



## Request for City Council Committee Action from the Department of Community Planning & Economic Development - Planning Division

**Date:** October 27, 2011

**To:** Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

**Referral to:** Zoning & Planning Committee

**Subject:**

**Name of Appellant:** Angela Elser

**Name of Original Applicant:** John and Judith Reiling

**Property Address:** 3616 Edmund Boulevard

**Ward #:** 12

**Appeal of decision of the Zoning Board of Adjustment:** Angela Elser has appealed the decision of the Board of Adjustment to approve a variance to allow for development on or within 40 feet of the top of a steep slope to allow for the new construction of a single-family dwelling on Lot 1 of the property located at 3616 Edmund Boulevard in the R1 Single-Family District, SH Shoreland Overlay District and MR Mississippi River Critical Area Overlay District.

**Recommendation:**

The Zoning Board of Adjustment and staff recommend concurrence with the action taken on September 15, 2011, for the property at 3616 Edmund Boulevard, Ward #12, as follows:

**1. 3616 Edmund Boulevard (BZZ-5163, Ward 12)**

**Variance:** John and Judith Reiling have applied for a variance to allow for development on or within 40 feet of the top of a steep slope to allow for the new construction of a single-family dwelling on Lot 1 of the property located at 3616 Edmund Boulevard in the R1 Single-Family District, SH Shoreland Overlay District and MR Mississippi River Critical Area Overlay District.

**Actions:** The Board of Adjustment **adopted** the findings and **approved** a variance to allow for the development, including a new single-family dwelling and driveway with retaining walls on or within 40 feet of the top of a steep slope on Lot 1 of the property located at 3616 Edmund Boulevard in the R1 Single-Family District, SH Shoreland Overlay District and MR Mississippi River Critical Area Overlay District, subject to the following conditions of approval:

1. CPED-Planning and all other applicable City departments review and approve the final plans.
2. Final plans must include soil, storm water, and vegetation information addressing conditions on the site and potential impact of the development.

**Previous Directives:** None

Prepared by: Shanna Sether, Senior City Planner, 612-673-2307 Approved by: Jason Wittenberg, Planning Manager, 612-673-2297 Presenters in Committee: Shanna Sether, Senior City Planner, 612-673-2307
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### **Community Impact**

- Neighborhood Notification: Longfellow Community Council was notified of the appeal application.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On July 12, 2011, staff sent a letter to the applicant extending the City's decision period for an additional 60 days, to September 29, 2011. On July 20, 2011 staff received a letter from the applicant granting an additional extension to December 1, 2011.

### **Background/Supporting Information**

Angela Elser has appealed the decision of the Board of Adjustment to approve a variance to allow for development on or within 40 feet of the top of a steep slope to allow for the new construction of a single-family dwelling on Lot 1 of the property located at 3616 Edmund Boulevard in the R1 Single-Family District, SH Shoreland Overlay District and MR Mississippi River Critical Area Overlay District. At its meeting on September 15, 2011, the Board of Adjustment voted 4-3 to adopt staff findings and approve the requested variance. The appeal (attached) was filed on September 23, 2011. The appellant's complete statement of the action being appealed and reasons for the appeal are attached. The Board of Adjustment minutes and Planning Division staff report are also attached.

**Department of Community Planning and Economic Development – Planning Division**  
Variance  
BZZ 5163

**Date:** September 15, 2011

**Applicant:** John and Judith Reiling

**Address of Property:** 3616 Edmund Boulevard

**Contact Person and Phone:** John Reiling, (612) 729-9137

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

**Date Application Deemed Complete:** June 2, 2011

**End of 60 Day Decision Period:** July 31, 2011

**End of 120 Day Decision Period:** On July 12, 2011, staff sent a letter to the applicant extending the City's decision period for an additional 60 days, to September 29, 2011. On July 20, 2011 staff received a letter from the applicant granting an additional extension to December 1, 2011.

**Ward:** 12      **Neighborhood Organization:** Longfellow Community Council

**Existing Zoning:** R1 Single Family District, MR Mississippi River Critical Area Overlay and SH Shoreland Overlay District.

**Proposed Use:** New single-family dwelling with attached garage

**Proposed Variance:** A variance to allow for development on or within 40 feet of the top of a steep slope to allow for the new construction of a single-family dwelling and driveway with retaining walls on Lot 1 in the SH Shoreland Overlay District

**Zoning code section authorizing the requested variance:** Chapter 525, Article IX Variances, Specifically Section 525.520(17) "to permit development in the SH Shoreland Overlay District...within forty (40) feet of the top of a steep slope or bluff."

**Background:** The applicant was granted a continuance from the June 30, 2011, and the July 28, 2011, Zoning Board of Adjustment hearings to allow for sufficient time to analyze new information provided by the public and provide additional engineering reports for the proposed site and project.

The lot is approximately 23,339 ft. and consists of two platted lots; Lot 1 and Lot 2. The property consists of an existing one and a two-story dwelling constructed in 1973. The applicant is proposing to obtain a separate property identification number for Lot 1 and construct a new single-family dwelling with an attached garage. There are substantial grade changes from the street and there are several steep

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slopes on the property. The site is located within 1,000 ft. of a mapped wetland adjacent to the Mississippi River and is therefore subject to SH Shoreland Overlay District regulations. A variance is required for all development on or within forty (40) feet of the top of a steep slope. Specifically, the development that is located on or within forty feet of a steep slope and within the SH Shoreland Overlay District is the cantilevered portion of the dwelling, the balcony in front of the cantilever and driveway with retaining walls. The majority of the dwelling is not located in the SH Shoreland Overlay District and is not subject to review through the variance application.

The new single-family dwelling will also be subject to the conditions of the design standards outlined in section 530.280 in the zoning ordinance.

**530.280. Design standards.** New single and two-family dwellings and multiple-family dwellings having three (3) or four (4) dwelling units shall comply with the applicable regulations of this zoning ordinance, including but not limited to the standards of Chapter 535, Regulations of General Applicability, related to front entrance, window area, and walkway requirements, and limitations on attached garages facing the front lot line. In addition, the zoning administrator shall ensure that such uses obtain a minimum of fifteen (15) points from Table 530-2, Single and two-family dwellings and multiple-family dwellings having three or four dwelling units. Standards used to meet the minimum requirement must remain in place for a period of not less than fifteen (15) years from the date of approval.

Preliminary review indicates that the design as currently proposed would receive 16 points for the following: Providing a basement, wood siding exterior, not less than 20% windows facing Edmund Blvd., not less than 10% windows facing the side and rear property lines and at least one deciduous tree in the front yard. If the applicant is approved for the variance required, they are required to submit an application of Administrative Site Plan Review for a new single-family dwelling.

Staff has received correspondence from the Longfellow Community Council and it is attached to this report. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

To apply for a variance to allow for development on or within 40 feet of a steep slope or bluff the following four items must be met:

- 1. Development must currently exist on the steep slope or within 40 feet of the top of a steep slope within 500 feet of the proposed development.*

The existing single-family dwelling at 3616 Edmund Boulevard and proposed single-family dwelling and driveway area are within 40 feet of the top of the steep slope and require a variance to allow for the cantilevered portion of the dwelling, the balcony in front of the cantilever and a driveway with retaining walls.

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

The applicant's architect is recommending that retaining walls support the driveway and be composed of either large modular blocks or gabion walls. Using these materials will not require footings and may only minimally disrupt the soil and tree root systems. Analysis of the soils were conducted American Engineering Testing, Inc. on behalf of the applicant. They have identified the site geology consisting of topsoil underlain by alternating layers of

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fine alluvium, mixed alluvium and coarse alluvium; including clay, silt and sand. According to American Engineering Testing, Inc. the naturally deposited alluvium beneath the topsoil and near surface fine alluvium are judged to be competent for structural support. The proposed project must comply with the City of Minneapolis' and International Residential Code standards and ordinances regarding the erosion control and stormwater regulations. The project area and surrounding properties are currently developed and the foundation and underlying material will be adequate for the slope condition and soil type.

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

The proposed project will require the removal of one oak tree that was damaged in an electrical storm within the SH Shoreland Overlay District boundary. The applicant's architect is recommending that retaining walls support the driveway and be composed of either large modular blocks or gabion walls. Using these materials will not require footings and may minimally disrupt the soil and tree root systems. Analysis of the soils were conducted American Engineering Testing, Inc. on behalf of the applicant. They have outlined several recommendations regarding building grading, fill placement and compaction, foundation design, floor slab design, basement backfilling/water control, exterior building backfilling and surface water infiltration. In addition, the civil engineer is recommending that a silt fence be installed at the upstream edge of the culvert to prevent erosion from entering the culvert, which travels to the Mississippi River. The proposed project must comply with the City of Minneapolis' and International Residential Code standards and ordinances regarding the erosion control. Further, Public Works has made comments that the primary cause of the erosion on the steep slopes today is the contributing impervious area from the surrounding area and this project should reduce the erosion from the lot upon its completion. Also, Environmental Services has outlined the parameters to maintain erosion on-site during and after construction. Building Code Plan Review Staff stated that the driveway retaining walls may impact the nearby oak trees. The landscape architect has provided recommendations for the proposed construction to ensure that tree loss will be limited to one oak tree in the SH Shoreland Overlay District boundary that was previously damaged by lightning. There will be 2 maples, with a 12 inch breast height diameter that are 5 ft. tall and additional maples under the footprint of the dwelling, which are less than 12 inches in breast height diameter that will be removed. These maple trees are not located in the SH Overlay District boundary. Staff does not believe that the proposed development will present danger of falling rock, mud, uprooted trees or other materials.

4. *The view of the developed slope from the protected water shall be consistent with the natural appearance of the slope, with any historic areas, and with the surrounding physical contexts.*

The project area is located within 40 feet of the top of a steep sloop and is approximately 930 feet from the edge of the Mississippi River and mapped wetland. Approximately 2/3 of the site is located in the SH Shoreland Overlay District. The front of the property is heavily wooded and there is a bluff on the east side of West River Parkway that drops down to the Mississippi River. During leaf-off season the subject area will may be more visible, as well as the rest of the existing structures located within 40 feet of the top of the steep slope on the west side of the Mississippi River.

**Findings Required by the Minneapolis Zoning Code:**

**VARIANCE** to allow for development on or within 40 feet of the top of a steep slope to allow for the new construction of a single-family dwelling and driveway with retaining walls on Lot 1 in the SH Shoreland Overlay District

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

There are unique circumstances of the parcel of land that have created the practical difficulties and have not been created by any persons presently having an interest in the property. The existing project area is already located within 40 feet of the top of the steep slope and any repair, replacement or improvements to this area would require this variance. The entire dwelling could be constructed outside of the SH Shoreland Overlay District boundary and a variance would not be required. However, access to the property via walkway or driveway could not and both are required by the zoning code. Therefore, the subject property could not be developed without a variance to allow for development within 40 feet of the top of the steep 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 applicant is seeking a variance to allow development, specifically for a cantilevered portion of a single-family dwelling, balcony and driveway with retaining wall on or within 40 feet of the top of a steep slope in the Shoreland Overlay District. The project area is located within 40 feet of the top of a steep slope and is approximately 930 feet from the edge of the Mississippi River and a mapped wetland. The front of the property is heavily wooded and there is a bluff on the east side of West River Parkway that drops down to the Mississippi River. The intent of the ordinance is to protect both the water body and other properties located below a steep slope from erosion and runoff. There is a 30-inch culvert at the bottom of the steep slope, located on the subject property. The culvert combines with the other storm drains and extends below Edmund Boulevard and West River Parkway to an outfall near East 36<sup>th</sup> Street. The applicant's civil engineer is recommending that a silt fence be installed at the upstream edge of the culvert to prevent erosion from entering the culvert and traveling to the Mississippi River. Public Works has made comments several comments regarding the proposed plan, including:

- 1) The primary cause of the erosion on the steep slopes today is the contributing impervious area from the surrounding area.
- 2) This project should reduce the erosion from the lot upon its completion.
- 3) Care should be taken to deal with the adjacent stormwater run off that flows onto the subject property during design and implementation.
- 4) I have found no documentation in City records indicating a natural spring in the vicinity of the subject property nor found no evidence of base flow in the pipe during dry weather potentially indicating a natural spring in this area.

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- 5) This project can be successfully completed without having a negative impact on the stormwater run off.
- 6) The final landscape plan shall be designed and implemented to minimize run off erosion from the property.

Also, Environmental Services has outlined the parameters to maintain erosion on-site during and after construction including:

- 1) Maintain a vegetative strip/buffer between the silt screen fencing on the construction boundary and the property lines
- 2) Minimize removal of ground cover in the construction area
- 3) Establish ground cover as quickly as possible after construction has been completed and water as needed to establish good growth and rooting of planted material
- 4) Wait to break ground until after the spring snow melt is done and if possible the spring rains
- 5) The silt screening fencing to be maintained and repaired
- 6) The site entrance and exit will need to be rocked to prevent tracking to the street

Finally, Building Code Plan Review Staff have reviewed the preliminary site plan and it appears as though it should be able to meet the building code requirements regarding drainage.

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

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

Staff believes that the granting of this variance would be in keeping with the spirit and intent of the ordinance and would not negatively alter the essential character of the area. Granting the variance to allow development within 40 feet of the top of a steep slope would likely not be detrimental to the health, safety or welfare of the general public or of those utilizing the property or nearby properties.

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

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

Staff believes the proposed project will prevent soil erosion and other possible pollution during and after construction. Building and erosion control permits will be reviewed and issued before any work may begin on the subject property. The applicant's civil engineer is recommending that a silt fence be installed at the upstream edge of the culvert to prevent erosion from entering the

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culvert and traveling to the Mississippi River. Public Works has made comments several comments regarding the proposed plan, including:

- 1) The primary cause of the erosion on the steep slopes today is the contributing impervious area from the surrounding area.
- 2) This project should reduce the erosion from the lot upon its completion.
- 3) Care should be taken to deal with the adjacent stormwater run off that flows onto the subject property during design and implementation.
- 4) I have found no documentation in City records indicating a natural spring in the vicinity of the subject property nor found no evidence of base flow in the pipe during dry weather potentially indicating a natural spring in this area.
- 5) This project can be successfully completed without having a negative impact on the stormwater run off.
- 6) The final landscape plan shall be designed and implemented to minimize run off erosion from the property.

Also, Environmental Services has outlined the parameters to maintain erosion on-site during and after construction including:

- 1) Maintain a vegetative strip/buffer between the silt screen fencing on the construction boundary and the property lines
- 2) Minimize removal of ground cover in the construction area
- 3) Establish ground cover as quickly as possible after construction has been completed and water as needed to establish good growth and rooting of planted material
- 4) Wait to break ground until after the spring snow melt is done and if possible the spring rains
- 5) The silt screening fencing to be maintained and repaired
- 6) The site entrance and exit will need to be rocked to prevent tracking to the street

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

Staff believes the proposed development will permit very limited site lines from the Mississippi River, if any. The front of the property is heavily wooded and there is a bluff on the east side of West River Parkway that drops down to the Mississippi River. During leaf-off season the subject area will may be more visible, as well as the rest of the existing structures located within 40 feet of the top of the steep slope on the west side of the Mississippi River.

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

The subject site does not have direct access to the Mississippi River and will not require the accommodation of any additional watercraft of any type on the Mississippi River.

**Recommendation of the Department of Community Planning and Economic Development - Planning Division:**

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **approve** a variance to allow for the development, including a new single-family dwelling and driveway with retaining walls on or within 40

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feet of the top of a steep slope on Lot 1 of the property located at 3616 Edmund Boulevard in the R1 Single-Family District, SH Shoreland Overlay District and MR Mississippi River Critical Area Overlay District, subject to the following conditions of approval:

1. CPED-Planning and all other applicable City departments review and approve the final plans.
2. Final plans must include soil, stormwater, and vegetation information addressing conditions on the site and potential impact of the development.

**Attachments:**

- 1) Written descriptions and findings submitted by the applicant
- 2) Copy of e-mail sent to Longfellow Community Council and CM Colvin-Roy
- 3) Correspondence
- 4) Comments from Public Works
- 5) Storm drains and outfall near East 36<sup>th</sup> Street map provided by Public Works
- 6) Comments from Building Code Plan Review
- 7) Comments from Environmental Services
- 8) Zoning map
- 9) Topographical map
- 10) Shoreland Overlay District map
- 11) Mississippi River Critical Area Overlay District map
- 12) Hennepin County map
- 13) Site plan
- 14) Floor plans
- 15) Elevations
- 16) Water drainage calculations
- 17) Geotechnical report
- 18) Tree protection information
- 19) Photographs