



City of Duluth  
Planning Division

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City of Duluth  
Planning Commission  
May 13, 2014 Meeting Minutes  
City Council Chambers - Duluth City Hall

I. Call to Order

President David Sarvela called to order the meeting of the City Planning Commission at 5:00 pm on Tuesday, May 13, 2014, in City Hall Council Chambers.

Roll Call

Attending: Marc Beeman, Drew Digby, Terry Guggenbuehl, Garner Moffat, Patricia Mullins, David Sarvela, Luke Sydow and Zandra Zwiebel

Absent: Tim Meyer (Excused)

Staff Present: John Kelley, Jenn Reed Moses, Steven Robertson, Nate LaCoursiere, Keith Hamre, Chuck Froseth and Cindy Stafford

II. Public Hearings

- A. PL 14-029 Rezoning from Form District 3 (Mid-Rise Community Shopping) and F-4 (Mid-Rise Community Mix) to Mixed Use Commercial (MU-C) properties at Spirit Valley Mall by Kent Oliver. Note: **Applicant has requested discussion on item be delayed until the June 10 meeting.**

- B. PL 14-038 Rezoning from R-1 (Residential-Traditional) to MU-C (Mixed Use-Commercial) at 9 West Palm Street by Kwik Trip, Inc.

**Staff:** Steven Robertson introduces the request to change the zoning. The list of allowable uses for R-1 and MU-C were included in commissioners' packets. He notes MU-C allows for a wider range of uses. Staff noted zoning change conforms to the future land use plan and is an appropriate rezoning. Staff recommends approval of the rezoning.

**Applicant:** Scott Teigen (CFO of Kwik Trip stores) addresses the commission. He stated they held a neighborhood meeting last week with residents expressing concerns about traffic. He can alleviate some of their concerns by vacating the alley, so none of their internal traffic would be exiting out onto Palm St. Kwik Trip's goal is make the neighbors their best customers, so they would like to work together.

**Public:** David Rauschenfels resides at 14 W. Palm Street. He is frustrated because the current zoning is a matter of trust. Rauschenfels has maintained his home in good faith, and is concerned about commercial businesses taking over the neighborhood and is concerned with the added traffic. He opposes the rezoning. Paul Nephew addresses the commission. Nephew lives in Proctor, but his daughter has a home at 9 West Palm Street. Although she enjoys her home, she feels they will need to move. They support Kwik Trip and are in favor of the rezoning.

**Commissioners:** Terry Guggenbuehl verifies the zoning is consistent with the land use. Per Robertson, yes, it was updated in 2009 in accordance with the small area plan.

**MOTION/Second:** Digby/Moffat recommends approval as per staff's recommendation.

**VOTE: (7-1, Beeman opposed)**

- C. PL 14-039 Vacation of Alley Right of Way and Dedication of New Alley Right of Way at 2 West Central Entrance and 9 West Palm by Kwik Trip, Inc.

**Staff:** Robertson introduces the request for a vacation of an improved street (alley) easement of the easternmost 175 feet by 20 foot wide alley between Oregon Avenue and South Arlington Avenue which runs parallel to West Central Entrance and W. Palm Street. This section of the alley will be replaced by a 125 foot by 25 foot alley that runs onto West Palm Street. Staff recommends approval with the condition that applicant pays all utility costs and the existing alley shall be accessible by the public until the new alley is accepted by the city.

**Applicant:** Scott Teigen of Kwik Trip present noting the company understands the conditions.

**Public:** N/A

**Commissioners:** Chair Sarvela clarifies with applicant their willingness to block off traffic to the alley. Applicant states a median island will be in place, so only access will be from West Central Entrance and Arlington. Chair Sarvela asks why the alley is needed at all. Per Robertson, the city doesn't want a right of way to come to a dead-end. Robertson states that vacations can be passed with conditions added unlike rezoning actions.

**MOTION/Second:** Moffat/Guggenbuehl recommends approval as per staff's recommendation with the condition that property will have no access to the rededicated alley.

**VOTE: (8-0)**

- D. PL 14-048 Vacation of Unimproved Alley and Street Right of Way Near Commonwealth and Becks Road by Wisconsin Central Limited

**Staff:** John Kelley introduces the request for a vacation of an unimproved platted street and alley in the Norton's Steel Plant Division of Duluth north of Becks Road and east of Commonwealth Avenue. The platted street portion is 33-feet in width and approximately 86 feet in length with the alley being 8 feet in width and approximately 190-feet in length. Staff recommends approval with the conditions listed in the staff report.

**Applicant:** Patrick Waldren (represents Wisconsin Central Ltd.) addresses the commission and will answer any questions.

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Sydow/Zwiebel recommends approval as per staff's recommendation.

**VOTE: (8-0)**

- E. PL 14-049 Vacation of Unimproved Street Right Near Roosevelt Avenue and State Street by Wisconsin Central Limited

**Staff:** Kelley introduces the request for a vacation of a portion of the unimproved Roosevelt Avenue in the Pittsburgh Addition located north of Becks Road and east of 108<sup>th</sup> Avenue West. The platted street portion is 50-feet in width and approximately 19-feet in depth. The proposed vacated portion of Roosevelt Street is adjacent to the existing Wisconsin Central rail line to the south. Staff recommends approval with the conditions listed in the staff report.

**Applicant:** Present, but did not address the commission.

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Zwiebel/Guggenbuehl recommends approval as per staff's recommendations.

**VOTE: (8-0)**

- F. PL 14-050 Vacation of Unimproved Street Right of Way Near Curtis Street and 119<sup>th</sup> West Avenue by Wisconsin Central Limited

**Staff:** Kelley introduces the request for a partial vacation of unimproved platted streets in the Balkan Division. The street is 33 feet in width and includes portions of Curtis Street and 119<sup>th</sup> Avenue West located in the northeast corner of the plat. The area to be vacated is approximately 8,425 square feet of right-of-way. Staff recommends approval with the conditions listed in the staff report.

**Applicant:** Representative present, but did not speak.

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Mullins/Beeman recommends approval per staff's recommendation.

**VOTE: (8-0)**

- G. PL 14-033 Special Use Permit for Placing Fill in the Floodplain for Wisconsin Central Limited

**Staff:** Kelley introduces the request for a special use permit for filling in the 100-year floodplain which is associated with construction of a new double track railway. Staff recommends approval with conditions listed in the staff report. Commissioner Zandra Zwiebel asks about taking fill from one area to fill another. Per Kelley it does not increase the flood stage but will result in a net increase in floodplain storage.

**Applicant:** Justin Trush, Field Engineer for Wisconsin Central/Canadian Railroad, addresses the commission clarifying they will be bringing in material which will spill into the flood plain. They are digging a portion of the upland between the railroad and the creek out to compensate for storage they are consuming for the construction of the roadbed.

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Guggenbuehl/Beeman approved as per staff's recommendation.

**VOTE: (8-0)**

- H. PL 14-036 Concurrent Use Permit for Private Skywalk above 10<sup>th</sup> Avenue East Right of Way between 1<sup>st</sup> and 2<sup>nd</sup> Streets by St. Luke's Hospital of Duluth

**Staff:** Jenn Moses introduces the request for a concurrent use permit for a new skywalk approximately 15 feet wide by 80 feet long over 10<sup>th</sup> Avenue East, connecting the existing hospital to the 4<sup>th</sup> floor of Building A. Skywalk will be approximately 30 feet above the road surface. Staff recommends approval with the three conditions listed in the staff report. Zwiebel asks if 66% of transparency is required by code. Per Moses, yes, unless there are structural and operations concerns, which are stated in email from St. Luke's architect. Commissioner Sydow asks what the structural concerns are.

**Applicant:** Pat Earley, Director of Facilities for St. Luke's Hospital, addresses the commission and notes the structural reason why it can't be built to meet the current UDC is because of the doors as explained in the commissioner's packet. The doors are

fire doors and are not glass. Sydow cautions they could be setting a precedent for other buildings not meeting the UDC.

**Public:** N/A

**Commissioners:** Patricia Mullins questions the transparency ratio and states it appears to have enough windows for a higher ratio. She feels it meets the ratio in theory if not in actual numbers. Per Moses, the ratio is calculated by the architect and notes the doors and the structure for the doors on both ends. Digby reads from the UDC and notes there is a 50% exception for structural/engineering limitations. He understands Sydow's concerns about setting a precedent, but is comfortable that it meets the code. Commissioner Moffat notes the height of the skywalk could be increased to allow for taller windows. Commissioner Beeman states they are looking at the structure as based on the whole and if the size is increased, the ratio would need to be readjusted to reflect the increase. Zwiebel states she is no longer concerned about the transparency issue as it seems to be adequately addressed.

**MOTION/Second:** Zwiebel/Guggenbuehl recommends approval as per staff's recommendation.

**VOTE: (7-1, Sydow opposed)**

- I. PL 14-037 Concurrent Use Permit for Heat Melt System Below the Sidewalk on the 10<sup>th</sup> Avenue East Right of Way Between 1<sup>st</sup> and 2<sup>nd</sup> Streets by St. Luke's Hospital of Duluth

**Staff:** Moses introduces request to seek a concurrent use permit for 1) a snow melt system under the driveway of "Building A" where it abuts 10<sup>th</sup> Avenue East; 2) a snow melt system under the sidewalk along the west side of 10<sup>th</sup> Avenue East, stretching 66 feet from the 1<sup>st</sup> Street sidewalk; and 3) an underground duct bank for St. Luke's generator power that will cross under 2<sup>nd</sup> Street, 10<sup>th</sup> Avenue E, 1<sup>st</sup> Street, and the 1<sup>st</sup> Street Alley. Staff recommends approval with the five conditions listed in the staff report.

**Applicant:** Present, but did not speak.

**Public:** N/A

**Commissioners:** Digby clarifies the snow melt system is already in place.

**MOTION/Second:** Sydow/Mullins recommends approval as per staff's recommendation.

**VOTE: (8-0)**

- J. PL 14-046 Rezoning from R-1 (Residential-Traditional) to R-P (Residential-Planned) at Rockridge School at 4849 Ivanhoe Street by ISD 709

**Staff:** Moses introduces the request to rezone the Rockridge School property from R-1 to R-P. The concept plan for the R-P district includes reuse of existing school building, single-family lots, preservation of common open space, and pedestrian easements between Hawk Ridge and adjoining neighborhoods. The applicant held a neighborhood meeting on April 29, 2014. The questions and comments from the meeting are included in the packet. Staff recommends approval for the three reasons listed in the staff report.

**Applicant:** Kerry Leider, Property and Risk Manager for Duluth Public Schools, addresses the commission. He believes there is general consensus that the building shouldn't be torn down and it should remain an asset to the community and be re-used. He feels the re-zoning will help occupy the building. He notes there isn't a perfect solution and feels all sides need to compromise. He notes another school, Lincoln Park School, was or soon will be successfully reused.



**Public:** Tom Ryther of 5114 Oakley Street addresses the commissioners and distributes a handout. Ryther is a member of the Friends of Rockridge organization and they appreciate the public involvement meetings that staff has committed to when the regulating plan is submitted. They have reviewed the concept plan and would like the rezoning to go through only if there is open space for continued public use including the 150' strip located along the north property line of block 1 lots 9 through 14 of the lakeside garden subdivision. He would like these lots to be deeded to the city for recreation and be added to the application by amendment.

Barb Soder of 5025 Glendale Street addresses the commission. Rockridge neighborhood has always been a part of her life. She supports the rezoning, but would like to see more open space. Per Leider, he notes the trail easement will be permanent. A resolution from the school district will include dedicated access to Hawk Ridge to make sure this land retained and dedicated for this purpose. The resolution will allow for additional dedication of the utility easement for pedestrian uses. The School's intent is the easement would establish a low-maintenance natural trail. It will not be paved or include concrete sidewalks. Chair Sarvela asks what the width of the pedestrian easement? Per Leider, it hasn't been determined yet, but notes the other trails have been 20 feet as was done at the former Central High School. Leider will work with city staff to determine what is appropriate. Since it is an unimproved natural trail it could be narrower. Leider noted the trail is within the common open space that is part of the R-P which will remain unimproved. Zwiebel asks if the location of the trail is consistent to what is already there. Per Leider, there are informal trails and defers her question to Mr. Ryther. Ryther stated the neighbors have called attention to trails that are in use and believes the alignment of the proposed trail is a good one. Digby asks staff about the property not included in the RP. Leider verifies nothing can be added to the R-P without notice. Moses confirms. Digby asks about the remaining 1.3 acres in the R-1; how many buildable lots would remain? Moses doesn't have an exact number but notes the minimum lot size in an R-1 is 4,000 square feet. Digby wants to make sure there is land available in order for the school district to get their proper value out of it in order to create housing for the city. Leider notes the upper platted lots of Norwood Street have the highest value potential. The district feels encumbering the lots will unnecessarily restrict future land owners and their intent would be to sell the land as two lot parcels. There would be three on the upper side and the number on the lower side will depend on factors including; location of the floodway, how the fill is determined and whether it's fully constructible.

Ryther re-addresses the commission. He appreciates Leider's efforts to keep them informed. The reason he would like to see the property be deeded is because easements are difficult to maintain and ownership is a preferred method.

**Commissioners:** Mullins verifies they cannot add the extra buffer zone behind the houses at this point. Per Chair Sarvela, it is a different process. Sydow comments on the slopes located on the back side of the building sites. He is not concerned about the land being clear cut and notes the balance of Norwood Street does not have development as well. Chair Sarvela voted against rezoning it to urban residential last year. The Chair has reservations about R-P's in general, but likes the direction this is going. Zwiebel commends the school district's effort to establish a trail as the neighborhood will appreciate being able to use it.

**MOTION/Second:** Sydow/Zwiebel recommends approval as per staff's recommendation.

**VOTE: (8-0)**

- K. PL 14-022 Environmental Assessment Worksheet for Stewart Creek Bank Stabilization by City of Duluth

**Staff:** Robertson notes the project will stabilize stream banks and restore the channel of Stewart Creek damaged by the 2012 flood. Robertson states the commissioners will be voting on whether an Environmental Impact Statement (EIS) is needed. Chris Kleist of city engineering gives an overview of the project. Stewart Creek is in west Duluth and the area is below the Munger Trail and above Clyde and 93<sup>rd</sup> Avenue West. The stream banks were severely eroded due to the flooding. The project will stabilize the banks, add vegetation and remove debris. Zwiebel wondered what the source of funding for the project is. Kleist notes the project will be fully covered through state and federal grants. Guggenbuehl asked if this the only section of Stewart Creek they will be working on. Per Kleist, they are applying for more areas of the creek in the future.

**Applicant:** N/A

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Sydow/Mullins - EIS is not necessary.

**VOTE: (8-0)**

- L. 5 Minute Recess

- M. PL 14-043 Concurrent Use Permit for Tie-back Anchors in the Alley Right of Way behind the 425 West Superior Street by Duluth Real Estate LLC

**Staff:** Robertson gives a brief overview of the entire project. The applicant is seeking a concurrent use permit to work in 1<sup>st</sup> Street Alley for the installation of: 1) temporary tie-back anchors, that will be removed after construction to be located at an elevation above the lowest existing utility, and 2) permanent tie back anchors, that will be un-tensioned and abandoned in place, located at an elevation below the lowest existing utility. Staff recommends approval with the conditions listed in the staff report. Sydow asks if the 5<sup>th</sup> Avenue trees will be removed. Per Robertson, yes.

**Applicant:** N/A

**Public:** Steve Bystedt of 26<sup>th</sup> East Superior Street addresses the commission. He is concerned about his skywalk and handicap access going away, along with his mailbox access. He doesn't feel the corporation or the city are being responsible and feels his problems are only going to get worse.

**Commissioners:** Guggenbuehl asks if there will be future decisions needed by the commission for skywalk issues. Robertson does not believe it will be coming back to the commission. Mullins asks if the skywalk issues are temporary or permanent. Robertson does not know.

**MOTION/Second:** Guggenbuehl/Mullins recommends approval based on staff's recommendations noting they would like to see skywalk issues being resolved.

**VOTE: (8-0)**

- N. PL 14-044 Concurrent Use Permit for Foundation Footings in the 4<sup>th</sup> and 5<sup>th</sup> Avenue West Right of Way between Superior Street and 1<sup>st</sup> Street by Duluth Real Estate LLC

**Staff:** Robertson introduces applicant's request for a concurrent use permit to work in the 4<sup>th</sup> and 5<sup>th</sup> Avenues West street easements. According to the applicant a constrained site and the shallow elevation of bedrock require the retention of soils at the property line of this project with the use of battered shotcrete walls and soil anchors in lieu of other temporary soil retention methods. These walls will occur at both the 4<sup>th</sup> Avenue West and the 5<sup>th</sup> Avenue West sides of the site. The top of the wall will be just below finished grade and left in place after construction. The location of the soil anchors will be

below the utilities located in 4<sup>th</sup> and 5<sup>th</sup> Avenues west and also will be abandoned in place. Staff recommends approval with the conditions listed in the staff report. Guggenbuehl asks if the sidewalk removal will be temporary. Per Robertson, the sidewalks will eventually be reinstalled. Moffat asks if the walls will be permanent. Per Robertson, yes adding if they needed to be removed, another method of shoring would be required.

**Applicant:** N/A

**Public:** N/A

**Commissioners:** Sydow asks about landscaping and temporary tree removal and placing trees back in place. Per Robertson, they did not consider this issue and looked purely on the public use of the right of way. He thought the city forester would decide what would be planted. Zwiebel asks when does construction begin. Robertson is not sure, but the applicant wanted these items secured by June.

**MOTION/Second:** Guggenbuehl/Beeman recommends approval as per staff's recommendation with the condition that trees be replaced as approved by the city forester.

**VOTE: (8-0)**

- O. PL 14-045 Concurrent Use Permit for Skywalk and Building Footings on 4<sup>th</sup> Avenue West and Superior Street West by Duluth Real Estate LLC **Note:** initial application was for a vacation.

**Staff:** Robertson introduces the request for a concurrent use permit to work in the West Superior Street easements for the connection of the proposed building to the existing sidewalks. This permit is related to the design surrounding the existing skywalk columns and footings on the Superior and Fourth Avenue sides of the site. Staff recommends approval with the conditions listed in the staff report.

**Applicant:** N/A

**Public:** N/A

**Commissioners:** Sydow is concerned about the narrowing of the sidewalk. Per Moses, the architects have supplied staff with a CAD drawing showing the building footprint, so they know exactly where the building will be.

**MOTION/Second:** Guggenbuehl/Beeman recommends approval based on staff's recommendations.

**VOTE: (8-0)**

- P. PL 14-040 MU-C Planning Review for a New Restaurant at 4402 Grand Avenue by Mike Jones and JP Subway Inc.

**Staff:** Steven Robertson introduced the request for a MU-C plan review for a new 2,400 square foot restaurant. Staff recommends approval based on the four conditions listed in the staff report. Digby questions traffic flow and notes the location is across from Denfeld High School. He questions if staff feels safety concerns have been adequately addressed. Per Robertson, they have met UDC standards and defers to the applicant on this topic.

**Applicant:** Bill Scalzo of Scalzo Architects addresses the commission noting there is a controlled intersection at 44<sup>th</sup> Avenue West and Grand Avenue. Digby asks if a condition can be made to have a better traffic flow? Sarvela inquired as to where the main entrance is located? Per Scalzo, entrance is on the west side, in front of parking spaces 9-16. Sarvela asks about adding a sidewalk to take pedestrians out of the driveway. Sydow would like a sidewalk to Grand Avenue as he is concerned about the alley width and the drive thru window with uncontrolled traffic. There is lots of extra space around

the drive-thru. Digby questions the landscape plan at 44<sup>th</sup> and Grand asking if a condition can be made to shift shrubs and curb cuts directing pedestrian traffic flow so people don't cut through the drive-thru lane. Scalzo said they can make those adjustments. Digby also questions vehicle turn lanes and the two opposing turns asking if it is possible to make a left turn off of Grand into Subway? Scalzo states yes. Digby requested if City Engineering could relook at the striping of the turn lanes? Guggenbuehl points out a similar situation at Central Entrance and the need to negotiate and share the turn lane with opposing traffic.

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Guggenbuehl/Beeman approved as per staff's recommendations with condition that a clear pedestrian entrance be installed in accordance with the land use supervisor.

**VOTE: (7-1, Moffat opposed)**

Q. PL 14-041 MU-C Planning Review for a New Primary Use Parking Lot at 4402 Grand Avenue by Mike Jones and JP Subway Inc.

**Staff:** Robertson introduces applicant's request for a MU-C planning review for a new primary use parking lot. The UDC is somewhat unclear and may need to be changed on this topic. Staff has no recommendation, and defers to the planning commission.

**Applicant:** Bill Scalzo notes it does meet the standards for the MU-C district.

**Public:** N/A

**Commissioners:** Moffat questioned staff about the designation for primary use parking lots and what the perceived gray area might be. Per Robertson, he believes code is clear, but outsider reading this section may have legitimate confusion on what is considered an accessory versus a primary lot. Robertson added he feels future primary parking lots needs written clarification. Moffat inquired if it is a shared lot, is physical separation needed? Per Robertson, code intended it be self-contained with own entrance and own exit, etc. Guggenbuehl asked if a condition can be added to include signage showing the lot can be used by others. Robertson defers back to commission. Sydow not sure if they would have to label their own parking lot. Nate LaCoursiere recommends PL14-041 tie in to PL 14-040 with the additional condition added of parking signage along with the curb cuts, and landscaping as they all are united.

**MOTION/Second:** Sydow/Beeman recommends approval as per staff's recommendation noting staff will likely revise the UDC language and with condition that it's tied together with PL14-040.

**VOTE: (8-0)**

R. PL 14-031 Variance From Side Yard Setback Requirements at 4414 West 8<sup>th</sup> Street by Darin Powell and Tim Collelo

**Staff:** Moses introduces the request for a variance to construct a deck for access out of the patio door for safety and cosmetic purposes. The house is less than three feet from the lot line; the proposed deck will not extend any closer to the lot line than the house. Staff recommends approval with the conditions listed in the staff report. Digby notes the recently added 2-car garages in the neighborhood appear to be within the six foot setback and asks if it's standard for the neighborhood. Moses, notes for a detached non primary structure the setback is three feet. Guggenbuehl notes condition 2 in the staff report and would like the language to state the deck should not extend past the house rather than a set number due to the inconsistency of surveys.



**Applicant:** Darin Powell (contractor) addresses the commission and asks if there are any questions. There are none.

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Guggenbuehl/Sydow approved in accordance with staff's recommendation with the practical difficulty being the narrowness of the lots with the revised condition 2 (from staff report) that instead of a survey, the deck not extend past the house.

**VOTE: (8-0)**

- S. PL 14-034 Variance from Shoreland Setback of 150 feet at 1726 Piedmont Avenue by Dennis Michaud and the South St Louis Soil and Water Conversation District

**Staff:** Jenn Moses introduces the applicant's request for a variance to build a retaining wall and add fill in an area compromised by the June 2012 Flood. The retaining wall will help with slope stabilization. Retaining wall would be built so that the base of the rip-rap will be 25 feet from the stream, which is less than the required structure setback of 150 ft. Two 15-foot tall wall sections will be built with a bench in between. Staff recommends approval based on the two conditions listed in the staff report.

**Applicant:** Present, but did not speak.

**Public:** James Winklesky (neighbor) addresses the commission and is in support.

**Commissioners:** N/A

**MOTION/Second:** Zwiebel/Guggenbuehl approved as per staff's recommendations.

**VOTE: (8-0)**

- T. PL 14-035 Variance from Front Yard Setback Requirements at 3635 Lake Ave South by Robert and Carole Lent

**Staff:** Jenn Moses introduces the request for a variance to construct a 500 square foot addition which requires a variance from the front yard setback (19 feet instead of 25 feet) from 37<sup>th</sup> Street. Staff recommends denial due to the conditions listed in the staff report that the applicant has not demonstrated practical difficulty. Neighbor is in support of the variance. Digby questioned if Lake Avenue is considered the front yard. Per Moses, 37<sup>th</sup> Street is considered the front yard for zoning purposes. Digby asks if 37<sup>th</sup> is a publically maintained road. Per Moses, yes it is a public right of way. Digby asks if it was publically built. Moses defers to applicant. Chair Sarvela asks about the determination of the front yard. Moses notes the definition of the front of a lot: the narrowest dimension of lot, if there are established buildings on the roads, then it's the orientation of the buildings that determine the front yard.

**Applicant:** Robert Lent addresses the planning commission. He stresses the addition is not for extra space, but is based on their aging needs. They would like to stay in their home. He notes the DECC expo and notes a program called, "Aging in Place". He disagrees with staff's recommendation to deny. Mr. Lent commented on Digby's question and the street is not plowed as it is mostly hand shoveled and snow blowed. Zwiebel clarifies which houses have 0' setbacks. Lent stated the Easy Housing homes on 32<sup>nd</sup> Street which have a shared wall. Guggenbuehl commented the planning commission voted to deny the variance and city council overturned it for Easy Homes. Zwiebel clarifies wheelchair access requirements. Per applicant, minimum is 3 x 3' feet for a turn-around, but 5 x 5' is recommended. Sydow asks if building the addition on the south side was considered. Lent stated yes, but it's not feasible due to being closer to adjoining neighbors on Minnesota Avenue, would mean gutting the entire house, and because of angle of house, they would run into setback restrictions. Moffat inquired to staff what are the rear setbacks. Per Moses, 25 feet. Digby, questioned what role does

ADA play in variances and zoning law? LaCoursiere stated under the variance standards a proposal for an addition is a reasonable use for the property, but the question is, has the applicant shown practical difficulty? Digby, is there case law in regards to disability or the ADA and living in a home? He sees there is reasonable use, but wonders if it can be incorporated in a hardship. LaCoursiere has not specifically researched case law in this regard and commented it is an important consideration, but technically has no bearing on the lot itself and the practical difficulty standard. Moffat feels there are other ways to make ADA accessible upgrades without the need for a variance. Beeman commented on other variances which have been granted and agrees with the applicant's point of view. Mullins feels there is a practical difficulty, based on what the applicant has shared. A professional has looked at other options and finds them not feasible. Carole Lent notes they have ample land and they are being discriminated against because they have land to use, whereas other owners who have been granted variances have no land for additions.

**Public:** N/A

**Commissioners:** Digby asks legal counsel about case law as it pertains to an elevator or the extension of a home as he would like to understand a deeper legal background to this situation. He entertains an option to table. Guggenbuehl agrees but notes there is space available on their lot. Moffat feels the ADA rules would only apply if there wasn't buildable area. Mullins asks applicant about their timeline. The applicant would like to break ground this building season.

**MOTION/Second:** Guggenbuehl/Moffat to deny as per staff's recommendation.

**VOTE: (4-4 Beeman, Mullins, Zwiebel, Digby opposed)**

Motion failed.

**MOTION/Second:** Mullins/Digby approved due to practical difficulty that it's not handicapped accessible and the unique condition of the property of two unimproved streets.

**VOTE: (4-4, Sydow, Sarvela, Guggenbuehl, Moffat opposed)**

Motion failed.

**MOTION/Second:** Guggenbuehl/Beeman – Table until June Meeting.

**VOTE: (8-0)**

Zwiebel asks legal counsel if this variance would go the city council without their recommendation. LaCoursiere will reference the bylaws. Per Robertson, if there is no decision by August 6<sup>th</sup> it is automatically approved per the 60-day rule. Moffat thinks they can extend their roofline and the addition would not need a variance. LaCoursiere notes if the motion ties it fails. The commission needs to make a decision. He suggests a motion to table the item until he has time to do more legal research. LaCoursiere clarifies Digby's request for legal research pertains to the 2<sup>nd</sup> aspect of the variance condition and whether the building of an addition in accordance to ADA standards would create a practical difficulty. Digby also adds "Aging in Place" and not necessarily just individuals with disabilities. Sarvela feels this could be discussed during a brown bag session. Mullins wondered if there has to be a legal precedent for aging at home.

- U. PL 14-042 Variance from Front Yard Setback Requirements at 30 East 9<sup>th</sup> Street by Jason Lindelof. Note: Public Hearing Notice requirement not met; item delayed until the June 10 meeting.

V. PL 14-027 UDC Text Amendment for Subdivisions

**Staff:** Steven Robertson introduces text amendments for subdivisions with the added restriction that the lot size be at least 10 acres in size.

**Applicant:** N/A

**Public:** David Szyszkoski, Minnesota Professional Land Surveyor, addresses the commission. He asks for the minimum lot size to be five acres, and appreciates the consideration for the language.

**Commissioners:** Guggenbuehl questions the five acre versus ten acre discrepancy and are there a lot of properties that would pertain? Per Robertson's best estimate it would be a difference between 1 and maybe 3 requests being brought forward. Froseth feels five acres is adequate.

**MOTION/Second:** Guggenbuehl/Zwiebel recommends approval as per staff's recommendations with additional language to include the minimum lot size to be five acres.

**VOTE: (8-0)**

III. Consideration of Minutes

March 11, 2014

**MOTION/Second:** Guggenbuehl/Zwiebel recommends approval.

**VOTE: (8-0)**

IV. Other Business

Update on Lincoln Park Small Area Plan. Moffat stated the first meeting was held and there is not much to report on yet.

V. Communications

Managers' Report. Froseth asks if there are any questions. Digby asks when the next Superior Street Public Meeting will be held. Moses, no meeting has been set yet, but they are looking at July.

VI. Reports of Officers and Committees

HPC. Mullins reported a new business would like to open up at 60<sup>th</sup> Ave East and London Road. UMD is the property owner. In order to re-use it under adaptive reuse it requires landmark status. UMD does not want to grant permanent landmark status only temporary status. She suggests a future adaptive reuse discussion and whether or not it should always require landmark status.

VII. Adjournment

Meeting adjourned at 9:16 p.m.

Respectfully,



Charles Froseth, Land Use Supervisor