

City of Duluth
Planning Commission
July 10, 2018 Meeting Minutes
Council Chambers - Duluth City Hall

Call to Order

Vice-President Janet Kennedy called to order the meeting of the city planning commission at 5:00 p.m. on Tuesday, July 10, 2018, in city hall council chambers.

Roll Call

Attending: Jason Crawford, Gary Eckenberg, Janet Kennedy, Tim Meyer, Margie Nelson, Luke Sydow, Sarah Wisdorf, and Zandra Zwiebel

Absent: Mike Schraepfer

Staff Present: Keith Hamre, Adam Fulton, Robert Asleson, Steven Robertson, John Kelley, Chris Lee, and Cindy Stafford

Approval of Planning Commission Minutes – June 12, 2018

MOTION/Second: Zwiebel/Wisdorf approve the minutes

VOTE: (8-0)

Zenith Awards (C.A.I.R, Endi, Center for Changing Lives)

Director Keith Hamre introduces the award recipients and thanks them for their outstanding achievements:

Mike Murray – Center for American Indian Resources – Fond Du Lac Reservation – for implementing urban design principles consistent with the comprehensive plan.

Peggy Walsh and Tina Marici – Endi - Harbor Bay Real Estate Advisors – for this development implementing the mixed-use vision and addressing the housing needs of the city of Duluth.

Dean Minardi – Lutheran Social Services – Center for Changing Lives – for implementing urban design principles consistent with the comprehensive plan.

Consent Agenda and hearing

Items that are perceived to be non-controversial or routine will be placed on the consent agenda. There will be no staff presentations on these items; the Planning Commission will be acting upon the staff recommendation and conditions written in the staff reports. There will not be an individual public hearing on each of these items unless the applicant or a member of the public wishes to speak to the matter. Instead there will be one public hearing for all the items on the consent agenda, and they will be addressed by the Planning Commission with one vote.

1. PL 18-077 Vacation of Building Line Easement at 2031 London Road by Marvin Development IV, LLC
2. PL 18-075 Variance from Front Yard Setback in a Rural Residential 1 (RR-1) District at 3902 Norton Road by Leah Collette

3. PL 18-084 Variance from Side Yard Setback in a Rural Residential 1 (RR-1) District at 711 Howard Gnesen Road by Christopher and Lindsay Theis

Staff: N/A

Public: No speakers.

MOTION/Second: Wisdorf/Sydow approve staff's recommendations for consent agenda items.

VOTE: (8-0)

Public Hearings

4. PL 18-078 Final Plat for Kayak Bay at Approximately the Intersection of Warwick Street and Grand Avenue by Spirit Valley Land Company LLC

(The following two items are connected and were introduced together. The vacation is needed for the Final Plat.)

Staff: Steven Robertson introduces the applicant's proposal for a final plat to subdivide the previously platted property in preparation for a future mixed use development (Kayak Bay). Staff recommends approval with the conditions listed in the staff report. The EAW was completed.

Applicant: Brad Johnson of Lotus Realty and Spirit Valley Land Company addresses the commission. He welcomes questions. Zandy Zwiebel asks about the construction of the private road and the significant grade. Will it interfere with the Munger Trail? Johnson shares a map. Meetings with DNR determined there will be an easement from the Munger Trail. They are trying to be as far away from trail as possible. There will be a retaining wall and will look quite nice. There will not be a lot of traffic. Zwiebel asks the applicant to give an overview of the project. Johnson states there will be 33 townhomes which will include some villas for sale or rent. There will be retail spaces including ski hut and a hotel. The project area is called River West. Robertson shares a map of the rezoning from January of 2017. The design is relatively the same. Luke Sydow asks about parcel H. Is this public or private? Robertson states private. Robertson states there will need to be a temporary easement for the city. Sydow suggests making the decisions now versus coming back later.

Public: No speakers.

Commissioners: Zwiebel asks about planned communities. What are the benefits that they are adding to the community? Robertson states the rezoning standards are put aside and considerations for the final plat are much more limited. He notes condition #2 which states no ground will be disturbed until the pale sedge report is completed. Manager Adam Fulton states the Riverside plan was previously approved and is intended to benefit riverside and the spirit mountain area. The intent of this project was well through and will broadly create neighborhood benefits.

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

VOTE: (8-0)

5. PL 18-079 Vacation of Public Right of Way for Kayak Bay Final Plat by Spirit Valley Land Company LLC

Staff: Steven Robertson introduces the applicant's proposal to vacate platted, but unimproved right of way, in preparation for a replatting of the subject area, with subsequent dedication of a new right of way and utility and drainage easements. Staff recommends approval with the conditions listed in the staff report.

Applicant: (See above item #4).

Public: No speakers.

Commissioners: (See above item #4).

MOTION/Second: Zwiebel/Wisdorf recommend approval as per staff's recommendations.

VOTE: (8-0)

6. PL 18-086 Variance from Minimum Lot Frontage Requirement in a Rural Residential 1 (RR-1) District at 10013 West Skyline Parkway by Edward and Candace Barbo
- Staff:** Adam Fulton introduces the applicant's proposal for a variance to reduce the minimum lot frontage from 250 feet to 0 feet to construct a single-family dwelling in the RR-1 zone district. The lot has no frontage on a city street. This request mirrors a request by the applicant in 2017, and is made based on new information and determinations by the city related to site access. A memo was shared which lists the parks department does not want another road extended through the Magney-Snively Natural Area. A single-family dwelling is permitted in this area. Staff recommends approval with the conditions listed in the staff report. Correspondence was received in opposition. The DNR has also commented. Gary Eckenberg questions why there is a reversal of recommendation. Per Fulton, it hinges on the January 3rd memo stating the inability to construct the public street. Zwiebel recalls past discussion, which included a cartway. Manager Fulton states the cartway was part of the first application. The new application does not include any discussion of the cartway, because a cartway does not constitute a public street under the UDC, and is just a means of access. Fulton states currently the use of an existing easement is proposed. Per Fulton this request would not be a flag lot. Zwiebel asks how they can guarantee this is the only home to go into the area. Fulton states there is potential for construction on other sites. This is a unique situation since it already has a barn with a road leading to it. But it could potentially constitute a precedent in the future. Robert Asleson states it affects reasonableness which would use the same access. It creates an element which may make denying a future application difficult. Eckenberg questions the pathway and what has changed. Fulton refers back to the 1/3/18 memo. Eckenberg asks about the level of traffic. Would it increase with a home? Tim Meyer asks what the practical difficulty is. Fulton notes because of the topography and natural bedrock condition that make the extension of Gogebic Street infeasible. Meyer asks if the state could override the city. Fulton notes the state has authority over streams, but doesn't have land use authority. Sarah Wisdorf asks if staff has addressed the DNR's concerns. Manager Fulton notes there is compliance with the DNR's conditions in regards to equine activity. The water and sewage would be private. Meyer asks if the parks and rec department made a recommendation. Fulton states no. Eckenberg asks about flag lots. Fulton states that Duluth doesn't allow flag lots, but that other cities do. It could create a driveway access only, and would be shaped like a flag.

Applicant: Ed Barbo addresses the commission. They sold their house in 1991. The neighbors contested the easement. The applicant shares a map with the commissioners. There was a 3-day hearing with the district court. It was unanimously decided Gogebic would not work, thus granting the current easement for life. Whether he builds a house or not, he's been using it for 25 years. Underground power has been brought in and there is an 8-stall barn. The house will go on a slab located further up the hill than the barn. The first time it failed because no hardship was determined. Now a hardship was

determined that public street could not be built. Eckenberg asks Barbo to articulate what the hardship is. Barbo states they could not build the other street. Eckenberg asks about what the applicant understood in 1991. Barbo stated he understood they either needed a street or an easement. They have been working on it all along. Zwiebel asks if they will leave the equestrian services as they are. Barbo states no. They don't anticipate having horse borders. They personally own three horses. Meyer questioned the email in opposition. Why continue? Barbo states he is frustrated and has made efforts to get along with his neighbors. He butted heads with his neighbors that are cross country skiers. Meyer states eight neighbors are opposed. Barbo thinks his neighbors don't want boarded horses there. Horse trails can be considered to conflict with pedestrian trails. Barbo isn't against bikers. Meyer states he has difficulty understanding why Barbo wishes to proceed when so many people are against it. Barbo wants to work with his neighbors and will try to be the best neighbors possible.

Public: John Bray, 31 W. Superior St. #402, addresses the commission. He represents the Franklins who are opposed to the variance. He doesn't feel they met the conditions of practical difficulty. The city didn't say a road CAN'T go through, they just don't WANT it to go through. There is no road frontage at all, which would create safety issues. Uniqueness – the applicants' bought a lot they knew they could not build a house on. He does feel it is in harmony with comp plan, or Duluth's future plans. He thinks last year's findings were much more complete. Scott Johnson, 4110 99th Ave. W., doesn't agree with the variance. It opens up the precedent for more growth. He doesn't like horses. Manager Fulton states horses are a permitted use in an RR-1. There is not a limit to the number of horses specified. Johnson states that the Barbos are great neighbors. He is concerned about a lot more horses being brought in the area. He cares about the area. Fulton cites the UDC section regarding agriculture general – RR-1, 50-19.8. Mychal Franklin, 4215 N. 100th Ave W., addresses the commission. They purchased their home in 1988. He and his wife are against the variance. They have not changed their position from a year ago. He is concerned about more homes being allowed in. He shares a site plan (handout) depicting to commissioners of what could come in for development. Tawni Hawkedahl, 5307 Medina Street, addresses the commission. She is friends with the Barbos. She is in favor of the variance. She doesn't see all these new properties popping up. Fulton states there is a five-acre minimum. As it stands today, not many new houses would not be allowed because of the lot size requirement and frontage requirement. Hawkedahl states that the neighbors moved into RR-1 knowing there are horses there. Franklins also have boarded horses. She notes the city council precedent. If Gogebic is buildable the commission can't grant the variance. Alice Stover, 9601 W. Skyline Pkwy., addresses the commission. They own the property in-between the two properties. They are the most effected with the easement going through, but are in full support. Russ Stover, 35 2nd St. Proctor, MN, addresses the commission. He is a former Duluth resident, and has served on the city council. One house is not going to change anything. Every 5 acres is capable of having a home. Traffic will not increase. He is in favor of the variance. Zach Golkowski, 5307 Wadena St., addresses the commission. He thinks the opposition is overstating the number of houses by stating 7 new houses could be allowed. The current application meets all requirements. The people in opposition are against horses. 7 houses – 3 of which are on Franklin's property. The most potentially could be 3. This is the Barbos' dream. The variance is the only thing the pc should consider. Greg Gilbert, Barbos' attorney, addresses the commission, and is in support of the variance. He reiterates the hardship. Stewart Creek prohibits the extension of

Gogebic Street. The practical difficulty is the extension of Gogebic Street must go through natural areas. The plan all along was for a horse barn with a small home. Todd McFadden, 4129 100 Ave W., addresses the commission. He bought land at county auction. There is no easement along Gogebic St. He asks about planning for the future. He states there are 35 total acres which could allow for 7 houses. He is opposed. 100th Avenue ends at Gogebic street. The city's map is incorrect. He has pictures of horse manure on 100th Ave. W. 100% of the people who live on 100th Ave. W. are opposed. He feels for the Barbos, but urges the commissioners to consider the future.

Commissioners: Wisdorf asks for clarification on driveway. Fulton states it's gravel driveway and needs to be clear for access for safety/fire and police purposes. Sydow states that the easement passes through three parcels. Who does the maintenance? Fulton states that city engineer would need to approve road design and safety, but that it would remain private. A development agreement could be added as a condition. It's a private easement, so maintenance would be the responsibility of the driveway owner. Sydow asks about the means or methods to control future development. Manager Fulton states if this is granted tonight, it is a unique situation which would not apply to future applicants. Future applicants do not have a horse barn. The requirement for a street for future development would need to be considered. Asleson says the basic requirement is 5 acres. Additional parcels could be approved, but access is an issue. The Stover property has no more street access than the Barbo parcel under consideration. Some of the same arguments could apply. In his opinion there is not a mandatory precedent created, but a question of fairness could be argued for future development. Future development will be met with the same level of scrutiny. Manager Fulton notes the RR-1 zoning intent is to be rural. Rural means different things to different people. These lots were created when St. Louis county did not have to meet city approval when granting subdivisions of property, so the city did not approve creation of this lot. Eckenberg states if the Franklins want to sell to create a subdivision, they would need to meet codes which would include stormwater considerations. This particular situation has a level of uniqueness. Zwiebel doesn't want to set precedence she is not comfortable with. Eckenberg notes the map with red dots of potential house builders. Asleson says it could end up on court, but wouldn't necessarily end up in court. Eckenberg states that neighbors moved into a rural situation and that local government could eventually be asked to take on road considerations such as maintenance. Wisdorf is not concerned about setting precedent. It's not simple or inexpensive. She can't deny based what may or may not happen in the future. She doesn't see denying houses which are allowed according to zoning rules. She is concerned with the DNR's finding and who will maintain the road.

MOTION/Second: Zwiebel/Meyer to deny the variance, which is opposed to staff's recommendations.

VOTE: (6-2, Wisdorf and Crawford Opposed)

Communications

10. Manager's Report – Adam Fulton gives an overview. The Comprehensive Plan was adopted by the city council on June 25, 2018. Implementation action will begin over next several months. Housing and the city flag are under consideration. Benchmarks will be developed. The Pastoret Terrace Environmental Assessment Worksheet (EAW) is available for viewing online. The planning commission will see this at their next meeting on August 14, 2018. There was a public meeting held for the Kenwood

Avenue/Arrowhead Road Rezoning held on June 7, 2018. Staff is evaluating elements of the area before recommendation come to the planning commission at their August 14, 2018 meeting. Vice Chair Kennedy asks staff to let them know when public meetings are happening. Fulton agrees. Nelson asks if the Commission will be getting paper copies of the EAW? Fulton confirm with Robertson that there will be paper copies of the EAW provided.

11. Reports of Officers and Committees
-Heritage Preservation Commission Representative – Zwiebel gives an overview. Next month the planning commission will see the railroad designation. Questions are related to if the administration, parks, and pollution control agencies are on board. There will be an HPC member present at the next meeting to talk about the Pastoret Terrace.
12. Meeting adjourned at 7:28 p.m.

Respectfully,



Keith Hamre - Director
Community Planning and Construction Services