

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-071-O

REPLACEMENT

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO SCALZO PROPERTIES, LLC, A
CONCURRENT USE PERMIT FOR TWO OFF STREET PARKING SPACES
LOCATED IN THE EAST FIFTH STREET PUBLIC 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 Scalzo Properties, LLC, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) Two off street parking spaces on the East Fifth Street public right-of-way, each one being nine feet wide and 18 feet deep, at 1527 East Fifth Street, Parcel Number 010-1480-08610, 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) Homeowner's liability insurance in an amount not less than \$300,000; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public right-of-way or 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 canceled 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 installation 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 right-of-way or 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:

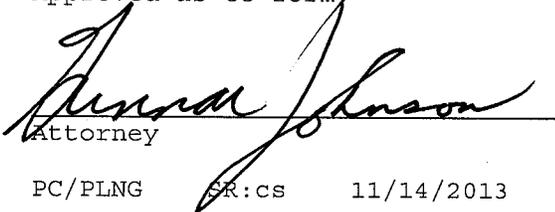
(a) The failure by the permittee to file the required insurance

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 180 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:


Attorney

PC/PLNG SR:cs 11/14/2013

STATEMENT OF PURPOSE: This ordinance grants Scalzo Properties, LLC, permission to construct and maintain two off-street parking spaces on the East Fifth Street public right-of-way. The applicant owns a four unit apartment complex at 1527 East Fifth Street that currently provides two off street parking spaces (located inside the structure).

On November 11, 2013, the planning commission held a public hearing on the proposal, and voted 7 yeas, 2 nays, and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets as requested. The planning commission also held a hearing on a request for a variance to allow parking in the front yard, which was approved on a vote of 6 yeas, 3 nays, and 0 abstentions.

Petition received: October 7, 2013

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



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	PL 13-131	Contact	Steven Robertson, 218-730-5295	
Application Type	Concurrent Use of Streets Permit	Planning Commission Date	November 12, 2013	
Deadline for Action	Application Date	October 7, 2013	60 Days	December 6, 2013
	Date Extension Letter Mailed	October 18, 2013	120 Days	February 4, 2013
Location of Subject	1527 East 5th Street			
Applicant	Scalzo Properties, LLC	Contact	lscalzo@charter.net	
Agent	Lynne Scalzo	Contact	lscalzo@charter.net	
Legal Description	010-1480-08610			
Site Visit Date	October 29, 2013	Sign Notice Date	October 29, 2013	
Neighbor Letter Date	October 18, 2013	Number of Letters Sent	72	

Proposal

The applicant is seek a Concurrent Use permit to add one off-street parking space in front of the applicant's apartment building. The parking space would primarily be located in the right of way of East 5th Street.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Residential	Traditional Neighborhood
North	R-1	Residential	Traditional Neighborhood
South	R-1	Residential	Traditional Neighborhood
East	R-1	Residential	Traditional Neighborhood
West	R-1	Residential	Traditional Neighborhood

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):

Traditional Neighborhood Future Land Use. 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.

Principle #8 - Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide.

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

- 1) The applicant is seeking a variance and concurrent use permit to provide one additional off-street parking space for the tenants of their 4 unit apartment complex. The variance is required to exceed the requirements of front-yard parking of UDC section 50-24.6. The concurrent use permit is required because the applicant wishes to place the additional parking space in the public right of way, up to the back of the existing sidewalk. If the variance is denied, then the applicant cannot proceed with their request for a concurrent use permit.
- 2) The apartment building was built in 1929, and purchased by the applicant in 2012. The lot is 95 feet wide and a 40 feet deep. Approximately 10 feet of the lot is used by neighboring property owners to access their garages. The front of the lot is considered to be East 5th Street; the right of way is 66 feet wide with curb and gutter, and sidewalks, on both sides.
- 3) The proposal will not harm or inconvenience the health, safety and general welfare of the city. While the right of way is currently being physically used by the public, the proposal project will not interfere with the public's ability to use the right of way (sidewalk or street).
- 4) The proposal is not an unreasonable use of public right of way and can be terminated if the City of Duluth desires to use the area for any public purpose. However, the city has had restrictions on parking in front of structures in residential districts since 1958, with allowances for driveway parking designed primarily for access to a garage. Granting this proposal would go against a long standing rule intended to improve the appearance and function of residential areas.
- 5) No City, citizen, or agency comments were received.
- 6) When concurrent use permits for parking in the right of way have been granted in the past, the general understanding is that the parking can not be restricted to private parties or rented/leased to individuals, but instead be available for the general public.

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

Staff recommends denial of the variance (PL 13-131). If the variance is granted, and the Planning Commission wishes to grant the concurrent use permit, it should be with the condition that the parking space being provided in the public right of way should be open to the public.

J-2

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



I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly licensed Architect under the laws of the State of Minnesota.

WILLIAM B. SCALZO
DATE
LICENSE NO. 18130

CONTRACTORS

PROJECT
HIGHLAND PARK APARTMENTS
1529 E 5TH ST
DULUTH MN. 55812

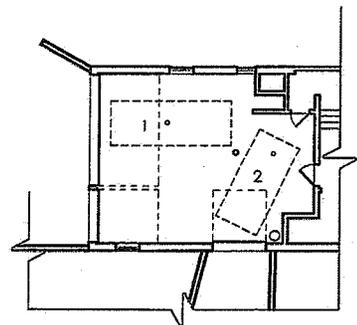
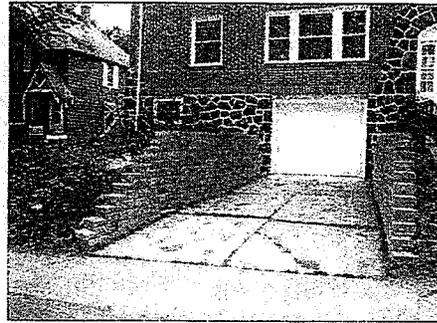
EXISTING SITE PLAN

REVISIONS

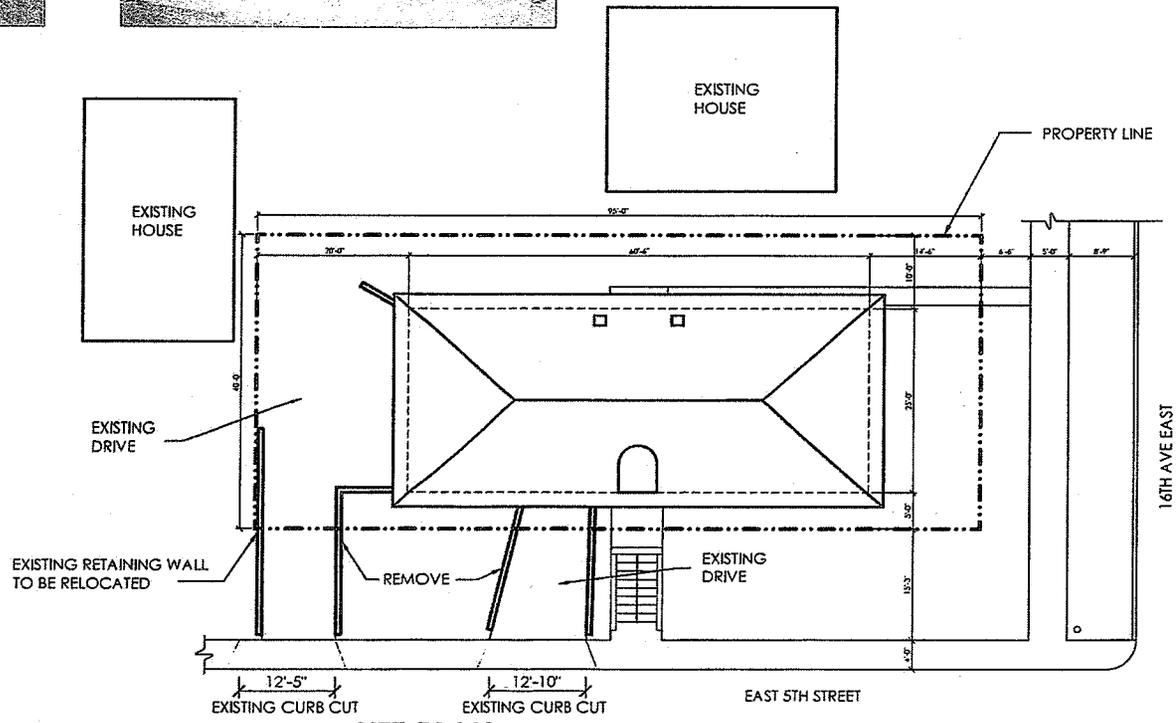
DATE JULY 5, 2013
DRAWN ZKS
CHECKED. WBS
PROJECT 1217

0 1"
FULL SCALE

SHEET NO.
EX1



2
EX1
EXISTING PLAN
1/16"=1'-0"



1
EX1
SITE PLAN
1/16"=1'-0"



J-3

