



Saint Paul Planning Commission

City Hall Conference Center Room 40
15 Kellogg Boulevard West

Agenda

Christopher B. Coleman,
Mayor

October 31, 2014

8:30 – 11:00 a.m.

Saint Paul
Planning Commission

Chair

Barbara A. Wencil

First Vice Chair

Elizabeth Reveal

Second Vice Chair

Paula Merrigan

Secretary

Daniel Ward II

Pat Connolly

Anne DeJoy

Daniel Edgerton

Gene Gelgelu

William Lindeke

Kyle Makarios

Melanie McMahon

Gaius Nelson

Rebecca Noecker

Christopher Ochs

Trevor Oliver

Julie Padilla

Emily Shively

Terri Thao

Wendy Underwood

Jun-Li Wang

David Wickiser

Planning Director

Donna Drummond

- I. Approval of minutes of October 3, 2014**
- II. Chair's Announcements**
- III. Planning Director's Announcements**
- IV. PUBLIC HEARING: Department of Natural Resources (DNR) Draft Mississippi River Corridor Critical Area Rules – Item from the Comprehensive Planning Committee.**
(Allan Torstenson, 6551/266-6579 and Josh Williams, 651/266-6659)
- V. Zoning Committee**

SITE PLAN REVIEW – List of current applications. *(Tom Beach, 651/266-9086)*

NO BUSINESS
- VI. Neighborhood Planning Committee**

Minor Zoning Text Amendments to Chapters 60-62, and portions of Chapters 63& 65 –
Release for public review and set a public hearing for December 5, 2014.
(Jake Reilly, 651/266-6618)
- VII. Comprehensive Planning Committee**
- VIII. Transportation Committee**
- IX. Communications Committee**
- X. Task Force/Liaison Reports**
- XI. Old Business**
- XII. New Business**
- XIII. Adjournment**



Information on agenda items being considered by the Planning Commission and its committees can be found at www.stpaul.gov/ped, click on Planning.

Planning Commission Members: PLEASE call Sonja Butler, 651/266-6573, if unable to attend.

**Saint Paul Planning Commission &
Heritage Preservation Commission**
MASTER MEETING CALENDAR

WEEK OF OCTOBER 27-31, 2014

Mon (27)

Tues (28)

3:30- Comprehensive Planning Committee
5:00 p.m. (Merritt Clapp-Smith, 651/266-6547)

13th Floor – CHA
25 Fourth Street West

Parkland Dedication Study – Discuss and consider recommendation to release for public hearing. *(Jamie Radel, 651/266-6614)*

Comprehensive Plan priorities for CIB and STAR application review.
(Michelle Beaulieu, 651/266-6620)

Weds (29)

Thurs (30)

Fri (31)

8:30- Planning Commission Meeting
11:00 a.m. (Donna Drummond, 651/266-6556)

Room 40 City Hall
Conference Center
15 Kellogg Blvd.

PUBLIC HEARING: Department of Natural Resources (DNR) Draft Mississippi River Corridor Critical Area Rules – Item from the Comprehensive Planning Committee.
(Allan Torstenson, 651/266-6579 and Josh Williams, 651/266-6659)

Zoning..... SITE PLAN REVIEW – List of current applications. *(Tom Beach, 651/266-9086)*

NO BUSINESS

Neighborhood Planning

Committee.....

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(Jake Reilly, 651/266-6618)

Happy Halloween



**Saint Paul Planning Commission
City Hall Conference Center
15 Kellogg Boulevard West**

Minutes October 3, 2014

A meeting of the Planning Commission of the City of Saint Paul was held Friday, October 3, 2014, at 8:30 a.m. in the Conference Center of City Hall.

Commissioners Present: Mmes. DeJoy, McMahon, Merrigan, Padilla, Reveal Shively, Thao, Underwood, Wencl; and Messrs. Connolly, Edgerton, Gelgelu, Lindeke, Makarios, Nelson, Ochs, Oliver, and Ward.

Commissioners Absent: Mmes. *Noecker, *Wang, and Mr. *Wickiser.

*Excused

Also Present: Donna Drummond, Planning Director; Bill Dermody, Merritt Clapp-Smith, Jake Reilly, Jamie Radel, Lucy Thompson, Sarah Zorn, and Sonja Butler, Department of Planning and Economic Development staff.

I. Approval of minutes September 5, 2014.

MOTION: *Commissioner Reveal moved approval of the minutes of September 5, 2014. Commissioner Thao seconded the motion. The motion carried unanimously on a voice vote.*

II. Chair's Announcements

Chair Wencl had no announcements.

III. Planning Director's Announcements

Donna Drummond announced that the DNR staff will be attending the next Planning Commission meeting to make a presentation about the proposed Critical Area rules on October 17, 2014. The Mayor and City Council's comment letter sent to DNR requested that the Planning Commission hold a public hearing to allow the broader community a chance to weigh in on the comments. The hearing will be on October 31, 2014.

IV. Zoning Committee

SITE PLAN REVIEW – List of current applications. (*Tom Beach, 651/266-9086*)

Three items came before the Site Plan Review Committee on Tuesday, September 30, 2014:

- Frattallone Hardware, expand existing parking lot at 215 Eva Street.
- Surly Brewing, new parking lot at 1051 Westgate Drive.

- Island Station, preliminary meeting about development plans for Island Station at 380 Randolph.

One item to come before the Site Plan Review Committee on Tuesday, October 14, 2014:

- East 7th Street Senior Apartments, new apartment building with 113 units at 720 East 7th Street.

OLD BUSINESS

#14-321-546 Pawn America – Conditional use permit for an alternative financial establishment and pawn shop, with modification of special conditions. 1891 Suburban Avenue.
(Bill Dermody, 651/266-6617)

Commissioner Nelson explained that the committee had a split vote (3-3) so this matter comes to the Planning Commission with no recommendation. However with the staff report being for an approval, he made a motion for approval of the staff's recommendation to approve the application but with several modifications, including changes to recommended condition #8 and two new conditions (#s 9 and 10).

MOTION: Commissioner Nelson moved for approval of the staff's recommendation with modifications. Commissioner Padilla seconded the motion.

Commissioner Ward inquired about any signage issues that were discussed at Zoning Committee. He recalled previous signage issues in the area.

Commissioner Nelson said that this recommendation would not allow a pylon sign and it addresses strict conformance with the Sunray sign requirements. The actual size of the sign itself in terms of square footage was not specifically addressed, it was mainly a matter of placement of the signage. So it looked like it was a single establishment more than it looked like there were multiple establishments within the shopping area.

Commissioner Padilla said that the sign would still have to meet the code requirements for the size of the sign, even though it's not set forth so as long as they're not providing a variance for a larger sign it would have to meet the code requirement for the size of the sign.

Commissioner Ward asked if there was any discussion on lighting.

Commissioner Nelson did not recall any discussion on lighting.

Commissioner Reveal voted against this and recalled it was a difference of opinion about how far it was appropriate to go as a zoning decision versus a policy matter. The original Pawn America was in front of the Planning Commission a few years ago and at that time they made a big deal about the distance requirement because there was an alternative financial institution in less distance than the code required and that ended up being closed in order for the Pawn America to open. There was also supposed to be additional development there which has not subsequently happened. She along with a few others felt that eliminating the distance requirement was too

significant an action to take and was more appropriate as a legislative decision and an ordinance change. The concern about signage was that if they were side-by-side on the building then they would look like two separate establishments and Commissioner Nelson has suggested a solution that puts them vertical on the building, but they did not talk about lighting or other issues.

Commissioner Oliver is opposed to this application as well. When this first came to the Planning Commission it was not Pawn America's project - it was Max it Pawn as Red Dog Holdings, which came to the Planning Commission recommended for denial of the pawn shop because of the nearby alternative financial and some community opposition to the pawn shop. District 1 had been in favor of that project, that's the key distinction, the members of the community, members of the neighborhood and the members of this commission supported the project and voted for the conditional use permit. The only reason the pawn shop was found to not impede normal development and to not be detrimental to the existing character of the neighborhood is because it was part of a project as an anchor to a four building development. Standing alone it is detrimental to the character and development in the neighborhood - it has impeded normal and orderly development. This is essentially guaranteeing that the project that the neighborhood was promised and the neighborhood supported will never happen and that this site will never be anything else but a combined pawn shop and payday lending. The earlier conditional use permit was approved for a reason and that reason has never come to pass and for that reason the conditions for Payday America just cannot be met because it will be detrimental to the existing character of the development in the neighborhood and it would impede normal development of the surrounding property.

At this time Chair Wencil and the First Vice Chair Reveal switched places so that Wencil could make a statement not as the chair.

Commissioner Wencil explained that there were two reasons why she was opposed to this. First, from Finding 3) b., §65.511 says that no alternative financial establishment shall be located within 2,640 feet of another alternative financial establishment. The building that the alternative financial establishment is in is not owned by Payday America - they are leasing it. So the use of it goes with the building it does not go with Payday America and if they moved out, then the owner could rent/lease it out to someone else. Given that there is an agreement she feels that the Planning Commission is over stepping its bounds to be deciding for an owner who is not here or even a part of this to be making that decision. Second, the finding about co-location of the pawn shop and the alternative establishment says that there has to be a distance and it seems to her that this is something that the City Council should address rather than the Planning Commission - it seems like the Planning Commission is legislating something that is beyond their purview.

First Vice Chair Reveal and Chair Wencil switch back to their original places.

Commissioner Padilla has trouble putting the onus on this applicant of what was promised a few years ago - they are not the developer and it is unfortunate that the site was not developed in a manner that was assumed to be, but it can't be held against the applicant that is before the Planning Commission. The additional development is not the fault of the existing applicant and while we may surmise or opine on what we think might have been developed if this had not been there, we cannot make those calls. And to Chair Wencil's first point regarding the existing site that would be vacated, condition 3 addresses that in a way that works. Even though the owner of the other building is not here it clearly states that the conditional use permit (CUP) is forfeited if that existing site does not lose its legal nonconforming status within one year. So if the current

owner leases that property to another alternative financial establishment, then Pawn America will lose their CUP for this application and we are addressing that issue and the signage is addressed. Those two are the biggest issues before the committee. She appreciates the comments about co-location, they do have the authority to approve modifications and they do actually approve unique modifications in certain circumstances that are within their purview and they do make those judgment calls and the City Council, if on appeal, can make a different decision. She does see the distinction between two store fronts and two separate entrances from what's being proposed here, which is one entrance, one use all combined in one location and she thinks that it reduces impacts by putting them together rather than having two different stores in the same neighborhood and with that she supports Commissioner Nelson's motion for approval.

Commissioner Thao asked if the applicant indicated whether or not, if not for the fact that he had been robbed three times, if they would not have co-located their services.

Bill Dermody, PED staff, said that the Pawn America business model is to combine these two businesses whenever they can regardless of any safety concerns.

Commissioner Thao said that through signage she hears Commissioner Nelson trying to offer the piece about having one door, one entrance, but not sure if the argument about "not wanting to indicate that this neighborhood is going downhill" is a good one to stand on when we have other neighborhoods in Saint Paul who have a higher concentration of these services. She believes this is the only one where the radius is large and she would be okay if the conditions were just saying they had to be adhering to whatever is in the current plan now because that's what currently in the plan right now. Commissioner Thao is for the conditions in the original staff report and not in support of what Commissioner Nelson is proposing.

Commissioner Edgerton voted in favor of this at Zoning Committee and he believes that the key argument has to do with spacing the 1,320 feet versus co-location. The reason for that spacing was that they did not want these two types of institutions located too closely together, because of the visual impact of having a pawn shop here and a check cashing alternative financial institution here in the same strip mall. In this case it's located at a single place with a single store front with a single door and then with Commissioner Nelson's condition of the vertical signage together and no pylon signing. Say they are located in the same place but there are two different signs and it might look as if there are two different stores visually and so that created this discussion of let's try to consolidate the signage to reduce that effect. Staff's recommendation was based on the spirit of the law. In this case the letter of the law says that you can't locate within 1,320 and it's based on the visual impact, and in this case by co-locating them together it's almost as though it's a single store front so you wouldn't have that same impact that led to that spacing. It's his opinion that co-locating would address the rationale of the 1,320 feet and that is why he supports it.

Commissioner Ochs said that the visual impact does not refer to the visual impact of the buildings themselves. Regardless of the type of business, they could dress up the façade anyway they feel the need to do. And the term visual impact is probably referring to the type of person who would use these types of services. The issue of having the payday loan type of business and a Pawn America was to reduce the type of traffic that might be conducive to criminal activity. Is that not the intent of the spacing of these two types of services or is it something else?

Commissioner Padilla is uncomfortable talking about what we think is the typical user of these stores, because there is a broad spectrum of people who utilize the services of both Pawn America and Payday Lending. She is uncomfortable with the idea that the visual impact is about the user and the visual impact in her mind is about the signage and the way that the building presents itself to the public not about the person who enters the store. Also to Commissioner Thao's point the applicant did address the fact that there had been an armed robbery at the site and while not the motivation for the co-location, this would provide additional security on site and they felt that it would be an additional preventative measure to co-locate these businesses.

Commissioner Reveal agrees with Commissioner Padilla and what it is about is what the code currently allows, what was decided earlier and what the conclusions are about the impact that can have on development and others. So from her point of view they are talking about issues of policy matters not issues of zoning matters and she is more comfortable sticking with the current statute. They have made exceptions in the past, but she does not remember one that was this clearly wiping out a standard altogether.

Commissioner Oliver disagrees slightly, saying that this is about the use that it is and is about the fact that it needs its own conditional use permit and has to meet the standards of the conditional use permit and the character of the project that was presented, which is detrimental to the character of the neighborhood at this location, it would impede development if it went in and the use is not appropriate.

Commissioner Makarios supports Commissioner Nelson's motion today and he thinks that co-locating these two businesses will not be detrimental to the character of the neighborhood and he thinks that it will help development in the neighborhood. The fact is that Payday America exists currently and is two blocks away from the existing Pawn America, and he thinks it will actually improve the chances of doing development in the neighborhood to take the two uses and put them in the same store front. The use already exist in the neighborhood – it's not going to be detrimental to the character of the neighborhood to take existing uses and put them in a nicer building in one store front and that could help development, not impede it.

Commissioner Oliver disagrees with the characterization that it's two blocks, Suburban Avenue is more of a suburban type development visually, and mentally there's no connection between these two, and you would not walk from one to the other necessarily. One is on Suburban Avenue and the other is far away across White Bear Avenue off of a winding street behind the Target Store. This would be an addition to the Suburban Avenue street front and business community, which the businesses on the back end of the Target Store are not considered part of the same thing and that is one of the reasons that area is not doing so well - the traffic does not go from one to the other, people go to Target and that's it. He cannot agree with the opposition that these things already exist, so what's the big deal? It is a big deal to move them.

Commissioner Ward asked for the position of staff regarding how to clearly define terms in section 5 §61.501 (c) detrimental use and (d) what will not impede the normal and orderly development. He wants to hear what is considered "detrimental" in the City's eyes and what is "normal orderly development".

Bill Dermody, PED staff, said that these are subjective measures that will require Planning Commission judgment. Rather than trying to define them, he refers to finding #6 regarding what it takes to modify special conditions. The planning commission may approve modifications of

special conditions when specific criteria is met: strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare. So the key terms are “unreasonably limiting” and “exceptional undue hardship” in making their decision.

Commissioner Ward said that it's not their call to say what's good and what's bad for a development, if it fits within the City's guidelines as outlined. The only purview or jurisdiction is whether it fits the zoning. He agrees 100% with Commissioner Reveal's position that it's a policy position and if policy allows it, whether we want it or not, we have to stick with that. If this is going to present an undue hardship to the owner or the property then, yes, the way the code is written it would unreasonably limit or prevent otherwise lawful use. It's a hardship to the owner to fulfill the requirements as written, and there are some suggestions to make it work by allowing a conditional use permit which is what we do. As noted in finding 5(c), there is not additional negative impact on the health, morals, and general welfare of the community. He will vote for this.

Commissioner Reveal moved to call the question. The motion to call the question passed 16-1 (Oliver) on a voice vote.

MAIN MOTION: *Commissioner Nelson moved an amended version of the staff's recommendation to approve the conditional use permit subject to additional conditions.*

Mr. Dermody noted that the site actually has a pylon sign currently with Pawn America upon it. He suggested amending the condition restricting a pylon sign so that applies only to Payday America in order to avoid having the existing pylon sign taken down. Commissioner Nelson agreed and so amended his motion.

The motion carried 10-7 (Merrigan, Ochs, Oliver, Reveal, Thao, Underwood, Wenc) on a roll call vote.

NEW BUSINESS

#14-325-680 HRA – Rezone from R4 One-family residential to T2 Traditional Neighborhood. 619-627 Wells Street between Edgerton and Payne Avenue. (Bill Dermody, 651/266-6617)

MOTION: *Commissioner Nelson moved the Zoning Committee's recommendation to approve the rezoning. The motion carried 17-0 with 1 abstention (DeJoy) on a voice vote.*

#14-324-966 John Lenzi – Rezone from B2 Community Business to T2 Traditional Neighborhood. 662 Payne Avenue South of intersection at Beaumont Street. (Bill Dermody, 651/266-6617)

MOTION: *Commissioner Nelson moved the Zoning Committee's recommendation to approve the rezoning. The motion carried unanimously on a voice vote.*

#14-326-683 Scott Kramer – Conditional use permit for a bed & breakfast residence with 4 guest rooms. 241 George Street West between Charlton and Waseca Street.
(Sarah Zorn, 651/266-6570)

MOTION: Commissioner Nelson moved the Zoning Committee's recommendation to approve the conditional use permit subject to additional conditions. The motion carried unanimously on a voice vote.

Commissioner Nelson announced the item on the agenda at the next Zoning Committee meeting on Thursday, October 9, 2014.

V. Comprehensive Planning Committee

Minor Zoning Text Amendments to Driveway Setback Requirements, Land Use Standards, and T District Uses and Standards – Release for public review and set a public hearing for November 14, 2014. (Jamie Radel, 651/266-6614)

Jamie Radel, PED staff, talked about the proposed zoning text amendments, they span a wide variety of sections of the code. The Driveway Setback would change the requirement from 25 feet to 6 feet in districts other than RL-RT2. Two Land Use Standards are proposed for change, to modify the open space requirements and modify building size standards. Under Zoning District Uses and Standards, permitting rental storage facility use in B4 – B5 districts, and permitting reception hall use in T2 districts. Allowing for commercial surface parking and increasing the maximum setback in T1 for nonresidential or mixed uses. Also allowing for T1, T2, and IT with a master plan.

Ms. Radel had distributed a handout requesting another amendment be made to this zoning language before releasing it for public review.

Commissioner Merrigan said regarding the amendment that was handed out, many mixed-use buildings have fronts and backs; they have a main street/retail area and a back service area. She asked under this proposal can people do storage with a conditional use permit if there is a part of that building that doesn't interact with the street and may be a secluded area because she does not want to limit an appropriate use where there would not be the need for an active street front. She would support that if that would help forward getting the building built or converted or to make use of that space. So as this is written could someone come forward with an application and say in this in particular condition they want to allocate this much to storage because it may be an appropriate placement for storage.

Ms. Radel said that currently it is not written that way, they could add something about a conditional use permit for non-public or non-public interfacing areas on first floors and skyway levels units of the building.

Commissioner Merrigan is more interested in the first floor of the building than the skyway level.

Lucy Thompson, PED staff, said that these conditions can be modified but she would rather leave it as a standard and condition and release the draft to the public, and see where it ends up. A building owner could request to modify the condition with a specific layout of where the storage

would be and where access to the skyway would be. Commissioner Merrigan was comfortable with releasing the proposed amendment as stated in the revised language that was distributed.

Chair Wencil said that the way this language is written, are we considering mostly basement-level storage, because she understands that the first floor or the skyway level we are mainly talking about downtown but are we talking underground also?

Ms. Radel replied that there are some areas in the downtown where buildings have sub-basements, so basements and sub-basements could be used for storage, or you could use third or fourth floors for storage or anything above the skyway level as storage.

Commissioner Lindeke asked about the surface parking change. Was this in reference to the attempts in the Selby Snelling area to create a shared surface parking lot for most of the businesses?

Ms. Radel said that it did stem from that discussion.

Commissioner Lindeke said so if someone was trying to build a building and create a surface parking lot; does it have to be shared in this language?

Ms. Radel said it does not have to be shared in this language it could just be someone who wanted to create a parking lot and that is why it was excluded from the area a quarter mile from the Green Line.

Commissioner Ward asked if surface parking is not allowed within a quarter mile of the Green Line, what will happen to the City-owned surface parking facilities that presently exist. If the City were to dispose of that property then would zoning be referred back to what it was rather than VP?

Donna Drummond, Planning Director, said with the rezoning that was done along University Avenue the VP zoning was eliminated and all those properties were rezoned to the T districts.

Commissioner Ward is thinking about a parcel on the corner of Grotto and Edmund, that is within that quarter mile and it is zoned VP, it is a large parking lot and so did that also get rezoned because it still shows as VP.

Ms. Drummond clarified that along University Avenue was rezoned however that far away could still be VP.

Commissioner Ward said so then no one can purchase a parcel and then change it to surface parking.

Ms. Radel said that if something is currently zoned with T zoning you cannot put a surface parking lot for commercial use on that parcel.

Commissioner Ward said even if the commercial use is related to the business.

Ms. Radel said no if it is related to the business then that would be part of the business, but to just make the business a parking lot cannot currently be done.

MOTION: *Commissioner Merrigan moved on behalf of the Comprehensive Planning Committee to release the draft for public review and set a public hearing on November 14, 2014. The motion carried unanimously on a voice vote.*

Commissioner Nelson announced the items on the agenda for the next Zoning Committee meeting on Thursday, October 9, 2014.

VI. Ford Site: Rezoning, preliminary master plan, and other project work for 2014-2015 – Informational presentation by Merritt Clapp-Smith, PED.
(Merritt Clapp-Smith, 651/266-6547)

Merritt Clapp-Smith gave an informational presentation about the Ford Site: Rezoning, preliminary master plan, and other project work for 2014-2015. Ms. Clapp-Smith's presentation is posted on the Planning Commission's web page where the approved minutes are located at: <http://stpaul.gov/index.aspx?NID=3430>.

Commissioner Merrigan said that at one point there was a discussion about form based zoning potentially for the site, so how did that discussion go, and how that might work with the T plus idea?

Ms. Clapp-Smith said that they are going to move through the zoning discussion first by focusing on the priorities to be addressed, and then determine in the code drafting phase what the best format is to achieve the priorities.

Commissioner Merrigan is amazed at how much work and how well done and how well thought out this process is and she commended Ms. Clapp-Smith for leading this group for all this time. This is a remarkable undertaking for the City and her work on this has been amazing and should be recognized. Commissioner Merrigan also thinks that this could provide an excellent opportunity for the Port Authority to look at new models for bringing in work, they have a model that they have been using for years and it has worked in many contexts, but the notion of industry and land uses has changed significantly over the years. She hopes that the Ford site is a place to set up some alternative models, which could help throughout the city.

VII. Neighborhood Planning Committee

Commissioner Oliver announced that the next Neighborhood Planning Committee meeting on Wednesday, October 8, 2014 has been cancelled.

VIII. Transportation Committee

Commissioner Lindeke reported that at their last meeting they talked about the Snelling Bus Barn site. They also heard from Reuben Collins and Jessica Treat about their trip to Copenhagen and they had a quick overview of the Downtown Parking Management Strategy. He also announced the item on the agenda at the next Transportation Committee meeting on Monday, October 6, 2014.

IX. Communications Committee

Commissioner Thao had no report.

X. Task Force/Liaison Reports

Commissioner Oliver announced that the Gateway Station Area Planning Task Force will be meeting on Tuesday, October 7, 2014 at the Conway Recreation Center from 5:00 – 6:30 p.m.

Commissioner Reveal reported that the West Side Flats plan has been sent to West Side Community Organization (WSCO) and they voted unanimously to support the plan as it was approved. They also received a significant EPA Grant to evaluate the opportunities for the greenway that's contemplated in the plan which would be a combined stormwater and recreational solution and they should have a draft of that report in the next few weeks.

Commissioner Nelson reminded the commissioners that at the next Planning Commission meeting on October 17, 2014 they will hold the Shepard Davern public hearings.

Commissioner Makarios announced the Ford Site Task Force will have a work session on Monday, October 20, 2014.

XI. Old Business

None.

XII. New Business

None.

XIII. Adjournment

Meeting adjourned at 10:17 a.m.

Recorded and prepared by
Sonja Butler, Planning Commission Secretary
Planning and Economic Development Department,
City of Saint Paul

Respectfully submitted,

Approved _____
(Date)



Donna Drummond
Planning Director

Daniel Ward II
Secretary of the Planning Commission

city of saint paul
planning commission resolution
file number 14-48
date August 8, 2014

Comments on Draft Rules for Mississippi River Corridor Critical Area

WHEREAS, the Minnesota Department of Natural Resources (DNR), on June 2, 2014, published a Request for Comments on draft rules for the Mississippi River Corridor Critical Area (MRCCA); and

WHEREAS, the proposed rules would replace the Standards and Guidelines for Preparing Plans and Regulations for the MRCCA in Executive Order 79-19 by Governor Quie in 1979, and would mandate new MRCCA zoning overlay districts and regulations to replace the districts and regulations that were adopted by the City and approved by the state pursuant to Exec. Order 79-19 in 1982; and

WHEREAS, MN Stat. 116G.15, which authorizes the rulemaking, directs the DNR to ensure that the river corridor is managed as a multipurpose resource in a way that "conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor, [and] . . . provides for the continuation, development, and redevelopment of a variety of urban uses," and requires the DNR to "take into account municipal plans and policies, and existing ordinances and conditions" in establishing districts for "management of the river corridor consistent with its natural characteristics and its existing development, and in consideration of potential new commercial, industrial, and residential development and redevelopment;" and

WHEREAS, the Planning Commission has reviewed and provided direction on detailed City staff comments on the draft rules, and makes the following more general comments, which reflect the concerns and hopes of the Commission for the rulemaking process going forward:

- **Local planning versus corridor-wide regulations:** Broad-brush regulations in the draft rules would supersede the thoughtful, finer-grained area and site-specific planning the City has done for the Critical Area, such as for implementation of the Great River Passage Master Plan and the West Flats Master Plan;
- **Existing uses and redevelopment:** Elements of the draft rules are broadly inconsistent with existing development, would create many nonconforming buildings, lots, roads, etc., and are therefore inconsistent with Critical Area guidelines to provide for the continuation, development, and redevelopment of a variety of urban uses;
- **Administrative burden, intrusiveness, and cost:** Several aspects of the draft rules would be unnecessarily costly and intrusive for property owners, and create unnecessary costs and administrative burden for municipalities; these include: a) development restrictions that would result in many nonconforming structures and the need to get approvals for minor changes, b) lack of clarity in some of the provisions regarding development and administration of ordinances; and c) requirements for permanent set aside and restoration of private land for public conservation and

moved by Reveal
seconded by _____
in favor Unanimous
against _____

habitat purposes through public acquisition, conservation easements and deed restrictions, which are subject to regulatory takings law;

- **Lack of data and analysis:** The DNR has not conducted meaningful analysis of how the proposed rules will impact existing development in the MRCCA. The ability to do any such analysis depends on the availability of accurate data depicting the natural features (e.g., bluffs, very steep slopes) that the rules are based around; and

WHEREAS, approximately 23% of the roughly 17,000 parcels in the Critical Area are in Saint Paul, approximately 21% of the city's land area is included in the Critical Area, and therefore the rules will have a substantial impact on Saint Paul; and

WHEREAS, the Planning Commission will oversee and make recommendations on amendments to the City's Mississippi River Corridor Overlay Districts as required following the approval of final rules for the Critical Area by the Governor; and

WHEREAS, the Planning Commission, because of the substantial impact on Saint Paul and the Commission's role in developing the City's River Corridor ordinances, would like the opportunity to hear a presentation from DNR staff following the August 15, 2014, deadline for comments, hear what other input the DNR has received, and engage in a more detailed discussion with DNR staff about the need and reasonableness of the proposed rules, their potential impact on Saint Paul, and how the rules can be crafted to conserve "the scenic, environmental, recreational, minerals, economic, cultural, and historic resources and functions of the river corridor" without unnecessary negative impacts on existing property owners and businesses;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission recommends forwarding this resolution and the comments drafted by staff to the Mayor for his consideration in submitting City of Saint Paul comments to the DNR by the August 15, 2014, deadline for comments.



CITY OF SAINT PAUL

Christopher B. Coleman, Mayor

390 City Hall
15 West Kellogg Boulevard
Saint Paul, MN 55102

Telephone: 651-266-8510
Facsimile: 651-266-8513

September 30, 2014

Commissioner Tom Landwehr
Minnesota Department of Natural Resources
500 Lafayette Road
Saint Paul, Minnesota 55155-4032

RE: Comments on Draft Rules for Mississippi River Corridor Critical Area (MRCCA)

Dear Commissioner Landwehr:

Thank you for the Minnesota Department of Natural Resources' (DNR) work on this important and complex topic and for the chance to comment. From the adoption of the Saint Paul *Mississippi River Corridor Plan* in 1981, to the creation and on-going work of the Saint Paul Riverfront Corporation, to development of Saint Paul's *Great River Passage Master Plan*, the City of Saint Paul has put a great deal time, effort, and resources into careful and effective planning, development and management of our river corridor to achieve the goals and purposes of the Mississippi River Corridor Critical Area (MRCCA).

The rules, as currently proposed, could have significant impact in both positive and challenging ways on this continuing effort. We appreciate your commitment to taking the time and using the resources necessary to get them right. In that vein, we request that the DNR engage in a more direct dialogue with our elected and appointed officials this fall, before you finalize the draft rules for the formal rule adoption process.

The City of Saint Paul's review of the draft rules has identified a number of topics we think could benefit from additional discussion. These include, but are not limited to, the following:

- The proposed district designations for some areas of the city which may be inconsistent with existing development and with planned and potential redevelopment. Areas of particular concern include our downtown, the Ford redevelopment site, Westside Flats and the Highwood neighborhood.
- The rationale behind proposed locational and setback requirements from slopes and very steep slopes.
- The rationale behind some of the dimensional standards—particularly height.
- Provisions in the rules requiring the set-aside or restoration for public conservation and habitat purposes.

- Clarification of language and maps within the rules to better reflect the current status of local ordinances and their regulation of the critical area.

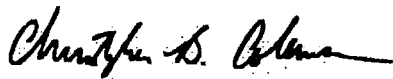
We look forward to continued work with you and DNR staff to conduct meaningful analysis of how the proposed rules would impact existing and proposed development in Saint Paul, and to continue to work together to craft rules that achieve the goals and purposes of the MRCCA.

The Saint Paul Planning Commission, in their review of the draft rules, asked for direct discussion with DNR staff about the proposed rules, their potential impact on Saint Paul, and how the rules could be crafted to conserve natural resources and functions of the river corridor without negative impacts on existing property owners and businesses. See attached resolution.

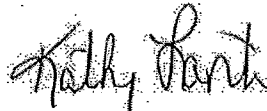
We would like to extend an invitation for you and your staff to attend the October 17, 2014 Saint Paul Planning Commission meeting to make a presentation and engage in a discussion about the impact of the draft rules in Saint Paul, and whether there are alternative means to achieve our shared goal of protecting and managing this cherished resource in a manner that recognizes and supports its multiple-purposes. The Planning Commission will then hold a public hearing at its October 31, 2014 meeting, and prepare recommended comments for consideration by the Mayor and City Council for submittal to the DNR.

Thank you again for your work on this important topic. We look forward to hearing from you. If you have further questions, please contact Donna Drummond, Director of Planning, at 651.266.6556 or donna.drummond@ci.stpaul.mn.us.

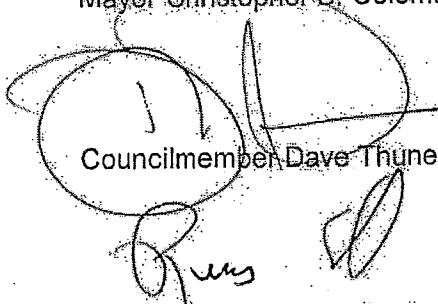
Sincerely,



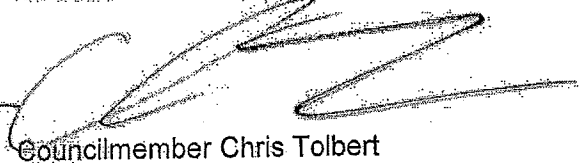
Mayor Christopher B. Coleman



Council President Kathy Lantry



Councilmember Dave Thune



Councilmember Chris Tolbert



Councilmember Russ Stark



October 24, 2014

Saint Paul Planning Commission
City of Saint Paul
City Hall Conference Center Room 40
15 Kellogg Blvd. West
Saint Paul, MN 55102

VIA EMAIL

Re: Public Hearing Regarding Mississippi River Corridor Critical Area Rulemaking

Dear Members of the Planning Commission:

In advance of the public hearing scheduled for October 31, 2014 concerning the Department of Natural Resources' (DNR) administrative rulemaking efforts for the Mississippi River Corridor Critical Area (MRCCA), enclosed please find the Saint Paul Area Chamber of Commerce's (SPACC) comments submitted to the DNR as part of the rulemaking process. In submitting comments and/or suggested amendments to the rules on behalf of the city of Saint Paul, please consider SPACC's comments.

For the last several years, SPACC has been heavily involved in the DNR's administrative rulemaking efforts concerning the MRCCA. Regarding the proposed rules released by the DNR on June 2, 2014, SPACC is concerned that the rules disproportionately affect existing commercial, industrial, and residential property owners, particularly in Saint Paul, which represents roughly 23 percent of the total number of parcels of land in the MRCCA. If new land use and zoning rules are promulgated by the DNR, it is imperative that the rules recognize the multi-purpose nature of the Mississippi River, protect existing property, respect the planning-related knowledge of local communities, and provide new opportunities for economic investment.

Please feel free to contact me with any questions or comments. Thank you.

With kind regards,

A handwritten signature in black ink, appearing to read "MB", is written over a horizontal line.

Michael J. Belaen
Director of Public Affairs and Legal Counsel

cc: Donna Drummond, Planning Director, City of Saint Paul



August 11, 2014

Mr. Daniel Petrik
C/O MRCCA Rulemaking Project
Minnesota Department of Natural Resources
500 Lafayette Road, St. Paul, MN 55155-4032

VIA EMAIL

RE: Mississippi River Corridor Critical Area Comments

Dear Mr. Petrik:

The Saint Paul Area Chamber of Commerce (SPACC) is a dynamic network of businesses and individuals that advocates for building communities that foster economic prosperity and a high quality of life for all. As the largest local chamber in Minnesota, SPACC submits these comments in response to the Minnesota Department of Natural Resources' (DNR) request for comments regarding the proposed rules governing land development in the Mississippi River Corridor Critical Area (MRCCA).¹

OVERVIEW

The Mississippi River is a critical asset to our great State. For more than a century, the river has served a variety of important interests. The river is an internationally famous scenic recreational asset that provides great natural, aesthetic, cultural, and historical value of unparalleled significance. At the same time, it is also a working river and an important transportation corridor that has defined our region's history as a catalyst for economic growth and prosperity. As Mark Twain appropriately said in *Life on the Mississippi*, "It is not a commonplace river, but on the contrary is in all ways a remarkable river."

In re-authorizing the DNR's administrative rulemaking authority in 2013, the Minnesota Legislature made several important changes to the enabling legislation that must guide the rulemaking process.² First, the legislature added redevelopment of commercial and industrial property as one of the important interests served by the river. Second, the legislature modified the considerations for creating new districts, substituting the importance of major river features in existence in 1979 for greater emphasis on the natural character of the river and existing property development with consideration for new commercial, industrial, and residential development. Finally, the legislature added commercial, industrial, and residential resources to the list of key features served by the river that must be protected and/or enhanced by any rules promulgated by the DNR.

¹ The "proposed rules" refer to the working draft rules released by the DNR on June 2, 2014, available at <http://files.dnr.state.mn.us/input/rules/rulemaking/mrcca/2014-clean.pdf>.

² Minn. Laws Ch. 137, Art. 2, §§ 18-21 (2013).

To ensure that the river, and its surrounding area, continues to serve such an important role in the region, SPACC encourages the DNR to adopt rules that protect existing property and respect the multi-purpose nature of the river, particularly in Saint Paul, which makes up a large portion of the MRCCA.³ SPACC appreciates the opportunity to submit these comments, as well as the DNR's willingness to consider the interests of stakeholders throughout the rulemaking process.

GENERAL CONCERNS

Based on a detailed review of the proposed rules, the following items are of concern to SPACC. We encourage the DNR to consider these general concerns while developing the final rules.

I. Insufficient Study into How Proposed Rules Affect Existing Development and Land.

The DNR proposes to increase the amount of regulatory control on existing structures and parcels of land within the MRCCA without a sufficient understanding of how much of an impact the changes will have on existing property.⁴ This is alarming, particularly in light of the fact that the proposed rules appear to overwhelmingly burden existing development. We believe the proposed rules work against public and private efforts designed to stimulate regional job growth, increase capital investment, and grow the local tax base.

To determine the extent to which the proposed rules affect existing structures and parcels of land, the City of Saint Paul conducted a GIS-based analysis of the proposed changes. As reflected in the tables below, the City's analysis demonstrates that existing property owners are being asked to bear the greatest costs of the proposed rules:⁵

| Structures Affected by Proposed Rules | |
|--|---------|
| Existing Structures in Saint Paul | 135,231 |
| Structures in Saint Paul and the MRCCA | 5,732 |
| Structures affected by Slope Preservation Zone | 1,374 |
| Structures affected by Bluff Impact Zone | 440 |
| Structures affected by Shoreline Impact Zone | 31 |
| Structures affected by 40' Slope Setback | 370 |
| Structures affected by 100' Slope Setback | 223 |
| Structures affected by Shoreline Setback | 61 |

³ Approximately 7,150 acres of land in Saint Paul (or 21 percent of the City) is within the MRCCA. There are roughly 17,000 parcels of land in the MRCCA. Of these, 3,948 are located in Saint Paul. Accordingly, Saint Paul represents about 23 percent of the total number of parcels of land in the MRCCA.

⁴ On several occasions, DNR staff indicated that a GIS-based analysis of how the rules impact existing structures and parcels of land was not performed prior to the publication of the proposed rules on June 2, 2014.

⁵ The information in the tables was provided by the City of Saint Paul on July 25, 2014. The figures were calculated using preliminary data on geographic features and are therefore an approximation of the impact on existing structures and parcels of land. The data is subject to change.

| Parcels of Land Affected by Proposed Rules | |
|---|--------|
| Existing Parcels of Land in Saint Paul | 76,128 |
| Parcels in Saint Paul and the MRCCA | 3,948 |
| Parcels affected by Slope Preservation Zone | 1,829 |
| Parcels affected by Bluff Impact Zone | 908 |
| Parcels affected by Shoreline Impact Zone | 169 |
| Parcels affected by 40' Slope Setback | 576 |
| Parcels affected by 100' Slope Setback | 465 |
| Parcels affected by Shoreline Setback | 205 |

The City's analysis further shows that more than 1,000 existing buildings in Saint Paul will become legally nonconforming as a result of the proposed rules.⁶ This is unreasonable and inconsistent with Minn. Stat. § 116G.15.

SPACC is concerned that the proposed rules will negatively affect redevelopment opportunities and future investment in the East Metro. SPACC urges the DNR to conduct a similar GIS-based study to determine how existing development will be affected in each community within the MRCCA. The additional study should include mapping preservation zones, impact zones, and setback areas. Without performing this geographic-based analysis, it cannot be said that the DNR has sufficiently ascertained the (1) probable costs or consequences of adopting the proposed rules, (2) extent to which the proposed rules affect existing structures and parcels of land, or (3) cumulative effect of the proposed rules on each community within the MRCCA.

II. Recognizing Importance of Balancing Interests Served by the Mississippi River, including Existing Commercial, Industrial, and Residential Property.

Over the last 30 years, businesses, citizens, and local units of government (LGUs) have worked together to develop a regulatory framework for the MRCCA that balances the important interests served by the river. The balance achieved by the existing framework provides for the enhancement of the environmental and cultural interests of the MRCCA while ensuring that the river continues to play an important economic role in the development of our region. LGUs, particularly Saint Paul, have carefully planned and managed the MRCCA as an important asset that serves a large number of stakeholders, including existing property interests.

The proposed rules do not sufficiently provide for the continuation and enhancement of existing commercial, industrial, and residential property. If the proposed rules are adopted, a significantly large number of structures and parcels of land will be detrimentally affected by the regulatory changes. The increased regulations will unnecessarily cause affected properties to become legally nonconforming, particularly in Saint Paul. This will harm local communities as property owners refrain from investing in their property, property values go down, and real estate transactions become discouraged.

If new land use and zoning rules are promulgated by the DNR, it is imperative that the rules recognize the multi-purpose nature of the river and the institutional knowledge of LGUs that have effectively managed the MRCCA over the last 30 years. As discussed in greater detail below, the

⁶ This information was provided to the Comprehensive Planning Committee of the City of Saint Paul on August 5, 2014 by city-planning staff.

proposed rules should be revised to provide greater protection of existing commercial, industrial, and residential properties as required by Minn. Stat. § 116G.15.

III. Cost Implications.

According to the DNR's January 14, 2014 report to the legislature, the long-term costs to local communities in implementing the proposed rules are estimated at \$5,000 per community.⁷ The DNR indicates that the costs will likely be higher in the future, somewhere between \$7,000 and \$10,000 per community. In total, the DNR estimates that it will cost between \$200,000 and \$300,000 for the applicable jurisdictions that will be required to implement the new rules. SPACC believes the cost estimates are grossly underestimated. LGUs will be forced to establish new licensing programs, update local plans, ordinances, and maps, as well as provide additional staff support as needed. These costs will undoubtedly be passed along to property owners in the form of increased taxes, licensing fees, and other development-related costs.

SPECIFIC CONCERNS

Based on a careful review of the proposed rules, SPACC's specific concerns include but are not limited to the following (ordered sequentially to track the proposed rules):

I. PART 6106.0080 ADMINISTRATIVE PROVISIONS FOR ORDINANCES.

a. Subparts 2 and 4. Variances and Conditional Use Permits.

The proposed rules include a section on variances. This is important because it provides LGUs with flexibility in managing the MRCCA and allows them to retain authority over quasi-judicial decision making. With that being said, SPACC is concerned that the variance provision fails to explicitly state whether LGUs have authority to grant variances and, if so, whether further approval by the DNR is required when a LGU grants a variance. SPACC is of the position that the provision should be revised to read "a local government is permitted to issue variances from the MRCCA rules⁸ consistent with Minnesota statutes chapters 394 and 462." If a LGU grants a variance, SPACC believes that further approval of that variance by the DNR is unwarranted except as otherwise explained below. LGUs have effectively managed the river corridor and adding another layer of approval will only serve to discourage private investment in the MRCCA.

Moreover, for variances and conditional use permits that affect certain areas or natural resources, the proposed rules require mitigation "proportional to the impact of the project on primary conservation areas." This raises three additional concerns:

⁷ The DNR's estimates are based on survey data from 2010. Minnesota Department of Natural Resources, *Report to Legislature on Mississippi River Corridor Critical Area Rulemaking 12-13*, dated January 15, 2014. The report does not provide any information as to the scope of the survey, the questions raised in the survey, and the identities of the communities that actually responded to the survey. SPACC understands that key communities, including the City of Saint Paul, did not participate in the survey. Because not all of the communities responded, SPACC is of the position that the data does not provide an accurate representation of the projected costs.

⁸ If the term "MRCCA rules" is used, the rules should contain a citation section providing for said reference.

- (1) The variance and conditional use permits provisions are overly broad with respect to when mitigation is required. The provisions state that for variances and conditional use permits that affect "primary conservation areas or other identified resources," mitigation is required. The term primary conservation area is openly defined to include a large number of "key resources and features." This definition will certainly leave LGUs struggling to interpret what resources and features need to be affected to trigger the mitigation requirement. The use of the phrase "or other identified resources" does not provide any additional clarity but rather adds to the confusion as to the scope of the resources covered. These provisions should be revised to provide more clarity;
- (2) LGUs should have discretion in choosing to require mitigation even where a variance and/or conditional and/or interim use permit affects the defined natural resources. There will undoubtedly be scenarios where mitigation is not warranted. For those situations, LGUs should have the flexibility to avoid the mitigation requirement. If the DNR is concerned that this approach will provide too much flexibility to LGUs, the proposed rules could be revised to include more flexibility while providing greater agency oversight. For example, the variance and conditional use provisions could be revised to state that "if a local government determines that mitigation shall not be required where a variance, conditional use permit, or interim use permit affects [insert defined natural resources triggering the mitigation], the local government must obtain approval from the DNR in not requiring mitigation." If such a provision is allowed, the proposed rules should also include a provision requiring the DNR to approve or deny the request within 10 business days; and
- (3) Finally, for those situations that warrant mitigation, the proposed rules incorporate a standard that is inconsistent with existing state and federal law. A condition that is tied to the issuance of a variance or permit need only bear rough proportionality to the impact created by the variance or permit. Minn. Stat. § 462.357, subd. 6(2); *see also Dolan v. City of Tigard*, 512 U.S. 374 (1994). The proposed variance rule increases this standard by requiring strict proportionality. This would drastically change existing law surrounding variances and conditional permits in Minnesota. The variance and conditional use provisions should be revised to state that mitigation must be "roughly proportional."

b. Subpart 3. Nonconformities.

The proposed rule concerning nonconformities permits LGUs to allow expansion of legally nonconforming principal structures that violate the setback requirements enumerated in Part 6106.0120. The authority to expand existing structures appears unnecessarily limited to the expansion of principal structures and only to the extent that those structures violate the setback requirements. As written, the proposed rules could be interpreted to disallow expansion of existing structures (principal or accessory) that become nonconforming as a result of the other regulatory changes. This is far too restrictive. A more reasonable approach would be to permit expansion of all existing structures that become legally nonconforming as a result of the proposed rules. This approach respects the effectiveness of LGUs in managing the MRCCA, helps balance the many interests served by the river, and protects existing development.

II. PART 6106.0100 DISTRICTS.

a. Subpart 9. District Boundaries.

The enabling legislation permits the DNR to establish new land-use districts within the MRCCA. Minn. Stat. § 116G.15, subd. 13 (2013). The DNR proposes to increase the number of districts within the MRCCA from four to six.⁹ While SPACC largely agrees with increasing the number of districts, SPACC believes that certain proposed districts in Saint Paul are inconsistent with existing development and potential new commercial, industrial, and residential opportunities. Specifically, SPACC is concerned about the following areas within the proposed districts in Saint Paul:

i. Application of Rural & Open Space (CA-ROS) District to Urban Spaces.

The proposed rules call for a large amount of land within Saint Paul to be designated as Rural & Open Space (CA-ROS). The CA-ROS district is “characterized by *rural* low density development patterns and land uses.” Part 6106.0100, subp. 2 (emphasis added). However, Saint Paul is not a rural community. It is a unique urban environment. Presently, there is no land in Saint Paul designated as rural open space.

By reclassifying land as CA-ROS in Saint Paul, the dimensional standards governing property development and redevelopment become more restrictive and burdensome, particularly with respect to building setbacks and height limits. For example, structures located within current districts are not allowed within 40 feet of blufflines. By contrast, structures within the proposed CA-ROS district must be at least 100 feet away from blufflines and very steep slopes. In replacing the current districts with the CA-ROS district, the setback requirement applicable to development will increase by 60 feet (from 40 to 100 feet). These are significant changes that will affect a large number of properties. This is particularly troublesome in urban-developed areas such as the Highwood neighborhood in Saint Paul.

ii. Ford Site.

The proposed rules designate the front portion (closest to river) of the Ford site in Highland Park to be a River Towns & Crossing (CA-RTC) district and the back portion to be an Urban Mixed (CA-UM) district. The dimensional standards applicable to each district govern building height. Specifically, the proposed rules call for a 56-foot height limit within the CA-RTC district and 65-foot limit in the CA-UM district. The draft rules provide that taller buildings may be allowed by a conditional use permit. However, before a conditional use permit may even be considered, the permit applicant must satisfy a number of conditions, including (1) completing a visual impact assessment based on the methods detailed in the *Mississippi National River and Recreation Area Visual Resources Protection Plan*, (2) identifying techniques to minimize views of buildings, and (3) identifying opportunities to enhance public river corridor views.¹⁰

⁹ The current districts are (1) Rural Open Space, (2) Urban Open Space, (3) Urban Developed, and (4) Urban Diversified. In addition, some communities have created their own districts based on their particular needs. For example, the City of Saint Paul uses Floodway and Flood Fringe districts to manage the MRCCA. As with the current districts, the new districts will be governed by a series of dimensional standards that will apply to property development and redevelopment activities.

¹⁰ SPACC believes that the final rules should provide greater clarity into what public river corridor views are to be protected and the standards used to determine whether said protection has been achieved.

SPACC is concerned that the proposed districts do not align with the City of Saint Paul's vision for redeveloping this critically important urban site into a 21st-century community. The City is in the early stages of engaging the community in a public process to prepare a land use and zoning plan for the redevelopment of the Ford site. This process will result in a community-based redevelopment plan, which will include a determination of the building heights most appropriate for this site. If the DNR restricts building heights before the community has the opportunity to complete the planning process, SPACC believes that proposed district designations may unnecessarily restrict redevelopment of the Ford site. Accordingly, SPACC believes the dimensional standards applicable to the Ford site, including the two structures located on the river parcel—the former steam plant and water treatment plant—should be governed by Saint Paul's underlying zoning code.

iii. Downtown Saint Paul.

The proposed rules designate a portion of downtown Saint Paul as an Urban Core (CA-UC) district. SPACC agrees with the designation of this area as Urban Core but is concerned that the applicable dimensional standards are not consistent with existing development, and may prevent the City and County of Ramsey from achieving their vision for redeveloping key areas of downtown, including the former county jail and West Publishing buildings. SPACC urges the DNR to exempt the area from Chestnut Street to the Lafayette/Highway 52 Bridge in downtown from the proposed dimensional standards. This approach is more consistent with efforts to strengthen the local tax base through redevelopment while preserving the river as a natural, scenic, and environmental asset.

iv. West Side Flats.

The proposed rules call for the West Side Flats, a 45-acre area directly across the river from downtown Saint Paul, to be designated as an Urban Mixed (CA-UM) district. This designation is inconsistent with community's vision for revitalizing the West Side Flats. Instead, SPACC believes the West Side Flats should be designated as an Urban Core (CA-UC) district. This designation better aligns with the community's vision. According to the West Side Flats Master Plan & Development Guidelines from 2001 (original Master Plan), "[w]hile the area has suffered from disinvestment over the last several decades and is currently the location of several acres of vacant land, the [West Side] Flats hold great promise to be transformed in a way that will complement the greater West Side area and reconnect it to the Mississippi River."¹¹

To facilitate reinvestment in the West Side Flats, the community engaged in an extensive planning process that culminated in a "vision of Saint Paul as a city on both sides of the Mississippi River, where the river joins, rather than separates, neighborhoods."¹² According to the original Master Plan, the community's vision for West Side Flats is centered on a series of linked urban villages where people live, work, and play. "The Mississippi River is an integral part of the neighborhood [with] opportunities to experience it from a number of perspectives and vantage points."¹³ This vision has facilitated new commercial, industrial, and residential investment in the West Side Flats—activity that SPACC strongly supports.

¹¹ City of Saint Paul, *West Side Flats Master Plan & Development Guidelines* 1 (August 2001), available at <http://www.stpaul.gov/DocumentCenter/View/73938> (last visited July 25, 2014).

¹² *Id.* at 2.

¹³ *Id.*

More recently, the City of Saint Paul re-engaged the community to revise the West Side Flats Master Plan & Development Guidelines (updated Master Plan) as a way to guide future private development and public infrastructure projects in the West Side Flats area.¹⁴ The updated Master Plan reaffirms that the “overall development goal of the [West Side] Flats is to extend and reconnect the greater West Side community to the river.” To achieve that goal, the updated Master Plan outlines a redevelopment strategy that envisions an urban mixed-use commercial corridor with green infrastructure, parks and open space, as well as the preservation of important industrial uses.

The proposed rules fail to appreciate the extensive planning efforts that have taken place to prepare a community-based vision for redeveloping the West Side Flats. Under the proposed rules, for example, buildings would be limited to heights of 65 feet (unless a conditional use permit is obtained). By contrast, the community's vision calls for maximum building heights ranging from 50 feet to 90 feet. The proposed rules are therefore inconsistent with the community's vision for revitalizing this important urban area. SPACC believes the West Side Flats should be designated as a CA-UC district. This approach would respect the community's vision and allow Saint Paul's underlying zoning to govern dimensional standards applicable to existing and future development.

III. PART 6106.0120 DIMENSIONAL STANDARDS.

a. Subpart 2(D). Structure Height CUPs.

LGUs should be permitted to develop their own standards for issuing CUPs with respect to height requirements. This will provide LGUs with greater flexibility in crafting conditional requirements that are consistent with the particular needs of individual communities.

b. Subparts 3(A) and (B). Location of Structures and Setback Requirements.

The proposed rules prohibit construction of structures and impervious surfaces (1) in areas defined as either a Slope Preservation Zone (SPZ) or Bluff Impact Zone (BIZ) (collectively referred to as “protected zones”) and (2) within the setback areas applicable to blufflines and very steep slopes. These restrictions apply regardless of the contiguous nature of the slope and/or whether it is connected to a larger bluff complex. Any structures that violate the locational restrictions will become legally nonconforming. The proposed rules are problematic for several reasons.

First, the setback requirements applicable to “very steep slopes” (40 feet in non-ROS districts and 100 feet in the ROS district) are unreasonable and overly restrictive. Presently, there is no setback requirement for very steep slopes in Saint Paul. The existing setback regulation prohibits construction of new structures within 40 feet of slopes that average more than 18 percent and rise more than 25 feet over the ordinary high water level (OHWL) or toe of the slope. The DNR proposes that relatively modest slopes with as little as 10 feet rise (i.e. very steep slopes) trigger the setback restriction. SPACC opposes this approach.

Second, the outright prohibition against building in protected zones, which includes the area within 20 feet of the zones, is unreasonable and overly restrictive. The proposed change is also inconsistent with existing regulations that have been operating for more than 30 years. While existing

¹⁴ City of Saint Paul, *West Side Flats Master Plan & Development Guidelines* (July 2014), available at <http://www.stpaul.gov/DocumentCenter/View/73938> (last visited July 25, 2014).

regulations preclude commercial and industrial development on slopes greater than 12 percent and residential development on slopes more than 18 percent, there is currently no limitation on development within 20 feet of very steep slopes. The creation of protected zones and the extension of setback requirements to the zones are drastic regulatory changes that will affect a significantly large number of existing structures and parcels of land. In Saint Paul, for example, more than 1,000 buildings will become nonconforming under the proposed regulations.

It should also be pointed out that, despite the DNR's representations to the contrary (*see. e.g.* Homeowner Guide to Commenting), Executive Order 79-19 did not impose a setback requirement for very steep slopes. Executive Order 79-19 required a 40 foot setback from blufflines—this is not the same as a very steep slope.¹⁵ The proposed rules significantly increase the extent to which the regulations apply without sufficient justification. The standards and guidelines enumerated in Executive Order 79-19 cannot be interpreted as prohibiting development on or near very steep slopes. The extension of the prohibition against development to very steep slopes and protected zones appears arbitrary and is unreasonable, unnecessary, and intrusive.

Moreover, while it may be true that a landowner could seek a variance from the 20-foot zone restriction, the practical reality is that it will be extremely difficult, if not impossible, to obtain a variance. This is principally due to the outright prohibition against construction in the zones, which will operate above and beyond the proposed setback requirements. Under current Minnesota law, variances “shall only be permitted when they are in harmony with the general purposes and intent of the [zoning restrictions].” Minn. Stat. § 462.357, subd. 6(2). By including an outright prohibition against construction within the zones, it can hardly be said that granting a variance for constructing a building within 20 feet of a very steep slope would be in harmony with the proposed rules.

Finally, the exceptions listed in Table 1 are ambiguous in many respects. For example, the proposed rules provide an exception for the “expansion of nonconforming structures due to setbacks.” Table 1 indicates that the exception is applicable to setbacks and protected zone restrictions.¹⁶ However, it is unclear if the exception applies to existing structures that are entirely within a protection zone, or whether the exception applies only if the structure is in both a protection zone and the corresponding setback area. This should be clarified. Furthermore, Table 1 states that exemptions applicable to protection zones are also subject to, *inter alia*, the land alteration standards. However, the land alteration standards prohibit all activities that expose the soil or change the topography or drainage within protection zones. The exceptions are therefore inconsistent with the practical operation of the other rules. As a result, the exceptions will not function as intended.

In summary, the proposed location and setback requirements are overly restrictive and fail to sufficiently consider the important interests served by existing development. When combined with the nonconformity provision discussed above, the excessively restrictive location and setback requirements

¹⁵ Executive Order 79-19, Appendix C(8).

¹⁶ On July 21, 2014, during a stakeholder meeting co-hosted by the Saint Paul Area Chamber of Commerce, DNR staff indicated that the exception in Table 1 of the proposed rules related to the expansion of nonconforming structures that violate the locational restrictions applicable to the protected zones was an error. DNR staff explained that structures within the protected zones should not be allowed to expand. This explanation was reconfirmed by the DNR on July 31, 2014 at a stakeholder meeting hosted by the Saint Paul Area Association of Realtors. If the dimensional standards applicable to the protected zones are not substantially revised as recommended, SPACC encourages the DNR to preserve the exception.

make it difficult, if not impossible, for existing commercial, industrial, and residential properties to expand. The proposed restrictions affect a large number of properties and represent a significant increase in the level of regulatory control over existing regulations. A more reasonable approach would be to eliminate location restrictions applicable to protection zones and impose a setback requirement for slopes that are greater than 18 percent and rise more than 25 feet in height. Additionally, the setback requirements should only apply to slopes or bluffs facing the Mississippi River Valley that are connected to a larger bluff complex. Finally, SPACC is of the position that LGUs should be permitted to map and draw their own blufflines for purposes of establishing the trigger setback lines. These changes would be more consistent with existing regulations and better protect existing development.

IV. PART 6106.0150 VEGETATION MANAGEMENT AND LAND ALTERATION STANDARDS.

The proposed rules impose a number of new restrictions that are unreasonable and excessive with respect to vegetation-related activities and land alteration. SPACC is concerned that the proposed rules (1) contain triggering thresholds that are too low, (2) impose unnecessary licensing requirements, and (3) will prevent property owners from making necessary improvements to existing structures.

For vegetation removal and/or land alteration that occurs outside the protected zones, a permit will be required for any activity that exceeds a certain threshold. SPACC is concerned that the proposed thresholds are far too low. In terms of land alteration, the threshold is disturbing 250 sq. ft. or more of total surface area. With respect to vegetation removal, the proposed threshold is simply removing more than 5% or 1,000 sq. ft. of tree canopy or vegetative cover. This is also an unreasonably low threshold. Additionally, SPACC questions the need to require a permit for these activities, or whether the stated purposes of the proposed rules could be achieved by less burdensome means.

Moreover, the proposed rules will unnecessarily prevent property owners from improving existing structures. For property within the protected zones, the proposed rules prohibit any land alteration unless an exception in Table 1 applies. This is far too restrictive and problematic. There is not an exception for improving existing structures. Thus, when combined with the nonconformity provision in part 6106.0080, subp. 3, the proposed land alteration standards excessively burden existing development. Without an exception for improving existing structures, property owners will not be allowed to make any repairs that necessarily require land alteration activities, such as fixing a compromised or damaged building foundation. The proposed rules are therefore inconsistent with Minnesota statutes chapters 394 and 462, which allow for the "repair, replacement, restoration, maintenance, or improvement" of nonconforming structures. Minn. Stat. §§ 394.36, subd. 4 and 462.357, subd. 1(e).

SPACC encourages the DNR to include an exception in the proposed rules for improving and/or repairing existing structures. We also encourage the DNR to consider eliminating the applicability of vegetation management and land alteration standards from very steep slopes and Slope Preservation Zones. Finally, SPACC believes LGUs should be permitted to issue exemptions from vegetation management and land alteration standards without further approval from the DNR.

V. PART 6106.0170 SUBDIVISIONS AND DEVELOPMENT STANDARDS.

c. Subpart 3(A). Design Standards and Protected Open Space.

The proposed rules require that a certain amount of land be set aside as protected open space for new subdivisions, planned unit developments, and redevelopments involving 10 or more acres.¹⁷ The amount of area to be set aside is calculated as a percentage of the overall size of the land in the district where the development or redevelopment occurs. The amount of land to be set aside ranges from 10% to 50% of the entire tract of land to be developed and/or redeveloped. These changes raise questions of whether the proposed rules will require LGUs to pay property owners just compensation in exchange for satisfaction of the open space requirements.

Because the proposed rules condition approval of developing/redeveloping a piece of property on private land being set aside for public use (e.g. protecting private land as open space and connecting it to "abutting open space, natural areas, and recreational areas"), the rules must be analyzed under the body of law governing exactions under the United States and Minnesota constitutions. See *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Essentially, if an LGU cannot demonstrate that an "essential nexus" exists between the exaction and the public use and that the exaction is "'roughly proportional' in nature and extent to the impact of the proposed development," the LGU will be ordered to pay just compensation for requiring the property owner to set aside private property as protected open space. *Id.*

In addition, the proposed open space rules, while seemingly legislatively imposed, appear to allow for adjudicative decision-making because LGUs will be required to make individualized determinations as to exactly how much private land must be set aside as protected open space. Accordingly, the adjudicative decisions will be subject to heightened scrutiny (as opposed to the lesser standard of deferential scrutiny) upon judicial review. *Id.* As a result, LGUs will be at greater risk of having to pay just compensation if their decisions are challenged.

Moreover, even if the proposed open space requirements are not construed as an exaction and therefore not subject to a *Dolan* and *Nollan*-type analysis, the requirements will certainly be subject to the body of jurisprudence governing regulatory takings, namely the balancing test established by the United States Supreme Court in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 658 (1978); see also *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623 (Minn. 2007). Under *Penn Central*, courts must balance the following three factors when deciding whether a regulatory taking has occurred and just compensation to the property owner is required: (1) the extent to which the regulation has interfered with the property owner's reasonable investment-backed expectations, (2) the economic impact of the regulation on the property owner, and (3) the character of the governmental action at issue. A property owner's investment-backed expectations, alone, support finding that a regulatory taking has occurred, particularly where private property is already owned after the proposed open space requirements take effect.

SPACC would also like to point out that many communities within the MRCCA already impose land dedication requirements. For example, the City of Saint Paul requires a dedication of parkland (or payment in-lieu of) under certain situations. If the protected open space requirements are included in

¹⁷ Individual parcels must be aggregated if they are part of a common redevelopment plan. However, it is not clear what constitutes a "common plan." This should be clarified.

the final rules, SPACC urges the DNR to also include a provision that requires LGUs with land dedication ordinances to accept satisfaction of the state set-aside MRCCA standard as also meeting the locally-enacted land dedication requirement. Property owners should not have to satisfy both requirements. Finally, SPACC is of the position that industrial redevelopments should be exempt from the protected open space requirements.

CONCLUSION

In summary, SPACC is concerned that the proposed rules will have a negative impact on future investment in our community. The proposed rules, as written, will increase restrictions on property use and development. As a result, the rules will cause a large number of existing properties to become legally nonconforming. At the same time, LGUs will have less flexibility in regulating the MRCCA. Moreover, the cost of implementing the rules will be significant. To ensure that the river remains an important national asset vital to the economic health of our region, SPACC encourages the DNR to adopt rules that provide greater protection of commercial, industrial, and residential resources within the MRCCA.

Please feel free to contact me with any questions or comments.

With Kind Regards,

A handwritten signature in black ink, appearing to read 'MB', with a long horizontal flourish extending to the right.

Michael J. Belaen
Director of Public Affairs and Legal Counsel



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

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REVISED AGENDA SITE PLAN REVIEW COMMITTEE

Tuesday, October 28, 2014
2nd Floor Conference Room
375 Jackson Street, Suite 218

| <u>Time</u> | <u>Project Name and Location</u> |
|-------------|---|
| 9:00 | Repave school bus parking lot for Saint Paul Public Schools 261 Chester Street |
| 9:45 | Shepard Road Development 2751 Davern (at Shepard Road) Preliminary meeting on the Master Plan and Phase 1 for a mixed-use development |

Applicants should plan to attend this meeting.

At this meeting you will have a chance to discuss the site plan for your project with Saint Paul's Site Plan Review Committee. The Committee is made up of City staff from Zoning, Traffic, Sewers, Water, Public Works, Fire Inspections, and Parks. You are encouraged to bring your engineer, architect, or contractor with you to handle any technical questions raised by city staff. The purpose of this meeting is to simplify the review process by letting the applicant meet with staff from a number of departments at one time. Staff will make comments and ask questions based on their review of the plans. By the end of the meeting you will know if the site plan can be approved as submitted or if revisions will be required. Staff will take minutes at the meeting and send you a copy.

The meeting room is on the skyway level and 25' to your left as you get out of the elevator.

Parking

A few free parking spaces are available in our visitor parking lot off of 6th Street at Jackson. Parking is also available at on-street meters. The closest parking ramp is on Jackson one block south of our office between 4th and 5th Street.

If you have questions, please contact Tom Beach at 651-266-9086 or tom.beach@ci.stpaul.mn.us.

**The Zoning Committee
meeting on Thursday,
October 23, 2014
was
CANCELLED**

**The next Zoning
Committee meeting
is Thursday,
November 6, 2014.**

Thank you





CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

*25 West Fourth Street
Saint Paul, MN 55102*

*Telephone: 651-266-6565
Facsimile: 651-228-3261*

October 22, 2014

To: Planning Commission

From: Neighborhood Planning Committee

Re: Minor Zoning Text Amendments to Chapters 60-62, and portions of Chapters 63 & 65 to be reviewed and set for Public Hearing

On December 5, 2008 the Saint Paul Planning Commission initiated a study of the Zoning Code to address minor text errors and clarify language in the zoning code.

Staff has been in the process of conducting this study and began work with Chapters 60 and 61 of the Zoning Code. A public hearing was held at the February 19, 2010 regular meeting of the Planning Commission. Subsequently the City Council adopted Ordinance 10-349 amending the zoning code to reflect those amendments.

Since that time additional changes have been made to both references in and interpretations of the code within these chapters, as well as additional typographical and contextual errors were found. This package addresses those edits and modifications.

This package covers Chapters 60 through 62 of the Zoning Code as well as portions of Chapters 63 and 65. This is the first in a series of public hearings on all minor text amendments to Zoning Code chapters.

The Neighborhood Planning Committee recommends that the Planning Commission set a public hearing for December 5, 2014.

Draft Minor Text Amendments Package –10/16/2014

Chapter 60. Zoning Code – General Provisions and Definitions

ARTICLE I. 60.100. GENERAL PROVISIONS AND EXCEPTIONS

Sec. 60.104. - Construction of language.

The following rules of construction apply to the text of this code:

...

~~(e)~~ The word "building" includes "structure" and any part thereof.

~~(e)(f)~~ The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

~~(f)(g)~~ The word "person" includes an individual, a corporation, a partnership, an incorporated association or any other similar entity.

~~(g)(h)~~ Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or," "either...or," the conjunction shall be interpreted as follows:

...

~~(h)(i)~~ "Abut" means having a common boundary or relationship at either a common property line, street or alley.

~~(i)(j)~~ "Adjacent" means located nearby, with or without contact.

~~(j)(k)~~ "Adjoin" means having a common boundary or relationship at a common property line.

~~(k)(l)~~ "Contiguous" means abutting.

~~(l)(m)~~ A "—" shall mean "through" when used between zoning district abbreviations within a land use category, e.g., "RT1—RM2" residential districts shall mean RT1, RT2, RM1, and RM2 residential districts.

[The terms *building* and *structure* are defined separately and are different.]

ARTICLE II. 60.200. GENERAL DEFINITIONS

Sec. 60.214. M.

...

~~*Master plan.* A plan for a specific site proposed for development or redevelopment under the provisions of the TN3 district, in order to demonstrate compliance with the intent of the district.~~

[This definition is out of date and is not needed here. § 66.344(b) *Master plan* applies to more than just the T3 district, and is clear about what a master plan without a separate definition here.]

Sec. 60.216. O.

...

Open space. Land and water areas retained for use as active or passive recreation areas or for resource protection. For the calculation of minimum open space within a TN3 traditional neighborhood district development, open space shall not include parking facilities, driveways, utility or service areas, or required yards.

[This district is no longer referred to as TN, but T.]

Sec. 60.217. P.

...

Planning district. One (1) of seventeen (17) geographic areas delineated, and from time to time amended, by the city council to facilitate citizen participation, early notification of proposed city actions, and planning for the purpose of determining concentration of community residential facilities. ~~Planning District Thirteen is divided into three (3) separate planning districts: Merriam Park, Snelling Hamline and Lexington Hamline.~~ An official map of the designated areas is maintained by the department of planning and economic development.

[District 13 is no longer divided into 3 separate planning districts.]

Sec. 60.220. S.

...

~~*Swimming pool.* A pool or tub constructed either above or below grade and having a capacity of five thousand (5,000) or more gallons.~~

[Move this definition to be with the regulations for this accessory use in Article 65.900, Accessory Uses.]

Sec. 60.227. Z.

...

Zoning conditional uses and variances

- (1) *Conditional uses:* A conditional use is a use permitted only after review and approval of an application by the planning commission, or the planning or zoning administrator where delegated to do so pursuant to section ~~61.300~~ 61.202(c).

...

ARTICLE III. 60.300. ZONING DISTRICTS AND MAPS GENERALLY

Sec. 60.301. Zoning districts established.

For the purposes of this code, the city is hereby divided into the following zoning districts:

...

(g) Overlay districts.

SF state fair parking and vending overlay districts

TP tree preservation overlay district

SD Shepard Davern commercial and residential redevelopment overlay districts

WB White Bear Avenue overlay district

HV Hillcrest Village overlay district

EG East Grand Avenue overlay district

SH Student housing neighborhood impact overlay district

[East Grand Avenue Overlay District was added in 2006. Student Housing Overlay District was added in 2012]

...

(i) Floodplain management overlay districts

FW floodway overlay district

FF flood fringe overlay district

[Regulations for these districts, pursuant to FEMA requirements, were adopted as a separate chapter 72 in 2010.]

Chapter 61. Zoning Code – Administration and Enforcement

ARTICLE. I. 61.100. GENERAL PROVISIONS

Sec. 61.107. Conditions of approval.

The planning commission, planning or zoning administrator, board of zoning appeals, or city council may impose such reasonable conditions and limitations in granting approval of a site plan, conditional use permit, similar use determination variance or other zoning approval, ~~and in making a similar use determination,~~ as are determined to be necessary to fulfill the ~~spirit intent~~ and purpose of the zoning code, to ensure compliance, and to protect adjacent properties and additionally, when approving a variance, as are directly related to and roughly proportionate to the impact of the variance

[Edited to bring the variance findings and conditions language in this code into compliance with the new state variance language in MN Stat. 462.357, Subd. 6.]

ARTICLE. IV. 61.300. GENERAL APPLICATION AND REVIEW PROCEDURES

...

Sec. 61.302. Application forms and fees.

...

(b) *Fee schedule.* Fees for the following zoning control applications shall be as follows:

...

- (8) *Rezoning*: One thousand two hundred dollars (\$1,200.00) up to one (1) acre of land, two hundred fifty dollars (\$250.00) for each additional acre of land, and an additional fee of five hundred dollars (\$500.00) for rezoning to TN3(M) Traditional Neighborhood District with a master plan and an additional fee of one thousand dollars (\$1,000.00) for rezoning to PD Planned Development District.

[This district is no longer referred to as TN, but T.]

...

ARTICLE. IV. 61.400. SITE PLAN REVIEW

Sec. 61.402. Site plan review by the planning commission.

- (a) *Plan to be submitted*. A site plan shall be submitted to and approved by the planning commission before a permit is issued for grading or the erection or enlargement of any building except one- and two-family dwellings, and including the following:

....

- (4) Any development in a TN district.

...

- (c) *Site plan review and approval*. In order to approve the site plan, the planning commission shall consider and find that the site plan is consistent with:

...

- (5) The arrangement of buildings, uses and facilities of the proposed development in order to ~~assure~~ ensure abutting property and/or its occupants will not be unreasonably affected.

...

- (d) *Compliance and time requirements*. The planning commission may make such requirements with respect to the above matters as to ~~assure~~ ensure compliance with them. When changes are required, the revised site plan shall be submitted within six (6) months from the date the applicant was notified of required changes. The zoning administrator may grant extensions. The property must be brought into compliance with the approved site plan within one year of the date of approval or as otherwise specified by the zoning administrator.

[Correction of a typographical error. Usage correction.]

...

ARTICLE. V. 61.500. CONDITIONAL USE PERMITS

Sec. 61.503. Conditional use permit, change requiring new permit.

...

- (b) The floor area of a conditional use expands by fifty (50) percent or more. For a conditional use existing on October 25, 1975, expansion is the sum of the floor area of all the expansions since then. For a conditional use established after October 25, 1975, expansion is the sum of the floor area of all

the expansions since being established. Floor area does not include floor area which is accessory to a principal use and which does not result in the expansion of a conditional use.

[Correction of a typographical error.]

Sec. 61.505. Conditional use permits, automatic expiration.

Unless expressly provided by the planning commission, when a use requiring a conditional use permit is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days,~~ one (1) year, or when a conditional use changes to a permitted use not requiring a conditional use permit, the conditional use permit shall automatically expire. Except for conditional use permits for a college, university, seminary, or similar institution of higher learning if the lot area of a conditional use is subsequently reduced in size, unless the reduction results from acquisition by governmental agencies for public improvements or uses, the conditional use permit shall automatically expire. If a conditional use becomes nonconforming and subsequently is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days,~~ one (1) year, the conditional use permit shall automatically expire. When an approved conditional use is not established in accordance with section 61.105, or is established and subsequently changed to a conditional use requiring a new permit under section 61.503, the conditional use permit shall automatically expire.

(C.F. No. 07-348, § 1, 5-9-07)

[One year is consistent with other time periods in the code. When the reduction in size stems from eminent domain or other acquisition by governmental agencies for public improvements or uses, it should not cause the CUP to expire. The colleges are concerned that they might lose their CUP if they sell off a part of the campus. This provides clarifying language per the colleges' request.]

ARTICLE. VI. 61.600. VARIANCES

Sec. 61.601. Variances.

The board of zoning appeals and the planning commission shall have the power to grant variances from the strict enforcement of the provisions of this code upon a finding that:

- (a) The variance is in harmony with the general purposes and intent of the zoning code.
- (b) The variance is consistent with the comprehensive plan.
- (ca) The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in question cannot be put to a reasonable manner not permitted by use under the strict provisions of the code; Economic considerations alone do not constitute practical difficulties.
- (db) The plight of the landowner is due to circumstances unique to the property, and these circumstances were not created by the landowner;
- (c) The proposed variance is in keeping with the spirit and intent of the code, and is consistent with the health, safety, comfort, morals and welfare of the inhabitants of the City of Saint Paul;
- (d) The proposed variance will not impair an adequate supply of light and air to adjacent property, nor will it alter the essential character of the surrounding area or unreasonably diminish established property values within the surrounding area;

- (e) The variance, ~~if granted, would~~ will not permit any use that is not ~~allowed permitted under the provisions of the code for the property in the zoning district where the affected land is located, ;~~ nor would it alter or change the zoning district classification of the property; and
- (f) The request for variance will not alter the essential character of the surrounding area ~~is not based primarily on a desire to increase the value or income potential of the parcel of land.~~

In granting a variance, the board or commission shall make written findings stating the grounds upon which the variance is justified. ~~Hardship as described in the finding set out in subsection (a) above shall include the need for Inadequate~~ access to direct sunlight for solar energy systems constitutes a practical difficulty in finding (c) above.

[Edited to bring the variance findings and conditions language in this code into compliance with the new state variance language in MN Stat. 462.357, Subd. 6.]

Chapter 62. Zoning Code – Nonconforming Lots, Uses and Structures

Sec. 62.109. Nonconforming use permits

...

- (d) *Expansion or relocation of nonconforming use.* The planning commission may permit the expansion or relocation of a legal nonconforming use if the commission makes the following findings:
 - (1) In residential districts, the expansion, or relocation will not result in an increase in the number of dwelling units;
 - (2) For expansion of a structure, the expansion will meet the yard, height and percentage of lot coverage requirements of the district;
 - (3) The appearance of the ~~enlargement~~ expansion or relocation will be compatible with the adjacent property and neighborhood;
 - (4) Off-street parking is provided for the ~~enlargement~~ expansion or relocation that meets the requirements of article 63.200 for new uses;
 - (5) Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use;
 - (6) After the ~~enlargement~~ expansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare;

...

[The word "enlargement" was struck in Ordinance 12-71, but was not edited properly in the final version.]

Chapter 63. Zoning Code – Regulations of General Applicability

ARTICLE.I. 63.100. GENERAL PROVISIONS AND PERFORMANCE STANDARDS

Sec. 63.119 – Sec. 63.121. Reserved.

Sec. 63.120. Private residential pools and hot tubs.

Private outdoor residential pools, both above and below ground, and hot tubs are permitted as an accessory use within the rear yard or nonrequired side yard; except that, for multiple family developments, the planning commission may determine the location of the pool or tub. Private outdoor pools and hot tubs shall meet the following requirements as applicable:

- (a) There shall be a distance of not less than ten (10) feet between the adjoining property line and the outside of the pool wall for aboveground pools. For in ground pools, there shall be a distance of not less than five (5) feet between the adjoining property line and the outside of the pool wall.
- (b) There shall be a distance of not less than four (4) feet between the outside pool wall and any building located on the same lot.
- (c) No swimming pool shall be located less than ten (10) feet from any side street or alley right of way, or the distance required for side yard by the zoning code, whichever is greater.
- (d) No swimming pool shall be located in a public easement.
- (e) All yards of one and two family structures containing swimming pools shall be enclosed by an obscuring fence not less than four (4) feet in height. All yards of residential structures of three (3) or more units and commercial structures containing swimming pools shall be enclosed by an obscuring fence not less than five (5) feet in height. The gates shall be of a self closing and self latching type, with the latch on the inside of the gate, not readily available for children to open. Gates shall be capable of being securely locked when the pool is not in use.
- (f) All yards containing hot tubs shall be secured as in subsection (5) above or shall have a cover which shall be locked when the hot tub is not in use.

[Move this section, along with the definition of *swimming pool* in Sec. 60.220, to Article 65.900, Accessory Uses, where these requirements for specific accessory uses belong.]

Sec. 63.121. Radio and television antennas.

Antennas, including single satellite dish TVRO's three (3) meters or less in diameter, short wave radio dispatching antennas, or those necessary for the operation of household electronic equipment including radio receivers, ham radio transmitters and television receivers, are permitted as accessory uses in all zoning districts and shall meet the following requirements:

- (a) Accessory antennas shall not be erected in any required yard, except a rear yard, and shall be set back a minimum of three (3) feet from all lot lines.
- (b) Guy wires or guy wire anchors shall be set back a minimum of one (1) foot from all lot lines.
- (c) Accessory antennas and necessary support structures, monopoles or towers may extend a maximum of fifteen (15) feet above the normal height restriction for the affected zoning district.

[The definition and standards for accessory uses such as this belong in Article 65.900 Accessory Uses.]

Chapter 65. Zoning Code - Land Use Definitions and Development Standards

ARTICLE VII. 65.900. ACCESSORY USES

Sec. 65.910. Accessory use or accessory.

A building, structure or use which is clearly incidental to, customarily found in connection with, and (except as provided in section 63.300) located on the same zoning lot as, the principal use to which it is related.

When "accessory" is used in the text, it shall have the same meaning as "accessory use."

An accessory use includes, but is not limited to, the following:

...

- ~~(p) Radio and television receiving antennas including satellite receiving dishes, or short wave transmit/receive antennas designed for dispatching or use with household electronic equipment including "ham" radio equipment, subject to the regulations in section 62.117.~~

Sec. 65.911. Antenna, radio and television receiving.

A wire, set of wires, metal or carbon fiber element(s), including no more other than one (1) satellite dish antennas three (3) meters or less in diameter, used to receive radio, television or electromagnetic waves, and including the supporting structure thereof, permitted as accessory uses in all zoning districts.

Standards and conditions:

- (a) Accessory antennas shall not be erected in any required yard, except a rear yard, and shall be set back a minimum of three (3) feet from all lot lines.
- (b) Guy wires or guy wire anchors shall be set back a minimum of one (1) foot from all lot lines.
- (c) Accessory antennas and necessary support structures, monopoles or towers may extend a maximum of fifteen (15) feet above the normal height restriction for the affected zoning district.

Sec. 65.912. Antenna, short-wave radio transmitting and receiving.

A wire, set of wires or a device, consisting of a metal, carbon fiber or other electromagnetically conductive element used for the transmission and reception of radio waves used for short-wave radio communications, and including the supporting structure thereof, permitted as an accessory use in all zoning districts.

Standards and conditions:

See section 65.911. Antenna, radio and television receiving.

[The amendments to §§ 65.910-65.912 above clarify the code as it is being administered under the provisions of § 63.121. the standards and conditions for these accessory uses are moved here from § 63.121 in Chapter 63 Regulations of General Applicability so that the definitions and standards for these uses are together.]

Secs. 65.913 – 65.9149. Reserved.

Sec. 65.915. Hot tub, outdoor.

Standards and conditions:

All yards containing hot tubs shall be secured as required in section 65.923(e) or shall have a cover which shall be locked when the hot tub is not in use. A hot tub shall be located at least three (3) feet away from any lot line.

[The use of a hot tub is not likely to produce the noise and splashing associated with a swimming pool; therefore, the setback requirements for a hot tub could be lessened. The proposed language codifies DSI's interpretation that the word "pool" only applies to a swimming pool, and that a hot tub must meet the setback requirement of an accessory use.]

Secs. 65.916 – 65.919. Reserved.

Sec. 65.922. Support services in housing for the elderly.

Support services within elderly housing as defined in section 65.1231 including limited food service, beauty salon and retail goods and sales areas.

Development standard:

Support service areas shall not exceed five (5) percent of designated community room area.

[Corrects typos.]

Sec. 65.923. Swimming pool, outdoor.

A pool or tub constructed either above or below grade and having a capacity of five thousand (5,000) or more gallons.

[Definition moved here from § 60.220.]

Standards and conditions:

- (a) There shall be a distance of not less than ten (10) feet between the adjoining property line and the outside of the swimming pool wall for aboveground pools. For in-ground swimming pools, there shall be a distance of not less than five (5) feet between the adjoining property line and the outside of the pool wall.
- (b) There shall be a distance of not less than four (4) feet between the outside swimming pool wall and any building located on the same lot.
- (c) A swimming pool shall not be located in a required front or side yard, less than ten (10) feet from any street or alley right-of-way, or in a public easement.
- (d) A hot tub shall not be located in a required front or side yard, less than three (3) feet from any lot line, or in a public easement.
- (e) All yards of one- and two-family structures containing swimming pools shall be enclosed by an obscuring fence not less than four (4) feet in height. All yards of residential structures of three (3) or more units and commercial structures containing swimming pools shall be enclosed by an obscuring fence not less than five (5) feet in height. The gates shall be of a self-closing and self-latching type, with the latch on the inside of the gate, not readily available for children to open. Gates shall be capable of being securely locked when the pool is not in use.

[There is confusion over whether the regulations for swimming pools and hot tubs in § 63.120 apply to swimming pools only or to both swimming pools and hot tubs. The definition of swimming pool as having a capacity of 5,000 or more gallons and thus not including hot tubs gets lost in Sec. 60.220. List *swimming pool* and *hot tub* as separate uses in Article 65.900, Accessory Uses, which along with the definition of *swimming pool* will avoid confusion about what regulations apply to swimming pools and what applies to hot tubs.]