

## City of Duluth Planning Commission

October 13, 2020  
Meeting Minutes

*Due to the COVID-19 emergency, many planning commission members participated through video conference from home. The meeting was held as a Special Meeting pursuant to Minnesota Statute 13D.021 in response to the Covid-19 emergency. Public comment was taken at [planning@duluthmn.gov](mailto:planning@duluthmn.gov) prior to and during the meeting, and via verbal comment through public attendance in the WebEx video conference during the meeting.*

### **Call to Order**

President Margie Nelson called to order the meeting of the city planning commission at 5:00 p.m. on Tuesday, October 13th, 2020.

### **Roll Call**

**Attendance:** (\* Via WebEx video conferencing – all votes conducted via roll call)

Members Present: Jason Crawford\*, Gary Eckenberg\*, Tim Meyer\*, Margie Nelson\*, Michael Schraepfer\*, Sarah Wisdorf\*, and Zandra Zweibel\*

Member Absent: Eddie Ratnam, and Andrea Wedul

Staff Present: Adam Fulton\*, Robert Asleson\*, John Kelley\*, Kyle Deming\*, Chris Lee, and Kris Liljeblad\*

### **Public Comment on Items Not on Agenda**

Jay Duncan asked about item 16-055. Deputy Director Fulton noted the item will be discussed during the Land Use Supervisor Report later in the meeting.

### **Approval of Planning Commission Minutes**

Planning Commission Meeting – September 8, 2020

**MOTION/Second:** Eckenberg/Wisdorf approved the minutes

**VOTE: (7-0)**

### **Consent Agenda**

PL 20-139 Interim Use Permit for Vacation Dwelling Unit at 5330 E Superior St by Sarah and Seth Maxim

PL 20-140 Interim Use Permit for Vacation Dwelling Unit at 11 S 54<sup>th</sup> Ave E by Sarah and Seth Maxim

PL 20-142 Interim Use Permit for Vacation Dwelling Unit at 409 S 19<sup>th</sup> Ave E by Nola Wick

PL 20-141 Variance for Front Yard Parking at 1400 and 1420 London Road by Andrew Baertsch

PL 20-146 Variance for a Deck at 4 Lakeside Court by Andrew Sternberg

PL 20-147 Variance to Side Yard Setback at 2835 Minnesota Avenue by Patrick and Heather Sims

PL 20-161 Variance from Shoreland Setback at 2835 Minnesota Avenue by Patrick and Heather Sims

**Staff:** N/A

**Public:** PL 20-141: Bill Burns addressed the commission. He is representing the applicant and noted they are working with city engineering on driveway entrance details and are not in agreement with the city engineer's proposed distance request for the driveway.

**Commissioners:** PL 20-141: Zandra Zwiebel asked about the driveway concerns. Deputy Director Adam Fulton noted the location of the driveway onto London Road. They want to ensure traffic safety, and will be adding landscaping to a corner to meet the intent of the code for the form district, but must coordinate right of way access with the city engineer.

PL 20-142: Gary Eckenberg noted Commissioner Michael Schraepfer is the property manager of this property, and asked how should they proceed to vote on all items. Schraepfer affirmed that he was going to ask the same question. City Attorney Robert Asleson suggested the make a motion to remove the item from the consent agenda. Schraepfer volunteered to abstain from the vote for all consent items, to move things along.

**MOTION/Second:** Wisdorf/Crawford to approve the consent agenda items as per staff recommendations.

**VOTE: (6-0, Schraepfer Abstained)**

### **Old Business**

(The next two items are related, and were discussed together.)

PL 20-120 Variance to Lot Size Requirements for a Six-Unit Residential Building at 106 S 15<sup>th</sup> Avenue East by James Talago

PL 20-121 Variance to Rear Yard Setback for a Six-Unit Residential Building at 106 S 15<sup>th</sup> Avenue East by James Talago

**Staff:** Chris Lee gave an overview. The applicant has provided a landscaping plan, which shows more buffering. Staff recommends approval.

**Applicant:** James Talago noted they are providing five parking spaces, which exceeds the minimum standards. In regards to the building's aesthetics, it will have a brick façade. He shared his computer screen, which showed the buildings brick essence. He feels it does fit into the neighborhood surroundings.

**Public:** Re-opened (also public comment period last month) and there were no speakers.

**Commissioners:** Eckenberg will be voting against this item. He thinks it will impair the surrounding lighting and increase congestion. It is incredibly intrusive. Tim Meyer agrees. He noted the Jefferson neighborhood is historic in nature. He doesn't feel the design fits the neighborhood. He is opposed. Eckenberg asked if the applicant was also a resident. Chris Lee verified he was the owner, but was unsure of his residency status. Deputy Director Fulton stated the applicant communicated in the web-ex chat bar that the applicant does live on site.

**MOTION/Second:**

**PL 20-120** Crawford/Wisdorf motion to approve the variance as per staff recommendations.

**VOTE: (3-4, Nelson, Eckenberg, Meyer and Zwiebel Opposed) – Variance fails and is denied**

**MOTION/Second:**

**PL 20-121** Eckenberg/Meyer motion to deny the variance which is on opposition of staff recommendations.

**VOTE: (4-3, Crawford, Schraepfer and Wisdorf Opposed) – Motion to deny is approved**

Chair Nelson noted the applicant has the opportunity to appeal these decisions to the city council.

**Public Hearings**

PL 20-130 UDC Map Amendment from RR-1 to RR-2 at 3821 N 87<sup>th</sup> Avenue W by Terry and Ashley Dunbar

**Staff:** John Kelley gave an overview. The applicants are proposing to rezone the subject property from the current zoning district of Residential-Rural 1 (RR-1) to Residential-Rural 2 (RR-2). This proposed rezoning would allow the applicant to sell the northern portion of the property for possible development of a new single-family home. The applicant has also submitted a companion application for a boundary line adjustment to make the northern parcel into a 2-acre lot, which is compliant with RR-2 parcel size. Staff recommends approval based on findings listed in the staff report.

**Applicant:** No comments.

**Public:** No speakers.

**Commissioners:** No comments.

**MOTION/Second:** Zwiebel/Eckenberg recommend approval as per staff recommendations.

**VOTE: (6-0, Wisdorf Abstained due to technical issues)**

(Commissioner Schraepfer Abstained from the next agenda item.)

PL 20-136 Interim Use Permit for Vacation Dwelling Unit at 1920 Minnesota Avenue by Candace Allender and Kevin Groenevelt

**Staff:** Chris Lee gave an overview. The applicant is proposing a new interim use permit for a vacation dwelling. The permit would be good for a four-bedroom home with nine occupants. The proposed IUP for a vacation dwelling is associated with an application that was part of the eligible applicants list and is subject to the 60-unit cap on vacation dwelling units. Lee noted there is a Homeowners Association Group for a property located across the street in opposition to the IUP. The Homeowners Association is concerned that the owner doesn't live there, and

cannot monitor the property. They are concerned about parties, and it appeared there were rentals already in progress. Staff noted the applicant meets all the requirements for the interim use permit. Staff recommends approval with the conditions listed in the staff report. Zwiebel asked if there was evidence to believe there was short-term rental behavior. Lee noted they did not receive complaints, and the owner does have an existing long-term rental license.

**Applicant:** Candace Allender and Kevin Groenevelt addressed the commission. They have an annual renter currently. Allender noted the property will be well monitored. There will be a visitor book and rules. The managing agent will oversee and enforce the rules. Eckenberg asked about where the applicants live now. Allender stated they have a cabin in Michigan and plan to eventually purchase a home in Stillwater. She feels she can keep a close handle on this, and noted Heirloom Property is their local property managing agent.

**Public:** Susan Halverson, president of the Homeowners Association, addressed the commission. They live across from the property and noted people park in front of her window. She is concerned about the escalation of carousing, the increased traffic, and noise. She asked who was responsible now. The applicant confirmed it was Heirloom Properties. Deputy Director Fulton noted rental rules can vary between long-term and short-term designations. The applicant noted there has never been a formal complaint made to her, or to Heirloom. Halverson stated they didn't previously know who to call if there were management issues or immediate concerns. Now they do.

**Commissioners:** Zwiebel noted there are more stringent rules for short-term rentals.

**MOTION/Second:** Zwiebel/Wisdorf recommend approval as per staff recommendations.

**VOTE: (6-0, Schraepfer Abstained)**

PL 20-138 Variance from Shoreland Setback for a Garage at 2511 W. 13<sup>th</sup> Street by Kevin Heaslip

**Staff:** John Kelley gave an overview. The applicant is seeking a variance to construct a new 20' x 26' garage within the 150' shoreland setback of Miller Creek. The applicant stated there is approximately a 20 foot elevation change from their house to the proposed garage site. Alternative locations for the garage were considered, but would also have 20-foot elevation change and would require significant excavation, loss of trees, and more impervious surface areas that could impact the stream. Staff received a petition in support from the neighbors, which was included in the commissioners' packet. Based on the findings, staff recommends approval with the conditions listed in the staff report. Eckenberg asked if the garage was at an angle because of the steepness. Kelley affirmed, and noted the applicant's proposal is the most appropriate location on the property.

**Applicant:** Kevin Heaslip addressed the commission, and welcomed questions.

**Public:** No speakers.

**Commissioners:** Zwiebel would like more details on the rain garden. She states that ten feet away seems like a long distance. Kelley noted staff did not receive details and deferred to the applicant. Heaslip stated the rain garden will be down hill on a natural slope. Drainage would not be a problem.

**MOTION/Second:** Zwiebel/Meyer approved as per staff recommendations.

**VOTE: (7-0)**

PL 20-151 Variance for a Fence in Skyline Parkway Overlay at 460 Jean Duluth Road by Paul Miner

**Staff:** Kyle Deming gave an overview. The applicant is proposing three variances be granted for the infilling of a legal, non-conforming fence along the street easement for Skyline Parkway. 1) Transparency - fences that exceed the elevation of Skyline Parkway plus three feet must be at least 75% transparent and the propose fence infill is to be 100% opaque like the existing fence. 2) Setback – fences are to be three feet back from the street easement line and the proposed fence infill is to be at the easement line in alignment with the existing fence. 3) Height – opaque fences between the house and the street are required to be less than four feet tall and the proposed fence infill is to match the existing fence at that location, which is 5 feet – 8 inches tall. Staff received one neighbor comment, which was in support. Staff recommends approval based on the findings, and recommends approval with the conditions listed in the staff report.

**Applicant:** Bill Burns who represents the applicant addressed the commission. This property has been there for 50 years. There is no view from Skyline to protect in this area; the fence will not change views; and the variance is a simple matter.

**Public:** No speakers.

**Commissioners:** Zwiebel is very familiar with the property and has no issues.

**MOTION/Second:** Zwiebel/Wisdorf approved as per staff recommendations.

**VOTE: (5-0, Eckenberg and Schraepfer Abstained due to technical issues)**

### **Communications**

Land Use Supervisor (LUS) Report – Deputy Director Fulton introduced Kris Liljeblad who is a senior transportation planner with the city. Liljeblad addressed the commission, and shared with them an update on the Street Preservation Program utilizing the one half percent sales tax that became effective for 2020 and generates approximately \$7 million per year. A program of projects for 2020 and 2021 was prepared by Public Works and Planning staffs with input from 10 City Hall in the City public meetings. Public input to the program is on a continuous basis, inviting residents to identify streets in need of repairs. The prioritization of projects has included Core Investment Areas, Safe Routes to Schools, and geographic distribution to fix streets in a fair and effective manner.. The challenge is to get as many miles repaired as possible with the available funds. Staff is now sharing the proposed project list for the 2021 construction season in order to identify issues to be addressed in the coming design process. They will be meeting the disabilities commission. Liljeblad will forward the 2021 project list to the planning commission including three maps showing projects in the east, west and central areas of Duluth. The maps also show the 2020 Sales Tax Street projects for reference.

PL 16-055: Deputy Director Fulton gave an overview. They received supplemental correspondence from Jay Duncan. In discussing the city's next steps, City Attorney Asleson noted they are seeking reasonableness of approach with progressive enforcement. They will commence with drafting a written warning, with citations on certain aspects of the violation to follow; including possible revocation the special use permit. They will pursue all reasonable actions and demonstrate citation process which may lead them to the result of revocation. City Councilor Janet Kennedy asked for a timeline. Deputy Director Fulton stated the written warning will be coming soon. This is a multiple step process, and ultimately the city is seeking voluntary compliance. Jay Duncan noted the findings in 2016, which stated if not done in one year the permit would be revoked. Three years seems like a long time. He doesn't understand why the city is dragging their feet. Deputy Director Fulton stated they are proceeding with an abundance

of caution as they work with the property owner. Councilor Kennedy asked again for an estimate of timeline. Commissioner Jason Crawford stated he understands the neighbors' frustration. He doesn't see any efforts being made by the owner. Councilor Kennedy also hears the community's frustration. She was on the planning commission when this item was approved, and believed in good faith the applicant would comply. How much of a timeline? One year – four years? Deputy Director Fulton can't provide a specific timeline, but they will send a final notice by the end of the week. The applicant will then have two weeks to comply, and then administration citations can be issued. The applicant has some rights as the business owner. Kennedy stated as planning commissioners and city councilors they really need to be involved to enforce future issues. Deputy Director Fulton stated there will be modifications and stronger parameters in the future to prohibit auto sales uses from becoming junk yards. Duncan asked if Witt was the property owner. Lee confirmed Jesse Witt is the taxpayer, and has some level of ownership. Commissioner Eckenberg asked if Witt is selling cars, and if this was against the law. Deputy Director Fulton stated this property is MU-C, but partially zoned R-1. He has not seen any documents showing grand-fathered rights to sell cars. Sales are allowed in MU-C under certain parameters. Sales are not permitted in any case in a public right of way.

Heritage Preservation Commission – Commissioner Sarah Wisdorf stated there is no new business. Their next meeting is scheduled for November.

Joint Airport Zoning Board – No report.

Duluth Midway Joint Powers Zoning Board – No report.

### **Adjournment**

Meeting adjourned at 6:58 p.m.

Respectfully,

DocuSigned by:  
*Adam W. Fulton*  
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Adam Fulton – Deputy Director  
Planning and Economic Development