PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0271R

RESOLUTION GRANTING AN INTERIM USE PERMIT FOR A VACATION DWELLING UNIT AT 1004 SOUTH LAKE AVENUE (GERARD AND NORMA DOWNES).

CITY PROPOSAL:

RESOLVED, that:

(a) The city council hereby grants Gerard and Norma Downes an interim use permit to operate a vacation dwelling unit located at 1004 South Lake Avenue and as described by the following:

Lot 179, Upper Duluth, Lake Avenue (PID 010-4380-00900); and

(b) Minnesota Statutes Section 462.3597 authorizes the city to issue an interim use permit that allows a use to exist until a specified date or until an amendment to this chapter authorizes or prohibits that use; and

(c) The city council finds that a time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use at this location; and

(d) The interim use permit shall remain in effect for up to six years following the effective date of this resolution, or until there is a change in ownership of the property, whichever occurs first; and

(e) Pursuant to Section 50-20.3.V and Section 50-37.10 of the Duluth City Code, 1959, as amended, the applicant applied for an interim use permit and the application was duly referred to the city planning commission (PL13-063); the commission gave due notice of public hearing and considered the application during a public hearing occurring on May 14, 2013; and

(f) The city planning commission, at their regular meeting on May 14, 2013, considered the application's consistency with the use specific standards for vacation dwelling units and the criteria for granting interim use permits and voted to recommend approval of an interim use permit for a vacation dwelling unit subject to the conditions listed below; and

FURTHER RESOLVED, that an interim use permit for the subject property, is approved subject to the following conditions:

(a) The applicant must disclose to all guests in writing the location of the nearest legal access to the Lake Superior beach; and

(b) The applicant must disclose to all guests in writing that quiet hours shall be observed between the hours of 10:00 p.m. and 8:00 a.m.; and

(c) The applicant adhere to the terms and conditions listed in the interim use permit document and any modifications to the document that may be deemed necessary by the land use supervisor provided that no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Approved as to form:

Attorney

PC/PLNG KD:cs 5/16/2013

STATEMENT OF PURPOSE: This resolution grants to Gerard and Norma Downes an interim use permit for a vacation dwelling unit at 1004 South Lake Avenue. The interim use permit remains in effect for six years, or until the property changes hands, whichever occurs first.

The applicant's proposal meets the use specific criteria for a three-bedroom vacation dwelling unit. The two required off-street parking spaces are provided and the applicant lives within the required distance of the property.

On May 14, 2013, the city planning commission held a public hearing on the proposal, heard testimony from citizens, and voted 9 yeas, 0 nays and 0 abstentions, with 0 commissioners absent, to recommend that the city council approve the interim use permit with conditions relating to quiet hours at the property and disclosure to guests the location of the nearest legal beach access.

Request filed: April 8, 2013
Action deadline: August 6, 2013

CITY OF DULUTH
Planning Division

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

STAFF REPORT

File Number	PL13-063	**Contact**	Kyle Deming, kdeming@duluthmn.gov		
Application Type	Interim Use Permit	**Planning Commission Date**	May 14, 2013		
Deadline for Action	**Application Date**	April 8 2013	**60 Days**	June 7, 2013	
	Date Extension Letter Mailed	April 19, 2013	**120 Days**	August 6, 2013	
Location of Subject	1004 S. Lake Ave.				
Applicant	Gerard & Norma Downes	**Contact**	pgdownes@hotmail.com, 218-343-2337		
Agent	Same	**Contact**			
Legal Description	Lot 179, Upper Duluth, Lake Avenue (PID 010-4380-00900)				
Site Visit Date	April 29, 2013	**Sign Notice Date**	April 30, 2013		
Neighbor Letter Date	April 25, 2013	**Number of Letters Sent**	31		

Proposal

Interim Use Permit for one vacation dwelling unit consisting of three bedrooms.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	One-family dwelling	Traditional Neighborhood
North	R-1	Undeveloped street	Traditional Neighborhood
South	R-1	Dwellings	Traditional Neighborhood
East	R-1	Park Point Beach	Preservation
West	R-1	Dwellings	Traditional Neighborhood

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

UDC Section 50-19.8. Permitted Use Table. A Vacation Dwelling Unit is an Interim Use in an R-1 District.
UDC Sec. 50-37.10.B ... Council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The ... Council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.1.P, a development agreement regarding the design, construction, and operation of the special use, 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 special use permit will continue to met.
UDC Sec. 50-37.10.E ... the Council shall only approve an interim use permit, or approve it with conditions, if it determines that: 1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location; 2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures of improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.

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

Governing Principle #8 - Encourage mix of activities, uses, and densities
Governing Principle #5 - Strengthen neighborhoods

Future Land Use - Traditional Neigbhorhood - Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

- 4-8 units/acre
- Form standards and conservation development an option
- Mix of housing types (i.e. town homes and 4-plexes) at corners
- Limited commercial uses (i.e., 'corner store') serving neighborhood market

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

Staff finds that:

1.) The applicant has submitted the required materials and agency approvals;

2.) The applicant has the required 2 off-street parking spaces in front of the garage which is accessed via a driveway on the unimproved 10th St. right of way;

3.) The applicants are the managing agents. They live within the required distance from the site and have provided the required notification to neighbors within 100';

4.) A time limit on this Interim Use is needed to verify that the Vacation Dwelling Unit at this location can function without negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. The time limit will be up to six years from the effective date of the Council resolution approving the interim use permit.

5.) In previous vacation dwelling unit interim use permit reviews the Planning Commission has recommended conditions that the applicant notify their guests in writing where the nearest pedestrian access to the Lake Superior beach may be found as well as the requirement of quiet at the property between 10 p.m. and 8 a.m. and staff has forwarded these conditions below should the commission decide to recommend them at this location.

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

Based on the above findings, staff recommends the Commission recommend approval of the Interim Use Permit subject to the following conditions:

1.) The applicant must disclose to all guests, in writing, the location of the nearest legal access to the Lake Superior beach; and

2.) The applicant must disclose to all guests, in writing, that quiet hours shall be observed between the hours of 10 p.m. and 8 a.m.; and

3.) The applicant adhere to the terms and conditions listed in the interim use permit document and any modifications deemed necessary by the Land Use Supervisor provided that no such administrative approval shall constitute a variance from Chapter 50.

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

City Planning

PL 13-063

Interim Use Permit

1004 S Lake Avenue

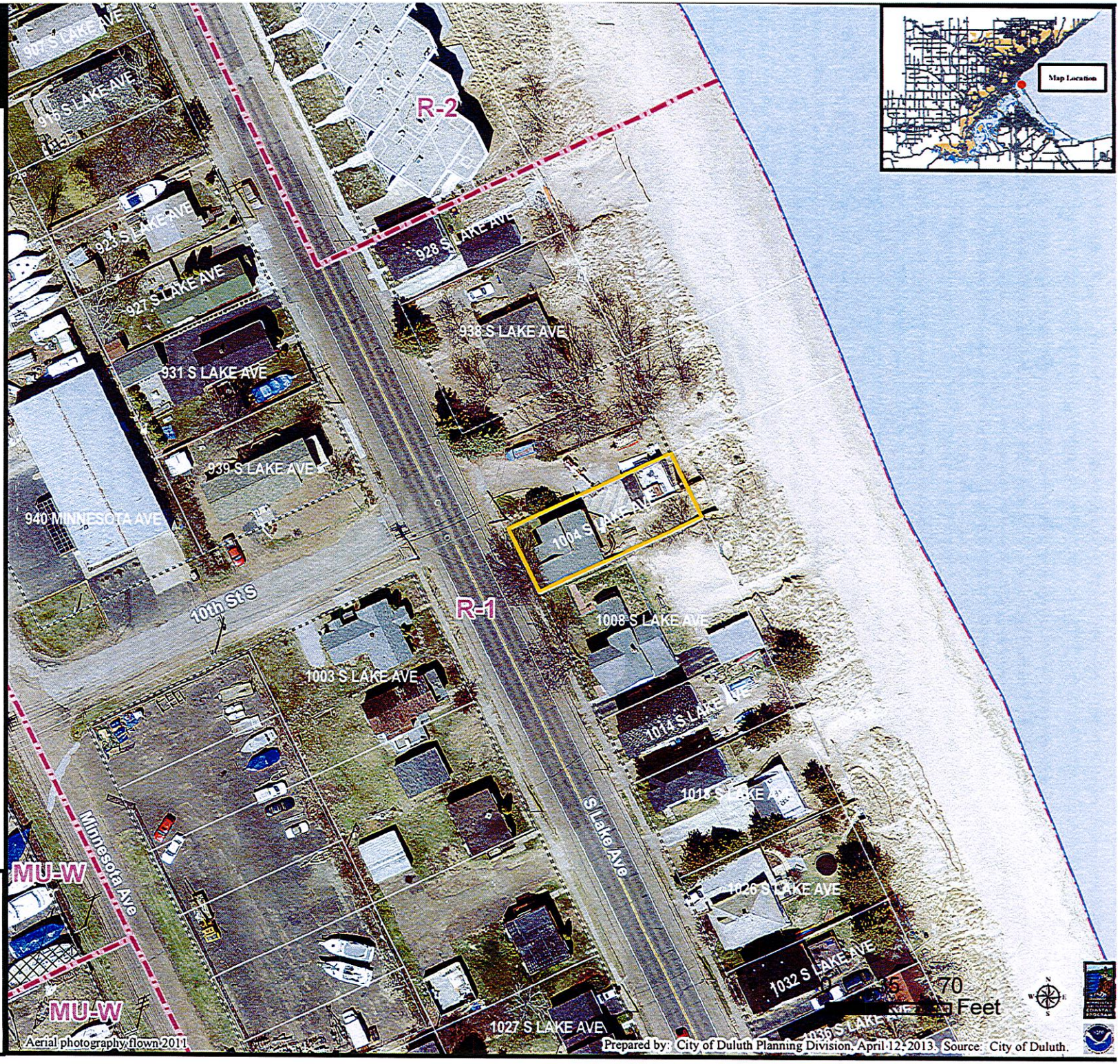
Legend

Right-of-Way Type

- Road or Alley ROW
- Vacated ROW

Easement Type

- Utility Easement
- Other Easement
- Zoning (Final)



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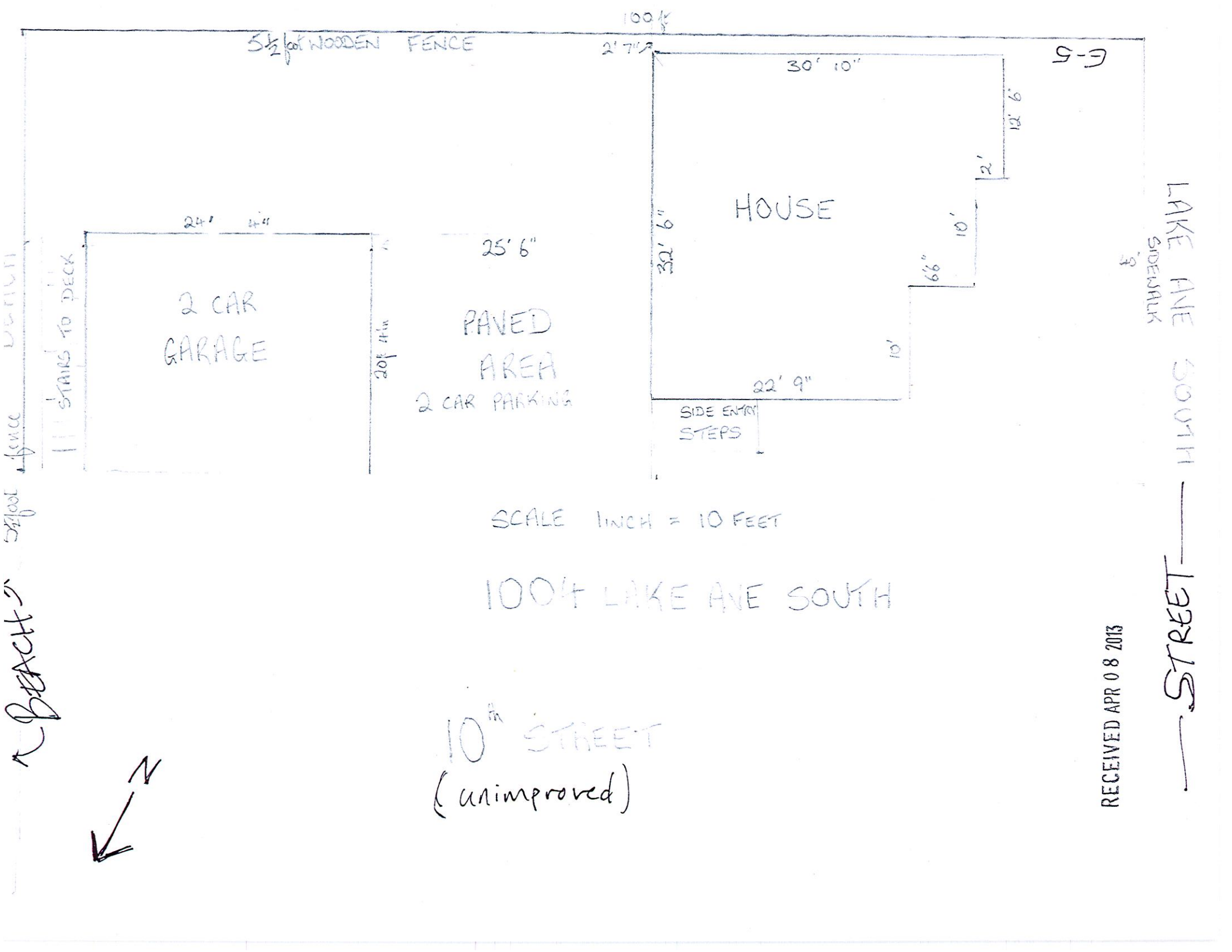

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City of Duluth
Planning Division

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218-730-5580 • Fax: 218-730-5904 • www.duluthmn.gov

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INTERIM USE PERMIT
FOR
VACATION DWELLING UNIT

Permit Number: PL13-063

Issued Date: May 28, 2013

Permit Holder:
Gerard & Norma Downes
3636 Wargin Rd.
Hermantown, MN 55810
218-343-2337
pgdownes@hotmail.com

Permit Location:
1004 S. Lake Ave.
Lot 179, Upper Duluth, Lake Avenue
PID 010-4380-00900

Permit Terms:

1. The number of vacation dwelling units issued under this permit is 1.
2. The vacation dwelling unit consists of 3 bedrooms.
3. The total number of persons that may occupy the vacation dwelling unit is 7.
4. The number of off-street parking spaces provided for the vacation dwelling unit is 2.
5. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, on or off the street.
6. The minimum rental period shall not be less than 5 nights during the period from June 15 to September 15. The minimum rental period shall not be less than 2 nights during the rest of the year.
7. The property owner must maintain all licenses and permits from the City of Duluth and State of Minnesota required for guest occupancy on the property for 3 to 21 days.
8. The interim use permit shall expire upon change in ownership of the property or in six years from the "issue date" listed above, whichever occurs first.
9. Permit holder must keep a guest record including the name, address, phone number, and vehicle (and trailer) license plate information for all guests and must provide a report to the City upon 48 hours' notice.
10. Permit holder must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the Land Use Supervisor within 10 days of a change in the managing agent or local contact's contact information.
    a. Managing agent: Gerard and Norma Downes
       3636 Wargin Rd.
       Hermantown, MN 55810
       218-727-2360
11. Permit holder must provide the name, address, and phone number for the managing agent or local contact to all property owners within 100' of the property boundary. The permit holder must notify neighboring properties within 10 days of a change in the managing agent or local contact's contact information.
12. Permit holder must disclose in writing to their guests the following rules and regulations:
    a. The managing agent or local contact's name, address, and phone number;
    b. The maximum number of guests allowed at the property;
    c. The maximum number of vehicles, recreational vehicles, and trailers allowed at the property and where they are to be parked;

d. Property rules related to use of exterior features of the property, such as decks, patios, grills, recreational fires, pools, hot tubs, saunas and other outdoor recreational facilities;
e. Applicable sections of City ordinances governing noise, parks, parking and pets;

13. If a permit holder is cited for any nuisance event as described in Chapter 40, Article III of the Duluth Legislative Code, the Land Use Supervisor may suspend the Interim Use Permit for 90 days. If the permit holder is cited for any nuisance event a second time, the Interim Use Permit shall be revoked.
14. Permit holder must post the permit number on all print, poster or web advertisements;
15. Prior to rental, the building must be inspected and an Operational Permit issued by the Fire Prevention office. Permit holder must maintain the property in conformance with this permit and be granted permit renewals as required by the Fire Department.
16. Prior to rental, the building must be inspected and the appropriate lodging license issued by the State of Minnesota and such licensure must be maintained.
17. Permit holder must apply for and be granted State and local sales tax numbers, including Hotel and Motel Use Sales Tax. Permit holder must make required sales tax payments to State and local governments according to the terms established by each taxing authority.
18. Permit holder must apply for and be granted a Hotel/Motel/B&B License from the City Clerk and must maintain licensure.
19. Permit holder agrees that (a) approval of the permit will not result in increased costs to the City if the property is later acquired by the City through eminent domain; (b) the use will be terminated at the permit holder's expense upon change in ownership of the property or 6 years from the permit issue date, whichever occurs first, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures of improvements related to the use, and (d) the applicant agrees to all conditions imposed by the City.
20. The permit holder must disclose to all guests in writing the location of the nearest legal access to the Lake Superior beach.
21. The permit holder must disclose to all guests in writing that quiet hours shall be observed between the hours of 10 p.m. and 8 a.m.

Attachments:
Site Plan

_____	_____
Permit Holder	Land Use Supervisor
_____	_____
Date	Date

Please note:
Interim Use Permits approved by the City Council shall lapse if the project or activity authorized 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 (UDC Sec. 50-37.1.N).