

City of Duluth Planning Commission

November 6th, 2024 – City Hall Council Chambers
Meeting Minutes

Call to Order

President Gary Eckenberg called to order the meeting of the city of Duluth Planning Commission at 5:00 p.m. on Wednesday, November 6th, 2024, in the Duluth city hall council chambers.

Roll Call

Attendance:

Members Present: Jason Crawford, Gary Eckenberg, Jason Hollinday, Margie Nelson, Danielle Rhodes, and Andrea Wedul

Members Absent: Chris Adatte, Brian Hammond, and Dave Sarvela

Staff Present: Nick Anderson, Amanda Mangan, Jason Mozol, Jenn Moses, Ariana Dahlen, Natalie Lavenstein, and Sam Smith

Approval of Planning Commission Minutes

Planning Commission Meeting – October 8th, 2024 –

MOTION/Second: Hollinday/Crawford approved

VOTE: (6-0)

Public Comment on Items Not on Agenda

No comments.

Consent Agenda

PLVAR-2410-0007 Shoreland Variance for New Detached Garage at 3709 W 4th St by Leo DeMontani

PLIUP-2410-0007 Interim Use Permit for Vacation Dwelling Unit at 9426 Congdon Blvd by Amanda Flowers

PLVAC-2410-0007 Vacation of Alleys within Dickerman's Division of Duluth by Alta Land Survey Company

PLSUP-2410-0005 Special Use Permit for Wireless Facility at 1600 London Rd by MasTec

PLIUP-2410-0013 Interim Use Permit for a Vacation Dwelling Unit at 1131 Denney Dr by Kate Hage

PLVAR-2410-0008 Variance for Shoreland Setback for Public Water Access of St. Louis River Near Perch Lake by the City of Duluth

Commissioners: President Eckenberg noted that staff highlighted an item on the consent agenda that needs to be corrected.

Staff: Natalie Lavenstein addressed the commission. The application for item PLIUP-2410-0007 states that five guests is the maximum occupancy. The staff report has a typo stating that six guests is the maximum. The correct amount is five guests.

Public: No speakers.

MOTION/Second: Nelson/Rhodes approve the consent agenda items as per staff recommendation with a correction made regarding a typo in item PLIUP-2410-0007.

VOTE: (6-0)

Public Hearings

PLIUP-2410-0008 Interim Use Permit for Vacation Dwelling Unit at 1315 Minnesota Ave by 1LLC

Staff: Natalie Lavenstein addressed the commission. The applicants' property is located at 1315 Minnesota Ave. The dwelling unit contains 3 bedrooms, which allow for a maximum of 7 guests. The applicant was on the Vacation Dwelling Unit Eligibility list. The subject property, 1315 Minnesota Ave, was built in 2022. The existing structure is a duplex (1313 and 1315 Minnesota Ave). 1313 Minnesota Ave has a current Interim Use Permit (IUP) for Vacation Dwelling Unit (VDU). The minimum rental period will be two nights, and two parking spaces will be provided on the driveway and garage. The applicant has indicated they will not allow motorhome or trailer parking.

The property is screened by an existing privacy fence on the south side. The site plan indicates a proposed privacy screen on the north side. There is an existing attached upper deck on the rear side of the property that, due to its elevation, may lead to guests using the space in a way that impacts neighbors. Staff recommends a fence be placed along this side of the deck to mitigate impacts. The applicant has listed Waypoint Collective as the managing agent who has authority to act for the owner in responding 24 hours a day to complaints from neighbors or the City.

Staff received five public comments in opposition of this project, and no city or agency comments were received. Staff recommends approval with conditions listed in the staff report.

Commissioners: Commissioner Wedul asked staff about the deck referenced in staff report, as she did not see it in the plans.

Staff: Jenn Moses addressed the commission. She explained that there is a deck, but the aerial imagery has not been updated since the deck was constructed, which is why it's not shown in the plans. The deck on the subject property is at a high level, which would allow people to look over the dense urban screening to see into the adjacent property. Staff typically recommends fence for decks of this height to help minimize noise and visual impacts.

Commissioners: President Eckenberg asked staff about the comments of opposition that were received from neighboring residents. One of the comments was a plea to the planning commission to deny the application in an effort to preserve neighborhoods in Duluth. He asked staff for clarification regarding the roles of the Planning Commission and City Council when it comes to regulating Vacation Dwelling Units in the city.

Staff: Moses responded that what is discussed in the staff report are the items in the use specific standards of the zoning regulations that provide the criteria for whether we should approve or deny a vacation dwelling unit. Staff considers all criteria before arriving at a

recommendation. The vacation dwelling unit rules have come with City Council investigation and input over the years, and that's how we have ended up with the criteria that are in the zoning regulations today. Currently, there are no rules or regulations that dictate how many VDUs are allowed in a neighborhood, nor are there any distance requirements in place.

Applicant: The applicant was present to answer questions if needed.

Public: Jed Lahti, 1311 MN Ave – Mr. Lahti is in opposition of the IUP. His first comment to planning staff addressed the concentration of VDUs in his neighborhood, as he feels it is too high at 7 VDUs currently in operation near him. He stated that one of the properties located at 1322 St. Louis was being operated illegally as a VDU, and that we should not be rewarding people who do not follow the rules. He requested that this property be brought into compliance.

He noted that comments from other neighbors have expressed that there are problems with the property management, guests leaving pet waste, parking issues, and snow removal. Lahti also claimed that the guests who stay at the VDU are not using garage spaces like they are supposed to, and he's had to ask them to move their cars on more than one occasion because they were blocking his driveway.

Commissioners: President Eckenberg asked applicant to respond to Lahti's claim about the illegal operation of the VDU. Eckenberg noted that Lahti did not seem to know who he would be able to contact with the issues regarding the rental property, and asked the applicant if there will be contact information posted for the neighbors in the event someone should choose to contact the property management agency, Waypoint Collective.

Applicant: Karen Haidos addressed the commission. She works with 1LLC. The property Lahti was talking about is an Accessory Dwelling Unit (ADU) at the back of the property. She believes that there is currently no active listing for this ADU, but earlier this year there was an active listing for it. During the summer, the unit was used by the owners and their family members. She stated that if there is an active posting for this unit right now, it would advertise rental periods of 30 days or more, which is within the permitted usage.

Waypoint Collective has a website that lists their rental properties. 1313 Minnesota Ave is a VDU, and 1315 Minnesota Ave is a long-term rental, and are both on this website. Lahti's complaints tonight were the first she had heard for this property, personally.

Commissioners: Commissioner Wedul agreed with Lahti in that she believes violations should not be rewarded, and asked staff if they were aware of any violations at the subject property. She also asked staff how potential future violations would be handled if the IUP had already been approved. Wedul encouraged Lahti to report any violations to staff via the Planning department webpage.

Staff: Lavenstein responded that she has not received any information regarding improper use of space. Moses echoed Lavenstein stating that there have been no violations or enforcement actions taken. There is a section of the zoning code that talks about the enforcement process. It starts with letters, administrative fines, and there is a process that gives staff the ability to remove any permits that are granted for the property if necessary.

Motion/second: Wedul/Rhodes approve as per staff recommendation with conditions:

- 1. The applicant shall adhere to the terms and conditions listed in the Interim Use Permit.**
- 2. The proposed fence shall be constructed prior to receiving the interim use permit.**
- 3. The applicant shall add 6 ft tall screening on rear upper deck.**
- 4. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning**

Commission review; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.

Vote: (6-0)

PLIUP-2410-0012 Interim Use Permit for a Vacation Dwelling Unit at 809 W 4TH St by Brian Mooers

Staff: Natalie Lavenstein addressed the commission. The applicant proposes use of a 2-bedroom dwelling in a duplex as a new vacation rental property. Applicant was on the eligibility list. The applicant proposes use of a 2-bedroom dwelling in a duplex as a new vacation rental property. The dwelling unit contains 2 bedrooms, which allow for a maximum of 5 guests. The application states 6 guests as a maximum, but as it was noted before, the correct maximum is 5 guests. Staff notes that applicant is in current violation of their Accessory Home Share permit (PLAHS2111-001) by renting more than the approved bedroom amount and by not occupying the unit. Applicant is also in violation at 811 W 4th St by using that unit as a vacation dwelling unit without a permit. Applicant has been notified through a city enforcement action that 811 W 4th St must cease operating as a vacation dwelling unit; approval of this interim use permit will allow applicant to come into compliance for 809 W 4th St.

The proposed minimum rental period will be two nights. One parking space will be provided in the rear area, and the applicant has indicated they will not allow motorhome or trailer parking. The site plan does indicate outdoor furniture in the rear yard as an outdoor amenity. The site plan indicates a proposed fence as the dense urban screen. The fence will screen the home and the outdoor amenity in the rear yard. The applicant has listed themselves to serve as the managing agent to be available 24 hours a day. One public comment was received in opposition of the project and is attached in the staff report. Staff recommends approval with conditions listed in the staff report, and with another condition that the maximum number of guests is 5.

Commissioners: Commissioner Rhodes stated that she is not okay with rewarding someone who is actively in violation of the zoning code. Rhodes asked staff ahead of time if there are any rules regulating this in the UDC, but there are none.

Staff: Jenn Moses responded to Commissioner Rhodes and stated that in the use-specific standards for VDUs, a permit may be denied if the applicant is found to be in violation. Staff recommended approval, and staff typically has a process of working with people to come into compliance and note that there is not a long history of violations. Staff will leave the decision to the commissioners based on staff findings.

Commissioners: Discussion ensued about past approvals of permits that were found to be out of compliance. However, some commissioners were against approval for this permit because the applicant has been notified that they were in violation by staff but continues to have their online listings up advertising their in-violation short-term rentals.

Commissioner Crawford asked about the status of current waiting list and asked if the cap has been reached. He is confused as to why this applicant should be granted a permit while being out of compliance, when the next person on the list may not be in violation of the code. He doesn't want to reward violations.

President Eckenberg asked for clarification on the lottery and the number of current active licenses throughout the city. It's his understanding that there are currently 157 VDUs in Duluth, with 74 of those being in Form districts and not subject to the cap of 100. He asked staff if the applicant is one of the people that is subject to the cap.

Staff: Moses replied that there are currently 83 active licenses out of the cap of 100, and staff is working with 17 applicants on the current list to fill the remaining spots and reach the cap. This applicant is one of those 17 people, and she believes that there are around 50 additional people on the wait list. Staff cannot confirm whether everyone else on list is in compliance with the code at this time.

Commissioners: Eckenberg asked if the applicant has ceased operation as a VDU since staff notified them of being in violation. Rhodes noted that the applicant is actively advertising 2 listings for this property on Airbnb's website.

Staff: Moses said that staff only recently learned about the violations, and at this time she is not sure if the applicant has ceased operation. She recommends the commissioners hear from the applicant.

Applicant: Brian Mooers addressed the commission. He resides in 809 W 4th St and operates it as an Accessory Home Share (AHS). He stated that the 811 W 4th St address is following regulations because it is listed a long-term rental, with the rental period being at least 28 days. He's seeking the VDU permit for the unit at the 809 unit so he can move out of the 811 unit and continue to use it as a long-term rental. Mooers claimed that he was not sure if the online listing reflected the proper rental period length for a long-term rental. He said if it was not listed correctly that he would make the changes necessary.

Mooers reiterated that once the 809 unit is granted the VDU permit, he will no longer live there, and the 811 unit will operate as a long-term rental, and he will be the managing agent.

Commissioners: Commissioner Rhodes asked the applicant why he was listing both addresses as entire rental units on Airbnb if he is currently living there.

Applicant: Mooers stated that his son was listing the units on his behalf, and that the listing for the 811 unit should advertise that it is a long-term rental. If the listings are not in compliance, he said he would change them as soon as he leaves the meeting.

Commissioners: President Eckenberg referenced the staff report, which states that Mooers is in current violation of his AHS permit by renting more than the approved bedroom amount, and by not occupying the unit. Commissioner Wedul questioned Mooers if he was indeed present during the rental periods, and if any of his past guests would concur with his claim if they were asked about it. and Commissioner Crawford looked at the listing on Airbnb and found that many of the reviews reflected rental periods of 1 night, a few nights, etc. Crawford asked if Mooers has just recently changed the listing to reflect long-term rental advertising. Commissioner Rhodes confirmed that the listing had not been changed yet.

Applicant: Mooers responded to commissioners that he is in the process of changing the listing. He has been a landlord for a long time, he stated that it has been great for the neighborhood. Mooers also promised that if he is not in compliance that he will change the listing and come into compliance. He has never had problems or neighbor complaints, and he believes he deserves a chance.

Commissioners: President Eckenberg noted that staff had only recently been made aware of the applicant's violations and asked Jenn Moses where planning staff stands on this matter given that they have worked with folks to come into compliance in the past.

Staff: Moses said that staff reviewed the applicant's listings on Airbnb, and both were clearly advertised that they were being rented as a full unit. Under the AHS permit, the most that someone is allowed to rent is 1 or 2 bedrooms, not the entire unit. The expectation is that the property owner permanently resides at the unit during the rental period. Nothing in the listing indicated that the owner was adhering to those rules, including the reviews that the commissioners had just found a few moments ago.

Staff typically starts with bringing people into compliance so they can follow the rules, but staff also recognizes that there is the ability for Planning Commission to deny the permit if the applicant is in violation, per the zoning code.

Applicant: Mooers added that he has been working with the city to come into compliance with things such as the screening requirements for both properties. He stated that if there is anything else that he needs to come into compliance with that he is willing to do so.

Public: No speakers.

Commissioners: Discussion ensued among the commissioners regarding the denial process, their findings that support denial of the permit, and what the appeal process entails. Commissioners welcome the applicant to come into compliance and then re-enter the VDU lottery in the future.

Motion/second: Rhodes/Wedul Deny the Interim Use Permit on the grounds that:

- 1. The applicant is in current violation of their Accessory Home Share permit (PLAHS2111-001) by renting more than the approved bedroom amount and by not occupying the unit.**
- 2. The applicant is also in violation at 811 W 4th St by using that unit as a vacation dwelling unit without a permit.**

Vote: (6-0)

PLIUP-2410-0013 Interim Use Permit for a Vacation Dwelling Unit at 1131 Denney Dr by Kate Hage

Staff: Jason Mozol addressed the commission. This structure on this property is a 4-bedroom, single-family home with a 2-car, attached garage. This property was previously on the VDU eligibility list since it is in a residential district. The entire single-family home will be rented. There are 4 bedrooms, which allow for a maximum of 9 guests. The minimum rental period will be two nights and four off-street parking spaces, and two garage stalls will be provided. The site plan indicates outdoor amenities will include a front yard deck. The properties to the north and east are screened by existing trees and shrubs. The property owner to the west has provided a signed letter waiving the need for screening. The applicant has listed Kristie Essen and Jeffery Denney to serve as the local contacts to all property owners within 100 feet of the property boundary. Applicant must comply with Vacation Dwelling Unit Regulations, including providing information to guests on city rules and regulations. There were no agency or city comments for this application, but 19 residents of neighboring properties expressed opposition due to potential neighborhood impacts. One neighbor expressed support for the project. Staff recommends that Planning Commission approve the permit subject to the conditions listed in the staff report.

Commissioners: Commissioner Crawford noted that there was a typo on application discussion section regarding the cap for VDUs in the city, as this application and the previous application had different values listed.

Staff: Jenn Moses confirmed that the cap is indeed 100 and the typo will be fixed.

Applicant: Kerry Hage, 2 Merilane Ave in Edina, MN – Kerry is the husband of the applicant Kate Hage. He stated that his wife’s family owned the property for 30 years, and he and his wife bought it 5 years ago. There was recently a long-term tenant living on the property, but before that the house sat empty. Members of their family would use it for weekend getaways on occasion. They own other properties used as Airbnb’s that are not in Duluth, and those operate successfully with high praise from neighbors and guests. He builds homes and he

specializes in adding value to properties in a variety of ways, and they currently have about 10 long-term rentals in Duluth.

Kerry addressed the neighbor's concerns regarding noise and traffic. He explained that although the subject property is a 4-bedroom home, and when his wife lived there, they that had a family of 6 with 6 cars coming and going each day. He believes that a short-term rental would not bring as much traffic, so noise should not be an issue.

Public: Kate Drevnich, 1119 Denney Dr. – Drevnich is opposed to the project. She contacted Roz Randorf, who is her City Council person. Drevnich stated that Randorf informed her that the Planning Commission has the power to approve this permit without council action as long as they are following all rules in the zoning code.

Duluth is short on housing. She and the neighbors surrounding the subject property ask that the commissioners prioritize the people who live in Duluth, and not tourists. Drevnich bought her home in 2022 there was only one long-term rental in their neighborhood, and it was good because they were part of their neighborhood community. Currently, Drevnich's house is surrounded by 3 different rentals, and they welcome this because those neighbors are long-term and therefore part of the community. One of the homes surrounding her house has an Accessory Home Share permit which is a short-term rental option, but she doesn't mind because she knows the homeowner and they are part of the community.

Drevnich expressed that she is concerned about the possibility of the Hage's turning both houses that neighbor her home into Airbnb's in the future. There are no rules that regulate how many VDUs there can be in a neighborhood, and she finds this concerning. One of the houses next to hers, located at 1131 Denney Dr, has a deck is only a few feet from her property line. She wants to be on good terms with all her neighbors, but she also wants the commission to be aware of her neighborhoods' concerns. She referenced a letter with 17 signatures in opposition to the project, which was previously submitted to the commissioners.

Jeffery Denney, 1112 Denney Dr. – Denney is in support of this project. He is a 3rd generation Denney who lives on Denney Dr, and he and his wife reside across the street from this proposed VDU. He stated that they run an Airbnb out of their home. They have an AHS permit, and they live in the lower level of their house while they rent out the upstairs level to a maximum of 4 guests at a time. Their home used to be rented out to college students, and at times had up to 6 students living there at once. He has never had noise or traffic complaints from neighbors during that time. Their house has been operating as a short-term rental for the past few years and it's been a great experience for guests and neighbors. He added that there is a great sense of accountability in Airbnb community, because guests and hosts can leave each other reviews. This helps ensure that good people will be renting their homes. Denney understands the housing problem, but if the applicant wants to run a business, they should be able to so.

Commissioners: Commissioner Rhodes informed Denney that his listing on Airbnb should include his approved permit number so he is in compliance. Discussion ensued pertaining to the issue of distance and other limitations for VDUs in an area. Commissioners suggested that folks bring these concerns to their city councilors, and they are the ones that regulate the city-wide VDU cap. The Planning Commission's role is to make decisions based on pre-established criteria and staff recommendations.

Motion/second: Nelson/Rhodes approve as per staff recommendation with the following conditions:

- 1. The applicant shall adhere to the terms and conditions listed in the Interim Use Permit.**
- 2. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning**

Commission review; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.

Vote: (6-0)

PLUTA-2410-0002 Proposed UDC Text Amendments Related to Adult-Use Cannabis Zoning Regulations by City of Duluth

Staff: Jenn Moses addressed the commission. The State of Minnesota has passed a series of laws and rules around adult-use cannabis. St. Louis County has had a moratorium in effect for the establishment of new cannabis operations, and that will sunset on December 31st, 2024. The State office of Cannabis Management has been working on rulemaking for licensing, and it is anticipated that those licenses will begin to roll out in early 2025. City staff has been reviewing Duluth ordinances and processes to make sure we are ready for when those licenses come forward.

There will be 2 cannabis ordinances going to city council. One of the ordinances will deal with the registration for cannabis establishments that must happen with the city. Unlike liquor licensing where the city of Duluth sets the rules and do the licensing, the state of Minnesota will handle licensing for cannabis. Cannabis establishments have to register with the city of Duluth so the city can recognize that they are there.

The other ordinance is the one that is before commissioners tonight. This ordinance looks at how adult-use cannabis businesses are reflected in the zoning regulations. The purpose is to provide clear guidance on where cannabis uses are allowed in Duluth. The licensing types that can be acquired at a state level cover a variety of different land uses, including retail locations, industrial operations, cultivation, etc. Staff also wants to make sure the proposed amendments coincide with other uses listed in the zoning code. For example, retail cannabis operations are allowed wherever existing retail is allowed, but they still must make sure they are meeting all other local and state requirements. The city of Duluth is allowed to set a maximum number of retail cannabis establishments under state statute. Under this statute, the city can allow one retail location per every 12,500 residents. The other ordinance that is not in front of the planning commission tonight states that when someone comes in to register their retail cannabis business that they will be subject to the cap.

In addition to retail, cultivation operations were also discussed. It is clear in the proposed text changes some agricultural uses (such as community gardens and urban agriculture do not include cannabis businesses, as they are often in residential neighborhoods. If someone is going to cultivate cannabis products, there are other zone districts for that.

For uses such as wholesaling, manufacturing, packaging and processing, those fell into some industrial categories. Staff thought it would be best to add a new use to the use table – Industrial Cannabis Operation. This use will be permitted in mixed use-business (MU-B) and Industrial General (IG), which is consistent with other uses in the code. Medical cannabis was omitted from use table and the use-specific standards because when it was added originally, it was the only that was the only permitted cannabis use at the time. Now, medical cannabis will be licensed by the state and will fall into the existing land use categories.

Moses noted that staff had the opportunity to inform some of the commissioners about this proposed ordinance back in October at the time of the special meeting. There was no official meeting because there was not a quorum, but staff did chat with some commissioners informally. Staff recommends that Planning Commission recommend approval to city council.

Commissioners: President Eckenberg asked staff to clarify what zone districts will allow retail sales of cannabis, and he asked about how many retail establishments will be permitted in Duluth with the cap and Duluth's current population.

Staff: Moses stated that the retail definition matches retail definition for cannabis uses, meaning that retail cannabis will be allowed wherever retail is allowed. The other cannabis ordinance talks about the registration piece and that will be handled by the Clerk's Office. Under the other ordinance, the retail cannabis registration process will be similar to liquor licensing in terms of working with the police department, establishing the location, distance requirements, and other regulations. The state statutes are clear in how local governments play into the new uses. Moses is not sure whether the state will suggest rounding up or down, but the cap for Duluth would be 6 or 7.

Commissioners: Rhodes noted that this ordinance does not apply to anything that is 5 milligrams or less, so the cannabis/THC products that are sold in grocery stores are not relevant here. This is also not applicable to breweries, as they are not considered to be in the cannabis creation category. Commissioner Crawford asked if there a demand for this type of retail in Duluth, and wondered if staff was anticipating the cap for retail locations to be reached quickly. Crawford also asked staff if there will be a fair process in place regarding the retail cap.

Staff: Moses referenced a state law, which she believed was an agriculture bill. It's her understanding that the sale of low potency edibles up to a 5 mg per serving limit is allowed. This is what we've been seeing on the market because that's what is already legal. These new rules from the state will be for adult-use cannabis at a higher potency and in a different form. The cap that staff is describing is for cannabis retail locations.

Staff has not done any work to assess the demand for retail establishments, so she is not sure what to expect. It will be up to clerks to decide how that process will be handled.

Public: No speakers.

Motion/second: Nelson/Holliday recommend approval to City Council.

Vote: (6-0)

Other Business

No other business.

Communications

Land Use Supervisor (LUS) Report – Jenn Moses addressed the commission. She thanked the commissioners for their flexibility with the recent special meeting and scheduling around the election this month, and assured everyone that next month will go back to the normal meeting schedule. Moses gave an update on the ongoing interviews to hire a new department director, and staff is eagerly waiting to see who it will be.

Heritage Preservation Commission Report – Moses addressed the commission. There was no quorum for the regularly scheduled meeting, so a special meeting was held because there was an item on the agenda that required commission action. Action for that item was approved so that item can move forward. The HPC annual meeting is next week.

Duluth Midway Joint Powers Zoning Board – No report.

Adjournment

Meeting adjourned at 6:15 p.m.
Respectfully,

Jenn Moses, Manager
Planning & Economic Development