

**Department of Community Planning and Economic Development**  
Conditional Use Permit, Variance  
BZZ-6069

**Date:** June 10, 2013

**Applicant:** Mississippi Watershed Management Organization

**Address of Property:** 2522 Marshall Street NE

**Project Name:** Mississippi Watershed Management Organization Headquarters Phase 2

**Contact Person and Phone:** Ann Schley, Sterns and Associates, LLC, (651) 398-7012

**CPED Staff and Phone:** Kimberly Holien, (612) 673-2402

**Date Application Deemed Complete:** May 8, 2013

**End of 60-Day Decision Period:** July 7, 2013

**Ward: 1 Neighborhood Organization:** Concerned Citizens of Marshall Terrace

**Existing Zoning:** C2, Neighborhood Corridor Commercial District; FP, Floodplain Overlay district; SH, Shoreland Overlay district; MR, Mississippi River Critical Area Overlay district

**Proposed Zoning:** N/A

**Zoning Plate Number:** 9

**Lot area:** 65,340 square feet

**Legal Description:** North 227 feet of south 280 feet of Lot 7, Auditor's Subdivision No. 34, Hennepin County, MN, except the south 50 feet of the North 227 feet of the south 280 feet of said Lot 7.

**Proposed Use:** Office

**Concurrent Review:**

- Conditional use permit for development and fill in the FP, Floodplain Overlay district.
- Variance to allow development within 40 feet of the top of a steep slope in the SH, Shoreland Overlay district.

**Applicable zoning code provisions:** Article VII, Conditional use permits; 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 Mississippi Watershed Management Organization (MWMO) has submitted land use applications for a number of alterations to their site at 2522 Marshall Street NE. The site contains an existing building with an approved site plan (BZZ-4805) from 2010 . The proposed alterations at this time are referred to as Phase 2 of the 2010 project. None of the work proposed at this time would impact the building or other site improvements that were constructed as part of Phase I, with the exception of an expansion to the parking lot. The proposed project includes extensive shoreland restoration and protection. Upon completion of these alterations the site will be used as an education and interpretive platform for outdoor learning and demonstration programs about water quality, stormwater management, urban ecosystem protection, restoration and management.

The scope of the current project includes an accessible walkway connecting the property to the Mississippi River, stormwater basins, interpretive features such as outdoor classrooms and stone amphitheaters, retaining walls and modifications to the parking area. Historically, a ravine ran from the northeast edge of the property to the southwest. Over time, this ravine was filled with various materials and a parking lot was constructed. Due to the poor fill material, the site is identified as a brownfield. During Phase I of development, 5,800 cubic yards of contaminated soil was removed from the site and 3,600 cubic yards of clean fill was place on site. As part of this phase, an additional 6,800 cubic yards of contaminated fill will be removed to create a more historic topographic profile and 1,500 cubic yards of clear fill will be brought in to provide a four-foot clean buffer on top of the contaminated soils. Grading activities will design grades to bring the shoreline to a more natural state and accommodate a future regional trail through this site and the adjacent Tony Jaros' site. Vegetative restoration of the site includes native plantings. Upland prairie and trees will cover most of the site with sedge meadows in the stormwater basins and floodplain species planted below the 100 year flood elevation. The existing parking lot on the west side of the site will be removed and additional parking spaces will be constructed to the west of the parking lot that was constructed as part of Phase I.

The west portion of the site is 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 FP, Floodplain Overlay, MR Mississippi River Critical Area Overlay and SH Shoreland Overlay Districts. Land uses in which access to or use of a surface water feature is an integral component, such as the proposed walkways and stairs that provide access to the beach for kayaks and canoes, require a conditional use permit in the Floodplain Overlay district. Placement of fill in the Floodplain Overlay district also requires a conditional use permit. Development is prohibited within 40 feet of the top of a steep slope in the Shoreland Overlay district, except as authorized through the variance process. The west side of the site has a steep slope that is approximately 42 percent and the applicant is proposing walkways, bridges, stormwater basins, swales, retaining walls, outdoor classrooms, a stone amphitheater and a parking lot in this area. A variance for the proposed work has been requested accordingly. Once grading on site is complete, the result will be a more gradual 26 percent slope. To first 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:

Department of Community Planning and Economic Development  
BZZ-6069

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 currently contains a surface parking lot at the top of a steep slope. The slope at the west edge of the property, from the river edge to the west edge of the parking lot is 42 percent.

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 stormwater basins to prevent erosion on the property. A part of Phase I, the applicant removed a significant amount of contaminated soil from the site and brought in clean fill to create a four-foot clean buffer over the remaining contaminated soil. This phase of the project will remove additional contaminated fill and grade the site and bring in 1,500 cubic yards of clean fill to provide a four-foot clean buffer on top of the remaining contaminated soil. The site will also be graded to achieve a more natural topographic profile. The site has an approved erosion control plan and SWPP from Phase I. With the four feet of clean fill proposed to be brought in by the applicant, the underlying material will be adequate for the walkways, retaining walls, amphitheater, bridges, outdoor classrooms and parking area proposed.

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

The proposed development will not present danger of falling rock, mud, uprooted trees or other materials. The applicant is proposing to restore a more natural grade with retaining walls and significant vegetative restoration to stabilize the soils.

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 work proposed by the applicant will restore the slope of the property to a more natural appearance, provide a significant amount of plant material and remove a bituminous parking area that is currently located directly at the top of the slope. The proposed fill is intended to provide an adequate clean buffer on top of contaminated soils, consistent with the requirements for brownfield cleanup. The walkways, new parking area, retaining walls, stone amphitheater, outdoor classrooms and other elements will be designed to blend in with the natural surroundings and be screened from view with the proposed vegetation.

Staff had not received any correspondence from Concerned Citizens of Marshall Terrace as of the writing of this report. However, a letter dated April 23, 2013 was received from the Above the Falls Citizens Advisory Committee (AFCAC), expressing support for the project.

Said letter is attached for reference. Any additional correspondence, if received, will be forwarded on to the Planning Commission for consideration.

**CONDITIONAL USE PERMIT:** to allow fill, a walkway and stairs in the FP, Floodplain Overlay district

**Findings as required by the Minneapolis Zoning Code:**

The Minneapolis Department of Community Planning and 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 proposed walkway, steps, vegetative clearing and fill/grading within the Floodplain will not prove detrimental to the public health, safety, comfort and general welfare. The modifications proposed by the applicant will enhance and improve the property by removing contaminated soils, bringing in approximately 1,500 cubic yards of clean fill to provide a buffer on top of existing soils, grade the site to achieve a more natural slope and provide a grade level walkway and stairs that provide access to the river. The walkway and stairs are intended to be used in conjunction with other interpretive features elsewhere on the site, including stormwater basins and demonstration areas, seating and bridges. The walkway and stairs will also provide access to the beach which will be used for mooring of canoes and kayaks. Other site improvements proposed as part of the project include 76 new trees, 22 new shrubs and 40,898 square feet of landscaped beds and native grasses. Upon completion of this phase of the project, the amount of impervious surface on site will be reduced from 38,036 square feet in 2009 to 18,564 square feet. These modifications will improve and enhance this riverfront property.

**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 proposal to bring 1,500 cubic yards of fill to the site and construct a walkway and stairs in the Floodplain will not be injurious to the use and enjoyment of other property in the vicinity or impede the normal and orderly development of the surrounding area. The surrounding area is fully developed with a mix of uses and the Mississippi Watershed Management Organization has been located on site since approximately 2011. The proposed project will remove impervious surfaces, grade the site to achieve a more natural topographic profile, add a significant amount of landscaping and provide educational opportunities related to stormwater management. These modifications should enhance the surrounding area and pose no risk to other properties, as evaluated in the additional Floodplain findings below.

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

Utilities and access roads are existing and adequate. The site has an easement for access from Marshall Street through the adjacent Tony Jaros' River Garden property at 2500 Marshall Street NE. The applicant will be required to work closely with the Public Works Department, the Plan Review Section of the CPED and the various utility companies during the duration of the development should the plan be approved. This would be required to ensure that all procedures are followed in order to comply with city and other applicable requirements.

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

The proposed alterations will not contribute to traffic congestion in the public street. The minimum off-street vehicle parking requirement for the MWMO office use is one space for each 500 square feet of gross floor area in excess of 4,000 square feet. The gross floor area of the building is 11,150 square feet in area, requiring 14 spaces. The on-site parking area on the east side of the site includes 6 parking stalls. As part of the project, the applicant is proposing to expand this parking area to include a total of 15 spaces to satisfy the minimum requirement. A second parking area on the west side of the site will be removed. The applicant has an easement agreement with the property to the south, Tony Jaros' River Garden, to utilize the existing curb cut on the adjacent property from Marshall Street NE. This shared curb cut minimizes traffic conflicts in the public street and minimizes the amount of impervious surface on site. With the expanded parking area, the two parking lots will function as one with shared access. The parking spaces on the subject MWMO property will be separated from the parking on the adjacent property with a landscaped island that is 20 feet in width. The site also has existing bike parking.

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

The site is designated for mixed use on the future land use map in *The Minneapolis Plan for Sustainable Growth*. The site is within the boundaries of a neighborhood commercial node and is one lot north of Lowry Avenue, which is a designated Community Corridor. The following policies of the comprehensive plan apply:

**Land Use Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.**

- 1.1.5 Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.

**Land Use Policy 1.4: Develop and maintain strong and successful commercial and mixed use areas with a wide range of character and functions to serve the needs of current and future users.**

- 1.4.1 Support a variety of commercial districts and corridors of varying size, intensity of development, mix of uses, and market served.
- 1.4.2 Promote standards that help make commercial districts and corridors desirable, viable, and distinctly urban, including: diversity of activity, safety for pedestrians, access to desirable goods and amenities, attractive streetscape elements, density and variety of uses to encourage walking, and architectural elements to add interest at the pedestrian level.
- 1.4.4 Continue to encourage principles of traditional urban design including site layout that screens off-street parking and loading, buildings that reinforce the street wall, principal entrances that face the public sidewalks, and windows that provide “eyes on the street”.

**Land Use Policy 1.9: Through attention to the mix and intensity of land uses and transit service, the City will support development along Community Corridors that enhances residential livability and pedestrian access.**

- 1.9.1 Support the continued presence of existing small-scale retail sales and commercial services along Community Corridors.
- 1.9.2 Support new small-scale retail sales and services, commercial services, and mixed uses where Community Corridors intersect with Neighborhood Commercial Nodes.

**Land Use Policy 1.11: Preserve and enhance a system of Neighborhood Commercial Nodes that includes a mix of housing, neighborhood-serving retail, and community uses.**

- 1.11.1 Discourage the commercial territorial expansion of Neighborhood Commercial Nodes, except to adjacent corners of the node’s main intersection.
- 1.11.2 Support the continued presence of small-scale, neighborhood serving retail and commercial services in Neighborhood.

**Environmental Policy 6.7: Preserve and protect land from pollution and encourage the remediation of contaminated sites.**

- 6.7.1 Support the environmental cleanup and remediation of brownfields and other contaminated sites to enhance the availability of urban land for redevelopment.

**Environmental Policy 6.9: Be a steward of clean water by protecting and enhancing its surface and groundwater systems.**

- 6.9.2 Continue to implement the city’s floodplain and Shoreland Ordinances, and the Mississippi River Critical Area plan.

- 6.9.3 Accomplish the guiding principles of the city's Local Surface Water Management Plan, which are to protect people, property and the environment; maintain and enhance infrastructure; provide cost-effective services in a sustainable manner; meet or surpass regulatory requirements; educate and engage the public and stakeholders, and enhance livability and safety.
- 6.9.7 Preserve and enhance the strategic placement of pervious surfaces within the city to decrease the rate and volume of stormwater runoff.

The applicant is proposing to remove impervious surface near the edge of the Mississippi River and relocate the parking to the east. The applicant is also proposing to restore a more natural slope, provide a significant amount of landscaping on site and provide for educational opportunities related to stormwater management and treatment. All of these elements are consistent with the above land use and environmental policies of the Comprehensive Plan.

The site is also within the study area of the *Above the Falls Master Plan*. This plan identifies the site and adjacent properties as the site of a future park. The plan also identifies a future trail crossing through the west side of the site. The modifications proposed will restore the property to a more park-like setting and allow for a future trail by removing the parking area and restoring a more natural grade adjacent to the river. The proposal also provides access to the Mississippi River in a sensitive manner.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located.**

With approval of the requested variance, the proposed project would conform to all other applicable regulations of the zoning code. The site has a previously approved site plan that is not impacted by the project, with the exception of alterations to the parking lot. With the proposed alterations, the parking lot would meet all of the landscaping and screening requirements in Chapter 530, Site Plan Review. All parking spaces would be within 50 feet of the center of an on-site canopy tree. A landscaped island on the south edge of the MWMO parking lot will include trees that also benefit the adjacent Tony Jaros' parking lot. Overall, the parking lot will be bordered by 17 canopy trees. The center island is 20 feet in width, providing eight feet of landscaping between the parking area and the south property line. The remainder of the island is located on the Tony Jaros' property. The existing building is located between the parking lot and the front lot line. The expanded parking will connect to the primary building entrance via a walkway that is a minimum of four feet in width.

**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 applicant has submitted erosion control and stormwater management plans that address the prevention of soil erosion both during and after construction. Construction sequencing and erosion controls to prevent pollution and erosion during construction have been addressed in the plans.

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

No structures are proposed at this time. The development within the floodplain will be at grade, including a walkway and stairs. Other elements of the project, including bridges, stormwater basins, retaining walls, bridges, seating areas and an expanded parking area will be located outside of the floodplain and will have limited visibility from the water once the proposed plantings reach maturity.

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

The existing beach area will be used for mooring of canoes and kayaks. This type of non-motorized watercraft can easily be accommodated by the Mississippi River. No docks are proposed at this time.

**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.**

There will be no change to the 100 year flood elevation and the proposed project should have no impact on danger to life and property.

**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 applicant is not proposing any development such as docks that would be susceptible to being swept downstream. The walkway, stairs and grade modifications will not pose any of the noted dangers.

**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.

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

The proposed walkway and concrete stairs are not located within the water and therefore are not as susceptible to flood damage. Any potential destruction of the proposed stairs and walkway would likely cause a financial issue for the property owner.

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

The proposed alterations within the Floodplain include grading and fill to create a more historic topographic profile, walkways and concrete stairs. The completed project will serve as an educational and interpretive platform for outdoor learning and demonstration programs about water quality, stormwater management, urban ecosystem protection, restoration and management. This can be considered a valuable service for the community.

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

The walkways and stairs are intended to provide access to the river and beach area to allow for mooring of canoes and kayaks. The use of these types of non-motorized watercraft is dependent on a waterfront location. The education programs described by the applicant will also be enhanced by a waterfront location.

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

The majority of the work proposed is intended to improve stormwater functionality and provide educational opportunities related to stormwater management and function. There are other locations on site that also serve this purpose. The applicant is also proposing to restore a more natural grade on site. These site modifications should not be impacted by any potential flooding.

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

The proposed alterations should improve floodplain management in the area. The applicant is re-grading the site in the floodway to restore a more gradual, natural grade over the existing short, steep slope at the edge of the property. The parking area at the edge of this slope is proposed to be removed with parking located on the east side of the site.

**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 NE. Due to a more gradual slope proposed by the applicant, accessing the river would be easier than it currently 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.**

Staff does not believe that the changes proposed to the site will adversely impact the Mississippi River. The significant shoreland restoration and protection proposed by the applicant should be an improvement over existing conditions in terms of stormwater runoff and erosion concerns, as well as floodplain management.

**VARIANCE: to allow development within 40 feet of the top of a steep slope.**

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

- 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.**

Development is prohibited within 40 feet of the top of a steep slope in the Shoreland Overlay district, except as authorized through the variance process. The proposed project includes extensive shoreland restoration and protection on and adjacent to a steep slope. The west side of the site has a steep slope that is approximately 42 percent and the applicant is proposing walkways, swales, stormwater basins, bridges, a stone amphitheater, retaining walls and a parking lot in this area. The grade of the slope is a circumstance that is unique to the property and has not been created by the property owner. The applicant is also proposing to remove an existing bituminous parking area that is at the top of the current slope and grade the site to create a more natural and historic topographic profile. Once grading on site is complete, the result will be a more gradual 26 percent slope. The extended parking area will be located at the top of the modified slope.

- 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 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 is proposing to grade the property to restore a more natural slope and bring in clean fill to provide a four-foot buffer on top of any remaining contaminated soil. The project also includes a significant amount of landscaping to stabilize the slope and retaining walls are proposed at various locations for additional erosion control. A detailed erosion control plan and stormwater management plan have both been submitted. The modifications proposed 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. The other alterations, including removing existing parking on the west side of the site and expanding the eastern parking area, while within 40 feet of the stop of a steep slope, will allow the applicant to use the property in a reasonable manner. The modifications allow for extensive shoreland restoration and for enhanced stormwater functionality on the site. The walkways, bridges, stormwater basins and seating areas are part of stormwater infrastructure and are also reasonable uses of the property.

**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.**

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. The modifications proposed by the applicant will reinstate a more natural grade on site, provide a significant amount of landscaping and relocate the parking area to the east side of the site, further away from the river. The walkways, bridges, stormwater basins and other interpretive features will benefit the general public by providing educational opportunities and access to the Mississippi River. There will be no detrimental impacts on the health, safety or welfare of those utilizing the properties or nearby properties.

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

The applicant has submitted erosion control and stormwater management plans that address the prevention of soil erosion both during and after construction. Construction sequencing and erosion controls to prevent pollution and erosion during construction have been addresses in the plans.

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

The retaining walls, bridges, walkways, retaining walls, seating area and parking lot will be visible from the Mississippi River. However, the majority of the development will blend into the natural landscape as designed and the applicant is proposing a significant amount of landscaping that will screen the parking area.

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

The existing beach area will be used for mooring of canoes and kayaks. This type of non-motorized watercraft can easily be accommodated by the Mississippi River.

**RECOMMENDATION:**

**Recommendation of the Department of Community Planning and Economic Development for the conditional use permit:**

The Department of Community Planning and Economic Development recommends that the City Planning Commission adopt the above findings and **approve** the application for a conditional use permit for a fill and development in the Floodplain for the property located at 2522 Marshall Street NE, subject to the following conditions:

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 two years of approval.

**Recommendation of the Department of Community Planning and Economic Development for the variance:**

The Department of Community Planning and Economic Development recommends that the City Planning Commission adopt the above findings and **approve** the application for a variance to allow development within 40 feet of the top of a steep slope for the property located at 2522 Marshall Street NE.

**Attachments:**

1. Statement of proposed use and project description
2. Correspondence
3. Zoning map
4. PDR Report
5. Site plan
6. Photos