

**Department of Community Planning and Economic Development – Planning Division**  
Conditional Use Permit and Variances  
BZZ-2708

**Date:** November 28, 2005

**Applicant:** Mike and Stacy Sullivan

**Address of Property:** 42 Summit Place

**Project Name:** Sullivan Residence

**Contact Person and Phone:** Jeremy Banken, (612) 363-6111

**Planning Staff and Phone:** Lonnie Nichols, (612) 673-5468

**Date Application Deemed Complete:** October 28, 2005

**End of 60-Day Decision Period:** December 27, 2005

**End of 120-Day Decision Period:** Not applicable at this time

**Ward:** 7      **Neighborhood Organization:** Lowry Hill

**Existing Zoning:** R2 (two-family residential) and SH (Shoreland overlay)

**Proposed Zoning:** No change proposed, not applicable for this application.

**Zoning Plate Number:** 18

**Legal Description:** No change proposed, not applicable for this application.

**Proposed Use:** Tiered retaining wall system on steep slope with deck area in required setback area at the top of the steep slope.

**Concurrent Review:** Conditional use permit and variance for development of a retaining wall system and deck on and within 40 feet of the top of a steep slope, and a setback and size variance from the required 5 feet to 3 feet along the east interior lot line allowing approximately 16 sf of a 336 sf deck to be built on existing pilings in required yard area.

**Applicable zoning code provisions:** Chapter 525, Article VII, Conditional Use Permits; Chapter 525, Article IX Variances, specifically Section 525.520(1) “to vary the yard requirements, including permitting obstructions into required yards not allowed by the applicable regulations, and 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; Chapter 535, Regulations of General

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Appropriation, specifically Table 535-1 Permitted Obstructions in required yards, and; Chapter 551, Article VI, Shoreland Overlay District.

**Background:** Structures LLC has filed application for a conditional use permit and variance for development of a retaining wall system and deck on and within 40 feet of the top of a steep slope, and a setback variance from the required 5 feet to 3 feet along the east interior lot line allowing approximately 16 sf of a 336 sf deck to be built on existing pilings in required yard area for the property located at 42 Summit Place in the R2 (Two Family Residential) and SH (Shoreland Overlay) zoning districts. The application was noticed for interior side yard setbacks of 10 feet with a deck size variance in error. This will be corrected by returning the said variances that were noticed in error.

The subject residence had a severe slope failure in the rear yard approximately four years ago causing a landslide that destabilized the slope and destroyed the adjacent neighbor's garage near the bottom of the steep slope area. The parties involved have reached a settlement and wish to proceed with the work proposed.

The City of Minneapolis issued building permit BIRE #3024796 to the applicant on October 16, 2003, to: construct a tied-back soldier pile and lagging wall at the Toe of the slope in the rear yard; construct a tiered gabion basket retaining wall system at the crest of the slope in the rear yard; regrade the slope to 1:7 horizontal 1 vertical and install soil nails and erosion control mat, and; to construct pile footings and support structure to grade for future deck, noting that a separate permit would be required for deck construction. A condition requiring special inspections and a final letter from the design engineers indicating that the work was completed according to the design intent was placed on the building permit by the Plan Review division of the City.

### **CONDITIONAL USE PERMIT**

**Findings as required by the Minneapolis Zoning Code:** for a conditional use permit for the development of a retaining wall system and deck on and within 40 feet of the top of a steep slope.

The Community Planning and Economic Development Planning Division has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

**1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The retaining wall system is intended to stabilize the soil and prevent further erosion on a steep slope. Provided best management practices are followed for the engineering and during implementation, the retaining wall system will not be detrimental to or endanger the public health, safety, comfort or general welfare. Staff believes that the deck proposed at the top of the steep slope should include a safety railing four feet in height facing the steep slope area, and be narrowed in width so that it is not in the required setback areas along the interior lot lines.

**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.**

Provided best management practices are followed for the engineering and during implementation, the retaining wall system and deck 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 project under review would be implemented to remedy the reoccurrence of another landslide and soil erosion at the subject site. Staff believes that the deck proposed at the top of the steep slope should include a safety railing four feet in height facing the steep slope area, and be narrowed in width so that it is not in the required setback areas along the interior lot lines.

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

Adequate utilities, access roads, drainage, necessary facilities or other measures, will be provided by following best management practices for the engineering and during implementation of the project. The applicant has indicated the involved parties (42 Summit Place and 735 Kenwood Parkway) have reached a settlement and wish to proceed with the proposed work.

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

The implementation of the project should not have a significant impact on traffic congestion in the public streets. However, when the retaining wall system is connected to the re-construction of the garage on the adjacent property, additional enclosed, off street parking stalls would be created which were previously lost due to a landslide and soil erosion.

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

**MINNEAPOLIS PLAN:**

The Minneapolis Plan identifies the subject property, 42 Summit Place, as a low density residential land use. The proposed retaining wall system and deck conforms to the following applicable policies and relevant implementation steps of the Minneapolis Plan.

**4.14 Minneapolis will maintain the quality and unique character of the city's housing stock, thus maintaining the character of the vast majority of residential blocks in the city.**

**Relevant Implementation Steps**

Continue using high quality materials for new construction and historic preservation that reinforce long-term housing maintenance goals.

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Encourage adaptive re-use, retrofit and renovation projects that make the city's housing stock competitive on the regional market.

Provide the flexibility in the city's ordinances to improve and maintain existing structures.

Attain the greatest possible degree of enhancements to neighborhood livability when making infrastructure improvements or modifications.

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

**Relevant Implementation Steps**

Encourage the planting and replacement of trees on public and private property.

Encourage the use of plant communities native to the Twin Cities which achieve native biodiversity and wildlife habitat (particularly for resident and migratory songbirds and waterfowl).

Continue to invest in the health of the urban forest by avoiding tree monocultures and planting a variety of native and other hardy non-invasive species.

**7.5 Minneapolis will protect and sustain its water resources.**

**Relevant Implementation Steps**

Develop and adopt a stormwater management ordinance for projects that will result in sizable land disturbance activity, with design standards for appropriate “best management practices” in order to reduce both runoff volume and contaminant loading from surface water runoff.

Adopt regulations encouraging the stabilization and re-vegetation of slopes and riverbanks.

The applicant has indicated that due to the design of the interlocking retaining wall system and severity of the slope, the landscaping will focus on plant varieties that contain low growing and surface root structures that will stabilize top soils, but not challenge the integrity of the retaining wall system. Any tree varieties will be carefully selected based on their root growth patterns. The applicant is encouraged to use plant communities native to the Twin Cities which achieve native biodiversity and attract wildlife habitat, such as songbirds.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.**

Provided the City Planning Commission would approve the variance for development of a retaining wall system and deck on and within 40 feet of the top of a steep slope, and setback and size variances from the required 10 feet to 3 and 5 feet along the interior lot lines allowing 96 sf of a 336 sf deck to be built on existing pilings, the proposal would conform to the applicable zoning code regulations of the district in which it is located upon approval of this conditional use permit. Development on the site would be required to comply with the following standards from Chapter 551 of the zoning code.

**551.510. Grading and filling.** Grading or filling involving more than ten (10) cubic yards where the slope of the land is toward a protected water shall be prohibited within the SH Overlay District except

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where authorized by an erosion control plan approved by the city engineer and the zoning administrator, subject to the following conditions:

- (1) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (2) Temporary ground cover, such as mulch, shall be used and permanent ground cover, such as turf grass, native grasses or other perennial flowering plants, vines, shrubs or trees shall be established.
- (3) Best management practices to prevent erosion and trap sediment shall be employed to ensure that soil loss levels do not degrade the protected water.
- (4) Fill shall be stabilized to accepted engineering standards.
- (5) Any work which will change or diminish the course, current or cross-section of a protected water shall be prohibited except where approved by the commissioner of natural resources.
- (6) The top of a riverbank or lake bank shall not be moved closer to the protected water.
- (7) Such grading or filling shall comply with the provisions of Chapter 52, Erosion and Sediment Control for Land Disturbance Activities, of the Minneapolis Code of Ordinances.

**551.520. Removal of vegetation.** Removal of vegetation on steep slopes or bluffs or within forty (40) feet of the top of steep slopes or bluffs, or within fifty (50) feet of the ordinary high water mark of any protected water, shall be prohibited within the SH Overlay District except as authorized by the zoning administrator subject to the following conditions:

- (1) Clear cutting of vegetation shall be prohibited, except as necessary for an approved development and subject to the requirements of this article and Chapter 535, Regulations of General Applicability. This provision shall not prevent the removal of noxious weeds or dead or diseased vegetation.
- (2) Selective removal of vegetation shall be allowed, subject to the requirements of this article and Chapter 535, Regulations of General Applicability, provided sufficient vegetative cover remains to screen parking areas, dwellings and other structures when viewed from the protected water and provided a continuous natural cover is maintained.
- (3) Vegetation shall be restored to the extent feasible after any construction project is completed to retard surface runoff and soil erosion and to provide screening. Restoration shall be completed as soon as feasible, but in no case later than the beginning of the next growing season following the completion of a project.
- (4) Best management practices to prevent erosion and trap sediment shall be employed to ensure that soil loss levels do not degrade the protected water.

**551.530. Stormwater management.** All development shall comply with all applicable regulations governing stormwater management, and shall employ best management practices to minimize off-site stormwater runoff, maximize overland flow and flow distances over surfaces covered with vegetation, increase on-site filtration, replicate predevelopment hydrologic conditions as nearly as possible, minimize off-site discharge of pollutants to ground and surface water, and encourage natural filtration function.

## ***SHORELAND OVERLAY DISTRICT STANDARDS***

Evaluation Criteria as Required by the Minneapolis Zoning Code for the Conditional Use Permit 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 applicants have indicated that the required soil erosion control methods will be followed during the construction of the retaining wall system and deck.

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

The construction of the retaining wall system and deck would not be visible from any protected waters.

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

This provision is not applicable to this development.

**VARIANCE:**

**Findings Required by the Minneapolis Zoning Code:** for a variance for the development of a retaining wall system and deck on and within 40 feet of the top of a steep slope.

**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.**

The proposed retaining wall system is intended to stabilize the soil and prevent further erosion on a steep slope. About half of the surface area of the steep slope has been covered with plastic tarp to prevent further erosion. 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. However, staff believes that the deck proposed at the top of the steep slope should include a safety railing four feet in height facing the steep slope area, and be narrowed in width so that it is not in the required setback areas along the interior lot lines.

**2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

The subject residence had a severe slope failure in the rear yard approximately four years ago causing a landslide that destabilized the slope and destroyed the adjacent neighbors garage near the bottom of the steep slope area. The parties involved have reached a settlement and wish to proceed with the work proposed. The circumstances are unique to the parcel of land for which the variance is sought and the landslide, resulting in property damage and a barren and unprotected steep slope, was not intentionally created by any persons presently having an interest in the property.

**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.**

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The project under review would be implemented to remedy the reoccurrence of another landslide and soil erosion at the subject site. The proposed retaining wall system is intended to stabilize the soil and provide a network of infrastructure on the subject property that will be physically connected to the adjacent neighbor's future garage wall near the bottom of the said steep slope. While the proposed retaining wall system would create a stepped grade change on the slope, 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.

- 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.**

The implementation of the project should not have a significant impact on traffic congestion in the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety. However, when the retaining wall system is connected to the re-construction of the garage on the adjacent property, additional enclosed, off street parking stalls would be created which were previously lost due to a landslide and soil erosion.

**VARIANCE:**

**Findings Required by the Minneapolis Zoning Code:** for a setback variance for a deck from the required 5 feet to 3 feet along the east interior lot line for the property located at 42 Summit Place.

- 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.**

The applicant has indicated the existing pilings were intended to serve as support posts for a deck planned for installation at the subject property in 2003 in coordination with building permit #3024796. Staff acknowledges the existence of the said building permit, issued October 16, 2003, but notes that the building permit states a separate permit is required for deck construction. The applicant could construct a deck approximately 275 sf by using the existing pilings, located within the side yard setback areas, as support posts for the structure. Also, two additional support posts could be added along the east interior setback line to provide approximately a 320 sf deck. The property can be put to reasonable use under the conditions allowed by designing the deck within the permitted setback area. The variance for a setback from 10 to 5 feet along the west interior lot line is not needed and can be returned to the applicant.

- 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.**

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The subject residence had a severe slope failure in the rear yard approximately four years ago causing a landslide that destabilized the slope and destroyed the adjacent neighbors garage near the bottom of the steep slope area. The parties involved have reached a settlement and wish to proceed with the work proposed. The circumstances are unique to the parcel of land for which the variance is sought and the landslide, resulting in property damage and a barren and unprotected steep slope, was not intentionally created by any persons presently having an interest in the property.

- 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.**

While the granting of the variance may not alter the essential character of the locality, it may be injurious to the use or enjoyment of the adjacent properties to the east, and staff does not believe granting the setback down to three (3) feet from the adjacent property would be in keeping with the spirit and intent of the ordinance. The deck would be an amenity for the property and provide functional space in the rear yard. Building the deck area in the east interior setback area would allow the structure to span 84% of the width of the lot (42/50), where 80% is permitted (40/50) (calculation = deck width divided by lot width). Staff believes that the deck proposed at the top of the steep slope should include a safety railing four feet in height facing the steep slope area, and be narrowed in width to comply with the required setback areas along the interior lot lines.

- 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.**

The proposed variance for deck area in the required interior side yard setback 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.

**VARIANCE:**

**Findings Required by the Minneapolis Zoning Code:** for a size variance allowing 96 sf of a 336 sf deck to be built on existing pilings in required yard area along the interior lot lines for the property located at 42 Summit Place.

- 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.**

This variance was noticed in error, is not needed, and can be returned to the applicant.

- 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.**

Not applicable.

- 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.**

Not applicable.

- 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.**

Not applicable.

## **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 for development of a retaining wall system and deck on and within 40 feet of the top of a steep slope, for the property located at 42 Summit Place, subject to the following conditions:

1. The use of “Best Management Practices”, including sections 551.510, 551.520, 551.530 of the zoning code for the implementation and maintenance of the project.
2. The deck width is narrowed so that it does not project into the required setback areas along the interior lot lines.

### **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 **approve** the variance for the development of a retaining wall system and deck on and within 40 feet of the top of a steep slope, subject to the following conditions:

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1. The use of “Best Management Practices”, including sections 551.510, 551.520, 551.530 of the zoning code for the implementation and maintenance of the project.
2. The deck width is narrowed so that it does not project into the required setback areas along the interior lot lines.

**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 setback variance from 5 feet to 3 feet for a deck along the east interior lot and **return** the setback variance from 10 feet to 5 feet for a deck along the west interior lot line for the property located at 42 Summit Place.

**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 **return** the size variance to allow 96 sf of a 336 sf deck to be built on existing pilings in required yard area along the interior lot lines for the property located at 42 Summit Place.

**Attachments:**

1. Project Description
2. Letters to Neighborhood and Council Member
3. Findings and Authorization letter
4. Copy of 2003 Building Permit (BIRE #3024796)
5. Zoning maps
6. Survey and Plans
7. Photos