



City of Duluth
Planning Division

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City of Duluth
Planning Commission
Minutes of September 14, 2010
City Council Chambers, City Hall

I. Call to Order: President Rand called the meeting of the Planning Commission to order at 5 p.m., Tuesday, September 14, 2010, in the City Council Chambers of Duluth City Hall and explained the public meeting procedure to the audience.

II. Roll Call:

Members Present: Mike Akervik, Mindy Appold, Henry Banks, Katelyn Blazevic, Rebecca Covington, Drew Digby, Terry Guggenbuehl, Frank Holappa, Heather Rand, David Sarvela, and John Vigen

Members Absent Excused: None

Staff Present: Christina Berglund, Kyle Deming, Jenn Reed Moses, Cindy Petkac and Edna Ulrich

III. Other Business – Variance Policy Update

Petkac stated that the policy memo included in the packet was drafted by Alison Lutterman. It explains the recent MN Supreme Court decision regarding granting variances from zoning regulations and determining undo hardships. The memo states that the applicant must present three factors in order to be granted the variance: That the property cannot be put to a reasonable use if used under the conditions allowed by official controls; the plight of the landowner is due to circumstances unique to the property and not created by the owner; and that the variance will not alter the essential character of the locality. If the land can't be put to a reasonable use, it would constitute a hardship.

IV. Public Hearings (staff reports of matters are on file in the Planning office)

V. A. **FN 10077** – Ramsey Village TND Amendment for exterior building signage standards by Wagner Zahn Architecture. **JM**

Staff: Moses presented the zoning text amendment for Ramsey Village. Ramsey has 9 building types and a need for signage. We have received comments from staff and others on these changes. This is consistent with the sign code and UDC.

Applicant: Elden Lindamood stated that they are currently working on a mixed use project which will include an office building and apartment building. He is requesting that the sign standards be approved.

MOTION/Second: Vigen/Appold to **Recommend Approval** for Ramsey Village TND Amendment for exterior building signage standards by Wagner Zahn Architecture.

Vote: Unanimous 11-0

B. **FN 10075** – C5 Plan Review for an off-site electronic billboard by heartland Digital Outdoor at 1101 Mall Dr. **NB**

Staff: This petition is for a C-5 plan review for an electronic sign. There is currently an approved Community Unit Plan for this property that includes a landscape plan. The applicant would like to remove 57 trees within a .5 acre triangular area. This project is inconsistent with the landscape plan approved as part of the CUP. Removal of trees would have an adverse effect on the natural environment as well as the visual and aesthetic quality of the development and is contrary to the purpose of C-5 plan review. Staff recommends denial of this application.

Applicant: John Dietrich, 6110 Minnetonka Blvd. Heartland Digital has worked for over a year to be consistent with the C-5 zoning. They have also worked with MnDOT and obtained a tree replacement plan. They have met all the standards that are set forth within the C-5 district. Trees are important, green is important and this business is important. The development is the sign. Applicant asks for approval for this plan.

Discussion: Akervik asked how they would do upgrades on the signs and Dietrich stated that the maintenance would be individuals on ladders. Should there be bigger repairs, they can have the crane come in but that would not be the norm. Banks asked about the brightness of the sign and Olson stated that it would be the same as the one across from Miller Hill Mall. The lighting of the signs is automatic and falls within the sign regulations.

Holappa stated that the property owner has the right under C-5 zoning. He thinks it should be something we should support. Digby was concerned that there was a resolution at some point approving the CUP. Petkac stated that the staff recommendation was based on the fact the CUP that was approved had a landscape plan and this proposal is not consistent with that plan.

MOTION/Second: Holappa/Akervik **Recommend Approval** for the C-5 Plan Review for an off-site electronic billboard by Heartland Digital Outdoor at 1101 Mall Dr. **Failed**
Vote: 2-9 (Akervik, Appold, Banks, Blazevic, Digby, Guggenbuehl, Rand, Sarvela, Vigen opposed)

C. **FN 10090** – Vacate 225 feet of alley to improve access to parking lot by Miners Inc at 208/210 N Central Ave & 5300 Bristol St. **NB**

Staff: This is a petition to vacate the alley between the Super One property and 208/210 Central Ave to provide improved access to adjacent properties and improved traffic circulation to Super One. There is a gas and sewer main within 200' of the alley and City Engineering will retain utility easements for the entire width and length of the vacated portion of the alley. Minnesota Power will also retain a utility easement for the power line. The City Fire Marshal had no concerns about the vacation. They did receive one telephone call from a neighbor who is concerned about how fast people drive through the alley.

Applicant: John Geissler represents Miners Inc. They own both sides of this alley to wish to have improved access to both properties. The own ers are willing to grant permanent utility easements. They met with Minnesota Power on site and they will get rid of the poles and the electric lines will be buried. The Fire Marshal had no objections to this. Their proposal should slow the traffic down. Berglund

stated that they would need a curb cut permit for the driveway and the Engineer would take this into account. Geissler said that they already have a curb cut but may need to relocate it a bit.

MOTION/Second: Akervik/Appold to **Recommend Approval** to vacate 225 feet of alley to improve access to parking lot by Miners Inc at 208/210 Central Ave & 5300 Bristol St.
Vote: Unanimous 11-0

D. **FN 10087** – Water Resource Management Ordinance variance to allow filling 9,205 SF of wetland for construction of a K-8 school by Tischer Creek Building Co. at the northeast corner of Rice Lake Road and Technology Dr. **KD**

Staff: This is for a Wetland Variance and will impact 9,205 SQ Feet to construct a K-8 Edison learning center and associated facilities. They need to show that they are not increasing the water temperature in Chester Creek and not increasing storm water runoff from the applicable watershed. The applicant has agreed that any wetlands that are filled or drained will be replaced with wetland credits purchased from a wetland bank in the Lake Superior greater watershed. This variance is within the newly stated Variance Policy. They provided a site plan and discussion that shows compliance with the findings. They tried to avoid as much wetlands as was possible and have selected a bank to purchase the wetland credits.

Applicants: Mark Pilon and John Jamnick. Pilon commented about the wetlands that were to be temporarily impacted stating that the wetland soil will be put back and there will be no impact on the wetlands. If it does, they will need to purchase additional wetland credits. They have kept the impact on wetlands to 1.3% of the site.

MOTION/Second: Appold/Sarvela to **Approve** the Water Resource Management Ordinance variance to allow filling 9205 SF of wetland for construction of a K-8 school by Tischer Creek Building Co. at the northeast corner of Rice Lake Road and Technology Dr.
Vote: 8-1-2 (Digby opposed, Vigen/Holappa abstained)

E. **FN 10088** – Rezone from M1 to a C5 by J&S Partnership between 44th & 46th Ave W & Grand Ave (lower side). **NB**

Staff: The Applicant is requesting the rezoning of several pieces of properties from M-1 to C-5. There is a small section zoned I-P and applicant would like this rezoned to C-5 as well. C-5 will convert to MU-C when the UDC becomes effective. Staff recommends approval as the rezoning is consistent with the Comprehensive Plan.

Applicant: Bill Burns, Hanft Fride. Burns has been working with J&S Properties. As they are looking at the existing and the new code, they see that this is an acceptable use. Both Fred Strom and Ron Johnson are here and would be happy to answer any questions.

MOTION/Second: Vigen /Holappa to **Recommend Approval** to Rezone from M1 to a C5 by J&S Partnership between 44th & 46th Ave W & Grand Ave (lower side).
Vote: Unanimous 11-0

F. **FN 10089** – Alley Vacation by J&S Partnership for the alley between 44th & 46th Ave W & Grand Ave and easements. **NB**

Staff: This is in the same area as the previous File. They are requesting an alley vacation. There are two water mains and City Engineering requests that the City have a 10 ft wide utility easement south of alley between 44th Ave W and 45th Ave W and a 10 foot wide utility easement North of the alley between 45th Ave W and 46th Ave W. Staff recommends approval of the vacation of the alley and maintaining the easements as granted by the applicant.

MOTION/Second: Vigen/Holappa to **Recommend Approval** the Alley Vacation by J&S Partnership for the alley between 44th & 46th Ave W & Grand Ave and easements. Vote: Unanimous 11-0

G. **FN 10057** – Rescind Vacation and Vacate and Rededicate at 43rd/44th Ave W. and Oneota by the Duluth City Engineers. **NB**

Staff: These were approved in 2005 for the vacations but were never recorded. 43rd Ave W is used for access for the two properties but does not provide through access. The applicant has requested to maintain the retention of utility easement along 44th Ave W. The property owners have agreed to the vacations. Staff recommends approval of these vacations.

Public Input: Rita Johnson - 4302 Grand Ave. Rita stated that there are homes here that need access by the alleyway. There is access but it is minimal and asked if there are any plans to make this a through street. This is a gravel road from Grand Avenue to the alley. There are many potholes and bumps in the road and what will be the impact on the houses on that row? Berglund states the vacation will be south of the alley and they will continue to have access. Petkac will follow up with her and get her to the appropriate contact regarding the condition of the road.

MOTION/Second: Akervik/Appold to **Recommend Approval** for the Rescind Vacation and Vacate and Rededicate at 43rd/44th Ave W. and Oneota.

Vote: Unanimous 11-0

H. **FN 10076** – Vacate 44th Avenue East from Dodge Street north to the alley by Jarrod Novotny. **KD**

Staff: The Avenue has not been constructed and the portions of 44th Ave E below it and above it have been vacated. The alley does include a Minnesota Power line and a pair of City storm sewer catch basins. The standard for vacation is uselessness and it has been determined by staff to be useless for vehicular and pedestrian purposes. The right of way is needed for utility purposes and Minnesota Power indicated that they would like the full length and width of 44th Ave E retained in a utility easement to have access to these poles. It is often difficult for access in the alley and they want the full access. There was one comment supporting the vacation from a neighbor. Staff recommends approval.

MOTION/Second: Covington/Appold to **Recommend Approval** to Vacate 44th Avenue East from Dodge Street to the alley north.

Vote: Unanimous 11-0

I. **FN 10092** – MC Plan Review for changes to the landscaped setback area on the east side of the Fourth Street Parking Ramp by SMDC. **KD**

Staff: This is a Medical Center plan review. The parking ramp was approved in 1995. SMDC is willing to grant a roadway easement of the eastern edge of the block to the City to have diagonal public parking in 4th Avenue East while still maintaining the public sidewalk. This would reduce the landscape area and setback required of the 1995 plan approval. It will now be 11 feet closer. Item B relates to the setback of the parking ramp. A 15 foot set back from all avenues is required. They propose to achieve the average setback width which meets the code requirements. Landscape area will be reduced from 17% to 15%, which still meets the code requirements.

Appold asked if this went through the City Engineers and Deming stated that they are in support of this parking arrangement. On 5th Ave E there is diagonal parking which is on the opposite side of the street, as well as on Superior Street. Vigen asked if SMDC is granting the city additional right of way for the City to widen the street and who is paying for it? Deming referred the question to the applicant.

Applicant: Joe Litman with LHB and representing SMDC. SMDC will be paying for the costs of the improvements. The parking will remain public metered parking. The reason for the setbacks and additional space is because they are meeting all the State statutes and guidelines. Appold asked about the sidewalks being next to transformers. Litman stated that the transformer doors are on the opposite side and do not swing out into that area. Appold asked if the sidewalk retaining wall will have railings and Litman replied that there will be solid steel railings, the highest is 3 to 4 feet.

MOTION/Second: Appold/Holappa to **Approve** the MC Plan Review for changes to the landscaped setback area on the east side of the Fourth Street Parking Ramp by SMDC.

Vote: Unanimous 11-0

- VI. Consideration of minutes - August 10, 2010. Motion/Second by Sarvela/Guggenbuehl.
Vote: Unanimous 11-0
- VII. Communications
 - A. City of Two Harbors correspondence

The City of Two Harbors is requesting the City of Duluth Planning Commission to support their efforts to have the Federal Highway Administration and MnDot amend their prohibiting any new off-premise advertising signs. Vigen and Sarvela volunteered to be contacts for them. Staff will draft a letter in support of their efforts with the Sign Regulations.

MOTION/Second: Vigen/Blazevic to support the City of Two Harbors efforts to have the Federal Highway Administration and MnDot amend their sign regulations restricting any new off-premise advertising signs.

Vote: Unanimous 11-0

- VIII. Old Business
- IX. Reports of Officers and Committees
 - A. Downtown Waterfront Mixed Use District
- X. New Business

FN 10093 - Consideration of hotel use in a W-1 District according to Sec. 50-111 by Joel Johnson at 1000 Minnesota Ave. **KD**

Staff: The nature of the project is a hotel with 40 to 60 rooms/suites at 1000 Minnesota Ave. This is a request for determination that the hotel use is advantageously served with the direct access to water or for other reasons that requires direct access with the waterfront. The hotel would be substantially marketed for Marina guests to lodge here and to be conveniently located to the water.

Digby questioned if there would be anything permitted that it not become a much larger hotel. Deming stated that they will need to meet all zoning and shoreland requirements and that the hotel use is limited to the area shown on the map.

Applicant: Bill Burns stated it has been a rather complicated process to propose a hotel for this part of MN Point. They are now proposing to locate the hotel on the harbor side of MN Avenue as the Park Point residents suggested they would support. The marina and hotel are to work together. There was a similar hotel permitted in a W-1 zone last year. They have word from City Engineering that the sewer system is more than adequate. Banks asked who would pay for infrastructure and Burns stated that he is not aware of anything that the city would pay for.

MOTION/Second: Digby/Holappa to **Approve** for Consideration of Hotel use in a W-1 District according to Sec. 50-111 by Joel Johnson at 1000 Minnesota Ave.

Vote: 10-0-1 (Blazevic abstained)

XI. Additional Business

Katelyn Blazevic was thanked for her service with the Planning Commission. Henry Banks stated that he will be resigning after two more meetings. Staff will follow up with City Administration.

Petkac stated that last year the City Council passed an ordinance reducing the number of Planning Commission members to nine members by 2013. With Blazevic and Banks' resignations, along with Stebe's resignation last month, the Planning Commission membership is at nine and therefore, there wouldn't be a need to fill these vacancies. Rand stated that as members' terms expire, the city should look at new applicants living in various neighborhoods throughout the city. Vigen stated that he feels the diversity of applicants' backgrounds is more important than where they live. Petkac stated that she would check the bylaws to see if the reduction in the number of Commissioners requires any changes. Sarvela asked that the quorum issue be addressed also.

Petkac stated that Mayor Ness would like to have a celebration for the UDC when it goes into effect on November 19. Jenn Moses is working on 2 manuals, a UDC Procedures Manual and an Applications Manual. Staff training and one or two brown bags will be held before the implementation, scheduled sometime in October and November.

XII. Adjournment. Motion: Digby/Holappa to Adjourn. President Rand Adjourned the Meeting at 7:15 pm.

Respectfully,



Cindy Petkac , AICP
Land Use Supervisor

CP:eu