



City of Duluth  
Planning Division

411 West First Street • Room 208 • Duluth, Minnesota 55802-1197  
218-730-5580 • Fax: 218-730-5904 • www.duluthmn.gov

An Equal Opportunity Employer

City of Duluth  
Planning Commission  
March 26, 2013 Meeting Minutes  
City Council Chambers - Duluth City Hall

I. Call to Order

President Guggenbuehl called to order the meeting of the City Planning Commission at 5:00 pm on Tuesday, March 26, 2013, in the City Council Chambers.

II. Roll Call

Attending: Henry Banks, Marc Beeman, Drew Digby, Terry Guggenbuehl, Patricia Mullins, David Sarvela, Luke Sydow and Zandra Zwiebel (arrived 5:10 p.m.)

Absent: Heather Rand (excused)

Staff Present: Keith Hamre, Charles Froseth, Steven Robertson, Kyle Deming and Cindy Stafford

III. Public Hearings

PL 13-005 Environmental Assessment Worksheet (EAW) Review for Duluth Traverse Trail, tabled from the March 12, 2013, Planning Commission Meeting, removed from table.

Determination that an Environmental Impact Study (EIS) is NOT needed

**Staff:** Steven Robertson. Robertson reminded the commission that the 30 day public comment period has ended. Staff received comments at the last minute, and felt that extra time was needed for Commission consideration of the EAW. Upon reviewing the EAW, comments from the public, and responses to questions raised, staff recommend that there is not a need for an EIS. A decision required within 30 days of the end of the public comment period which, is the April 5, 2013

**Applicant:** N/A

**Public:** N/A

**Commissioners:** Digby thinks this project will greatly improve the city. The key questions have been answered. Banks asks staff to comment about Josh Fitzpatrick's (U.S. Army Corps of Engineers) wetland letter. Robertson responded the Army Corps has been involved from the beginning and feels their concerns have been addressed. Steven mentions the need for parking lots was brought up in the comments. He stated the UDC requirements and zoning process would apply for parking lot(s) landscaping and stormwater and relieve some negative impacts. Guggenbuehl thinks that the EAW is thorough and all questions have been answered. Steven mentioned tree removal and noted in the EAW any trees larger than 4 inches would be protected with the trail meandering around them.

**MOTION/Second:** Digby/Sydow recommends approval of staff's recommendation that an EIS is not needed.

**VOTE: (7-0)**

VI. Communications

(Moved forward in the agenda due to the following public hearings not be begin earlier than 5:20.)

Commissioner Patricia Mullins reported on the Heritage Preservation Commission's (HPC) meeting. Keith Hamre explained that their name changed from Historic to Heritage. Text and flow chart do not match up in the UDC. Both parties have the ability to nominate properties for landmark status and then present the nomination to the City Council. Hmare would like the HPC to be proactive and make known the positive benefits for owners to receive landmark status. Either Committee cannot force local landmark status onto an owner who opposes it. Rand agrees the updated flowchart with both committees reporting to the City Council is beneficial.

VII. Reports of Officers and Committees

(Moved forward in the agenda due to the following public hearings not be begin earlier than 5:20.)

Guggenbuehl notes that new commissioner terms are beginning. He would like to set up nominations for new members to the education committee (sets up brown bag lunches) and tax forfeit committee.

Recess taken until 5:20 p.m., so committee can peruse UDC handout materials.

A. PL 13-028 Amend Future Land Use Map from Traditional Neighborhood to Urban Residential at Rockridge Elementary School at 4849 Ivanhoe Street

**Staff:** Froseth introduced the land use change, noting that it is not a zoning district change at this point. This is the first step in the process. Public meetings were held on February 13<sup>th</sup>, and March 13<sup>th</sup>. Per Robertson, due to City Council schedule anything approved tonight or next meeting will go the Council on April 22<sup>nd</sup>.

**Applicant:** (Spoke after public comments) Kerry Leider, property manager for Duluth Public Schools (ISD 709) notes the property has been for sale for 2 years. District would like the building to be reused and/or repurposed. Concept plan to neighbors would not change the footprint of the building and notes that with no sidewalks it limits traffic. With limited possible maximum dwelling units, it would have less impact on the neighborhood infrastructure than in when it was a school. Notes other schools have been rezoned and returned to tax generating property, and wants to bring back value to district and taxpayers. He urges the PC to take action to pass on to City Council where more public feedback can be heard at that time.

**Public:**

Brian Medred resident of 4906 Glendale St. opposes the land use change and doesn't feel an apartment building will fit the neighborhood.

Danielle Henjum resident of 5001 Oakley St. opposes the land use change. Rockridge is in a traditional neighborhood with no sidewalks or stores. There are significant environmental issues, including bird migration.

Tom Ryther resident of 5114 Oakley St. opposes change and urges the commission not to move forward. He doesn't feel that rezoning should be a marketing issue.

Mark Irving resident of 4923 Ivanhoe St. opposes the land use change. He presented a petition with 182 names who also want to keep the traditional neighborhood. He contacted many agencies and discussed the adverse effects to bird flight migration paths.

Kerry Leider see above.

Public Comment period closed.

Hamre addresses Commission and wanted to clear up the word "consensus" listed in the staff report. He noted that there was division of opinion in the public meeting. He reiterated this is a land use change and not a rezoning change. At the public meetings the District presented a plan of what that rezoning might look like, but with no actual developer there, it is difficult to address all concerns. Key principle of the Comprehensive Plan from a sustainability standpoint is to reuse and repurpose existing buildings. He advised the PC to table until next meeting to review the materials (petitions and letters) submitted tonight.

**Commissioners:** Commissioner Digby asks if any of the surrounding properties meet the UDC's definition of rural with two acres or larger? Hamre, no. Digby would like to move forward with the decision tonight to give folks the opportunity to present their views in front of the City Council instead of making them come back for yet another PC meeting. Guggenbuehl agrees and feels that tabling would delay the inevitable. Mullins asks if there would be additional access points needed? Hamre said that would depend on a potential developer's plans, but the building is sprinklered, so it would not be required. Beeman asks if there is a potential developer in the works? Hamre responded it would depend on if the land use is changed. Site is 19 acres, so potentially an additional 57 houses could be developed. Mullins asked staff what the rationale is of not selling the building to another school? It's the School Board's policy not to sell to another K thru 12 school. Sarvela has concerns and doesn't feel that a change in use makes sense. There is no transition between residential and commercial. Sydow asked about the rest of the property potentially being rezoned R-2? Guggenbuehl notes possible future landscaping and parking spaces. Zwiebel sees a benefit in repurposing the building and feels keeping it R-1 is too limiting. She could picture it as a possible assisted living facility for people who have lived in this community all of their lives.

**MOTION/Second:** Digby/Banks recommends approval to amend future land use map from traditional neighborhood to urban residential

**VOTE: (5-3, Mullins, Beeman and Sarvela opposed)**

- B. PL 13-027 Zoning Map Amendment from Residential-Traditional (R-1) to Residential-Urban (R-2) and Mixed Use Business (MU-B) at Central High School 800 East Central Entrance

**Staff:** Chuck Froseth notes that this is a zoning change, not a land use change. A zoning change requires a legal description, which staff is still waiting for. Staff recommends tabling until The April 9, 2013 meeting.

**Applicant:** N/A

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Digby/Sydow recommends approval to table the public hearing until April 9, 2013 meeting.

**VOTE: (8-0)**

- C. PL 13-035 Zoning Map Amendment from Mixed Use-Neighborhood (MU-N) and Mixed Use-Business (MU-B), to Mixed Use-Commercial (MU-C) at Block 25 Endion Division of Duluth (located between London Road and South Street, and between South 21<sup>st</sup> Ave East and South 22<sup>nd</sup> Avenue East), by London Acquisition, LLC

**Staff:** Robertson notes citizen letter placed on Commissioners' desks. The change in land use to secondary commercial was passed by City Council last night. Map is now in conformance with the future land use plan. The applicant is requesting the zoning change so the redevelopment of the land can include such uses as: retail, grocery, office multi-family residential, convenience store, restaurant and drive-thru restaurant. Staff recommends approval.

**Applicant:** Dan Maddy of Fryberger Law Firm represents London Acquisition, LLC addressed the PC and notes that past and present use are identified in MU-C. Recognizes that when an actual plan comes forward it will have to be brought to the PC for their consideration.

**Public:** N/A

**Commissioners:** Guggenbuehl asks if this zoning change would require a plan review future structures. Robertson responded noting most items would with a few exceptions. The citizen letter is concerned that the MU-C would allow for very tall structures. The next agenda item, UDC text amendments, would modify the height of structures in MU-C districts. PC doesn't have as much freedom to reject applications as in the case of a special use permit, but it can still be denied or attach reasonable conditions, if warranted. Zwiebel asks what height is allowed without review, and Digby asks could height be considered a reasonable condition? Steven thinks it would difficult, since the ordinance allows it. He noted the next item on the agenda pertains to changing the height limit. Sarvela asks about the 500 foot area. Steven notes MU-C is intended for highway commercial. Digby feels that MU-C is the right zone, but they do have to look at the height restrictions. Sarvela is concerned that the cart would be in front of the horse and something could pass without height restrictions.

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

**VOTE: (6-2, Sarvela and Sydow opposed)**

D. PL 13-036 UDC Text Amendment (Additional Public Hearing On April 9, 2013)

**Staff:** Steven Robertson refers PC to the staff report, and introduces the 13 proposed changes.

**Applicant:** N/A

**Public:** Greg Strom, Architect who represents 7 churches introduces their petition to repeal the regulation as originally listed in the UDC (50-20.2c number 2). They feel the regulation was restrictive and put in there without sufficient research and review. Duluth Gospel Tabernacle bought land on Arrowhead Road and their plans would be affected by current limitation. Also, existing buildings (schools) which might be available for purchase/reuse are typically over 40,000 square feet. Any concerns about parking, wetlands, and stormwater issues are already being addressed. Regarding alternative and ongoing church uses: food shelves, 12-step programs and daycares. These functions serve a huge benefit to the community. Prior to the UDC he noted there were no restriction on size of churches.

**Commissioners:** Zweibel asks if they are looking for complete omission of any size limitations. Storm said, yes, that would be ideal. If it's not struck completely from the UDC then the change from 40,000 to 50,000 would be better and also noted the preference of special use versus not allowed. Sydow asks what is the historic traditional size of a church in a neighborhood. Traditionally he feels that churches were smaller with less parking and less corporate. He notes that 50,000 square feet is quite a large building for a current residential neighborhood. Storm responded, the size varies greatly, agrees that 50,000 square feet is quite large, but notes the comparison to the size of schools which are allowed in traditional residential neighborhoods. Zwiebel asks if the churches operating now would be affected? Robertson responded they would be considered legal non-conforming, but would not be allowed to expand, but if destroyed they would either need a variance or rebuild in compliance. Digby gave his feedback on all proposed changes as he will not be at the April meeting. He feels that height requirements are far-reaching and could be limiting development. MU-N agrees with half of them, wants to encourage appropriate uses. Sign

code changes – he doesn't agree with the elimination of menu boards and not sure about deleting landscaping on free-standing signs. Sydow agrees with the landscaping and feels it can be easily done with minimal cost. Street frontage extending past property. Vacation dwelling unit in R-2 – he feels that two days is not long enough. He agrees with the allowance for 50,000 square feet for churches with special use permits. Guggenbuehl noted he agrees with Digby about the height restrictions in MU-C restrictions. He is comfortable with the plan review process. Robertson – MU-I is a small portion of zone districts. Sarvela has concerns that plan reviews are too far along in the process and agrees with height restrictions.

**MOTION/Second:** Sydow/Zwiebel recommends approval to table until the next meeting.

**VOTE: (8-0)**

**E.** PL 13-034 Interim Use Permit for a Vacation Dwelling Unit at 124 N. Hawthorne Rd. by Theresa Hanson

**Staff:** Deming directed commissioners to the information placed on their desks, which includes additional neighbor comments as well as information requested at the last meeting. There are 35-40 vacation dwellings in the City overall. Also provided was information on how the Police Department regards the excessive consumption of police services provision. Email from Mary Elizabeth Jones was noted. Deming introduces Theresa Hanson's request for one vacation dwelling unit consisting of five bedrooms (including two 2-room suites) located at 124 North Hawthorne Road in the Congdon neighborhood. The site has a large driveway area and parking plans show room for 6-8 cars in the driveway including 1 car in the garage. Property is unique size of the home (exceeding 3,200 square feet) and the 2-room suites, guest occupant limit would be increased 14 guests versus the standard 11. Staff recommends approval subject to conditions which include obtaining the operational permit by the City Fire Department and the Lodging License by the State Department of Health.

**Public:** Rachel Moseley neighbor at 202 N. Hawthorne Rd opposes the vacation dwelling unit permit. She and her husband share a private driveway with the applicant. She feels increased traffic associated with the vacation dwelling is an infringement of their privacy and compromises their life style. She is also concerned that it could affect the property's value. She appreciates the owner's rental agreement restrictions, but notes that it is hard to regulate when they are not there. She asks that parking for 6-8 cars not be granted. She feels that a 3 car allowance is reasonable.

**Applicant:** Theresa Hanson (property owner and applicant), addressed the Commission. She addressed her neighbor's concerns and maps out where cars are allowed to park in accordance with the rental agreement. She hasn't received response from her renters that parking was not enough. She requires renters not to park in the shared driveway. She has hired property managers to visit site twice a week. They remove garbage as well as monitor activities at the house. General audience/renters are families and multiple family members celebrating a special event. (i.e. 50<sup>th</sup> wedding anniversary). Robert & Carly Frye (property managers) addressed the commission and confirms the site is visited almost every day.

**Commissioners:** Sydow asks about parking in the garage. Applicant stated there are 2 spaces available in the summer. In the winter, she stores the patio furniture, so only 1 space is available at that time. Sarvela asked if there is parking allowed on Hawthorne Rd. No. He asks if parking is legally allowed in driveway. Yes. Guggenbuehl refers to the map and noted the driveway is labeled as East 2<sup>nd</sup> Street, and questions if it is technically a City street. The owner hires someone for snow removal and reiterates with her neighbor that

the City does not plow it. Deming confirmed it sounds like the City does not maintain it as a street. Digby asked if it would be a hardship to only allow parking spots for 6 or 7 cars. Applicant feels she is already buffering spots which allows for visitors, and feels her driveway contains ample room. Sydow asks staff about the property managers for other vacation rentals. Is it a company, or a relative? Per Kyle, with just a handful of examples to go by, so far it's been neighbors or the owner themselves who oversee site. Banks asks about the property's history with police involvement. Is it a problem property? (Per property managers, it is not.)

**MOTION/Second:** Zwiebel/Banks recommends approval per staff's recommendation with a condition that no more than 7 vehicles are allowed to park outside of the garage.

**VOTE: (8-0)**

F. PL 12-030 Interim Use Permit for a Vacation Dwelling Unit at 1302 Minnesota Avenue by Steven Pitschka

**Staff:** Deming points out to Commission the two hand-written letters included in their packets. The owner does not have any off-street parking, so staff recommends approval with the condition that the permit be revoked if the two required spaces have not been constructed by November 1, 2013. The conditions relating to Park Point rental vacations are also included in the staff recommendation.

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

**Public:** Molly Haugen resident of 1505 Lake Ave. S. opposes vacation rental permits and asked what the overall plan is? She feels her neighborhood is diminished, and feels the only winner is the property owner.

**Commissioners:** Guggenbuehl asks Deming to comment on the overall plan. Deming noted the criteria includes a requirement if there are repeated police calls, and/or other provisions are not met, the permit can be suspended by the Land Use Supervisor. And then if it happens again in a six year period, the permit can be revoked. Therefore, there are controls in place to remove the permit if need be. Froseth noted the Park Point plan does not address the quantity of vacation rental permits. Digby confirms with staff that it's not just police calls that can revoke a permit. He feels that if a vacation rental owner is resistant to applying for a permit, this could mean they are unwilling to abide by the rules. Mullins agrees and feels if the owner is willing to obey the rules, that limiting the amount of permits is difficult.

**MOTION/Second:** Digby/Zwiebel recommends approval for the interim use permit as recommended by staff.

**VOTE: (8-0)**

G. PL 13-029 Interim Use Permit for a Vacation Dwelling Unit at 1535 Lake Ave S by Steven Pitschka

**Staff:** Deming refers to map which showing location. This is a four bedroom property which requires 2 parking spots located in front of their garage. Staff recommends approval based on the normal Park Point conditions re: beach access points and quiet hours.

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

**Public:** N/A

**Commissioners:** N/A

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

**VOTE: (8-0)**

H. PL 13-031 Interim Use Permit for a Vacation Dwelling Unit at 1210 Lake Ave S by Steven Pitschka

**Staff:** Deming shows location of the property which is the last house on the block. It is a two-bedroom unit which requires one parking spot that they have provided in the driveway adjacent to the home. Staff recommends approval based on the normal Park Point conditions regarding beach access and quiet hours.

**Public:** N/A

**Commissioners:** Banks notes that these houses have the same owner and is curious about this. Asks if this will be a growing business for the owner.

**Applicant:** Steve and Heather Pitschka addressed the Planning Commission. Steve said he owned a house on Park Point and bought property further down to get a better view of the lake. He didn't want to part with his original property, so kept it. He stated that the property owners around him commended his upkeep of the property. He decided to turn it into a rental unit. A friend suggested looking into vacation rentals. Other properties came on the market and it was a perfect opportunity for them. They ask renters to respect their neighbors. He said making the rentals work as a business is a lot of work. It is not their intention at this time to have more than three.

**MOTION/Second:** Digby/Mullins recommends approval of interim use permit as recommended by staff.

**VOTE: (8-0)**

I. PL 13-020 Variance from Front Yard Setback at 120 Bruce Street by Marie Kelsey

**Staff:** Robertson noted in the following five variances the PC is the deciding body, but if a variance is denied the applicant can appeal to the City Council within 10 days. This home was originally built too close to the lot line by a previous owner, and they would like to make an expansion which requires two variances. Staff believe that the applicant's request is reasonable and meets UDC standards, and recommend approval.

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

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Zwiebel/Sydow recommends approval based on staff recommendation.

**VOTE: (8-0)**

J. PL 13-021 Variance from Shoreland Setback at 120 Bruce Street by Marie Kelsey

**Staff:** Robertson noted the ordinance asks for the applicant to mitigate the impacts of the variance on the shoreland area. Staff recommends approval of the variance with conditions that a rain garden and the installation of rain gutters on the back of the house are met.

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

**Public:** N/A

**Commissioners:** N/A

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

**VOTE: (8-0)**

K. PL 13-023 Variance from Parking Lot Location at 28 West 2<sup>nd</sup> Street by Scottish Rite Foundation

**Staff:** Robertson gave background information and noted staff is recommending approval on the first variance and denial on the second. If the PC overturns the denial, Roberson asks for clarity in the motion of the reasons why, so it can be placed in the findings of fact.

Following the pre-application meeting, the Land Use Supervisor determined that this is an Iconic building design type. Based on the topographical issues of this lot, staff recommends their request to have parking in the front is reasonable and recommends approval of the variance.

**Applicant:** Jim Proctor, President of the Scottish Rite Foundation is in agreement with the recommendation and asks if there are any questions.

**Public:** N/A

**Commissioners:** Sydow asks if there two stories above second street, and is underground parking feasible? Proctor stated that due to ledgerock issues, it is not feasible. Zwiebel notes that new development will improve sight issues along First Avenue which is one way.

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

**VOTE: (8-0)**

L. PL 13-024 Variance from Side Yard Setback at 28 West 2<sup>nd</sup> Street by Scottish Rite Foundation

**Staff:** Robertson noted that while the applicant is proposing a worthy project that will have community benefit, staff recommends denial and feels that there is not sufficient evidence to recommend approval for a variance and that the applicant can still proceed with the project without the need for relief from the setbacks.

**Applicant:** Jim Proctor, President of Scottish Rite Foundation stresses they help kids with communication issues including hearing, speech, Down Syndrome. They operate on private donations only and are the number one treatment center for autism. Enforcing the five foot setback will cut in to their useable space. Disputes the staffs findings. Can't locate somewhere else temporarily and other building types would require 5-6 variances. Carol Roberts, Scottish Rite Director for 23 years. 1999 moved into 27 foot wide building which used to be a credit union. They changed it into a speech and language clinic, and made do. They have lots of needs and only a small space. She encourages PC not to limit them with the setback. Jodi Anderson, DSW Architects, has been working with Scottish Rite for the past year and stresses the importance of the 0' setback. Per Roberts, the greenspace is considered therapy space, so kids aren't confined to just cubicles.

**Public:** N/A

**Commissioners:** Sydow questions the green space allowance. Digby feels that this is the proposal fits the intent of the comprehensive plan and the UDC. He feels it meets the primary purposes and would like to grant this variance. They propose to use the property in a reasonable manner, the relief is needed based on the uniqueness of the property, granting the variance will not alter the essential character of the area and granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

**MOTION/Second:** Digby/Zwiebel recommends approval for a variance.

**VOTE: (8-0)**

M. PL 13-012 Variance to Reconstruct a Non-Conforming Building by Karl Norman at 21 East 9<sup>th</sup> Street

**Staff:** Robertson stated this is not a typical variance. The existing home is too close to the side lot line; three feet and needs to be six feet. The home was more than 50% damaged by fire on July 27, 2011. The applicant needed to either: rebuild home in a different spot, remove three feet of the home, or seek a variance. Based on the fact that the home has been there for many years and is not detrimental to the public welfare of the City, staff recommends approval.

**Applicant:** Lonnie Anderson of Heartwood Construction represents the owner Karl Norman. It doesn't make sense to move the house or to remove three feet. The owner just wants to repair it.

**Public:**

Bob Hoyt owner of 22 E. 10<sup>th</sup> Street which is located directly behind the applicant's property has not seen the proposed plan for the new house. He is concerned with his view of the lake. Same height would be okay, but he doesn't want the house to get higher or expand. Per contractor, the owner just wants to repair what is there and doesn't want to make it higher or wider.

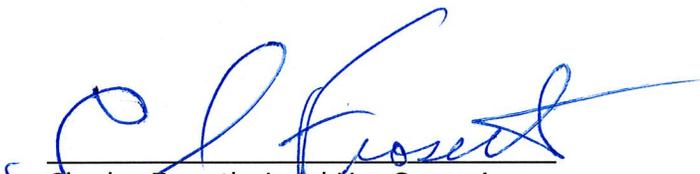
**Commissioners:** Banks asks if we can do this legally. Froseth stated they are only repairing home to current footprint and feels it is appropriate. Sydow wanted it clarified in the motion that the variance was just to repair the structure, not expand it.

**MOTION/Second:** Sydow/Mullins recommends approval of variance with condition that no expansion is allowed.

**VOTE: (8-0)**

- V. Consideration of minutes – Next meeting
- VI. Communications (Discussed earlier in agenda)
- VII. Reports of Officers and Committees  
(Discussed earlier in agenda) Froseth gave a brief overview.
- VIII. New Business
- IX. Other Business
- X. Adjournment  
Meeting adjourned at 8:15 p.m.

Respectfully,



Charles Froseth, Land Use Supervisor