



City of Duluth
Planning Division

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City of Duluth
Planning Commission
May 8, 2012 Meeting Minutes
City Council Chambers, Duluth City Hall

- I. Call to Order: President Digby has called a meeting of the City Planning Commission for 5 p.m., Monday, May 8, 2012, in the City Council Chambers.
- II. Roll Call: Henry Banks, Marc Beeman, Drew Digby, Terry Guggenbuehl, Patricia Mullins, Heather Rand, David Sarvela, Luke Sydow and Zandra Zwiebel
- III. Public Hearings

Committee of the Whole (Start at 5:00 pm)
A. Committee Discussion of Central High School

Staff: Keith Hamre stated that we had a public meeting on April 26th and the map before you tonight is amending the comprehensive plan to match the future land use. We did have before a map that had transportation utilities along the road area. We are taking that off because that kind of cut up that site. They are looking at the just a Business Park designation. Also took off Urban Residential. One was adjacent to Harbor Highlands and South which is Urban Residential. We also took off Neighborhood Commercial. We added two Urban Residential designations and matched the south. Those were some proposals by the school district staff. They agreed on the Bike trail and bumped up the business park. We did not have too much problem with this. We want to work with the school district with something that is doable. We will initiate the zoning process with Mixed Use Business and Mixed Use Commercial. Digby stated that the public perceived that this is owned by a public entity. Even though they are separate entities, the school district is the owner of this land and we need to see what the appropriate use is. What is the right balance? We would like to hear their comments. Hamre added that this is a primary area and the two residential zones have it matching up.

Banks had a question on the Primary Reduction in the recreation land use. Hamre stated that it is the two residential zones. Sydow understands the need of Central Entrance. Guggenbuehl likes this and is in full favor for it. Digby is worried about this and it would be a decrease in rentals. We may have developments this fall and Moses is researching the Mixed Use Business and Mixed Use Commercial. Sarvela stated he is against this for the discrimination against renters.

B. Committee Discussion of Higher Education Small Area Plan and Overlay District

Hamre discussed the adoption process for the Higher Education Small Area Plan. City Council amended the resolution to include an overlay district. Hamre showed a map of Council's proposed overlay district and said the UDC may need to be amended soon to incorporate an overlay. Digby asked what the district would regulate, if it would require bike parking and development standards. Councilor Stauber has said that it was to regulate conversion from ownership to renters. Digby stated that this would increase discrimination for renters. Sarvela stated that once we have this overlay it will more and more restrictions on rental properties to discriminate against them.

Public Hearings (Discussion on the Following Items to Start at 5:30 pm)

IV. A. PL 12-076 - Amend the Comprehensive Plan Future Land Use Map for that section of the 4th Street corridor, from Mesaba Avenue to 4th Avenue East from Urban Residential to Neighborhood Mixed-Use **JJ**

John Judd stated that basically this is the first step in creating a Form Based District for the area, as recommended in the Unified Development Chapter (UDC). As noted in the staff report, increased commercial development along this corridor is also supported by the recent findings of a marketing study conducted as part of the Higher Education Small Area Plan and it is also listed as a priority in the Hillside Neighborhood Revitalization Plan. Judd then reviewed the land use map and what areas are proposed to be for changed. If this amendment is approved the City will be following this action with a proposal to rezone the area to a Form Based District. Rand stated that concerns had been conveyed to her by neighborhood residents that views should not be impacted.

MOTION/Second: Rand/Zwiebel to **Recommend Approval** to the City Council the following amendment to the Comprehensive Land Use Plan-Future Land Use Map: From Urban Residential to Neighborhood Mixed Use the area from Mesaba Avenue to 4th Avenue East between the alley above and the alley below 4th Street.

VOTE: Unanimous (9-0)

B. PL 12-064 - UDC Zoning Map Amendment from Residential-Traditional (R-1) to Mixed Use-Neighborhood (MU-N) at 1102 Maple Grove Road by ZMC Hotels **JRM**

Jenn Reed Moses stated that this proposal is to rezone this from Residential-Traditional, R-1, to the zoning designation Mixed Use-Neighborhood (MU-N). The area to the south is Mixed Use-Commercial and to the north is a residential area. The future land use is Neighborhood Mixed Use, and the Central Entrance Small Area Plan indicated this as an area for future development. Staff recommends approval to the City Council. Mullins asked if there is a chance for an electrical line or a sewer station going in here? Digby stated that in rezoning we are not doing a site review and the special use would require this to come back to us. Moses said that these two uses are the special uses in almost all zone districts. Applicants would like to put a hotel on the site.

Applicant: ZMC Hotels was started with the Goldfine family. They currently operate 32 properties. As part of this process they have support for a hotel. At the beginning of the process they informed the neighbors and had several mailings going out. They have reached 85% of the people. They are very sensitive to the neighbors with the public process.

Mike Kruger - Lindahl Road. He is representing some people that live in this area. He has been involved with many appraisers and realtors. His house is across the street from the hotel. His neighbor stated that they wouldn't buy a house across the street. Some of the people that had signed wished they didn't. It seems that we could have done better. You have a blind corner by Walgreens and we have a shortage of housing.

Rand stated that Central Entrance has significant traffic. This parcel is for Mixed Use-Neighborhood or R-2. This is a sloped lot and the individuals would be looking at a two story building. Mullins asked Moses if landscaping and buffering would be required. Digby stated that this is a zone district which requires a buffer. Beeman asked about buffering requirements and the hope for a buffer for those single family homes. Guggenbuhl stated support for the rezoning.

Motion/Second: Banks/Zwiebel to **Recommend Approval** of the Zoning Map Amendment to the City Council. **VOTE:** Unanimous (9-0)

- C. 12-077 - Residential-Rural 1 (RR-1) at 415 West 9th Street Maple Grove by Wisconsin Educational Communications Board. **SR**

Staff: Robertson stated that the Planning Commission had approved a Special Use Permit for a Telecommunications Facility on this site at their previous meeting, with the condition that the property be rezoned to a zoning designation that would consider it as an allowable use. The applicant is asking to rezone to RR1 and the comprehensive plan is designates this area as an area of future study. Robertson added that the applicant wants to reuse a current structure within the limits of our ordinance.

MOTION/Second: Guggenbuehl/Zwiebel to **Approve** the UDC Zoning Map Amendment from Residential-Traditional (R-1) to Residential-Rural (RR-1) at 415 W 9th Street by Wisconsin Educational Communication Board. **Vote:** Unanimous (9-0)

- D. PL 12-075 - Variance from the 150 foot setback to allow a new entrance road, scales, and leachate collection system at 1100 W. Gary St. by Vonco V **KD**

Deming stated that this item and the next are related to one another and that the Variance is necessary for approval of the Special Use Permit amendment.

The current special use permit language requires a 150 foot vegetative buffer. Their proposal is to locate in the leachate collection system between the waste and the property line. The former

Special Use Permit allowed waste to be stored at 150 feet from the property line and so the only place to locate the leachate collection system is inside the 150 foot buffer. Deming highlighted the facilities in the buffer.

They need a new entrance road to lead to truck scales, lights and a holding tank. There are technical difficulties with the current location of the driveway with site distances and space to park trucks waiting to access the scale and so they need a new roadway access. The presence of a significant ravine prevents the applicant from locating the driveway and scales outside the 150 buffer. Staff finds that there is difficulty in meeting the 150 foot setback. Staff recommends that, to mitigate for the loss of natural vegetation buffer that the applicant be required to plant a row of evergreen trees along the north property boundary.

Applicant: Steve Halgren: They received a permit amendment to accept different waste and need to put in a composite liner. With this water that moves through the waste will be collected in the ground and a network of underground piping. Guggenbuehl asked what the volume of leachate collected - the applicant stated that it was about 28,000 of gallons of water per year. The chemistry of water is more or less salty water. Zwiebel asked about industrial waste – it is a broad definition and they are required specifically to manufacturing, foundries, and paper waste material.

Motion/Second: Guggenbuehl/Rand to **Approve** the Variance from the 150 foot setback to allow a new entrance road, scales, and leachate collection system at 1100 W. Gary Street by Vonco V **with the following conditions:** 1. The Applicant obtain approval of a Special Use Permit amendment for the proposed facilities; and 2. The project be limited to, constructed, and maintained according to documents titled Vonco V- Duluth, Existing Conditions/Proposed Features drawn by Carlson-McCain and receive April 16, 2012; and 3. The applicant plant a row of deer-tolerant evergreen trees before October 15, 2012; between Gary Street and the new access road to compensate for the reduced width available for natural vegetation and that the City's Land Use Supervisor approve the planting plan.

Vote: Unanimous (9-0)

E. PL 12-033 - Special Use Permit (Solid Waste Processing and Disposal Facility)

Amendment to allow a new entrance road, scales, and leachate collection system at 1100 W. Gary St. by Vonco V. **KD**

Deming stated that this is consistent with the comprehensive plan and the UDC, if the previously discussed Variance is approved, and if the Commission approves the use of dust suppressant on the road to meet the dust-free requirement. Staff finds the dust-suppressant acceptable due to the location of the roadways away from residential areas and it works in other areas. The City Council has previously determined that a landfill is an appropriate use in this area and this amendment will allow continued use with appropriate conditions, including: 1. Obtaining a setback Variance, 2. That the project be constructed as shown in the plans, 3. That they use dust suppressant to the access roads to keep the roadways dust free, and 4. All lights installed as part of this special use permit amendment meet downcast, full cut-off style.

Motion/Second: Guggenbuehl/Rand to **Approve** the Special Use Permit **with the following Conditions:** 1. The applicant obtain a Variance from the 150 foot Setback requirement (UDC Sec. 50-20.4J.1 and that the conditions of the variance be adhered to or this Special Use Permit amendment shall be null and void; and 2. The project be limited to, constructed and maintained according to documents titled Vonco V - Duluth, Existing Conditions/Proposed Features drawn by Carlson-McCain and received April 16th 2012; and 3. The applicant apply dust suppressant to the access roads in such a manner as to keep the roadways dust free; and 4. All lights installed as part of this Special Use Permit amendment meet the downcast, full cut-off style required by Sec. 50-31. **VOTE:** Unanimous (9-0)

Halgren stated that the applicant intended to have asphalt put down to diminish the storm water requirements and be a good neighbor.

(Discussion on These Following Items Will Not Start Until After: 6:15 pm)

- F. PL 12-070 - Vacation for Public Right of Way for ISD 709 at Lincoln Park Elementary School **SR**

Robertson stated that this is for a vacation of an alley and alley easement. It is time for the school to be sold to a new development and they want to clear the title; the alley and alley easement has never been exercised by the City and don't serve any function.

MOTION/Second: Sydow/Beeman to **Approve** the Vacation for Public Right of Way for ISD 709 at Lincoln Park Elementary School **with the following condition:** That the applicant shall prepare a vacation plat that is approved by the City Engineer and that is in a form that is recordable by the County Recorder's requirements to the Land Use Supervisor within 90 days of the Planning Commission's recommendation or it shall result in the applicant being denied. **VOTE:** Unanimous (9-0)

- G. PL 12-069 - Vacation of Public Right of Way at 2102 Maple Grove Road by Klinefelter Bankruptcy Estate **SR**

Robertson stated that the applicant wishes to vacate, and then rededicate, an easement. This will help the applicant redevelop the property.

MOTION/Second: Rand/Banks to **Approve** the Vacation of Public right of Way at 2102 Maple Grove Road by Klinefelter Bankruptcy Estate **with the following Conditions:** 1. That the utility easement be rededicated as indicated on "Vacation Sketch for: DJR Architecture, Inc" dated 4/26/12. 2. The applicant shall prepare a vacation plat that is approved by the City Engineer and that is in form that is recordable by the County Recorder's Office prior to the proposed vacation application going before the City Council. Failure to present a vacation plat meeting the City Engineer's requirements to the Land Use Supervisor within 90 days of the Planning Commission's recommendation or it shall result in the application being denied. **VOTE:** 8-0 (Sydow Abstained)

H. PL 12-066 - Variance from Coldwater River Setback at 2102 Maple Grove Road by Klinefelter Bankruptcy Estate **SR**

Staff: The applicant would like a setback for a structure. This site has challenges with being close to the shoreland setback and having a significant amount of land in a designated floodplain. The applicant has submitted a mitigation plan and have agreed to remove some existing impervious surface. Staff recommends approval.

MOTION/Second: Guggenbuehl/Rand to **Approve** the Variance from Cold Water River setback at 2102 Maple Grove Road **with the following conditions:** 1. The Applicant will remove 1,380 Square feet of existing impervious surface from the 75 foot impervious surface setback in order to reduce impacts to the Miller Creek. 2. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50. **VOTE:** Unanimous 8-0 (Sydow abstained)

I. PL 12-067 - Plan Review in Mixed Use-Commercial (MU-C) at 2102 Maple Grove Road by Klinefelter Bankruptcy Estate **SR**

Staff: There are elevations of the exterior. This is a challenging site to redevelop. The applicants had lighting plans and they are improving the site and the traffic pattern by eliminating two of the existing four curb cuts. Staff thinks that their application is reasonable and that the development would be appropriate for this site and character of the neighborhood.

Applicant: Sheldon Berg. They are decreasing the areas closer to the creek to minimize what is running into the creek.

Motion/Second: Zwiebel/Banks to **Approve** the Plan Review in Mixed Use-Commercial (MU-C) at 2102 Maple Grove Road by Klinefelter Bankruptcy Estate **with the following conditions:** 1. The project be limited to, constructed, and maintained according to documents as follows: Exterior Elevations, dated March 6, 2012; Utility Plan, Landscape/Site Plan, and Lighting Plan from Luna Sales Associates dated 4/6/12. 2. Applicant to apply for and receive a boundary line adjustment of subdivision replat so that each principal structure is on a lot prior to receiving a building permit for a new structure. 3. Applicant apply for and receive a variance for the proposed structure in the shoreland setback. 4. Applicant apply for and receive easement vacation and dedication for utility easement on lot 2, Block 2. 5. Plant materials to be chosen from the UDC Species List in effect at the time of construction. 6. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

VOTE: 8-0 (Sydow abstained)

- J. PL 12-063 – Variance to reduce the side yard setback from 6 ft. to 4 ft. for renovations to a home at 3710 94th Ave. W. by Cory & Sancia Tondryk **KD**

Staff: Deming explained the purpose of the variance is to allow a restructuring of the roof from a hip to a gable shape, causing an increase in nonconformity, and an addition to the rear of the house over an existing one-story section. The applicant's property is at 4 feet to the south property line. Deming reminded staff of the correspondence on their desks this evening related to this site.

Staff does find that an expansion of the small home is a reasonable use, however they could have added on to the other side of the house and not needed a variance and, therefore, recommends denial of the variance because there isn't a practical difficulty.

Staff also notes that granting the variance won't alter the essential character of the area and wouldn't impair the UDC or Comp Plan.

Applicant - Sancia Tondryk: This was the intent to get a variance. The building was built and was added onto by extending an addition across the back. They also are increasing the height increase for the non-conformity and that they want to make it livable. For them to do anything they would need a variance.

Guggenbeuhl stated that he didn't understand this. Tondryk - It was so awkwardly built and was rotted throughout the house, they were just trying to make it safe for their family. Zwiebel stated that they could build on the other side of the house they wouldn't have needed a sideyard setback variance. Rand asked if they had obtained a building permit for this, the construction wouldn't have happened.

Tondryk - They didn't pull a permit as they were just going to put shingles on. When they purchased the trusses they had no roof on their house and had to do it as simply as they could. They needed to do something.

Banks stated that he saw that Steven Eberhart had a stop work order on the property. Deming added that the stop orders had been issued in May of last year. Deming added that Eberhart had visited with the applicants and explained the need of permits for the work they had done.

Guggenbuehl stated that this is a part of the hardship along with the other the issues of the homeowner and that they have to undo what they have already done. Digby stated that the variance doesn't work as the applicant hadn't followed the rules.

Digby asked if there is any reasonable legal difference because we're considering a variance after the fact. Beeman asked about the lot the home sits on. Mullins added that it wasn't really an expansion but a roof project. Digby stated that the structure was altered and it no longer qualifies as legal nonconforming as it is within the set back. This is a vertical increase of the nonconformity.

Sydow stated that to approve the variance doesn't change the building footprint. The commission won't grant a variance not because of the date of the structure, but the layout has

a practical difficulty to grant on the grounds of the narrowness and the conditions of the property.

Banks stated that the lot is 50' wide by 140' feet deep. Sarvela asked if they tried to build to the side of the house, but they still would have difficulties in the front half of the house due to the front yard setback. Guggenbuehl stated that they might have a fine for a violation.

MOTION/Second: Sydow/Beeman to **Approve** the Variance to the Side Yard Setback from 6 feet to 4 feet for renovations to a home at 3710 94th Ave. W. by Cory & Sancia Tondryk because the original home was constructed on a 25 foot wide lot requiring a variance for even a modest vertical expansion – a reasonable use. **VOTE:** (6-3) Rand, Guggenbuehl and Banks

K PL 12-079 – Variance from Transparency Requirements for Hotel in Mixed Use-Waterfront (MU-W) at 1003 Minnesota Avenue **JRM**

Moses stated that this is for the Harbor Cove Marina Hotel. This site is located in the MU-W district. The UDC standard calls for 70% transparency but the applicant is proposing 26.5%. They are asking for a variance. Staff finds that the use of the property as a hotel is reasonable and that this type of construction is reasonable for this use. There is an extensive shear area that is needed to maintain the structural integrity of the building. They also need to have HVAC. This is hampered by increased transparency. In reviewing the elevations and design, the building meets the UDC intent of being oriented toward the water. There is some additional room for increased transparency. Based on the findings, staff recommends that the minimum transparency be 30%.

Applicant: The applicant showed the elevations. They are designing the building to look like the old boat house. They are requesting the variance be approved at 26.5% because it will allow for a better view out of the hotel rooms.

MOTION/Second: Zwiebel/Banks to **Approve** the Variance from Transparency Requirements for a Hotel in Mixed Use-Waterfront (MU-W) at 1003 Minnesota Avenue **with the following Conditions:** 1. The minimum transparency on the harbor side of the hotel be 26.5%. 2. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from provisions of Chapter 50. 3. Approved variances shall lapse if the project or activity is not begun within 1 year of the permit date. **VOTE:** Unanimous (8-0) Sydow Abstained

L. PL 12-078 – Plan Review (Revised) for Hotel in Mixed Use-Waterfront (MU-W) at 1003 Minnesota Avenue **JRM**

This project had Plan Review at the April meeting but now is proposing to add an additional 12 hotel rooms, 4 on each floor. This adds 28' to the north-south dimension of the hotel. They have also added 13 parking spots. Project still meets all UDC requirements.

MOTION/Second: Beeman/Mullins to **Approve** the Plan Review **with the following conditions:** 1. The project be limited to, constructed, and maintained according to documents drawn by bdp architects, as follows: site plan, preliminary landscape plan, and building elevation, all received April 18, 2012, and lighting specifications, dated April 27, 2012. 2. Plant materials to be chosen from the UDC Species List in effect at the time of construction. 3. Applicant apply for and receive shoreland permit prior to construction, and demonstrate compliance with any applicable flood plain and stormwater requirements 4. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50. 5. Per UDC Sec. 50-37.1.N, approved plan reviews lapse if the project or activity authorized by the permit or variance is not begun within 1 year of the permit date. **VOTE:** Unanimous (8-0)
Sydow Abstained

M. PL 12-034 - Variance from Shoreland Setback at 7718 St. Louis River Road by Don and Marge Podorsek **JRM**

Moses stated that this is for a shoreland variance. The shoreland requires a 150' setback and they are proposing building a garage. It would be 130' from the stream and the retaining wall would be in front of the house, away from the stream. Alternative sites for the garage would be located closer to the stream. The applicants stated that they are working to plant 70 trees. This includes erosion control to be stabilized from the plantings. Staff is recommending approval.

MOTION/Second: Zwiebel/Beeman to **Approve** the requested variance **based on the following conditions:** 1. That the proposed stream restoration project with the Duluth Stream Corps, or a similar stream restoration project with the same level of mitigation, be completed within 1 year of construction 2. Erosion control practices be used during construction. 3. Disturbed areas be stabilized after construction with plantings to reduce stormwater runoff. 4. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.
VOTE: Unanimous (9-0)

N. PL 12-065 - Variance from Shoreland Setback at 3409 Chambersburg Avenue by Becky Persgard **JRM**

This is a shoreland variance. The stream is part of Miller Creek and requires a 150' setback and a 50' natural buffer. Applicant is proposing building a deck alongside the house. Deck footings are already in place and deck would be 110' from stream. A deck on a single-family home is a reasonable use of the property and would not alter the essential character of the area. Applicant's plans include collecting rainwater from the property.

MOTION/Second: Beeman/Guggenbuehl to **Approve** the Variance **with the following conditions:** 1. That a minimum 50-foot naturally vegetative buffer be maintained along the length of Miller Creek, per UDC Sec.50-18-1.D, and be added as a deed restriction to ensure any future property owners continue to maintain the buffer. 2. Any alterations to the approved plans do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50. **VOTE:** 9-0 (Unanimous)

- V. Consideration of Minutes – March 27, 2012, April 10, 2012 - Guggenbuhl/ Beeman.
- VI. Communications
- VII. Old Business
 - A. PL 11-141 - Comprehensive Plan Map Amendment at Central High School at 800 E. Central Entrance from Institutional to Business Park, Urban Residential, and Recreation, by the City of Duluth (tabled following January 10, 2012, Public Hearing) **KH**

The Applicant stated that this allows us to see the planning development and that your concern is noted and he will pass it along to the district.

MOTION/Second: Zwiebel/Beeman to **Approve** the requested variance **based on the below conditions to ensure ongoing mitigation to shoreland impacts:** 1. That a minimum 50-foot naturally vegetative buffer be maintained along the length of Miller Creek, per UDC Sec.50-18.1.D, and be added as a deed restriction to ensure any future property owners to continue to maintain the buffer. 2. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50 **VOTE:** Unanimous (9-0)

- B. PL 11-122 - Special Use Permit Amendment for Telecommunications Facility (49' Monopole) in a Residential-Traditional (R-1) zone at 2010 E. 7th St. by Buell Consulting (tabled following March 27, 2012, Public Hearing) **SR**

Staff: Robertson stated that the applicant has submitted to withdraw this at this time.

- VIII. Reports of Officers and Committees
 - A. Duluth Historic Preservation Commission (Next Meeting, May 22)

Staff: The next meeting is on Tuesday, 2:00.

- IX. New Business

- A. Review of TIF District Project Area (Woodland School / Blue Stone Development)
KH

Staff: The TIF laws stated that they have to be reviewed and determined to be compliant with the Comprehensive Plan. We have 3 tax increment districts that will go through a public process. The first district would be the Woodland and eastern portion on 6th Street. They are expanding their boundaries. The Planning Commission finds that this redevelopment has been met with the Higher Education Small Area Plan.

Banks thought that he understood TIF districts were for blighted areas. Hamre stated that the consideration here is for redevelopment.

- X. Other Business
 - A. Public Meeting for Sign Code Update
 - B. Future Planning Commission Brown Bag Meetings (Noon on the Third Fridays in May, July, August, October, and December)

- XI. Adjournment

Respectfully,



Keith Hamre, Interim Planning Manager