

**Town of Duluth
Planning Commission
Meeting Minutes
9/29/11**

The meeting was called to order by Chair Dave Chura at 7.

Roll call:

Present: Dave Chura, Jan Green, Jo Thompson, Paul Voge and John Schifsky

Absent: Brigid Pajunen

Also present: Sue Lawson, Planning Director; Wayne Dahlberg, former Planning Director

The agenda was approved as written.

The minutes from the August 25th meeting were approved without change.

Public Hearing for Variance for Seeds of Hope Ranch, Russell and Wendy Krook

John Schifsky recused himself from the hearing.

Sue Lawson introduced the hearing and the process. The variance request is for a 22,000 sq ft indoor riding arena. The zone district the property is located in is SMU-6. Accessory structures over 2000 sq ft are not allowed in this zone without a variance. The request meets all of the setback requirements for the zone district. Impervious surfaces are not to exceed 25% in this zone district and the actual amount of impervious surface for this site, if the variance were approved, would be 4.76%.

Access is by private road, Pine Park Rd. The wetlands delineation has been accepted and they have applied to purchase wetland replacement credits.

The original Conditional Use Permit (CUP) was granted June 23, 2005 to allow 10 horses on the property with the following conditions:

- 1) Review in 5 years regarding runoff and manure issues
- 2) Not to exceed 10 horses; if more wanted they need to come back to the Commission
- 3) Not to pasture less than 50% of the property
- 4) Manure should be stored in containment area where it can be leached into the soil and to till with the slope of hill with Best Management Practices used

On March 23, 2010 the CUP was reviewed by the Commission, including a request to raise the number of horses allowed from 10 to 20. This request was denied because the original conditions were not all being met. The CUP was set to review again in 6 months with a manure management plan and implementation schedule in place. On February 24, 2011, the Commission reviewed it again and amended the original CUP to allow 15 horses with the following additional conditions:

- 1) The five recommendations made by NRCS be followed with change to item 3 that manure be removed on a weekly to biweekly basis except when frozen.
- 2) From recommendations made by the MPCA, pasture areas must maintain vegetation and sensitive areas adjacent to the stream must be protected and minimally grazed or completely fenced out. The supplemental feeding and watering areas near the stream are devoid of vegetation and have significant erosion. These areas must be restored with vegetation and further impact must be minimized by removing supplemental feeders from these areas and fencing the animals out.
- 3) Must maintain a signed log of manure removal and send it to the Commission quarterly.
- 4) That the Krooks request that the MPCA come back in the summer and then yearly to evaluate what has been done and how it is working, and that their recommendations and any actions taken resulting from their recommendations be submitted to the Commission.

At this point, Sue said she has not received the quarterly log of manure removal, but, to her knowledge, they have complied with the rest of the conditions.

At the original hearing for the CUP two neighbors appeared in support of the permit. At both the March 2010 and the February 2011 reviews, concerns raised were traffic, manure and water quality. In addition, parking was a concern raised at the February review.

Sue showed a map of the site and the proposed arena.

Earlier this year, the Minnesota Legislature changed the criteria for granting a variance. Sue read the new criteria:

1. No variance shall be granted unless the applicant for the variance shows that:
 - A. The proposed variance is in harmony with the general purposes and intent of the zoning ordinance;
 - B. The proposed variance is consistent with the comprehensive plan; and
 - C. There are “practical difficulties” in complying with the zoning ordinance.

"Practical difficulties" means:

- A. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- B. The landowner's plight is due to circumstances unique to the property not created by the landowner; and
- C. The variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties.

Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

2. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

3. Conditions may be imposed when granting variances. Any condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
4. In evaluating all variance applications, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.
5. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes, Section 216C.06, subdivision 14, when in harmony with the official controls

Jan asked why, if it says in the Ordinance that accessory structures over 2,000 sq ft are not allowed, is the Commission considering this request?

Sue said that she talked to the Town's attorney and he said that accessory structures are allowed in the zoning district; the variance is for size.

Paul asked what the land use is for this piece of property. The Krooks put the use down as residential, but he felt it is not residential.

Sue the conditional use is for the horses. The variance doesn't have anything to do with the use, only with the dimensional requirements.

Russ Krook presented the variance request. The purpose of the building is for an indoor riding arena. Their service is very weather dependent. They need the arena in order to keep the horses well trained and to continue to provide the service they provide. It will also be used as shelter for horses in inclement weather. In addition, there will be room for hay storage and for a tack room. In the future, they hope to put in an observation room for parents to watch their children while they ride.

He showed on the map where the wetland area of concern is. He said that there are three cattails on the entire property and they are growing in a ditch he made to control runoff. There are a couple of other areas classified as wetlands and both of their prior choices for location of the arena proved to be too expensive in wetlands buyback to be practical. There are 1723 sq ft of wetlands that they will have to offset. They will leave a buffer of trees between the parking lot and the building and also between the arena and the railroad tracks. The railroad tracks are on an easement and to his understanding, there is no setback from an easement.

Paul asked if the parking area and the arena area are currently wooded.

Russ said that they have opened it up more over time for pasture. But they don't really use pasture; they are on hay year around. They just let the horses out to graze for a limited amount of time and don't let the pasture areas get grazed below 3 or 4 inches. They have three feed lots now and have repaired areas that were damaged earlier by horse feeding.

Sue asked where the kids ride in the summer.

Russ said that the kids ride only in the arena – their insurance won't allow them to have the kids riding on the roads.

Sue asked if they were likely to have clients in the winter if they have the arena.

Russ said they would occasionally use it in the winter, but not on a daily basis. They will use it mostly for training and hay storage during the winter months. They do have occasional gatherings, like a sliding party, and they might use it for that. The riding area itself is about 80 ft by 150 ft. It will be a gravel base (taconite tailings), with sand on top. They will take out the clay.

Sue asked how many vehicles will the new parking lot hold?

Russ said maybe 40. They want to be able to park horse trailers so they can host clinics for fund raisers once or twice a year.

Sue asked if there is currently any kind of traffic like that on Pine Park Road.

Russ said no. There are occasional horse trailers and John Roway moves equipment from jobsite to home to jobsite, but he doesn't know how much or how often.

Dave asked what the height of the building would be.

Russ said the main building would be 80 ft by 205 ft with 18 ft side walls on the 80 ft side and a roof pitch of 3 to 3.5 : 12.

Sue calculated that it would be about 28 ft tall.

Public Testimony

John Schifsky spoke. He said that his property is the 20 acres directly to the south of Russ's property. He said that there have been horses down below his property several times this summer, but he doesn't think that's a big deal. He said that John Roway does move equipment in and out. The biggest piece of equipment he has is a ten yard dump truck. He hasn't moved that much lately because it has been a slow construction season this summer. John's said that he is not in favor of the project. He is also an official on the road association, but he is not speaking from that perspective. His objection is that the road was originally put in to serve three residences. It is about 12 ft wide and they don't want it to get bigger than that. How will the larger rigs navigate? The Shoreland Mixed Use zone district is intended to provide residence and mixed use. Roway is using his property as base for his construction company. John's concern is with an increase in traffic and use of the road. Traffic associated with the ranch would be more year-round with the new structure. With room for 40 cars, there is a potential for many more users than there have been in the past. The CUP was originally granted for the horses, but he doesn't think that anyone really understood what the property was going to be used for. He feels like it is going to continue to be pushed. His other concern is the 15 horse limit. The Township will not be going out to count horses. Once there is more room for horses, will they adhere to the limit? And when horses are trailered in, how does that affect the total?

Clay Sederberg spoke next. His property adjoins the Krooks' property on the north side and they recently built their house there. They are interested in meeting the neighbors and seeing what is going on. He has 7 acres that are landlocked by the Krooks' property and he wants to make sure that his property doesn't lose value. Has the Township granted variances to the 2000 sq ft limit before?

Sue said that she is not sure but she didn't think so. Variances and conditional uses do not set precedents. But people may not always see it like that.

Wayne Dahlberg said that there is one variance up on Pioneer Road for a riding facility in a 4 ½ acre minimum lot size zone district. They have 10 acres and constructed a similar sized arena. It is a different situation from the one here in that it is an agricultural area.

Clay asked why the request for 20 horses was turned down and 15 allowed?

Sue said because of the capacity of the property.

Russ pointed out that the State and County standard allows 1 horse per acre and the MPCA included that in their report.

Clay asked if there would be events where more horses came in.

Russ said occasionally and only temporarily – 3 to 4 hours at most.

Clay asked if bringing in additional horses for events will violate the permit. He said that he found it easy to work with the Township and that people should have the opportunity to do what they want with their land.

Wayne Dahlberg spoke next. He was the previous zoning administrator and was in that position for 10 ½ years. He handled that CUP. At the time it was pretty much a discussion of how many horses would be allowed. Livestock is not allowed in that zone district without a CUP. The discussion included how the horses would be used and the Seeds of Hope operation. It was acknowledged and in the open. He just wanted to clarify that.

The public testimony portion of the hearing was closed.

Jan asked how the original request was phrased and if there is a permit on file that says exactly what the permit is for.

Sue read from the original CUP application which is dated May 30, 2005 and is one page long. The application is for CUP "to have horses on the property... We have ample room to support pleasure horses. We currently have approximately 18 acres fenced into three paddocks with plans for more fencing. It is my contention that according to Article VI Section 3, I do not need this permit."

She then read from the minutes of the public hearing, dated June 30, 2005.

Sue went over the requirements for a CUP from our ordinance. The Krook property is at the end of Pine Park Road which is in the W2b zone district (2 acre zone district). The Krook property is 36.64 acres. Mr. Krook stated he mistakenly read our ordinance and thought having livestock was allowed in the W2b district. He has fenced in 10-12 acres, has pasture area and has brushed and cleared 3.5 acres. The family enjoys horses and rescues them and has a non-profit going called Seeds of Hope Youth Ranch where they invite abused and neglected children to come and enjoy the horses. They plan to have no more than 10 horses. They will not clear all the land and manure will be used as fertilizer and kept in a separate area as there is a ravine and watershed nearby.

Susan Brenning, a neighbor, felt the Krook family was respectful and concerned about the environment and fully supports the project. Jeff Cook suggested they till with the slope of hill and stressed a manure containment area. The public testimony portion of the hearing closed.

Janet McTavish made a motion to approve the CUP with a review in five years to see that runoff and manure issues are addressed. Dave Miller seconded. Conditions: 1. Review in five years regarding runoff and manure issues. 2. Not to exceed 10 horses – if want more, they need to come back to the Commission. 3. Not to pasture less than 50% of property. 4. Manure should be stored in containment area where it cannot leach into soil and to till with the slope of hill with Best Management Practices used. Wayne also mentioned to keep in mind the neighbors when riding in regard to waste left behind. Sue inquired about road agreement amongst the neighbors. Mr. Fisher state there is no road agreement. The question was called and the CUP request passed unanimously.

Jo said that she appreciates what they have done and believes that they have been sensitive to environmental issues. But the variance is for over 10 times the allowed, which is a lot of impervious surface in a small area. This project puts it at almost 5% impervious surface. Most areas only allow 2% without some kind of storm water management system.

Sue said that the typical lot size in this zone district is 2 acres and Russ has 36 acres. Maximum lot coverage for FAM-1 and 2 is 2% and for FAM-3, which is a 10 acre lot size, is 5%. She said that it is hard to compare percent to percent exactly because minimum lot size changes, but you can look at the amount of square feet the 5% represents of a 10 acre lot versus the percent over 36 acres.

Paul said that based on what Wayne said and the application and minutes, the use was clearly for a horse ranch and it was prior to the current Ordinance, so it would be grandfathered in. If someone wanted to do this now, the use would not be permitted in SMU-6.

Sue said that the conditional use for the 15 horses would continue. The CUP would discontinue if the owner did not use the use for a period of one year.

Paul said that it is a conditional use for 10 horses to be used at this ranch and so it would not be considered grandfathered use at this point.

Dave asked if the 15 horses that are allowed is the number the Krooks are allowed to maintain or if it includes horses brought in temporarily.

Sue said that her interpretation is that it is the number of horses he is allowed to maintain on the property – overnight, over months, etc., and does not include horses that are brought in for a few hours.

Jan brought forward a motion to deny the variance based on

1) The proposed variance is in not harmony with the general purposes and intent of the zoning ordinance. It is not in harmony with zone district SMU-6 which is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior. And 2) the variance is not reasonable because it is 10 times larger than what the zone district allows without a variance. In addition, the increased use would result in increased traffic and impact the harmony of the neighborhood.

Jo seconded the motion.

Discussion

Dave asked if instead of a 22,000 sq ft building, they put up multiple smaller structures that equaled the same square footage, would it still be an issue?

Jan said that the whole point of having limits for sizes in residential areas is because of the mass of the larger buildings.

Sue said that a permit is not required for a 10 ft by 10 ft structure, so it conceivably would be allowable, at least until you were to reach the maximum lot coverage, which in this zone is 25%. This number is based on two acres, which is the typical lot size in the zone district, but we still use the same number for 36 acres. The specifications are based on lot size and it is unusual to have a tract this size in that zone district. There are additional large tracts further up.

Dave asked then if it would be preferable to have a single large structure on a property this size or to have multiple small buildings. He sees the benefit in having the single structure.

Sue said that a structure 80 ft by 150 ft would be 12,000 sq ft, which would be 6 times the limit.

Dave said that they could put a second outdoor arena in without any variance if they wanted to. Instead of completely denying the request, is there a way to modify the request to reach a more reasonable size and yet still address some of their concerns for horse shelter and hay storage? Or is the primary need for an indoor riding facility?

Russ said that a building for horse stalls would be approximately 36 ft by 80 ft, a building for hay storage would be approximately 40 ft by 80 ft, and a building for an indoor arena would be approximately 80 ft by 150 or 160 ft, resulting in more square footage than the single structure they are asking for.

Dave asked what the primary need is.

Wendy said the indoor arena is most important because of weather and flies. But all three are important.

Russ said that the building is being funded by anonymous donor.

Dave said that he struggles with whether 22,000 sq ft could be considered reasonable when the maximum size is 2000 sq ft. But these zone district restrictions are based on the fact that the tracts of land tend to be very small in this district, and that is not the case here.

Sue said that if you were to look at alternative scenarios for that tract of land, you could end up with 18 residences all with maximum lot coverage of 25% and all using Pine Park Road.

Jan said that she also wants her resolution to reflect that it will result in increased traffic on the road. Increased traffic would not be in harmony with the zone district, which is residential.

Russ said that the road is a public road. They are just maintaining it.

Dave asked if the Road Association has discussed this issue at all.

Russ said they have not discussed the arena.

Jan said she would also like to make it a part of the resolution that we find the original CUP with the County or with the Township.

Sue said that the minutes make it clear that we granted the CUP, but the bookkeeping may have fallen through the cracks.

Paul said that we need to address the criteria delineated by the recently revised State Statutes. He said we have looked at the issue of whether or not it is in harmony with the purposes and intent of the Ordinance. By allowing the use back in 2005, we accepted that the existing use is in harmony with the purposes and intent of the Ordinance. There is disagreement over whether the proposed use is in harmony with the purposes and intent of the Ordinance.

Jan disagreed with whether the original use is in harmony with the purposes and intent of the Ordinance. She said that if you look at the minutes from the original CUP hearing, the conditional use was granted for livestock on a large parcel of land for recreational use and that is not exactly how the use has evolved.

Regarding the second factor, Jan said that there is nothing in the Comprehensive Land Use Plan (CLUP) that speaks to criteria for a residential use, so it is hard to evaluate how consistent the project is with the CLUP.

As to whether or not the property owner proposes to use the property in a reasonable manner, Paul said that 22,000 sq ft did not seem reasonable.

Regarding the criteria that the landowner's plight is due to circumstances unique to the property not created by the landowner, Paul said that in this case, the circumstances have been created by the landowner expanding the horse use on the property. It is an expansion of the use, and may

result in having more horses on the site, even if temporarily. Having horses in that zone district is not in keeping with the intended essential character of the locality, which is the last criteria the Commission needs to address under the new legislation.

Dave said that he thought that the fact that the applicant has far more land than the minimum lot requirement for this zone district constitutes a unique circumstance to the property not created by the landowner. A 22,000 sq ft building on 35 acres is a much smaller percentage of lot coverage than a 1999 sq ft structure on a 2 acre lot.

Jan said that our Ordinance is not constructed in that fashion. If you want to look at it that way, you should ask for a zone district change.

Dave felt that the Ordinance provides the variance process to allow for circumstances like these.

Jan said that the variance needs to be reasonable and she does not think that 10 times the allowed size is reasonable.

Dave said that given the amount of land they have, even though the structure may seem large, 22,000 sq ft on 35 acres is no more reasonable or unreasonable than 1999 sq ft on 2 acres.

Jo said that another issue is the horses on the property, including nutrient loading and compacting of soil. The Commission made the decision to allow horses because they have so much land. Allowing this structure would add more burden to the land.

Sue calculated that 2000 sq ft on 2 acres is about 2.2% coverage and 22,000 sq ft on 36 acres is about 1.4% coverage.

Paul said that the Commission needs to keep in mind that the property is also within the Shoreland Overlay area so it would be subject to those additional conditions as well.

Dave said that if the Commission were to approve the 22,000 sq ft structure, they could place a condition on the variance that the acreage remain intact and not be divided.

Sue said the Commission could also other conditions related to the variance, such as set days and hours of operation in the winter.

Jan's motion was read again and voted on. It passed with three to one. Voting in favor of the motion were Jan, Jo and Paul. Dave voted against the motion.

The motion was typed up, read out loud and approved unanimously. (See attached.)

Following this there was a brief discussion about structuring resolutions in the future to include findings of fact and to address each of the stipulations in the new legislation.

Dave read from an email from Dave Mount about a presentation by the Army Corps of Engineers on their Knife River Watershed Hydrologic and Sediment Modeling Study on October 18.

Dave said that the November meeting date for the Commission falls on Thanksgiving. Because work on updating the Ordinance keeps getting put off due to hearings, etc., it might be a good idea to schedule a November meeting to work on that. It was decided to meet on the 17th of November.

Sue said that in her discussions with Tim Strom, he said we need to get the latest statutory changes regarding variances and conditional uses in the Ordinance as soon as possible.

Sue brought up the issue of tree cutting on the Congdon Trust land. She said that she suggested to the Board that she and Barb Crow and John Schifsky meet with Tim Hanson regarding the Congdon Trust lands.

Jan said that she should be able to get detailed maps from Bill Majewski.

Mary Ann Sironen, Town Supervisor, said that she would like to be a part of the group. She said that the land across from her is Congdon Trust land. People have traditionally taken care of the land as though it is were their own. She is concerned that the City will allow it to grow up in brush since they are putting restrictions on grass cutting, tree pruning and cutting, etc. No one has a permit to manage the land, so everyone is currently out of compliance.

Jan said that the City gave some kind of permission to Nokomis to remove underbrush. She also noted that she is concerned about a culvert the County is putting in on Stony Point. They are piling the excavated clay and, if it rains, the clay will end up in Lake Superior.

Sue reported that the North Shore Community Center is expanding their parking and is improving the soccer field.

She also reported that she met with a property owner who had a building that didn't need a permit but didn't meet setbacks. It is taken care of now.

There will probably be a design review at the October meeting. Sue said that the Lannons own the lot adjacent to their motel that currently has two houses on it that have been used as rental property. They would like to tear down the two houses and replace one with a duplex and the other with a four-plex. It is a non-conforming lot of record -- 169 ft wide -- so they can build on it if they can meet the setbacks. It is a commercial use and any commercial development in that area is subject to a design review in order to get a permit. The Commission does not approve or deny the project in the review; it is more of a conversation, a chance to make comments and work together. The last design review that came before the Commission was the Lighthouse restaurant.

Wayne said that it is a chance for the Commission to react to the site design in a proactive way to help ensure the design's compatibility with the North Shore. The intent is to have a positive dialog early on with whoever is doing something in the commercial zone.

Sue said it would likely be similar to the conversation we had with the Minnesota DNR regarding the informational kiosk at the McQuade Safe Harbor.

Sue said that she and Wayne did a concept design for the Town Hall and it was well-received by the Board. They will present it at the annual meeting. It features a connection to the Fire Hall from the Town Hall with an office for Planning and Zoning, an office for the Township police, and storage and an evidence room. There will also be one more stall in the fire hall. There have been some drainage issues, but the foundation is on concrete piers and is basically solid. The parking lot will be expanded and drainage issues will be addressed. Where police office is now will be record storage. They have not determined how it will be phased yet.

Wayne said that at this point they are just investigating options and opportunities and getting input.

Mary Ann said that the Board will be advertising to replace Bill Lannon on the Commission. Bill resigned due to health issues.

Sue said that the Board asked if the Commission could wait until November so there would be time for the position to appear in the newsletter.

Dave suggested that the Board interview enough applicants to fill the vacancies in March when his and Jan's terms are up.

Dave said that regarding the Ordinance the Commission needs to look again at what they want as interim uses.

Jan said that the major decision about interim use is do we want to delineate all or some or none of the uses it would apply to. Lakewood Township doesn't identify particular uses but leaves it as an option at the discretion of the Planning Commission.

Dave asked Paul to put together a list of criteria to help determine which uses could be interim uses.

Paul said that there should be a clear difference between conditional and interim uses with sound rationale for why a use is one and not the other. If someone comes to the Township, they should be able to know ahead of time whether they are going to need a permit for a conditional use or an interim use. Uses that constitute a public nuisance – noise, odor, smoke, for instance – and uses that will occur for a limited time should be interim.

Jo asked about impervious surfaces.

Sue said that we could still count them as impervious surface if we wanted to and leave that language in the Ordinance as it is. A compromise was made between areas with minimum 4.5 acre lot size and 9 acre lot size. It is not a linear thing where a simple change of percentage would work.

The meeting adjourned at 9:50.