

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-044-O

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

AN ORDINANCE GRANTING TO DANIEL NEFF A CONCURRENT USE PERMIT FOR THE INSTALLATION OF AN EXHAUST FAN TO PROJECT THREE FEET ONTO THE SOUTH SECOND AVENUE EAST RIGHT-OF-WAY.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Daniel Neff and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) An externally mounted exhaust fan to the existing building at 202 East Superior Street and extending outward three and a half feet from at a height of 16 feet over the sidewalk, on the described property as shown in Public Document No. \_\_\_\_\_.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to save harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of instillation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public easement shall be limited to the designated area described in Section 1 above and further shown on (Public Document No. \_\_\_\_\_); and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance

certificate as specified in Section 2 30 days after this ordinance takes effect;  
or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 10. 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 SR:cs 6/13/2013

STATEMENT OF PURPOSE: Daniel Neff of Lake Superior Glass Art is seeking authority to place an exhaust fan over the public right-of-way on Second Avenue East. Mr. Neff received a concurrent use permit for a propane storage cabinet on the Michigan Street right-of-way on February 13, 2012.

On May 14, 2013, the planning commission held a public meeting on the proposal, and voted 9 yeas, 0 nays and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets as requested.

Petition received: March 13, 2013

Action deadline: There is no action deadline for this resolution.



**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 13-049	<b>Contact</b>	Steven Robertson	
<b>Application Type</b>	Concurrent Use of Streets Permit	<b>Planning Commission Date</b>	May 7, 2014	
<b>Deadline for Action</b>	<b>Application Date</b>	March 13, 2013	<b>60 Days</b>	N/A
	<b>Date Extension Letter Mailed</b>	N/A	<b>120 Days</b>	N/A
<b>Location of Subject</b>	202 E. Superior Street			
<b>Applicant</b>	Daniel Neff	<b>Contact</b>	lakesuperiorartglass@gmail.com	
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	See attached			
<b>Site Visit Date</b>	May 7, 2013	<b>Sign Notice Date</b>	April 29, 2013	
<b>Neighbor Letter Date</b>	N/A	<b>Number of Letters Sent</b>	N/A	

**Proposal**

Applicant is requesting a Concurrent Use Permit to have an exhaust fan 3 feet into the right of way of South 2nd Ave East. According to the applicant, the request will "allow for an exhaust fan mounted on the 2nd Ave side of the building, to overhang the sidewalk by approximately 24 inches. This fan is approximately 16 feet above the sidewalk and does not drip grease as restaurant fans do".

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	F-7	Commercial	Central Business Primary
<b>North</b>	F-7	Commercial	Central Business Primary
<b>South</b>	F-7/I-G	Street/Hwy 35	Recreation
<b>East</b>	I-G	Commercial	Central Business Primary
<b>West</b>	F-7	Commercial	Central Business Primary

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

UDC Section. 50-37.7C. The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

J-1

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

**Principle #4 - Support emerging economic growth sectors**

Emerging economic sectors add economic, cultural and social diversity. These include higher education, medical, value-added manufacturing, commercial outdoor recreation, historic resources interpretation, arts and music, information technology and visitor services.

-Future Land Use Designation Central Business Primary encompasses a broad range of uses and intensities:

- Governmental campus
- Significant retail
- Entertainment and lodging
- Opportunities for high-density housing
- Central plaza, public/open space
- Public parking facilities neighborhood or specialty retail markets.

-Current History. Applicant received a concurrent use permit in early 2012 for propane fuel tanks in the Michigan Street sidewalk.

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

1. Applicant is requesting a Concurrent Use Permit to have an exhaust fan 3 feet into the right of way of South 2nd Ave East.
2. The sidewalk area within the right of way is approximately seven (7) feet wide from the building to the curb line of Michigan Street. The exhaust fan will extend approximately two (2) feet into the sidewalk/right of way. There will be approximately 16 feet of clearance from the bottom of the fan to public's use of the sidewalk within the rights of way. There will be no impact on the public's ability to enjoy the public right of way or use the sidewalk.
3. No comments were received from citizens, other city departments, other utilities, or governmental agencies. It was noted that the applicant has worked with staff from Building Safety and the Fire Department to meet compliance with applicable codes.

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

Based on the above findings, Staff recommends approval of the proposed Concurrent Use Permit to the City Council, subject to the following conditions:

- 1) The applicant provides liability insurance meeting the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota:
  - (a) Public Liability with limits not less than \$3,000,000 on the release of a hazardous substance and single limits of \$1,500,000 for any number of claims arising from a single occurrence (note that this is the same insurance amount that is required for the 2012 concurrent use permit)
  - (b) The City of Duluth shall be named as the Insured.
- 2) The applicant agrees to provide certificates showing that applicant is carrying the above described insurance in the specified amounts to the City Duluth.
- 3) The project be limited to, constructed, and maintained according to the documents drawn by dated received March 13, 2013.
- 4) Applicant comply with all applicable state and federal building and fire codes.

5-2

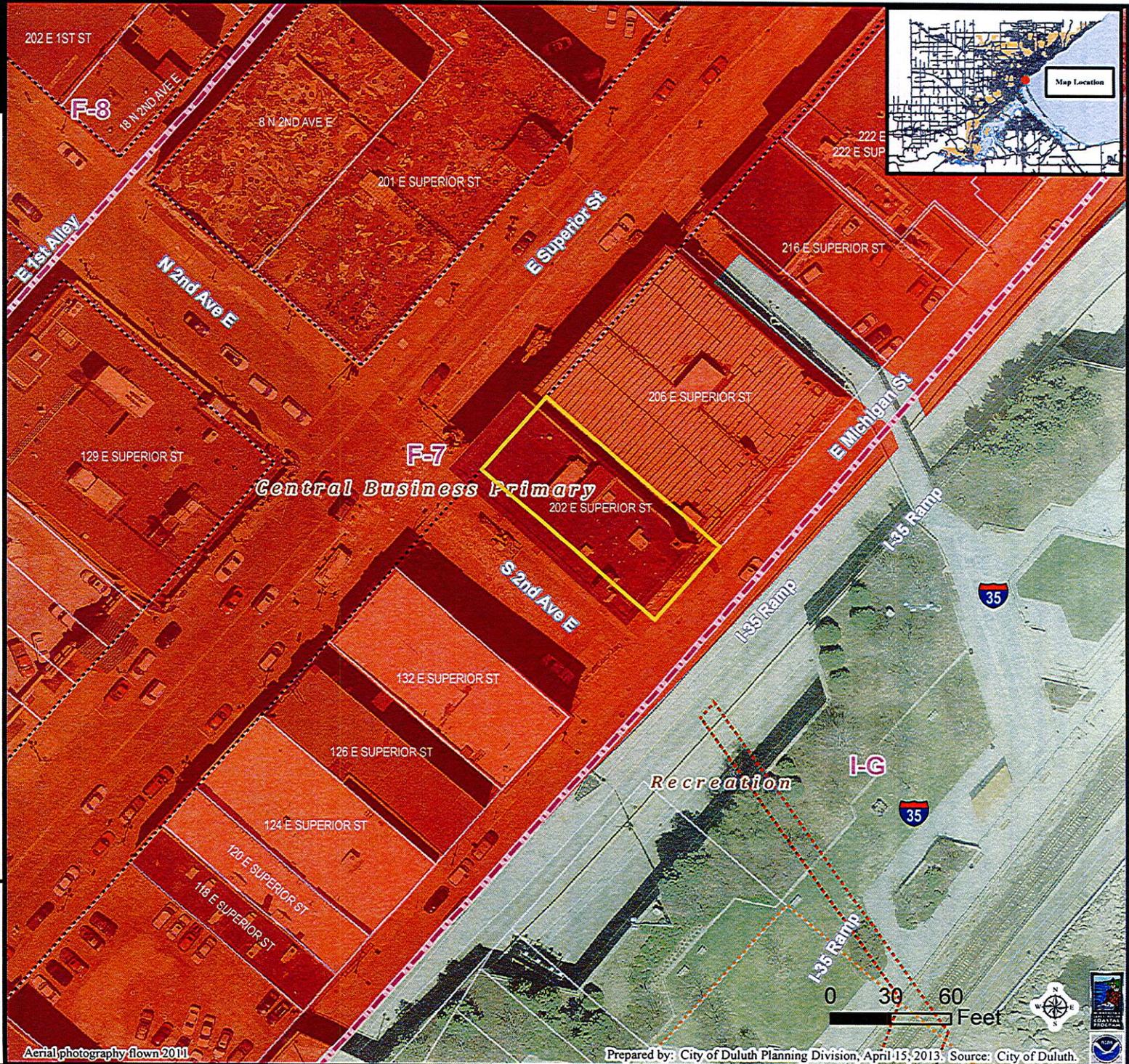
**Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)**



# City Planning

PL 13-049

Concurrent Use Permit  
202 E Superior St



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.

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Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, April 15, 2013. Source: City of Duluth.



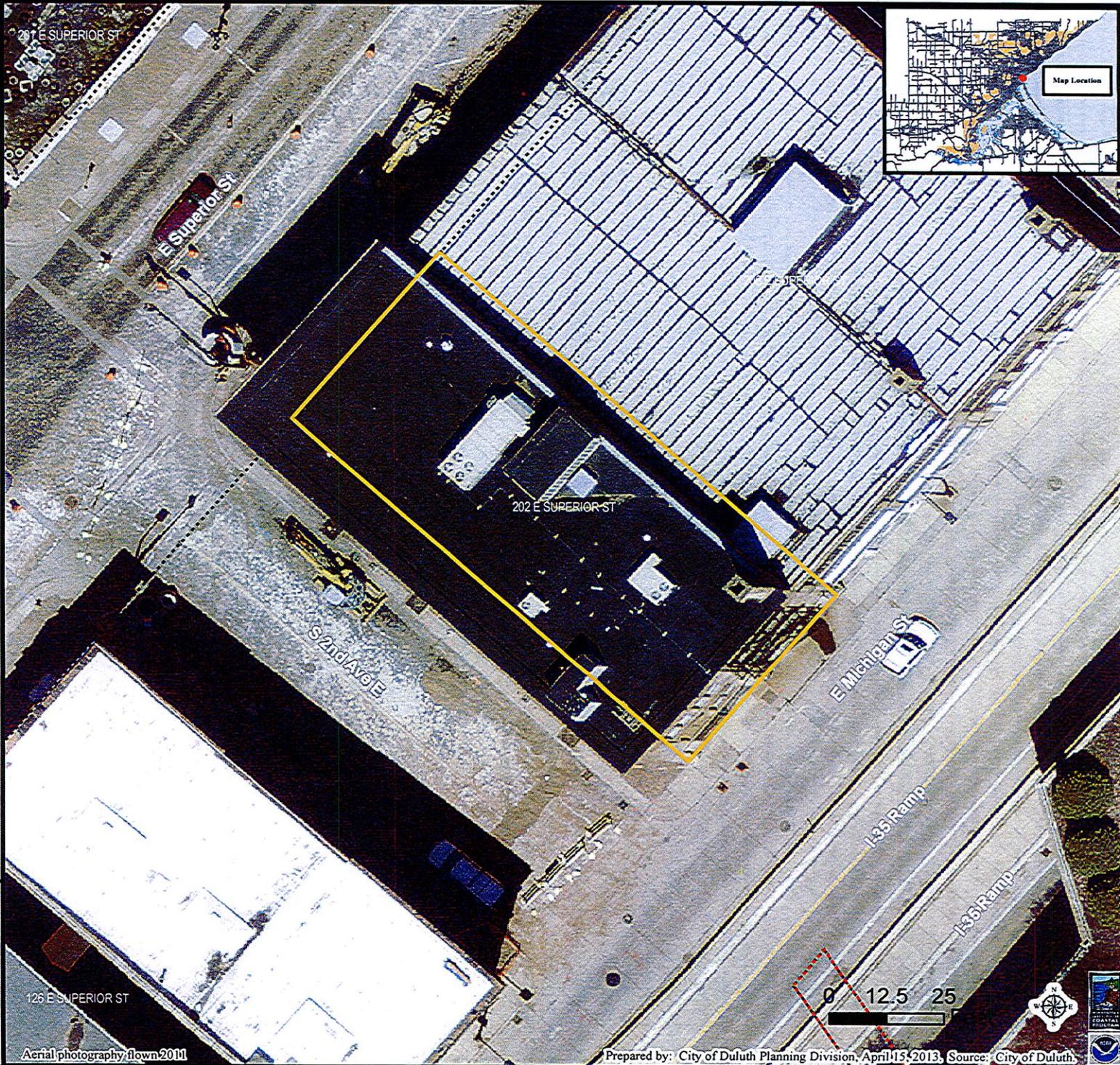


# City Planning

PL 13-049

Concurrent Use Permit

202 E Superior St



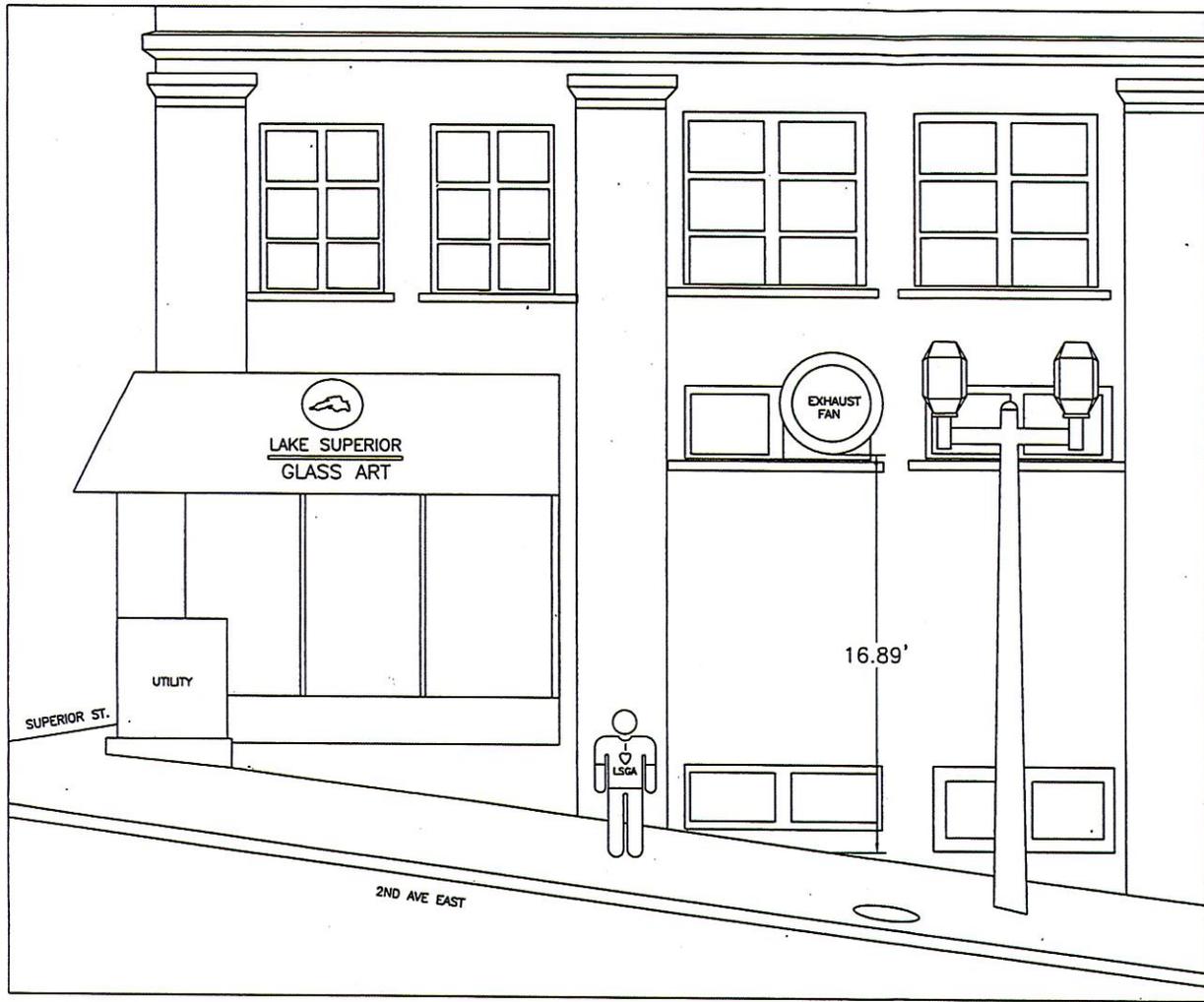
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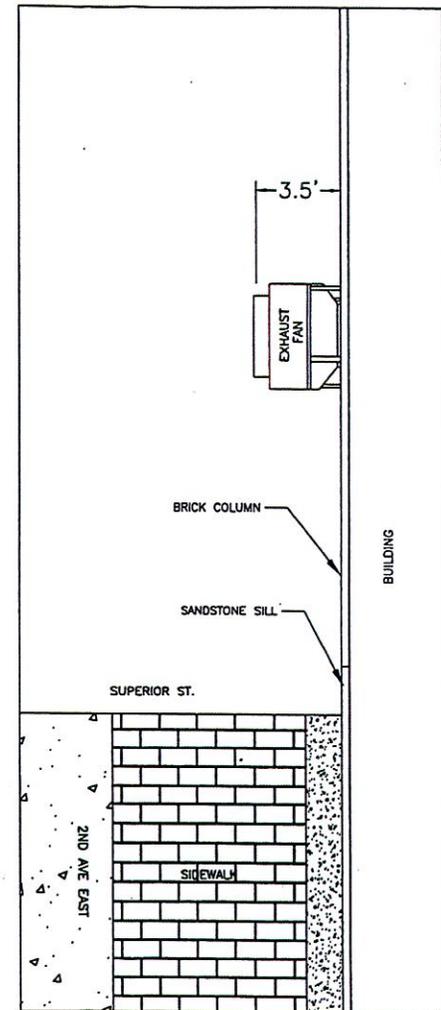
Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, April 15, 2013, Source: City of Duluth.





FRONT VIEW



SIDE VIEW



EXHAUST FAN  
 LAKE SUPERIOR GLASS ART  
 202 EAST SUPERIOR STREET  
 DULUTH, MINNESOTA 55802

J-5

Lake Superior Art Glass  
202 East Superior St.

This application is seeking a concurrent use permit to allow an exhaust fan to protrude over the public sidewalk on 2<sup>nd</sup> Avenue East located over the "eastern" sidewalk, between Superior and Michigan Streets.

Lake Superior Art Glass uses an externally mounted fan to exhaust fumes from its workstations. This fan is the same style used in commercial kitchens but differs in one major way; it produces no grease. Essentially, the only thing coming from the fan is heated air as a result of melting the glass with lampworking torches. Therefore, there is no inconvenience to the public using the sidewalk below because all exhaust is hot and will rise after leaving the fan. The exhaust is odorless and is not harmful to people because it has been mixed with significant amounts of fresh air from the make-up air unit.

As seen in the attached drawing, the fan extends over the sidewalk 3.5 feet. This is an over-estimation in my opinion. When viewed in person, it extends approximately two feet from the footprint of the building. The fan is mounted at least 16 feet above the sidewalk so it does not impede the use of the sidewalk.

The City of Duluth Building Department has addressed all other code issues concerning this fan and they have given their approval of its installation. If you have any questions, do not hesitate to contact me directly.

Dan Neff  
[lakesuperiorartglass@gmail.com](mailto:lakesuperiorartglass@gmail.com)  
218-780-0803

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SPACE AVAILABLE  
Call Greg  
**Follmer**  
COMMERCIAL REAL ESTATE  
218-510-0018 | gregfollmer.com



LAKE SUPERIOR  
ART GLASS



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ORDINANCE NO. 10136

AN ORDINANCE GRANTING TO DANIEL NEFF A CONCURRENT USE PERMIT FOR THE INSTALLATION OF THE EXTERIOR STORAGE OF PROPANE TANKS IN A LOCKABLE METAL STORAGE CONTAINER TO PROJECT INTO THE MICHIGAN STREET RIGHT-OF-WAY.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Daniel Neff and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) A lockable metal storage cabinet 18 inches deep and containing two 100 pound, 14 inches in diameter, propane tanks and resting on a concrete pad, and lying within five feet to 12 feet of the southwest corner of said Lot 34, Block 1, Central Division of Duluth; and

(b) A protective metal barrier attached to the existing building and extending outward two feet from the building and a width of three feet, on the described property as shown in Public Document No. 12-0213-13.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Public liability insurance in an amount not less than \$3,000,000 on the release of a hazardous substance and single limits of \$1,500,000 for any number of claims arising from a single occurrence and in the amount not less than \$500,000 for property damage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its employees, agents or contractors; and

(c) The policy shall contain a condition that may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(d) The city of Duluth shall be named as an additional insured; and

(e) The certificate shall also reference this ordinance by its ordinance number. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be pre-2004 edition. Permittee shall cause a current version of the required insurance certificate to be filed with the city clerk while permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

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CERTIFIED COPY OF ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to save harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of instillation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public easement shall be limited to the designated area described in Section 1 above and further shown on (Public Document No. 12-0213-13); and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file acceptance of this ordinance as

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CERTIFIED COPY OF ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

specified in Section 2 within 30 days after this ordinance takes effect; or

(b) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(c) The failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: March 16, 2012)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Krause, Krug, Larson, Stauber and President Hartman -- 9

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed February 13, 2012  
Approved February 13, 2012  
DON NESS, Mayor

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I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing ordinance passed by the city council on the 13th day of February, 2012, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 17th day of February, 2012.

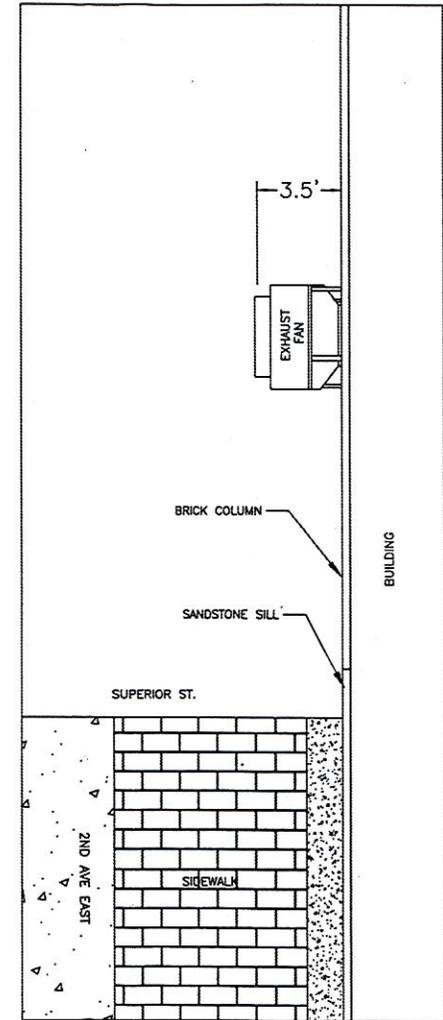
JEFFREY J. COX  
City Clerk

by *Heather D. O'Connell*  
Assistant  
CITY OF DULUTH, MINNESOTA

J-10



FRONT VIEW



SIDE VIEW



LAKE SUPERIOR  
ART GLASS  
EXHAUST FAN  
LAKE SUPERIOR GLASS ART  
202 EAST SUPERIOR STREET  
DULUTH, MINNESOTA 55802