

Department of Community Planning and Economic Development
Variance
BZZ 6209

Date: September 12, 2013

Applicant: Cemstone Products Company

Address of Property: 45 and 65 26th Avenue North

Contact Person and Phone: Patrick Bergin, (651) 686-4221

CPED Staff and Phone: Shanna Sether, (612) 673-2307

Date Application Deemed Complete: August 14, 2013

End of 60-Day Decision Period: October 13, 2013

Ward: 3 **Neighborhood Organization:** Hawthorne Neighborhood Council

Existing Zoning: I3 General Industrial District

Existing Overlay District: MR Mississippi River Critical Area Overlay District and SH Shoreland Overlay District

Zoning Plate Number: 8

Proposed Use: New sound wall

Variance: to increase the maximum height of a fence from 8 feet to 18 feet to allow for a new 515 foot long, 5-inch wide sound wall for Cemstone and Aggregate Industries, an existing concrete, asphalt or rock crushing facility.

Zoning code section authorizing the requested variance: Chapter 525, Article IX Variances, specifically Section 525.520(5) “to permit an increase in the maximum height of a fence.”

Background: The subject property is 45 and 65 26th Avenue North and is the site for Cemstone Products Company and Aggregate Industries. The subject properties are approximately 7.2 acres (316,527 square feet), and the use is a concrete, asphalt or rock crushing facility, a conditional use in the I3 General Industrial District. Cemstone was relocated to this property from a parcel located on 10th Avenue South along the Mississippi River in 1991. In 2007, Cemstone was awarded to ready-mix concrete construction contract for the 35W Bridge Reconstruction project. During the project, Cemstone operated 24-hours a day and 7 days a week to stay on schedule. During this time, the Minnesota Pollution Control Agency (MPCA) was contacted and the subject property was evaluated for compliance with MN Rule §7030.0030 Noise Control Requirement:

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§7030.0030 NOISE CONTROL. No person may violate the standards established in part §7030.0040, unless exempted by Minnesota Statutes, section §116.07, subdivision 2a. Any municipality having authority to regulate land use shall take all reasonable measures within its jurisdiction to prevent the establishment of land use activities listed in noise area classification (NAC) 1, 2 or 3 in any location where the standards established in part §7030.0040 will be violated immediately upon establishment of the land use.

During and after the 35W Bridge Reconstruction project, three noise studies were conducted and in all three studies, the noise levels exceeded the allowed standards for residential noise, but did not exceed levels set for industrial property. Cemstone representatives met with their residential neighbors at the Riverview Townhomes Condominium Association and have concluded that in order to mitigate off-site impacts of noise related to the operation of the use, a noise wall shall be constructed. Cemstone hired HDR Engineering, Inc. to evaluate the noise reduction provided by the proposed noise wall. HDR used Cadna-A, acoustical three-dimensional noise model and analysis software, designed for evaluating environmental noise from stationary and mobile sources to calculate noise levels. The results of the noise model showed that an 18-foot tall noise wall provides effective noise attenuation to the adjacent residential property. The proposed wall would be located near the south property line of the subject properties, adjacent to the Soo Line Railroad. The proposed sound wall would be constructed from precast concrete, textured to appear as a stone wall. The maximum height of a wall or fence in this location is 8 feet. The applicant is proposing to construct an 18-foot high, 5-inch thick wall, 515 feet in length. Therefore, the applicant is requesting a variance to increase the maximum height of a wall from 8 feet to 18 feet.

Staff has not received correspondence from the Hawthorne Neighborhood Council. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

VARIANCE: to increase the maximum height of a fence from 6 feet to 18 feet to allow for a new 515 foot long, 5-inch wide sound wall for Cemstone and Aggregate Industries, an existing concrete, asphalt or rock crushing facility.

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.**

The circumstances upon which the variance is sought are unique to the parcel of land due to the nature of the land use and the adjacent residential use. Staff finds that these circumstances have created practical difficulties in complying with the ordinance and have not been created by the applicant. The applicant is proposing to construct a new 18-foot tall, 5-inch thick sound wall to mitigate the off-site impacts due to the noise of an existing concrete, asphalt or rock crushing use. The existing use of the property was established in 1991 on the subject property and the adjacent residential property was established in 2003. The adjacent residential property is zoned I1 Light Industrial District and IL Industrial Living Overlay District. The IL Overlay District allows for residential uses in the industrial zoning districts with a conditional use permit.

Cemstone was found to be in compliance with industrial noise standards set by the MPCA, but was found to be out of compliance with the noise standards for residential uses. HDR Engineering, Inc. evaluated the potential noise reduction provided by the proposed noise wall. HDR used Cadna-A an acoustical three-dimensional noise model and analysis software, designed for evaluating environmental noise from stationary and mobile sources to calculate noise levels. The results of the noise model showed that an 18-foot tall noise wall provides effective noise attenuation of the existing land use towards the adjacent residential property.

- 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 purpose of regulating the height of fencing and screening is to promote the public health, safety and welfare, encourage an aesthetic environment and allow for privacy while maintaining access to light and air. The proposed wall has been designed in response to noise levels that exceed what is allowed by the MPCA and is intended to improve the sound attenuation of the existing land use towards the adjacent residential property to the south. The applicant provided data showing the performance of the proposed noise wall using a computer-based acoustical analysis modeling software. The report concluded that in order to allow for effective noise reduction, an 18-foot tall wall would be required. Further, the proposed wall will provide screening from the existing outdoor processing and production of the property to the adjacent residential property to the south. Staff finds that proposed 18-foot tall, 5-inch thick, 515-foot long solid noise wall would allow for reasonable use of the property that will be in keeping with the spirit and intent of the ordinance and comprehensive plan.

- 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 finds that in this case, the proposed 18-foot tall, 5-inch thick, 515-foot long solid noise wall would not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. The proposed wall has been designed in response to noise levels that exceed what is allowed by the MPCA and is intended to improve the sound attenuation of the subject property. The applicant provided data showing the performance of the proposed noise wall using a computer-based acoustical analysis modeling software. The report concluded that in order to allow for effective noise reduction, an 18-foot tall wall would be required. Further, the proposed wall will provide screening from the existing outdoor processing and production of the property to the adjacent residential property to the south.

The proposed sound wall would be constructed from Sentry-Cast panels and columns. These panels are precast concrete, textured to appear as stone. Staff has concerns about the potential for graffiti on the proposed wall and is recommending that the applicant install landscaping, including vines. Therefore, staff finds that the proposed decoration of the sound wall with additional landscaping, including vines, will allow for the sound mitigation, add visual interest by lessening the fortress-like appearance of the wall and protection against graffiti.

Granting of the 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 sound wall will require a building permit and the existing property will be inspected for future compliance with MPCA regulations.

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

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

Staff finds that the applicant has demonstrated that proposed project will prevent soil erosion and other possible pollution during and after construction. The majority of the subject property is located outside of the SH Shoreland Overlay District and the proposed sound wall will not be constructed on or within 40 feet of the top of a steep slope. The applicant will be required to adhere to best management practices both during and after construction. A building permit will be required to allow for the construction of the proposed sound wall.

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

The proposed wall may be visible from the Mississippi River during leaf-off season. The proposed sound wall will be constructed over 350 feet from the river and mature trees exist along the banks of the river. The height of the proposed wall would be consistent with the heights allowed for a building wall. Staff finds that the proposed sound wall will have limited visibility from the protected water.

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

The subject property does not have direct access to the Mississippi River. Therefore, the proposed additions will not impact watercraft usage on the river.

Recommendation of the Department of Community Planning and Economic Development:

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt staff findings and **approve** the variance to increase the maximum height of a fence from 6 feet to 18 feet to allow for a new 515 foot long, 5-inch wide sound wall for Cemstone and Aggregate Industries, an existing concrete, asphalt or rock crushing facility located at 45 and 65 26th Avenue North in the I3 General Industrial District and MR Mississippi River Critical Area Overlay District, subject to the following conditions of approval:

1. The sound wall shall be decorative and have a stone-like appearance.
2. The applicant shall provide landscaping, including but not limited to, vines on the south side of the proposed sound wall.

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3. Approval of the final site, elevation and floor plans by the Department of Community Planning and Economic Development.
4. All site improvements shall be completed by September 12, 2015, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

Attachments:

1. Written descriptions and findings submitted by the applicant
2. Letters to Council Member Hofstede and Hawthorne Neighborhood Council
3. Zoning map
4. Existing survey
5. Site plan
6. Elevations
7. Renderings and examples
8. Photos