

#18

City Council Presentation on Behalf of Kathryn Engdahl  
Regarding Request for Variance at  
17 Hall Lane, St. Paul, Minnesota

George R. Dunn, Esq.  
Tilton & Dunn, P.L.L.P.  
101 East Fifth Street, Suite 2220  
Saint Paul, MN 550101  
(651) 224-7687

Council President Stark and Members of the Council:

I am here today regarding the Request for Variance at 17 Hall Lane, St. Paul, on behalf of my client, Kathryn Engdahl, and with the support of several other neighbors and community members who share Ms. Engdahl's concerns. Many of those people are present in your chamber today.

The neighbors' concerns regarding the requested variance involve both substantive issues and procedural issues, both micro-issues and macro-issues.

I have provided a handout that has been distributed to members to help illustrate the issues involved. Those materials include an aerial view of the neighborhood, several pictures of the bluff under Hall Lane and the street itself (in reality, Hall Lane is much more of an alley than a street). I have also included some news clippings regarding reports of recent bluff failures in the area of Hall Lane.

I have also included a letter from Westside Community Organization in opposition to the variance and a memo from neighbors in opposition.

From a historical perspective, for decades there have only been three homes on Hall Lane. This requested variance is one of the first steps in an effort to put a fourth

house on the street/alley that would be built on a lot that is significantly compromised by its proximity to the bluff, the geology of the bluff, and the lot's modest dimensions.

Historically, the three homes on Hall Lane have been 11 Hall Lane, 13 Hall Lane, and 19 Hall Lane. The lot now in question has always been a side yard to 13 Hall Lane.

That changed just last year when, in March of 2016, a speculator bought 13 Hall Lane from an individual who had lived there for many years. The speculator then went on to split the lot that 13 Hall Lane occupied into two lots, which are now designated as 13 Hall Lane and 17 Hall Lane. 17 Hall Lane is the subject of this variance request.

The neighbors have no objection to the appropriate informed use of this lot, but contend that the proposed development of the lot would change the character of the neighborhood and pose unreasonable risks to the integrity of the bluff line, which is essential to those above the bluff (i.e., the homes on Hall Lane), as well as individuals and entities below the bluff, which include citizens using the sidewalk along Wabasha or the street itself, as well as the City of St. Paul's pumping station and several commercial buildings.

It should be noted in the beginning that this is not an effort to deny appropriate use of the property or deny anyone financial gain from the appropriate use of his/her property. The land speculator bought the property from a long-time owner in March of 2016 for \$140,000, after which he split the one lot into two lots, 13 Hall Lane and 17 Hall Lane. Property records from Ramsey County indicate that improvements were made to 13 Hall Lane of approximately \$25,000. After those modest improvements, the speculator then

sold 13 Hall Lane in December of 2016 for almost \$227,000, a profit of almost \$62,000. Now he seeks to sell the property that was formerly the side yard for 13 Hall Lane for a stated amount of \$59,000. If the sale for 17 Hall Lane is completed, the speculator in this instance would be profiting over \$120,000 on an investment of \$140,000 in approximately 1½ years. Those numbers suggest that denying the ability to build on this compromised lot is not a situation that amounts to a hardship on the property owner. The numbers suggest that there is plenty of room here for the City of St. Paul to make sure that this lot is appropriately developed in light of its unique and fragile geological location, the limitation of the lot, and the restricted nature of the street/alley without harming the owner.

It is our belief that the City Council should be looking at the big picture here about whether the lot should even be developed in light of known dangers regarding the fragile nature of the bluff. I will address those concerns in the latter part of my presentation, but first I will address procedural concerns about how this process has even proceeded to this point.

Neighbors first received notice of this requested variance in a public hearing notice dated and mailed on May 26<sup>th</sup> (the Friday before Memorial Day weekend), notifying property owners of a hearing on June 5<sup>th</sup>. Although many neighborhood residents received this notice, some residents did not, including the next-door neighbor in 13 Hall Lane. In any case, that notice of mailing was not timely pursuant to Minn. Stat. § 394.06, Subd. 1(a) and 2, since there was only a notice of six calendar days. The hearing was

then postponed for two weeks to June 19<sup>th</sup>, however, no additional notice was delivered to the neighbors and interested parties regarding this new hearing date. There was a new date for the hearing, but people were not told about the new date.

The second procedural concern is that, according to the St. Paul Zoning Court, an application for a variance is required to be filed by the owner or leaseholder of the property. *See* § 61.300(b). In this instance, the applicant is purported to be a potential contingent buyer of the property, not the owner of the property. St. Paul's Zoning Court defines the owner as an individual who is the owner of the fee simple title. *See* § 60.216-O. There is no definition I could find indicating a definition of a "lease-hold interest" in the Zoning Court Code. In any case, it does not appear that the applicant is in a lawful position to be making this Request for Variance.

Section 61.601 of the St. Paul Zoning Code indicates the criteria under which a request for variance should be granted. I suspect the Council is aware of those criteria and as you have probably received numerous Board of Zoning Appeals Staff Reports that are focused on the criteria. I will focus on just some of the criteria:

1. Is the variance in harmony with the general purpose and intent of the Zoning Code?

Section 60.103 sets forth the purpose of the Code, and that is to promote and protect the public health, safety, morals, aesthetics, economic vitality, and general welfare of the community. Under that criteria, the proposed variance should be denied. St. Paul

has, for years, tried to come to grips with the fragile nature of the Mississippi River bluff on the West Side. In 2013, tragically we saw the consequences of failing to take seriously enough the dangers posed by an unstable bluff. The investigation of the 2013 fatal rock slide found that the City did not know soil erosion posed a threat. Obviously, following the rock slide and the investigation, the City can no longer claim lack of notice or knowledge as a defense to rock slide caused by the approval of inappropriate development.

In the immediate vicinity of this area, there have been three collapses of the bluff as it borders Hall Lane. These include rock slides that took out the historic green staircase, damage to a bakery on Wabasha, and just this spring a collapse resulted in boulders rolling down the bluff, across the sidewalk, and into Wabasha Street. Obviously, there have probably been other shifts and changes in the bluff that have gone undetected because they have not impacted people or infrastructures. There can be no doubt that the stability of the bluff in this area is in question and any development needs to recognize the fragile geologic nature of this location.

2. Is the variance consistent with a comprehensive plan?

This brings up two considerations. First, the comprehensive plan acknowledges the fragile nature of the bluff. Second, without a proper geo-technical study we do not know what the effect of development will have on the bluff. Without a geo-technical study we can not say this variance is consistent with the comprehensive plan.

3. Are there practical difficulties with complying with the provision?

Here, the staff report focuses on the surface dimensions of the lot without taking into consideration the basic question of whether the geological circumstances of the lot makes it buildable. The question here is not just whether the garage should be in the front or the back of the lot; the underlying question is whether this a buildable lot to begin with and whether there should even be a home and a garage on that lot.

4. Is the plight of the landowner due to circumstances unique to the property and not created by the landowner?

Here, we would submit that the plight was created by the landowner in his decision to split the lot. For years, the lot at 17 Hall Lane was a side yard to 13 Hall Lane. Had it remained part of the lot that 13 Hall Lane is on, there would be no issue here. It was the homeowner's decision to split the lot into two lots that has created this circumstance.

5. Will the variance permit any use not allowed in the zoning district where the affected land is located?

This is not applicable in that it is a single-family dwelling in the family residential district.

6. Will the variance alter the essential character of the surrounding area?

There are two things to be said in this regard: (A) all of the houses on Hall Lane have off-street parking. The proposed plan associated with this request for variance does not have off-street parking. That is changing the essential character of the surrounding area and impacting other landowners on Hall Lane because the obstructions that would be caused by any on-street parking will impact everyone on Hall Lane and potentially

adjoining properties. As you can see from the photographs, Hall Lane is essentially an alley. It is minimal width. It can barely fit a garbage truck as it is now. If 1 - 2 cars are parked on Hall Lane, it becomes difficult if not impossible for emergency vehicles and service-type vehicles (garbage and utility trucks, for example) to navigate the lane. And (B) in a broader sense, the question of whether this will change the essential character of the surrounding area involves geological questions that have not been examined and therefore can not be answered. If the proposed buildings and the associated removal of trees and disruption of soil that could be expected if this project goes forward changes the geological nature of the bluff in this location, then it certainly has the potential to drastically alter the character of the surrounding area.

In closing, I would just like to say that the neighbors object to the way the zoning department approached this procedurally and the lack of notice to appropriate people.

Furthermore, there is concern that the failure to provide off-street parking has a potential impact to the health and safety of the neighborhood and that it will create congestion on an already congested alley.

Finally, it seems as if the cart is being put before the horse in this matter. Discussing whether a variance should be granted for the location of a garage prior to the approval of the building of the house and garage in the first place seems ill-conceived. The first thing that should be done is a geo-technical engineering study to see whether this site is appropriate for development on the bluff.

As the tragedy of the 2013 landslide, the recent rock slides in the immediate vicinity, including the one just this spring, illustrate, St. Paul is now on notice that development along the bluff on the West Side needs to be approached cautiously. Any decisions regarding such development should be done in an informed matter. The City was able to claim a lack of notice or knowledge regarding the fatal bluff failure in 2013. If a subsequent bluff failure happens in this area that results in harm to persons or property, I do not believe the City would be able to make that same claim. Under these circumstances, the City should proceed carefully and only move forward if such a decision is supported by sound science and analysis.

On behalf of my client and other neighbors in the area, I request that the City require a geo-technical engineering study be done and that this issue of whether this lot is suitable for development prior to proceeding on the variance and/or any building permit.

In the alternative, if the Council is inclined to grant this variance, I ask that the Council hold off on that decision and send this back to the Zoning Department to examine the need for the applicant to provide off-street parking for the site.

Thank you for your time.



Variance Application #17~ J587  
Opposition by Hall Lane Bluff Homeowners  
June 19, 2017

6/19/2017

Google Maps

EXHIBIT A: Satellite photo of Hall Lane



Imagery ©2017 Google, Map data ©2017 Google 50 ft



Variance Application #17-040587  
Opposition by Hall Lane Bluff Homeowners  
June 19, 2017

**EXHIBIT B:** Garbage truck – 13 Hall Lane garage on left





6/19/2017

June 19, 2017

**EXHIBIT C:** Garbage truck and utility truck – 19 Hall Lane garage on left



6/19/2017

Variance Application #17-040587  
Opposition by Hall Lane Bluff Homeowners  
June 19, 2017

**EXHIBIT D:** Utility truck – 19 Hall Lane driveway on right





Variance Application #17-040587  
Opposition by Hall Lane Bluff Homeowners  
June 19, 2017

Google Maps 18 Hall Ln

EXHIBIT E: Driveway at 19 Hall Lane



Image capture: Aug 2014 © 2017 G

St Paul, Minnesota

Street View - Aug 2014



6/19/2017



Variance Application #17-040587  
Opposition by Hall Lane Bluff Homeowners  
June 19, 2017

**EXHIBIT F:** Driveway at 13 Hall Lane & additional offstreet parking  
at 11 Hall Lane (in addition to the 17 foot driveway)



Image capture: Aug 2014 © 2017

St Paul, Minnesota

Street View - Aug 2014



ST. PAUL

## St. Paul's Wabasha Street-West Side bluffs stairway on its last legs

A very special flight of stairs is coming down in St. Paul, perhaps as soon as today.

MAY 20, 2008 -- 12:03AM

So long, green stairs.

The almost-century-old staircase that rises up 191 steps from Wabasha Street to the top of the West Side bluffs in St. Paul is on its last legs, and today might be the end.

A rainstorm a couple of weeks ago loosened a large boulder that fell from the top of the bluffs and crashed into one of the staircase's upright supports, said John Maczko, city engineer.

Workers have been trying to stabilize the staircase since, but to no avail. It's fenced off for safety.

"The best thing for it is to come down," Maczko said. Efforts to get money for more substantial rehabilitation haven't been successful, he added.

The city spends about \$16,000 yearly to maintain the stairs. About \$60,000 was put into them in the past couple of years to keep them safe, Maczko said.

Today, they're a safety hazard.

For many past and former high school athletes, the green stairs conjure burning sensations in the legs and lungs.

"It was the ideal training device," said Mayor Chris Coleman, a 15-year West Side resident. He used to load up a backpack and walk the stairs to train for mountain hikes.

People watched fireworks from it. But it also served a practical purpose: getting people from the bluffs to the flats.

The view from above gives a panoramic picture of downtown St. Paul.

At the top of the bluffs, where Hall Avenue turns into Prospect Boulevard, black letters and arrows on a white sign say: "Stairway to Wabasha."

At the top of the stairs, mounted on chain-link fencing, black letters -- all capitalized -- on a white sign say: "Steps closed."

"Hopefully we'll move forward quickly to get them rebuilt," Coleman said.

CHRIS HAVENS



(<http://stmedia.startribune.com/images/1stairs0520.jpg>)  
RENEE JONES SCHNEIDER, DML - STAR TRIBUNE STAR TRIBUNE

The staircase off Wabasha Street was recently damaged by a boulder that came loose during a rainstorm, rendering it unstable and...

Exhibit 2  
(p.1)

EAST METRO

## Van-sized boulder smashes into St. Paul bakery

Bakery owner Robert Dubuc wants to rebuild in a new location.

By Chao Xiong (<http://www.startribune.com/chao-xiong/10646266/>) Star Tribune

APRIL 13, 2011 -- 12:43PM

Robert Dubuc thought he'd get a head start on a busy day at his West Side bakery in St. Paul last Friday, but what he found stopped all plans indefinitely: A van-sized boulder had crashed into the back of his business.

"It looked like a bomb went off back there," Dubuc said Monday.

Dubuc's now shuttered and condemned business sits at 385 Wabasha St. S. at the foot of St. Paul's limestone bluffs, where city authorities say a rockslide this large is unusual. Ricardo Cervantes, director of the city's department of safety and inspections, said the boulder is about 20 feet long and 12 feet high.

"On occasion we're going to have some rocks come out of the bluffs, but typically it's not going to land on a structure, and typically they're not this large," Cervantes said.

Dubuc believes the boulder fell sometime between midnight and 2 a.m. Friday. He arrived at the bakery about 2:15 a.m. with an extern.

At first, the two smelled gas. Further investigation revealed that the boulder had smashed through one-third of a rear wall and roof, and bent a gas pipe to the bread oven. No one was hurt.

"It's hard to think clearly right now," said Dubuc, who opened his bakery in 2008. "My whole life is wrapped up in the bakery, and other people's lives." He said he wants to rebuild — but not there.

Dubuc said he always knew there was the possibility of rockslides, but he never envisioned such damage. It's unclear what caused the boulder to fall, but Cervantes said the long winter may have weakened the boulder's hold in the bluff face.

"We understand that the bluff, like much of Mother Nature, is in change," Cervantes said.

Homes on top of the bluff were not compromised.

Dubuc was allowed back in for the first time on Monday. He gathered up some paperwork but left behind an expensive bread oven. He made sure to grab his 13-year-old sourdough starter.

"The longer it's alive, the more flavor it has," he said of the starter. "It takes time, and I really need to keep that going."

Chao Xiong • 612-270-4708 Follow Chao on Twitter: @ChaoStrib

cxiong@startribune.com

612-673-4391

ChaoStrib



6/15/2017

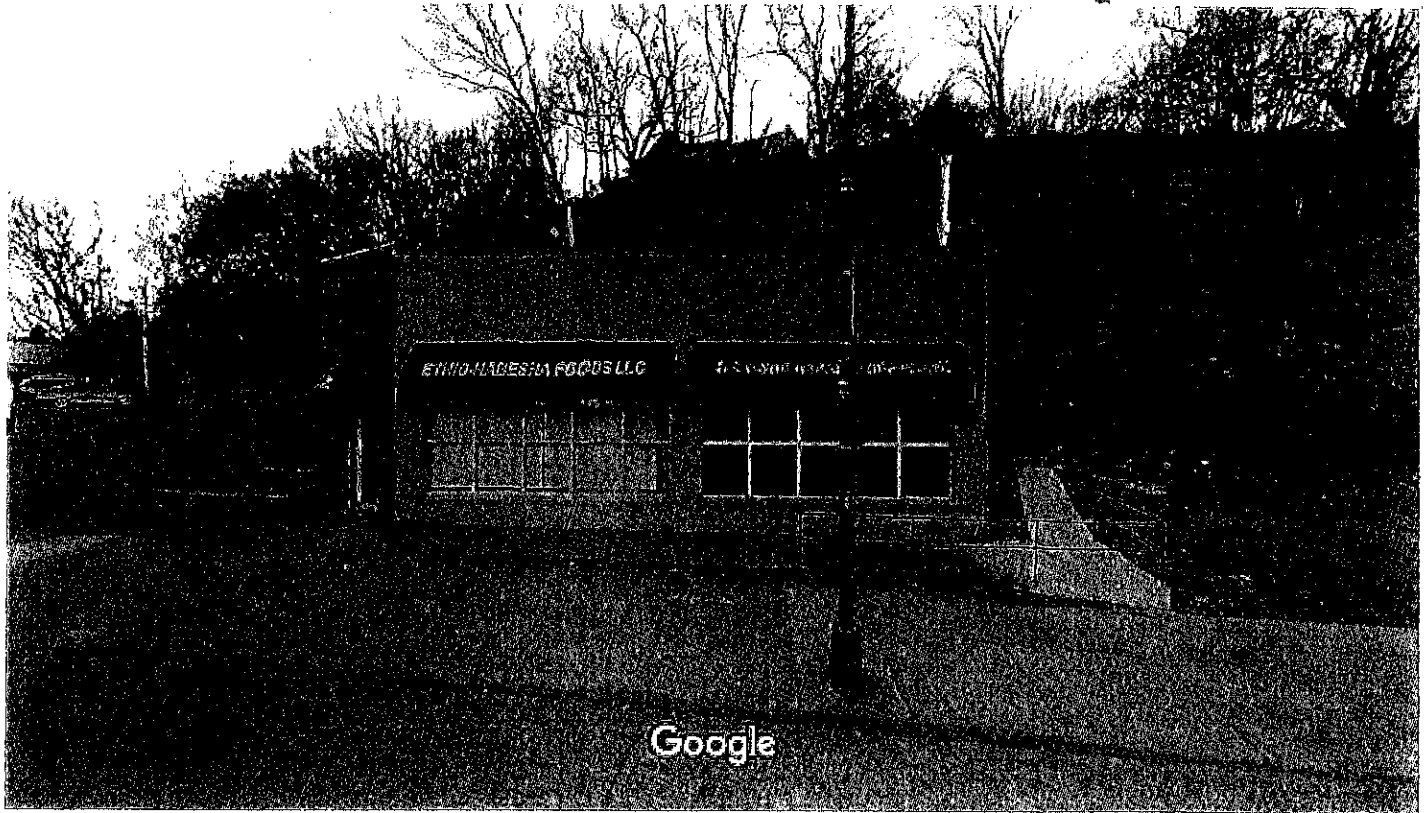
385 Wabasha St S - Google Maps

Exhibit 2  
(p.2)

385

Wabasha St S

385



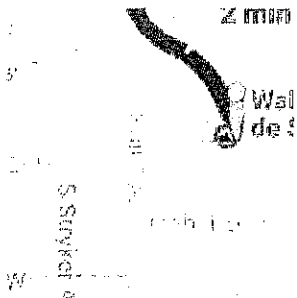
Google

Image capture: Nov 2016 © 2017 Google

St Paul, Minnesota

Street View - Nov 2016

FORMERLY Robert Dubac's  
Bakery



6/16/2017

357 Wabasha St S - Google Maps

Exhibit 2  
(p. 3)

Google Maps 357 Wabasha St S

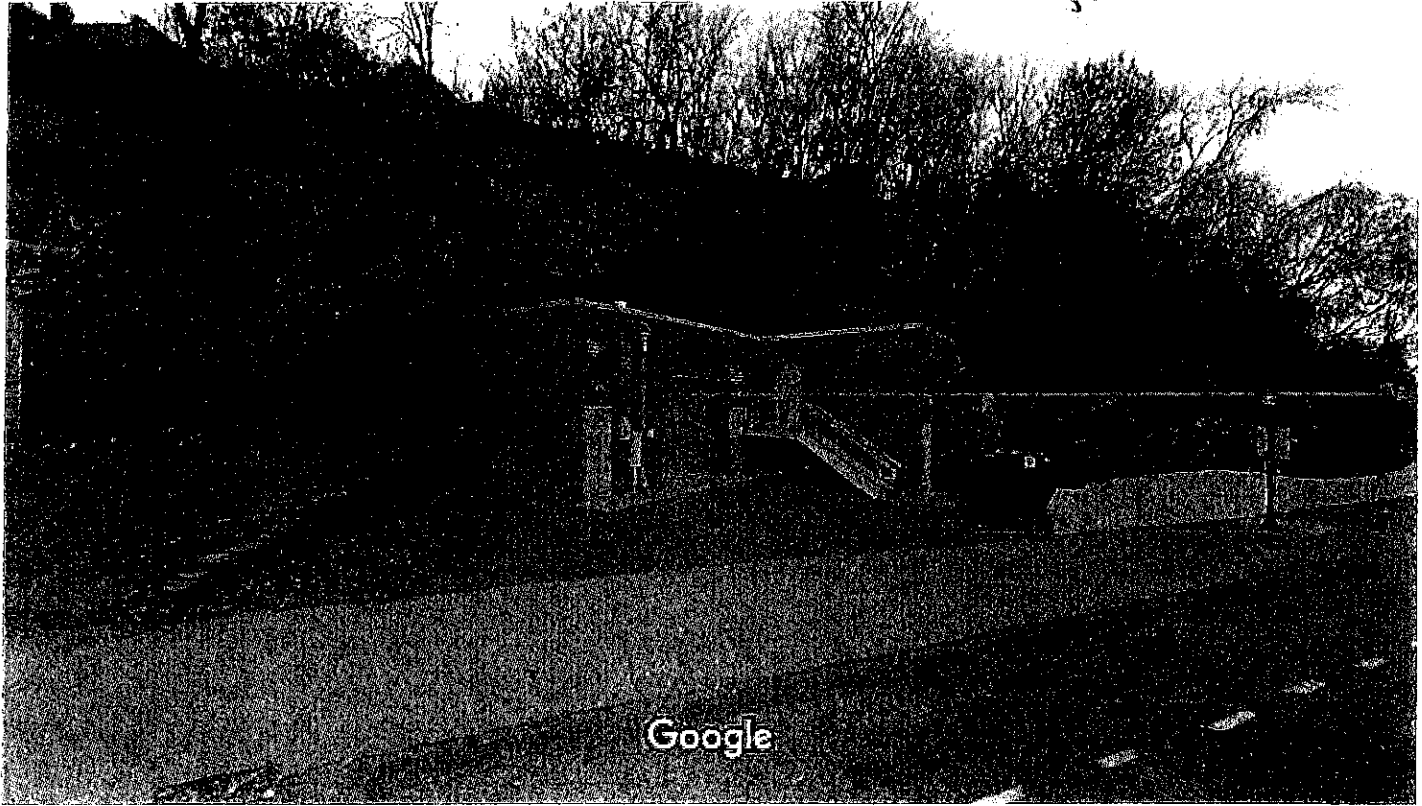
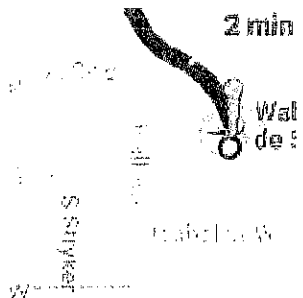


Image capture: Nov 2016 © 2017 Google

St Paul, Minnesota

Street View - Nov 2016



### EXHIBIT 3

My name is Milly Anderson, and own a business "Milly's Bakery" located at 421 Wabasha St South.

One morning around 10:30 a.m., In the month of April 2017, I was driving, as usual, from Wabasha Street toward my business "Milly's Bakery", right before the bakery space located crossing from the Taco House, I noticed a small rock coming down from the bluff, I hit my brakes, so the stone won't damage my car, as soon as I did that, I saw 2 large boulders, like 8 Ft long and maybe 3-4 Ft wide, coming after the little rock, they were flying high, I do not think those big boulders hit the railing.

I panicked and thank goodness no cars were coming on the other side of the street, so I was able to make a quick u-turn and that saved me.

I was just shaking and went into the Wabasha Caves parking lot, when I saw a guy who was walking and he stopped to watch, so I talked to him a little bit about this.

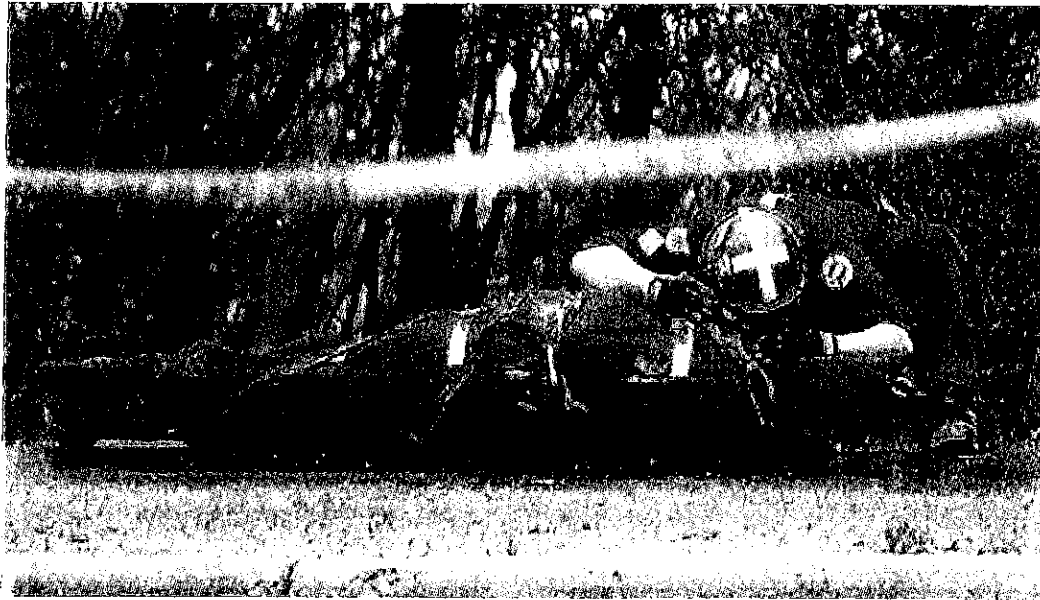
The large boulders once they hit the street, exploded all over and there was no access for cars to pass thru, for few minutes, people start moving pieces of stone, they could pass thru.

After this incident I am very scared to drive or walk thru that section of the street.

Exhibit 4  
(p. 1)

Place your ad here. Click triangle to begin.

## Investigators: Fatal rockslide was not predictable



FILE - In a May 22, 2013 file photo, an emergency worker attends to a victim brought out of a landslide area by helicopter on the West Side of St. Paul, Minn. The rockslide that killed two children on a fourth-grade field trip to Lilydale Regional Park was the result of natural causes and the city could not have predicted it, according to reports of two independent investigations released Thursday, Sept. 5, 2013. (AP Photo/The Star Tribune, Jerry Holt) MANDATORY CREDIT; ST. PAUL PIONEER PRESS OU (/ AP)

By AMY FORLITI, Associated Press

SEPTEMBER 5, 2013, 11:33 AM | ST. PAUL, MINN.

**A** rockslide that killed two children during a school field trip at a St. Paul park was the result of natural causes, and city officials could not have prevented or predicted the tragedy, according to findings of two investigations released Thursday.

Mayor Chris Coleman hired two independent investigators to examine the incident at Lilydale Regional Park. One investigation looked at what the city knew and whether the rockslide could have been

prevented. The other examined the geotechnical aspects of the slide and what caused it.

The investigators found the collapse was an "unpredictable, natural occurrence," the city said, adding it will continue to suspend permits for fossil hunting in the park while it creates a plan to keep people informed of potential risks.

"We can put up a sign. We can put up a fence. We can put up a gate. But we can't keep people from getting back into the 17 miles of wild area along the bluffs of the river in the city of St. Paul," Coleman said. "The best thing we can do is arm people with knowledge."

Lilydale Regional Park runs along the Mississippi River. It's a popular destination for fossil hunting, which requires a city permit.

Fourth-graders from Peter Hobart Elementary School in St. Louis Park were on a fossil-hunting field trip in the park on May 22 when a mass of sand and broken shale fell from a bluff overlooking the fossil beds near the East Clay Pit. Two students - 10-year-old Mohamed Fofana and 9-year-old Haysem Sani - were killed. Two others were injured.

As he announced the studies' findings, Coleman said Thursday the victims' families are in his thoughts and prayers.

"To those families, the tragedy will never end, and we need to always remember that," he said.

One investigation led by Don Lewis, the dean at Hamline University's School of Law, found the slope failure was apparently due to natural soil erosion common along the Mississippi River bluffs, aggravated by a rainy spring and foot traffic along unmarked trails. The other investigation, led by Ryan Benson of Northern Technologies, Inc., found the rockslide was a result of natural environmental changes, combined with ongoing impacts of weather on sand and shale.

Benson said there is no evidence that anything man-made triggered the rockslide. He added it's hard to predict when, where, or how big the next rockslide would be, and the city should consider similar bluff areas to be a risk.

The team's report said: "The only variable that is predictable with a high level of certainty is that slopes of this nature ... are inherently unstable, will undergo additional weathering, and are highly likely to undergo failures of varying degrees in the future."

Lewis' investigation found the city was aware that slope failures had occurred within the park and along the river's bluffs before. In May 2011, there was one failure north of the East Clay Pit, but it did not

damage people or property. Nine months later, a Parks and Recreation forestry supervisor saw erosion while ice climbing in the Fossil Ground, and reported that the hillside was at risk.

Mohamed Bah, one of Mohamed Fofana's uncles and president of the Guinea Association/Community of Minnesota, told the Star Tribune the results don't make sense, and parents wouldn't have sent their children to the park if they knew the dangers.

"If they had knowledge about the area that it was risky, why would they send vulnerable kids there?" Bah told the newspaper.

Lewis' team found that while city officials knew soil erosion could be an environmental concern, there was no evidence that they knew of unstable bluffs that posed a safety risk.

"The city did not know soil erosion posed a threat," Lewis said.

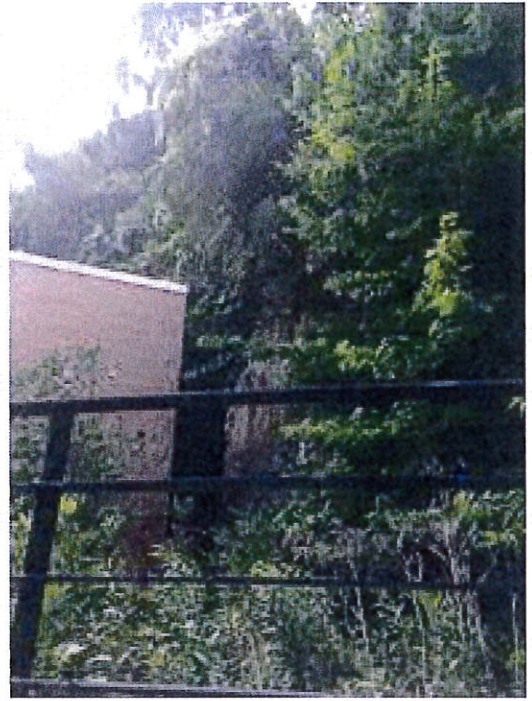
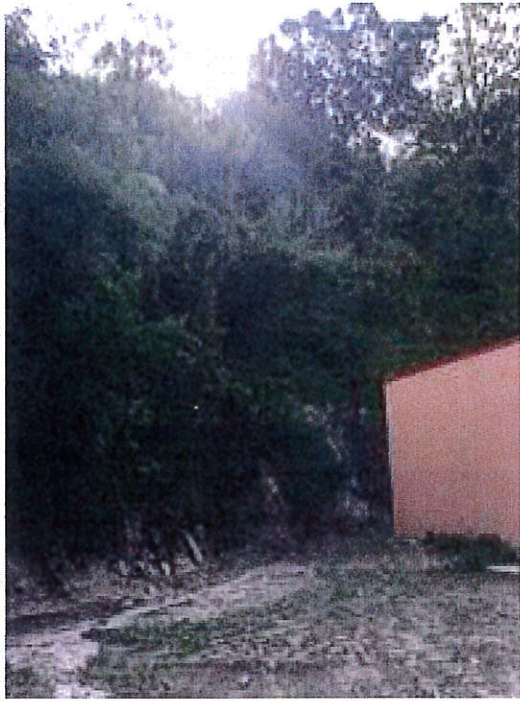
Sarah Thompson, a spokeswoman for St. Louis Park Public Schools, said the school is focusing on education, as well as recovery and healing for students.

---  
Follow Amy Forliti on Twitter: <http://www.twitter.com/amyforliti>

Copyright © 2017, The San Diego Union-Tribune

**This article is related to:** Government, Politics and Government, Public Officials













July 7, 2017

Board of Zoning Appeals | Department of Safety and Inspections  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101-1806

RE: Application for a zoning variance at 17 Hall Lane (File 17-040587)

To BZA members,

The West Side Community Organization (WSCO), the neighborhood planning Council for District 3, holds a standing resident-led Land Use committee meeting each month to, among other business, make recommendations on major variance applications within the District. At its most recent meeting on June 20<sup>th</sup>, 2017, WSCO's Riverfront Development and Land Use committee voted to oppose the variance requested for 17 Hall Lane (File 17-040587) based on two major concerns:

1. **Does the bluff have the capacity to support new residential development (and the excavation, tree removal involved) without compromising stability and integrity?** Although the proposed structure does meet the bluff setback requirements as configured, this is a minimal and crude assessment of how new development may negatively impact the bluff. No soil boring and sampling findings were included in the application, nor was a geotechnical engineering study done.

In December 2016, the Minnesota Department of Natural Resources adopted new rules for Mississippi River Corridor Critical Area (MRCCA), including development within Bluff Zones. They have not yet been adopted by the City of Saint Paul. If they had, however, more information and assessment would be required before this project could move forward. We point this out to underscore that bluff integrity and stability is of concern to not just West Siders but to a much broader coalition of state, regional, and local agencies. In other words, just because the city's current zoning code may allow it, that does not necessarily mean its safe or sustainable. There are businesses and sidewalks directly below this area on Wabasha Street; large boulders have been in the streets as recently as 2015. The concerns for public safety, for the protection for natural assets and environment, cannot be overstated and should take a back seat for one lot in the name of in-fill development.

2. **The site, as presented in the application, does not allow for adjacent off-street parking, which is standard among single family detached houses in this area.** Residents addressing the committee pointed out that while several homes do have a garage/home configuration like the one proposed (with a garage in front) nearly all have at least one additional stall so as not to obstruct the narrow street.

WSCO's Riverfront Development and Land Use Committee recommends the BZA deny this zoning variance request. However, if the committee is determined to bypass these pressing concerns voiced by the community, we strongly advise that a geotechnical engineering study of the potential impact to the bluff be required by the city before the variance is granted.

Sincerely,

WSCO Riverfront Development and Land Use Committee

---

TO: CITY OF SAINT PAUL BOARD OF ZONING APPEALS  
FROM: HALL LANE BLUFF HOMEOWNERS  
DATE: June 19, 2017  
RE: Opposition to Application for Zoning Variance

This letter is being written on behalf Christine Herkenratt, Kathryn Engdahl and Gordon Schwarz. We are the three homeowners living in historical home sites situated between Hall Lane and the Mississippi River Bluff on Saint Paul's West Side – 13 Hall Lane, 19 Hall Lane, and 11 Hall Lane, respectively. We respectfully submit to you our opposition to the granting of the applied-for variance. We have serious concerns that we ask you to consider carefully as you decide whether to approve this variance application.

**Procedural requirements have not been met.**

State law requires that a public hearing shall be held before any variance is approved or denied, and notice of such hearings must be at least 10 days before the hearing. Minn. Stat. §394.26, Subds. 1a and 2. The Public Hearing Notice was dated and mailed May 26<sup>th</sup> (the Friday before Memorial Day weekend), notifying property owners of a hearing June 5<sup>th</sup>. This provided notice of six calendar days (4 workdays, due to the intervening Memorial Day) – clearly a violation of the statute.

I was advised that the applicant decided to postpone the hearing two weeks in order to "submit additional information." I asked whether the homeowners would be properly notified of the new hearing date and was told that "we don't have to." Thus, those homeowners who received the defective notice and who erroneously believed that they had missed the June 5<sup>th</sup> hearing, would have no opportunity to be heard.

Further, the Notice was never sent to the homeowner at 13 Hall Lane, who is directly adjacent to the subject property. Query whether the Metropolitan Council of Environmental Services (which I believe owns the lift station at about 352 Wabasha, at the bottom of the bluff directly below 17 Hall Lane) has received any notice either. If there was, indeed a failure to notify the MCES, there would appear to be an additional violation of the statutory procedural requirement.

In a June 15<sup>th</sup> email to Mr. Benner, our District 3 Planning Council (West Side Citizens Organization) President Krysten Ryba-Tures pointed out further procedural deficiencies in notification that raise significant issues of due process.

2

Finally, another irregularity is the failure to identify the owner of this property. The Applicant Andrew Zelinskas identifies his property interest as "Owner" – yet he is not the owner according to the Zoning Code definition (holder of fee simple title), §60.216. The title to this property is held by Anthony Starr, a Roseville resident who is a self-professed "flipper" of property for his own financial gain. Mr. Zelinskas' interest is merely conditional on being able to build. The application cover sheet sent out with the Notice fails to identify anywhere the actual owner, Mr. Starr.

It is at this point that the history of this Hall Lane Bluff land must be understood. For many, many years, the lots between Hall Lane and the bluff have contained three homes: 11 Hall Lane, 13 Hall Lane and 19 Hall Lane. For many, many years, two of the three houses (13 Hall Lane and 19 Hall Lane) historically have green space to the north of their property – land containing trees and gardens (see Exh. A). For many, many years there have been no "vacant lots." This longstanding history represents the "essential character of the surrounding area." It wasn't until Anthony Starr bought 13 Hall Lane, flipped the house, and then quickly severed its historical side yard for his own personal profit, that the landscaped side yard became a "vacant lot." Now, as a result of his action, you are being asked to cram two structures into a very small space – creating risks to public safety in several respects that will be discussed below. This is not within the historical or essential character of the surrounding area.

### **Concerns for Neighborhood Safety**

Procedural flaws and lack of transparency aside, those of us who live on the bluff and whose only access to our homes is by Hall Lane have sincere and deeply felt public safety concerns in two areas: (1) the fragility of the bluff – which has suffered three significant collapses in recent years (the most recent this spring); and (2) the impact on traffic congestion and safety of a garage opening directly onto Hall Lane with no driveway and a mere 4-

foot apron – creating a hazardous bottleneck on this 20-foot-wide alley called Hall Lane. Many of our neighbors share these concerns.

3

**The Findings in the Staff Report are not supported by the law or facts.**

The existing structures on the Hall Lane bluff lie within the River Corridor Overlay District, which was established after they were built. As the Staff Report acknowledges in “B. Site and Area Conditions,” 17 Hall Lane “is located within the River Corridor Overlay District and must comply with all standards and conditions.” The River Corridor designation signals the need for extra care in evaluating any proposed variance therein. With all due respect, the Staff Report is seriously deficient in this regard.

**D. FINDINGS:**

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

The Staff Report cites only the RT1 zoning language and fails to mention the “general purposes and intent of the zoning code.”

According to §60.103 (Intent and purpose):

- The very first purpose is “(a) To promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community.” Through the unspeakable tragedy in spring 2013 in which a bluff collapse took the lives of two school children, Saint Paul came to grips with the imperative of taking care to prevent further such tragedy. Three collapses involving Yoerg’s bluff (the name of the bluff bordering Hall Lane) took out the historic green stairs, a bakery on Wabasha, and this spring brought a collapse that extended across the sidewalk and into Wabasha Street. Clearly, this bluff’s stability is in question – and bears serious evaluation before adding more stress in the form of excavation, utility digging, building placement, interference with large tree root systems, and changes in water distribution.
- (g) To lessen congestion in the public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial

**vehicles.** Hall Lane is 20 feet wide. It would qualify as an alley according to the Zoning Code (§60.202), except that the 3 houses on the bluff rely on Hall Lane as our sole means of access. The 20-foot width means that there is barely enough clearance for trucks and utility work (see Exhs. B, C and D), not to mention emergency vehicles. That is one reason each of the established homes has provided off-street parking in addition to garages to avert congestion by parking off the street (see Exhs. E and F). Commercial vehicles have space to pull off Hall Lane when servicing any of the three existing homes. The variance for 17 Hall Lane allows no such accommodation for commercial or even non-commercial vehicles. This problem will become severely exacerbated in the winter, when there already is limited space for the snow to be deposited so as not to obstruct traffic.

- **(h) To provide for safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic.** The addition and placement of a garage so close to the lane, with vehicles entering directly onto the lane, not to mention the inevitable addition of parking directly on the lane – will undermine the safe and efficient circulation of other vehicular, pedestrian and bicycle traffic.
- **(i) To encourage a compatible mix of land uses, at densities that support transit, that reflect the scale, character and urban design of Saint Paul's existing traditional neighborhoods.** None of the homes on Hall Lane are as closely situated to neighboring buildings as would the proposed structures be.
- **(n) To prevent the overcrowding of land and undue congestion of population.** Just as noted in the Applicant's comments – the lot is extremely small and narrow. Placing structures as proposed will cause overcrowding of land and – on the 20-foot wide road – undue congestion of traffic.

The Staff Report also fails to mention the "Intent and purpose" of the RC-4 Overlay District (§68.101), which provides:

- **(1) To protect and preserve the Mississippi River Corridor as a unique and valuable resource for the**

benefit of the health, safety and welfare of the citizens of the city and the state;

5

- (2) To prevent and mitigate irreversible damage to the Mississippi River Corridor;
- (3) To protect and preserve the Mississippi River Corridor as an essential element in the federal, state, regional and local recreation, transportation, sewer and water systems;
- (4) To maintain the river corridor's value and utility for residential, commercial, industrial and public purposes;
- (5) To protect and preserve the Saint Paul River Corridor's biological and ecological functions;
- (6) To preserve and enhance the Saint Paul Mississippi River Corridor's aesthetic, cultural, scientific and historic functions.

While the Staff Report's reference to the Code is severely limited here, the factual narrative is misleading. "There are four lots that front Hall Lane, three of which are developed with garages in front of the houses." The facts do not mention that two of the three lots have garages either facing north or south, with driveways ranging in length from 50 feet (19 Hall Lane) to 20 feet (13 Hall Lane); the only one of the garages directly facing Hall Lane is set back 17 feet – all starkly in contrast to the proposed variance. The three existing houses all provide substantial parking for additional off-street vehicles. The proposed variance has no such provision.

The Staff Report asserts that the applicant will be "preserving the bluff area." Presumably this refers only to lines on a drawing of the bluff line and the 40-foot setback. However, in reality, "preserving the bluff" is a much more complex and challenging matter. Certainly, this is a matter requiring closer scrutiny and study than simply lines on a plat drawing.

The requested variance may threaten the bluff as a vital component of the Mississippi River Corridor, and with it the health, safety and welfare of Saint Paul citizens. Not only will it not prevent or mitigate irreversible damage – but well may cause it.



The facts suggest that the variance is not in harmony with the general purposes and intent of the St. Paul Zoning Code and the Mississippi River Corridor Overlay District zoning code.

6

2. The variance is consistent with the comprehensive plan.

The pertinent Comprehensive Plan referenced in the Staff Report is the Land Use Plan, not Housing. The cited provision (LU 3.4) stresses compatibility with the surrounding neighborhood's character and prevailing pattern of development.

This has been discussed: the pattern of development for the homes on Hall Lane is that each allows ample space in addition to the garages to provide for vehicles parking off street. Singular among ALL of the lots on both sides of Hall Lane – the proposed variance will NOT provide such parking and by necessity will create a bottleneck on this 20-foot wide street, traffic congestion and safety hazards. This is not consistent with the comprehensive plan.

3. The applicant has established there there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.

There is no doubt that there are practical difficulties in building on a lot that is too small to build on in light of the safety issues of bluff instability and traffic bottlenecking on a 20-foot wide lane.

4. The plight of the landowner is due to circumstances unique to the property not created by the landowner.

In the first place, the landowner is Anthony Starr, not Andrew Zalinkas. Mr. Starr turned a historic side yard into a "vacant lot" for his own personal profit (not out of interest in bluff preservation or concern for traffic congestion). He directly created a lot too small to build on in a way that would be compatible with the surrounding neighborhood and safe for the public.

5. The variance will not permit any use that is not allowed in the zoning district where the affected land is located.



The Staff Report speaks only to the RT1 zoning district, ignoring the RC4 Overlay zoning district. For reasons already discussed, there is significant likelihood that the proposed construction could cause irreparable harm to the fragile bluff, and thus would not be allowed in accordance with the RC4 intent and purpose.

7

6. The variance will not alter the essential character of the surrounding area.

The Staff Report characterizes the surrounding area simply as having "garages located in the front yard." This characterization is perfunctory and one-dimensional. The essential character of the surrounding area is that of "garages PLUS" – that is, garages plus sizeable driveways and parking provision in addition to the garages. As clearly illustrated in Exhibits E and F, the three houses have additional gravel parking areas – a 50-foot driveway at 19 Hall Lane, a 20-foot driveway at 13 Hall Lane, and at 11 Hall Lane, a 17-foot driveway and parking alongside the garage. Due to the narrow width of Hall Lane and its lack of curbing, sidewalk and shoulder, this extra accommodation within the lots on the bluff property is part of the essential character of the surrounding area.

The Board of Zoning Appeals is required to discharge your duties and exercise your powers to fulfill the objectives of the zoning code, to secure public safety and substantial justice done. §61.203(a). We hope that you take seriously your responsibilities to secure public safety and consider the equities of this landowner's conduct.

Through this process of neighbors talking with each other, sharing our genuine concerns about the degrading integrity of the River Bluff and about traffic congestion and threats to safety – a vision has begun to emerge: We believe that the best use of the land would be for us collectively to purchase the land and create a community garden – to share the vista of the river valley with the community and to offer a place of peace and contemplation.

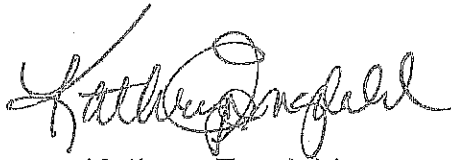
We respectfully request that the Board of Zoning Appeals deny the variance application. We thank you for your consideration.

Respectfully yours,


The Hall Lane Bluff Homeowners



Christine Herkenratt,  
13 Hall Lane



Kathryn Engdahl  
19 Hall Lane



Gordon Schwarz  
11 Hall Lane