



City of Duluth
Planning Division

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City of Duluth
Planning Commission
Minutes of December 13, 2011
City Council Chambers

- I. Call to Order: Vice President Guggenbuehl has called a meeting of the City Planning Commission for 5 p.m., Tuesday, December 13, 2011, in the City Council Chambers.
- II. Roll Call: Henry Banks, Terry Guggenbuehl, Frank Holappa, Heather Rand, David Sarvela, Luke Sydow, John Vigen, and Zandra Zwiebel.

Excused: Drew Digby
- III. Public Hearings
 - A. PN 11-134 - Zoning Map Amendment of the Downtown from Mixed Use-Commercial (MU-C) to Form Districts, Mid-Rise Community Shopping/Office (F-5), Downtown Shopping (F-7), and Downtown Mix (F-8). Boundaries of the Area are from approximately Mesaba Avenue to North 3rd Avenue East and from Michigan Street to the alley above 2nd Street by City of Duluth JJ

John Judd stated that this re-zoning and part of the implementation of the Comprehensive Land Use Plan. We are currently mapping for the various form based districts in the city. This change to the downtown area, which is currently Mixed Use Commercial (MU-C), would be to one of three different form based districts: Mid-Rise Community Shopping/Office (F5), Downtown shopping (F-7) and Downtown Mix (F8). Judd went over the map of the three rezoning areas. Judd pointed out that the Comprehensive Land Use Plan identifies these areas as central business primary and central business secondary. The Form Based districts were called for in the Comprehensive Plan and focus on the central shopping areas of the city and were developed with public input, assistance from consultants and City Staff. They provide standards for the exterior of the buildings including build-to zones, design standards. The list of permitted uses for all of the zones is fully described in the Unified Development Chapter (UDC). A 330 piece mailing was sent out to property owners and emails were forwarded from the Greater Downtown Council and the Chamber of Commerce to their members regarding this proposal. Eight "Zoning Notice" signs were also posted. We held two special public meetings regarding this proposal, on November 17 and 22. Based on the recommendations from the Comprehensive Land Use Plan and the UDC process, this rezoning of the downtown area to form based districts is recommended.

Applicant: Rob Link - A&L partnership. He would like to speak to the F7 zone. Although he understands notifications went out, he had just found out about these proposals. He has been doing development in Duluth for over 25 years. His company owns a large number of buildings in downtown and has invested millions. This legislation has to be the most absurd proposal that he has ever seen. He realized that this is inconsistent with the development of downtown and it is mind boggling and doubts that most of the building owners know the impact of this proposal. This cannot happen. The proposal calls the district downtown shopping, but everyone knows there is little demand for retail in downtown. If there are some retail successes in downtown – he doesn't see it. He doesn't think that this proposal was thought through.

Applicant: Rebecca Lewis. She has a few thoughts on the form based code. There is sustainability and economic sustainability. These are tools that are a very positive thing. But it shouldn't create road blocks to a successful downtown. Office Use, Education, or Medical uses can be a vibrant contributor to a downtown. The form based district concept is a very good tool. But this should not be used as a limitation. We can have F7 a form based district with but with greater flexibility regarding permitted uses.

Zwiebel was wondering about the other areas where office use was not allowed on the first floor of buildings. Lewis stated that it would be only allowed on the upper levels not the street level in the F7 district.

Vigen stated that as an example the medical Office in the Weiland building. Under the F7 district it would not be permitted on the street level. Judd stated that this and other existing uses could continue as legal/non-conforming use. Holappa asked about possible amendment to the UDC permitted uses. Petkac stated that the UDC will be revisited this summer. Staff is currently compiling a list of changes and will be bring forward to the Council for another round of amendments in summer of 2012. If the Planning Commission wants to recommend amendments to the F7, they could do that at the time but we must be open about the UDC amendment process.

Form District F7 is to be applied in specific areas of the heart of downtown. This requires a retail storefront on the main floor. Vigen is looking at how some of the buildings are re-used. We had a vacant building on First Street and now have housing on the main floor. He is looking at medical, School, and Office uses in particular. He is having some second thoughts on this and thinks that this may be one of the glitches that we can reconsider.

Petkac stated that we proposal identifies three form districts. The Commission could make a divide up their recommendations (for each of the districts individually) on the same file number and forward it to the City Council. Vigen stated that a data center or housing might be appropriate be use on the main floor in any of the three districts. Vigen moves to table. Petkac stated that it would be in May or later to recommend amendments to the UDC.

MOTION/Second: Vigen/Holappa to **Table** the Zoning Amendment of the Downtown from Mixed Use-Commercial (MU-C) to Form Based Districts, Mid-Rise Community Shopping/Office (F-5), Downtown Shopping (F-7), and Downtown Mix (F-8). Boundaries of the Area are from approximately Mesaba Avenue to North 3rd Avenue East and from Michigan Street to the alley above 2nd Street by City of Duluth. **Vote:** Unanimous (8-0)

- B. PN 11-132 – Plan Review in a Mixed Use Institutional (MU-I) at 935 Kenwood Avenue by Benedictine Health Center. **JK**

Staff: John Kelley stated that Benedictine Health Center submitted an application to construct a 47 space parking lot with a temporary gravel surface for 6 months in order to complete a parking study. The standards for lighting and landscaping have been met. Based on those findings, we recommend approval to the Planning Commission, for the temporary gravel surface of the parking lot until June, 2012.

Sydow stated that light levels-foot candles appeared to be high in some areas.

Applicant: Mark Roman– Executive Director of Benedictine Health Center and Rebecca Lewis- Consultant. They will certainly look at the plan to get less light and clarification for a maximum average of 2.5 for lighting.

MOTION/Second: Rand/Sarvela to **Approve as Amended** (Lower Lighting Levels) **with the following conditions:** 1. The Parking lot surface treatment shall be a temporary gravel surface until June of 2012. 2. Permanent storm water controls shall be installed during construction of the parking lot. 3. The project to be limited to, constructed, and maintained in accordance with documents submitted.

VOTE: Unanimous (8-0)

- C. PN 11-124 – Vacate Public Right of Way at 1120 Railroad Street by North American Salt. **JK**

Staff: Kelley stated that this is a petition by North American Salt to vacate the right of way to construct a new storage pad where the right of way exists today. There have been other vacations of rights of way in this area and would not result in a dead end street. Kelley recommends approval without conditions.

MOTION/Second: Zwiebel/Rand to **Recommend Approval** to Vacate the Public Right of Way at South 10th Avenue West.

Vote: Unanimous (8-0)

- D. PN 11-126 – Vacate Public Right of Way at Wren Avenue between Terrace Street and Swan Lake Road by William and Susan Gatewood. **JK**

Staff: Kelley stated that the applicant has petitioned to the city to vacate an unimproved portion of Wren Avenue between Terrace Street and Swan Lake Road. Staff determined that the parcel to the south and east of the applicant's property and abutting Wren Avenue would not have the required lot frontage per the UDC if the right of way is vacated. Based on this and stating that the right of way is useful for this reason staff recommends denial to vacate the right of way.

Applicant: William Gatewood stated that his property abuts the right of way. Vigen said that the applicant owns lots 1 and 2 of block 2. We don't want to vacate something that removes frontage. Vigen asked if it would it be reasonable to allow this individual the expansion of their yard and continue to maintain the frontage for the lot south and east of the applicants. Otherwise we have something sitting here that is useless. Rand stated that there is some merit to this. Kelley added that in this case the lot could potentially be land locked if the right of way were vacated. Vigen would move to table this.

MOTION/Second: Sydow/Rand to **Table** the Vacation of the Right of Way at Wren Avenue between Terrace Street and Swan Lake Road by William and Susan Gatewood.

VOTE: Unanimous (8-0)

- E. FN 11-024 – Vacate and Rededicate a Pedestrian Easement at Grant School by the Duluth School District **SR**

Staff: This is an easement vacation and also an easement dedication. The applicant is asking us to vacate the existing easement and give us another easement in exchange. Engineering had no concerns and staff recommends this proposal without conditions.

Motion/Second: Sydow/Rand to **Recommend Approval to Vacate and Rededicate** a Pedestrian and Utility Easement at Grant School by the Duluth School District without conditions

VOTE: Unanimous (8-0)

- F. PN 11-125 – Variance to reduce the corner-side yard setback to 6’ to allow a building addition at 1701 Minnesota Avenue and by Susan Ault. **KD**

Staff: The site map is on the screen which shows 17th and Minnesota Avenue. The applicant is proposing a reasonable use of their property with an addition to a rather small home, but that they have not demonstrated exceptional practical difficulties or undue hardship in complying with setbacks. Staff pointed out two other areas where the home could be expanded in front and behind while complying with setbacks. If the Planning Commission grants the variance it would not likely alter the essential character of the area or diminish property values. Holappa inquired about the potential for development on vacant lots behind the subject property and staff confirmed that there were several blocks of tax forfeited land on both sides of St. Croix Avenue and 17th Street. There is a real possibility the area could develop and that 17th St. might be needed to serve the area and that granting the variance would result in a home at 6’ from the street right of way line.

Applicant: Susan Ault stated that she had the same thought as staff had. The home is on a crawl space. She developed this plan to expand the home as shown on the site plans and thought there were difficulties. She stated that adding on to the home as staff has suggested would result in needing to completely redo the existing roof would not work because it would cause existing rooms that have windows would no longer have them. This is a 40 year old home and in good condition and she doesn't want to have to completely rebuild it to make it livable as a retirement place; that would be completely impractical.

Holappa stated that to not grant this it would be a hardship for them. They have other opportunities but do not think that they would work here.

MOTION/Second: Holappa/Banks to **Approve** reducing the corner-side yard setback to 6' to allow a building addition at 1701 Minnesota Avenue by Susan Ault.
VOTE: (5-3) Rand, Vigen, Sarvela

- G. PN 11-130 – Variance to reduce the rear yard setback to 3'-6" to allow a building addition at 610-618 East Fourth Street by the Whole Foods Coop. **KD**

Staff: Deming showed the site plan of the Whole Foods Coop. There is an existing loading dock off the alley and the proposed addition would be built on top of the loading dock. The rear yard setback is 25' and the UDC states that they cannot expand the nonconformity horizontally or vertically; this would be a vertical expansion. The applicant has not shown exceptional practical difficult or undo hardship and there are other places where they can expand the building and comply with setbacks. The applicant does not want the loss of parking by expanding elsewhere. They do have more parking than the UDC states that they need because the exceed 150% of the minimum parking. Staff's opinion stated that granting would this would not cause any additional traffic and staff recommends denial. Banks asked where they are planning to build.

Applicant : Sharon Murphy. Murphy stated they are planning to bring this up to the 2nd level and then have more landscaping. Zwiebel asked what this would be used for. Murphy stated that they will have an inside eating area and directly inside the area that they want to enclose it, this will roughly double the space here. Murphy added that the deli sales have grown by almost 91 percent. With this increase they want to serve as many people as they can and they feel that it is an existing space and just enclosing a portion of the building. If this was excavated they would need to have an extremely deep a foundation. It is impractical to add onto the front of the store. This is why they are looking to add on top of the loading dock is the best bet here.

Applicant: Chris Gardner, LHB. He stated that there are 2 submerged tunnels and adding anywhere from the east would be quite a challenge as it is in poor condition. The second is that there is a lower level on that floor and there would need to be a parking level and basement. The existing wall would not be able to handle this.

Applicant: Hugh Reiten, LHB. They needed to create the footprint and it is not as easy to change it. He thinks that this is a practical footprint and thinks that it is the best site for this and that is why they need a variance.

MOTION/Second: Zwiebel/Vigen to **Approve** the Variance to reduce the rear yard setback to 3' - 6" to allow a building addition at 610-618 East Fourth Street by the Whole Foods Coop. **VOTE:** Unanimous (8-0)

- H. PN 11-133 – Variance to reduce rear yard setback to 7' in a Residential-Traditional (R-1) Zone District to allow a building addition at 3427 Lake Avenue South by Patricia Sterner. **KD**

Staff: Deming stated that the site is a unique property sitting on a lot tied to Minnesota Avenue by a little parcel. This situation is different from the others as that the applicant did not know that the setback rules changed in August 2010 while plans were being developed for the site. Deming recommends approval because of the special circumstances as the rules changed and the situation was beyond the control of the applicant.

Applicant: Mike Medlin. They proceeded to keep the project going.

MOTION/Second: Sarvela/Holappa to **Approve** reducing the rear yard setback to 7' to allow a building addition at 3427 Lake Avenue South by Patricia Sterner. **VOTE:** Unanimous (8-0)

- I. PL 11-131 – Special Use Permit Amendment for Telecommunications Facility in a Residential-Rural (RR-1) zone district at 415 West 9th Street at by AT&T. **SR**

Staff: Robertson stated that they are looking at a Special Use Permit for a telecommunication facility. The city revised the telecommunications ordinance in 2010. As a result, applicants that want to add or modify existing facilities need a Special Use Permit. The applicant had submitted engineering plans to verify that this tower can handle the additional weight, which is very important. The approval is on condition that the tower can handle the tower load.

MOTION/Second: Vigen/Sarvela to **Approve** the Special Use Permit Amendment for a Telecommunications Facility in a Residential-Rural (RR-1) at 415 West 9th Street by AT&T with the following conditions: 1. That the project be maintained according to the documents titled "Site Number: MPLSMNU5050, Microwave Swap" drawing by Ulteig, dated 10/28/11. 2. That the applicant secures all necessary permits required by Federal, State, County or City laws and regulations. 3. That approval is subject to receipt of a structural analysis that in the opinion of the City indicates that the tower is capable of supporting the tower loads. **VOTE:** Unanimous (8-0)

- IV. Consideration of Minutes – November 8, 2011 - MOTION/Second Sarvela/Rand to Approve the Minutes as written.
- V. Communications - Robertson stated that we would like to have brown bag meetings and bring them to the city council in June. He emailed Digby to have one member of the planning commission with our work group. We will have stakeholder meetings. In terms of putting forward new language, it would include planning staff and Allison, Engineering and Parks. If anyone is interested, please let us know.
- VI. Old Business
- VII. Reports of Officers and Committees
 - A. Duluth Historic Preservation Commission
 - B. Education Subcommittee
- VIII. New Business
- IX. Other Business
- X. Adjournment

Respectfully,



Cindy Petkac, AICP
Planning Manager
CP:eu