

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-026-0

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 50-19.8, 50-20.3, 50-22.1, 50-24.4, 50-24.6, 50-25.1, 50-25.2, 50-25.8, 50-26.1, 50-26.4, 50-30.5, 50-31.3, 50-37.1, 50-37.6 AND 50-37.9, AND ADDING SECTION 50-26.5, OF CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO REVISIONS OF THE UNIFIED DEVELOPMENT CHAPTER.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-19.8 of Chapter 50 be amended as follows:

50-19.8 Permitted Use Table

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-T	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
RESIDENTIAL USES																								
Household Living																								
Dwelling, one-family	P	P	P	P	P	P	P					U	U	U	U	U	U	U	U	U				
Dwelling, two-family				P	P	P	P					U	U	U	U	U	U	U	U	U			50-20.1.A	
Dwelling, townhouse				S	P	P	P			P													50-20.1.B	
Dwelling, multi-family					P	P	P	P	P	P	U	P	U	P	P	U	P	P					50-20.1.C	
Dwelling, live-work					P	P	P	P		P	P	P	P	P	P	P			P	P				
Group Living																								
Co-housing facility				S	S	P	P																	
Residential care facility/assisted living (6 or fewer)		P	P	P	P	P	P				U	P	U	P	P	U	U	P	P					
Residential care facility/assisted living (7 or more)				S	P	P	P	P	P	P	U	P	U	P	P	U	U	P	P					
Rooming house					S	P	P	P	P	P	U	P	U	P	P	U	U	P	P					
PUBLIC, INSTITUTIONAL AND CIVIC USES																								
Community and Cultural Facilities																								
Bus or rail transit station							P	P	P	P	P	P	P	P	P	P	P	P	P					
Cemetery or mausoleum	S	S	S	S	S	P	S	S	S	S													S	
Club or lodge (private)					S	P	P	P	P		P	P	P	P	P	P	P	P					50-20.2.A	
Government building or public safety facility		P	P	S	P	P	P	P		P	P	P	P	P	P	P	P	P	P	S	S	S		
Museum, library, or art gallery				S	S	P	P	P		S	P	P	P	P	P	P	P	P					S	
Park, playground, or forest reserve	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P					P	

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Religious assembly		P	P	S	P	P	P	P	P	S	P	P	P	P	P	P	P	P	P					
Educational Facilities																								
Business, art, or vocational school							P	P	P	P	P	P	P	P	P	P	P	P	P					
School, elementary		P	P	P	P	P	P	P				U	P	U	P	P	U	U	U					
School, middle or high		S	S	S	S	P	S	S				U	P	U	P	P	U	U	U					
University or college						I			P					U	P	P	U	U	U					
Health Care Facilities																								
Hospital									P															
Medical or dental clinic					S	P	P	P	P	P	P	P	P	P	P	P	P	U	P					50-20.2.B
Nursing home					P	P	P	P	P		P		P		P									
Other institutional support uses not listed in this table									P															
COMMERCIAL USES																								
Agriculture and Animal-Related																								
Agriculture, general	P	P																						
Agriculture, urban		P	P	P	P	P																		
Kennel	S	S					S	S	P															
Riding stable	S	S	S			P				S													S	
Veterinarian or animal hospital	S	S			P	P	P	P	P	P		P		P	P									
Food, Beverage, and Indoor Entertainment																								

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Adult entertainment establishment																						P		
Convention or event center								P		P	P				P	P			P	P	P			
Indoor entertainment facility								P		P	P		P		P	P			P	P	P			
Restaurant (no drive-in/drive-through)						S	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Restaurant (with drive-in/drive-through)								P		P			P		P									
Theater							P	P			P		P		P	P			P	P	P			
Lodging																								
Hotel or motel						P	P	P	P	P	P		P		P	P			P	P	P			
Bed and breakfast				S	P	P	P	P	P	P	P		P		P		P							
Seasonal camp or cabin	P	P				P					P												S	
Offices																								
Bank						I	S	P	P	P	S	P	P	P	P	P	P	P	P	P				
Office				S	P	P	P	P	P	P	P	P	P	P	P	P	P	U	P	P				
Data Center							S	P	P	P	S	U	U	U	U	U	U	U	U	U	P			
Outdoor Recreation & Entertainment																								
Golf course		S	S			P																	P	
Marina or yacht club											P											S	S	
Tourist or trailer camp	S	S	S								S												S	
Other outdoor entertainment or recreation use not listed		S						S		S	S													

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Personal Services																								
Business park support activities										P														
Preschool		S	S	S	P	P	P	P	P		P	P	P	P	P	P	P	S	P	S				
Day care facility, small (14 or fewer)	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P				50-20.3.I
Day care facility, large (15 or more)		S	S	S	S	P	P	P	P		P	P	P	P	P	P	S	P	S					50-20.3.I
Funeral home or crematorium					S		S	P	P	P			P		P						P			
Mini-storage facility										P											P	P		50-20.3.L
Personal service and repair, small						P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Personal service and repair, large						I	S	P	P	P	P		P		P		P		P		P			
Retail Sales																								
Adult book store																						P		Chapter 5
Building materials sales								S		P														50-20.3.G
Garden material sales		S						P							P									
Grocery store, small						P	P	P		P		P		P	P	P	P	P						50-20.3.K
Grocery store, large								P																50-20.3.K
Retail store not listed, small					S	P	P	P	P		P	P	P	P	P	P	P	P	P	P				50-20.3.R
Retail store not listed, large.								P		P		P		P	P		P	P						50-20.3.R
Vehicle-Related																								
Automobile and light vehicle repair and service							S	P		P		P		P	P	P					P			
Automobile and light vehicle sales, rental, or storage								P		P											P			

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W	P-1		
LAND USE CATEGORY																									
Filling station					S	P	P	P		P	P		P		P	P	P					P	P		50-20.3.J
Parking lot or parking structure (primary use)						I		P	P	P	P	S	S	S	S	S	S	S	S	S		P	P		50-20.3.O
Truck or heavy vehicle sales, rental, repair, or storage										P												P			
INDUSTRIAL USES																									
Industrial Service																									
Contractor's shop and storage yard										P					P							P	P		50-20.4.B
Dry cleaning or laundry plant										P												P			
Research laboratories									P	P												P	P		
Industrial services										P												P	P		
Manufacturing and Mining																									
Manufacturing, light									P	P					P							P			50-20.4.F
Manufacturing, heavy																						P			
Manufacturing, hazardous or special																						S			50-20.4.G
Mining, extraction and storage																						S	S		50-20.4.H
Water-dependent manufacturing, light or heavy																							P		
Transportation-Related																									
Airport and related facilities	S																					P			50-20.4.A
Railroad yard or shipyard and related facilities																						P	P		
Truck freight or transfer terminal										P												P	P		

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Utilities																								
Electric power or heat generation plant																						P	P	
Electric power transmission line or substation	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	50-20.4.C
Major utility or wireless telecommunication facility	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	50-20.4.E
Radio or television broadcasting tower		S								S												S	S	50-20.4.I
Solar, geothermal, or biomass power facility (primary use)		S				P		S	S	P												P	S	
Water or sewer pumping stations/reservoirs	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Water or sewer treatment facilities																						P	P	
Wind power facility (primary use)		S							S	S												P	S	50-20.4.M
Waste and Salvage																								
Junk and salvage services																						S	S	50-20.4.D
Recycling collection point (primary use)								S	S	S												P	P	
Solid waste disposal or processing facility		S								S												S	S	50-20.4.J
Wholesale Distribution and Storage																								
Storage warehouse										P					P							P		50-20.4.K
Wholesaling										P					P							P		50-20.4.L
Bulk storage not listed elsewhere																						P		
Water-dependent bulk storage or wholesaling not listed elsewhere																							P	

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																									
ACCESSORY USES																									
Accessory agriculture roadside stand	A	A																					A	50-20.5.A	
Accessory bed and breakfast	A	A	A	A	A	A	A		A		A													50-20.5.B	
Accessory boat dock, residential	A	A	A	A	A	A	A	A	A		A													50-20.5.C	
Accessory caretaker quarters										A											A	A	A		
Accessory communications tower for private use	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Accessory day care facility	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A					
Accessory dwelling unit	A	A	A	A	A	A	A																	50-20.5.D	
Accessory heliport	A								A												A			50-25.5.E	
Accessory home occupation	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	A	A	A				50-20.5.F	
Accessory recycling collection point					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
Accessory sidewalk dining area					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A				50-20.5.G	
Accessory solar or geothermal power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.H	
Accessory uses and structures not listed elsewhere	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.I	
Accessory wind power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.J	
Minor utilities and accessory wireless antennas attached to existing structures	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.K	
TEMPORARY USES																									
Temporary construction office or yard	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Temporary event or sales	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story

A = Accessory Use

S = Special Use Or Interim Use

I = Interim Use Only

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards			
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-G	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W	P-1				
LAND USE CATEGORY																											
Temporary moveable storage container	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		50-20.6.A
Temporary real estate sales office				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A							
Temporary use not listed in this table	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

Section 2. That Section 50-20.3 of Chapter 50 be amended as follows:

50-20.3 Commercial uses.

A. Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this code.

B. Agriculture, general.

1. No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 ft. from any lot line.
2. All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 ft. from any lot line.

C. Automobile and light vehicle repair and service

1. No displays or storage of merchandise, parts or refuse may be located closer than 20 ft. from any public right-of-way.
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district.
3. All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property.

D. Automobile or Light Vehicle Sales, Rental or Storage

In the MU-C district, the use is permitted when located at least 100 ft. from any R district.

E. Bank

1. In the MU-N district, banks are limited to no more than two drive-through windows and one drive-through lane for ATM services on the premises.
2. Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.
3. Banks in the R-P, F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities.

F. Bed and Breakfast

This is a primary use of land, and the owner need not reside in the use. The use shall:

1. Have no more than 12 habitable units;
2. If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;

5. Contain a minimum of 1,500 sq. ft. of area on the first floor of the main building;
6. Dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For-profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to 6 days per year and shall be restricted to the period of October 15 through June 15;
7. Shall not have signage exceeding 12 sq. ft. in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days.

G. Building Materials Sales

1. Outdoor storage is limited to 10% of the parcel's land area, and shall not be permitted in any required front yard area.
2. Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between 6 ft. and 8 ft. in height. The fence may exceed 8 ft. in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area.
3. A landscaped earth berm may be used instead or in combination with a required fence or wall.

H. Convention or Event Centers

1. A convention center may not exceed 50,000 square feet if it is within 500 feet of a multi-family use, or 15,000 square feet if it is within 500 feet of a one or two family use.

I. Day Care Facility, Small and Large

1. In the RR-1 and RR-2 districts this use and related parking facilities and structures other than driveways are limited to no more than 20% of the lot or parcel area.

J. Filling Station

1. No displays or storage of merchandise, parts or refuse may be located closer than 10 ft. from any public right-of-way.
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a Residential or Mixed Use District.
- 3.

K. Grocery Stores, Small and Large

1. Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas.
2. Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock.

L. Mini-Storage Facility

This use shall comply with the following standards:

1. The use shall be contained within an enclosed building or buildings;
2. If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;
3. The use shall be designed so that doors to individual storage units do not face any abutting street frontage;
4. At least 50% of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on those facades;
5. Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;
6. Signage shall be limited to one 40 sq. ft. illuminated pole and 20 sq. ft. of non-illuminated wall signage. Signs shall not be located closer than ten ft. to the front property line and no closer than 50 ft. to any side property line;
7. In the RR-1 district, there shall be a minimum of 50 ft. of landscaped or naturally vegetated buffer from all property lines;
8. In the R districts a dense urban screen shall be installed along all side and rear property lines.

M. Office

1. In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted.
2. In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted.
3. In the F-6 district, offices may not have drive-through facilities.

N. Other Outdoor Entertainment or Recreation Use Not Listed

1. No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 ft. of an R-C, RR-2 or R district.

O. Parking Lot or Parking Structure (Primary Use)

1. In the MU-C district, any parking structure shall be located at least 50 ft. from any RC, RR or R district.
2. In F-1, F-2, F-3, F-4, F-6, F-8 and F-9 districts, only parking lots are allowed as primary uses. In F-7, only parking structures are allowed as primary uses. In F-5, parking lots and parking structures are allowed as primary uses.

P. Restaurant (No Drive-In/ Drive-Through)

In the R-2 district, no use shall exceed 5,000 sq. ft. in gross floor area.

Q. Restaurant (With Drive-In/Drive-Through)

Drive through lanes must be located at least 25 ft. from the boundary of any RR or R district and impacts along the boundary with those districts shall be buffered through the use of a dense urban screen.

R. Retail Stores, Small and Large

1. Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas.
2. Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock.
3. Retail stores limited to one drive-through window.
4. Any drive-through lane that is located between a retail store and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.

S. Seasonal Camp or Cabin

1. In the R-C and RR-1 districts, buildings shall be located not less than 200 ft. from any R district.
2. In the R-C district, the design of the site shall preserve the rural character by:
 - (a) Separating each camp or cabin site by at least 50 ft., measured from the closest points on each tent or cabin area;
 - (b) Preserving all natural vegetation not required to be removed for access roads, trails or public safety;
 - (c) Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites.

T. Tourist or Trailer Camp

When located in a flood plain, this use is limited to trailers without foundations that can be easily moved should flooding occur.

U. Veterinarian or Animal Hospital

1. In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 ft. from any lot line.
2. In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation.

Section 3. That Section 50-22.1 of Chapter 50 be amended as follows:

50-22.1 General Requirements

A. Intent

The building types detailed in this section outline the desired building forms for new construction and renovated structures within the form districts.

B. Applicability

1. All building type standards apply to all new construction and renovation of existing structures, where the renovation includes an addition of more than 50% in building square footage.
2. When a renovation of the front facade occurs with no added building square footage, the street facade requirements and base type requirements must be met when:
 - (a) the existing building front, corner, or lakefront facade is located within the build-to zone;
 - (b) the renovation includes any of the following:
 - (i) installation of additional doors or a change in location of a door;
 - (ii) expansion or change in location of 30% of windows on any street or lakefront facade;
 - (iii) replacement of 30% or more of facade materials on any street or lakefront facade with a different facade material.
3. When a renovation of the shape or style of the roof occurs with no added building square footage, the cap type requirements must be met when the existing building front, corner or lakefront facade is located within the build-to zone.
4. Under all circumstances, no portion of the building type standards must be met in the case of normal repairs required for safety and continued use of the structure, such as replacement of window or door glass.

C. General Requirements

All construction in the Form Districts must meet the following requirements:

1. Zone Districts

No primary building shall be developed within a Form District unless it matches one of the building types approved for that district in Table 50-22.2-1.

2. Planning Review Required

Development of any building type must be reviewed and approved by the city through the planning review process in Article 5.

3. Permanent Structures

All buildings constructed must be permanent construction without a chassis, hitch, or wheels, or other features that would make the structure mobile. Temporary structures and uses are permitted as shown in Article 3.

D. Alternative Compliance for Renovation of Existing Primary Structures

Where compliance with the specific requirements of section 50-22 is not possible as a result of unique site conditions, an owner may propose alternatives consistent with the goals of sections 50-16 and 50-22. Approval of an alternative approach is authorized where an applicant can demonstrate the following:

1. The renovation does not increase the existing primary structure's footprint; and
2. The proposed renovation achieves the goals stated in 50-16 relevant to the particular form district to the same degree, or better than, the building form standards set forth in section 50-22.

Section 4. That Section 50-24.4 of Chapter 50 be amended as follows:

50-24.4 Maximum Parking Limits

No more than 150% of the minimum required number off-street parking spaces, excluding the adjustments allowed in 50-24.3, shall be provided. This limit does not apply to the following uses: one-family, two-family, townhouse, and live-work dwellings. Off-street parking spaces that existed on November 18, 2010, and that were composed of hard-surfaced, dust-free material such as concrete, bituminous, or pervious paving materials may continue even if they exceed the maximum parking limit.

Section 5. That Section 50-24.6 of Chapter 50 be amended as follows:

50-24.6 Location of Parking Spaces

A. On Site Location and Exceptions

1. All required parking spaces shall be located on the same lot with the principal building or the primary use served; except as provided in subsection 2 below.
2. ~~Where if an increase in the number of parking spaces is required by a change or enlargement of any use other than a single family dwelling, two family dwelling, or townhouse, the increased parking requirement may be satisfied by utilizing:~~
 - ~~(a) primary use parking lots or parking structures located and maintained up to 500 feet from the lot containing the change or enlargement, or~~
 - ~~(b) accessory parking lots that existed on November 18, 2010, were composed of hard-surfaced, dust-free material such as concrete, bituminous, or pervious paving materials, and that are located and maintained up to 500 feet from the lot containing the change or enlargement. the required spaces may be located and maintained up to 500 ft. from the lot containing that use. Where required parking spaces are not provided on site, a written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit.~~
3. Where required parking spaces are not provided on site, a written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit.

B. Parking Location Within the Site

Unless a front yard parking permit was issued for the property on or before June 1, 2009, required parking spaces shall only be provided on those portions of the lot indicated in Table 50-24-3.

Section 6. That Section 50-25.1 of Chapter 50 be amended as follows:

50-25.1 Applicability

- A The landscaping provisions of Sections 50-25.2 through 25.49 and 25.7 shall apply to lots and parcels in any zone district that contain (i) more than 10,000 sq. ft. of lot area, and (ii) a primary structure with a multi-family, mixed use, commercial,

institutional, industrial, or parking principal use, when any of the following conditions occur:

1. A new primary structure is constructed;
 2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25%;
 3. An existing primary structure is relocated on the lot or parcel;
 4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25% of 50% or more of the pre-application assessor's market value of the primary structure, as shown in the records of the city assessor ~~the market value of the land and buildings, as indicated by tax assessor's records;~~
 5. A new ~~primary use~~ parking lot containing 25 or more spaces is constructed; or an existing parking lot containing 25 or more spaces is reconstructed.
 6. An ~~existing parking lot containing 25 or more spaces is redesigned or reconstructed with significant changes to the layout of parking spaces, driving aisles and access drives.~~
- C. In any Form District, landscaping shall not be required on the portion of a lot occupied by a principle structure.
- D. The tree preservation provisions of Section 50-25.9 apply to all development or redevelopment on lots and parcels in any zone district that contain (i) more than 10,000 sq. ft. of lot area, and (ii) a primary structure with a multi-family, mixed use, commercial, institutional, industrial, or parking principal use, as well as to any new lot of record created after November 19, 2010, regardless of the primary use of the property, in any zone district.
- E. The landscaping between differing land uses provisions of Section 50-25.5 apply to all development or redevelopment on lots and parcels when there is a change of use.

Section 7. That Section 50-25.2 of Chapter 50 be amended as follows:

50-25.2 General Landscaping Standards

A. Landscape Plan Required

A landscape plan shall be submitted as a part of all development applications for those activities listed in Section 50-25.1.A, unless the land use supervisor determines that compliance with the provisions of Section 50-25 can be demonstrated without the use of a landscape plan. A landscape plan may be combined with other required application materials if compliance with Section 50-25 can be demonstrated in the combined materials.

B. Plant Materials

Plant materials shall be from the city's approved landscaping plant list as shown in the UDC Application Manual. All plant material shall be hardy to Northeast Minnesota, suitable for the site, free of disease and insects and conform to the American Standard for Nursery Stock of the American Nursery and Landscape Association.

C. Minimum Living Materials

In all areas where landscaping is required, a minimum of 50% of the surface area shall be covered by living materials, rather than bark, gravel or other non-living materials.

D. Existing Vegetation

Existing vegetation shall be protected during construction through use of a fence around an area sufficient to protect the health of the vegetation, and shall be incorporated into the landscape plan wherever possible.

E. Vegetation Grouping

Landscaping shall generally incorporate large irregular groupings of the same species of shrub, avoiding rigid or repeated specimen planting except for boulevard trees, and shall introduce multiple varieties within one general area. Except for plantings used for screening, no one species of tree or shrub may make up more than 50% of the total amount of landscape plantings.

F. Soil Condition

All required landscaping shall be planted in uncompacted soil with a minimum depth of 2 ft.

G. Grading and Drainage

All open areas shall be graded, properly drained and maintained according to storm water standards in Section 50-18.1.E.

H. Raingardens and Storm Water Management Features

Areas included in raingardens or vegetated site features created to meet storm water management requirements in Section 50-18.1.E shall be counted towards any required interior site or parking lot landscaping, and if vegetated to meet the requirements for any landscaped buffers shall count towards those buffer requirements.

I. Minimum Plant Sizes

Where included as part of the required landscaping, deciduous trees shall have a minimum caliper of 2.5 in., coniferous trees shall be a minimum of 6 ft. in height, large shrubs shall be of a minimum 5 gal. container size and have a height of at least 6 ft. at maturity, small shrubs shall be of a minimum 5 gal. container size and have a height of less than 6 ft at maturity, and ground cover shall be of a minimum 1 gal. container size. The above dimensions apply to sizes at time of planting.

J. Plant Material Spacing

Except for buffer zone provisions of Section 50-25.5, Landscaping Between Differing Land Uses, plant materials shall not be placed closer than 4 ft. from any fence line or property line. Where tree planting requirements are based on linear street frontage, areas occupied by driveways shall be included when calculating the number of trees required to be planted, and any trees that would otherwise be required in driveways shall be planted in other landscaped front yard areas unless prohibited by minimum spacing requirements for that species as recommended by the American Standard for Nursery Stock of the American Nursery and Landscape Association. The land use supervisor may authorize adjustments to these spacing requirements when required due to topography, drainage, utilities or obstructions, provided that the total amount of required landscaping is not reduced.

K. Snow Storage Areas

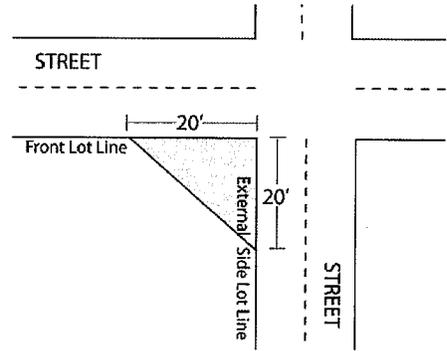
Areas required for snow storage and areas required for landscaping shall not overlap, except that snow may be stored on ground cover landscape areas (e.g., turf) that do not contain required landscape trees or other plantings.

L. City Right-of-Way

Tree removal or planting in city rights-of-way shall be done only with the approval of the city forester.

M. Protection of Site Distances

On any corner lot on which a front and side yard are required, no wall, fence, structure, sign, or any plant growth that obstructs sight lines at elevations between 2.5 ft. and 6 ft. above the driving surface of the adjacent roadway shall be maintained in a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of 20 ft. along the front and side lot lines and connecting the points so established to form a right triangle on the area of the lot adjacent to the street intersection.



N. Delay of Installation Due to Season

Whenever the installation of required landscaping is not possible by the time construction on the primary structure or primary use parking lot has been completed, the city may authorize a delay in installation until no later than the following ~~June 30~~ August 31. As a condition of authorizing a delay in installation, the city may require that a surety or other guarantee, in a form acceptable to the city, in the estimated amount of such installation be provided, or the city may issue a temporary certificate of occupancy, with the permanent certificate of occupancy to be issued following installation of all required landscaping.

O. Flexibility for Redevelopment

Where the requirements of this Section 50-25 apply to a redevelopment or reconstruction project, rather than a new development, the land use supervisor may authorize a reduction of minimum off-street parking requirements established in Section 50-24 by up to 10% if required to accommodate street frontage landscaping required by Section 50-25.3 or parking area landscaping required by Section 50-25.4.

Section 8. That Section 50-25.8 of Chapter 50 be amended as follows:

50-25.8 Alternative Landscaping

~~In lieu of compliance with the specific requirements of this Section 50-25 an owner may propose to the land use supervisor an alternative approach consistent with the intent of this section. An alternative approach is designed to provide administrative flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required landscaping. The land use supervisor may approve a proposal under this section only if the proposed alternative compliance achieves required landscaping to the same degree or better than the provisions of this section.~~

Where compliance with the specific requirements of section 50-25 is not possible as a result of unique site conditions abutting or surrounding a proposed site, an owner may propose alternatives consistent with the goals of section 50-25. The Land Use Supervisor may approve an alternative proposal where an applicant can demonstrate that the alternative proposal achieves required landscaping to the same degree, or better than, the provisions of section 50-25.

Section 9. That Section 50-26.1 of Chapter 50 be amended as follows:

50-26.1 Screening of Mechanical Equipment

A. Applicability

The standards of this section shall apply to all of the following uses that contain a primary structure in all zones, except I-G and I-W: a multi-family, mixed use, commercial, institutional, industrial, or parking principle use, when any of the following conditions occur:

1. A new primary structure is constructed;
2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25%;
3. An existing primary structure is relocated on the lot or parcel;
4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25% or more of the pre-application assessor's market value of the primary structure, as shown in the records of the city assessor. ~~of the market value of the land and buildings, as indicated by tax assessor's records;~~

The following exterior mechanical features shall be screened: (i) electrical and gas-powered mechanical equipment and power systems equipment; (ii) heating, ventilating and air conditioning equipment ductwork, and lines; and (iii) power systems equipment. Roof or wall-mounted antennas and vent openings shall not be considered mechanical equipment for purposes of these screening standards.

The standards of this section shall not apply if the only feasible location for mechanical screening would impede the functioning of solar, wind or geothermal energy equipment or systems if such systems are otherwise in compliance with applicable building codes and zoning requirements.

Section 10. That Section 50-26.4 of Chapter 50 be amended as follows:

50-26.4 Fences and Walls

Unless otherwise expressly provided for in this Chapter, or unless expressly provided for in conjunction with the approval of a special use permit, fences and walls shall comply with the following general standards:

A. Fence/Wall Height

1. General Front Yard Standards

- (a) No fence or wall located between the principal structure on a lot and the front property line shall exceed 4 ft. in height.
- (b) Chain link fences, fences that are electrically charged, fences constructed of barbed or

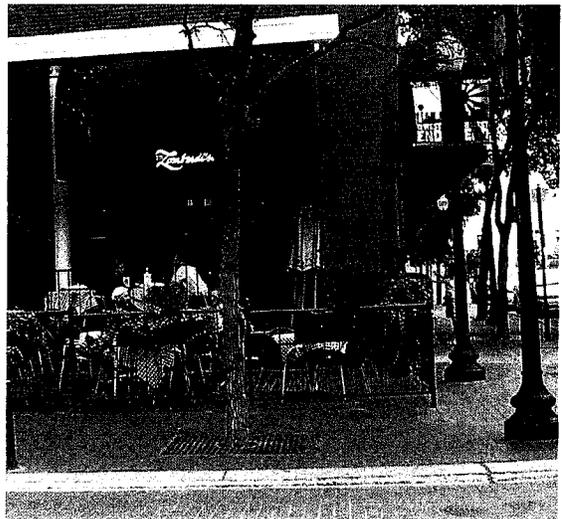


Figure 50-26.4-A: Form District front setback wall height

razor wire and fences constructed of temporary plastic fencing (snow fences) are prohibited. ~~Prohibitions on electrically charged fences and fences constructed of barbed or razor wire shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes.~~

(c) Prohibitions on electrically charged fences shall not apply to fences used to protect gardens and landscaping on residential lots. Prohibitions on electrically charged fences and fences constructed of barbed or razor wire shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes.

2. General Side and Rear Yard Standards

Fences that are electrically charged, and those constructed of barbed or razor wire shall be prohibited.

(a) This prohibition shall not apply to electrically charged fences used to protect gardens and landscaping on residential lots.

(b) This prohibition shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes.

3. Residential Zone Districts

The maximum height of a fence or wall within required side and rear yard area is 8 ft. The maximum height for fences and walls for entry gates at the residential subdivision entrance shall be 8 ft.

4. Mixed Use and Special Purpose Zone Districts

The maximum height of a fence or wall within required side and rear yard area is 8 ft., but the land use supervisor may approve a fence or wall up to 12 ft. in height where additional height is needed to provide adequate security because of topography or the nature of the material or equipment stored in the area.

5. Form Districts

The maximum height of a fence or wall within required side and rear yard area is 8 ft., but the land use supervisor may approve a fence or wall up to 12 ft. in height where additional height is to provide adequate security because of topography or the nature of the material or equipment stored in the area. Fences and walls are not permitted in required front yard areas, except for wrought iron fences used to enclose outdoor patio or dining areas, in which case the maximum height of the fence shall be 3 ft.

6. Vacant Property

As an exception to other fence height limits, vacant property may be fenced with chain-link fencing not to exceed 6 ft. in height when the purpose of such fencing is to prevent unauthorized dumping or soil disturbance that results in fugitive dust or nuisance conditions. Such fencing of vacant property shall not be construed to allow use of the property for outdoor storage.

B. Retaining Walls

1. Applicability

The requirements of this section apply to construction of new retaining walls in all districts, except for (a) retaining walls on properties containing only one-family and two-family dwellings, and (b) retaining walls that will not be visible from neighboring sites or from a public street frontage.

2. Design Standards

All retaining walls shall comply with the following standards:

- (a) Retaining walls more than 6 ft. tall shall be terraced to minimize visual impacts on residents, neighboring properties and the public realm;
- (b) Terracing shall be limited to three tiers;
- (c) A terrace at least 4 ft. wide, with a maximum slope of 3:1, shall be provided between each tier to create pockets for landscaping. Reduced terrace depths may be administratively approved by the building official where site constraints limit the amount of space available to accommodate the minimum required width;
- (d) Terraces between retaining wall tiers shall be vegetated with permanent landscaping to screen retaining walls and provide visual interest unless soil conditions are determined by a licensed engineer to be unsuitable due to geologic hazards;
- (e) Retaining walls shall be stacked natural stone or faced with stone or earth-colored materials, textured and colored Mechanically Stabilized Earth (MSE) blocks or other material compatible with the primary building materials;
- (f) Retaining walls constructed of railroad ties, timber and gabion-type materials are not allowed.



Figure 50-26.4-B: Retaining wall terracing and articulation

C. Materials and Signs

No fence, wall or retaining wall shall be constructed of scrap or waste materials unless those materials have been recycled or reprocessed into building materials for sale to the public. No sign may be posted on any fence, wall or retaining wall except for a property identification/management sign not exceeding 1 sq. ft. in size.

D. Alternate Screening

In lieu of compliance with the specific requirements of this section an owner may propose to the land use supervisor an alternative approach consistent with the intent of this section. An alternative compliance approach is designed to provide flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required screening. The building official may approve a proposal under this section only if it is determined that the proposed alternative compliance achieves required screening to the same degree or better than the provisions of this section.

Section 11. That Section 50-26.5 be added to Chapter 50 as follows:

50-26.5 Alternative screening.

Where compliance with the specific requirements of Section 50-26 is not possible as a result of unique site conditions abutting or surrounding a proposed site, an owner may propose

alternatives consistent with the goals of Section 50-26. The land use supervisor may approve an alternative proposal where an applicant can demonstrate that the alternative proposal achieves required landscaping to the same degree, or better than, the provisions of Section 50-26.

Section 12. That Section 50-30.5 of Chapter 50 be amended as follows:

50-30.5 Parking Design Standards

Each primary use or accessory parking structure shall comply with the following requirements:

- A Each facade of the parking structure that faces a public street shall contain, or have the appearance of containing, horizontal rather than sloped floor planes and shall not reveal interior ramps.
- B All sides of the structure not occupied by retail, office or residential uses must be articulated through the applicant's choice of at least three of the following:
 - 1. Windows or window shaped openings;
 - 2. Decorative wall insets or projections;
 - 3. Awnings;
 - 4. Changes in color or texture of materials;
 - 5. Public art approved by the Duluth Public Arts Commission pursuant to its established review and approval criteria;
 - 6. Integrated landscape planters;
 - 7. Pedestrian-scaled lighting;
 - 8. Benches, plazas, or other pedestrian areas;
 - 9. Other features as approved by the land use supervisor as providing an equivalent degree of architectural articulation, visual interest or pedestrian amenity.
- C Openings in the podium or tuck under parking areas shall be screened with architectural screens.

Section 13. That Section 50-31.3 of Chapter 50 be amended as follows:

50-31.3 Design and Illumination Standards

All exterior lighting regulated by this section shall not be altered or replaced except where the alteration or replacement would comply with the provisions of this section. All exterior lighting shall meet the following design standards:

- A Any light source or lamp that emits more than 900 lumens (13 watt compact fluorescent or 60 watt incandescent) shall be concealed or shielded with an Illuminations Engineering Society of North America (IESNA) full cut-off style fixture with an angle not exceeding 90 degrees, with 90% of the light below 80 degrees, to minimize the potential for glare and unnecessary diffusion on adjacent property. Exterior lighting shall be designed, constructed, and maintained in a manner that minimizes off-site glare, light trespass on adjacent property, and traffic hazards for pedestrian and motorists.

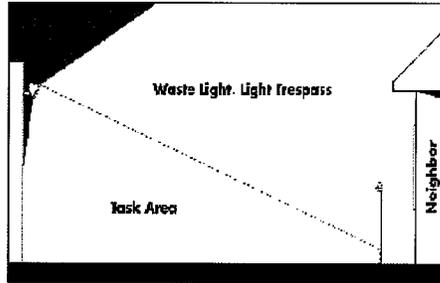


Figure 50-39.1-A: Does not comply -- Light trespass

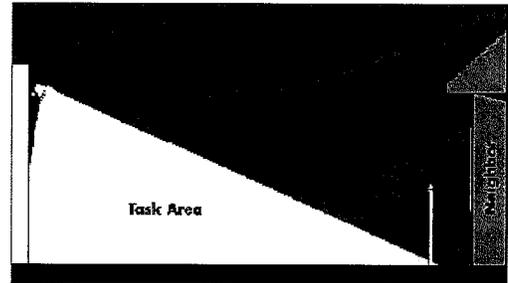


Figure 50-39.1-B: Complies - No light trespass

- B All lighting shall have the intensities and uniformity ratio consistent with the IESNA Lighting Handbook, and shall be designed and located so that the illumination measured in footcandles at the finished grade shall comply with the standards in Table 50-31-1, Minimum and Maximum Illumination Values. The illumination shall take into account changes in finished grade, walls, building and other existing or proposed site conditions. All exterior lighting shall meet the requirements of the Minnesota State Energy Code, except for temporary decorative seasonal lighting.

Table 50-31-1: Minimum and Maximum Illumination Values (in Footcandles)

Use	Minimum Light Levels in Parking Lots	Maximum Average Illumination in Parking Lots	Maximum Illumination On Property	Maximum Illumination at Property Line (Excluding Rights-of-Way)	Maximum Illumination at Right-of-Way	Maximum / Minimum Ratio In An Illuminated Area
Agricultural Uses	None	2.5		1.0	2.0	
Residential Uses <u>and Agricultural and Animal Related Uses</u>	0.2	1.0	<u>5</u>	1.0 <u>.5</u>	1.0	<u>10:1</u>
Commercial, Retail, Office, Industrial, Mixed Uses, and Institutional (Including Athletic Fields) Uses All Other Uses	0.2	2.5	<u>10</u>	1.0	2.0	<u>15:1</u>

- C The maximum height of any lighting pole serving a residential use is 20 ft. The maximum height serving any other type of use is 25 ft., except that:
- (1) in parking lots larger than 5 acres, the maximum height of any pole located at least 100 ft. from any residential use is 35 ft., and
 - (2) in the I-G and I-W zone districts, the maximum pole height is 50 ft.

The calculation for the height of lighting poles excludes the pole's base (up to 30 inches).

- D ~~Floodlights shall not be utilized to light all or any portion of a building façade between 10:00 pm and 6:00 am. Sign illumination shall conform to the provisions of Section 50-27.~~
- E Lighting of free standing canopies for on automobile service stations, convenience stores, and other similar uses shall have a maximum light level of 15 footcandles. Outdoor canopies shall be fully recessed into the canopy and shall not protrude downward beyond the ceiling of the canopy. Maximum lighting level uniformity (maximum to minimum) on the site shall be 15:1.
- F ~~In no case shall an exterior lighting source be visible from any property line or add more than one footcandle to illumination levels at any point off-site. The use or operation of searchlights for advertising purposes is prohibited. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal, is prohibited.~~
- G All outdoor light not necessary for security purposes shall be reduced to 30% of design levels or less, activated by motion sensor detectors, or turned off during non-operating hours.
- H Light fixtures used to illuminate flags, statues, monuments, or any other objects mounted on a pole, pedestal or platform shall use a narrow cone beam of light that will only illuminate the object not extend beyond the illuminated object.
- I For upward-directed architectural, landscape and decorative lighting, and flood lights, direct light emissions shall be contained by the buildings and not be visible above the building roof line, and shall not be utilized to light any portion of a building façade between 10:00 pm and 6:00 am.
- J No flickering or flashing lights shall be permitted, except for temporary decorative seasonal lighting.

Section 14. That Section 50-37.1 of Chapter 50 be amended as follows:

50-37.1 Common Procedures and Requirments

A. Pre-Application Meetings

A pre-application meeting is an informal discussion between a potential applicant, interested citizen, city staff and the historic preservation commission (if applicable) regarding a possible project subject to this Chapter. The purpose of the pre-application meeting is to assist the applicant by identifying the types of approval needed to complete the project, application material and impact studies required, applicable comprehensive plan provisions and applicable review criteria. A pre-application meeting may include a site visit at the request of the city. Pre-application meetings are required for the following types of applications:

1. UDC zoning map amendment;
2. District plan adoption or amendment;
3. Subdivision concept plan;
4. Vacation of street;
5. Concurrent use of streets permit.
6. Historic resource designation;
7. Special use or interim use permit.

B. Authority to File Applications

1. A property owner or a contract purchaser may apply for any type of permit or approval unless a more specific application is stated in this Section 50-37.1.B or in Sections 50-37.2 through 16 below. In the event of a conflict between the provisions of this Section 50-37.1.B and the provisions of Sections 50-37.2 through 16, the provisions of Sections 50-37.2 through 16 shall govern.
2. An agent of the property owner, or a resident of the property, may apply for any type of permit or approval provided the agent or resident has written authority of the property owner to do so.
3. Applications for designation of a historic resource are governed by Section 50-37.8.
4. Any person may request an interpretation of this Chapter, and the land use supervisor may issue interpretations of this Chapter as needed and shall post issued interpretations on the city web site.

C. Application Materials and Fees

1. Each application for a permit or approval, or for a modification of a permit or approval, pursuant to this Chapter, shall include all those application materials listed for that type of application or modification listed in the UDC Application Manual for this Chapter and a fee in the amount listed for that type of application or modification shown in the latest schedule of fees approved by council.
2. The city may reject applications not meeting the requirements of this Chapter, the UDC Application Manual, or as required or authorized by MSA 15.99.
3. Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city.
4. The schedule of fees shall be adopted from time to time by the council by resolution, pursuant to Section 31-6 of the code, to defray estimated staff costs and expenses of processing applications.
5. The schedule of fees may provide for additional fees if an applicant submits more than two applications that are incomplete, pursuant to Section 50-37.1.D below, for the same proposed development.
6. All fees are non-refundable regardless of whether the applicant withdraws the application prior to a decision or whether the application is approved, approved with conditions or denied.

D. Determination of Completeness

A determination of completeness shall be made for each application pursuant to MSA 15.99.

E. Inactive Complete Applications

If an application has been determined to be complete, but review of the application reveals possible additional impacts on the surrounding area, any request by the city for additional materials necessary to evaluate those impacts shall comply with the provisions of MSA 15.99.

F. Withdrawal of Applications

An applicant may withdraw an application at any time prior to a decision by the city by filing a written request to withdraw the application with the city. Any resubmission is subject to the provisions of subsection 50-37.1.G below. If the application is later resubmitted, it shall be treated as a new application for purposes of review and scheduling. Any fees paid for a withdrawn application shall not be refunded.

G. **Successive Applications**

If an application pursuant to this Chapter has been denied by the city, an application requesting the same or essentially the same approval shall not be accepted during the next 12 months.

H. **Public Notice**

1. **Types of Notice**

The city uses one or more of the following methods to notify the public about pending applications where there is an opportunity for public comment on the application. The type(s) of notice provided for different types of applications are shown in Table 50-35-1.

(a) **Newspaper notice** means the publication of one notice in a newspaper of general circulation within the city at least 10 days before the date of the public hearing, except in the case of amendments to the text of this Chapter or zoning map, in which case the notice shall be published at least once each week for three successive weeks before the date of the public hearing.

(b) **Mailed notice** means a letter mailed by first class mail to property owners within 350 feet of the applicant's parcel at least 10 days prior to the date of the public hearing. In the case of an application for vacation of a street, the notice shall be mailed to the owners of all properties abutting (a) the portion of the street proposed to be vacated, and (b) the portion of that street extending 350 ft. from the ends of the portion proposed to be vacated. In the case of an application for rezoning an area of 5 acres or less, the notice shall be mailed to each property owner in the area to be rezoned and each owner of property located partly or entirely within 350 ft. of the area to be rezoned. Failure to give mailed notice as required by this section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this section has been made.

(c) **Sign notice** means a sign with minimum dimensions of 24 in. by 30 in. posted as close as reasonably possible to each street frontage on the applicant's property with the text between 3 and 5 ft. above grade level, with a title line reading "Zoning Notice" in letters at least 3 in. tall, and with the remainder of the text in letters at least ½ in. tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing as shown on the sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way.

2. **Content of Notice**

Each required notice shall include the following information:

- (a) The name of the applicant;
- (b) The address of the property;

- (c) A narrative description of the project including the proposed land uses, size (in sq. ft.) and height (in ft. and stories) of any proposed buildings or building expansions;
- (d) The type of permit or approval being sought;
- (e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);
- (f) Contact information for the assigned city staff member;
- (g) The date, time and place of the public hearing.

3. Special Notice Provision for Appeals

In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal.

I. Public Hearings

- 1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant to rules and practices established by each of those bodies and in compliance with state law.
- 2. Attendance shall be open to the public.
- 3. All hearing and decision timeframes shall comply with MSA 15.99.

J. Review Criteria

- 1. The planning commission shall approve or recommend approval of an application if it makes a written finding that:
 - (a) The application is consistent with the adopted Comprehensive Land Use Plan, as that plan may have been amended after adoption;
 - (b) The application complies with all applicable requirements of this Chapter, as those requirements may have been varied through a variance approved pursuant to Section 50-37.9;
 - (c) The application complies with all additional approval criteria listed in Section 50-37.2 below.
- 2. If the planning commission determines that the criteria in subsection 1 have not been met, the commission shall deny or recommend denial of the application or approve it with conditions to bring the application into conformance with the above criteria.
- 3. The council is encouraged, but not required, to make decisions on applications under this Chapter pursuant to the criteria listed in subsection 1. In no case may the city's final action result in the approval of a use variance.
- 4. The applicant bears the burden of proof that an application complies with all applicable standards and criteria in this Chapter.

K. Conditions on Approval

- 1. As an alternative to denying an application, the building official and the land use supervisor are authorized to approve applications with conditions necessary to bring them into compliance with the requirements of this Chapter or with any previously approved district plan for the property.

2. As an alternative to denying an application, the planning commission is authorized to recommend or impose conditions on approvals that it determines are necessary to (a) bring the application into compliance with the requirements of this Chapter, the purposes of the zone district where the property is located or any previously approved district plan for the property, or (b) prevent or minimize adverse effects upon surrounding areas or upon public facilities and services.
3. All conditions imposed on approved applications shall be reasonably related to the anticipated impacts of the proposed development or land use and to the purposes of this Chapter.
4. In the case of decisions made by the planning commission or council, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts.
5. Any conditions on approved applications shall be listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Chapter.

L. Administrative Adjustments

Where an application concerns development or redevelopment of ~~an existing platted lot~~ a lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways.

1. The front, side or rear setbacks of a new ~~structure~~ or modified building structure are no more than 1 ft. smaller than the minimum setbacks required by this Chapter;
2. The height of a new or modified structure is no more than 2 ft. taller than the maximum required by this Chapter;
3. For properties where Section 50-24 requires more than 3 off-street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site contains 1 less parking space than is required.
4. Handicap accessibility structures can encroach into the yard setbacks.
5. For properties where 50-21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50' in length may be granted if the Land Use Supervisor determines that further extension of the street is not anticipated due to topography, Comprehensive Land Use Plan, or utility availability.

M. Modifications of Approvals

1. Application

An applicant who has received a permit or approval from the city pursuant to this Chapter may apply to modify that approval pursuant to this Section 50-37.1. An application for a modification shall be made to the building official, who shall determine whether it requests a minor or major modification pursuant to the criteria in subsections 2 or 3, as applicable.

2. Minor Modifications

Minor modifications are those that (a) relate to redevelopment of a single building on one or more existing platted lot(s), (b) qualify as administrative adjustments pursuant to subsection 50-37.1.L or (c) that the city determines are otherwise consistent with any district plan approved for the zone district where the property is located. Applications for minor modifications may be approved by the city if it determines that the applicant would have practical difficulties designing or constructing the project without the minor modification. However, the city may require that an application meeting the criteria for a minor modification be treated as an application for a major modification if it determines that the application raises a significant public controversy on which numerous parties other than the owner of the property may want to offer testimony.

3. Major Modifications

Major modifications are those that do not qualify as administrative adjustments pursuant to subsection 50-37.1.L or minor modifications pursuant to subsection 2 above. Applications for major modifications shall be treated as a new application for an approval of the same type being modified. However, if the city determines that an application for modification is not consistent with a district plan applicable to the property, and that the inconsistency may materially and adversely affect other property owners subject to the same district plan, the city may require that the applicant obtain approval of a revised district plan instead of a major modification. In the case of a major modification involving a natural resources permit, the city may require additional reports and data necessary to evaluate the impacts of the modification.

N. Lapsing of Approvals

Some permits and approvals issued pursuant to this Chapter shall lapse and be of no further force or effect if the action approved in the permit or approval does not begin within a specific period of time, as listed below:

1. Approved preliminary plats for subdivision shall lapse unless a complete application for a final plat of at least 50% of the land covered by the preliminary plat is submitted within 5 years of the preliminary plat approval;
2. Approved final subdivision plats shall lapse unless the approved final plat is recorded with the register of deeds within 90 days after approval;
3. Approved vacations of streets shall lapse unless a plat showing the vacation is recorded with the office of the county recorder within 90 days after final approval;
4. Approved planning reviews, zoning permits, special use permits, interim use permits, concurrent use of street permits, sidewalk use permits and variances shall lapse if the project or activity authorized by the permit or variance is not begun within 1 year of the permit date. The building official may extend this period one time for a period of up to 1 year if the property owner presents a written request showing the reasons for the delay was outside the owner's control;
5. Erosion and Sediment Control Permits (ESCP) shall lapse one year after approval if all construction activities are not completed or the entire site is not fully stabilized with 70% successful establishment of vegetation. In case of a lapse of the ESCP, a new permit shall be obtained;
6. Approved building permits shall lapse 1 year after issuance unless construction has begun by that date.

7. The MS-4 Statement of Compliance and accompanying drainage report will be valid for 2 years from the date of approval. If permanent stormwater facilities (BMPs) are not fully constructed and operational within 2 years, and extension of 1 year may be granted if a written request is submitted and approved by the City Engineer. The written request should document the reasons for the extension and the current state of completion of the project.

○ Appeals

This section is intended to comply with the provisions of MSA 462.357 and MSA 360.068 as amended, and shall be interpreted to comply with those provisions wherever possible.

1. General Provisions for Appeal to Planning Commission

- (a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be filed within 10 days after the decision by filing with the building official a written notice of appeal addressed to the commission and specifying the grounds of the appeal.
- (b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board of adjustment. The appeal must be filed within 10 days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern.
- (c) The building official shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed.
- (d) A timely appeal shall stay all proceedings involved in the appeal; and no appeal shall be deemed to permit the appellant to do or to continue doing, directly or indirectly, any act or thing prohibited by the decision being appealed. However, if the building official notifies the planning commission in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the planning commission may order that proceedings not be stayed pending appeal.
- (e) The commission shall fix a time for a hearing on the appeal, shall provide notice of the hearing pursuant to Section 50-37.1.H, and shall hold a public hearing pursuant to Section 50-37.1.I.
- (f) Any party may appear at the hearing in person, by agent or by attorney. Notice of the decision of the board shall be mailed to the appellant.
- (g) If the appeal alleges that the boundaries of a wetlands or shorelands area on the Natural Resources Overlay map in Section 50-18.1 are in error, the

appellant shall bear the burden of proving the map erroneous by the production of clear and convincing technical evidence.

2. Exceptions

- (a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I No Safety Obstructions, 50-27.1.L Attachment to Buildings, 50-27.1.M Wind Pressure Design, 50-27.1.N Electrical Wiring, or 50-27.1.O Certification of Structural Engineer must be taken to the state building official as provided in the State Building Code.
- (b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Chapter 10 of the code or to the state building official.
- (c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board.
- (d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the reasonable use of his or her property, or is unreasonable given the size and shape of the property and its orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this section, but may authorize variations to those standards, in accordance with the procedures in Article 5 of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St Louis River and the harbor.

3. Powers of Planning Commission on Appeal

- (a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the building official or land use supervisor could have made regarding the application.
- (b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the building official.
- (c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district.
- (d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below.

4. Appeals of Planning Commission Decisions to Council

- (a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission on an appeal pursuant to subsection 1 above may appeal that decision to the council.
- (b) Any appeal must be filed within 10 days after the planning commission's decision by filing with the city clerk a written notice of appeal addressed to the council and specifying the grounds for the additional appeal.
- (c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the building official notifies the council in writing that a stay would cause imminent peril to life or property,

and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal.

- (d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal.
- (e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located.
- (f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall only approve development plans if it finds that the requirements for the district plan in that district will be satisfied.

5. Appeal of Planning Commission Decisions to the Courts

- (a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission.
- (b) In case of decisions appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected in 60 days after the decision appealed from is filed in the office of the planning commission.
- (c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01.

6. Appeals of Historic Preservation Commission Decisions to Council

- (a) Where applicable, Section of 50-37.1.O.4 shall apply of historic commission decisions, when appealable to City Council

P. Security for Improvements

- 1. If the provisions of this Chapter or conditions attached to a permit or approval under this Chapter require the applicant to construct or make improvements to the property, to protect the city or adjacent property owners from injury or damage, or to return the property to a stated condition following the completion of operations or construction, and those actions have not been completed, then the city shall require the applicant to post security to ensure that those improvements are made in a timely manner, and that if the applicant fails to make those improvements the city will have adequate funds on hand to complete the improvements at the applicant's expense.
- 2. Security shall be posted in a form acceptable to the city, which may include but are not limited to cash, a promissory note, a letter of credit issued by a financial institution acceptable to the city, or a performance bond issued by a financial institution acceptable to the city. The security shall be in an amount equal to 110% of the estimated cost for the city to complete the improvements.
- 3. The city shall release posted financial security upon confirmation by the building official that the required improvements have been constructed in accordance with all applicable design and construction standards. In the case of any improvements to be dedicated to the city, the city shall release posted financial security upon acceptance of the improvements by the city. At the discretion of the building official, partial releases of financial security may be made after construction or dedication of some but not all of the required improvements, but financial security equal to 110% of the estimated cost of for the city to complete the improvements shall be retained.

4. As an alternative to requiring the posting of financial security, the city may authorize the issuance of a temporary certificate of occupancy for the property, provided that the applicant signs a development agreement with the city agreeing to pay the city a specific financial penalty per month if the required improvements are not constructed by a certain date. The amount of the penalty shall be calculated so that if the applicant does not construct the improvements within one year after the required date the penalties will equal at least 110% of the estimated cost for the city to complete the improvements.

Section 15. That Section 50-37.6 of Chapter 50 be amended as follows:

50-37.6 Vacation of Streets.

This Section applies to all applications to vacate a public street, highway or utility easement. This section is intended to comply with the provisions of City Charter Section 100.

A. Application.

1. An application for vacation of a public street, highway or utility easement must be accompanied by a petition of the person or persons who own a majority of the lineal frontage of the land abutting the portion of the street, highway or utility easement proposed to be vacated.
2. The application shall be filed with the city and forwarded to the planning commission for review.
3. Other application provisions of Section 37.1.B shall apply to the extent they are consistent with subsections 1 and 2 above.

B. Procedure.

1. Review and Recommendation.
The city assessor shall review the application to determine the sufficiency of the signatures on the petition. The planning commission shall review the application, conduct a public hearing on the proposed vacation pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council based on whether the petition meets the criteria in subsection C below.

2. Council decision.
Upon receipt of the planning commission recommendation, and a copy of the vacation plat prepared by the applicant and approved by the city engineer, the council shall make a final decision by resolution pursuant to Section 100(b)5 of the City Charter. Failure to present a vacation plat meeting the city engineer's requirements to the land use supervisor within 90 days of the planning commission's recommendation shall result in the application being denied.

Vacation of Street



(P) Indicates Public Hearing Required

3. Recording

~~After approval of the vacation, the City Clerk shall file the vacation plat and authorizing resolution in the office of the County Recorder. After approval of a vacation, the applicant shall submit, at the applicant's expense, a plat showing the vacated street, highway or utility easement, and that plat shall be duly certified by the city clerk and recorded in the office of the county recorder. Failure of the applicant to submit the plat in a timely manner will result in lapsing and invalidation of the council's decision as described in Section 37.1.N.~~

C. Criteria

The planning commission shall review the proposed vacation, and council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

Section 16. That Section 50-37.9 of Chapter 50 be amended as follows:

50-37.9 Variances

This section applies to applications for a variance from the terms and provisions of this Chapter. Different types of variances are subject to differing criteria for approval, and in many cases are also subject to limitations on the types of variances that can be granted.

A. Application

An application for a variance shall be filed pursuant to Section 50-37.1.B.

B. Procedure

The planning commission shall review the application, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision on the application based on the criteria in subsections 50-37.9.C through M below, as applicable to the specific type of variance being requested. The planning commission may grant a different variance or different form of relief than that requested by the applicant if it determines that the alternative relief better meets the criteria in subsections C through M below. The commission may impose appropriate conditions and safeguards to protect adjacent properties and the public interest, including but not limited to financial security pursuant to Section 50-37.1.P or a development agreement regarding the design, construction and operation of the project, to protect the Comprehensive Land Use Plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the variance will continue to be met. Constructing any improvement or beginning any activity authorized by the variance shall constitute the applicant's agreement to conform to all terms and conditions of the permit.

C. General Variance Criteria

Unless different or inconsistent criteria or limitations are stated in subsections 50-37.9.D through M below for the specific type of variance being requested, the planning commission shall approve an application for a variance, or approve it with conditions, if it finds that the proposed variance meets the following criteria. If there is a direct conflict between a provision or criteria in subsections D through M below and the general criteria in this subsection C, the provisions in subsections D through M shall govern:

1. Because of the exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property, the strict application of the requirements of this Chapter would result in peculiar and exceptional practical difficulties or exceptional or undue hardship to the property owner;
2. The special circumstances or conditions that create the need for relief were not directly or indirectly created by the action or inaction of the property owner or applicant;
3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity;
4. The relief is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant;
5. The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety or public welfare of the inhabitants of the city;
6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map;
7. The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27;
8. The relief complies with any additional limitations or criteria applicable to that variance in subsections D through M below.

D. No Use Variances

No variance may be permitted to allow any use that is not listed in Table 50-19.8 as a permitted or special use in the zone district where the property is located.

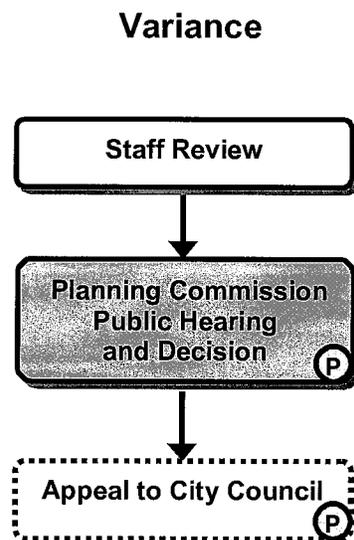
E. Variances to Lot Size in Unsewered Areas

A variance from the minimum lot size in unsewered area shall not be granted without presentation of a permit or letter of intent to issue a permit for onsite sewerage treatment from the county.

F. Variances for Two-Family Dwellings in the R-1 District

The commission shall not grant any variance from the requirements for the allowance of two-family dwellings within the R-1 zone district except:

1. A variance from the required front yard setback;



(P) Indicates Public Hearing Required

2. A variance reducing the minimum dimensional requirements by up to 10%.

G. Permitted Variances from Parking and Loading Regulations Variances

1. Residential Districts

- (a) A variance may be granted to allow parking on a portion of a lot in an R zone where parking is not permitted by Section 50-24.6.B in the following two cases:
 - (i) On any non-corner lot in an R district where the permitted parking area as shown in Table 50-24-3 is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, and the applicant demonstrates hardship;
 - (ii) On any corner lot in an R district where the R district parking area is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, without a showing of hardship.
- (b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:
 - (i) On a non-corner lot with frontage of less than 50 ft., only one parking area may be located outside the R district parking area;
 - (ii) On a corner lot with frontage of less than 50 ft., the variance may allow for compliance with the off street parking requirements of this Chapter;
 - (iii) On a corner or non-corner lot with frontage of 50 ft. or greater, no variance may allow a parking area, including any driveway area leading to it, to exceed an additional 30% of the front yard;
 - (iv) The proposed parking area shall be entirely located on the applicant's lot and shall not encroach across any abutting lot line unless such abutting lot and the subject lot are under the same ownership and the abutting lot is not occupied by a dwelling unit;
 - (v) Where the proposed parking area will encroach into any unimproved area of a street, the variance shall expire upon improvement of the street;
 - (vi) Economic considerations, in whole or part, shall not constitute a hardship.

2. Reducing Required Parking Spaces Mixed Use, Form and Special Purpose Districts

~~In Mixed Use, Form and Special Purpose Districts, Except as provided in 50-37.9.G, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled.~~

3. Exceeding Required Parking Spaces

Variances from the maximum parking limits provided in 50-24.4 shall not exceed 175% of the minimum requirement provided in Table 50-24.1

H. Variances to Reduce Setbacks

When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26 of this Chapter.

I. Variances in the MU-C District

1. Within the MU-C district, the only variances that may be approved are variations in any dimensional standard in Sections 50-15.3 and 50-21 by no more than 10%. However, if the need for a variance is the result of a government taking pursuant to eminent domain powers, then (a) the limits of this subsection I.1 shall not apply and (b) all or part of the required landscaping and buffering may be placed in the public right-of-way if the property owner executes a perpetual maintenance agreement with the owner of the right-of-way.
2. In the case of a setback reduction variance, the landscaping and buffering in any reduced setback area shall be at least four ft. in height and screen out at least 50% of the view of any parking area, unless the setback is reduced to less than 5 ft., in which case it shall screen out at least 75% of the view of the parking area.

J. Variances in A-O Airport Overlay District

Variances shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern.

K. Variances from Flood Plain Regulations

Variances to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K.

1. **In a floodway:**
 - (a) No variance shall be granted that would result in any increase in flood levels during the base flood discharge;
 - (b) No variance shall authorize the placement of a manufactured home, dwelling unit or any structure designed for human habitation;
 - (c) No variance shall be granted authorizing a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (d) Variances shall be limited to giving the applicant a minimal reasonable use of the site.
2. **In a flood fringe:**
 - (a) No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (b) Variances shall not produce any adverse effects to the flood capacity or efficiency of the watercourse.
3. **Flood insurance notice and recordkeeping**

The building official shall notify the applicant for a variance that:

- (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
- (b) Construction below the 100 year or regional flood level increases risks to life and property. Such copy notification shall be maintained with a record of all variance actions. The building official shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the administrator of the national flood insurance program.

4. **General considerations**

The city shall consider the following factors in granting variances and imposing conditions on permits and variances in flood plains:

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

L. Standards for Variances in Shorelands

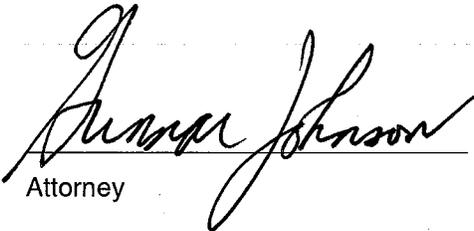
No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas.

M. Reconstruction of a Non-Conforming Building

A variance may be granted to permit the reconstruction of a nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 50% of its reproduction value, if the commission determines that it is necessary for the preservation and enjoyment of a substantial property right and is not detrimental to the public welfare of the city.

Section 17. That this ordinance shall take effect 30 days after its passage and publication.

Approved to as form:



Attorney

PC: ping SR: 4/12/2012

STATEMENT OF PURPOSE: This ordinance implements revisions to 16 sections of the Unified Development Chapter as part of the annual UDC Update process. There was a public information meeting held on Tuesday, March 20th, and two public hearings held on Tuesday, March 27th and April 10th, 2012.

The revisions were unanimously recommended (7-0) for approval by the Planning Commission at a public hearing on April 10, 2012.

Action Deadline: Not Applicable

FN: 12-019



City of Duluth
Planning Division

411 West First Street • Room 208 • Duluth, Minnesota 55802-1197
218-730-5580 • Fax: 218-730-5904 • www.duluthmn.gov

An Equal Opportunity Employer

MEMORANDUM

DATE: April 2, 2012
TO: Planning Commissioners
FROM: Steven Robertson, Senior Planner
SUBJECT: PL 12-019, Spring 2012 Updates to the UDC

The Planning Division is recommending a few changes to the UDC. This "Spring 2012 Update" will be followed later this summer with recommended changes to the sign section of the UDC (50-27), and then with a more comprehensive revision process this fall/early winter (as part of the annual UDC review).

A public information meeting was held on Tuesday, March 20th, and a public hearing was held at the Special Planning Commission meeting on Tuesday, March 27th. There was some conversation about the landscaping standards (using assessed value for a benchmark and changing that benchmark from 25% to 75%), lighting standards (what the appropriate light level is for right of way and adjacent properties), and changes to the use table (in form districts and R-P). Ultimately, the issue was tabled to get more comments from interested persons and to make minor amendments.

In the past several days, the Planning Division have also discussed two additional items.

The first is how to address "twin homes" (a structure containing two dwelling units sharing a vertical party or division wall divided by a recorded lot line). Our current code allows for two family dwellings (but when the structure is wholly located on a single lot) and townhomes (a structure containing three to eight dwelling units each sharing two vertical party or division walls). The thought is to either create a specific use category for twin homes, or to amend one of the existing definitions.

The second recent items discussed is the transparency requirements for developments in MU-W. The requirement is for 70% transparency, as measured in 50-22.5.D.1. The language in that section states: "the minimum amount of transparency required on the upper stories of facades with street frontage, measured per story or per facade, depending on the building type. Buildings with Storefront and Shopfront base types are required to have a greater ground story transparency on the front façade".

The following are recommendations for changes, to be heard at a Public Hearing on Tuesday, April 10th.

Issue 1, Changes to Use Table Districts (50-19.8)

Form district F-7 Downtown Shopping (office as a permitted use as opposed to "upper story" only).

Form district F-6 Mid-Rise Neighborhood (one, two, and multi-family dwellings and medical and dental clinic as permitted uses as opposed to "upper story" only).

R-P has been modified to allow the following uses as interim uses in order to provide more options for the Woodland R-P and other Residential-Planned projects: university or college, bank, personal services (large), and primary use parking lot or parking structure.

Issue 2, Update Relevant Use Specific Standards (50-20.3)

This suggestion updates the Use Specific Standards to match some of the changes in the use table (banks in R-P).

50-20.3.E. Bank

1. In the MU-N district, banks are limited to no more than two drive-through windows and one drive-through lane for ATM services on the premises.
2. Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.
3. Banks in the R-P, F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities.

Issue 3, Redevelopment in Form Districts (50-22.1)

The recommendation is to add a new section for alternative compliance when redeveloping in form districts. The idea is to make it easier to redevelop existing structures when it is very problematic to bring it into compliance with all the form district rules (note: only when the structure's footprint isn't being changed). This language is similar to the alternative provisions in the landscaping and screening sections.

50-22.1.D. Alternative Compliance for Renovation of Existing Primary Structures

Where compliance with the specific requirements of section 50-22 is not possible as a result of unique site conditions, an owner may propose alternatives consistent with the goals of sections 50-16 and 50-22. The Land Use Supervisor may approve a proposal under this section where an applicant can demonstrate the following:

1. The renovation does not increase the existing primary structure's footprint; and
2. The proposed renovation achieves the goals stated in 50-16 relevant to the particular form district to the same degree, or better than, the building form standards set forth in section 50-22.

Issue 4, Existing Parking Spaces that Exceed Maximum Allowed (50-24.4)

This recommendation is to clarify that existing hard-surfaced parking spaces that were legally constructed prior to the UDC being adopted, may continue to exist.

50-24.4 Maximum Parking Limits

No more than 150% of the minimum-required number off-street parking spaces, excluding the adjustments allowed in 50-24.3, shall be provided. This limit does not apply to the following uses: one-family, two-family, townhouse, and live-work dwellings. Off-street parking spaces that existed on November 18, 2010, and that were composed of hard-surfaced, dust-free material such as concrete, bituminous, or pervious paving materials may continue even if they exceed the maximum parking limit.

Issue 5, Location of Parking Spaces (50-24.6)

This recommendation is to clarify an existing provision in the UDC that allows off-site parking. The intent is to still have required parking on the same site as the land use, but to also allow flexibility in locating some of the parking off site when necessary.

50-24.6 Maximum Parking Limits

A. On Site Location and Exceptions

1. All required parking spaces shall be located on the same lot with the principal building or the primary use served; except as provided in subsection 2 below.

2. Where If an increase in the number of parking spaces is required by a change or enlargement of any use other than a single family dwelling, two-family dwelling, or townhouse, the increased parking requirement may be satisfied by utilizing:

(a) primary use parking lots or parking structures located and maintained up to 500 feet from the lot containing the change or enlargement, or

(b) accessory parking lots that existed on November 18, 2010, were composed of hard-surfaced, dust-free material such as concrete, bituminous, or pervious paving materials, and that are located and maintained up to 500 feet from the lot containing the change or enlargement. the required spaces may be located and maintained up to 500 ft. from the lot containing that use. Where required parking spaces are not provided on-site, a written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit.

3. Where required parking spaces are not provided on site, a written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit.

Issue 6, Clarify Landscaping Applicability Standards (50-25.1)

This recommendation is to clarify the requirements for landscaping when parking lots are reconstructed, as well as clearly indentifying when buffer landscaping between differing land uses is required. In addition, this proposed amendment increases the cost threshold when the primary structure is remodeled, from 25% to 75% of the value, in order to make it easier to redevelop existing properties without triggering required landscaping standards (except for buffering between conflicting land uses).

50-25.1 Applicability

A. The landscaping provisions of Sections 50-25.2 through 25.49 and 25.7 shall apply to lots and parcels in any zone district that contain (i) more than 10,000 sq. ft. of lot area, and (ii) a primary structure with a multi-family, mixed use, commercial, institutional, industrial, or parking principal use, when any of the following conditions occur:

1. A new primary structure is constructed;
2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25%;
3. An existing primary structure is relocated on the lot or parcel;
4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25% of 75% or more of the pre-application assessor's market value of the primary structure, as shown in the records of the city assessor the market value of the land and buildings, as indicated by tax assessor's records;
5. A new primary use parking lot containing 25 or more spaces is constructed; or an existing parking lot containing 25 or more spaces is redeveloped.
6. An existing parking lot containing 25 or more spaces is redesigned or reconstructed with significant changes to the layout of parking spaces, driving aisles and access drives.

B. In any Form District, landscaping shall not be required on the portion of a lot occupied by a principle structure.

C. The tree preservation provisions of Section 50-25.9 apply to all development or redevelopment on lots and parcels in any zone district that contain (i) more than 10,000 sq. ft. of lot area, and (ii) a primary structure with a multi-family, mixed use, commercial, institutional, industrial, or parking principal use, as well as to any new lot of record created after November 19, 2010, regardless of the primary use of the property, in any zone district.

- D. The landscaping between differing land uses provisions of Section 50-25.5 apply to all development or redevelopment on lots and parcels when there is a change of use.

Issue 7, Allow Later Date to Install Landscaping (50-25.2)

This recommendation pushes back the date that landscaping must be installed by two months.

N. Delay of Installation Due to Season

Whenever the installation of required landscaping is not possible by the time construction on the primary structure or primary use parking lot has been completed, the city may authorize a delay in installation until no later than the following ~~June 30~~ August 31. As a condition of authorizing a delay in installation, the city may require that a surety or other guarantee, in a form acceptable to the city, in the estimated amount of such installation be provided, or the city may issue a temporary certificate of occupancy, with the permanent certificate of occupancy to be issued following installation of all required landscaping.

Issue 8, Clarify Alternative Landscaping Provisions (50-25.8)

The recommendation is to amend this section that that it's language and format is similar to the screening section.

50-25.8 Alternative Landscaping

~~In lieu of compliance with the specific requirements of this Section 50-25 an owner may propose to the land use supervisor an alternative approach consistent with the intent of this section. An alternative approach is designed to provide administrative flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required landscaping. The land use supervisor may approve a proposal under this section only if the proposed alternative compliance achieves required landscaping to the same degree or better than the provisions of this section.~~

Where compliance with the specific requirements of section 50-25 is not possible as a result of unique site conditions abutting or surrounding a proposed site, an owner may propose alternatives consistent with the goals of section 50-25. The Land Use Supervisor may approve an alternative proposal where an applicant can demonstrate that the alternative proposal achieves required landscaping to the same degree, or better than, the provisions of section 50-25.

Issue 9, Clarify Screening Applicability Standards (50-26.1)

This recommendation is to clarify when the requirements of screening apply. Note, this specific item was changed from what was shared with the Planning Commission on March 27, 2012.

50-26.1 Applicability

The standards of this section shall apply to all of the following uses that contain a primary structure in all zones, except I-G and I-W: a multi-family, mixed use, commercial, institutional, industrial, or parking principle use, when any of the following conditions occur:

1. A new primary structure is constructed;
2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25%;
3. An existing primary structure is relocated on the lot or parcel;
4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25% or more of the pre-application assessor's market value of the primary structure,

as shown in the records of the city assessor. of the market value of the land and buildings, as indicated by tax assessor's records;

The following exterior mechanical features shall be screened: (i) electrical and gas-powered mechanical equipment and power systems equipment; (ii) heating, ventilating and air conditioning equipment ductwork, and lines; and (iii) power systems equipment. Roof or wall-mounted antennas and vent openings shall not be considered mechanical equipment for purposes of these screening standards.

The standards of this section shall not apply if the only feasible location for mechanical screening would impede the functioning of solar, wind or geothermal energy equipment or systems if such systems are otherwise in compliance with applicable building codes and zoning requirements.

Issue 10 (new), Clarify Prohibition on Fences, and Deleting Alternative Screening (50-26.4)

New Item. The language for prohibitions for signs was double stated (b & c). Also, the section for screening is being deleted from 50-26.4.D and being put into its own section 50-26.5

50-26.4 Fences and Walls

Unless otherwise expressly provided for in this Chapter, or unless expressly provided for in conjunction with the approval of a special use permit, fences and walls shall comply with the following general standards:

A. Fence/Wall Height

1. General Front Yard Standards

(a) No fence or wall located between the principal structure on a lot and the front property line shall exceed 4 ft. in height.

(b) Chain link fences, fences that are electrically charged, fences constructed of barbed or razor wire and fences constructed of temporary plastic fencing (snow fences) are prohibited. ~~Prohibitions on electrically charged fences and fences constructed of barbed or razor wire shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes.~~

(c) Prohibitions on electrically charged fences shall not apply to fences used to protect gardens and landscaping on residential lots. Prohibitions on electrically charged fences and fences constructed of barbed or razor wire shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes.

D Screening

~~In lieu of compliance with the specific requirements of this section an owner may propose to the land use supervisor an alternative approach consistent with the intent of this section. An alternative compliance approach is designed to provide flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required screening. The building official may approve a proposal under this section only if it is determined that the proposed alternative compliance achieves required screening to the same degree or better than the provisions of this section.~~

Issue 11, Clarify Alternative Screening Provisions (50-26.5)

The recommendation is to move the alternative compliance into its own section so it is clearly understood that it applies to the entire screening section of 50-26, not just the section on fences and walls. This language and format is similar to the landscaping section.

50-26.5 Alternative Screening

Where compliance with the specific requirements of section 50-26 is not possible as a result of unique site conditions abutting or surrounding a proposed site, an owner may propose alternatives consistent with the goals of section 50-26. The Land Use Supervisor may approve an alternative proposal where an applicant can demonstrate that the alternative proposal achieves required screening to the same degree, or better than, the provisions of section 50-26.

Issue 12, New Parking Ramp Design Standards (50-30.5)

This recommendation is to allow more flexibility when constructing parking ramps.

50-30.5 Parking Structure Design Standards

Each primary use or accessory parking structure shall comply with the following requirements:

A. Each facade of the parking structure that faces a public street shall contain, or have the appearance of containing, horizontal rather than sloped floor planes and shall not reveal interior ramps.

B. All sides of the structure not occupied by retail, office or residential uses must be articulated through the applicant’s choice of at least three of the following:

1. Windows or window shaped openings;
2. Decorative wall insets or projections;
3. Awnings;
4. Changes in color or texture of materials;
5. Public art approved by the Duluth Public Arts Commission pursuant to its established review and approval criteria;
6. Integrated landscape planters;
7. Pedestrian-scaled lighting;
8. Benches, plazas, or other pedestrian areas;
9. Other features as approved by the land use supervisor as providing an equivalent degree of architectural articulation, visual interest or pedestrian amenity.

C. Openings in the podium or tuck under parking areas shall be screened with architectural screens.

Issue 13, Update Lighting Standards (50-31.3)

This recommendation clarifies some of the language in the Lighting Section. Note, this specific item was changed from what was shared with the Planning Commission on March 27, 2012.

All exterior lighting regulated by this section shall not be altered or replaced except where the alteration or replacement would comply with the provisions of this section. All exterior lighting shall meet the following design standards:

A. Any light source or lamp that emits more than 900 lumens (13 watt compact fluorescent or 60 watt incandescent) shall be concealed or shielded with an Illuminations Engineering Society of North America (IESNA) full cut-off style fixture with an angle not exceeding 90 degrees, with 90% of the light below 80 degrees. to minimize the potential for glare and unnecessary diffusion on adjacent property. Exterior lighting shall be designed, constructed, and maintained in a manner that minimizes off-site glare, light trespass on adjacent property, and traffic hazards for pedestrian and motorists

B. All lighting shall have the intensities and uniformity ratio consistent with the IESNA Lighting Handbook, and shall be designed and located so that the illumination measured in footcandles at the

finished grade shall comply with the standards in Table 50-31-1, Minimum and Maximum Illumination Values. The illumination shall take into account changes in finished grade, walls, building and other existing or proposed site conditions. All exterior lighting shall meet the requirements of the Minnesota State Energy Code, except for temporary decorative seasonal lighting.

Table 50-31-1: Minimum and Maximum Illumination Values (in Footcandles)						
Use	Minimum Light Levels in Parking Lots	Maximum Average Illumination in Parking Lots	Maximum Illumination On Property	Maximum Illumination at Property Line (Excluding Rights-of-Way)	Maximum Illumination at Right-of-Way	Maximum / Minimum Ratio In An Illuminated Area
Agricultural Uses	None	2.5		1.0	2.0	
Residential Uses and Agricultural and Animal Related Uses	0.2	1.0	5	1.0	1.0	10:1
Commercial, Retail, Office, Industrial, Mixed Uses, and Institutional (Including Athletic Fields) Uses All Other Uses	0.2	2.5	10	1.0	2.0	15:1

- C. The maximum height of any lighting pole serving a residential use is 20 ft. The maximum height serving any other type of use is 25 ft., except that:
 - (1) in parking lots larger than 5 acres, the maximum height of any pole located at least 100 ft. from any residential use is 35 ft., and
 - (2) in the I-G and I-W zone districts, the maximum pole height is 50 ftThe calculation for the height of lighting poles excludes the pole's base (up to 30 inches).
- D. ~~Floodlights shall not be utilized to light all or any portion of a building façade between 10:00 pm and 6:00 am. Sign illumination shall conform to the provisions of Section 50-27.~~
- E. Lighting of free standing canopies for an automobile service stations, convenience stores, and other similar uses shall have a maximum light level of 15 footcandles. Outdoor canopies shall be fully recessed into the canopy and shall not protrude downward beyond the ceiling of the canopy. Maximum lighting level uniformity (maximum to minimum) on the site shall be 15:1.
- F. ~~In no case shall an exterior lighting source be visible from any property line or add more than one footcandle to illumination levels at any point off site. The use or operation of searchlights for advertising purposes is prohibited. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal, is prohibited.~~

- G. All outdoor light not necessary for security purposes shall be reduced to 30% of design levels or less, activated by motion sensor detectors, or turned off during non-operating hours.
- H. Light fixtures used to illuminate ~~flags~~, statues, monuments, or any other objects mounted on a pole, pedestal or platform shall use a narrow cone beam of light that will only illuminate the object not extend beyond the illuminated object.
- I. For upward-directed architectural, landscape and decorative lighting, and flood lights, direct light emissions shall be contained by the buildings and not be visible above the building roof line, and shall not be utilized to light any portion of a building façade between 10:00 pm and 6:00 am.
- J. No flickering or flashing lights shall be permitted, except for temporary decorative seasonal lighting.

Issue 14, Land Use Supervisor Administrative Adjustments (50-37.1.L)

This recommendation clarifies what can be administratively adjusted.

L. Administrative Adjustments

Where an application concerns development or redevelopment of ~~an existing platted lot~~ a lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways.

- 1. The front, side or rear setbacks of a new ~~structure~~ or modified building structure are no more than 1 ft. smaller than the minimum setbacks required by this Chapter;
- 2. The height of a new or modified structure is no more than 2 ft. taller than the maximum required by this Chapter;
- 3. For properties where Section 50-24 requires more than 3 off-street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site contains 1 less parking space than is required.
- 4. Handicap accessibility structures can encroach into the yard setbacks.
- 5. For properties where 50-21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50' in length may be granted if the Land Use Supervisor determines that further extension of the street is not anticipated due to topography, Comprehensive Land Use Plan, or utility availability.

Issue 15, Clarify Vacation Standards (50-37.6)

This recommendation clarifies the process for vacations.

B Procedure

1. Review and Recommendation

The city assessor shall review the application to determine the sufficiency of the signatures on the petition. The planning commission shall review the application, conduct a public hearing on the proposed vacation pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council based on whether the petition meets the criteria in subsection C below.

2. Council Decision

Upon receipt of the planning commission recommendation, and a copy of the vacation plat prepared by the applicant and approved by the City Engineer the council shall make a final

decision by resolution pursuant to Section 100(b)5 of the city Charter. Failure to present a vacation plat meeting the City Engineer's requirements to the City Clerk within 90 days of the Planning Commission's recommendation shall result in the application being denied.

3. Recording

After approval of the vacation, the City Clerk shall file the vacation plat and authorizing resolution in the office of the County Recorder. After approval of a vacation, the applicant shall submit, at the applicant's expense, a plat showing the vacated street, highway or utility easement, and that plat shall be duly certified by the city clerk and recorded in the office of the county recorder. Failure of the applicant to submit the plat in a timely manner will result in lapsing and invalidation of the council's decision as described in Section 37.1.N.

Issue 16, Clarify Variance Standards (50-37.9)

This recommendation clarifies the variance standards for required parking spaces, landscaping, and sign regulations.

G. Permitted Variances from Parking and Loading Regulations Variances

1. Residential Districts

(a) A variance may be granted to allow parking on a portion of a lot in an R zone where parking is not permitted by Section 50-24.6.B in the following two cases:

(i) On any non-corner lot in an R district where the permitted parking area as shown in Table 50-24-3 is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, and the applicant demonstrates hardship;

(ii) On any corner lot in an R district where the R district parking area is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, without a showing of hardship.

(b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:

(i) On a non-corner lot with frontage of less than 50 ft., only one parking area may be located outside the R district parking area;

(ii) On a corner lot with frontage of less than 50 ft., the variance may allow for compliance with the off street parking requirements of this Chapter;

(iii) On a corner or non-corner lot with frontage of 50 ft. or greater, no variance may allow a parking area, including any driveway area leading to it, to exceed an additional 30% of the front yard;

(iv) The proposed parking area shall be entirely located on the applicant's lot and shall not encroach across any abutting lot line unless such abutting lot and the subject lot are under the same ownership and the abutting lot is not occupied by a dwelling unit;

(v) Where the proposed parking area will encroach into any unimproved area of a street, the variance shall expire upon improvement of the street;

(vi) Economic considerations, in whole or part, shall not constitute a hardship.

2. Reducing Required Parking Spaces Mixed Use, Form and Special Purpose Districts

~~In Mixed Use, Form and Special Purpose Districts~~, Except as provided in 50-37.9.G, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled.

3. Exceeding Required Parking Spaces

Variances from the maximum parking limits provided in 50-24.4 shall not exceed 175% of the minimum requirement provided in Table 50-24.1