

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-061-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION, FROM R-1 TO MU-N, OF THE PROPERTIES LOCATED AT 4131, 4201 AND 4219 GRAND AVENUE (KHAI KING, MURPHY OIL USA, INC., AND CHRIST THE KING LUTHERAN CHURCH).

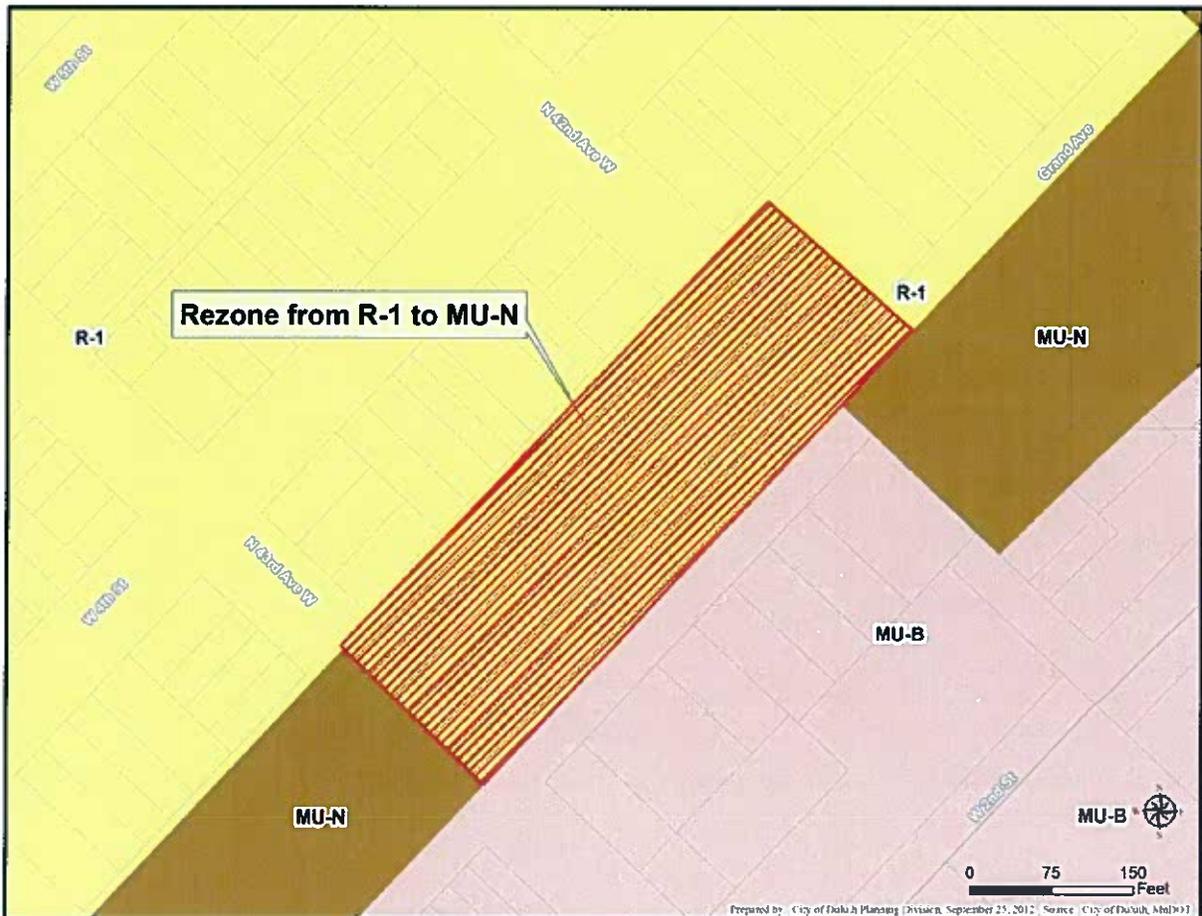
CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That the 1.37 acres of the subject properties located at 4131, 4201 and 4219 Grand Avenue and as more particularly described as follows:

010-0480-00460      010-3610-09550      010-3610-09530  
010-3610-09520      010-3610-09470

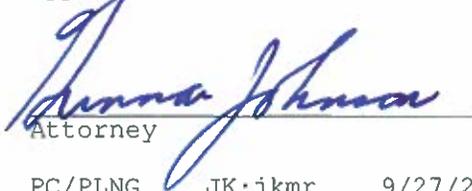
be reclassified from Residential-Traditional(R-1), to Mixed Use-Neighborhood (MU-N), and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:



(Ref. File No. 12-125)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

Approved as to form:

  
Attorney

PC/PLNG JK:jkmr 9/27/2012

STATEMENT OF PURPOSE: This zoning map amendment provides a zoning change from R-1 to MU-N for the properties located at 4131, 4201 and 4219 Grand Avenue.

The applicant is interested in rezoning the property to MU-N because the current use as a restaurant is a legal, but nonconfirming use, in an R-1. The other co-applicants, Murphy Oil USA, Inc., and Christ the King Lutheran Church, have uses that are legal nonconforming uses in an R-1. Rezoning to MU-N would allow the uses of all three properties to be considered legal, conforming uses.

On September 18, 2012, the Duluth planning commission held a public hearing on the proposal and voted 8 yeas, 0 nays, and 0 abstentions, to recommend that the city council approve the rezoning requested for the following reasons:

- (1) This proposal is consistent with the comprehensive land use plan;
- (2) Rezoning to MU-N will allow a mix of uses that are reasonably related to the existing land uses in the area;
- (3) The proposed MU-N zone district is consistent with the future land use category "Neighborhood Commercial";
- (4) Material adverse impacts on nearby properties are not anticipated.

The motion to approve the rezoning from R-1 to MU-N must prevail with an affirmative vote of 2/3 by the city council.

Date of application: July 31, 2012  
Action deadline: November 28, 2012



**CITY OF DULUTH**  
Planning Division

411 W 1<sup>st</sup> St, Rm 208 \* Duluth, Minnesota 55802-1197  
Phone: 218/730.5580 Fax: 218/723-3559

**STAFF REPORT**

<b>File Number</b>	PL 12-125	<b>Contact</b>	Steven Robertson, 218 730 5295	
<b>Application Type</b>	UDC Map Amendment	<b>Planning Commission Date</b>	September 18, 2012	
<b>Deadline for Action</b>	<b>Application Date</b>	July 31, 2012	<b>60 Days</b>	September 29, 2012
	<b>Date Extension Letter Mailed</b>	August 23, 2012	<b>120 Days</b>	November 28, 2012
<b>Location of Subject</b>	4131 Grand Avenue			
<b>Applicant</b>	Khai King	<b>Contact</b>		
<b>Agent</b>	Daniel and KamolPak Williams	<b>Contact</b>	kamolpak@hotmail.com	
<b>Legal Description</b>	See Attached			
<b>Site Visit Date</b>	August 29, 2012	<b>Sign Notice Date</b>	September 4, 2012	
<b>Neighbor Letter Date</b>	Aug 23 and Sep 7, 2012	<b>Number of Letters Sent</b>	128	

**Proposal**

Applicant requests that this property be rezoned from R-1 to MU-N because "this would also make the location have consistent zoning with the rest of Grand Avenue and is consistent with the city's long range plan". The applicant is joined in the petition by other property owners along Grand Avenue (Murphy Oil USA and Grace Lutheran Church).

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Commercial	Neighborhood Commercial
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	MU-B	Institutional (Medical)	Neighborhood Commercial
<b>East</b>	R-1/MU-N	Residential	Neighborhood Commercial
<b>West</b>	R-1/MU-N	Commercial/Church/Residential	Neighborhood Commercial/Traditional Neigh.

**Summary of Code Requirements (reference section with a brief description):**

**Section 50-37.3 UDC Text or Zoning Map Amendments**

A. Application 1. The planning commission may, upon its own motion, propose and hear amendments to the text of the UDC or the boundaries of the official zoning map.

B. Procedure 1. Planning Commission Review - The planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.J, with public notice as required by Section 50-37.1.H, and make a written recommendation to council based on the criteria in subsection C below. 3. When Written Consent or Supermajority Required: the affirmative vote of 2/3 of the council shall be required if: (ii) The planning commission has completed a study of an area containing at least 40 acres of land surrounding the applicant's property and the proposed rezoning is a result of that study, and a finding is made that it would be impractical to obtain the required written consent.

C. Criteria - The planning commission shall review the application, and council shall approve the application, or approve it with modifications, if it determines that the application: 1) Is consistent with the Comprehensive Land Use Plan; 2) Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use; 3) Is required by public necessity, convenience, or general welfare, or good zoning practice; 4) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

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**Comprehensive Plan Findings (Governing Principle and/or Policies) and Current History (if applicable):**

- 1) Governing Principles: Principle #8 - Encourage mix of activities, uses and densities
- 2) The Comp Plan defines "Neighborhood Commercial" as small- to moderate scale commercial, serving primarily the adjacent neighborhood(s). May include specialty retail; community gathering businesses such as coffee shops or lower intensity entertainment; offices; studios or housing above retail (storefront retail with vertical mixed use). Typically situated in or adjacent to residential neighborhoods. May transition to neighborhood mixed use.
- 3) Recent History: the applicant was intended to be on the September 11, 2012 Planning Commission meeting, but the "notice sign" was not posted in time to meet the notice requirements. There was also some confusion on the rezoning petition; staff worked with the applicant(s) to clarify the exact boundary of the rezoning petition.

**Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):**

Staff finds as follows:

- 1) The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or else be considered arbitrary and capricious.
- 2) The Comprehensive Plan - Future Land Use Map identifies the area proposed for rezoning as "Neighborhood Commercial" (see description above). The uses permitted in the MU-N zone district are consistent with the Comprehensive Plan description of the "Commercial Neighborhood" future land use category.
- 3) The MU-N zone district is reasonably related to the existing land use in the immediate area.
- 4) Good zoning practice requires that zone districts be consistent with the future land use category identified for the area.
- 5) No comments were received from public agencies and City departments. There were some citizen phone calls, mostly asking for clarification/scope of the rezoning.
- 6) Note that according to UDC, "where a proposed amendment to the zoning map would change any property from a Residential district to a Mixed Use, Form, or Special Purpose District, a planning commission hearing and a notice of 3 weeks shall be required. In addition, the affirmative vote of 2/3 of the council shall be required if: (i) The city has not received the written consent of the owners of 2/3 of those properties located wholly or partially within 100 ft. of the property proposed to be rezoned". A sufficient petition from property owners within 100 feet was not submitted with the application, so this rezoning request requires a 2/3 vote when the proposal is advanced to the City Council.

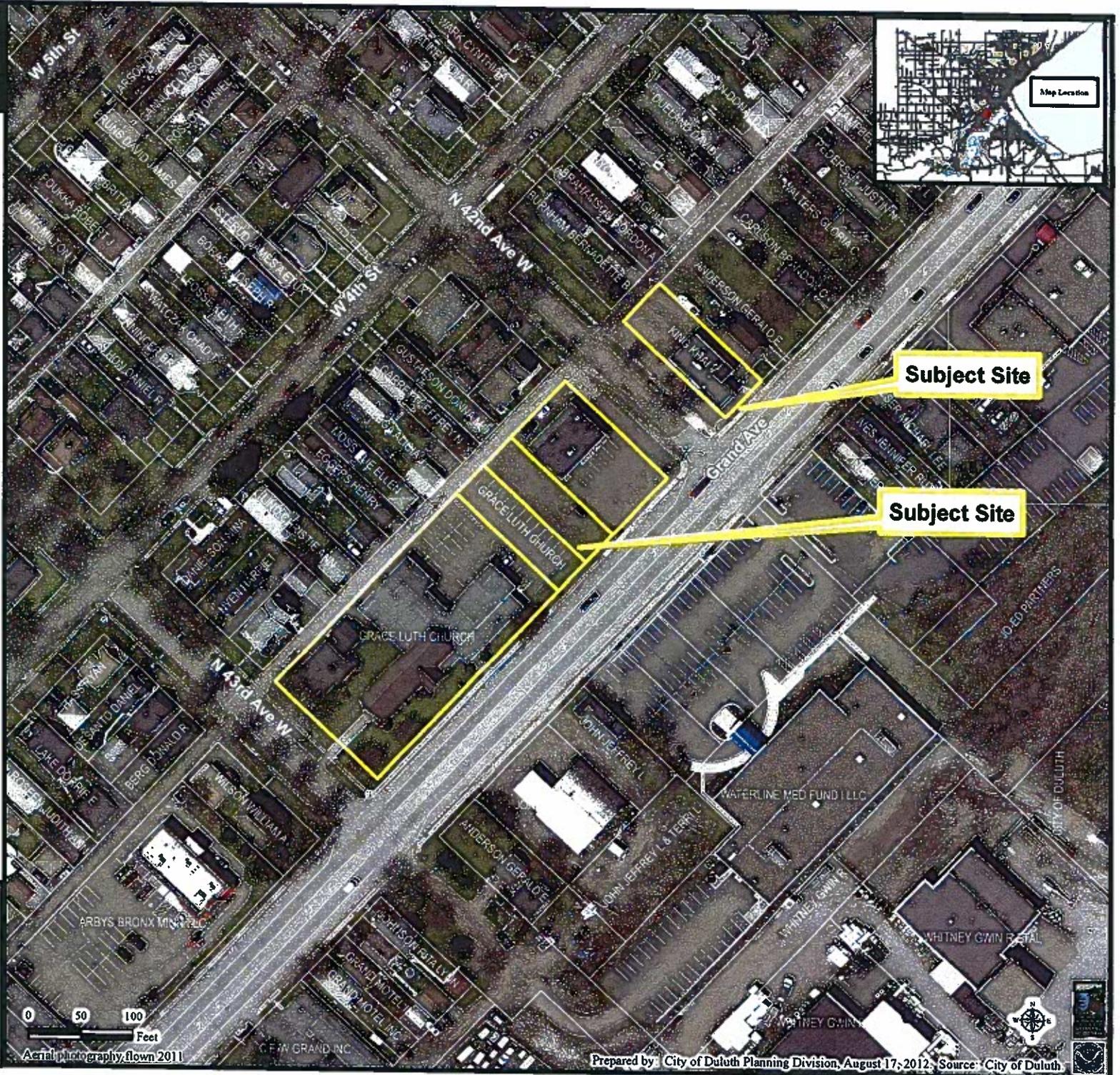
**Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):**

Based on the above findings, staff recommends to Planning Commission that the proposed rezoning be recommended for approval by City Council for the following reasons:

- 1) This proposal is consistent with the Comprehensive Land Use Plan.
- 2) Rezoning to MU-N will allow a mix of uses that are reasonably related to the existing land uses in the area.
- 3) The proposed MU-N zone district is consistent with the future land use category "Neighborhood Commercial".
- 4) Material adverse impacts on nearby properties are not anticipated.

**Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)**

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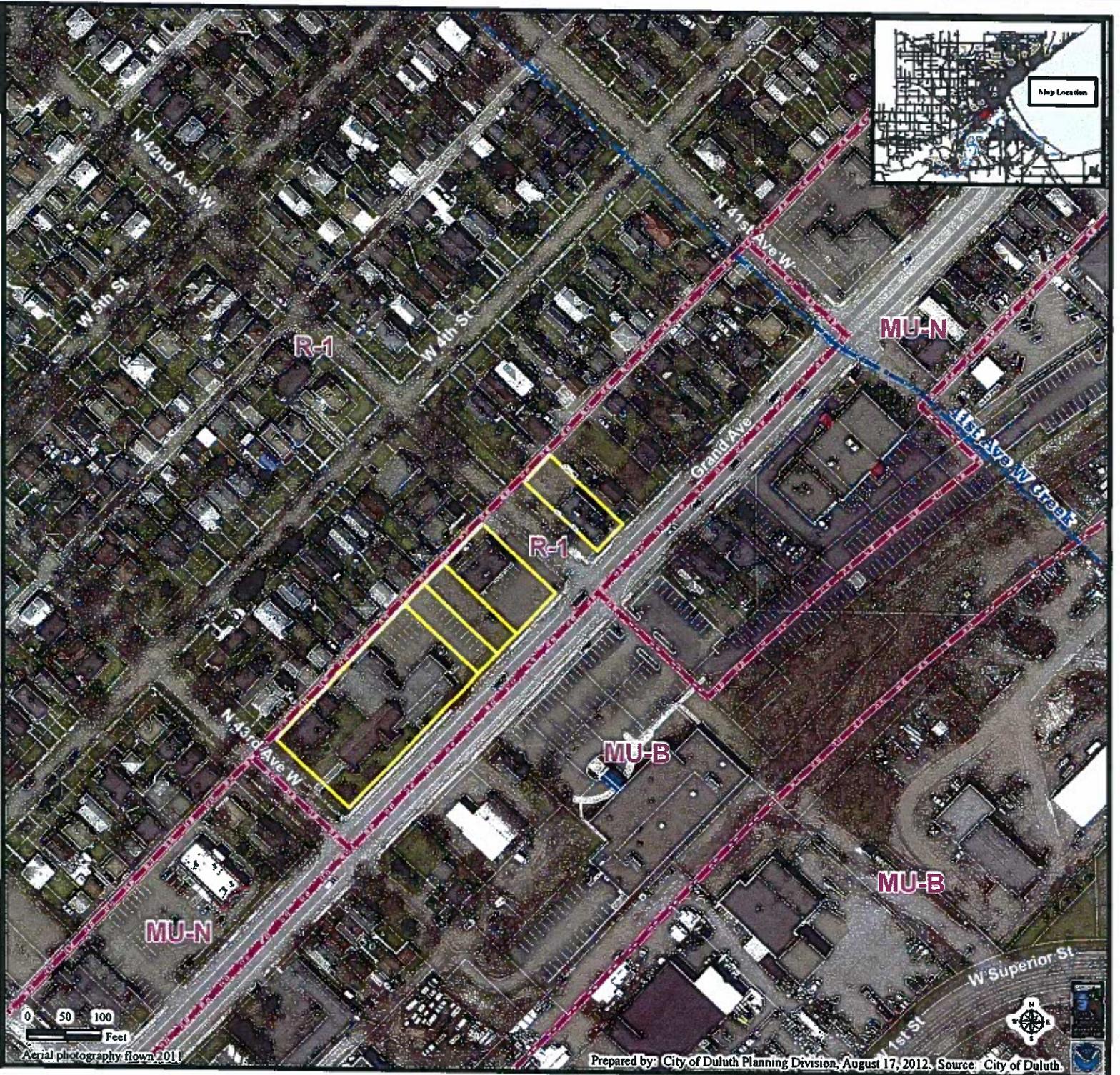
**Legend**

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



# City Planning

PL 12-125  
Grand Avenue Rezoning



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Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, August 17, 2012. Source: City of Duluth.

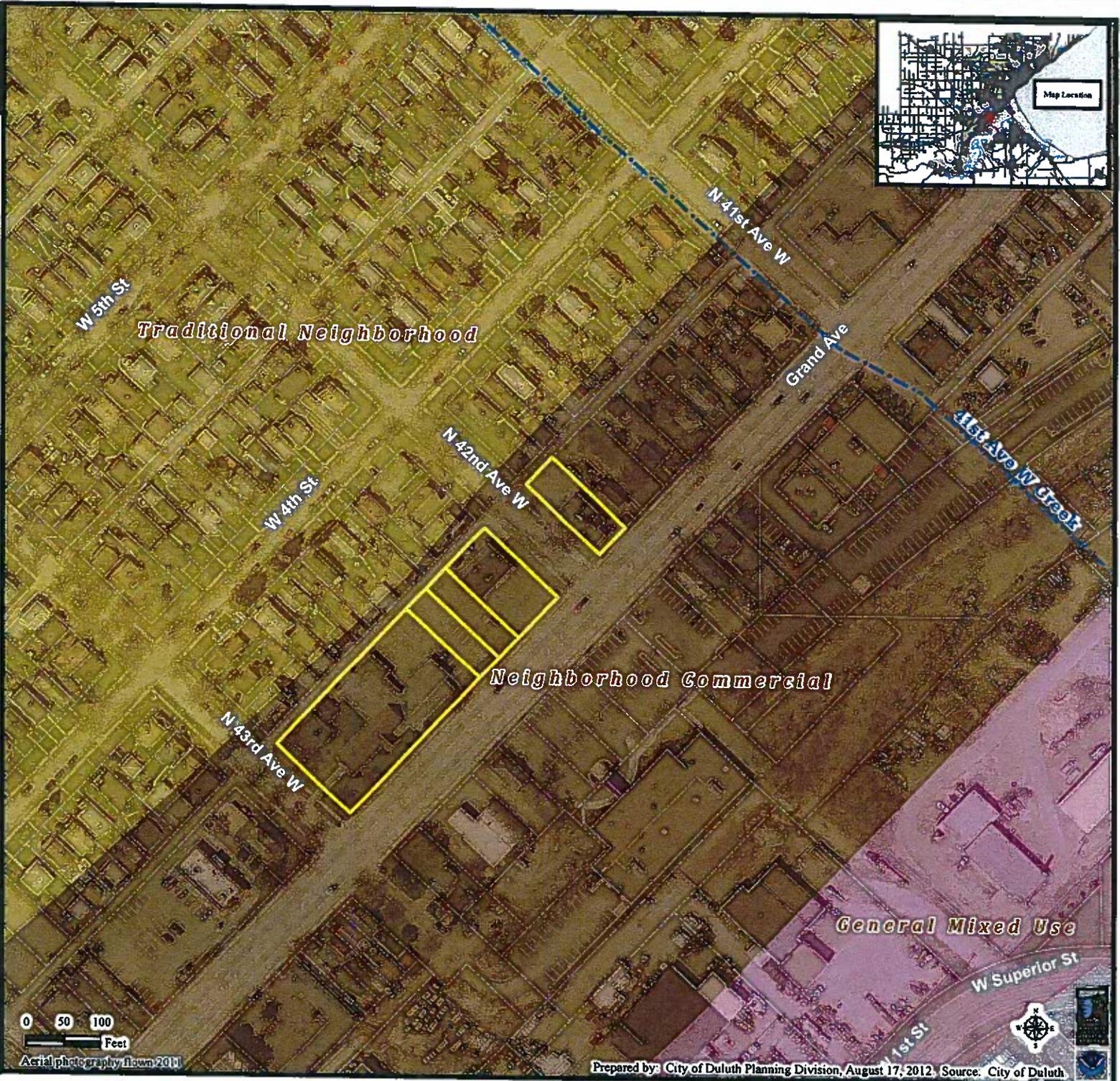
**Legend**

**Streams**

-  Trout Stream (GPS)
-  Other Stream (GPS)

**Future Land Use**

-  Preservation
-  Recreation
-  Rural Residential
-  Low-density Neighborhood
-  Traditional Neighborhood
-  Urban Residential
-  Neighborhood Commercial
-  Neighborhood Mixed Use
-  General Mixed Use
-  Central Business Secondary
-  Central Business Primary
-  Auto Oriented Commercial
-  Large-scale Commercial
-  Business Park
-  Tourism/Entertainment District
-  Medical District
-  Institutional
-  Commercial Waterfront
-  Industrial Waterfront
-  Light Industrial
-  General Industrial
-  Transportation and Utilities



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Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, August 17, 2012. Source: City of Duluth



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# CITY OF DULUTH ZONING MAP AMENDMENT PETITION

File No. \_\_\_\_\_

Date \_\_\_\_\_

### Section I

We, the undersigned property owners petition to reclassify from R-1 to MU-N the following legally described property: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### Section II

Attach a map of the area described above.

### Section III

We believe that this rezoning will be in the public interest because it will make consistent all of grand ave

### Section IV

Petitioners: Owners of property requested to be rezoned (all property owners must sign)

NAME Khai King ADDRESS \_\_\_\_\_ Phone #/Fax #/Email 218-725-

Bldg owner

KHAI KING 4131 GRAND AVE DULUTH, MN 55807  
CELL 218-341-5704  
HOME 218-729-7826

KAMOLPAK WILLIAMS CAFE OWNER  
Kamolpak Williams

### LEGAL DESCRIPTION

DULUTH PROPER  
CHANDLER PARK ADDITION  
BLOCK 3  
LOTS 31 & 32

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Section V

If petitioning for a change from a Residential district to a Mixed Use, Form, or Special Purpose District, include consenting property owners within 100 feet of the property requested to be rezoned (if not included, the rezoning would require a 2/3 vote from council to be approved). All property owners of the property must sign.

NAME ADDRESS LEGAL DESCRIPTION OF PROPERTY  
YOU MAY USE ADDITIONAL SHEETS

MURPHY OIL USA INC. # 4884  
 4201 GRAND AVE DULUTH, MN 55807  
 LEGAL DESCRIPTION: PLAT NAME ONEOTA DULUTH  
 BLOCK 079  
 THAT PART OF BLK 79, ONEOTA,  
 WHICH LIES BETWEEN THE EXTENDED  
 NELY AND SWLY LINES OF LOT 30,  
 RESURVEY OF MURRAY & HOWIES  
 ADD TO DULUTH, EXTENDED SELY  
 TO THE MIDDLE LINE OF GRAND  
 AVE. W AND ALL OF LOT 16 IN  
 LOTS 30 THRU 32 BLOCK 1  
 RESURVEY OF MURRAY & HOWIES  
 ADD AND INC LOTS 1 THRU 3  
 BLK 1 CHANDLER PARK ADD

SIGNATURE

*Murphy Oil USA, Inc. by [Signature]*

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GRACE LUTH CHURCH  
4219 GRAND AVE  
DULUTH, MN 55807

LEGAL DESCRIPTION:

PLAT NAME; ONEOTA DULUTH  
BLOCK 079

DESCRIPTION: LOTS 9 THRU 13

SIGNATURES



Chairman

July 24, 2012

ANDERSON GERALD E  
4127 GRAND AVE  
DULUTH, MN 55807

LEGAL DESCRIPTION:

DULUTH

PLAT NAME; CHANDLER PARK ADDITION TO DULUTH  
BLOCK 003

DESCRIPTION: LOTS 28, 29, AND 30

SIGNATURE Gerald E Anderson 7/24/12

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All

## Uses Allowed in Mixed Use-Neighborhood (MU-N) Zone District

### Permitted Uses

- Dwelling, one family
- Dwelling, two-family
- Dwelling, townhouse
- Dwelling, multi-family
- Dwelling, live-work
- Co-housing facility
- Residential care facility/assisted living (6 or fewer)
- Residential care facility/assisted living (7 or more)
- Rooming house
- Bus or rail transit station
- Club or lodge (private)
- Government building or public safety facility
- Museum, library, or art gallery
- Park, playground, or forest reserve
- Religious assembly
- Business, art, or vocational school
- School, elementary
- Medical or dental clinic
- Nursing home
- Veterinary or animal hospital
- Restaurant (no drive-in/drive through)
- Theater
- Hotel or motel
- Bed and breakfast
- Office
- Preschool
- Day care facility, small (14 or fewer)
- Day care facility, large (15 or more)
- Personal service and repair, small
- Grocery store, small
- Retail store not listed, small
- Filling station

### Special Uses

- Cemetery or mausoleum
- School, middle or high
- Bank
- Data Center
- Funeral Home or Crematorium
- Personal service and repair, large
- Automobile and light vehicle repair and service
- Electric power transmission line or substation
- Major utility or wireless telecommunication facility
- Water or sewer pumping stations/reservoirs