JOINT MAHTOMEDI CITY COUNCIL/PLANNING COMMISSION
WORKSHOP AGENDA
JUNE 10, 2020
5:00 P.M.

Meeting to be held telephonically pursuant to Minn. Stat. Sec. 13D.021
Telephonic Meeting Call-in Instructions
Dial: 1-312-626-6799
Enter Meeting ID 965 8757 1108 Password 468629
Please Hit the # sign twice to enter to meeting
https://wsbeng.zoom.us/j/96587571108?pwd=QkVYeUpqQTVVVIdRNihTcUw5T3VxZz09

1. CALL TO ORDER

2. APPROVAL OF AGENDA

3. DISCUSS 2040 COMPREHENSIVE PLAN CHANGES RELATED TO ZONING CODES

4. ADJOURN
Memorandum

To: Honorable Mayor and City Councilmembers
   Planning Commission Members

CC: Scott Neilson, City Administrator

From: Erin Perdu, AICP, Senior City Planner

Date: June 4, 2020

Re: Zoning Diagnosis
   WSB Project No. 015205-000

The subject of the joint City Council/Planning Commission work session set for June 10th is upcoming zoning ordinance amendments. Some amendments are required as a follow up to the adoption of the Comprehensive Plan, others may be desired as a matter of policy.

To help guide the discussion, we have put together a Zoning Diagnosis for the City which highlights major issues. We have incorporated goals from the Comprehensive Plan as well as feedback from this year’s Strategic Planning retreat.

Please review in advance of the meeting and come prepared to share your thoughts. The goal of the meeting is to get direction on the ordinance amendments needed, and staff will work with the Planning Commission to draft those over the coming months.
INTRODUCTION

The City of Mahtomedi is a unique, historic City that grew from a quaint summer resort and vacation community just outside the Twin Cities metropolitan area. It began as a destination with a unique sense of place tied to its "small town" character and City leaders endeavor to preserve that special character. Mahtomedi has grown into an active and prosperous city with a population of 8,040 in 2018, based on an estimate by the Metropolitan Council. Although much has changed over the years, Mahtomedi has maintained the "small town" character that residents and visitors value. And while Mahtomedi and the metropolitan area will continue to experience change, this Comprehensive Plan presents "A Vision to Sustain Our ‘Small Town’ City" for present and future generations.

The first and most important job of the zoning ordinance is to protect the health, safety, and welfare of the City’s residents, business owners, and visitors. The main way zoning does this is by implementing the goals and policies set forth in the Comprehensive Plan. Mahtomedi’s 2040 Comprehensive Plan lays out a bold vision for the future of housing, sustainability, economic development, and transportation. Policies in each of these areas require changes to the zoning ordinance which enable the types of change envisioned.

During this zoning diagnosis, we examine the current ordinance to determine where there are conflicts; where zoning may be an obstacle for the type of development the City wants; and where there is outdated language that needs to be updated.

Cities use zoning to guide development of privately-owned land to ensure the land is used in a way that promotes both the best use of that land and the prosperity, health, and welfare of its residents. Cities derive the authority to zone from Minnesota and United States supreme court cases and from the Municipal Planning Act found in Minnesota Statutes. The Municipal Planning Act establishes a consistent and comprehensive procedure for adopting, amending, and implementing a zoning ordinance.

WHAT ZONING CAN AND CAN’T DO

While zoning is a primary way for communities to impact the built environment, it is important to understand what zoning can and cannot do.

What zoning CAN do

- Allow the type of development envisioned in the Comprehensive Plan
- Describe what uses are permitted and where
- Establish the parameters for development related to:
  - Lot size, width, depth
  - Setbacks or build-to lines
  - Building coverage
  - Building height minimums and maximums
  - Landscaping requirements
  - Parking minimums and maximums
  - Design standards

What zoning CANNOT do

- Guarantee development
- Take away allowed uses
- Preempt state and federal law
- Act as a building code
- Control behavior
The limits to zoning are steeped in history and documented in case law. When creating, adopting and amending land use plans and zoning ordinances, a city is making law by exercising its so-called "legislative" authority. The city council creates new plans and laws (ordinances) for the entire community to advance its health, safety, and welfare. When acting legislatively, the council has broad discretion. In contrast, when applying existing plans and laws, a city council is exercising so-called "quasi-judicial" authority. It is limited to determining the facts of a specific request, and then applying those facts to the relevant law. A city council has less discretion when acting quasi-judicially. It can be helpful to visualize this as a "pyramid of discretion" that shows cities have greater discretion when making land use decisions and policies at the base of the triangle, and less as decision-making moves up the pyramid. Discretion is greatest when officials are creating and drafting the comprehensive plan and writing the zoning code; the least when administering those plans and codes, such as when reviewing a building permit for compliance with the dimensional requirements of the zoning district.

GOALS

As part of its 2040 Comprehensive Plan process, and its annual strategic planning efforts, the City has articulated many goals that directly relate to the City’s zoning and subdivision ordinances. These goals and priorities are shared below, which define project values for this zoning update (words that have a strong connection to zoning are **bold**). How does the current code measure up to the goals? The goals serve as standards against which we judge our work.

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**From the City Council's strategic direction and priorities for 2020/2021**

1. **REDEVELOPMENT & REINVESTMENT**
   - The City will review and update city ordinances to support redevelopment that is consistent with city objectives for **housing affordability**, **environmental sustainability**, **fire safety**, and **neighborhood character**:
     - Meet with Council, PC, Environmental Commission to identify opportunities to strengthen ordinances
     - Develop an ordinance aimed at **limiting variances**

2. **COMMUNITY ENGAGEMENT**
   - The City is committed to building strong relationships with community members for increased awareness, input, and support for decisions impacting the community’s wellbeing:
     - **Educate** residents on ordinances and processes
     - Increase the informal/‘pop up’ direct interactions with residents and elected officials

3. **SUSTAINABILITY**
   - The City will implement its sustainability plan and strategies which include a review and update to city ordinances for alignment with the plan's objectives:
     - **Rooftop solar**
     - **Sustainable** practices
     - EV charging stations
     - Enforcement for **trees and wetlands**

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City of Mahtomedi
The Comprehensive Plan also contains many goals and policies that directly link to work with the zoning code:

**LAND USE**

Mahtomedi has sustained and enhanced our “small town” city by using land in a manner that simultaneously strengthens our economy, protects our natural resources, and ensures a high quality of life for all residents. Gather and consider input from residents, business owners and customers in development and redevelopment opportunities.

a. Use land in a manner that promotes economic stability and business diversity while complementing the surrounding environment and preserving important natural resources.
   i. Promote the infill development on vacant industrial sites within the existing industrial park along Long Lake Road north of Highway 694. Ensure that any new light industrial development compliments existing uses, protects the natural environment, and respects the surrounding residential neighborhoods.
   ii. Continue to allow home occupations that are compatible with existing residential neighborhoods. Consider opportunities to help support home occupations where appropriate.

b. Use land in a manner that protects natural and historic resources that contribute to Mahtomedi’s character.
   i. Focus development and redevelopment in areas that are already urbanized. Minimize further encroachment into natural areas where feasible
   ii. Study the need and feasibility for providing community gardens that can help residents grow and sell food locally

c. Use land in a manner that ensures a high quality of life for residents by preserving Mahtomedi’s sense of place and provides housing opportunities for all.
   i. Promote development and redevelopment that enhances the existing character of and strengthens the vitality of Mahtomedi’s neighborhoods.
   ii. Recognize that Mahtomedi’s unique sense of place relates, in part, to its historic development pattern that includes narrow and meandering streets, unique lot configurations, and an intermingled mixture of building styles that include small lake cottages, large estates, and village and neighborhood convenience uses. Review and update the City’s ordinances as necessary to ensure that development respects the historic character of the area.
   iii. Coordinate with the City of Willernie to review and update ordinances as may be necessary to ensure that the shared downtown area continues to reflect the character of the historic village.

**OPEN SPACE**

Significant open spaces and natural resources are preserved and enhanced throughout Mahtomedi.

a. Identify and implement measures to protect and enhance the City’s water resources including lakes, ponds, streams and wetlands.

b. Identify and implement measures to protect and enhance the City’s plant and animal habitats.

c. Acquire, maintain and dispose of open space with the best interest of the natural ecosystem and the park system as a whole in mind.

d. In all land use decisions, acknowledge the interrelationship and balance between natural resources, the economy and the social aspects of life in Mahtomedi and the surrounding region.

Continues on following page
Housing

a. Mahtomedi has well designed and well maintained housing and neighborhoods.
   i. Encourage strong residential property maintenance and enhancement activities.
   ii. Ensure that all neighborhoods are safe and attractive and are well served by essential municipal services and facilities.
   iii. Promote green building techniques and renewable energy sources in the development of new housing and the renovation of existing housing.
   iv. Utilize zoning tools to ensure that new housing respects neighboring properties and the character of the neighborhood.

b. Mahtomedi provides diverse housing options for all income levels and housing needs in the City.
   i. Promote opportunities to modify or renovate existing housing units and/or property in a manner that enables existing residents to stay in their homes and that provides an affordable way to provide additional housing for others.
   ii. Integrate housing for all income levels throughout the city wherever possible

   (1) When considering a PUD for affordable housing, the City should determine when the level of affordable housing and the guaranteed length of affordability provide a public benefit great enough to justify the potential impacts that would result from a deviation in the zoning or subdivision regulations.

Economic Development

Mahtomedi has retained, recruited, expanded and diversified local businesses and industries to provide adequate jobs, meet the service needs of residents and visitors, provide a strong municipal tax base, and operate in a socially and environmentally responsible manner. Mahtomedi has well designed and well maintained housing and neighborhoods.

a. Retain and support local businesses and industry.
   i. Identify any perceived or real obstacles (such as overly restrictive ordinances) that the City could potentially remove or minimize to help businesses and industries prosper, while still protecting the health, safety, and welfare of the public.

b. Recruit industries and businesses, particularly those that have a synergistic relationship with existing industries, businesses, and institutions, and those that help diversify Mahtomedi's economic base.

c. Increase the number of jobs within the community and support the ability of residents to telecommute.

d. Support entrepreneurs, small businesses, and start-ups as a source of new employment.
   i. Encourage entrepreneurship in Mahtomedi by connecting residents with resources at Century College and supporting home occupations in a manner compatible with surrounding uses.
   ii. Analyze the long-term viability of existing and proposed neighborhood convenience nodes in the City. Where appropriate, work with property owners and neighbors to ensure the continued success of neighborhood convenience uses in a manner that compliments the surrounding neighborhoods.
INTENT

When acting legislatively, such as with this update to the zoning ordinance, a city can engage in broad policy discussions, and sort through competing views about what plans and laws would be in the best interest of the city. Although not everyone may be on board with the outcome, the more public participation in the planning (comprehensive plan) and law-making (zoning code update) stage, the better the understanding among the public of why the city has put a plan or law in place. The zoning ordinance begins with a purpose statement which outlines the community’s reasons for adopting the ordinance. The purpose statement links the rules and regulations listed in the ordinance to the community’s values, plans, and goals. This update is an opportunity for Mahtomedi to be clear about the type of development it intends to promote with its ordinance, which link to the values and goals expressed in the comprehensive plan and other documents.

Mahtomedi establishes its zoning intent in the current ordinance as follows

**Statement of Legislative Intent.** This Ordinance is adopted to:

A. Protect and promote the public health, safety and general welfare of the community.
B. Classify properties into zones and districts reflecting their peculiar suitability for particular uses.
C. Guide future land development to insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities.
D. Provide for sequential planned development that will allow the efficient and orderly expansion of utility systems without premature urbanization of existing undeveloped land.
E. Preserve the unique character and individuality of the City’s historic growth pattern.
F. Regulate the location, construction, alteration and use of buildings, structures and land.
G. Conserve property values.
H. Insure adequate light, air, privacy and convenience of access to property.
I. Prevent the overcrowding of land and the undue concentration of population.
J. Fix reasonable standards to which building structures and uses shall conform.

K. Lessen congestion in the public streets by providing off-street parking of motor vehicles and off-street loading and unloading of commercial vehicles.
L. Facilitate adequate transportation, water, sewage disposal, education, recreation and other public facilities and requirements.
M. Prohibit the use of buildings, structures and lands that are incompatible with the intended use or development of lands within the specified zones.
N. Protect against fire, explosion, noxious fumes, offensive noise, vibration, dust, odor, heat, glare and other pollution and hazards in the interest of the public health, comfort and general welfare.
O. Conserve natural resources and maintain high standards of environmental quality.
P. Conserve the natural and scenic beauty and attractiveness of roadways.
Q. Preserve the quality of surface waters and guide the prudent development of shoreland areas.
R. Preserve and protect the capacity of flood plains and natural ponding areas to carry, hold and discharge excess surface waters.
S. Provide for the administration of this Ordinance and define the powers and duties of the various administrative officers and bodies.
T. Provide for the enforcement of this Ordinance and prescribe penalties for the violation of its provisions or any future amendments.
Many of the changes required to the zoning ordinance directly link to the recently adopted 2040 Comprehensive Plan.

### Residential Densities

There are a few minimum lot size/maximum density requirements in the current zoning districts that must be updated to allow for development at the maximum densities prescribed in the comprehensive plan:

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Current Min. Lot Size</th>
<th>Required Min. Lot Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-4 Multi-Family</td>
<td>4,356 sf (10 units/acre)</td>
<td>1,742 sf per unit (25 units/acre)</td>
</tr>
<tr>
<td>MU-PUD Mixed Use PUD</td>
<td>None</td>
<td>1,742 sf per unit (25 units/acre)</td>
</tr>
<tr>
<td>VMU Village Mixed Use</td>
<td>Density 10-30 units/acre</td>
<td>12-25 units/acre</td>
</tr>
</tbody>
</table>
Briarwood Area
The Briarwood Area is one of the most unique in the City and has been studied over the past decade due to failing septic systems and requests for utility extensions. The general consensus has been to preserve the rural character of the neighborhood and to not extend urban services. However, there are many non-conforming lots that do not match the Rural Residential District. A special zoning district for the Briarwood area should be considered.

Mixed Use PUD
The Mixed Use – Planned Unit Development (MU – PUD) District is intended to provide an area for a mixture of medium to high density residential and limited commercial uses that embody a village atmosphere. Currently the MU-PUD is located in an area along Century Avenue that is the subject of the Century Avenue Small Area Plan. Mixed income residential uses should comprise the majority of the District. Limited commercial uses and open space should be sensitively integrated with the residential development. This District allows for maximum flexibility in the promotion of difficult redevelopment projects and it allows the arrangement of residential and commercial uses in a manner that is in the best interest of the City.

Much of the language in the district is outdated and does not match the current goals for the site as described in the draft Century Avenue Small Area Plan. That Plan suggests some work on the zoning district to facilitate the redevelopment envisioned:

- Change the title of the district to avoid confusion with the adjacent Planned Unit Development (Ledgestone Townhomes)
- Remove the percentage requirement for owner-occupied dwelling
- Remove the ratio of commercial vs residential uses (but keep the requirement for affordable housing units)
- Allowing more commercial uses than just those described in the B-2 district

Sustainability
The 2040 Comprehensive Plan places a significant emphasis on sustainability throughout the document's chapters. In particular, the following zoning-related actions are included:

- Establish zoning ordinances to allow solar as an accessory use in all districts
- Protect access to solar resources and maximize renewable energy resources in new development while minimizing potential adverse impacts to biological, visual, and natural resources
- Increase community access to local food resources by promoting Community Supported Agriculture (CSA) farms, Mahtomedi farmer's market, and residential and community gardens.
- Promote sustainable transportation infrastructure and adopt zoning language that aligns with the Green Streets Program strategies.
- Promote shared parking
- Provide incentives for low-impact site development
Other Policies from the Comprehensive Plan

In addition to those mentioned above, there are a couple of other policies put forth in the Comprehensive Plan that should be clarified and discussed as part of this zoning update:

- The housing element includes a goal of encouraging strong residential property maintenance and enhancement activities. Does the City wish to explore a property maintenance code? Are there particular issues of concern? The rental licensing ordinance could be improved to address some of the issues as well.
- Affordable housing tools are also laid out in the housing element, including affordable housing provision in the public benefits that could be offered for a Planned Unit Development. When considering a PUD for affordable housing, the City should determine when the level of affordable housing and the guaranteed length of affordability provide a public benefit great enough to justify the potential impacts that would result from a deviation in the zoning or subdivision regulations.

MAINTENANCE

Neighborhood Character

Over the past few years, there have been several variance and CUP applications that have generated discussion from the Planning Commission and City Council on how best to protect neighborhood character, especially in the R1-E Historic Mahtomedi district and along the shores of White Bear Lake. There have been instances of requests that meet ordinance requirements, and yet seem to run contrary to the desired character of the neighborhood.

The Planning Commission and City Council should provide direction on the following questions so that appropriate updates to the ordinance can be made:

- Is setback averaging (required in the R1-E but not in other districts) resulting in the desired neighborhood character? Or should it be modified?
  - Should setback averaging be allowed in other districts as well?
  - Should it be required on riparian lots, even if the resulting setback would be larger than the minimum setback required by current ordinance? Staff can provide information on the potential impacts of this.
- Are new homes being constructed in the historic district too large for the parcels? If so, should we change the permitted floor area ratio on these residential lots? Staff can provide
- Is the Conditional Use Permit the right method to use to deal with requested ordinance deviations in the historic district?

- Or would variances be better (they have more stringent criteria)?
- Staff can provide historic information on the patterns of variances and CUPs that have been granted
- Are side yard setback requirements adequate in the R1-E?
  - Should there be an additional requirement for a maximum ratio of building width to lot width?
- Is the method for measuring building height in riparian areas appropriate?
  - Should there be restrictions on roof pitch?
- Should public notice requirements be created for certain building permits?

Uses

We should take this opportunity to review the lists of permitted, accessory and conditional uses in each zoning district to remove outdated language and add newer uses that can/should be considered. These may include uses such as:

- Microbreweries
- Maker-spaces
- Short-term rentals
- Types of home occupations/work from home arrangements
Other Maintenance
Staff has compiled a matrix of additional edits that should be made to the ordinance to eliminate inconsistencies, clarify ambiguous language, and correct outdated definitions. The complete matrix is attached as an Appendix to this diagnosis. The edits generally fall into a few categories:

- Riparian lot standards
- Impervious surface regulations
- Setbacks
- Signs
- Accessory structures
- Building code-related

The subdivision ordinance, while separate from the zoning ordinance, is part of the City's official controls and should be examined for streamlining and maintenance items. In particular, the City should consider including an administrative review process for lot line adjustments (rather than requiring a minor subdivision, public hearing and City Council approval) and clarify the procedures for lot combination.

These maintenance items are not as time-sensitive as the amendments required by the Metropolitan Council. However, it is most efficient and clear to the public to complete them in-tandem with the other amendments.
To: Zoning Administrator Neilson; City Council; Staff  
From: Steve Wolgamot  
Re: Substantial Changes to Zoning Ordinance  
Date: June 3, 2020

I believe our zoning ordinance, particularly in the historic district is woefully inadequate, permitting, without review, construction of houses of unreasonable size; inadequate separation; deleterious effects on value of nearby properties, and; damage to the interest of the general public. This memorandum will suggest that we have legitimate right and interest to legislate on a variety of topics which are either not currently addressed or as to which the current language is ineffective. It will then propose possible changes to remedy some of these circumstances.

Please understand that I am not disputing the interpretation of the current ordinance by staff. Rather, it is rather sad that a proper textual reading of an ordinance written by others some time ago should produce such absurd results.

I have previously addressed sideyard setback inadequacies and the risk of fire and have discussed those with Chief Fischer. I will attach my memo in that regard at the end of this text.

LEGALLY COGNIZABLE INTERESTS:

Zoning codes have existed for more than 100 years. They represent restrictions on the uses that may be made of property within a municipality. These restrictions are based upon the legitimate interests of the public which serve as the basis for their enactment, and provide legal justification when they are challenged. Current zoning codes and building requirements embrace a wide range of legitimate public interests, some of which are described below:

1. Light and air. The earliest codes were premised on these most basic of human rights. The sun is the only natural source of light so structures which block sunlight from reaching people or other properties are a legitimate concern for regulators. Equally, air movement can be restricted by buildings, walls and other structures, providing legal justification for regulation. Note that the rights to light and air are human rights, owned by people and not by dirt.
Accordingly, these rights extend not simply to adjacent or abutting property owners but to the public as well.

2. Retention of Property Value. Practice has established that unreasonable infringements of light, air, and view affect property values. Property values are of critical importance to a municipality since they generate municipal revenue and relate directly to the financial stability of the community and its members. Accordingly, retention of property values is a legitimate basis for regulation.

3. Fire. In many American communities, the first governments were local fire companies, a recognition that the ever-present risk to life and property of fires in structures constructed with flammable materials, which is to say all of them, establishes a valid basis for regulation.

4. Waste of Resources. As people have come to recognize that resources have limits, the legitimacy of government regulation of property rights to preclude waste has been acknowledged. For example, requirements of specific “R” values for windows, walls and ceilings are dependent on this rationale for their unquestioned legitimacy.

5. View. View as a public right and concern is sometimes viewed as resting on the effects of private construction on adjacent or nearby property. However, as noted above, public rights inhere in the public, not in the dirt, and these rights have effects on passers-by as well as immediate neighbors. “View” is recognized as a legitimate concern in Mahtomedi’s current zoning ordinance in the following language: “Compliance with prevailing conditions will allow the City to protect property rights of neighbors, based on existing views, vegetative conditions and access.” Section 11.01, Subdivision 11.5.A.2.c.(2), emphasis added.

While not limited to preservation of value of nearby structures, limitations of view, particularly in the Historic District and with properties having a view of bodies of water can produce enormous diminishments of property value, the prevention of which is a legitimate public interest as recognized by the courts and embraced by Mahtomedi’s Zoning Code.
“Field of view”, that is to say the lateral extent of a desired or existing view is an element of this protected interest. This represents, in its most basic terms the difference between observing with normal vision and looking through a telescope.

6. Maintainability. The public right to insist on structures which will endure a reasonable life and which, therefore, can be maintained, is well-established. Thus, building codes routinely prescribe the sorts of materials which may be used in construction and those requirements are upheld. All structures, and all individual elements of structures, will require maintenance. Accordingly, the construction of structures which cannot be maintained by the individual property owner is a valid concern of the public and a legitimate subject of regulation.

7. Safety. Residential construction safety involves both the safety of those employed to construct or repair the structures and those who live in them. Not infrequently, owners are involved in repairs or maintenance, or simply investigating problems. Structures which employ extreme design elements may be hazardous and are appropriate for regulation.

8. Neighborhood Character. A reasonable modicum of consistency with existing structures and with past traditions has been recognized as a legitimate matter for regulation. Specifically, in Mahtomedi’s existing building code, in the Historic District, the language “retain its character” is recited as a legitimate legislative goal. Section 11.01, Subdivision 11.5.A.2.

9. Consistency. Many elements of Mahtomedi’s existing code demonstrate the regulation of structures and their locations for consistency. Often, these are included in the side-yard and setback requirements.

10. Proportionality. Lots in Mahtomedi, and particularly in the historic district, range dramatically with regard to every dimension. Some lots are less than 100’ deep. The deepest appears to be just over 600 feet from front to back. With regard to the Historic District, this is purportedly addressed in Section 11.5.A.2.b, which proposes a “sliding scale” of regulation. Although this is nowhere defined, it is, in some cases, effected by regulations which reflect a percentage of a
value instead of a flat numerical standard. Unfortunately, the current ordinance fails in numerous ways.

11. Effects. Recent developments and much of the construction in the historic district over the past ten years or so, demonstrates the utter failure of the zoning provisions currently in effect.

FAILINGS OF THE CURRENT ZONING ORDINANCE AND PROPOSALS:

1. Side yards. The current ordinance in the historic district establishes side-yards as a percentage of lot width, subject to various limitations and a wealth of permitted encroachments. The effect of this is to virtually eliminate side yards in the case of some of the narrow lots. Since the side-yard percentage is limited by a fixed maximum requirement, on wider lots the effect of proportionality is lost and large homes can be built on relatively narrow lots. Due to the parallel wall oven effect, the encroachment of window bumpouts, chimneys (often surrounded with flammable material) and excessive overhangs, the likelihood of fire transmission from one structure to another is vastly increased as the multi-million dollar Helgeson/Nightingale fire demonstrated.

2. Light and view. The current ordinance includes nominal height limitations which rely on the “average” height between roof peak and roof edge and which relate to the ground height at the location of the structure. There is no reference to the ground height at the edge of the lot, nor to the height of adjacent property. Since steep slopes characterize part of the historic district, this can lead to structures which tower over the structures beside and behind them, restricting light and view and blocking sunlight for considerable portions of the day.

3. Roof Pitch. Mahtomedi’s zoning ordinance now prescribes a minimum roof pitch but no maximum. As the number of pretentious McMansions continues to grow, absurd roof pitches abound. These are inconsistent with the character of the neighborhood; consume energy unnecessarily by creating large heated volumes unrelated to functionality, and are unsafe to construct and maintain, requiring special equipment even to inspect or correct minor repair.

4. Access and Maintainability. House repairs are effected with ladders where they can’t be reached from the ground. OSHA has established the maximum pitch of a ladder in use as 4:1 (height/base) which is
essentially fifteen degrees from vertical. Any element of a structure whose height above the property line is more than four times its lateral displacement from the property line cannot, therefore, be legally reached for needed repair or maintenance without trespassing on adjacent property.

5. Light and view. Ironically, when property owners elect to push side-yard setback to the absolute legal minimum, they then discover that they have thereby considerably reduced their own sense of privacy (which is itself a nominally protected element under Mahtomedi’s code). They then seek to correct this by building fences or adding unneeded vegetation which further restrict light, air and view for neighboring properties as well as the public in general. This can be observed particularly along Wildwood Beach Road, but is prevalent elsewhere.

Specific Concerns and Suggestions:

a. Sideyard setback. I have previously supplied the city with suggested language which would improve the proportional effect of sideyard measurement by increasing the maximum sideyard requirement. I will attach a copy of that note, along with its discussion of the impact on fire transmission and protection. Current sideyard requirements preserve the worst characteristic of the historic district – overcrowding and limited space – while making no provision to preserve the best things, proportionality of structures to lot size; reasonable design; and restraint.

b. Field of View. Field of view depends on both the width of an opening and the length of parallel walls. Thus, some recent construction in the historic district has minimized, perhaps illegally, the sideyard setback and more than tripled the length of the wall paralleling the lot line. As such, tunnel vision is the result, a result which is entirely inconsistent with the established character of the historic district.
PROPOSED LANGUAGE: Sideyard minimum. For homes with riparian frontage, sideyards shall not be less than fifteen percent (15%) of the maximum dimension of the structure measured perpendicularly to the waterfront on both sides. No structural encroachment of any kind is permitted in this restricted space.
c. Building Height. A new structure in the historic district measures 50’ above the neighboring yards and more than 100 feet long. For reference, this is a visual and light barrier equivalent to a Motel 6. PROPOSED LANGUAGE: In order to account for variations in land elevation, the height of residential structures shall be measured either from the ground adjacent to the structure or from the nearest location on the property lines of the property, whichever is more restrictive.

d. Roof Pitch. We are not an alpine village. Traditional roof pitches in the historic district have been appropriate for maintenance and safe construction and the roofs themselves have borne an evident relationship to the interior spaces and volumes. This is not true just in the early settlement of the district, nor in the Edwin Lundy era of remodeling of early structures, nor even with the construction of large homes occurring since about 1980. Rather, the absurd roof pitches appear only in homes built within about the last ten years as showmanship outweighed any good sense with regard to material use; energy consumption; and interference with light, air and view for neighbors and the public. Moreover, extreme pitches increase the velocity of rain run-off aggravating control of stormwater and causing damage to adjacent property and vegetation. PROPOSED LANGUAGE: Roof pitches of residential structures shall be limited to 8 units of rise to every 12 units of horizontal measure.

e. Setback. The zoning ordinance in the Historic District provides for front yard setbacks generally consistent with the houses on either side, but then incorporates a numerical maximum of 45 feet. Section 11.5:R1-E.D.3.a.(4). This numerical limitation is wholly inconsistent with the general notion of proportionality encompassed in the historic district and produces an absurd result. Consider the following example:

Home under construction: Setback from OHW – 80’

Home to the north: Setback 153 feet
Home to the south: Setback 173 feet

But for the Shoreland requirements this home would, no doubt, thoughtlessly and unreasonably have been built more than 100’ closer to the water than its neighbors. This is ridiculous and has, without question, caused substantial diminutions in value of neighboring structures.
PROPOSED LANGUAGE: Eliminate the 45’ rule. Consistency, even in smaller lots is highly unlikely to cause an issue which would result only from dramatic changes in lot depth from one lot to another which could be dealt with by variance. Moreover, the existing protection permitting rebuilding in the current location in historic district would protect reasonable replacement of existing structures.

f. Maintainability.

The current language permits structures to be built which simply cannot be maintained without trespassing on neighboring properties. Where the construction of the structure itself may have caused friction and dissension, this circumstance can only lead to further ill will, erosion of community cohesion and damage to property values. The following language complies with the OSHA ladder standards.

PROPOSED LANGUAGE: In order to permit access for maintenance of all structures, no part of a structure, including eaves, bumpouts, chimneys or any another element of the structure shall be closer to the lot line, measured horizontally, than 25% of its height above the height of the ground at the point on the property line closest to its location.

g. Other concerns.

Volume of structures is a big issue. The value of lots in the historic district is very high. The below-minimum lots created by minor sub on Rose and Tamarack are now for sale at $165,000 and $175,000. Lake lots are, of course, bizarrely expensive. Builders and their customers tend to arbitrarily construct ratios of structure cost to lot cost, which are hopelessly inappropriate for lots with high intrinsic value. The result is huge structures. The one discussed occasionally above has a volume of approximately five times that of the house it replaced. It restricts daytime sunlight to at least four other structures and impinges on the view of at least four other houses. I haven’t devised language to address this, but a limitation on the volume of houses as compared to those they replace, would be useful.

h. Subdivision.
The Helgeson/Nightingale fire, which damaged at least two additional houses, occurred where a 150’ lot had been subdivided into two 75’ lots, which are below our minimum. At the very least, it is incumbent on the city to show discipline and deny subdivision of any other riparian lots. There appear to be very few which can any longer meet the 160’ required for subdivision under our ordinances.

i. Front Yards and Back Yards.

I have been told that for riparian properties, the front yard is the one facing the lake. This is a verbal distinction with which I agree and have for all of the 65 years that I have lived facing the water, but it is less clear about our ordinances. The only language I have found is in Section 10.B.7.c which is:

“The rear yard setback on waterfront uses shall conform to the prevailing setbacks in the area or front yard setback of the particular zoning classification.”

Unless controlled by some other provision, this unclear language doesn’t explain who decides which of the two standards referred to should apply. This needs clarification.
TEXT OF MY MEMORANDUM FROM TWO MONTHS AGO REGARDING SIDEYARD SETBACKS:

STRATEGIC GOAL – IMPROVING ZONING CODE
   Side Setbacks – Using the Historic District as an example

A responsibility of the city council is to propose improvements to our zoning ordinance. The ferocious fire that destroyed three adjacent residences on Park Avenue about ten years ago is testament to the inadequacy of our sideyard requirements with regard to fire safety and access. It is also true that exploitation of those foolish provisions, riven with exceptions, has produced an crowded, closed environment in some neighborhoods and largely eliminated the public’s opportunity even to see White Bear Lake at some locations. The following discussion relates to the historic district but the problem should be addressed in all residential districts.

Setbacks in the Historic District:

Section 11.5.D.3.c Provides:
c. Minimum Principal Building Setback from Interior Side Lot Line. Ten percent (10%) of the lot width, with a maximum side yard setback of eight (8) feet.

ANALYSIS:

1. Sideyard setbacks determined as a percentage of lot width are permissible in zoning requirements. In fact, in numerous cities, particularly in California, they appear to be the norm.
2. Where lots are very narrow, and some in the historic district are as narrow as 32 feet at the point of construction, this produces an absurd side setback of 3.2 feet
3. On a 150 foot wide lot, the side setback is never greater than 8’ which as the discussion below will demonstrate is hopelessly unsafe with regard to fire.
4. Encroachment into sideyard setbacks is permitted by the general standards applicable as outlined below:

PERMITTED ENCROACHMENTS
Section 10.1.B.6 Provides:

6. Allowable Encroachments into Required Setbacks. The following may encroach into the required setbacks:

a. Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters and the like, provided they do not extend more than two and one-half (2 ½) feet into any required setback.

b. Terraces, steps, patios, stoops, landings or similar structures provided said terrace, steps, patios, stoops, landings or similar structures has its floor no higher than the entrance floor of the building and does not extend to a distance less than five (5) feet from any property line.

c. Window or similar bays not to exceed a depth of three (3) feet nor to contain an area of more than thirty (30) square feet; fire escapes not to exceed a width of three (3) feet.

d. Fences and walls as regulated by Subdivision 10.6: Fences. e. Detached outdoor picnic shelters, gazebos, pergolas, recreational equipment and access drives, except as regulated hereinafter shall adhere to the setback regulations for accessory structures as regulated in Subdivision 9.6, A: Accessory Buildings,

ANALYSIS:

While setback areas are theoretically open from ground to sky, this elaborate promise is completely undone by the permitted encroachments, particularly “window or similar bays”, which are routinely used on narrow lots to expand the width of interior rooms and to effectively negate the sideyard setback requirements.

Since the only sideyard setback requirement for an interior lot is 10% of the lot width, on a narrow lot, say 40’ which is not uncommon in the district, the initial sideyard setback would be four feet. A permitted bumpout and it appears that all bumpouts are approved, of 3 feet would reduce the effective sideyard to one foot and separation of similar houses to 2’. If the bumpout is also permitted any eave at all, the sideyard is effectively zero.
As noted below, setbacks this small invite the passage of fire, preclude light and air and generally create an undesirable and unsafe situation.

THE RISK OF FIRE

THE OVEN

Consider for a moment two adjacent houses in the historic district on 75’ wide lots, very generous for the historic district. If the lots are riparian, the height can be 35’ above the ground level adjacent to the house. With a moderate roof pitch, this could afford a wall 30’ high, or two walls 30’ high on adjacent houses.

So far as I am aware, except for issues of impervious surface and lot coverage, there is no limit to the length of the sidewall that may be placed next to this limited setback. For the new house at 74 Spruce Street, the sidewall length including the attached garage appears to be about 104’.

The effect of these numbers, taken together, is to produce a rectangular box, 100 feet long, 30’ high, and only 16’ deep. Of course, the structures are likely to have bumped out windows and very wide eaves, meaning that the closest point is well under 16 feet.

This is the approximate situation of the homes owned by Tom and Ann Helgeson and the Nightingale family which burned to the ground about ten years ago. When the Helgeson house caught fire it was fully engulfed in only a few minutes, as is the case with nearly all fires in homes with modern open construction and little interior wall to create even momentary fire barriers. Once the Helgeson house was on fire the space between the two houses was an oven, with radiant heat from the flames immediately focused on the house next door.

Heat moves to areas of lower temperature, but with this large, thin rectangle there simply are no cooler areas accessible for the heat to leave. In the center, the temperature on the side of the Nightingale’s house would have been at or near the temperature of the exposed flames coming out of the Helgeson house. Since flames actually shoot out the windows of houses on fire, and since lake homes typically have many windows, the flames were actually much closer to the Nightingale home than 16’ and the conflagration of the Nightingale house was essentially guaranteed.
In short, the current sideyard setback requirements, coupled with unreasonable height and no effective limitation of the length of parallel sidewalls render houses built to these standards inherently unsafe and virtually assure that a fire in one house will damage or destroy those nearby. Note that a fire transmitted in this way will not trip smoke or fire detectors in the adjacent house until the fire actually penetrates the outer skin of the adjacent house, minimizing warning for those next door.

Homes built in this way are, for fire purposes, mirror images of each other. It is no surprise, then, that the engineering analysis of fire transmission to adjacent buildings is called the “mirror image” analysis.

A MORE RATIONAL APPROACH

A reasonable approach to narrow lots, overbuilt houses and the proven likelihood of fire would take into account the sideyard separation, the length of the parallel mirror image within which heat could be transmitted, and the parallel surface area of two adjacent structures. The following chart, Method 1, represents an approach to sideyard setback, length and area that is employed by the British. “Method 1” is specifically set forth for residential properties.
Note that the sizes of homes typically built in Mahtomedi all exceed the 30.0 square meters of parallel wall that is the maximum cited as acceptable in less than 6 meters (20') of sideyard clearance. Also note that the maximum length permitted is 24 meters (79 feet).

This is an approach which intelligently considers the risk of transmitted fire rather than a simple, but wholly inadequate standard riven with exceptions.

A reasonable sideyard setback requirement for the historic district (and likely for others) would reflect the percentage of lot width calculation in the current ordinance but be considerably more definitive and with fewer exceptions.

PROPOSED LANGUAGE – Section 11.5 D 5 c:

Following the underlined title:
Twenty percent (20%) of the greatest lot width measured at any longitudinal location of the proposed structure, to a minimum required setback of five (5) feet and a maximum required setback of twenty five (25) feet. The sideyard requirement shall be increased by six (6) feet for any part of the structure generally parallel to the side lot line which exceeds 72 feet in length. Bumpouts for lateral extensions of the structure for windows, chimneys or any other purpose, shall be considered encroachments. That portion of eaves or soffits greater than 24” shall also be considered an encroachment.

Practical effect. The owner of an 80’ lot, the minimum width of new lot permitted by our ordinances, would be subject to 16’ setbacks on either side and would be thus permitted a 48 foot wide structure. With a 72’ length available at the minimum sideyard dimension, a home with 3,456 square feet of one floor living space could be accommodated and an ample garage set slightly farther away from the property line. This is more than adequate or appropriate anywhere in the historic district.

The former Benz home, perhaps the largest in the historic district is on a 160’ wide lot, for which sideyard requirements would be 25’ on each side, leaving 110’ for home construction. This is the approximate width of this remarkable home.

The proposed language would require somewhat more room between houses and reduce the “oven” effect of huge homes built with parallel, tightly spaced sidewalls which promote the transmission of fire from structure to structure and endanger public safety.

Respectfully submitted:

Steven Wolgamot, Council Member