

## APPEAL OF THE ZONING ADMINISTRATOR, CITY PLANNING COMMISSION, OR BOARD OF ADJUSTMENT APPLICATION REQUIREMENTS CHECKLIST

A complete application must be received in the Community Planning and Economic Development—Development Services Division office within the prescribed time period. Faxed applications are not accepted. Staff will only accept applications that include all of the items listed below. If any of the items are missing at the time of submittal, staff will not accept the application.

<input checked="" type="checkbox"/>	Correct fees paid (checks payable to Minneapolis Finance Department).
<input checked="" type="checkbox"/>	Statement of reason for appeal.
<input checked="" type="checkbox"/>	Completed Application Worksheet and signed Notice of Appeal form.
<input checked="" type="checkbox"/>	Electronic copy of the application submittal.

### FEES

APPLICATION TYPE	FEE (DOLLARS)
Appeals of the ruling of the board of adjustment or city planning commission	450
Appeals of the ruling of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance	450

**APPLICATION WORKSHEET**

<b>Appellant</b>	Name	Liz Wielinski, Irene Jones, Lisa Hondros et al. <b>See attached Statement of the Appeal</b>
	Mailing Address Including City, State and Zip Code	3519 Second St NE, Minneapolis, MN 55418
	Phone Number	612.390.3735
	Email	lizski@goldengate.net

**NOTICE OF APPEAL**

Choose one:

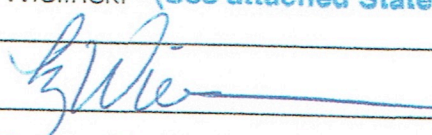
- I, \_\_\_\_\_ (print name) do hereby file an exception to the Decision of the **Zoning Administrator** as provided for in Chapter 525.170;
- I, \_\_\_\_\_ (print name) do hereby file an exception to the Decision of the **Board of Adjustment** as provided for in Chapter 525.180;  
Liz Wielinski
- I, \_\_\_\_\_ (print name) do hereby file an exception to the Decision of the **City Planning Commission** as provided for in Chapter 525.180;

Project Name	2648 Marshall St NE
Project Address	2648 Marshall St NE, Minneapolis, MN 55418
PLAN Number	PLAN10867

Further, I do hereby request that I be given an opportunity to express my case before the Board of Adjustment or the proper committee of the City Council.

The action being appealed and the reasons for appealing the decision are attached and made a part of this notice of appeal.

Appellant's Name: Liz Wielinski **(See attached Statement of Appeal for all parties to this appeal.)**

Appellant's Signature: 

Date: 1/7/2021

**Former District 1 Park Commissioner  
Former Minneapolis Planning Commissioner  
Park Watch, co-founder**

**Appeal to the City Council  
of the Decision of the City Planning Commission, dated June 28, 2021  
with respect to the Variances and Conditional Use Permit granted for the  
Property at 2648 Marshall St NE, Ward 1 (PLAN10867)**

**July 7, 2021**

Statement in support of the Appeal by individuals  
Liz Wielinski, Irene Jones, Lisa Hondros, Sally Grans-Korsh, Above the Falls  
Citizens Advisory Committee; and nonprofits National Parks Conservation  
Association, Friends of the Mississippi River, Audubon Chapter of Minneapolis,  
Great River Coalition and Friends of the Riverfront.

**Request**

We respectfully request the City Council reverse the decision of the City Planning Commission and deny the variances and conditional use permit granted for 2648 Marshall St NE because the record does not support findings required for approval of the variances and conditional use permit.

**Reason for the Appeal**

**The project does not meet the standards for riverfront protection in the city's MRCCA ordinance, and the variance application was incomplete.**

The Planning Commission erred in its decision to permit a proposed structure to be built directly over the top of the Mississippi River bluff. This is a violation of the city's Mississippi River Corridor Critical Area (MRCCA) ordinance and state law. The City's failure to follow its own ordinance is arbitrary and capricious.

Granting this land use application depends on accepting the underlying premise that the natural topography of this property creates a practical difficulty simply because it differs from neighboring properties. This approach imagines an invisible bluffline that is closer to the river, which can be used for determining appropriate setbacks required by the MRCCA ordinance. This argument defies logic and is completely contrary to the spirit and intent of the law, which is to protect the Mississippi River, including its shorelines and bluffs.

Given that (as far as we are aware) this is the first variance application under the new MRCCA ordinance, it is crucial that the city take care to consider and apply the ordinance correctly. Furthermore, the Planning Commission decision is contrary to future land use guidance, as well as environmental, park and equity

goals, of the 2040 Plan. Variances should be rare, and this application did not receive the required level of scrutiny.

**Procedural Background – MRCCA was an afterthought.**

Throughout this process, city staff have ignored or downplayed the importance of MRCCA rules and the city’s responsibility to follow them. Staff’s actions caused unnecessary delays (which led to truncated discussion by the commissioners). They also neglected to properly notify and consult with the DNR.

Staff did not initially identify the need for a MRCCA variance for this project. When this item was first noticed for public hearing before the Planning Commission on May 24, 2021, only the conditional use permit and Shoreland Overlay District variance were under consideration. On or about May 20, the planning department confirmed that the hearing would be delayed one cycle. In an email dated June 3, 2021, staff confirmed the decision to add the MRCCA variance to this application. On June 14, the hearing date was delayed another cycle at the request of Commissioner Chris Meyer in order to allow additional time for discussions between the Park Board and the property owner.

When the June 28 meeting agenda was posted online during the week prior to the meeting, it did not include a public hearing for 2648 Marshall St NE. Interested parties concluded there would not be a hearing. However, by chance an individual noticed the item added on the morning of June 28, although it was difficult to know how to sign up to speak because the item was not included on the city’s list of agenda items in the public comment sign-up system. The staff report published online was missing all but two of the written public comments known to be submitted. Some, but not all public comments, were added later in the day. In spite of all the confusion, staff stated that the hearing must proceed because of the 120-day rule.

During the June 28 meeting, when several commissioners expressed concern about the proposed variances, city staff informed them if they denied the project they would have to come up with their own new findings.

**Project Description**

The property sits within the Mississippi National River and Recreation Area managed by the National Park Service.

The property is within the Mississippi River Corridor Critical Area (MRCCA), and the project would negatively impact two Primary Conservation Areas protected by the MRCCA Ordinance:

- (1) Bluff Impact Zone (bluff and land within 20 feet of the bluff); and
- (2) Significant Existing Vegetation Stand.

The applicant proposes a new detached dwelling that would encroach upon the *entire* bluff impact zone and includes a deck supported by stilts built directly into the bluff and Significant Existing Vegetation Stand.

The property is guided as Future Land Use Park in the 2040 Plan. The property is within the boundary of the Above the Falls Regional Park and part of an MPRB Acquisition Plan approved by the Metropolitan Council.

The property is also within the Northern Green Zone, created by the City Council in 2017 to address the environmental justice overburden in North and Northeast Minneapolis and design and implement a plan of action to improve environmental and population health, and social, economic and environmental justice.

## Analysis

### **I. The Planning Commission erred by granting variances to allow (1) development within 40 feet of the top of a steep slope; and (2) structure placement within the [Bluff Impact Zone of the] Mississippi River Corridor Critical Area Overlay District.**

- The existing bluff is not a “practical difficulty” unique to this property. The findings supporting approval erroneously depend on the assertion without evidence that the bluffline on the property has been modified. In fact, the evidence supports the opposite conclusion that the parcel has a natural riparian topography with minimal geomorphic alteration. Reasonable use of the property is possible without the variance. **The proposed variance is due to a design preference; not a hardship.**
- The proposed use is not in keeping with the spirit and intent of the Comprehensive Plan. The findings supporting approval erroneously ignore Future Park land use guidance of the 2040 Plan. The findings supporting approval erroneously ignore regional park planning goals for continuous

parcs and trails along the river connecting long underserved residents of North and Northeast Minneapolis to the Mississippi River.

- The proposed use is not in keeping with the spirit and intent of the MRCCA ordinance, and the record does not support the additional findings required to grant a MRCCA variance or conditional use permit.

**A. The existing bluff is not a “practical difficulty” unique to this property.**

The approved findings depend on the property owner’s assertion without evidence that a modified bluffline creates practical difficulties unique to this property and justifies the variances. Nothing in the record supports this assertion.

As noted in the letter from the MN DNR: “There is no evidence that a prior property owner modified this site other than statements of the current property owner. Fill along the river in this part of Minneapolis is common in order to increase the amount of usable property. The existing topography of this lot is not consistent with that typically found on properties with land fill. Natural riparian land along rivers typically have ravines and irregular shorelines. There is nothing unique with this riparian parcel.”

In fact, there is ample evidence in the record to support the finding that the property bluffline is natural. While surrounding properties added fill to extend the bluffline with the aid of large retaining walls, 2648 Marshall St NE appears to have kept its natural features. Building permit records indicate that the current structure is a residential building that was originally permitted on May 22, 1901 by Permit B 48722. (AFCAC Letter, Friends of the Riverfront Additional Comments dated June 28, 2021)

In response to evidence that the existing bluff is natural riparian land, staff recognized the speculative nature of claims the bluff has been modified by human activity at the public hearing on June 28:

“The unique situation here for the site is that this bluffline is significantly different from all the other surrounding blufflines on the river . . . . It’s not so much about what created this . . . unique circumstance, that we have some speculation about what may have created the unique circumstance, but ... looking at this context diagram itself you can see that this property specifically has a significantly different bluffline than the surrounding

properties and that is a practical difficulty that does restrict the buildable area.” (Planning Commission Meeting, June 28, 2021 at 1:27)

Simply observing that the shoreline on this property differs from its neighbors falls far short of establishing that there is a practical difficulty unique to the property. In any case, the project must be evaluated in its current condition, as articulated by the Audubon Chapter of Minneapolis letter:

“Changes in geographic features within the MRCCA and Shoreland Overlay District do not justify overriding the environmental protections provided by these regulations on the basis that the changes have created ‘practical difficulties.’ If projects in these protected areas are allowed based on geographic features that have been in existence for years (in this case at the time of purchase), the regulations are meaningless. Perhaps the bluff line here originally extended further west; perhaps it didn’t. The city must address the situation as it exists today, and no practical difficulty exists. Granting a variance in this case will set a precedent for other projects to obtain variances based on changes in geographic features that predate the application.”

The existing bluffline defines the buildable area, as it has since the applicant acquired the property and for decades before, however it does not present a unique circumstance or practical difficulty. The applicant could build a dwelling elsewhere on the property, without encroaching on the sensitive bluff. A design preference for a river view is not a hardship unique to the property.

**B. The proposed use is not in keeping with the spirit and intent of the Comprehensive Plan, which guides future land use as Park and incorporates the City’s MRCCA Plan and the Above the Falls Master Plan Update.**

The application for variances is contrary to the spirit and intent of the 2040 Plan and should be denied. Placing the proposed new structure on the river bluff on a parcel guided as Future Land Use Park undermines and threatens to foreclose goals of the 2040 Plan relating to Environmental Systems, Parks & Open Space, and Equity.

2648 Marshall is a critical link for completing the continuous trails envisioned for the Above the Falls Regional Park. It is also within the Northern Green Zone, and

the City Council must consider the benefits to the community of regional park infrastructure like parks and trails.

Applicable 2040 Policies include but are not limited to:

Policy 77 *Park Access*: Make new and existing parks more accessible by biking and walking. **A healthy park system consists of not only high-quality parks, but also a robust network of trails and walkway connections.** Children especially need to be able to safely walk or bike to nearby parks. From bike lanes and multi-use paths to sidewalks and greenways, these routes should be comfortable, safe, and well-maintained, integrating signage, lighting, and safe road crossings. **City parks and connecting networks can link to larger regional parks and trails to create a significant recreational and ecological amenity for the entire region.** (emphasis added)

Policy 15 *Transportation and Equity* Action Steps include: Provide equitable and ample access to walking, bicycling, transit options, and a shared mobility economy; Increase connections to isolated areas of the city that were created by historic inequities; and Support strategies to improve mobility for seniors and those with mobility challenges.

Policy 61 *Environmental Justice and Green Zones* Action Steps include: “Ensure that the people and communities in areas of environmental injustice experience the benefits of local and regional infrastructure investments.”

Policy 97 *Preserving and Enhancing Public Lakes and Waterways* Action Steps: Strive for interconnected environmental corridors and riparian areas as habitat corridors and for flood protection and recreation, and create additional “steppingstone” areas for habitat; and Leverage partnerships with the Minneapolis Park and Recreation Board, watershed management organizations, and other partner agencies to implement the Mississippi River Corridor Critical Area Plan (See appendix) and to integrate and coordinate efforts to improve public and ecological functions in the river corridor.

The findings supporting approval adopted by the Planning Commission ignore Comprehensive Plan policies relating to the environment, parks, and equity and



focus instead (once again) on the assertion without evidence that the proposed use is “reasonable” because of the “modified” bluffline.

Furthermore, the rationale underlying dismissal of future land use and built form guidance as Parks is deeply flawed. The description of “Park” in both future use and built form categories clearly describes parks and park supportive structures, not housing. In addition, asserting that the MPRB has no “imminent” plans to purchase is unfounded. 2648 Marshall St NE is within the boundary of the Above the Falls Regional Park and part of an MPRB land acquisition plan approved by the Met Council. The MPRB has demonstrated interest in acquiring this property.

Linking North and Northeast Minneapolis to the rest of the Regional Park system with connected parks and trails is an equity issue. Looking forward, the analysis underlying approval of these variances could doom the future of the Above the Falls Regional Park, which is so needed to address historical inequities.

As privately owned land becomes available, developers will rely on this land use decision as precedent. Instead of providing needed open space and access to the river, there will be a wall of privately owned housing, putting traditionally underserved residents of North and Northeast in no better position than they were when blocked from the river by industrial uses.

The requested variances are inconsistent with goals and land use guidance of the 2040 Plan and should be denied.

**C. The proposed use is not in keeping with the spirit and intent of the MRCCA ordinance, and the record does not support findings required to grant a variance.**

1. Building on the bluff with a zero-foot setback is not in substantial compliance with state rules and the city’s MRRCA Plan. The required bluff setback in the MRCCA Urban Mixed District is 40 feet. The proposed setback of zero feet does not meet the city and state standard that the “extent, location, and intensity of the variance will be in substantial compliance with the MRCCA Plan.” Minneapolis Ordinances §551.1820(a)(b)2.a.

2. Building on the bluff is not consistent with Urban Mixed District priorities of “[r]estoring and enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated storm water into the river, and

providing public access to and public views of the river.” Minneapolis Ordinances §551.1830(a)(5)b.

3. The record is not sufficient to support a finding that the proposed use will not be detrimental to Primary Conservation Areas (PCAs). As stated above in section I(A), the unfounded assertion that the bluffline has been “modified” cannot support a finding of no detrimental impacts on the Bluff Impact Zone. The staff report also fails to identify the Significant Existing Vegetation Stand PCA on this property, so there is no evaluation of negative impacts and thus no basis for the required finding.

4. The record does not contain all materials required by Minneapolis Ordinances Section 551.1820(e)(2) for evaluation of impacts required for approval of a MRCCA building permit and / or variances, including but not limited to, scaled maps and plans, dimensional renderings, and other materials that identify and describe the following: Primary Conservation Areas; Public River Corridor Views; Existing vegetation to be removed; Ordinary High Water Level, blufflines, and all required setbacks [*NOTE: The bluff diagram provided by the applicant shows the bluffline but not Ordinary High Water Level or required setbacks*]. Materials submitted by the applicant do not refer to the MRCCA Overlay District.

## **II. The Planning Commission erred by granting a conditional use permit to allow a cluster development within the MR Mississippi River Critical Area Overlay District.**

For all the reasons listed above in sections I(B) and I(C), the proposed use is not in keeping with the spirit and intent of the Comprehensive Plan or the MRCCA ordinance, and the record does not support the findings required to grant a MRCCA conditional use permit.

As with the variances evaluated above, approval of the conditional use permit in the Critical Area depends on this erroneous finding in the staff report: “The subject site was altered significantly through industrial work on the area which changed the bluff line.” (Staff Report, page 7) There is absolutely no evidence in the record to support this finding, only unsupported assertions by the applicant. To the contrary, the record supports a finding that the bluffline on this property has natural riparian topography. The applicant could build a new dwelling elsewhere on the property, without encroaching on the sensitive bluff.

## **Proposed Findings Supporting Denial of Both Variances**

1. Practical difficulties do **not** exist in complying with the ordinance because of circumstances unique to the property. There is nothing unique about the existing topography of this riparian parcel and there is no hardship.
2. The property owner or authorized applicant proposes to use the property in a manner that will **not** be in keeping with the spirit and intent of the ordinance and the comprehensive plan. The proposed use is not in compliance with the MRCCA ordinance and conflicts with the Future Park guidance of the 2040 Plan. The parcel is within the boundary of the Above the Falls Regional Park, and the proposed use conflicts with Above the Falls Regional Park planning goals for continuous parks and trails connecting long underserved residents of North and Northeast Minneapolis to the Mississippi River. The parcel is included in plans for property acquisition by the Minneapolis Park and Recreation Board.

## **Proposed Additional Findings for Variances within the MR Mississippi River Critical Area Overlay District**

3. The extent, location and intensity of the variance will **not** be in substantial compliance with the MRCCA Plan. The MRCCA provisions for bluff setbacks are intended to protect bluff areas from degradation resulting in sediment and nutrient flow into the river. Building on the bluff with a zero-foot setback is not in substantial compliance with the MRRCA Plan. Building on this bluff will remove significant amounts of vegetation that provide slope stability and habitat, in an area of the river with very little habitat.
4. The variance is **not** consistent with the character and management purpose of the Urban Mixed MRCCA district in which it is located. Building on this bluff is not consistent with UM District priorities of “[r]estoring and enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated storm water into the river, and providing public access to and public views of the river.” [Minneapolis Ordinances §551.1830(a)(5)b.]
5. The variance **will be detrimental** to PCAs and will contribute to negative incremental impacts to PCAs when considered in the context of past, present and reasonable future actions. Building on the bluff with a zero-foot setback would be

detrimental to the entire Bluff Impact Zone. Building directly into this bluff will remove significant amounts of vegetation that provide slope stability and habitat, in an area of the river with very little habitat and would be detrimental to the Significant Existing Vegetation Stand.

6. The variance **will negatively impact** birds and other wildlife using the Mississippi Flyway through habitat loss in identified PCAs and significant vegetation stands.

### **Proposed Findings Supporting Denial of the Conditional Use Permit**

7. The extent, location and intensity of the conditional use will **not** be in substantial compliance with the MRCCA Plan. The MRCCA provisions for bluff setbacks are intended to protect bluff areas from degradation resulting in sediment and nutrient flow into the river. Building on the bluff with a zero-foot setback is not in substantial compliance with the MRRCA Plan. Building on this bluff will remove significant amounts of vegetation that provide slope stability and habitat, in an area of the river with very little habitat.

8. The conditional use is **not** consistent with the character and management purpose of the Urban Mixed MRCCA district in which it is located. Building on this bluff is not consistent with UM District priorities of “[r]estoring and enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated storm water into the river, and providing public access to and public views of the river.” [Minneapolis Ordinances §551.1830(a)(5)b.]

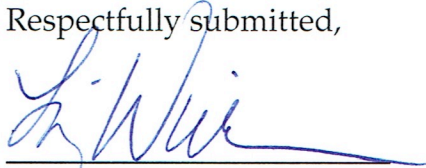
9. The conditional use **will be detrimental** to PCAs and will contribute to negative incremental impacts to PCAs when considered in the context of past, present and reasonable future actions. Building on the bluff with a zero-foot setback would be detrimental to the entire Bluff Impact Zone. Building directly into this bluff will remove significant amounts of vegetation that provide slope stability and habitat, in an area of the river with very little habitat and would be detrimental to the Significant Existing Vegetation Stand.

10. The conditional use **will negatively impact** birds and other wildlife using the Mississippi Flyway through habitat loss in identified PCAs and significant vegetation stands.

## CONCLUSION

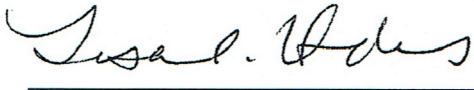
For all the reasons cited above, we urge the City Council to correctly apply the MRCCA ordinance and deny the variances and conditional use permit granted for 2648 Marshall St NE. The Planning Commission based its decision upon assertions without factual basis and incomplete analysis and must be reversed.

Respectfully submitted,



/s/ Liz Wielinski  
Former District 1 Park Commissioner,  
Former Minneapolis Planning  
Commissioner  
and Co-Founder of Park Watch

/s/ Irene Jones  
Irene Jones



Lisa C. Hondros

/s/ Sally Grans-Korsh  
Sally Grans-Korsh

/s/ Mary Jamin Maguire  
Mary Jamin Maguire, Co-Chair  
Above the Falls Citizens Advisory  
Committee

/s/ Cristine Goepfert  
Christine Geopfert  
Associate Director, Midwest Region  
National Parks Conservation Association

/s/ Colleen O'Connor Toberman  
Colleen O'Connor Toberman,  
River Corridor Program Director,  
Friends of the Mississippi River

/s/ Keith Olstad  
Keith Olstad, Chair  
Audubon Chapter of  
Minneapolis



Diane Hofstede, President  
Great River Coalition

/s/ Edna Brazaitis  
Edna Brazaitis  
Friends of the Riverfront