



**City of Duluth
Planning Division**

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**City of Duluth
Planning Commission
October 9, 2012 Meeting Minutes
City Council Chambers, Duluth City Hall**

Call to Order

President Digby called to order the meeting of the City Planning Commission at 5:00pm on Tuesday, October 9, in the City Council Chambers.

Roll Call

Attending: Henry Banks, Marc Beeman, Drew Digby, Terry Guggenbuehl, Patricia Mullins, Heather Rand, David Sarvela, Luke Sydow, and Zandra Zwiebel.

Absent: None

Staff Present: Keith Hamre, Steven Robertson, Kyle Deming, Jenn Reed Moses, John Kelley, Nathan LaCoursiere.

Communications

12-0492R – Resolution Requesting the Planning Commission Review Mixed Use Zone Districts (Councilor Krause)

Councilor Krause discussed concern with the type and scale of commercial use within the Mixed Use-Neighborhood (MU-N) zone district. Councilor Krause reviewed commercial activity in the Miller Hill area and road configuration to support future commercial development. Councilor Krause suggested the Planning Commission consider less intensive commercial use when adjacent to existing residential neighborhoods.

Public Hearings

- A. PL 12-144 UDC Map Amendment for the Coffee Creek Development. Previously approved Low Density Planned Development (08-0167R) Rezoned to Residential-Planned (R-P) per Section 50-14.7.H of the UDC, by the City of Duluth

Staff: John Kelley stated that this was previously approved as a Low Density Planned Development (LDPD). The UDC calls for previously approved LDPDs to be rezoned to R-P. This is consistent with the comprehensive plan and the UDC.

Public: Thomas Baklin – owns property behind the existing apartment building, outside of the study area. He is concerned about stormwater flowing to his house from the apartment units. Kelley stated there would be an approved stormwater management plan for this project and that the City Engineering department can help with follow-up.

MOTION/Second: Guggenbuehl/Rand to Approve the UDC Map Amendment for Coffee Creek Development to change the zoning from Residential-Traditional (R-1) to Residential-Planned (R-P).

VOTE: (9-0)

- B. PL 12-145 UDC Map Amendment for the Bayhill Cove Development. Previously approved Low Density Planned Development (08-0523R) Rezoned to Residential-Planned (R-P) per Section 50-14.7.H of the UDC, by the City of Duluth

Staff: Kelley explained this proposal includes 15 home sites that were a previously approved LPDP. Sarvela asked if they have a Special Use Permit and Kelley replied they do. Digby explained this is another "housekeeping" item under the UDC.

MOTION/Second: Rand/Guggenbuehl to Approve the UDC Map Amendment for the Bayhill Cove Development to change the zoning from Residential-Traditional (R-1) to Residential-Planned (R-P).

VOTE: (9-0)

- C. PL 12-146 UDC Map Amendment for the Eastridge Estates Development. Previously approved Low Density Planned Development (08-0391R) Rezoned to Residential-Planned (R-P) per Section 50-14.7.H of the UDC, by the City of Duluth

Staff: Kelley stated that this is similar to the previous two files. Hamre added this is part of the city-wide UDC rezoning process and the Commission will see more rezonings in the future since all previously approved LDPDs need to be rezoned to R-P.

Public: Tom – a landowner in Eastridge. Was concerned new development would happen because of this rezoning. Digby said no uses will change because of this. Hamre added that staff will ensure future notices about R-P rezonings are clearer and describe the zoning process better.

MOTION/Second: Guggenbuehl/Zwiebel to Approve the UDC Map Amendment for the Eastridge Estates Development to change the zoning from Rural-Residential 1 (RR-1) and Residential-Traditional (R-1) to Residential-Planned (R-P).

VOTE: (8-0, Sydow abstaining)

- D. PL 12-148 UDC Text Amendments to Section 50-19.8, 50-20, and 50-41, to Add "Vacation Dwelling Unit" as an Interim Use, to Add "Accessory Vacation Dwelling Unit" as an Interim Use, to Establish Use Specific Standards for the Uses, and add to Definitions Pertinent to Vacation Rentals

Staff: Hamre discussed the need for regulation of vacation rentals in the community. Two public meetings were held to gather input on vacation rentals and for a proposed ordinance to regulate them.

President Digby noted City Councilor Gardner was present in the room and asked if she had any comments to add. She stated that she was at the meeting to listen to the discussion on the proposed vacation rental ordinance.

Planner Deming presented an overview of the findings from his research completed on vacation rentals in other communities. Deming stated that items identified during his research and from community input were incorporated in the proposed ordinance. Deming discussed the relationship of the proposed ordinance to similar definition and regulations for like uses in the UDC. Deming discussed the proposed ordinance by section and the zone districts that vacation rentals are permitted.

President Digby asked about the minimum rental periods proposed. Deming explained they are a compromise with what the permanent residents wanted for neighborhood quiet and vacation rental owners wanted for needing to do weekend rentals during the off season.

Commissioner Beeman asked what zone districts vacation rentals were permitted. Deming stated RR-1, RR-2, R-1, R-2, R-P, MU-N and Form District 5.

Beeman asked who would issue the permit. Deming stated that the permit would be an Interim Use Permit, which requires a public hearing and review and approval by the Planning Commission and City Council.

Commissioners discussed licensing and inspection of rental properties. Hamre stated that the City Life Safety office completes the inspections of rental properties. The Fire Marshall's staff would conduct inspections of the property similar to what bed and breakfasts currently have (called a Fire Operational Permit) every 3 years.

Banks asked if the items noted in Mr. Wilmes' communication were addressed. Deming replied that they had been addressed.

Commissioners discussed the matter of owner occupied rentals. Concerns were expressed in terms of tracking rental use by owner and enforcement.

Zwiebel asked about the requirement of regulating rentals based on number of bedrooms as compared to square footage of building.

Sydow asked about motor home parking and time frame and also what constitutes excessive consumption of police services.

City Attorney LaCoursiere stated that excessive consumption of police services follows the framework of a public nuisance as described in Sec. 40 of the City Legislative Code. If a property has more than one citation for public nuisance in 90 days the Police can cite the owner for excessive consumption of police services.

Sarvela asked about the requirement to provide guest information.

Public: Ged Frank - 1437 Minnesota Avenue. Concerned with limitation on number of guests per bedroom, prefers it to be based on bedroom square footage. He would like minimum stay to be 2 nights year round and asked that permitting be held to a reasonable cost.

Mike Wilmes - 4301 E. Superior Street. Mr Wilmis has been in hospitality business for years and commended staff on the work completed for the ordinance.

Ken Aparicco – 2309 E. 1st Street. Mr. Aparicco stated that the collection of sales tax is important. He asked that consistency with other rental ordinances be applied. Mr. Aparicco stated that VRBOs are hard to find and will be hard to regulate. Mr. Aparicco asked if homes are not owner occupied should they be considered a commercial use.

Bill Burns – 3332 Minnesota Avenue. Mr. Burns stated that he is a vacation rental owner. He stated that vacation rentals are better kept and managed than regular rentals in his neighborhood.

Patricia Burns – 3332 Minnesota Avenue. Mrs. Burns stated that their first home on Park Point was renovated to allow for a vacation rental. She provides a letter to all of their vacation renters outlining the rules and regulations. Mrs. Burns stated that VRBO offers more opportunity for

vacationers. She added that they have no problem renting for 7 days during the summer months, but that weekend rentals would be OK too.

Mullins asked if the ordinance should only apply to the Park Point area. Commissioners discussed public meeting noticing and the need to provide more notice for meetings.

Rand, Guggenbuehl, and Zwiebel would like to discuss the occupancy/bedroom requirement as requirements and explore the option of regulating by the square footage the rental.

Hamre recommended tabling the matter to complete some more review.

MOTION/Second: Guggenbuehl/Beeman to Table the matter for one month and Continue the public hearing on the next agenda for the UDC Text Amendments to Section 50-19.8, 50-20, and 50-41, to add "Vacation Dwelling Unit" as an Interim Use, to add "Accessory Vacation Dwelling Unit" as an Interim Use, to establish Use-Specific Standards for the uses, and add to Definitions pertinent to vacation rentals.

VOTE: (9-0)

- E. PL 12-151 UDC Text Amendments to Section 50-14.7, 50-17.5, 50-17.6, 50-19.8, and 50-37.11, to Amend Residential-Planned Development, Create Commercial-Planned Development, and Amend the Plan Review Process

Staff: Planner Moses presented an overview of the proposed UDC Text Amendments for the existing Residential-Planner (R-P) and the Commercial-Planned (C-P) zone districts. Moses stated that the C-P district was a recommendation of the recently approved Higher Education Small Area Plan.

City Attorney LaCoursiere stated that he needed more time for review of the proposed text amendments.

Mullins asked if there are use distinctions between the low density and high density R-P districts? Planner Moses stated there are differences in the types of uses permitted in the R-P and C-P districts, but not between the existing low density and high density R-P districts.

Sydow asked that cross sections of buildings be included in the regulating plan application materials to be submitted for review.

MOTION/Second: Sarvela/Zwiebel to Table the matter for one month and Continue the public hearing on the next agenda for the UDC Text Amendments to Section 50-14.7, 50-17.5, 50-17.6, 50-19.8, and 50-37.11, to amend Residential-Planned development, create Commercial-Planned development, and amend the Plan Review process

VOTE: (9-0)

- F. PL 12-152 UDC Text Amendments to Section 50-14.6.A, 50-14.6.D, 50-14.6.E, 50-15.2.D, 50-15.2.E, 50-18.4, and 50-18.5, to Amend Density in R-2, Remove R-2 and MU-N Development Standards, Amend the Skyline Overlay District Map, and Create a Higher Education Overlay District

Staff: Planner Moses discussed the proposed UDC Text Amendments, which includes changing the density in the R-2 district from 1,500 square feet to 750 square feet per multi-family unit, removing the development standards from the R-2 and MU-N districts, and instead incorporating them as part of a new Higher Education Overlay district that regulates new multi-family residential development as well as new commercial development in the areas around UMD and St. Scholastica, and amending the Skyline Parkway Overlay maps to remove the segment known as the "UMD gap."

Digby stated that this was a first look at the proposed text amendments and that more time is needed to tweak them.

MOTION/Second: Guggenbuehl/Sarvela to Table the matter for one month and Continue the public hearing on the next agenda for the UDC Text Amendments to Section 50-14.6.A, 50-14.6.D, 50-14.6.E, 50-15.2.D, 50-15.2.E, 50-18.4, and 50-18.5, to amend density in R-2, remove R-2 and MU-N development standards, amend the Skyline Parkway Overlay map, and create a Higher Education Overlay district.

VOTE: (9-0)

- G. PL 12-143 UDC Text Amendments to Section 50-2, 50-27, and 50-41, to Amend Sign Regulations and add Definitions Pertinent to Sign Regulations

Staff: Planner Robertson reviewed the sign code revision process, which included having public meetings to gather input. Robertson stated that the existing sign code is outdated and in need of revising. Robertson stated that there have been recent variances granted for signage and that it was time to revise the sign code.

Public: Kenneth Peskin – Alexandria, VA. Mr. Peskin stated that he is representing the International Sign Association and submitted a handout to the Commissioners and Staff. Mr. Peskin stated that signs change overtime and that property and buildings remain the same. Mr. Peskin is concerned with the lowering of pole sign height as this may have implications to blocking views of businesses and other signage. Mr. Peskin is also concerned with limiting the amount of information that can be placed on a sign. He also commented that there may be a discrepancy between the sign construction standards and sign design standards.

Todd Johnson – 5147 Miller Trunk Highway. Mr. Johnson stated that he has been in the sign business for a number of years in Duluth. Mr. Johnson stated that he is concerned with the proposed new sign regulations, particularly the size of pole signs in commercial areas. He stated that the regulation will discourage business's form coming to Duluth and therefore loss of jobs. Mr. Johnson is also concerned with sign regulation in the form districts.

Kerry Lieder – ISD 709. Mr. Lieder thanked the City for their work on the sign ordinance. Mr. Lieder is concerned with the proposed square footage of a monument sign for schools. He is concerned that it will be too small to allow for an electronic message board to be incorporated into the sign. Mr. Lieder also felt that the size of scoreboards should be re-evaluated. Mr. Lieder asked the Planning Commission to consider allowing for slightly larger monument signs and scoreboards.

Zwiebel asked about sign permitting requirements and electronic message boards being allowed on monument signs at school location. Zwiebel also asked about placing limitations on what can be put on signs.

City Attorney LaCoursiere stated that he would need time to review state statutes regarding this matter.

Planner Robertson suggested the Commissioners table the item but asked for clarification on the areas of the code that should be revised.

Digby stated that he is ok with the pole sign height but would like staff to look at the monument sign size for schools.

Banks is concerned with the issue of scaring away businesses from Duluth.

Guggenbuehl is concerned with question from the International Sign Association about limiting 6 items of information.

Rand is concerned with the determination of sign height and the one size fits all approach.

Sarvela is supportive of the sign requirements in the MU-N district.

Mullen is concerned with hurting business.

Beeman asked about how the proposed code would impact existing signs.

Digby asked Staff to consider the schools concern on monument sign size.

Sydow stated that he would like to see larger monument sign size for all zone districts.

MOTION/Second: Zwiebel/Beeman to Table the matter for one month and Continue the public hearing on the next agenda for the UDC Text Amendments to Section 50-2, 50-27, and 50-41, to amend sign regulations and add Definitions pertinent to sign regulations

VOTE: (8-0, Sydow abstained)

- H. PL 12-141 Variance from Structure Setback in a Coldwater River Shoreland at 5 South 59th Ave West by Brett and Julie Nordman

Staff: Planner Moses stated the applicant would like to rebuild a house after flood damage and to move the house out of the floodplain, which will then be 115' from Keene Creek. Moses stated the applicant is requesting a variance from the 150' coldwater stream setback. Staff is recommending approval to the Planning Commission.

MOTION/Second: Rand/Sarvela to Approve the variance from structure setback in a Coldwater River Shoreland with the following conditions: 1) The project be limited to, constructed, and maintained according to the site plan and mitigation plan received September 5, 2012. 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: (8-0, Digby Abstained)

- I. PL 12-142 Variance for Side Yard Setback in a Residential-Traditional (R-1) at 5 South 59th Ave West by Brett and Julie Nordman

Staff: Planner Moses stated that the variance request is related to the item that was previously discussed. Moses stated the applicant would like to rebuild a house after flood damage and is proposing a 5' setback from both side lot lines instead of the required 15' corner side yard setback.

MOTION/Second: Rand/Sarvela to Approve the variance for a 5' setback from both side lot lines with the following conditions: 1) The project be limited to, constructed, and maintained according to the site plan received September 5, 2012. 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: (8-0, Digby Abstained)

- J. PL 12-140 Variance from Front Yard and Side Yard Setback in a Residential-Traditional (R-1) at 1920 Minnesota Avenue by Lynn and Dan McGinty

Staff: Planner Moses reviewed the variance proposal and stated that the applicant is seeking variances from the required front yard setback and side yard setback to build a garage on their property. Based on Staff findings, staff is recommending denial of the variance request.

Applicant: Dan McGinty stated that his intent for the garage location is to keep the existing character of the Park Point neighborhood.

Public: Elisa Troians – 1924 Minnesota Avenue. Ms. Troinas stated that she is the neighbor to the applicant and has two windows on the side of her home that would face the proposed garage. She is concerned with car lights and proximity to her house (blocking light coming into the house). Ms. Troinas is also concerned with the proposal diminishing her property value.

MOTION/Second: Rand/Guggenbuehl to recommend denial of the variance request because a driveway could be placed between the house and side property line, allowing the applicant to build a garage, so the application does not meet the criteria of exceptional and peculiar difficulty.

VOTE: (8-1, Beeman Against)

- K. PL 12-094 Variance for Rear Yard Setback in a Residential-Traditional (R-1) at 218 East 4th St by John Almquist.

Staff: Planner Moses reviewed the information presented at the September 11, 2012 Planning Commission meeting. Since that meeting, additional information has been provided showing location of heating and plumbing in the northeast wall of the structure, making it difficult to place a staircase in that location. Moses stated that based on staff's findings, staff is recommending approval of the variance request.

Sydow asked if the proposal will meet building code standards. Moses stated that the applicant must meet building code requirements.

MOTION/Second: Guggenbuehl/Beeman to Approve the variance for a rear yard setback with the following conditions: 1) The project be limited to, constructed, and maintained according to the site plan and building elevations. 2) Property be surveyed and staked throughout the construction process to ensure 1' setback from property line. 3) 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: (9-0)

- L. PL 12-147 Variance from Structure Setback in a Coldwater River Shoreland at 2030 Columbus Avenue by Ardis Smolnikar

Staff: Robertson stated that staff is recommending denial of the proposed 24x24 garage because it does not meet the standard of practical difficulty. Robertson also noted that the applicant may be willing to reduce their request and that some relief may be warranted.

Applicant: Brian Lamone – is the builder working with the applicant. The existing 1-car garage is dilapidated. Lamone presented mitigation plan which included gutters and water directed to yard pond. Owner is willing to simply rebuild the existing garage with a 12x22 footprint.

Digby noted that with the mitigation plan, stormwater from the existing site may be improved. Rand asked if the applicant was hoping for construction before winter, and Lamone affirmed that. Robertson added that if the Commission determines hardship, their plan meets mitigation standards.

MOTION/Second: Rand/Beeman to Approve the variance to shoreland setback because the existing structure needs to be rebuilt and is entirely within the Coldwater Stream setback. This is a reasonable use of the property. Motion includes the following conditions: 1) Applicant meet all other applicable shoreland regulations. 2) Before receiving a building permit, applicant submit a more detailed mitigation plan to staff demonstrating how the proposed mitigation system will function

VOTE: (9-0)

- M. PL 12-150 Variance from Impervious Surface Setback in a Coldwater River Shoreland at 14302 Oldenberg Parkway by Minnesota Power

Staff: Robertson showed maps of the dam area. Although close to the river, it is an industrial use and an altered area. Applicants are requesting a service road. Staff is recommending approval. The mitigation plan meets standards.

Applicant: They are requesting safe access to the dam. Grading required for this project will also remove overburdened weight from the slope and provide slope stability. Sydow asked if the road could be narrower than 20 feet, and the applicant stated that because of the type of maintenance vehicles and safety concerns, 20 feet is needed.

MOTION/Second: Zwiebel/Guggenbuehl to Approve the variance to shoreland setback with the following conditions: 1) The project be limited to, constructed, and maintained according to the site plan and mitigation plans received from the applicant. 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: (9-0)

Consideration of minutes – July 10, 2012; August 14, 2012; September 11, 2012; and September 18, 2012

Zwiebel asked that the August 14 minutes be amended under Item G to remove the existing reference to Annis's background and replace it with, "Zwiebel requested information about the experience and background of the applicant, and whether this use would provide treatment services."

Old Business

None.

Reports of Officers and Committees

Digby informed the commission that an HPC representative will be needed and asked for volunteers. He also shared that there will be a long-term flood recovery committee looking at planning in the whole region.

The next Planning Commission Brown Bag is November 15.

New Business

None.

Other Business

Banks asked if the November commission meeting can include a discussion of conflicts of interest. City Attorney LaCoursiere will prepare some information.

Adjournment

Meeting adjourned at 8:34.

Respectfully,



Keith Hamre, Director of Planning and Construction Services

