

**Department of Community Planning and Economic Development – Planning
Division**

Conditional Use Permit and Variance

BZZ-2677

Date: November 14, 2005

Applicant: Dan Radunz, 8951 Mariago Circle, Bloomington, MN 55438, (952) 210-8582

Addresses of Property: 5912 Girard Avenue South

Project Name: Radunz Residence

Contact Person and Phone: Dan Radunz, 8951 Mariago Circle, Bloomington, MN 55438, (952) 210-8582

Planning Staff and Phone: Becca Farrar, (612)673-3594

Date Application Deemed Complete: October 4, 2005

End of 60-Day Decision Period: December 3, 2005

End of 120-Day Decision Period: On November 2, 2005, Staff sent the applicant a letter extending the decision period to no later than February 1, 2006.

Ward: 13 **Neighborhood Organization:** Kenny Neighborhood Association

Existing Zoning: R1 (Single-family) district, SH (Shoreland) Overlay District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 36

Lot area: 6,365 square feet or .14 acres

Legal Description: See attachment.

Proposed Use: A new single-family home in the R1 district.

Concurrent Review:

- Conditional Use Permit to locate development within 50 feet of any protected water (wetland) and to allow development within 40 feet of the top of a steep slope.
- Variance to permit development in the Shoreland Overlay District within 50 feet of a protected water and within 40 feet of the top of a steep slope.

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits, Chapter 525, Article IX, Variances & Chapter 551, Article VI, SH Shoreland Overlay District.

Background: The applicant proposes to construct a new single family home northeast of Grass Lake on the property located at 5912 Girard Avenue South. The property is currently vacant but densely vegetated, zoned R1 and is located within the SH (Shoreland) Overlay District.

Due to the proximity of the property to Grass Lake and the surrounding wetland, the grades on site and the location within the SH Overlay District, the proposed development requires a conditional use permit to allow development within 50 feet of any protected water (wetland) and to allow development within 40 feet of the top of a steep slope. A variance is also required in the SH Overlay District in order to permit development within 50 feet of any protected water (wetland) and within 40 feet of the top of a steep slope. The SH Overlay District defines a steep slope as land having an average slope of 18 percent or greater measured over a horizontal distance of 50 feet or more.

The single-family home as proposed would be approximately 45 feet wide. With the inclusion of the proposed covered porch which appears to wrap around the side of the proposed home, the structure would be 50 feet wide. Per Section 535.90, the minimum width of single-family residential structures is 22 feet. The structure as proposed would meet the required setbacks per the R1 district from the property lines. The property would not be subject to a front yard increase (546.160), as the adjacent residential property to the north is located 21 feet 7 inches from the east property line which is less than the 25 foot minimum district requirement. The home is proposed at 2 ½ stories and 35 feet tall with a walkout basement. Without benefit of detailed architectural plans, Staff is unable to determine whether the home is meeting the height limitations within the Shoreland Overlay District. Should the Planning Commission approve the applications, the applicant would be required to attain a separate permit for the single-family dwelling which would be required to meet all applicable requirements.

There are wetlands located on the south side of the property. The proposed home would wrap around the northern edge of the delineated wetlands and at the closest point would be constructed approximately 1 foot from the delineated boundary. A wetland delineation report was prepared by a private consulting firm and has been attached for reference. The report states that the wetland boundary was delineated along a slight rise in topography due apparently to historic fill. The report further states the Hennepin County Soil Survey has not mapped the soils in this portion of the county because it is urban land. Additionally, the applicant has also provided a survey which identifies the trees currently located on site which has been attached for reference. Based on the applicant's proposal, it would appear that the majority of the trees on site would be removed in order to construct the proposed structure.

Staff is concerned and questions whether the site could be developed while adhering to the following applicable regulations: (1) compliance with the grading and filling regulations of Section 551.510, including employing best management practices to prevent erosion and trap sediment; and (2) removal of vegetation on a steep slope which is prohibited except as authorized by the zoning administrator in section 551.520 of the zoning code.

Staff has not received correspondence from the Kenny Neighborhood Association stating a position on the applications prior to the printing of this report. Neighborhood letters have been attached for reference.

CONDITIONAL USE PERMIT – (1) to permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland) (2) to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope

Findings as Required by the Minneapolis Zoning Code:

The Department of 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.

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Wetland protection at various levels of government is based on a consensus that there is a strong public interest in the preservation of the quality and quantity of wetlands. The design and configuration of the structure as proposed would be located within 1 foot of a delineated wetland. Staff would expect that the design of the proposed home could be deemed to have a detrimental impact on or endanger the public health, safety, comfort or general welfare. The majority of the dense vegetation on site would be removed and Staff would expect that construction of a new home within 1 foot of the wetland could be detrimental as it is unlikely that the wetlands wouldn't be disturbed.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Staff does not generally believe that allowing the proposed development within 40 feet of the top of a steep slope would endanger the public health, safety, comfort or general welfare. However, the structure as proposed and designed would be located directly within the area categorized as a steep slope which could have a detrimental impact. Staff would expect that the property could potentially be developed in such a manner that the above listed impacts are minimized.

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.

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Staff believes that the structure as proposed could potentially be injurious to the use and enjoyment of other property in the vicinity however, would likely not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district. The proposed structure would be located within 1 foot of a delineated wetland area and would likely require that the majority of the vegetation on site be removed.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Staff believes that the proposed development located within 40 feet of the top of a steep slope and constructed within the steep slope could potentially be injurious to the use and enjoyment of surrounding property, however, would likely not impede the normal development of the surrounding area. The development as proposed would likely result in substantial alteration to the property as it currently exists, both in regard to vegetation removal as well as grading and filling impacts.

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

The applicant would be required to work closely with the Public Works Department, the Plan Review Section of the Inspections Department and the various utility companies during the duration of the development 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 parking requirement for the proposed development would be 1 off-street parking space. The applicant is proposing to provide 2 spaces in an attached front-loaded garage off of Girard Avenue South. Staff believes that adequate measures would be provided.

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

According to the *Minneapolis Plan*, the site is located in a predominately low density residential area. According to the Principles and Policies outlined in the *Minneapolis Plan*, the following apply to this proposal:

Policy 9.5 Support the development of residential dwellings of appropriate form and density.

Staff would argue that the development as proposed is not appropriate in regard to form based on the configuration and design of the proposed structure. A proposal inclusive of a home at or near the minimum width requirement of 22 feet instead of a 50 foot wide home would potentially be supportable as the home would be located substantially further from the on –site wetland area and would arguably impact the on site steep slopes less as well.

Policy 7.4 Minneapolis will encourage the planting and preservation of trees and other vegetation.

Staff would argue that allowing the development to move forward as proposed would not result in the preservation of trees and other vegetation currently on the site. Based on the submitted tree survey provided by the applicant, Staff would expect the majority of the trees to be removed to make way for the proposed home.

Policy 7.5 Minneapolis will protect and sustain its water resources.

Implementation Steps:

- **Preserve and restore wetlands for their irreplaceable contributions to water quality, control of floodwater rates and volumes, wildlife habitat and aesthetic purposes.**
- **Undertake community-based and citywide measures to protect lake water quality by managing storm runoff, employing erosion control measures and other best management practices.**

The applicant proposes to construct a 50 foot wide single-family home with a walkout basement in the Shoreland Overlay district within 1 foot of a delineated wetland and within the steep slope located on the property. This specific proposal is not in conformance with the above noted principles and policies of the comprehensive plan.

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

With the approval of the conditional use permits and variances, as well as compliance with the single-family home design requirements and the Shoreland Overlay District requirements, this development would appear to meet the applicable requirements of the R1 zoning district. The applicant must comply with the grading and filling regulations of Section 551.510, including employing best management practices to prevent erosion and trap sediment. Additionally, removal of vegetation on the steep slope shall be prohibited except as authorized by the zoning administrator in section 551.520 of the zoning code.

ADDITIONAL FINDINGS FOR CONDITIONAL USES (551.490) –

A. Evaluation Criteria

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

The applicant would be required to prevent soil erosion and possible pollution of public waters, both during and after construction. The applicant would be required to install a silt fence during construction and would be required to follow all applicable City requirements to prevent any type of pollution. Due to the constraints of the site and the proposed design of the residential structure within very close proximity of the wetland, Staff is concerned with the potential for erosion on site. Staff recommends that the applicant consider an alternative design that significantly increases the distance between the dwelling and protected water.

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

It is difficult to predict the potential for visibility as the majority of the vegetation on site would likely be removed and the structure as proposed would be 35 feet tall. However, the adjacent site closest to Grass Lake is also densely vegetated.

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

Not applicable for the proposed development.

B. Uses Allowed – development within 50 feet of a protected water (wetland) and within 40 feet of the top of a steep slope

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

The applicant has not verified that the underlying material would be adequate for the existing slope conditions and soil types. The existing slope would likely not remain intact as some filling and grading of the site would likely be necessary in order for it to be buildable. Further, the slope and wetland on site would likely be disturbed throughout the entire construction process.

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

The applicant has not verified that the development would not present any danger of falling rock, mud or uprooted trees and other materials. Silt fencing would be

required to be placed at both the top and bottom of the steep slopes subject to City requirements.

- 3. 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 surrounding architectural features.**

Staff believes that the view of the developed slope from the protected water would not be consistent with the natural appearance of the slope and with the surrounding architectural features.

VARIANCES - (1) to permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland) (2) to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope.

Findings as Required by the Minneapolis Zoning Code for the Variances:

- 1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): It would be unlikely that the property could be put to a reasonable use under the conditions allowed and with strict adherence to the regulations of the zoning code. If required to develop at least 50 feet away from the delineated wetland boundary on site, only 15 square feet of buildable area would remain with adherence to the interior and rear yard setback requirements. Due to the site constraints, Staff believes that the house as proposed is not a reasonable use of the property. It is Staff's position that a modified proposal incorporating a house at or near the minimum width requirements could be deemed reasonable; however, construction of a home with a walkout basement within 1 foot of a delineated wetland is not a reasonable use of the property.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: It would be difficult to put the property to a reasonable use under the conditions allowed and with strict adherence to the regulations of the zoning code. The top of the steep slope on site is based on the existing contours of the site and is therefore, irregular. The buildable area would be substantially reduced and would require that the majority of any new construction be located adjacent to the rear lot line. It is likely that the home as proposed would require significant alterations to the existing property. Staff would argue that the proposal is not reasonable and that construction of a home designed sensitively to fit into the existing contours or with minimal grading and filling meeting the requirements of Section 551.510 would be reasonable and potentially supportable.

- 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.

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): The circumstances could be considered unique as there are wetlands that are delineated on the south side of the property. However, it is Staff's position that that the proposed development does not constitute a hardship. A house at or near the minimum width requirement of 22 feet would arguably have much less of an impact on the wetland area located on the property and could potentially be supported. Designing and proposing to construct a house, with a walkout basement within 1 foot of a delineated wetland at a width of nearly 50 feet has been created by the applicant and does not constitute a hardship.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: The circumstances requiring a variance to allow development within 40 feet of the top of a steep slope are somewhat unique to the site, however, it is likely that the home as proposed would require significant alterations to the existing property and the on site slope. Staff would argue that the proposal does not constitute a hardship and that construction of a home designed sensitively to fit into the existing contours or with minimal grading and filling meeting the requirements of Section 551.510 could potentially be supportable.

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.

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Staff would conclude that granting the variance to construct a new 50 foot wide, single-family home with a walkout basement within 1 foot of a delineated wetland is not in keeping with the spirit and the intent of the ordinance. The Shoreland Overlay district was established to preserve and enhance the environmental qualities of surface waters and the natural and economic values of shoreland areas within the city. Further the district provides for the efficient and beneficial utilization of those waters and shoreland areas and protection of the public health, safety and welfare. Staff would argue that this proposal is not in keeping with the spirit and intent of the ordinance, and further could alter the essential character of the locality.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Granting a variance to construct the proposed home would likely not be in keeping with the spirit and intent of the ordinance and would likely alter the essential character of the area. The proposed development would have significant impacts on the property as the densely vegetated site would likely need to be cleared to accommodate such a large home. The proposed location would also likely require significant grading and filling.

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.

To permit development in the Shoreland Overlay District within 50 feet of any protected water (wetland): Granting a variance to allow development within 1 foot of a wetland area would likely not result in a substantial increase in the congestion of the public streets, danger of fire or be detrimental to the public welfare or endanger the public safety.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Granting the setback variance to allow development within 40 feet of the top of a steep slope would likely not result in a substantial increase in the congestion of the public streets, danger of fire or be detrimental to the public welfare or endanger the public safety.

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 **deny** the application for a conditional use permit to allow development within 50 feet of a protected water for property located at 5912 Girard Avenue South.

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 **deny** the application for a conditional use permit to allow development within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

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 above findings and **deny** the variance to permit development in the Shoreland Overlay District within 50 feet of a protected water for property located at 5912 Girard Avenue South.

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 above findings and **deny** the variance to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for property located at 5912 Girard Avenue South.

Attachments:

1. Statement of use and description of project
2. Findings
3. Correspondence
4. Letter from Minnehaha Creek Watershed District
5. Wetland Report
6. Zoning map
7. Plans – survey, site and proposed residence elevations
8. Neighborhood letters