

City of Duluth  
Planning Commission  
**Minutes of Tuesday, April 13, 2010**  
City Council Chambers, City Hall

**I. Call to Order:** President Akervik called the meeting of the Planning Commission to order at 5:00 p.m., **Tuesday, April 13, 2010**, in City Council Chambers of Duluth City Hall and explained the public hearing procedure to the audience.

**II. Roll Call:**

Members Present: Mike Akervik, Mindy Appold, Henry Banks, Katelyn Blazevic, Rebecca Covington, Drew Digby, Terry Guggenbuehl, John Vigen

Members Absent Excused: Frank Holappa, Heather Rand, David Sarvela, Jim Stebe

Staff Present: Kyle Deming, Terri Fitzgibbons, Alison Lutterman, Cindy Petkac, Edna Ulrich

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

A. **FN 10021** - C-5 Review for 10,211 square foot store addition and parking lot expansion at 5401 Burning Tree Road by Miner's, Inc, Super One Foods (KD)

**Staff:** Deming reviewed changes to the amended staff report. The proposal is for a building addition and parking lot expansion at Super One Foods. A pole sign and driveway have been relocated as well due to the Minnesota Department of Transportation (MNDOT) highway expansion project. A variance is requested for parking count and parking lot setback, which is allowed in the code. Staff recommends approval.

**Discussion:** Digby asked if these requirements will be different under the new code. Deming stated the new code will generally have enhanced requirements. Digby asked about the sidewalk, and Deming stated the plan follows the code for public access and a bus shelter will be relocated within the parking lot.

**Applicant – John Geissler, DSGW Architects:** Geissler stated the bus stop will be moved slightly to the north with no significant change, and a sidewalk has been added.

**Discussion:** Vigen asked about ambiguity of the property line. Geissler stated a Salo survey confirmed the addition falls within the property limits. Vigen asked about the parking lot setback variance, and Geissler stated a variance is requested from the required 25 feet to 10 feet. An existing parking lot in the southwest corner has no setback.

Appold asked about trees within parking lot islands. Geissler stated three islands contain trees on the plan. Appold expressed concern about a scotch pine being a suitable tree for this site. She is also concerned about water runoff flowing to the island closest to the store and not being filtered. Geissler stated they will review this area to ensure the water is treated in the bioretention pond.

Vigen asked about snow storage, and Geissler stated the majority of snow will be dumped on the other side of the retaining wall at the far end of the parking lot.

Appold asked about new calculations for stormwater runoff. Geissler stated the new calculations were approved by Eric Shaffer of City Engineering.

**Public Input** – Karen Lewis, 120 West Fifth Street, Duluth: Lewis takes the bus to this area and is concerned about accessibility and safety between Super One and Burning Tree Mall. Lewis is also concerned about runoff going straight into Miller Creek. She feels Burning Tree Road and Mall Drive is a dangerous intersection and is also concerned that trees not be too high for visibility.

<b>MOTION/Second:</b> Vigen/Appold to Recommend Approval of C-5 Review for 10,211 square foot store addition and parking lot expansion at 5401 Burning Tree Road by Miner's, Inc, Super One Foods Vote: 7-1 (Digby Opposed)
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B. **FN 10022** - Vacation of alleyways in area of Arrowhead Road and Kenwood Avenue by Duluth Teachers Credit Union (KD)

**Staff:** Deming stated the vacation is for the area only immediately adjacent to property owned by the applicant. The standard for a vacation is determining the uselessness of the alley. This section has not been improved for vehicular purposes and likely will not be in the future since the property on both sides is owned by the applicant. The alley is needed for utility purposes as MN Power, phone, and gas lines are located in the alley. Staff recommends approval of the vacation with retention of a utility easement.

**Discussion:** Appold asked what the vote was for the previous file regarding this matter before the Planning Commission. Deming stated in 2008 the Planning Commission recommended approval which the City Council denied. Appold asked why it's coming before the Commission again. Deming stated he will defer to the applicant but indicated the land requested has changed slightly from the previous request.

**Applicant** – William Burns, Hanft Fride: Burns stated this site has been controversial and the neighbors feel they were wronged when the property was rezoned. The use of this site is best utilized for commercial use, and if the alley can be vacated the current owner (Duluth Teachers Credit Union) plans to sell the property.

**Discussion:** Vigen asked about the history of adjacent homes being purchased, and Burns stated the two properties south of the proposed vacation are owned by the credit union.

**Public Input** – Diane Schubert, 104 West Cleveland Street: Schubert's priority is healthy and safe neighborhoods. She feels the alleys protect the neighborhood and prevents traffic from coming onto Cleveland Street.

Cheryl Behling, 117 West Cleveland Street: Behling stated she is against this vacation and wonders why the applicant keeps requesting same. If approved, the community will lose control over the future use resulting in diminished property values, degradation of the neighborhood, and unsafe intersections.

Barbara Brooks, 1530 West Arrowhead Road: Brooks stated one corner of residential property at this site will be surrounded by commercial property. Brooks is concerned about accidents at the intersection of Arrowhead Road and Kenwood Avenue.

Marlene Zwak, 105 West Cleveland Street: Zwak stated she is concerned about traffic safety issues at Arrowhead Road and Kenwood Avenue as well as the dead-end Cleveland Street.

Diane Sorensen, 40 West Cleveland Street: Sorensen stated traffic safety is the utmost concern in opposing this vacation. A large-scale commercial use was never intended for this site during previous approvals.

John Sorensen, 40 West Cleveland Street: Sorensen stated the property owner exercising its rights is not a valid reason to grant a vacation.

Karen Lewis, 120 West Fifth Street: Lewis is concerned about a business at this site due to the already busy intersection.

**Discussion:** Akervik asked if the vacation would change the use of the adjoining residential property. Deming stated the zoning boundary is the center of the alley and the vacation does not affect this. Vigen stated the ancillary use of surrounding land was not considered at the time the corner property was rezoned. Vigen asked about the zoning code provision that allows encroachment of up to 300' into a more restrictive zone, and Deming confirmed a parking lot can be granted with a variance from the Board of Zoning Appeals. Petkac stated in the new UDC it is proposed to remove that provision. Vigen stated the issue is really the maximum economic gain being sought by the property owner. Vigen feels alleyways serve a greater function within neighborhoods than simply right-of-way.

Akervik made a motion to recommend approval which was not seconded.

<p><b>MOTION/Second:</b> Vigen/Banks to Recommend Denial of Vacation of alleyways in area of Arrowhead Road and Kenwood Avenue by Duluth Teachers Credit Union Vote: 7-1 (Akervik Opposed)</p>
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- C. **FN 10023** - Vacation of "Building Line Easement" along East First Street near 12<sup>th</sup> Avenue East by Semper Development (KD)

**Staff:** Deming stated this vacation is for an easement which was condemned in 1904 across the front 20 feet which functioned as a building setback line. Staff finds the easement useless and recommends vacation because its function has been replaced by the zoning code.

<p><b>MOTION/Second:</b> Vigen/Appold to Recommend Approval of Vacation of "Building Line Easement" along East First Street near 12<sup>th</sup> Avenue East by Semper Development Vote: Unanimous 8-0</p>
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D. **FN 10024 - Medical Center District Plan Review at 12<sup>th</sup> Avenue East between Superior Street and East First Street for Walgreen's store, Semper Development (KD)**

**Staff:** Deming stated this plan is similar to a C-5 plan review with slightly different criteria. The proposal is for a Walgreen's store, which is a permitted use in the area. Staff recommends approval.

**Discussion:** Appold asked where the closest bus stop is located, and Deming stated one is located at every block on Superior Street. Deming stated a sidewalk connects the building and is accessible. Digby asked about the definition of safe pedestrian connections. Deming stated the wording of the code includes the word "enclosed" referring to Skywalk connections, but is applied overall for safe connections. Digby is concerned about pedestrians cutting across the parking lot from the medical district to the store.

**Applicant – James Kohler, Semper Development:** Kohler reinforced Deming's staff report.

**Discussion:** Vigen asked about bicycle and motorcycle parking. Kohler stated a bike rack is located at the front door and motorcycles would park in regular parking stalls. The grade on 12<sup>th</sup> Avenue East was taken into consideration for the lot configuration and accessibility. Appold asked about the loading zone and drive through. Kohler stated large delivery trucks would use East First Street and back up into a recessed loading area once per week. Daily deliveries often come through the front door. Appold asked the height of the retaining wall, and Kohler stated it is six feet with a railing for safety.

Appold is concerned about parking lot safety and proposed a wider island for pedestrian passageway. Kohler was amicable to this proposal. Lutterman reminded Commissioners that changes of the alley may require a vacation or concurrent use permit. Kohler stated a sidewalk could be added on the western edge of the site, but the concern is that it may promote pedestrian traffic in that parking area.

Guggenbuehl expressed concern about lighting, landscaping, and noise due to the proximity to a residential property. Kohler stated the goal is to provide a year-round buffer. Truck unloading lasts approximately three hours and does not involve a loading dock, only a conveyor belt. He was unsure about garbage pick-up.

Vigen is concerned about landscaping on the 12<sup>th</sup> Avenue East. Lutterman stated these conditions must be indicated in the motion. Appold is concerned about vehicle and pedestrian traffic congestion at the 12<sup>th</sup> Avenue East entrance. Kohler stated the drive through will have a stop sign and crosswalk. Kohler was amicable to adding sidewalk space instead of sod near the entrance. Appold feels the bike rack would be better located at 12<sup>th</sup> Avenue East. Kohler was amicable. Lutterman stated within a medical district plan review the President of the Planning Commission could designate a small committee to fine-tune details without the matter being required to come back to the Commission. Akervik also confirmed small details could be approved by the Planning Office, which Deming confirmed.

Appold asked if two drive-through lanes are necessary. Kohler stated some prescriptions require a consultation but the second lane is generally not used frequently. Kohler stated each lane would have a stop sign.

Vigen summarized the Commission's recommendations as follows: Add landscaping along First Street and 12th Avenue East, move bike rack to upper side of site, and replace sod with a sidewalk at entrance.

**Public Input – Ron Franzen, St. Luke's:** Franzen stated St. Luke's is very supportive of this project as it will benefit their patients.

**Discussion:** Digby asked about pedestrian safety. Franzen stated few patients walk or take the bus to the hospital. Franzen also observes their patients using sidewalks rather than cutting through parking lots. They have a security staff to keep patients safe and provide directions.

<p><b>MOTION/Second:</b> Vigen/Akervik to Recommend Approval of Medical Center District Plan Review at 12<sup>th</sup> Avenue East between Superior Street and East First Street for Walgreen's store, Semper Development with the following conditions: Add landscaping along First Street and 12<sup>th</sup> Avenue East, move bike rack to upper side of site, and replace sod with sidewalk at entrance</p> <p style="text-align: right;">Vote: Unanimous 8-0</p>
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E. **FN 10025** - Sidewalk Obstruction Permit for a sidewalk café at 11 East Superior Street for Takk for Maten/Kippis Restaurant (KD)

**Staff:** Deming stated a recent determination is that sidewalk obstruction permits are a more appropriate manner to address such requests rather than concurrent use permits. Five tables and 12 chairs are proposed for this site. The proposal meets requirements; staff recommends approval.

**Discussion:** Digby asked about alcohol consumption in this area. Lutterman stated alcohol would not be allowed under this permit; one would have to be obtained from the Alcohol, Gambling, and Tobacco Commission. Appold feels this proposal would add to the ambience of the downtown area. Deming confirmed the furniture will be removed from the sidewalk at the end of each day. Appold is concerned about the narrowness of the walkway, especially when bikes are chained to the light post, and as it relates to accessibility. Appold questioned if this will set a precedent for outdoor smoking areas. Lutterman stated the matter would be addressed by the Alcohol, Gambling, and Tobacco Commission. Banks asked if the Technology Village will provide security in this area. Vigen asked if fencing was mandatory and is concerned about the border when walking west bound on the sidewalk. Deming stated he is unsure of the origins of the fencing requirement but only knew of it as past practice. Appold asked if neighbors were notified. Deming stated property owners within 300 feet were notified. As a tenant Pizza Luce would not have received a notice, but A & L Properties did.

**Applicant – James Ross, owner Takk for Maten:** Ross stated the proposal is intrusive in the public right-of-way. Ross feels a rope is sufficient but supports the fence requirement. Ross stated Technology Village security will monitor the area, and the area will not be provided for smoking. The majority of their business takes place during breakfast and lunch.

**Discussion:** Appold asked about furniture storage. Ross stated they plan to stack furniture in a small area just inside the door. Lutterman stated the permit would not allow Takk for Maten to store furniture on the public sidewalk when not in use. Digby asked about smoking in the area. Lutterman stated this is an outdoor area and smoking is allowed.

**MOTION/Second: Vigen/Appold to Recommend Approval of Sidewalk Obstruction Permit for a sidewalk café at 11 East Superior Street for Takk for Maten/Kippis Restaurant**

**Vote: Unanimous 8-0**

Akervik expressed the idea of color coding bricks to eliminate the need for fencing. Deming agreed.

IV. Consideration of Minutes: March 9 and 23, 2010. Motion/Second by Akervik/Vigen

Vote: Unanimous 7-0 (Appold Absent)

V. Communications

VI. Old Business

VII. Reports of Officers and Committees

A. Downtown Waterfront Mixed Use District – Akervik appointed Vigen as the Planning Commission representative for DWMX meetings, replacing Commissioner Morrison.

B. Zoning Advisory Committee – Petkac stated a ZAC meeting is scheduled for April 22 and a TAC meeting is scheduled for April 23. A public meeting for Module 4 will be held May 18<sup>th</sup> in the Council Chambers.

VIII. New Business

IX. Other Business – Akervik advised Commissioners to indicate their availability to staff for the annual meeting in May.

Commissioners Guggenbuehl and Covington were welcomed and introduced to the Commission.

X. Adjournment. Motion: Akervik/Appold to adjourn. President Akervik adjourned the meeting at 7:35 p.m.

Respectfully,



Cindy Petkac  
Land Use Supervisor

CP:tmf