



Legislation Text

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**File #:** 21-029-O, **Version:** 1

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AN ORDINANCE GRANTING MARK KURILLA AT 2102 MINNESOTA AVENUE A CONCURRENT USE PERMIT FOR CONSTRUCTING A RETAINING WALL WITHIN THE PLATTED RIGHT OF WAY FOR 21<sup>ST</sup> STREET AND LAKE AVENUE.

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 Mark Kurilla and their successor(s) in interests, referred to herein as the permittee, to construct and maintain the following on that property legally described below:

(a) The concurrent use area (Area #1) consists of 32.5' by 18.5' encroachment within the platted right of way for Lake Avenue, legally described as:

A parcel of land lying within the platted right of way of Lake Avenue lying adjacent to Lot 41, Lower Duluth, Lake Avenue, according to the recorded plat thereof, St. Louis County, Minnesota, described as follows:

Beginning at the North most corner of said Lot 41; thence Northeasterly, 18.50 feet, along the Northeasterly extension of the Northwesterly line of said Lot 41 to a line parallel with and distant 18.50 feet Northeasterly of the Northeasterly line of said Lot 41; thence Southeasterly, deflecting to the right 90 degrees, along said parallel line 32.50 feet; thence deflecting 90 degrees to the right 18.50 feet to the Northeasterly line of said Lot 41; thence deflecting to the right 90 degrees, along the Northeasterly line of said Lot 41 for a distance of 32.50 feet to the point of beginning.

as shown in the Exhibit B.

(b) The concurrent use area (Area #2) consists of 43.5' by 21.5' encroachment within the platted right of way for 21<sup>st</sup> Street, legally described as:

A parcel of land lying within the platted right of way of 21st Street lying adjacent to Lot 41, Lower Duluth, Lake Avenue, according to the recorded plat thereof, St. Louis County, Minnesota, described as follows:

Commencing at the North most corner of said Lot 41; thence Southwesterly along the Northwesterly line of said Lot 41 for a distance of 38.50 feet to the point of beginning of the concurrent use area herein described; thence continuing Southwesterly along said Northwesterly line 43.50 feet; thence Northwesterly, deflecting to the right 90 degrees 21.50 feet to a line parallel with and distant 21.50 feet Northwesterly of the Northwesterly line of said Lot 41; thence Northeasterly, deflecting 90 degrees to the right, along said parallel line 43.50 feet; thence Southeasterly, deflecting 90 degrees to the right 21.50 feet to the point of beginning.

as shown in the Exhibit B.

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) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; 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 hold 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 or of the city of Duluth and its employees, agents, contractors, 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 and any costs to repair or replace of any of the permittee's property or improvements thereto. 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, sidewalks, 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. Permittee shall immediately reimburse City for any costs incurred by City arising out of permittee's failure to fulfill its obligations under the section.

Section 6. The terms and conditions of this ordinance shall be deemed to run with the land. 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 ten 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 the exhibit; 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.

(c) Permittee will be responsible for the ownership, operation, and maintenance of the private improvements, including snow removal on the structure and along the sidewalk between the street and structure.

(e) The private improvements shall be designed to comply with any applicable engineering standards, building code, and fire code requirements. Permittee acknowledges that any future removal of the structure per this ordinance could impact the building's compliance with the building code.

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 60 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. Permittee shall cause this ordinance to be recorded against the benefited property in the office of the St. Louis County Recorder.

Section 11. By accepting the permit authorized by this ordinance, permittee, for itself and its successors in interest, is agreeing to be bound by its terms.

Section 12. That this ordinance shall take effect and be in force the later of 30 days from and after its passage and publication or the date upon which this ordinance is recorded as provided for in Section 10 above.

**STATEMENT OF PURPOSE:** This ordinance grants the property owner of 2102 Minnesota Avenue, Mark Kurilla, a concurrent use permit to construct retaining walls for landscaping in the right of way for Lake Avenue and 21<sup>st</sup> Street and described in Staff Report PL 21-083 or Exhibit A. The existing wall, as originally constructed, is located within the right of way for both areas. The concurrent use permit will allow for continued use of the right of way, together with improvements to the retaining wall.

On July 13, 2021, the planning commission held a public hearing on the proposal, and voted 7 yeas, 0 nay, and 0 abstentions, to recommend that the city council approve the request for a concurrent use of streets.

Petition received: June 2, 2021

Action deadline: September 30, 2021

Applicant:

Michael Bruckelmyer

2304 Lismore Road

Duluth, MN 55804

Permit Property:

2102 Minnesota Avenue, Duluth

St. Louis County, Minnesota, Parcel ID: 010-3100-00210

Complete legal descriptions of Concurrent Use Area's provided on Exhibits in staff report PL 21-083