

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

Conditional Use Permit and Variances
BZZ-3175

Date: August 28, 2006

Applicant: Jim Pohlad, 60 S. 6th Street, Suite 3800, Minneapolis, MN 55402, (612) 661-3860

Addresses of Property: 3809, 3811 and 3813 Sheridan Avenue South

Project Name: Private Residence on Lake Calhoun

Contact Person and Phone: Anne Okerman Gardner, Coen & Partners, 400 1st Avenue North #710, Minneapolis, MN 55401, (612) 341-8070

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

Date Application Deemed Complete: July 24, 2006

End of 60-Day Decision Period: September 22, 2006

End of 120-Day Decision Period: Not applicable for this application.

Ward: 13 **Neighborhood Organization:** Linden Hills Neighborhood Council

Existing Zoning: R2B (Two-family) district, SH (Shoreland) Overlay District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 29

Lot area: 30,349 square feet or .70 acres

Legal Description: See attachment.

Proposed Use: A single-family development in the R2B district.

Concurrent Review:

- Conditional Use Permit to allow development (a single-family home) within 40 feet of the top of a steep slope.
- Variance of the front yard setback requirement (reverse corner) along West Calhoun Parkway to allow for walkway, patio, and a pool encroachment.

- Variance to permit development (a single-family home) in the Shoreland Overlay District 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.

Background: The applicant proposes to construct a new single family home to be located at the southeast corner of West Calhoun Parkway and Sheridan Avenue South overlooking Lake Calhoun. The addresses of the properties are 3809, 3811 and 3813 Sheridan Avenue South. The properties are zoned R2B and located within the SH (Shoreland) Overlay District. A conditional use permit and variance are required to allow development in the Shoreland Overlay District within 40 feet of the top of a steep slope. A variance is also required to allow the walkway, patio and pool encroachments into the required front yard (reverse corner) along West Calhoun Parkway. The walkways located in the front yard are greater than 4 feet in width and the patio exceeds 50 square feet in area and projects more than 4 feet into the required yard. Should the Planning Commission approve the required land use applications, prior to obtaining a building permit, the applicant must attain a separate permit for the single-family dwelling which would be required to meet all applicable requirements, inclusive of Chapter 530 requirements as they pertain to single and two-family dwellings (530.280). It appears that the structure as proposed may not meet these requirements. Additionally, according to the submitted elevations, it appears that the proposed structure would not be meeting the principal entrance requirement as stated in Section 535.90 of the Zoning Code. This provision would require that a principal entry be located along the Sheridan Avenue South frontage.

Typically, the development would require a 20 foot setback along both Sheridan Avenue and West Calhoun Parkway, however, the established front yard of the closest principal building located on the same block face on either side of the property exceeds the front yard required by the R2B district. As such, the required front yards cannot be less than such established front yard. Based on this provision the applicant would be required to adhere to a setback of 41.5 feet along Sheridan Avenue and a varying setback of 50-60 feet along West Calhoun Parkway due to the irregularity of the front lot line.

Further, due to the proximity of the properties to Lake Calhoun, the grades on site and their location within the SH Overlay District, the proposed development requires a conditional use permit to allow development within 40 feet of the top of a steep slope and a variance to permit development in the SH Overlay District 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 site had previously been reviewed and approved by the Planning Commission for a cluster development in 2005. Those approvals were not pursued in lieu of the proposed single-family development.

The Linden Hills Neighborhood Council provided an email to Staff stating a position on the submitted applications. The correspondence stated that Linden Hills Zoning Committee voted not to oppose the proposed development. The correspondence has been attached for reference.

CONDITIONAL USE PERMIT - to allow development 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.

Staff does not generally believe that allowing a single-family home within 40 feet of the top of this steep slope would endanger the public health, safety, comfort or general welfare.

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.

Staff does not generally believe that the proposed single-family home even though located within 40 feet of the top of a steep slope would be injurious to the use and enjoyment of surrounding property nor will it impede the normal development of the surrounding area.

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 one parking space. The applicant is providing 4 enclosed parking spaces in an attached garage. Staff believes that adequate measures would be provided for the proposed development.

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 Polices outlined in the *Minneapolis Plan*, the following apply to this proposal:

- Minneapolis will grow by increasing its supply of housing.
- Improve the availability of housing options for its residents.
- Work with private and other public sector partners to invest in new development that is attractive, functional and adds value to the physical environment.
- Maintain and strengthen the character of the city’s various residential neighborhoods.
- Support the development of residential dwellings of appropriate form and density.

The applicant proposes to construct a single-family home on a large, vacant property. This development is 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 permit and variances, this development would meet the applicable requirements of the R2B 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 prevent soil erosion or other possible pollution of public waters, both during and after construction. The applicant would install a silt fence during construction and would follow all applicable City requirements to prevent any type of pollution.

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

Based on the submitted drawings and adherence to the front setback requirement as it relates to the proposed structure as well as compliance with the height limitations in

the Shoreland overlay district, the visibility of the structure appears to be limited from Lake Calhoun. Retaining walls are indicated on the plan and are specifically identified as being 4 feet in height. No retaining wall shall be permitted in the front yard that exceeds a height of 3 feet. Further, retaining walls are a permitted obstruction only when retaining natural grade, as noted in Table 535-1 of the Zoning Code.

- 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 –yard encroachments including walkways, patio and a pool within the steep slope

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

The applicant has verified that the underlying material would be adequate for the existing slope conditions and soil types. The existing slope would remain intact and undisturbed throughout the entire construction process.

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

The applicant has verified that the development would not present any danger of falling rock, mud or uprooted trees and other materials. The area would be fenced off during the construction process and left undisturbed until the installation of final landscaping. Silt fencing would 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.**

Based on the submitted drawings the view of the developed slope from the protected water would be consistent with the natural appearance of the slope and with the surrounding architectural features.

VARIANCES – (1) of the front yard setback requirement (reverse corner) along West Calhoun Parkway to allow for walkway, patio, and a pool encroachment; (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.

Front yard setback requirement (reverse corner) along West Calhoun Parkway for walkway, patio, and a pool encroachment: The property could likely be put to a reasonable use under the conditions allowed, however, strict adherence to the regulations of the zoning code would cause undue hardship. The property is subject to two front yards, including a substantial front yard setback requirement along the north side in order to maintain the contiguity of building placement along West Calhoun Parkway. The structure is meeting the required setback requirement and it is Staff's position that allowing a larger walkway and patio area as well as pool in the substantial front yard as required is a reasonable use of the subject 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 significantly reduced and would require that the majority of any new construction be located adjacent to the rear lot line.

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.

Front setback requirement (reverse corner) along West Calhoun Parkway: The circumstances requiring the varying 50-60 foot setback could be considered unique as the property is subject to a front yard increase per 546.160. This provision was created in order to preserve existing setbacks and to maintain the character and street edge in primarily developed neighborhoods. The street edge will be maintained based on the proposal. The variance to allow walkway, patio and pool encroachments in the required yard are unique to the parcel as the property is subject to such a substantial front yard setback.

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 unique and have not been 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.

Front setback requirement (reverse corner) along West Calhoun Parkway: Granting the setback request from 50-60 feet to approximately 40 feet (at the closest point) for the pool and walkway/patio areas would likely be in keeping with the spirit and the intent of the ordinance and will likely not alter the essential character of the locality or be injurious to the use and enjoyment of other property in the vicinity. The properties along the Parkway are all very densely vegetated which would likely minimize any foreseeable visible impact of the proposed setback variance. Further, any fencing or retaining walls must comply with Article VI of Chapter 535 of the zoning code. The perimeter fencing around the pool would be required to be 4 feet tall as required by the building code. Fences located in the required front yard can be constructed to a height of 4 feet in height if constructed of open, decorative, ornamental fencing materials that are less than sixty (60) percent opaque.

To permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope: Granting a variance to allow encroachments into the required yard would be in keeping with the spirit and intent of the ordinance and would likely not alter the essential character of the area along West Calhoun Parkway and would not be injurious to the use or enjoyment of other property in the vicinity. As previously mentioned, the parcel is subject to a substantial front yard increase and allowing some encroachments into the required yard would appear to adhere to the intent of this finding.

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.

Front setback requirement (reverse corner) along West Calhoun Parkway: Granting the setback variance along West Calhoun Parkway 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 **approve** the application for a conditional use permit to allow development within 40 feet of the top of a steep slope for property located at 3809, 3811 and 3813 Sheridan Avenue South , subject to the following condition:

1. 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.
2. The proposal shall comply with the grading and filling regulations of Section 551.510, including employing best management practices to prevent erosion and trap sediment.
3. Submittal of final plans for the single-family home that meets the design standards in Section 530.280 and 535.90 of the Zoning Code.
4. Any retaining wall on site greater than 3 feet in height shall require engineering design and approval.
5. The applicant shall define more clearly define on the final site plan where the proposed retaining wall and fencing will be located and shall provide a detailed elevation of any proposed retaining walls/fencing with the final plans.

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 of the front yard setback requirement (reverse corner) along West Calhoun Parkway for walkway, patio and pool encroachments on the property located at 3809, 3811 and 3813 Sheridan Avenue South subject to the following conditions:

1. All proposed retaining wall / fence structures are subject to final review and approval and are permitted obstructions only when retaining natural grade. All retaining wall / fence structures are required to comply with Article VI of Chapter 535 of the zoning code. No retaining walls taller than 3 feet in height shall be permitted in the front yards.
2. The perimeter fencing around the pool would be required to be 4 feet tall as required by the building code. The perimeter fencing around the pool shall meet the requirements in 535.420 (1) of the Zoning Code.

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 to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for property located at 3809, 3811 and 3813 Sheridan Avenue South.

Attachments:

1. Statement of use
2. Findings – CUP and variances
3. Correspondence
4. Zoning map
5. Plans
6. Photos