



STAFF REPORT

DATE: 12/11/2023

MOTION

TO: Planning Commission
FROM: Sophia Jensen, City Planner
AGENDA ITEM: Conditional Use Permit Extension Request – Upper 33rd St Townhomes

BACKGROUND:

The City Council adopted Resolution 2023-006 approving the Upper 33rd St LLC conditional use permit for a 4-unit townhome located at 11046 Upper 33rd Street on January 17th 2023. The ordinance requires substantial construction within 12 months of the date on which the conditional use permit was granted. Otherwise, the council, after receiving recommendation from the planning commission, may extend the permit for such additional period, as it deems appropriate. The current conditional use permit deadline is January 17th 2024.

The developer submitted a 1-year extension request to the City on December 4th 2023. As outlined in the extension request letter, the site had previously unidentified contamination which caused significant delays in the project construction. The developer is working through MPCA requirements and land remediation.

ISSUE BEFORE THE PLANNING COMMISSION:

The Planning Commission is being asked to make a recommendation to City Council to consider the extension of the conditional use permit deadline to January 17th 2025?

PROPOSAL DETAILS/ANALYSIS:

Upper 33rd LLC is requesting a 1-year extension of their conditional use permit to work through environmental contamination on the site and MPCA regulations.

FISCAL IMPACT

None.

OPTIONS

- 1) Recommend extension the conditional use permit deadline to January 17th 2025
- 2) Recommend rejection the extension request.

RECOMMENDATION:

Staff is recommending that the Planning Commission approve the request to extend the Conditional Use Permit Deadline.

“Move to recommend approval of an extension of the conditional use permit deadline for the Upper 33rd St Townhome project to January 17th 2025.”

ATTACHMENTS:

1. Draft Resolution 2024-XX
2. Original Approval Resolution 2023-006
3. Upper 33rd St LLC Extension Letter Request

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2024-XX

*A RESOLUTION APPROVING AN EXTENSION OF THE CONDITIONAL USE PERMIT FOR
A FOUR UNIT TOWNHOME AT 11046 UPPER 33RD STREET NORTH*

WHEREAS, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, Upper 33rd St LLC (the “Applicant”), submitted an application to the City of Lake Elmo (the “City”) for a four unit townhome conditional use permit located at 11046 Upper 33rd Street N, a copy of which is on file in the City of Lake Elmo Community Development Department; and

WHEREAS, on January 17th, 2023, the Lake Elmo City Council adopted Resolution 2023-006 approving the conditional use permit; and

WHEREAS, City Code also requires substantial completion of the project within twelve months of approval to remain valid; and

WHEREAS, Upper 33rd St LLC has submitted a request for an extension to the conditional use permit deadline to allow for additional time to address environmental contamination on site and work through MPCA requirements;

NOW, THEREFORE, BE IT RESOLVED THAT the City Council does hereby approve an extension to the deadline for recording the conditional use permit deadline to January 17th 2025.

Passed and duly adopted this **XX** day of January 2024, by the City Council of the City of Lake Elmo, Minnesota.

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION 2022-06

**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR THE
CONSTRUCTION OF A FOUR UNIT TOWNHOME WITH CONDITIONS AT
LOTS 10 AND 11, BLOCK 2 SUBDIVISION LAKE ELMO PARK**

WHEREAS, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, Henry Elgersma of Upper 33rd LLC (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a Conditional Use Permit for the construction of a four unit townhome the property described as Lots 10 and 11, Block 2 of the Lake Elmo Park subdivision (PIDs 13.029.21.32.0051 and 13.029.21.32.0052) (the "Property"); and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on November 28th, 2022; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated January 17th 2023; and

WHEREAS, the City Council considered said matter at its January 17th 2023 meeting; and

NOW, THEREFORE, based on the testimony elicited and information received, the City Council makes the following:

FINDINGS

1. The proposed use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city. *The proposed use will not endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the City.*
2. The use or development conforms to the City of Lake Elmo Comprehensive Plan. *The site is already zoned in conformance with the intent of the Old Village District of the Village Planning Area and the Village Mixed Use zoning district.*
3. The use or development is compatible with the existing neighborhood. *The proposed use is compatible with the existing single family residential in the neighborhood. The design of the proposed structure is consistent with the surrounding area in terms of building height, building materials, colors, and variations of pitched roofs.*
4. The proposed use meets all specific development standards for such use listed in the Zoning Code. *The use meets all the specific development standards for single family attached dwellings set forth in LEC 105.12.820(a)(3).*
5. If the proposed use is in a flood plain management or shoreland area, the proposed use meets all the specific standards for such use listed in Article XIX (Shoreland Management) and Title 100

(Flood Plain Management). *The proposed use is not within a Shoreland Management District or a Floodplain Management zone.*

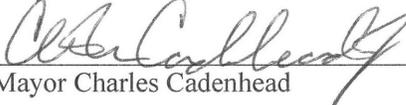
6. The proposed use will be designed, constructed, operated, and maintained so as to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area. *The design of the proposed structure is designed to be compatible with the height, colors, and building materials of the surrounding area.*
7. The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring structures. *The use is not hazardous and will not create a nuisance.*
8. The proposed use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use. *The proposed use will be served adequately by essential public facilities and services.*
9. The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. *The proposed use will not create excessive additional requirements at a public cost.*
10. The proposed use will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare, or odors. *The proposed residential use will not produce excessive noise, fumes, glare, or odors. The addition of four dwelling units should not create excessive traffic along 33rd Street N especially with the restriction of on street parking. Any future expansion of 33rd Street N to the west will further improve traffic circulation.*
11. Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. *The proposed structure will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. Four additional residential units should not create congestion.*
12. The proposed use will not result in the destruction, loss, or damage of a natural or scenic feature of major importance. *The use will not result in the destruction, loss, or damage of a natural or scenic feature of major importance.*

DECISION

NOW, THEREFORE, BE IT FURTHER RESOLVED, and based upon the information received and the above Findings, that the City Council of the City of Lake Elmo hereby approves the request by Henry Elgersma of Upper 33rd LLC for a Conditional Use Permit for the construction of a four unit townhome on the property located at Lots 10 and 11 Block 2 of the Lake Elmo Park Subdivision and grants the same, subject to the following conditions of approval:

1. The applicant must obtain all other necessary City, State, and other governing body permits and approvals prior to the commencement of any construction activity onsite.
2. All recommendations in the City Engineer's memorandum dated 1/9/2023 shall be met prior to any construction activity.
3. All recommendations provided by the City's Landscape Architect memorandum dated 1/6/2023 shall be met prior to any construction activity.
4. All conditions in the Fire Chief's memorandum dated 1/6/22 must be met prior to any construction activity.
5. The applicant shall provide the City with recorded documents from Washington County which effectuate the required lot consolidation prior to any construction activity.
6. The applicant must receive an approved address from Washington County prior to any construction activity.
7. An encroachment agreement is required for fencing located in the required drainage and utility easements prior to any construction activity. A fence permit is also required regardless of the location of the fencing.
8. If the applicant has not taken action toward starting the townhouse structure or if substantial construction has not taken place within 12 months of the City's approval of the conditional use permit, the CUP approval shall become void. The applicant may request City Council approval of a time extension to start or implement the conditional use permit.

Passed and duly adopted this 17th day of January, 2023 by the City Council of the City of Lake Elmo, Minnesota.



Mayor Charles Cadenhead

ATTEST:



Julie Johnson, City Clerk

Request for Extension of Conditional Use Permit Resolution 2022-06**11046 Upper 33rd St N**

As manager of Upper 33rd LLC, Element Design-Build LLC would like to formally request a one year extension to the Conditional Use Permit associated with City of Lake Elmo Resolution 2022-06 passed on January 17th, 2023.

The delay is due to extra time needed to properly report and remediate previously undiscovered environmental contamination on the property. Since discovery of the issue immediately after breaking ground in June, the build team has conducted further environmental testing and has engaged a new environmental engineer, Braun Intertec, to draft and submit a Response Action Plan to MPCA for approval. Because of upcoming winter conditions, construction will not be able to resume until April of 2024. At that point the project will continue with an approved Response Action Plan from MPCA with no changes to the Conditional Use Permit or Building Permit plans.

Respectfully submitted,



Ryan McKilligan
Project Manager
Element Design-Build