



CITY OF DULUTH

Community Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197

Phone: 218/730.5580 Fax: 218/723-3559

File Number	PL 19-011		Contact	Kyle Deming	
Type	Rezone from MU-N and F-4 to MU-C		Planning Commission Date		April 9, 2019
Deadline for Action	Application Date		February 6, 2019	60 Days	April 7, 2019
	Date Extension Letter Mailed		February 22, 2019	120 Days	June 6, 2019
Location of Subject		5300 Bristol St. (Spirit Valley)			
Applicant	Miner’s Inc. and Super One Liquor, LLC		Contact	Bruce Anderson	
Agent	William Burns – Hanft Fride P.A.		Contact		
Legal Description		See Attached			
Site Visit Date		March 22, 2019	Sign Notice Date		March 25, 2019
Neighbor Letter Date		March 22, 2019	Number of Letters Sent		35

Proposal

The Applicant is proposing to rezone the subject property from the current zoning districts of Mixed Use Neighborhood (MU-N) and Form District 4, Mid-Rise Community Mix (F-4) to Mixed Use-Commercial (MU-C).

Staff is recommending approval of the proposed rezoning to MU-C.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-N, F-4	Commercial	Central Business-Secondary
North	R-P	Rowhouses & detached res.	Urban Residential
South	I-G	I-35 & paper manufacturer	General Industrial
East	I-G	I-35 & paper manufacturer	General Industrial
West	F-4	Commercial	Central Business-Secondary

Summary of Code Requirements

- UDC Sec. 50-37.3.B: Planning Commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.

- UDC Sec. 50-37.3.C: The Planning Commission shall review the application, and Council shall approve the application or approve it with modifications, if it determines that the application:

1. Is consistent with the Comprehensive Land Use Plan;
2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use;
3. Is required by public necessity, convenience, or general welfare, or good zoning practice;
4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

- The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or else be considered arbitrary and capricious.

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

Governing Principles:

Principle #5 – Promote reinvestment in neighborhoods.

Principle #6 – Reinforce the place-specific.

Principle #8 – Encourage a mix of activities, uses, and densities.

Economic Development

Policy #2 – Foster growth of existing employers and strategically recruit new employers

Strategy #1 – Prioritize redevelopment efforts in the Core Investment Areas.

Policy #3 – Build on existing economic strengths and competitive advantages

Strategy #1 – Promote employer expansions that include job growth as well as new commercial and industrial development to support the level of activity in industry and commerce priority areas.

Strategy #7 – Analyze commercial market demand and best practices to determine options for expansion of neighborhood serving uses in nodes accessible by transit.

Site History:

In 1958 the bulk of the subject site was zoned R-2 (One- and Two-Family Residential) except the block facing Central Avenue which was zoned C-2 (Highway Commercial).

In the 1960's I-35 was extended through the area splitting the residential area.

In 1988 the R-2 zoned property was rezoned to C-2 as an implementation of the West Duluth Neighborhood Plan – Opportunities for Change.

In 1992 the 60,000 sq. ft. Super One Foods store was constructed and a 6,800 sq. ft. addition was constructed in 2002.

In 2011 Super One Liquors opened in the existing building at 210 N. Central Ave. The 6000 sq. ft. building was originally constructed in 1894.

202. N. Central Ave. was most recently Thrifty White Pharmacy in a 3,726 sq. ft. building constructed in 1964.

In 2006 the City Council adopted the Duluth Comprehensive Land Use Plan which included a Future Land Use Map that recommended Central Business-Secondary (CBS) for all of the subject property.

In 2010 the subject property was rezoned Mixed Use-Neighborhood (MU-N) with the adoption of the Unified Development Chapter (UDC) and corresponding new zone districts.

In 2011 the lots that front Central Avenue were rezoned Form District 4, Mid-Rise Community Mix (F-4) to further implement the comprehensive plan recommendation for the establishment of form districts in traditional business districts (File No. 11020).

Review and Discussion Items

Staff finds that:

- 1) The Applicant is proposing to rezone the subject property from Mixed Use Neighborhood (MU-N) and Form District 4, Mid-Rise Community Mix (F-4) to Mixed Use-Commercial (MU-C).
- 2) The majority of the rezoning area is currently zoned MU-N, which is “established to accommodate a mix of neighborhood-scale, neighbor-hood serving non-residential uses and a range of residential uses located in close proximity. This district accommodates both horizontal (uses located in separate structures) and vertical (uses located in the same building) types of mixed use. Non-residential uses may include small-scale retail, service and professional offices that provide goods and services to the residents of the surrounding neighborhood.”
- 3) The portion of the rezoning area along Central Ave. is zoned F-4, which was created for “portions of the London Road and West Duluth (Grand Avenue and Central Avenue) study areas either contain[ing] auto-oriented development or a mixture of different building types. The F-4 District was created for those areas that are not strictly comprised of mixed-use buildings. These areas are often transitional in nature, as the study area switches from commercial to residential. The integration of Corridor Building II and Cottage Commercial II will assist in stepping down the intensity as the district approaches residential neighborhoods.”
- 4) The purpose of the proposed MU-C district is “established to provide for community and regional commercial development along commercial corridors and nodal centers. Intended non-residential uses include retail, lodging, service, and recreational facilities needed to support the community and region, as shown in Table 50-19.8. Development should facilitate pedestrian connections between residential and non-residential uses.”
- 5) The entire area proposed for rezoning is designated Central Business Secondary (CBS) on the Comprehensive Plan’s Future Land Use Map. According to the comprehensive plan, CBS is “an area adjacent to and supporting the central business primary area or a stand-alone area providing a similar mix of destination land uses, but at a lower intensity than the primary CB area. Includes mixed regional and neighborhood retail, employment centers, public spaces, medium density residential, and public parking facilities. Medium densities; multi-story and mixed-use buildings are encouraged, form-based guidelines, pedestrian-oriented design, limited off-street parking required, loading facilities required.”
- 6) The Minnesota Planning Act provides that zoning (an “official control”) should implement the general objectives of the comprehensive plan, and appellate courts have issued decisions that zoning must comply with the comprehensive plan or be considered arbitrary and capricious. Good zoning practice requires that zone districts be consistent with the future land use category identified for the area.
- 7) The future land use category of Central Business Secondary (CBS) is most commonly reflected in the City’s zoning map as form districts. However, the area along I-35 from 23rd Ave. W. to Garfield Ave. is zoned MU-C while being in a larger area of CBS. There are also large areas of CBS future land use zoned MU-B.
- 8) In rezoning property, implementing the comprehensive plan is one criterion to consider. Other criteria include existing land use patterns, public necessity, convenience, or general welfare, or good zoning practice, which are explored in the findings below.
- 9) The proposed rezoning area is dominated by two retail operations that are scaled to serve more than just the immediate neighborhood. These uses are more in keeping with the purpose statement of the proposed MU-C zone than the neighborhood focus of MU-N. According to the UDC, MU-C zoning “is established to provide community and regional commercial development along commercial corridors and nodal centers.” Additionally, part of the description of Central Business Secondary future land use also “includes mixed regional and neighborhood retail.”
- 10) The existing land use pattern of that part of the rezoning area near Central Ave. is oriented to vehicular travel with the liquor store building’s entrance and parking on the side of the building facing a multi-lane driveway that leads from Central Ave. into the Super One store parking lot. The liquor store building, though abutting the Central Ave. sidewalk, has no building entrance there. Buildings across Central Ave. are also not pedestrian-oriented including a bank with drive-thru and a gas station. Rezoning this area MU-C would be consistent with the existing land use pattern. However, this area was zoned F-4 in 2011 to implement the comprehensive plan by leading the area into being a continuation of the pedestrian-oriented business district to the north. Rezoning to MU-C would be a decision to limit the Form district about 200 feet north of its planned extension to I-35.

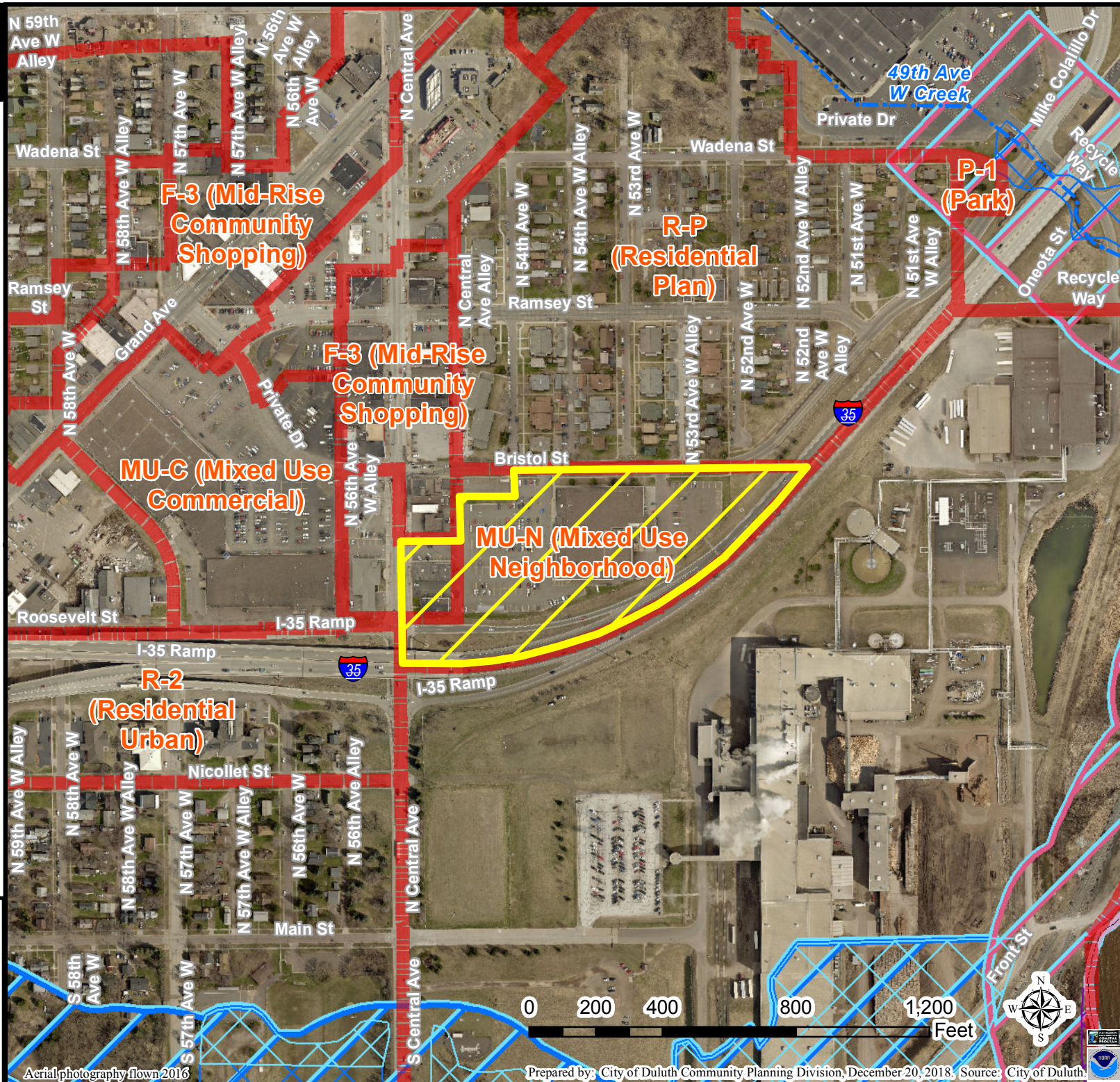
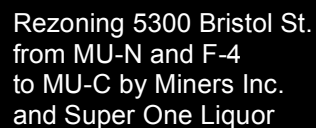
11) The area proposed for rezoning is owned by two entities with a desire to orient their property to I-35 rather than the pedestrian-oriented business district. A decision to rezoning this area to MU-C is supported by comprehensive plan economic development strategies listed above that “foster the growth of existing employers” and “redevelopment efforts in the Core Investment Areas.” Spirit Valley is a Core Investment Area. Rezoning to MU-C could also facilitate the orderly redevelopment of the site utilizing appropriate traffic controls and screening, the details of such to be reviewed by the Planning Commission. This would benefit the public necessity, convenience, and general welfare of the community.

12) If rezoned to MU-C there exists the potential for a large commercial land use to locate across Bristol St. from a residential neighborhood with associated noise from large HVAC equipment, car and truck traffic as well as building and parking lights. These potential material adverse impacts on nearby properties can be mitigated through application of the UDC Development Standards and Planning Commission site plan review as required by the MU-C zone district.

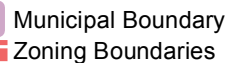
13) The existing Super One is classified in the UDC as “Grocery Store Large.” It is not a permitted use in MU-N and rezoning to MU-C would eliminate the legal nonconformity and permit its expansion. The liquor store is a permitted use in the current F-4 district and would be allowed to expand if the owners so desired.

14) No correspondence has been received as of writing.

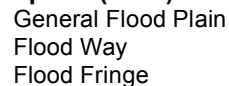
Recommended Action: The findings above support recommending the rezoning to MU-C because doing so is consistent with the comprehensive plan; is reasonably related to the overall needs of the community and existing land use patterns; is required by public necessity, convenience and good zoning practice; and any material adverse impacts will be mitigated to the extent reasonably possible by application of UDC development standards and review of development plans by the Planning Commission.



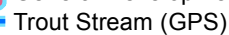
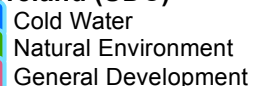
Legend



Floodplain (UDC)



Shoreland (UDC)



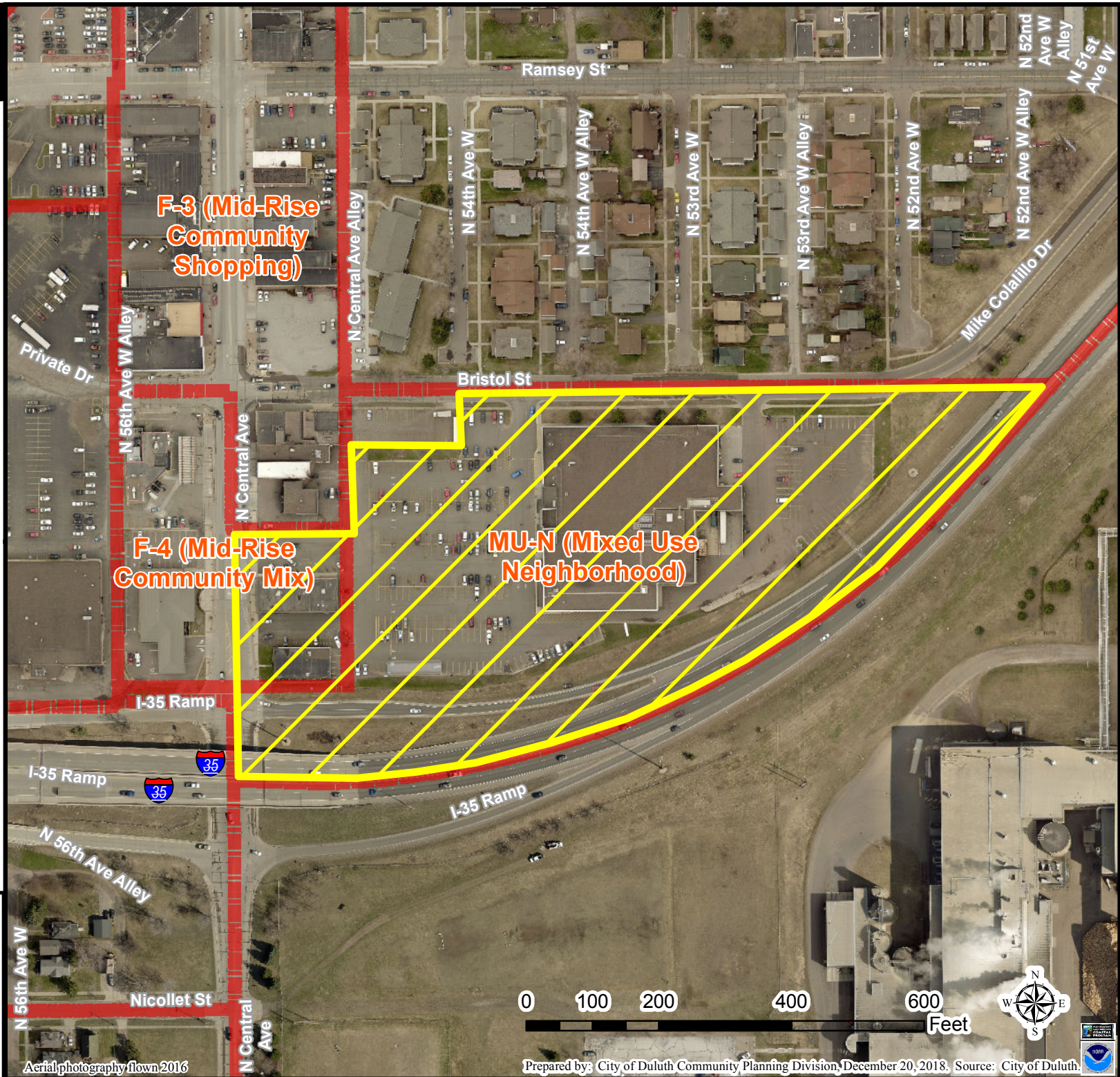
The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used 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.

Aerial photography flown 2016

Prepared by: City of Duluth Community Planning Division, December 20, 2018. Source: City of Duluth.



Rezoning 5300 Bristol St.
from MU-N and F-4
to MU-C by Miners Inc.
and Super One Liquor



Legend

- Municipal Boundary
- Zoning Boundaries
- Floodplain (UDC)**
 - General Flood Plain
 - Flood Way
 - Flood Fringe
- Shoreland (UDC)**
 - Cold Water
 - Natural Environment
 - General Development
 - Trout Stream (GPS)
 - Other Stream (GPS)

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Aerial photography flown 2016

0 100 200 400 600 Feet

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Rezoning 5300 Bristol St.
from MU-N and F-4
to MU-C by Miners Inc.
and Super One Liquor

Legend

Municipal Boundary

Floodplain (UDC)

General Flood Plain

Flood Way

Flood Fringe

Shoreland (UDC)

Cold Water

Natural Environment

General Development

Trout Stream (GPS)

Other Stream (GPS)

Future Land Use

Open Space

Rural Residential

Low-density Neighborhood

Traditional Neighborhood

Urban Residential

Neighborhood Commercial

Neighborhood Mixed Use

General Mixed Use

Central Business Secondary

Central Business Primary

Auto Oriented Commercial

Large-scale Commercial

Business Park

Tourism/Entertainment District

Medical District

Institutional

Commercial Waterfront

Industrial Waterfront

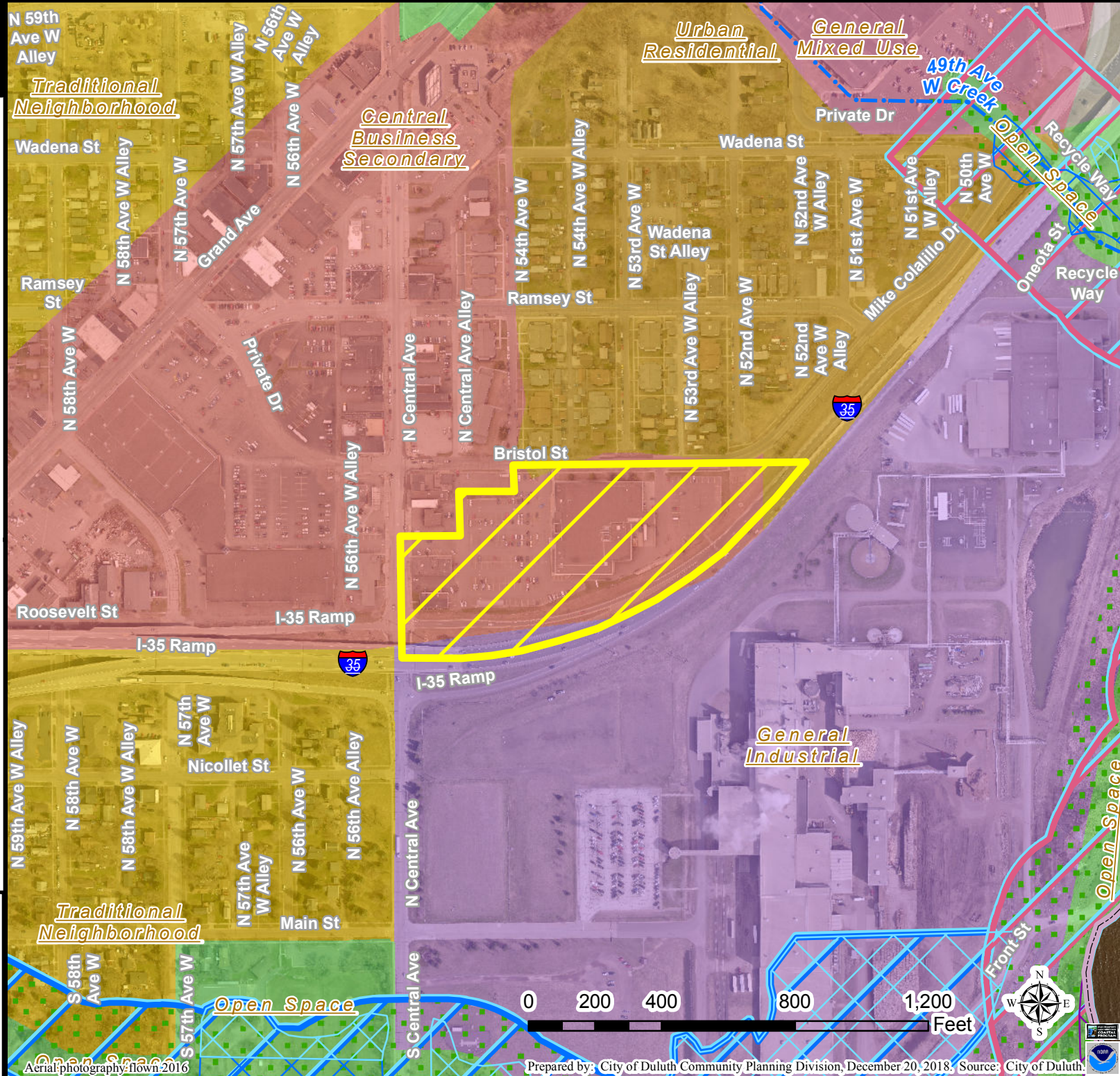
Light Industrial

General Industrial

Transportation and Utilities

Sensitive Lands Overlay

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CITY OF DULUTH ZONING MAP AMENDMENT PETITION

File No. _____

Date _____

Section I

We, the undersigned property owners, petition to reclassify from Form District – 4 (F-4) and Mixed Use – Neighborhood (MU-N) to Mixed Use – Commercial (MU-C) the property legally described in Exhibit A, attached hereto.

Section II

A map of the area is attached hereto as Exhibit B.


Section III

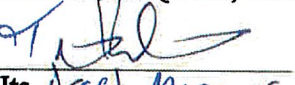
We believe that this rezoning will be in the public interest because it continues reasonable zoning regulation of the properties in question consistent with the use and opportunities relating to these properties. History is important here and the history shows that the Miner's Incorporated property, the Super One grocery store, was zoned commercial (MUC equivalent) until the Comprehensive Plan and related rezonings, which rezoned it to MUN. Miner's Incorporated did receive notice, but did not acquiesce. The property owners assert that this was in error since it put this major facility, the only full-service grocery in the neighborhood, into a grandfathered nonconforming status. This negatively impacts the value of the property and its flexibility, potentially subjects the property to unnecessary regulation and prohibits any expansion or significant remodeling. It is inappropriate and unfair that this property is so zoned. With respect to the property along Central Avenue, which has been acquired by Miner's Incorporated and Super One Liquor, LLC, that property was rezoned to a Form District due to the nature of the neighborhood to the north, which, one could argue, has logical reasons to be a Form District. The property in question, which is the subject of this petition, however, is not a walking or retail shopping area, it is a relatively high-speed area immediately off the freeway or an entry to the

freeway and should not be subjected to F-4 or MUN restrictions and regulations. Specifically, the requirement of no setbacks in building to a front yard property line is inconsistent with the logical development of this property, given the circumstances.

Section IV

Petitioners: Owners of property requested to be rezoned (all property owners must sign)

<u>NAME</u>	<u>ADDRESS</u>	<u>Phone#/Fax#/Email</u>
MINER'S INCORPORATED	5065 Miller Trunk Highway Hermantown, MN 55811	P (218) 729-3330
By  Its <u>Asset Manager</u>		bruce.anderson@miners-inc.com

SUPER ONE LIQUOR, LLC	5065 Miller Trunk Highway Hermantown, MN 55811	P (218) 729-3330
By  Its <u>Asset Manager</u>		bruce.anderson@miners-inc.com

Section V

(Not Applicable – Not requesting a change from a Residential District).

Copy to:

William M. Burns	130 W. Superior St. #1000	P (218) 722-4766
Hanft Fride,	Duluth MN 55802	F (218) 529-2401
A Professional Association		wmb@hanftlaw.com

Exhibit A
(Legal Description)

Those parts of vacated 54th Avenue West, vacated 54th Alley West, vacated 53rd Avenue West, vacated 53rd Alley West, and vacated 52nd Avenue West; Lots 3-14, Block 18, Lots 1-16, Block 17, and Lots 1-15, Block 16, WEST DULUTH FIRST DIVISION, and Lots 1-12, Block 200, and Lots 1-9, Block 201, ALTERED PLAT OF WEST DULUTH, THIRD DIVISION described as follows: Beginning at the intersection of the centerline of vacated 54th Avenue West and the extended South line of Lot 14, Block 18, West Duluth, First Division; thence running S'y along said centerline to a line commencing on the extended East line of said Block 18, distant 20 feet South of the SE corner of Lot 16 in Block 18, and terminating at the SW corner of Lot 16, Block 17, West Duluth, First Division; thence running NE'y along the aforesaid line to the SW corner of Lot 16, Block 17, West Duluth, First Division; thence running E'y along the South line of said Lot 16 for 60 feet; thence running NE'y to the SW corner of Lot 12, Block 200, Altered Plat of West Duluth Third Division; thence running N'y along the West line of said Lot 12 ten feet; thence running NE'y to a point on the East line of Lot 10, Block 200, Altered Plat of West Duluth, Third Division, distant 10 feet South of the NE corner of said Lot 10; thence running NE'y to a point on the East line of Lot 5, Block 201, Altered Plat of West Duluth, Third Division, distant 10 feet North of the SE corner of said Lot 5; thence running NE'y to the intersection of the centerline of vacated 52nd Avenue West and a line commencing on the East line of said Lot 5, distant 10 feet North of the SE corner of said Lot 5, and terminating at a point on the West line of Lot 1, Block 202, Altered Plat of West Duluth, Third Division, distant 38 feet South of the NW corner of said Lot 1; thence running N'y along the centerline of vacated 52nd Avenue West to the South right-of-way of Bristol Street; thence running W'y along the South right-of-way of Bristol Street to the centerline of vacated 54th Avenue West; thence running S'y along said centerline of vacated 54th Avenue West to the extended North line of Lot 3, Block 18, West Duluth, First Division; thence running W'y along the extended North line and North line of said Lot 3 to the NW corner of said Lot 3; thence running S'y along the West line of said Block 18 to the SW corner of Lot 14 in said Block 18; and thence running E'y along the South line and extended South line of said Lot 14 to the point of beginning.

Together with the vacated parts of the 16 foot wide alley between Central Avenue and 54th Avenue West accruing thereto pursuant to vacation Resolutions filed January 5, 2001, in the office of the St. Louis County Registrar of Titles as Document No. 894798 and October 20, 2016, in the office of the St. Louis County Registrar of Titles as Document No. 977544.

-AND TO-

Lots 15 and 16, Block 18, WEST DULUTH FIRST DIVISION, and Lots 15 and 16, Block 19, WEST DULUTH, FIRST DIVISION, together with vacated 54th Avenue West and vacated Roosevelt Street adjacent thereto.

Together with the vacated parts of the 16 foot wide alley between Central Avenue and 54th Avenue West accruing thereto pursuant to Vacation Resolution filed January 5, 2001, in the office of the St. Louis County Recorder as Document No. 1152301.

-AND TO-

Lots 8, 9, 10, 11, 12, 13 and 14, Block 19, WEST DULUTH FIRST DIVISION.

Together with the vacated parts of the 16 foot wide alley between Central Avenue and 54th Avenue West accruing thereto pursuant to vacation Resolutions filed January 5, 2001, in the office of the St. Louis County Registrar of Titles as Document No. 894798 and in the office of the St. Louis County Recorder as Document No. 1152301.