plantings to stabilize the site even more. Plantings include shrubs and additional trees. The proposed project must comply with the City of Minneapolis' and International Residential Code standards and ordinances regarding the erosion control. Staff does not believe that the proposed development will present danger of 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.

The retaining walls and deck are located on or within 40 feet of the top of the steep slope, and during leaf-off season will be visible. Along the west bank of the river are industrial uses, including a scrap metal facility. The view of this slope is similar to those along the east bank of the river, albeit with more retaining walls. The applicant is proposing additional plantings to further screen the deck and retaining walls.

Staff has received correspondence from several neighbors and they are attached to this report. Staff will forward additional comments, if any are received, at the City Planning Commission meeting.

CONDITIONAL USE PERMIT to allow development (deck and boat launch) and fill in the FP Floodplain Overlay District

Findings as Required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Department – Planning Division has analyzed the application and from the findings above concludes that:

- 1. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The Planning Division does not believe that allowing the applicant to have a dock or boat launch along the Mississippi River would be detrimental to or endanger the public health, safety, comfort or general welfare. This dock has been in place since 1998, and there are many docks along the Mississippi, including the two neighbors and several commercial uses. Per the engineer's report submitted by the applicant, the placement of fill will have no effect on the danger of flooding.

2. The conditional use 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 Planning Division does not believe that allowing the applicant to have a dock/boat launch or the riprap on the shoreline would be injurious to use and enjoyment of other properties in the vicinity. There are some issues relating to storage of materials on site (e.g. flotsam, concrete and other building materials, etc.), but these can and should be removed by the applicant. Development or improvement of surrounding properties should not be affected if various materials and outdoor storage are removed.

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

The site has adequate utilities and access. The applicant is working with a landscape architect and has submitted a plan to reduce stormwater runoff from the site, eliminating erosion and drainage issues. The applicant proposes to meet all City requirements related to drainage and soil erosion. Staff has concerns about the size of the boat launch, since the river cannot be nor should be accessible by motorized vehicle at this location. Staff is recommending changes to the boat launch.

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

The development would have no effect on parking or traffic congestion in the public streets.

5. The conditional use is consistent with the applicable policies of the comprehensive plan.

The future land use map in *The Minneapolis Plan for Sustainable Growth* designates this site as Parks and Open Space. The property is also part of the Minneapolis Park and Recreation Board's long-term vision of creating a trail along the river, but the property is currently controlled by the applicant. Should the conditional use permit for the dock and fill be granted, both would transfer to the Minneapolis Park and Recreation Board if they acquired the property.

a. According to the principles and polices outlined in *The Minneapolis Plan for Sustainable Growth*, the following apply to this proposal:

Be a steward of clean water by protecting and enhancing its surface and groundwater systems. (Environment Policy 6.9):

- Continue to implement the city's floodplain and shoreland Ordinances, and the Mississippi River Critical Area plan.

- Preserve and enhance the strategic placement of pervious surfaces within the city to decrease the rate and volume of stormwater runoff.

Staff Comment: The Planning Division believes that the dock and fill are in conformance with the policies of *The Minneapolis Plan for Sustainable Growth*.

b. Consistency with plans:

The *Above the Falls Master Plan* calls for this parcel to be a “higher intensity use park,” specifically a “Linear Park Node.” A linear park node is intended to provide a gateway entrance to a park area as well as include services to park goers such as overlooks, picnic shelters or pavilions, artwork, and overlooks of the Mississippi.

Staff Comment: The Planning Division believes that the dock and fill are in conformance with the policies of *Above the Falls Master Plan*. The dock is not permanent, and the fill is used to help prevent erosion along the shoreline. The conditional use permit for the dock and fill would transfer to the Minneapolis Park and Recreation Board should they acquire the property.

6. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

With the approval of the conditional use permit the dock and fill will meet the applicable regulations of the R6 and FP zoning districts.

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

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

The dock has no effect on soil erosion. The fill added by the applicant, “riprap,” is a wall of stones put together specifically to prevent erosion. The FP Floodplain overlay specifically recommends the use of riprap to reduce soil erosion.

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

The dock/boat ramp and fill are visible from protected waters. Since they are along the water’s edge, there is no effective way of screening the dock and fill. Staff is proposing modifications to the boat launch to minimize the size and alter the materials.

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

The dock is for the private use of the homeowner, and while the owner has several different watercraft, he can only use one at a time and it will not increase watercraft usage on the Mississippi River from the

current numbers. Staff is proposing a change to the boat launch to avoid large boats from accessing the river at this location, since a large boat should not be able to access the river at this location given the steep slope.

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 the FP Floodplain Overlay District:

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

Per the engineer's report submitted by the applicant, there has been no change to the 100 year flood elevation.

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.

The dock is floating and is securely fastened to handle large rain events. The boat launch is constructed of a series of logs, and those logs could be swept downstream. Planning Staff is recommending the applicant either remove the boat launch or construct it to industry standards to eliminate this concern.

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

The existing water supply and sanitation systems will continue to be used and are functioning properly. Staff has some concerns over the houseboat, and is recommending any inoperable or unlicensed watercraft be removed.

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

The destruction of the dock, boat launch, and any associated watercraft would cause a financial issue for the homeowner. The house and detached garage are not in the floodway or floodplain and would not be affected.

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

The dock/boat launch does not provide important services to the community at large, but other docks and boat launches along the river do. The fill/riprap does help eliminate soil erosion, especially with the stormwater outlet at the north end of this property.

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

A dock and boat launch by necessity must be on a waterfront location.

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

A dock and boat launch must be in the floodway in order to function.

8. The relationship of the proposed use to the floodplain management program for the area.

The dock/boat launch and fill should have no effect on the floodplain management in the area – they are in the floodway.

9. The safety of access to the property in times of flood for ordinary and emergency vehicles.

The site as a whole is accessible from Marshall Street Northeast. Due to a more gradual slope, accessing the river is easier on the applicant's property than on nearby properties should emergency personnel need to access the lower part of the property.

10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

No change is expected to the height, velocity, duration, rate of rise and sediment transport of the flood waters at the site.

11. Such other factors which are relevant to the purposes of this article.

The Planning Division does not believe that the changes proposed to the site will impact the Mississippi River. The dock/boat launch and fill are existing. The applicant is proposing additional plantings to help address stormwater runoff and erosion concerns.

VARIANCE to allow development (accessory structures, retaining wall, etc) on or within 40 feet of the top of a steep slope in the MR Mississippi River Critical Area Overlay District and the SH Shoreland Overlay District.

Findings Required by the Minneapolis Zoning Code:

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

There are unique circumstances of the parcel of land that have created the practical difficulties and have not been created by any persons presently having an interest in the property. Along the east bank of the river, the Mississippi has been narrowed considerably by the Army Corps of Engineers and the City. The back of the lot has been increased by 91 feet due to construction material dredged fill taken from the navigable channel by the US Army Corps of Engineers in 1962. In addition, the City of Minneapolis controls property and an easement on the north side of the property for a storm sewer pipe that empties in to the Mississippi River. In 1993 this pipe failed during a major rain event, washing out material and creating a 50 foot deep, 100 foot wide, and 200 feet long crater in the area the rear of the lot. The area was reconstructed by Public Works, creating the conditions on site when the applicant acquired the

property. According to the applicant, the deck was rebuilt by Public Works at this time as well. The applicant did not create the additional property, the composition of construction materials and soil on the property, nor did he build the existing deck.

The applicant has, however, modified the grade of the property in order to access the river easily. The applicant has responded to earlier City orders to address erosion concerns, and has proposed a plan to address relating to runoff and stormwater management. The retaining walls have been unearthed and reconstructed by the applicant, but were partially present prior to the applicant's acquisition of the property. The applicant has removed a large portion of fill/soil since 1999 with a series of soil erosion permits.

The existing project area is already located within 40 feet of the top of the steep slope and any repair, replacement or improvements to this area would require this variance. The changes made by the applicant to the property are existing, and have been in place for almost a decade. The deck was existing prior to 1998, and strict adherence to the regulations would not allow the retaining walls or deck. Removal of the retaining walls would actually increase erosion issues on the site. The applicant is not proposing additional structures on the slope, and has removed one structure (a pergola) to comply with zoning regulations.

Staff is concerned over the construction debris and other materials scattered about this site. Staff is proposing to condition the removal of extra materials, such old construction debris, wood, and other objects.

2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.

The applicant is seeking a variance to allow development, specifically a deck and retaining walls, on or within 40 feet of the top of a steep slope in the Shoreland Overlay District. Both the retaining walls and the deck are existing. A deck and retaining walls accessory to a single family dwelling are reasonable.

The intent of the ordinance is to protect both the water body and other properties located below a steep slope from erosion and runoff. The applicant has removed quite a bit of vegetation since acquiring the property, but has since added landscaping and plantings to help with erosion control and stormwater runoff, and has submitted a landscape plan demonstrating additional plantings to meet the spirit and intent of the ordinance.

Staff believes that the applicant has demonstrated that the necessary precautions will be taken to control erosion of the site and that the subject site will not be significantly altered to adversely affect the water quality of the Mississippi River. Staff believes that the property owner is proposing to use the property in a reasonable manner.

3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

Staff believes that the granting of this variance would alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. The deck and retaining walls are existing, and the applicant is proposing additional plantings to alleviate issues related to stormwater runoff and erosion as well as provide additional screening of the development from the river.

Granting the variance to allow development on a steep slope would likely not be detrimental to the health, safety or welfare of the general public or of those utilizing the property or nearby properties.

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.

The applicant has already addressed soil erosion concerns and will continue to do so with additional plantings. No additional structures are planned, but the applicant will continue to modify the site to address erosion and runoff issues. Four erosion control permits have been issued on the site since 1998.

Staff is concerned about how the site plan will be implemented, and is recommending the pathway have additional materials installed.

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

The deck and retaining walls are visible from the Mississippi, especially during leaf-off seasons. The applicant is proposing additional plantings to address this issue.

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

The deck and retaining walls will have no effect on the types, uses and numbers of watercraft on the Mississippi River. The dock and boat launch are addressed in the conditional use permit findings above.

RECOMMENDATIONS

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 conditional use permit application to allow development (a dock and boat launch) and placement of fill on the property located at 2136 Marshall Street Northeast in the R6 Multiple Family District, the SH Shoreland Overlay District and MR Mississippi River Critical Area Overlay District, and the FP Floodplain Overlay District, subject to the following conditions:

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1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. CPED-Planning and any other applicable City departments review and approve the final plans.
3. Removal or reconstruction of the boat launch to industry-standard materials (e.g. rails, not logs). The boat launch shall not be accessed by a roadway on the property.
4. Removal of inoperable or unlicensed watercraft.
5. All site improvements shall be completed by October 31, 2012, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance

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 findings above and **approve** a variance to allow for the development, including retaining walls and a deck, on or within 40 feet of the top of a steep slope on the property located at 2136 Marshall Street Northeast in the R6 Multiple Family District, the SH Shoreland Overlay District and MR Mississippi River Critical Area Overlay District, subject to the following conditions:

1. CPED-Planning and any other applicable City departments review and approve the final site and landscape plans.
2. The pathway from the top of the steep slope to the river shall be covered with materials designed to prevent erosion, e.g. bark, mulch, or rock.
3. The applicant shall install all plantings proposed on the site plan submitted, or substitute similar plantings.
4. Removal of outdoor construction materials and debris, as well as other materials not customarily associated with the use of a single-family dwelling, e.g. flotsam, logs, etc.
5. All site improvements shall be completed by October 31, 2012, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

Attachments:

1. Written descriptions, findings, and documentation submitted by the applicant
2. Copy of e-mail sent to the Bottineau Neighborhood Association and Councilmember Hofstede
3. Correspondence

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4. Zoning Map
4. Site plans, including as-is and proposed
5. Aerial photo of the site
6. Photographs