

City of Duluth
Planning Commission
March 10, 2015 Meeting Minutes
Council Chambers - Duluth City Hall

I. Call to Order

President Zandra Zwiebel called to order the meeting of the city planning commission at 5:00 pm on Tuesday, March 10, 2015, in City Hall Council Chambers.

Roll Call

Attending: Marc Beeman, Terry Guggenbuehl, Tim Meyer, Garner Moffat, Patricia Mullins, Luke Sydow and Zandra Zwiebel

Absent: Drew Digby and David Sarvela

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

II. Unfinished Business

- A. PL 15-006 MU-C Planning Review for Restaurant at 104 West Central Entrance by Donco, LLC (Tabled from February 10, 2015, Planning Commission Meeting)

Staff: Jenn Moses shares the applicant's revised site plan and landscaping plan. They have increased the drive aisle on the western side of the property and decreased the east side aisle width and added angled parking. Area west of parking will be landscaped. The grading plan and photometric plan were distributed to the commissioners prior to the meeting. The applicant's revised submittal meets all UDC requirements and staff recommends approval with the conditions listed in the staff report and memo. Moses would like to revise condition one to include the project be built according to the grading and photometric plans. Condition two can remove "lighting" since it's discussed in the photometric plan. She asks commissioners to consider a fourth condition regarding a joint use agreement with the adjoining property owner in regards to traffic flow.

Applicant: Brian Swanson of Donco addresses the commission. He states he does have cross easement with the neighbor. He asks if there are any questions. Luke Sydow asks about the intent of the driveway to allow two-way traffic. The applicant states the design works better used as a one-way for better traffic flow.

Public: N/A

Commissioners: N/A

MOTION/Second: Meyer/Beeman approved as per staff's recommendation with the revised changes adding grading and photometric plans into condition one and removing lighting from condition two and adding a fourth condition of a joint agreement with neighboring property for traffic usage.

VOTE: (7-0)

III. Public Hearings

- A. PL 15-033 UDC Map Amendment to Rezone to Park and Open Space (P-1), Grosvenor Square, Kelso Park, Portman Community Recreation Center, Russell Square and Washington Square Parks by the City of Duluth

Staff: John Kelley introduces the city's proposal to rezone park property including Grosvenor Square, Kelso Park, Portman Community Recreation Center, Russell Square and Washington Square located on the eastern portion of the city from the current zoning districts of Residential-Traditional (R-1) to Park and Open Space (P-1). Staff recommends approval.

Applicant: N/A

Public: N/A

Commissioners: N/A

MOTION/Second: Meyer/Moffat recommend approval as per staff's recommendation.

VOTE: (7-0)

- B. PL 15-018 Text Amendment Changes to Section 50-17, 50-19, 50-20, and 50-41 Related to the Permitted Use Table to Allow for a New Airport Zoning District, and Medicinal Cannabis Land Uses

Staff: Suzanne Kelley introduces the city's text amendment changes to the UDC which includes: definitions, zoning districts, separation of uses, development standards, process and ordinance as defined in the staff report. A manufacturer of the product may not operate at any location within 1,000 feet of a school. Staff recommends the interim special use permit be limited to three years. Kelley asks the commissioners to recommend approval which will then be forwarded to the city council. Terry Guggenbuehl asks if legal has looked at it as it pertains to state legislation. Nate LaCoursiere states legal has been involved and notes the interim use process allows the city to be flexible and responsive. Tim Meyer brings up zoning questions. Will the facilities even be allowed? Will council address this? Charles Froseth states yes eventually, but first this recommendation needs to pass in order to be brought to the city council. A moratorium was passed six months ago giving the planning department time to study the issue. The study was comprehensive and was conducted as an interal city team approach. The major focus was to be respectful of neighborhoods and residents.

Applicant: N/A

Public: Ray McCulland - 4766 Rice Lake Rd – addresses the commission. He owns acreage by the airport and would like to utilize the site for growing the product. Jodi Slick - 2304 W. Superior St – addresses the commission. Her organization focuses on Lincoln Park neighborhood's business revitalization, neighborhood engagement and sustainability. She is not for or against the medicinal cannabis land use issue, but states it's a personal issue for her since her father benefitted from medicinal THC. She is a member of the Lincoln Park small area plan committee. The committee is interested in changing the Superior Street corridor to a form based district to increase the potential of housing on the second floor of those buildings. She asks about timing. If this cannabis text amendment recommendation passes, how does this integrate with the small area plan? She notes currently the small area plan has not vetted this particular use for the neighborhood. She would like the buffer from residential areas to be 500 feet versus the proposed 200 feet which is only about half a block. She states west Duluth is working hard to rebrand its image, and has concerns. Kelley addresses Slick's questions. This recommendation is immediate and needs commission action before the moratorium expires. Kelley shares a map of the Lincoln Park neighborhood. If they expanded the residential buffer from 200 feet to 500 feet, it would be too restrictive. Chair Zandra Zwiebel asks if Lincoln Park is rezoned, will the 200 feet buffer will be observed? Kelley states yes. Guggenbuehl asks about traffic research. Kelley states there has not been a traffic study. Chair Zwiebel adds there is still a special use permit required. Sydow asks if all school owned property would be off-limits noting the storage facility owned by the school district on Garfield Ave. Kelley states yes, the GIS map shows all school owned properties, not only schools. Meyer asks how we would gauge public input. Kelley replies, once council adopts the ordinance applications be a special use permit process on a case by case basis. Dale Lewis – of Park State Bank in Lincoln Park with roots in

Morgan Park, addresses the commission. She is concerned about the Morgan Park school. The mayor and administration has been working diligently to develop a new plan for the river corridor, which is an attractive place to live with buildable land. She suggests changing the zoning in places that are truly compatible. Why set yourself up for a fight that doesn't need to be fought? Neil Atkins – 3818 W. 6th St – addresses the commission. He originally had a question, but has since discovered the answer. His question was why doesn't the state control the regulations through licensed pharmacies? Most pharmacies will not deal with substances not approved by the FDA.

Commissioners: Guggenbuehl states we are not creating new zones, just creating this activity as a special use permit process. He feels river front development will not be effected and will not conflict with the mayor's vision. A special use permit will be brought back to the commission. Garner Moffat feels comfortable with the setbacks. He sees the dispensary as a cross between a neighborhood bar and a pharmacy. He notes the state has been careful and will only be dispensing pills or liquids, not smokables. The main safety concern would be for the owners of the establishment with their cash on hand. He notes the Lincoln Park small area plan which plans to extend the form district along Superior Street. The entire buffer would be set an additional 200 feet back. Patricia Mullins asks Kelley what location she suggests. Kelley states possibly the airport, but it would be the decision of the applicant. Sydow asks staff to follow up on the school owned storage property on Garfield Avenue. Kelley will look into it. Moffat also, notes the bus facility by the ore docks is listed as school property. Kelley will follow up. Mullins and Guggenbuehl inquired about the proposed airport district. Froseth explains the text amendment combined medical cannabis and airport zoning district into one ordinance. The proposed airport zoning district is open for public comment. Steven Robertson gives an overview of the proposed new zone district which is just for airports. The new airport district would only allow government buildings, airport related structures and uses, and cell tower facilities as a special use. Chair Zwiebel opens public hearing on this topic. No comment. Mullins asks if they can narrow it down to specific areas. Guggenbuehl notes more scrutiny would come later and right now they are focusing on general areas.

MOTION/Second: Guggenbuehl/Moffat recommend approval of the proposed text changes as per staff's recommendation on these code amendments.

VOTE: (6-1, Beeman opposed)

- C. PL 15-029 Vacation and Dedication of Utility Easement at 6520 Grand Avenue by Kwik Trip

Staff: Steven Robertson introduces the proposal to vacate an active utility easement (a sanitary sewer line is within the easement). The current easement is 66 feet wide by 200 feet long. The applicant would then dedicate a new 30 foot wide by 366 foot long drainage and utility easement. Staff recommends approval of the vacation with the condition that the easement vacation will not be recorded until the proposed new 30 feet by 366 foot drainage and utility easement is dedicated.

Applicant: Not present.

Public: N/A

Commissioners: N/A

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

VOTE: (7-0)

- D. PL 15-034 Vacation of A Portion of South Street, Between 21st Avenue and 22nd Avenue East by the City of Duluth and Harbor Bay Real Estate Advisors
Staff: Steven Robertson introduces the proposal for a partial vacation of the South Street platted Right of Way; generally between South 21st and 22nd Avenues East. The vacation will not affect any future bikeways. Meyer asks about the off ramp off of I-35. Per Robertson, MnDOT has not issue with the street vacation. Staff recommends approval with the conditions listed in the staff report.
Applicant: Present, but did not speak.
Public: N/A
Commissioners: N/A
MOTION/Second: Guggenbuehl/Meyer recommend approval as per staff's recommendation.
- VOTE: (7-0)**
- E. PL 15-022 Special Use Permit for a Primary Use Parking Lot at the Northeast Corner of West 4th Street and 3rd Avenue West, by the Center American Indian Resources
Staff: Steven Robertson introduces the special use permit request for a new primary parking lot in the F-6 District. There was a small revision of a lot line which was handed out to commissioners prior to meeting. Staff recommends approval with the two conditions listed in the staff report.
Applicant: Present, but did not speak.
Public: N/A
Commissioners: Guggenbuehl asks about the primary parking lot on W. 1st Street. He is concerned with the lighting and the adjacent apartment building. Robertson, the lighting standards were met.
MOTION/Second: Guggenbuehl/Meyer approved as per staff's recommendation.
- VOTE: (7-0)**
- F. PL 15-031 Special Use Permit for a Primary Use Parking Lot at the Southeast Corner of West 4th Street and 2nd Avenue West, by the Center American Indian Resources
Staff: Steven Robertson introduces the special use permit request for a new primary use parking lot in the F-6 zone district. He notes the minor lot line change. Staff recommends approval with the two conditions listed in the staff report.
Applicant: Present, but did not speak.
Public: N/A
Commissioners: N/A
MOTION/Second: Guggenbuehl/Beeman approved as per staff's recommendation.
- VOTE: (7-0)**
- G. PL 15-023 Variance for Form District Standards (2 Driveways/Entrances) at 221 West 4th Street, by the Center for American Indian Resources
Staff: Steven Robertson introduces the proposal for a variance from the building standards of a Main Street Building II in the F-6 Form District. The applicant is proposing two access points from the street, whereas the code does not permit any access points if an improved alley access exists. The practical difficulty is extreme lot elevation and significant bedrock issues. Staff recommends approval with the conditions listed in the staff report.
Applicant: Present, but did not speak.

Public: Biju Phillip - 221 w 5th St – addresses the commission. He lives in condo above the proposed building and is concerned about the height which will create an obstruction of views, and thus create a potential negative impact on his property. They would like their view to remain and not be blocked by the proposed clinic. Robertson reviews the elevations noting the height of the rear of the building would be at approximately 27 feet. The height meets present zoning code standards, which is a maximum of 45 feet for this form district building type.

Chris Oman – 219 W. 5th St – addresses the commission. He is concerned about his view and the lack of information.

Commissioners: Sydow asks about the view shed and the back of the building. Also, was underground parking considered? Randy Wagner – architect for the project – addresses the commission. He gives the historic background. The building design takes in account bedrock issues. The further west the higher the bedrock problem becomes. The topography runs at a diagonal. They are trying to minimize blasting and the effects to the surrounding historic properties. Guggenbuehl notes the modular block retaining wall on the west side. He suggests the same brick as the building to tie it together. Also agrees with Sydow about the view/roof parapets. Wagner states they are willing to add additional screening from the rear of the building to block the view of roof top amenities. Sydow also asks about the retaining wall aesthetics. Wagner states they are open to suggestions. Meyer notes the design adheres well to the zone based form of the neighborhood particularly the Sacred Heart and Damiano buildings, and feels the proposed project matches scale to what is already in the neighborhood. He feels the access points blend in well and doesn't have any concerns. Mullins is concerned about the view shed and the concerns of the residents uphill of the project. Mullins would like to table due to neighbors' concerns. Robertson states these variances are based on this particular request for relief, which are from the two access points and 30 feet occupied space, and which does not related to the height of the proposed clinic. The applicant is trying to make reasonable efforts for screening. Meyer sees the variances (PL 15-023 and PL 15-024) as being approved together, as both are integral to the project and both should be considered together.

MOTION/Second: Meyer/Guggenbuehl approval of both variances (PL 15-023 and PL 15-024), with conditions listed in the staff report and noting the approved variances will expire if project is not begun within one year. A friendly amendment was added to include additional screening on the roof . Moffat is uncomfortable voting on both.

VOTE: (5-2 Moffat and Mullins opposed)

- H. PL 15-024 Variance from Form District Standards (30 Feet Occupied Space on the Ground Floor) at 221 West 4th Street, by the Center for American Indian Resources

Staff: (see above – variances combined)

Applicant: (see above – variances combined)

Public: (see above – variances combined)

Commissioners: (see above – variance combined)

MOTION/Second: (see above motion – variance combined)

VOTE: (see above – variances combined)

- I. PL 15-013 Variance from Front Corner Side Yard Setback Requirement for New Accessory Structure (Detached Garage) at 129 West 7th Street by Deborah Anderson
Staff: Jenn Moses introduces the request for a variance from the corner side yard setback to build a 24' x 24' garage that would be 10' from the property line instead of the required 20'. Staff recommends denial because the request is not due to exceptional narrowness, shallowness, or shape of the applicant's property; and, the applicant has not demonstrated practical difficulty. Meyer asks how close the neighboring building is to the buildable area, as it pertains to fire separation issues. Moses states she can't specify the exact building code requirement, but even adhering to the fire separation there is still plenty of room for a two car garage. Chair Zwiebel asks if they can still put a driveway in at an angle. Moses, yes, with approval from engineering.
Applicant: Deb Anderson addresses the commission. She notes her neighbor was granted a variance 4-5 years ago and believes there is still 30 feet of green space. Any other location of the garage would have an adverse effect on five healthy trees. She notes the steepness of the lot and feels this is the best plan for a quality garage to be put on an old property. Only the corner of the building would be in the easement. This location maximizes safety as 7th Avenue West is extremely steep. Meyer asks what her main practical difficulty is. Anderson states erosion and run-off. Guggenbuehl asks if she considered a smaller garage. The applicant states 24' x 24' is a nice sized two-car garage and she would like a nice quality garage. Mullins asks how erosion affects this. Applicant states if not located on the flat part of her land, construction would require additional fill.
Public: N/A
Commissioners: Chair Zwiebel asks staff about the home on the hill's variance. Moses replies that the neighboring house has an attached garaged on the opposite side of the house. The house meets side yard setbacks for the primary building.
MOTION/Second: Moffat/Sydow motion to deny as stated in staff's recommendation.

VOTE: (4-3 Beeman, Mullins and Meyer opposed)

- J. PL 15-014 Variance from Front Yard Requirements for New Structure at the 900 Block of East Superior Street (Leif Erickson Park) by Leif Erickson Restoration and Save our Ship
Staff: Moses introduces the request for a variance from the front yard setback to build a 24' x 62' structure housing the Leif Erickson Ship. The structure would be 8' from the property line instead of the required 20'. Staff notes the triangular shaped lot, partially owned by MnDOT, with restrictions on the load that can be placed on the MnDOT retaining wall. Staff recommends approval with the conditions listed in the staff report.
Applicant: Neil Atkins, chair of Leif Erickson Restoration project, addresses the commission. He notes the tempered glass around the ship will deter vandalism. This site is secure and visible, and it's the entry way to the park with same name as the ship. Guggenbuehl inquired about access to the ship. Atkins it will be fully enclosed, but will be fully visible. It will be backlit with an informational kiosk.
Public: N/A
Commissioners: N/A
MOTION/Second: Guggenbuehl/Moffat approved as per staff's recommendation.

VOTE: (7-0)

- K. PL 15-020 Variance from Front and Front Corner Side Yard Setback Requirement at 732 N 11th Avenue West by Brad and Teresa Peterson

Staff: Jenn Moses introduces the proposal for a variance to: a) rebuild an existing nonconforming structure and b) add a 25' x 26' addition that would be approximately 10' from the front property line instead of the required 25'. Staff recommends approval of the variance to remodel an existing structure located approximately 4' from the property line with the conditions listed in the staff report, based on the fact that requiring demolition of the existing house in order to build in a different location on the lot would constitute a practical difficulty. Staff recommends denial of the variance for the addition for the conditions listed in the staff report including the applicant has not demonstrated practical difficulty; an addition could be placed elsewhere on the lot.

Applicant: Brad and Teresa Peterson address the commission. They share two neighbor letters both of whom are in favor of their variances. One letter is from Mark Jennings - 931 W. Skyline Parkway - and one letter if from Sharon Buchanan - 1025 W. 8th Street. The applicants feel they have met the requirements for both variances.

Public: N/A

Commissioners: Moffat asks staff if the addition could be shifted back theoretically. Per Moses, the addition could be moved back. If house is rebuilt prior to addition, then definition of "front" would change and would allow addition closer to the lot line. Mullins feels they need to consider the viewshed importance and feels water run-off is also important. Common sense doesn't meet up with practical difficulty, but feels their hands are tied. Moffat thinks there is a way to make it work without a variance. The applicant said it won't work because it's a garage underneath. Meyer would challenge their designer to look at the setback requirement first and doesn't see a practical difficulty. Guggenbuehl is also having trouble identifying a practical difficulty.

MOTION/Second: Moffat/Meyer (a) approved the rebuilding of an existing nonconforming structure and (b) denied the variance for an addition due to no identified practical difficulty as shown in the staff report.

VOTE: (5-2, Beeman and Mullins opposed)

- L. PL 15-025 Variance from MU-W Height Limit at 1001 Minnesota Avenue by Island Inn and Suites

Staff: Moses introduces the proposal for a height variance that would allow for a hotel with a maximum height of 120' instead of the required maximum of 35'. The property is currently used as a marina. Marinas and hotels are permitted uses in the MU-W zone district. A hotel could be built on the property within the existing height limit of 35' as demonstrated by a neighboring hotel. The height variance is not necessary for the preservation and enjoyment of a substantial property right. The additional 85' in height would alter the essential character of the area. Six emails were received from citizens including four in the original packet and two more which were handed out before today's meeting. Staff recommends denial due to the following four conditions: 1) Request for variance is not due to exceptional narrowness, shallowness, or shape of the applicant's property. 2) The relief is not necessary for the preservation and enjoyment of a substantial property right. 3) The variance would alter the character of the area. 4) Applicant has not demonstrated practical difficulty.

Applicant: Troy Hoekstra (project developer from St. Cloud) addresses the commission. (Joel Johnson, owner of property, present, but did not speak). They were approved for this project a couple of years ago, but they ran into some financial difficulty with their franchise. They committed to being an equity partner in their project, but decided to back out on short notice. Consequently they could not begin construction. In the interim the zoning around their development site changed and

created the 35' height restriction. They were approved, developed, bid, planned, financed and spent four years preparing to build the very same hotel they are here asking a variance for. The purpose for their variance is they feel they should be allowed to build something they were already approved to develop and build. Marc Beeman asks the applicant how tall his proposed hotel will be. Hoekstra states 118'. At the time the approval was granted, the restriction was 120'.

Public: Kevin Kelleher - 939 S. Lake Ave - addresses the commission. He feels the hotel will alter the characteristic of the neighborhood and is not natural to the area. He feels the scale is unreasonable and asks the commissioners to deny. Jeff Stuermer - 931 S. Lake Ave – addresses the commission. He lives approx. 200 feet from the proposed hotel. He is against the variance for legal, moral and common sense reasons. He notes one of the conditions of the applicant's original approval was construction was supposed to begin within one year, which it did not. They received a one year extension and construction still did not begin. They did not receive a permanent property right and must begin the process again and comply with the new zoning rules. Jan Cohen – 1602 Minnesota Ave – addresses the commission. She notes the other hotels which are in conformance and is against the variance.

Commissioners: Meyer comments he was a member of the water front design review commission which no longer exists. What people don't understand is tall buildings allows for more view and access to the lake. Personally he feels these types of projects should be allowed. For purposes of the UDC he feels they need to deny it, but in the long term he states changes to the UDC could allow these developments to occur in the right place. Guggenbuehl asks staff if the other hotel on the point was built within the height requirements. Moses states, yes. Guggenbuehl noted he was serving on the planning commission at the time the initial project passed. He kept looking for ground to be broken, which it never was. He said there is no way now to pass it based on the current zoning laws.

MOTION/Second: Moffat/Guggenbuehl denied as per staff's recommendation.

VOTE: (6-1, Meyer opposed)

M. PL 15-026 Variance from Front Yard Setback at 2727 Minnesota Avenue by Steve King
Staff: Moses introduces the proposal to build a new house that would be 21' from the front property line instead of the required 25'. Staff recommends denial due to the conditions listed in the staff report including the applicant has not demonstrated practical difficulty; a new house could be reasonably placed within the existing buildable area.

Applicant: Joe Utyro, representing the applicant, addresses the commission. The variance was approved before and it will not alter the characteristics of the neighborhood. Guggenbuehl states he does not see the hardship. The applicant just wants the footprint which was granted before be reinstated.

Public: N/A

Commissioners: N/A

MOTION/Second: Sydow/Moffat denied as per staff's recommendation.

VOTE: (7-0)

N. PL 15-005 Text Amendment to Section 50-37, Related to Land Use Supervisor Administrative Authority (Tabled from February 10, 2015, Planning Commission Meeting)
Staff: Robertson introduces the city's proposal for a minor text change to the authority of the Land Use Supervisor to approve minor administrative adjustments as described in the staff report. Staff recommends approval. Sydow feels they are giving engineering permission for 5 feet. He feels view sheds are important and this will be giving too much allowance. Mullins agrees with Sydow and feels the city needs to meet a practical difficulty requirement. Guggenbuehl doesn't feel the planning commission needs to see every scenario. Sydow notes the new gas line on Skyline with a giant valve in the right of way. Froseth notes it could be for existing situations only, and suggests changing the wording in the UDC on item #3 to omit the word "new" and replace it with "existing".

Applicant: N/A

Public: N/A

Commissioners: N/A

MOTION/Second: Guggenbuehl/Moffat recommend approval as per staff's recommendation with the change of the wording in statement #3 to omit the word "new" and replace with "existing".

VOTE: (7-0)

O. PL 15-017 UDC Text Amendment Changes to Section 50-20, Related to Major Utility or Wireless Telecommunication Facilities

Staff: Steven Robertson introduces the city's proposed text amendments to the UDC, Wireless Telecommunication Facilities as described in the staff report. Staff recommends approval. Guggenbuehl asks how the facilities are sited. Robertson states the applicant requests a pre-app meeting with staff and the applicant does the work in finding a location for their wireless telecommunication facility.

Applicant: N/A

Public: N/A

Commissioners: N/A

MOTION/Second: Guggenbuehl/Mullins recommend approval as per staff's recommendation.

VOTE: (7-0)

IV. Other Business

V. Communications

Managers' Report – Chuck Froseth thanks the commissioners for their time.

Future Brown Bag Meetings: Wednesday, March 18 at noon. Topics will include staff reports and communication. Paul Solberg of DAAR (Duluth Area Association of Realtors) will introduce himself and his organization.

A. Consideration of Minutes - February 10, 2015

MOTION/Second: Beeman/Sydow approve the February minutes.

VOTE: (7-0)

B. Reports of Officers and Committees

Heritage Preservation Commission Representative (No Quorum on February 24, 2015)

C. Meeting adjourned at 8:14 p.m.

Respectfully,



Charles Froseth, Land Use Supervisor