

City of Duluth  
Planning Commission  
July 11, 2017 Meeting Minutes  
Council Chambers - Duluth City Hall

I. Call to Order

President Terry Guggenbuehl called to order the meeting of the city planning commission at 5:00 p.m. on Tuesday, July 11, 2017, in city hall council chambers.

Roll Call

Attending: Terry Guggenbuehl, Janet Kennedy, Tim Meyer, Garner Moffat (left during agenda item D), Margie Nelson, Michael Schraepfer, Luke Sydow, Heather Wright Wendel, and Zandra Zwiebel

Absent: N/A

Staff Present: Keith Hamre, Nate LaCoursiere, Steven Robertson, Kyle Deming, Chris Lee, Kate Van Daele, and Cindy Stafford

II. Approval of Planning Commission Minutes – June 13, 2017

**MOTION/Second:** Meyer/Zwiebel approved the minutes with one small change.

**VOTE: (9-0)**

III. Public Hearings

- A. PL 17-067 Final Plat for Steel Plant Terminal Second Addition, Generally Described as Between North Boundary Avenue to the West, Park Place to the North (Except the Northernmost 150 Feet), and Terminal Avenue to the East, by Lotus Realty LLC

**Staff:** Chris Lee introduces the applicant's proposal to subdivide and create a final plat for future commercial development. This plat will be called the Steel Plant Terminal Second Addition. This area is approximately 4.92 acres in size. Staff recommends approval with the conditions listed in the staff report with the additional condition that the applicant provides two signed official copies of the plat to city engineering for their permanent files, either Mylar or an acceptable facsimile approved by the city engineer. Margie Nelson asks who owns the property. Director Keith Hamre majority owned by Lotus. The tax forfeit parcels will go out to public auction.

**Applicant:** Brad Johnson of Lotus Realty Development addresses the commission. The final site plan is targeted for Spring of next year. Wetland mitigation and stormwater plans have been completed and approved.

**Public:** No speakers.

**Commissioners:** Luke Sydow confirms the current zoning us R-1. Lee states the future land use is mixed-use neighborhood (MU-N). Lee states a filling station is not allowed in an R-1 district. Zandra Zwiebel would like to know the thought process involved. Director Hamre the applicant wishes to proceed. This is just one step that needs to be completed. Zwiebel asks if a grocery store a permitted use in an R-1. Director Hamre states no. The city will bring back zoning changes in the future. Garner Moffat has a concern about a special use permit, but agrees with the plat. Nelson is concerned it's not all owned by the same owner. Would it be voided if a new owner comes in? Director Hamre explains a new plat would be needed with a new owner. The county will sell a portion of the land which is landlocked. Tim Meyer asks if the county land will be auctioned. Director Hamre affirms. Moffat notes the way the lots are

configured, he is not concerned and states the land for sale has been available for two decades.

**MOTION/Second:** Moffat/Sydow approved as per staff's recommendations.

**VOTE: (6-3, Nelson, Kennedy and Meyer Opposed)**

- B. PL 17-093 Interim Use Permit for Vacation Dwelling at 5802 London Road by Kirk and Marianne Bernardino

**Staff:** Kate Van Daele introduces the applicants' proposal to use their home as a vacation dwelling unit. The home has two bedrooms which allows for a maximum of five people. There was one letter in opposition. Staff recommends approval with the conditions listed in the staff report with the additional condition that the applicant combine two-tax parcels into one tax parcel.

**Applicant:** Kirk Bernadino addresses the commission. He reviewed the opposition letter and doesn't feel the short term rental will cause problems for the community. Their property manager will be diligent. Nelson asks if the house is for sale. Bernardino states it was, but isn't now. They have no plans of putting it back on the market in the next year. Director Hamre explains an Interim Use permit does not transfer with ownership.

**Public:** Tom Jespersion, 5705 London Rd., addresses the commission. He is concerned about short term renters not caring about their neighbors. He is concerned about kids having parties, and doesn't want the neighborhood to lose its integrity. He notes there is an apartment in the garage. Van Daele states in the applicant's pre-app meeting it was determined the garage apartment will not be rented out.

**Commissioners:** Chair Guggenbuehl comments on the neighbor's concern about noise. The permit can be revoked if there are violations.

**MOTION/Second:** Moffat/Nelson recommend approval as per staff's recommendations.

**VOTE: (9-0)**

- C. PL 17-015 Interim Use Permit for Vacation Dwelling at 139 Howard Gnesen by Douglas McCorison

**Staff:** Kate Van Daele introduces the applicant's proposal to use their house as a vacation dwelling. The home has three bedrooms which allows for a maximum of seven people. Staff recommends approval with the conditions listed in the staff report along with one more condition that the carport issues be resolved either by reducing the size or demolishing it all together. Nelson asks about the copy of the letter they received from construction services. Is there a fine? Director Hamre states the fine is imposed due to the permit fee being doubled. Janet Kennedy asks if there has been a precedent set with another property needing so many items changed in order to be in compliance. Van Daele states this is a difficult application. Staff is confident the applicant will comply. Kennedy asks how many IUP permits are left. Van Daele states there are three more left and they will be introduced to the commissioners at their next meeting. Kennedy asks staff what the compliance time frame is. Van Daele states the IUP will be on hold for the applicant to comply.

**Applicant:** Doug McCorison addresses the commission and asks if there are any questions. Sydow asks him if the items can be resolved within 90-120 days. He asks because of the shortage of IUP permits. McCorison states he has two lawyers who are

working on it diligently. Regarding the carport, he states there was an incorrect survey done in 1996 which showed the line being 30 feet further to the south, and it was recently discovered the carport as on the neighbor's property. He's not sure how to resolve it. Zwiebel asks if he can resolve it in four months. McCorison is unsure about the neighbors' situation and notes the carport has been there for 15 years. He doesn't want to tear down the carport. McCorison thinks four months is a reasonable amount of time to get the carport situation resolved. Greg Gilbert (attorney for the applicant) addresses the commission. The applicant's lodging license and id # are obtained. If the garage and lighthouse are to be used, they will need to be brought up to code. Regarding the encroachment of carport, the applicant will work on an agreement with the southern neighbors or modify the carport. He thinks four months is reasonable.

**Public:** No Speakers.

**Commissioners:** Kennedy would like compliance or suggests the possibility of tabling the item. Mike Schraepfer feels the carport issue should be given leniency since it was incorrectly surveyed to begin with. Zwiebel notes the applicant could also apply for a variance and thinks his legal counsel can help him.

**MOTION/Second:** Zwiebel/Sydow recommend approval as per staff's recommendations with added conditions the carport issues be resolved and all requirements be completed within a four-month time frame.

**VOTE: (9-0)**

(Moffat leaves the meeting during the next agenda item.)

- D. PL 17-092 Variance from Parking Standards (Width of Parking Lot Drive Aisle from the 24 feet required to 10 feet) at 318 N 18<sup>th</sup> Avenue East by Imran Khan

**Staff:** Chris Lee introduces the applicant's proposal for a variance from the minimum drive aisle width. The minimum width is 21' to allow for two-way traffic; the applicant is proposing 10' in width. There were comments received by concerned neighbors in regards to parking on the site and additional parking on the street. Staff recommends approval with the conditions listed in the staff report. Schraepfer asks if this is out of the ordinary. Lee states it's a fairly significant reduction. Schraepfer notes this could set an unwanted precedent. Director Hamre states it was a church which used the driveway. Currently it functions partially as an alley. There is a tight turn radius. Schraepfer asks about prior church use for parking. Director Hamre states parking is a challenge and they will need to provide access to their parking area.

**Applicant:** Imran Khan addresses the commission. There is space and they are working on parking solutions. His agent Jim Jenson will be providing car parking services and they hope their customers will use alternative transit (walking or bus) options. The goal is not to have it filled with cars. They don't want their neighbors to be upset. They will be called the golden bulldog and want it to be a high quality establishment. Chair Guggenbuehl asks Khan if he has had communication with the adjacent apartment owner in order to reach an access agreement. Khan is indecisive and hints there is strain between him and the apartment caretaker. Khan just wants to clean up the neighborhood and be a good neighbor. Heather Wright Wendel confirms with the applicant he hopes to cater to bus and walking clients. Will he also have bike parking? Khan states yes. Sydow asks Khan if he considered using a broker to talk to the adjacent neighbor regarding easement. Sydow thinks this kind of establishment adds strength to the neighborhood, but he is concerned with the parking situation. Khan agrees to have more dialog with his neighbor in the future. Khan notes his proposed valet service. They

have 7 spaces and a handicap space and they have invested a lot in the building already. He reiterates he wants to cater to walking residents. Moffat is excited about the restaurant, but is not sure about the parking spaces, and how it will work. Khan states his mini-van pulled in without a problem. Sydow isn't as concerned with the 10 foot width as much as he is concerned about the space layout. Schraepfer suggests tabling the item until a new plan comes back. Meyer likes Sydow's idea about sharing the drive with the applicant's neighbor. Meyer likes the project but would like to table until the parking issues are figured out. Street parking is an option and perhaps the applicant can work out off-street parking with others. Khan mentions he can reduce the square footage. He just wants to get the restaurant open. Director Hamre suggests they can have the public hearing and then choose to table, if they so wish.

**Public:** Penny Schwarze, 1804 E. 3<sup>rd</sup> St., addresses the commission. There are a lot of rentals in the area, and there is limited on-street parking. She took pictures up and down 18<sup>th</sup> Avenue East and 3<sup>rd</sup> Street and there were only three spaces available at 6:00 in the evening. They own a double lot on the corner and park in in their garage because there isn't parking available. Several old properties are grandfathered-in that don't meet current parking standards, so the on-street parking is utilized. She is concerned about what a restaurant would do to the already strained parking situation. The DTA serves the neighborhood, but they can't rely on the fact that people will choose not to drive. There is a gas meter sticks which extends out into the 10-foot aisle. The exit is somewhat blind. She doesn't see how parking will work and is opposed. Khan interjects and feels he is being personally attacked because he wasn't interested in selling his property to the speaker. Chair Guggenbuel uses his gavel and explains to the applicant the commission's order of procedure. Jim Jenson, 1214 N. Arlington Ave., addresses the commission. The business is good for the community, and it will clean up the area. He took photos of the on-street parking, and every time of the day is different. There is available parking. He is in favor of the variance.

**Commissioners:** No further discussion.

**MOTION/Second:** Sydow/Meyer Tabled for more consideration about parking.

**VOTE: (8-0)**

- E. PL 17-079 Special Use Permit for a Restaurant in a Mixed Use Neighborhood District (MU-N) and in the Higher Education Overlay District (HE-O) at 318 N 18<sup>th</sup> Avenue East by Imran Khan

**Staff:** Director Hamre suggests tabling this item also, which would allow them to have the public hearing at their next planning commission meeting.

**Applicant:** N/A

**Public:** N/A

**Commissioners:** N/A

**MOTION/Second:** Meyer/Nelson Tabled along with previous agenda item until next month.

**VOTE: (8-0)**

- F. PL 17-082 Variance from Lot Frontage Requirements in Rural Residential 1 (RR-1) at 10013 West Skyline by Ed Barbo

**Staff:** Kyle Deming introduces the applicants' proposal for a variance to reduce the minimum lot frontage from 250 feet to 0 feet to construct a dwelling in the RR-1 zone

district. The lot has no frontage on a city street. If the variance is approved the applicants will petition the city to convert an existing easement to an official Cartway, a 1,700-foot (0.32 mile) private road under MN Statute 435.37, Easement for Cartway. Staff recommends denial of the variance for the reasons listed in the staff report which include the applicant has not established practical difficulty. Schraepfer asks staff about other large parcels within the city. Is not having street frontage common? Deming didn't do a survey of the entire community, but the majority have access and are not severed from a street. Zwiebel asks staff to explain how the easement works on the private property. Deming notes in the past two separate private easements were granted to this property to allow access, but did not approve a road.

**Applicant:** Ed Barbo addresses the commission. He bought the property 26 years ago. The easements were given to the previous owner. The waterline is placed on rock. The alternate access point was over the water line. Went to court and where the waterline was, there was no way to add a street. Sydow asks if he is proposing a 33 foot cartway the entire way. Barbo states yes. The middle section is as wide as 40 feet. Zwiebel asks the applicant if his neighbors are okay with continuing the private easement situation. Barbo has grown up with neighbors and they have plowed each other's roads and watched each other's kids grow up. He thinks they were aware that he would eventually like to build a house. He spoke with his neighbors and they agreed to step back and let him take this next step to see how it goes.

**Public:** John Bray (attorney who represent Franklins) addresses the commission. They are opposed to the home on that lot. A cartway is not a substitute for a road. They are apples and oranges. It is township law and the statute doesn't include a severed lot off of an existing lot. They are in support of denial. This will set an unwanted precedence. The applicants knew from 1991 and on that they couldn't build a home. Greg Gilbert (attorney for the applicant) addresses the commission. The issue is the cartway. It has been done in rural communities for years. The applicants' property is landlocked. In 2006 a cartway statute (435.37) was created for class I cities (includes Duluth). This statute lists four requirements, which the Barbos meet: 1) 5 acres or more; 2) no access except over a navigable waterway; 3) no access except over the land of someone else; 4) current access is less than two rods (33 feet) in width. This creates conflicting characteristics. They have a land-locked parcel and can have access to a road. This competes with city law which requires 250 feet of frontage. They are proposing a variance in conjunction with a cartway. Very few homeowners fit all four criteria for a cartway, and it's limited to this particular property. He suggests tabling to propose cartway and to consider both at the same time. Linda Ross Sellner addresses the commission and is in support of staff's valuation to deny. She is concerned about further development on top of sketchy permitting. This is a preservation area. She feels this home would be visible in an otherwise green area. She is also concerned with non-permeable surfaces, and opposes the variance. John Bray readdresses. Cartways are only for access purposes. It's not a golden ticket for a home.

**Commissioners:** Chair Guggenbuehl notes the lot frontage requirement. Is a cartway considered frontage for zoning purposes? Nate LaCoursiere addresses the commission. He states both attorneys did a good job in presenting each side. The cartway decision comes at a later time. The variance is at hand now. Before time and expense of a cartway this commission is asked to grant a variance. Chair Guggenbuehl notes comp plan update, and the emphasis of not extending city services. Zwiebel doesn't see a hardship that the owner didn't bring about themselves. She can't see opposing staff's

recommendation to deny. Schraepfer comments on other large rural lots within the city of Duluth. Has this cartway exception ever come up before? Director Hamre is unaware of one, or of a request for one. Meyer has trouble approving because he doesn't see a practical difficulty.

**MOTION/Second:** Nelson/Meyer denied as per staff's recommendations.

**VOTE: (8-0)**

IV. Communications

A. Manager's Report – Director Hamre shares with the commission that the city will have a booth at sidewalk days. The vision committee will meet on 7/19/17 at the wheeler field house. The city council overturned the planning commission's decision for a rear yard setback. There will be more conversation about expanding the number of allowed interim use permits for vacation rentals.

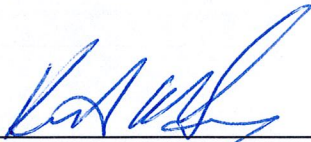
B. Reports of Officers and Committees –  
Heritage Preservation Commission Representative Chair Guggenbuehl gives an overview. There will be a historic resource designation of the Lincoln Park Pavilion (25<sup>th</sup> Ave. W. and 5<sup>th</sup> Street).

**MOTION/Second:** Zwiebel/Meyer recommend approval to the Heritage Preservation Commission.

**VOTE: (8-0)**

C. Meeting adjourned at 7:30 p.m.

Respectfully,



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Keith Hamre - Director  
Planning and Construction Services