

City of Duluth Planning Commission

**May 14th, 2024 – City Hall Council Chambers
Meeting Minutes**

Call to Order

President Gary Eckenberg called to order the meeting of the city of Duluth planning commission at 5:02 p.m. on Tuesday, May 14th, 2024 in the Duluth city hall council chambers.

Roll Call

Attendance:

Members Present: Chris Adatte, Gary Eckenberg, Brian Hammond, Jason Hollinday, Margie Nelson, Danielle Rhodes, and Dave Sarvela

Members Absent: Jason Crawford and Andrea Wedul

Staff Present: Ryan Pervenanze, Jean Coleman, Jenn Moses, Kyle Deming, John Kelley, Chris Lee, Jason Mozol, and Samantha Smith

Approval of Planning Commission Minutes

Planning Commission Meeting – April 9th, 2024 – Changes were previously requested by Danielle Rhodes in an email sent to planning staff members regarding a change to item PL24-011. Rhodes shared these proposed changes with the rest of the commission. Staff members Jenn Moses and Ryan Pervenanze confirmed the requested changes will be made.

President Gary Eckenberg requested a change be made to the Attendance list, asking for commission members to have first and last names listed. Eckenberg also requested changes be made under the Heritage Preservation Commission Report portion under "Communications". Ryan Pervenanze ensured the corrections would be made.

MOTION/Second: Sarvela/Rhodes approved

VOTE: (7-0)

Public Comment on Items Not on Agenda

No comments.

(Items PL 24-039, PL24-044 and PL 24-252 were removed from the consent agenda and placed under public hearings.)

Consent Agenda

PL 24-035 Interim Use Permit for Amended Vacation Dwelling Unit in a Form District at 30 W 1st St by Jason Taly and Rachel Watson

- ~~PL 24-039 Variance from Shoreland Setback at 5730 London Road by Dean Jablonsky~~
PL 24-043 Interim Use Permit for a New Vacation Dwelling Unit at 103A E Superior Street by Eric Faust
~~PL 24-044 Vacation of a Utility Easement at 3800 Greysolon Place by Matt Schiller and Betsy Schwartz~~
PL 24-045 Variance from Retaining Wall Requirements in a Parking Lot on 3rd Street between 3rd and 4th Avenue W by St Louis County
PL 24-048 Vacation of a Portion of 63rd Avenue W Adjacent to 6303 Highland Street by Eric D. Abbett and Melissa Joy VanDell Abbett
~~PL 24-052 Interim Use Permit for an Interim Outdoor Living Site at 206 W 4th Street by Damiano Center~~
PL 24-053 Minor Subdivision for Incline Village at 802 E Central Entrance by Incline Plaza Development LLC

Commissioners: PL24-039 – Commissioner Danielle Rhodes requested this item be removed from the consent agenda and be placed under public hearings.

Public: PL24-044: Stephanie Ball – 3737 Greysolon Road – Stephanie addressed the commission and expressed her opposition to item PL24-044. She requested it be pulled from the consent agenda to be discussed individually.

PL-24-052: Roger Smith Sr. – 1720 Big Lake Road – Roger asked to remove this item from the consent agenda to be considered separately.

MOTION/Second: Nelson/Rhodes approved the consent agenda items as per staff recommendation.

VOTE: (7-0)

Public Hearings

PL24-039 Variance from Shoreland Setback at 5730 London Road by Dean Jablonsky

Commissioners: Rhodes requested clarification as to why this item was considered a routine ask. It is her understanding that the applicant is building a new structure and it appears that there is room on the front and the sides to get more space if that's what the applicant wishes. She is wondering why this is a unique situation in the eyes of staff members.

Staff: John Kelley addressed the commissioners. He informed them that the applicant is proposing to use an existing foundation to construct a new single-family home that will meet the current setbacks for R-1, with the exception of the rear of the building. There are a couple decks and roof eaves that will encroach into the 50 ft shoreline setback, which requires a shoreline setback variance. In terms of practical difficulty, the applicant has indicated in the report that there are constraints due to topographical issues and a MNDOT drainage easement directly west of the existing structure and foundation. The applicant is asking for relief of 7 ft into the shoreline setback for the decks and roof eaves.

Commissioners: Commission members asked staff about the drainage easement on the west side of the structure and the feasibility of the applicant building on the west side instead. Staff reiterated that the client is wishing to build on the back of the structure, not the west side, so as to avoid conflict with the existing drainage easement. Commissioners also asked how far the proposed deck will go over the shoreline setback.

Applicant: Dean Jablonsky, 5730 London Road: Dean addressed the commission regarding the details of his property. Jablonsky purchased his parcel in 2019. The garage on the parcel has a tuck-under living quarters and it was built in the late 1970s/early 1980s, which was before current UDC regulations. The practical difficulty for adding on to this property is the setbacks on the front, rear, and west sides, as well as a steep 18-ft drop-off on the East side. The applicant believes the best solution is to build on the existing foundation to build upwards. He also wants to have a view of the lake with this proposed structure by adding a deck. The new deck will achieve this lake-view goal, but the eaves will go into the 50 ft. shoreline setback by a few feet. Bill burns, Legal Representative of Jablonsky: Burns reiterates that the applicant wants to protect views of the lake, and no views will be obstructed with his client's building plan.

Public: No speakers.

Motion/second: Adatte/Hollinday recommended approval as per staff recommendation

**Vote: (6-1)
Rhodes opposed**

PL 24-044 Vacation of a Utility Easement at 3800 Greysolon Place by Matt Schiller and Betsy Schwartz

Staff: Jenn Moses addressed the commission. Moses recommends the procedure of first answering any commissioner questions, then ask the applicant if they would like to speak, and then open up the public hearing.

Commissioners: No questions.

Public: Stephanie Ball 3737, Greysolon Road – Stephanie addressed the commission and brought photographs for commissioners to help address her concerns about this item. Her property is directly behind the applicant's property. Her concern is that there is, what she calls, a severe storm water drainage problem in her neighborhood. There is a public easement on the applicant's property that could be used to address this drainage issue. She states that there was a large pipe was installed in the last several years that redirects water from the applicant's property to her backyard, making her backyard un-usable. Ms. Ball argued that a utility easement should not be vacated unless it is useless, and it is not useless to her. Her map showed the utility easement and where it runs in regards to her property. It drains into her backyard. She suggested there is also likely a sub pump because of the "whoosh" noises that she hears.

Applicant: Matt Schiller addressed the commission. He stated that there is a sub pump from the basement that works in conjunction with the pipe to direct water in between her parcel and her neighbor's property, not directly into her yard. He would be happy to cut the pipe shorter if that would help Stephanie. The issue in question is vacating a Minnesota Power easement that is not being used, which is not a public utility easement. Schiller reiterated that he would be happy to speak with Stephanie in private about finding a resolution to remedy her water drainage concerns, but the issues about the pipe she brought forward to the council are ultimately unrelated.

Commissioners: Commissioners had questions about whether the easement that the applicant wants to be vacated is a Minnesota Power easement or a City of Duluth easement, because the applicant's original plat drawings had Minnesota Power on them and the City would not be the entity to address that. Commissioners also requested clarification in regards to the issue at hand being a drainage issue.

Staff: John Kelley answered that it's a platted city easement. Minnesota Power is a private utility company, but staff did hear back from them that there were no issues reported for the vacation of that utility easement at this time.

Staff: Kelley answered the commissions questions saying that the issue being discussed seems to be about water drainage from one property to another, which is an issue between neighbors and should be handled by them outside of the commission meeting. The City Engineering department has deemed this easement useless as there is no need for it in that area. However, the City engineer stopped short of a complete utility vacation because there is an existing 5ft chunk of the easement that will be preserved. The City Engineer has retained the important part of the easement.

Motion/second: Rhodes/Hammond recommended approval as per staff recommendation

Vote: (7-0)

PL 24-052 Interim Use Permit for an Interim Outdoor Living Site at 206 W 4th Street by Damiano Center

Commissioners: Commissioner Rhodes asked staff for more information about the Safe Bay program as well as the potential for a temporary fence or screening permit for this project.

Staff: Jenn Moses addressed the commissioners. She believes the applicant hasn't looked into the details of that at this point, however, if the applicant chooses to pursue a fence permit application in the future, they will need to adhere to existing zoning rules for fences and have a fence permit in place. Moses explains that the applicant is seeking an Interim Use Permit for what the zoning code calls an Interim Outdoor Living Space. The City has been working with many organizations who help people who are experiencing homelessness, and they identified a need for places that are monitored where homeless people can go to be safe. Last year this organization operated under temporary use permit to see if the program ran smoothly and whether or not they would want to renew. This year staff guided them to the interim use permit so they can re-evaluate once a year to make appropriate changes, if necessary. Damiano center works in collaboration with CHUM and Safe Bay. This is a safe, legal place to for people to park and sleep overnight, and they also provide showers, bathrooms, trash/recycling and all services required by zoning regulations for an outdoor living site. It is staffed the entire time it's open by trained monitors. Damiano and Safe Bay staff has noticed that by having staff present the entire time it's open, that there has been less trespassing and less dangerous activity since opening last year.

Applicant: Seth Courier, 629 N 7th Ave E from Damiano Center – Seth addressed the commission. Safe Bay is a collaboration with CHUM and Damiano, where CHUM utilizes Damiano property and hygiene unit to operate Safe Bay at night. During the pilot launch of the Safe Bay program last year, Courier noted that there was a significant amount of unwanted activity, trespassing, and trash accumulation that occurred during the day outside of Safe Bay hours. People who were not utilizing Damiano services would park their cars outside the Damiano, which is where many of these issues were stemming from. Now, there is no parking allowed on the street outside of staffed hours by those who are not using Damiano's services, and this policy has caused these problems to subside. Courier went on to say that the neighborhood is safer when Safe Bay is operating. There is currently a half fence up around the Damiano property to help CHUM staff manage people who were walking through the parking lot. They want to apply for a fence permit and build a temporary fence that can put up and taken down every day. The purpose of this temporary fence will be to provide safety and comfort to the people staying there by serving as a physical and visual barrier. They want a temporary fence because Safe Bay works in conjunction with the warming center, so Safe Bay opens when the warming shelter closes. Courier also explained that Safe Bay is designed to be a short-term solution for people experiencing homelessness and is meant to help them transition to more permanent housing.

Public: Roger Smith Sr., 1720 Big Lake Road – Smith addressed the commission and was there speaking as a representative of the Fond Du Lac Band of Lake Superior and Chippewa. The Center for American Indian Resources (CAIR) building is across the street from the Damiano Center, and Smith explained that they have had concerns with people who utilize Safe Bay at the Damiano Center over the past 2 years. The Fond Du Lac Band appreciate the Damiano's work and the services they provide for the community, at the same time they've been seeing problems during the day with garbage, human waste, drug/alcohol paraphernalia, and other debris being left around. Smith went on to talk about other issues that have occurred in 2024. The staff and clients at CAIR are not opposed to the permit or services provided by Safe Bay and the Damiano Center, but they do have safety concerns for their clients and staff members who work in the CAIR building.

Commissioners: Commissioners had clarifying questions about the hours of operations and more police involvement to address the safety concerns of the public.

Staff: Jenn Moses responded by informing the commission that the problems Mr. Smith reported did not happen under Safe Bay as it hasn't been in operation yet this year in 2024. Moses noted the Safe Bay hours of operation are from 8pm to 8am each night in the warm months. Staff also pointed out that the police have been involved are aware of the concerns of the public, and staff have bi-weekly meetings that anyone is welcome to join to discuss these issues and how to improve the neighborhood. Above all else, Safe Bay has helped people and is making a positive difference in the community. There are still issues going on that are part of a bigger problem and are well-noted, but Safe Bay is helping resolve them and is not related to the public's concerns.

Motion/second: Nelson/Rhodes recommended approval as per staff recommendation

Vote (7-0)

PL 24-021 Variance to Corner Side Yard Setback at 1231 W 4th Street by Katherine Mueller and Kevin Farnum

Staff: Jason Mozol addressed the commission and introduced the project with photos on display for the commission to reference. The current side-yard setback is 15 ft., and the applicant is requesting 3.9 ft. When reviewing a variance application, staff and Planning Commission consider 4 different practical difficulty criteria. 2 of these criteria were not met during review: The exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property. Due to these findings, staff recommend Planning Commission deny the variance request. The applicants provided additional information regarding reduced output of a solar array if they were not granted the variance, but this was not considered for practical difficulty because compliant location of the proposed garage does not significantly limit the access to solar energy. Mozol presented a map that shows available space for garage to be built on the property.

Applicant: Katherine Mueller, 1231 W 4th St – The applicant presented additional materials including a survey. She talked about electrical usage for the proposed garage, specifically how solar access would be reduced in almost any other area of their lot mainly due to trees. Staff assumes their lot is buildable, but the applicant says that not all of it is due to protruding bedrock. Item 7 in the Staff Report warns of potential increased street congestion with the proposed variance. Mueller argues that it will not cause such problems given the length of the driveway being longer than a pick-up truck, and with this new garage they would park their vehicles in there instead of the right of way. Additionally, their house is located in a dead-end alley, avenue, and street, all of which the city has vacated. Her point being that this is a low-traffic area and the variance would not cause and increase in street congestion.

Public: No Speakers.

Commissioners: President Eckenberg asked the applicant to confirm that without the variance, there would be less solar production. Eckenberg asked for clarification on how this would apply to practical difficulty criteria, as it was unknown exactly how much of an impact on solar production the variance denial would have.

Applicant: Mueller responded that there would be less solar generation without the variance due to where the garage would be in relation to the house. State statutes for electricity do not apply to garages as they do to houses, and she is wondering why this is.

Staff: Jenn Moses added that while sunlight is important for solar projects, this does not guarantee that people can construct a large structure wherever you want, be it a house or garage. However, this is a garage project, not a solar project. There are many houses in Duluth that have shade that might not have the best spots for garages with solar panels, therefore this is not a unique problem. Staff also brought up the desire to preserve trees, and how preserving a tree in a proposed plan does not meet the practical difficulty criteria. It is not possible for staff to say yes to this project due to lack of substantial evidence. The garage could be built elsewhere and there are other solar places on the property that don't require cutting down trees.

Commissioners: Discussion ensued amongst the commission members about the potential kilowatt hours that will be saved each year with this proposal. It would not be a substantial amount of energy saved, per Minnesota Power rates found online. Commission members expressed their support of solar energy, but they determined that there are a lot of other places on this property that could get sun. When it comes to solar panels being installed, green energy should be encouraged. Green energy is good, but the project still needs to meet the criteria that was previously established.

MOTION/Second: Rhodes/Sarvela motion to deny the variance request per staff recommendation

VOTE: (5-2)
Eckenberg and Adatte opposed

PL 24-041 Variance from Rear Yard Setback at 1515 E 7th Street by Craig and Margaret Lilja

Staff: Chris Lee addressed the commission. The applicant of this project proposes to reduce the current rear-yard setback from 25ft to 18ft to build an attached garage to the rear of their existing home. Chris Lee presented images of a map that showed the buildable area if the garage is detached. The applicant states that this is a necessary request to build the garage on the same grade as the home, however the desire does not meet the variance criteria for exceptional narrowness, shallowness, or shape. Staff determined that the garage can be constructed in a manner that does not require a variance. However, the one potential uniqueness of this property is the telephone pole location that could prohibit some access to the garage, but there is still room for a driveway and navigating around the pole is possible. The circumstances are not unique. Staff recommends Planning Commission denies the variance request due to the reasons listed in the staff report.

Applicant: Craig Lilja, 1515 E 7th St. – Mr. Lilja addressed the commission. He stated that staff reported to him that the project meets all 9 zoning requirements except the the practical difficulty criteria, but the applicant believes they do meet the criteria. He says that if the garage were to be detached, the power pole would be in the driveway apron no matter how the garage is placed. That reason, to them, defines practical difficulty. Lilja then referenced item PL24-016 where staff recommended UDC text changes to R-1 setback regulations, specifically the rear setback reduction. Lilja also referenced an email from planner Chris Lee, that said if the

Applicants wait until council approves these changes, they would be able build the garage how they want and not need to request a variance. However, Lilja still wants to pursue the variance request on the principle that these variance requests exist so citizens can have the opportunity to vary from the code, and not have to wait until City Council changes the code. They also wish to continue with the variance request due to the power pole posing potential practical difficulty for them, and because the proposed project meets all of the other zoning criteria.

Public: No speakers.

Commissioners: Commissioners asked the applicant how much it would cost to have Minnesota Power move the pole, and the applicant informed them that it was determined to be upwards of \$9,000 to \$10,000. Money, however, is not a practical difficulty. Commissioner Rhodes noted that the UDC setback changes are actively making their way through city council. She imagines that these things must happen from time to time, where someone has a project being held up by a code change that is in progress. Rhodes asked staff for clarification on what the realistic timeline is for this change to the code. Commissioners also asked staff what would happen if they were to deny the request, or possibly table the request.

Staff: Jenn Moses stated that the proposed code changes were read at Council the night before on May 13th, and expected that second read will be later towards the end of May. After the code change is approved, it would go into effect 30 days later. If council votes to approve, CSI will start the process of reviewing building permits. Staff reminds everyone that they are handling this proposal based on what they are able to do right now per the current code. Staff was trying to give the applicant hope by letting him know that the code change could happen soon, but they can't legally approve this variance until the code is changed. There is legal risk to anticipate and apply potential code changes that may or may not happen. If council denies the code changes, the applicant can appeal, but the variance cannot be applied for again for another year. If Planning Commission votes to deny the applicant's request and council passes the code changes, there would be no need for the variance request. If this item is tabled, it will show up on next month's agenda in June.

MOTION/Second: Hammond/Nelson motion to deny the variance request per staff recommendation

VOTE: (5-2)
Eckenberg and Hollinday oppose

Other Business

PL 23-127 Adoption of Final Alternative Urban Areawide Review (AUAR) for the Central High School Redevelopment Project site at 800 E Central Entrance PL 24-058

Staff: Kyle Deming addresses the commission. He informs the commission that this is the final step in the AUAR process, as the Planning Commission approved it last month. The comment period expired with no objections filed, but 2 letters were received, that are included in the packet. Staff recommends for the Commissioners to adopt the final AUAR document.

Commissioners: No comments or discussion.

MOTION/Second: Nelson/Hollinday recommended approval as per staff recommendation

VOTE: (7-0)

PL 24-058 Compliance with Comprehensive Plan of Tax Increment Finance (TIF) Plan establishing TIF District No. 37 for Incline Plaza Phase 1 at 800 E Central Entrance

Staff: Kyle Deming addresses the commission. It is a statutory requirement that Planning Commission considers a TIF plan's consistency with the comprehensive plan and underlying

zoning. In order to assist planning commissioners, staff prepared a memo outlining the proposed TIF plan and what's to be accomplished with that plan. The memo also provides the comprehensive plan future land use designation for the property and the zoning, including their purpose statements and their intended uses, as well as the current zoning's regulating plan. There must be consideration of 5 guiding principles from the comprehensive plan found in the memo. Staff finds that the project is consistent with the comprehensive plan and the underlying zoning, including the regulating plan that has already been adopted for the property. Staff recommends that the Planning Commission finds that that the TIF plan is in compliance with the Comprehensive Plan.

Commissioners:

MOTION/Second: Hammond/Nelson recommended approval as per staff recommendation

VOTE: (7-0)

Communications

Land Use Supervisor (LUS) Report – Ryan Pervenanze addressed and thanked the commissioner on behalf of staff for their role in the AUAR process. He also acknowledged Senior Planner Kyle Deming for seeing the AUAR project through. Pervenanze mentioned that the commission will see some more environmental reviews coming up, including the Sofidel expansion project. Recognition and thanks were given to city attorney Jean Coleman for her efforts of working with staff and commissioners. She has accepted another position elsewhere and will be missed. Pervenanze also provided an update on PL24-011 in regards to Bald Eagle. The item went to council last night on 5/13, but no action was taken. There were many public comments, but the "fireworks" will come at the next meeting.

Heritage Preservation Commission Report: Staff informed the commissioners that there was no meeting, so there is nothing new to report. Bi-laws require a member of the Planning Commission to serve on the HPC. Commissioner Chris Adatte volunteered and was appointed Representative of the Planning Commission to the Heritage Preservation Commission. Vote by acclimation was recommended per Attorney Coleman.

Vote: (7-0) Chris Adatte is appointed.

Joint Airport Zoning Board – There is no report as the group has not met. President Eckenberg's term expired earlier this year, so they still need a member from the Planning Commission to serve on that board.

Duluth Midway Joint Powers Zoning Board – Staff reports that there are no major updates. Staff are still in communication with Midway Township and are still looking at doing a land-use study for the land off of Becks Road.

Adjournment

Meeting adjourned at 7:05 p.m.

Respectfully,

DocuSigned by:

Ryan Pervenanze

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Ryan Pervenanze, Manager
Planning & Economic Development