



City of Duluth
Planning Division

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City of Duluth
Planning Commission
April 9, 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, April 9, 2013, in the City Council Chambers.

II. Roll Call

Attending: Marc Beeman, Terry Guggenbuehl, Garner Moffat, Patricia Mullins, Heather Rand, and David Sarvela

Absent: Drew Digby (excused), Luke Sydow (excused) and Zandra Zwiebel (excused)

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

III. Public Hearings

Please note item 13-027, rezoning of Central High School tabled at the March 26th meeting, has been withdrawn by the applicant.

A. PL 13-048 Environmental Assessment Worksheet (EAW) Review for CN Dock 6 (Take Any Public Testimony, Decision at the May 14, 2013 PC Meeting)

Staff: Robertson noted tonight is an optional comment opportunity. Citizens can make known their input. Robertson provided a brief overview. Due to scope of project, an EAW was necessary.

Applicant: Jeff Heller project manager for Krech & Ojard described the three pronged approach: stabilization of Dock 6, expansion of fill in phases of half moon bay area, and the handling of the storm water. This is a new application, but also a continuation of a 1960 permit that established the dock footprint as it exists now.

Public: No speakers.

Commissioners: Guggenbuehl asks how the EAW relates to the permitting agencies (DNR, MPCA, Army Corp of Engineers). Per Heller, agency coordination is handled through this EAW process. The fill permit will be issued by the Army Corp of engineers is on hold until this process is complete. Mullins asked where the next project will be? Per Heller, they are working with the agencies to determine the sequencing.

MOTION/Second: Beeman/Mullins - table until next month's meeting.

VOTE: (6-0)

B. PL 13-052 Environmental Assessment (EA) Review for US Army Corps of Engineers 21st Avenue West Dredged Material Placement (Take Any Public Testimony, Decision at the May 14, 2013 PC Meeting)

Staff: Robertson reviewed process. The EA form is seen as more complex and is considered a replacement document for the EAW and follows the EAW process. If the project is successful they can improve the site in the next 3-4 years. They wish to put

dredge material in the area to create an artificial habitat for aquatic creatures, because of new nature of this and the scope, an EAW is necessary.

Applicant: N/A – (will make a presentation next month).

Public: No speakers.

Commissioners: Mullins asks if the 21st Ave W. channel is vacant. Per Steven, he notes it's controlled by the State and not private property.

MOTION/Second: Sarvela/Beeman - table until next month's meeting.

VOTE: (6-0)

C. [PL 13-036](#) UDC Text Amendment (Additional Public Hearing Was Held on March 26, 2013)

MOTION/Second: Rand/Mullins - Motion made to take off table.

VOTE: (6-0)

Staff: Robertson directs Commissioner's attention to the two citizen letters in support of changes. Lot size in R-1: current code says the larger of 4,000 square feet or average. Some citizens were confused, so the wording was changed. He noted the twin home definition, and setbacks for heights in mixed use districts, and churches.

Applicant: N/A.

Public: Greg Strom speaks on church changes. He is in favor of grouping the R-1 zone in with the other 3 zoning districts under consideration (RR-1, RR-2, R-2) and notes the small/large distinction of 50,000 square feet be the same in all of the districts.

Paul Kellner resident of Park Point is neutral on the amendment and wants to clarify the minimum lot street frontage going from 30 feet to 40 feet. He questions the reasoning and talks about challenging lots that it might be more restrictive.

Commissioners: Guggenbuehl asks about the landscape requirements for signs. Per Robertson, he thought it would be helpful to separate this into two ordinances. Mullins asks about large church size about how difficult it would be to get a special permit to expand larger than 50,000 sq ft. Robertson, a special use is an allowed use with conditions and the fee is around \$700. Sarvela asks staff what the rationale was to removing the landscaping requirement for signage. Robertson, it is his understanding that it was administration's idea to help reduce cost of future sign projects. Guggenbuehl asks if there were any noted hardships. Roberson stated that his understanding is that some sign builders and property owners are worried they would have to maintain the landscaping. Also, there was thought a few shrubs won't change the overall effect of all the asphalt on Central Entrance. City Council adopted an amended version of the sign code, in hopes that a few items would be changed, and that's why it's been brought back for discussion. Guggenbuehl notes that UDC changes are somewhat common, and the sign code is new, and we have not heard yet about hardships. A year down the road the Commission could be talking about changes, but a decision should be made to move forward. Rand asks about landscaping of signs and notes she would like to hear more reasoning. She comfortable with the verbage on district dimensional standards and "or average" will fit in nicely with the Park Point's concerns on lot sizes. She notes churches impact neighborhoods sometimes are negative due to parking and a special use permit would provide some redress. Moffat suggests tabling this item.

MOTION/Second: Moffat /Beeman motion to table.

VOTE: (2-4, Guggenbuehl, Mullins, Rand & Sarvela opposed)

Commissioners: Mullins asks about parking regulations as pertains to churches. Guggenbuehl says reasonable parking standards are already in place. Rand suggests a motion adding conditions or exceptions. Mullins asks about changing historic distract names from Historic to Heritage. Froseth stated that due to state historic requirements it was best

to keep as is. Rand asks about mixed use waterfront properties. Robertson reviewed the height requirements for mixed use structures.

MOTION/Second: Mullins /Sarvela motion to accept changes per staff's recommendations with the exception of religion assembly R-1 permitted use versus special use and put back landscaping requirements for signs.

VOTE: (3-3, Guggenbuehl, Rand & Sarvela opposed)

MOTION/Second: Moffat/Mullins motion to table until later in the agenda.

VOTE: (6-0)

- D. [PL 13-019](#) Interim Use Permit for a Vacation Dwelling Unit at 3330 Minnesota Ave. by Patricia Burns (Cottage on the Point)

Staff: Kyle Deming introduces the request vacation dwelling unit at the above address. The applicant must provide the City Fire Operational Permit and State Lodging License. Also, must meet the two conditions associated with Park Point Vacation Rentals (list beach access points and quiet hour times).

Applicant: Patricia Burns welcomes any questions.

Public: Frank Puglisi is a Park Point resident and would like more restrictions imposed including swimming flags and alleviation of garbage/dog waste.

Commissioners: Rand states that item mentioned might already be handed out to the guests at the owner's discretion. Beeman asks if property owners own into the water. Kyle shows that property extends back to tax forfeited land. There is public land located between beach and property owner. Rand doesn't want rules to become cumbersome and rules are already in place for the public beach. She asks about repeated Police calls. Deming reported it needs to be repeated Police calls and the homeowner will be contacted by Community Police Officer to figure out the cause of the calls. After that they may be cited for excessive consumption of Police services. Moffat agreed with staff recommendations and feels the beach issue concerns are a separate issue.

MOTION/Second: Rand/Moffat recommends approval as per staff's recommendations.

VOTE: (6-0)

- E. [PL 13-038](#) Interim Use Permit for Vacation Dwelling Unit at 206 N. 11th Ave. W. by Ted Stein and Carelle Stein

Staff: Deming introduces the interim use permit request for a three bedroom vacation dwelling unit. Parking is located behind the home. A recommended condition is the owner must provide evidence that the required notice has been sent out to property owners within 100 feet.

Applicant: Ted & Carelle Stein – they have been operating as a guest house for ten years.

Public: Jill Joyce, caretaker of property, is in favor of vacation dwelling unit and has had no Police complaints. She notes their guests enjoy the City.

Commissioners: Rand, this is in her neighborhood and has never heard a complaint.

MOTION/Second: Rand/Moffat recommends approval as per staff's recommendations.

VOTE: (6-0)

- F. [PL 13-039](#) Interim Use Permit for Vacation Dwelling Unit at 1202 S. Lake Ave. by Jerry Paulson and Betsy Snow (Park Point Carriage House)

Staff: Deming introduces applicants request for an interim use permit for a one bedroom vacation dwelling unit. They have three parking spaces. The owner lives adjacent to the site and is the property manager.

Applicant: Present, but did not speak.

Public: N/A.

Commissioners: N/A.

MOTION/Second: Rand/Moffat recommends approval as per staff's recommendations.

VOTE: (6-0)

- G. [PL 13-040](#) Interim Use Permit for Vacation Dwelling Unit at 1018 S. Lake Ave. by Deborah Medlin (Park Point Beach House)

Staff: Kyle Deming introduces applicants request for an interim use permit for a three bedroom vacation dwelling unit. There are four parking spots. The owner is the managing agent and lives one block away.

Applicant: Present, but did not speak.

Public: N/A.

Commissioners: N/A.

MOTION/Second: Rand/Moffat recommends approval as per staff's recommendations.

VOTE: (6-0)

IV. Consideration of Minutes (moved up in agenda due to time considerations)

March 12, 2013 Minutes

MOTION/Second: Sarvella/Mullins recommends approval.

VOTE: (5-0, Moffat abstains)

March 26, 2013 Minutes

MOTION/Second: Sarvella/Mullins recommends approval.

VOTE: (5-0, Moffat abstains)

- H. [PL 13-042](#) Higher Education Overlay (HE-O) Plan Review for New Structure at 1831 East 8th Street by Carla Blumberg

Staff: Steven Robertson presented this item. There is an alternative landscaping design which was approved by the land use supervisor about four days ago. The applicant is proposing a mixed use structure with commercial on the ground floor, upper floor would be residential with sufficient parking in the rear. Staff supports the development with conditions as noted in the staff report.

Applicant: Applicant welcomes any questions.

Public: Janell Hirschhoff neighbor who lives across the street from proposed building is opposed. She and her husband are concerned the proposal will increase traffic and parking to an already heavily congested area.

Commissioners: Rand asks the applicant if the three story building will affect their view shed. Janell feels it will and overall be more urban in nature. Rand notes that zoning has already been changed and asks commissioners to consider the issue of blocking view sheds in the future for other sites. Guggenbuehl wasn't initially in total support, but feels this project exceeds his expectations. It was noted that this site was used for a commercial uses in the past.

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

VOTE: (6-0)

I. [PL 13-041](#) MU-I Plan Review for New Addition and New Structure at 935 Kenwood Avenue by Benedictine Health Center

Staff: Robertson introduces project reporting anything zoned MU-I requires Planning Commission approval, unless there is an approved district plan. The applicant is proposing two large projects and several small projects for their site. The assisted living building is a new 48 unit building located south of the existing Westwood assisted living building. A new road and parking will be added. Staff recommends approval with conditions listed in the staff report, including wetland mitigation and tree replacement plan.

Applicant: Katie, Administrative CEO of Benedictine Health Center, gave an overview of project and asks if there are any questions. Guggenbuehl asks about the wetland mitigation. Chad stated the manmade infiltration pond will be slightly relocated and resized based on need. Sarvela appreciates sidewalks proposed around perimeter, but is concerned about the large parking lot and access for dropping residents off. Rebecca Lewis commented that buildings will be interconnected and walkways will be inside buildings.

Public: No speakers.

Commissioners: Rand asks for clarity from Sarvela about his sidewalk question. Sarvela noted the parking lot location and people will try to cut straight through to new building, rather than using the skywalks. Moffat is concerned with environmental impact of new roadway. Rand welcomes the applicant reps back up to talk about the Commissioner's concerns. Lewis addresses pedestrian issues and noting walkability of the campus and the overall strategy. The project does not include sidewalks, but they can be added in the future. She notes the change in elevation and that steps may be required, which given the age of the residents will require feasibility studies. Moffat added it may be more safe to have steps than no walkway at all. Guggenbuehl asks staff if they can work with applicant on plan review. Robertson, staff is looking at this new parking lot for development standards and visitor parking will need to be signed. Guggenbuehl asks Moffat's to clarify his environmental concerns. Moffat, road around building is in a wetland area. Lewis, noted the constraints on the existing road which include turning radius issues, and the new road will be a great improvement. Robertson, access for the fire department is an important issue, which Rebecca concurs.

MOTION/Second: Beeman/Mullins (originally motioned – not voted on).

Rand/Mullins recommends approval per staff's recommendation with condition that visitor signage is clearly displayed at new parking lot.

VOTE: (5-1, Moffat opposed)

J. [PL 13-047](#) Special Use Permit for Fence in a Floodway at 2202 Maple Grove Road by Grandma's Miller Hill Mall

Staff: Robertson introduces applicant's request to construct a fence in a floodway. Grandma's would like to increase their patio size. As a condition for outdoor liquor sales, a fence is needed to separate the customers from the general public. The proposed fence will be a pole and cable design with little impact on the water flow in the event of future flooding. Staff recommends approval.

Applicant: Tony Boen of Grandma's addresses the commission. He thanks staff for their help and explains that the patio furniture will be removed at night.

Public: No speakers.

Commissioners: Rand comments that due to the fence design having little impact on the water flow, she is in support.

MOTION/Second: Moffat/Rand recommends approval per staff's recommendation.

VOTE: (6-0)

- K. [PL 12-174](#) Special Use Permit for New Telecommunications Tower at 2010 East 7th Street by AT&T and GTP Towers

Staff: Robertson notes the Commission saw this project approximately 16 months ago. The new proposal addresses previous concerns, such as height and stealthing. This is a stealth antenna where the antennas are located inside the structure. Robertson notes the examples of different stealthing systems located in the Commissioners packets.

Applicant: Steve Stulz of AT&T, they worked hard on coming up with a solution that is a good fit for both the City and AT&T. He asks if there are any questions. The proposed color of the tower will be light blue.

Public: No speakers.

Commissioners: Moffat, thinks this is an improvement and asks if it's possible to get the tree design. Robertson, hasn't discussed restrictions with the applicant, but wanted to include it for Planning Commission consideration. Moffat notes for future designs it warrants consideration.

MOTION/Second: Beeman/Sarvela recommends approval per staff's recommendation.

VOTE: (6-0)

- L. [PL 13-046](#) Quick Plat at 2102 Maple Grove Road by MHM 22, LLC

Staff: Steven Robertson states that applicant wants to split the property into three distinct lots.

Applicant: Present, but did not speak.

Public: No speakers.

Commissioners: N/A.

MOTION/Second: Mullins/Beeman

VOTE: (6-0)

- M. [PL 13-043](#) MU-C Plan Review at 2102 Maple Grove Road by MHM 22, LLC

Staff: Robertson introduces the applicant's intentions to demolish the existing structure (formerly Ground Round Restaurant) and constructing three additional structures for new retail businesses. Applicant must adhere to flood plain rules. Engineering is concerned about dumpsters being too close to creek and would suggest either moving them, or a having a way to secure them. Staff recommends approval with the conditions as stated above.

Applicant: Sheldon Berg discusses the redevelopment of the site which has been vacant for about three years. He discusses the significant improvement in the site's stormwater system. Pete (Civil Engineer from Krech & Ojard) discusses the site layout for four businesses who would like as much parking as available. He describes the underground detention system which will minimize the temperature gain of the stormwater. He also notes the coldwater setback areas of impervious gain within the setback. Berg, there are revisions to plan, since it was last approved to make the site work for the developer and meet city code. Guggenbuehl asks applicant about the dumpster locations. Sheldon states there are masonry enclosures with locked gates and will be secured.

Public: Tony Boen of Grandma's Restaurant is concerned about water shed and doesn't want increased water going on their property.

Commissioners: N/A.

MOTION/Second: Beeman/Mullins recommends approval per staff's recommendation.

VOTE: (6-0)

N. [PL 13-044](#) Shoreland Variance at 2102 Maple Grove Road by MHM 22, LLC

Staff: Robertson introduces the applicant's request for a shoreland variance. Staff recommended approval of the variance last year because there was a vegetative buffer. This time staff recommends denial due to three reasons noted in staff report.

Applicant: Pete (Civil Engineer from Krech and Ojard) explained they elected to use mechanical means to control storm water. The past design had the overflow going into grass area, but revised plan includes taking the run-off underground into retention system for rate control, temperature control and pollution control. Berg, commented on the possibility of adding more pervious asphalt pavers. Guggenbuehl asks what is the capacity of the stormwater retention area? Pete, they are required by code not to increase the rate run-off. The storage area is 100 cubic feet.

Public: No speakers.

Commissioners: Guggenbuehl asks if denied, what is the impact for the project. Robertson, there are alternatives, but the applicant would need to revise their current plans. Guggenbuehl poses the question to the Commissioners if they are comfortable with the proposed mechanical means for handling the stormwater. Robertson, said that staff still recommends denial, but notes that the applicant will control the temperature of the stormwater run-off. Mullins asks if adding more pavers would change staff's recommendation? Robertson, pavers require maintenance, so after 5 years it might not be working as designed if not property maintained.

MOTION/Second: Moffat/Sarvela recommends denial as per staff's recommendation. Rand reminds commissioners this is a variance and there needs to be a hardship. She is comfortable with Staff's recommendation. Applicant notes pavers have sand between them, so they wouldn't require vacuuming. Maintenance is less of an issue. Development already has national tenants that meet higher standards. Berg, hardship is due to setback restrictions. Less than half of the site would be usable with those restrictions, and the owner would not be allowed to put it reasonable use thus the lot would remain vacant. The owner is interested in working with City staff to gain approval and is hoping for approval tonight. Mullins likes the idea of having the water cooled before it goes into the creek. Guggenbuehl agrees with Mullins and the hardship involved is the site itself. Rationale of ordinance looks at the potential reuse and this site would be hard to reuse due to its location. Sarvela is concerned that they already approved the site for a variance last year, and thinks developer is cramming too much into the space right next to the creek. He also likes the idea of cooling the water. Rand is still in support to deny and feels there is still a reasonable use that can occur.

VOTE: (3-3, Mullins, Beeman and Guggenbuehl opposed)

Guggenbuehl stated Commission can entertain a motion to deny the staff recommendation which allows the shoreland variance and can include conditions. Or they have the option to table it, which would delay project. Rand asks if they can forward to City Council without making a recommendation. Froseth stated there would not be a way to appeal a non-decision. Guggenbuehl asks if anybody is willing to make a motion to accept the applicant's request with added conditions. Moffat is not comfortable making a motion. Beeman, the

applicant is limited by the site's location. Guggenbuehl looks for common ground and wants to mitigate the differences. Mullins asks if the applicant has any ideas for a compromise. Pete (Civil Engineer for Krech & Ojard), he has worked for other municipalities and notes that the shoreland setback is to provide a vegetative buffer from the receiving waters. They will divert the water that would normally flow right into the creek and will treat it via mechanical means. One option would be to increase the volume of the detention system and increase the detention time which would allow more time for the particles to settle out. They could increase the volume by 10 percent. Berg reiterates they are willing to work with staff and they don't want to waste the Commissions time. They would entertain adding more of a buffer by pulling parking away 10 feet from creek. Due to landscaping, parking lot will be covered by shade trees which will help with cooling. Guggenbuehl asks if those conditions would be enough to warrant a motion. Rand asks if there was another condition mentioned. Applicant noted pavers were brought up. Rand notes that they want to see development, but feel that too much is trying to be jammed into the site given the restrictions. Moffat would consider voting in favor for the variance if conditions/improvements were made. He noted the possibility changing the location of drive thru. Guggenbuehl, if the parking lot spaces be changed would that move this along? Applicant said they will make it work. Sarvela asks the applicant if they would be willing to move the parking area back 18 feet. Yes, the applicant will make it work. Moffat is concerned with the building being too close. Mullins asks staff if they like the conditions proposed. Robertson, with the proposed landscaping the parking lot will definitely be an improvement. Beeman notes that applicant is willing to make needed improvements. Guggenbuehl asks if someone wants to make a motion with conditions.

MOTION/Second: Mullins/Beeman motion to approve the shoreland variance with the following three conditions: parking be moved back 18 feet, stormwater retention pool is increased by 10 percent and pervious pavers are added. Guggenbuehl asks if this would be acceptable. Moffat is not in agreement, but notes a possible change to drive thru location. He is not comfortable with the buildings as they are now. Guggenbuehl asks PC if these conditions are not acceptable, what would be? Rand notes that a variance was approved last year and feels they are trying to jam more into the same space. Guggenbuehl notes that it would be possible to table. Developer (Hector) addresses the PC and explains the reason that last year's approval was not acted on was due to tenant issues. Starbucks backed out and decided not to relocate. Also, Caribou Coffee did not want to relocate either. Panera was interested but they needed a bigger building which requires utility relocation. Vitamin Shop location was shifted as far east as possible to accommodate utility relocation. Panera is excited about coming to the area, and many site plans have already been evaluated. He feels this revised plan is the ultimate design. When existing snow melts it will go into the creek and none of that will occur once development begins. He is willing to work with staff and appreciates a compromise be made. Rand asks applicant if an increase in the retention pool is feasible. Applicant states that would be a question for the civil engineer and doesn't know even know what a 10 percent increase would cost. Rand states that an increase in size would be more acceptable to her than pervious pavers that have had mixed results. Pete (Civil Engineer) feels 10% growth is attainable. Rand asks about increasing size an additional 15%. Pete notes the space is available. Rand asks if that increase would be effective. Pete says every little bit helps. Guggenbuehl states this is a very developed area and looking at ways to mitigate impacts to shoreland and water shed area. Collecting stormwater is a good step and feels that moving the parking area back 18 feet is a good compromise by developers. Rand feels that she could support the variance with the new conditions, but cautions PC that they are setting a precedent and to

consider ramifications of surrounding property owners. Sarvela notes that we need to verify hardship.

MOTION/Second: Beeman/Mullins recommend approval of the shoreland variance with conditions that parking be moved back 18 feet, and stormwater retention pool is increased by 15% due to the hardship of the shape of the lot and they are making mitigation efforts to alleviate the problems of the shape of the lot.

VOTE: (5-1, Moffat opposed)

O. [PL 13-045](#) Vacation of Utility Easement at 2102 Maple Grove Road by MHM 22, LLC

Staff: Robertson introduces applicant's request for a partial abandonment of the utility easement. Minnesota Power is currently using it and wants assurance from the applicant that they will assume the relocation costs. Construction plans must be also be approved by City Engineer. Staff recommends approval.

Applicant: The owner will assume the relocation costs and will draft a formal letter. They will begin to create the construction work plans for approval.

Public: No speakers.

Commissioners: N/A.

MOTION/Second: Moffat/Beeman recommends approval per staff's recommendation. Ideally the City Clerk doesn't want anything going to the Council until everything is ready. Steven states that if the PC approves this vacation it would not go to City Council until City Engineering approves the construction plans and a bond is secured.

VOTE: (6-0)

C. [PL 13-036](#) UDC Text Amendment (Additional Public Hearing Was Held on March 26, 2013)
(This item was tabled earlier in the agenda.)

Staff: Froseth states we aren't going to see a lot of churches in developed R-1 areas. The recent trend is for new churches mainly going to Arrowhead Road. Parking requirements need to meet code.

Applicant: N/A.

Public: No speakers.

Commissioners: Guggenbuehl notes Mullins', Rand's and Sarvela's concerns.

MOTION/Second: Sarvela/Beeman recommends approval per staff's recommendation with condition that landscape be continued to be required for new pole/monument signs. Steven states the definition of a twin home is one structure on two lots. The **sum** of both lots has to be 40 feet.

VOTE: (6-0)

IV. Consideration of Minutes
Approved earlier in the agenda.

V. Communications
Discusses at next meeting.

VI. Old Business
None

VII. Reports of Officers and Committees

Discuss at next meeting.

VIII. New Business
N/A.

IX. Other Business
N/A.

X. Adjournment
Meeting adjourned at 8:35 p.m.

Respectfully,



Charles Froseth, Land Use Supervisor