

**Town of Duluth
Planning Commission
Approved Meeting Minutes
June 26, 2014**

The meeting was called to order at 7:00 by Vice Chair Jo Thompson.

Present: John Schifsky, Jo Thompson, Wayne Dahlberg, Jerry Hauge and Larry Zanko
Absent: Paul Voge and Brigid Pajunen

Also present: Sue Lawson, Planning Director and Don Sitter, Town Board liaison

The agenda was approved as written.

The minutes were approved as written.

Furlong Variance Public Hearing

Chuck and Sandy Furlong were introduced.

Sue outlined the process for the hearing. She then presented the Furlong's variance request: They want to replace an existing garage (which will be torn down) with a 16 ft by 30 ft garage that will be placed further back on their property. The request is for a variance from 10 ft to 4 ft for the side yard setback. The existing garage is at 4 ft from the side yard property line and they want to maintain this side yard setback. By placing the garage further back, it will meet the road setback, which the existing garage does not meet.

The Furlongs live on Greenwood Rd which is a gravel road. When gravel is added (at least once a year) the road rises. Because the existing garage is very close to Greenwood Rd, the increasing steepness of the driveway has made using the garage impossible. The angle of the driveway would be decreased by moving the location of the garage back on the lot.

Sue showed pictures of the driveway and existing garage. The slope of the driveway from the road to the garage is steep.

Sue then presented the criteria for the variance from the Ordinance, Article X Section 3.

The Planning Commission shall always act with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building or use detrimental to a neighborhood.

1. Variances shall only be permitted
 - a. when they are in harmony with the general purposes and intent of the Ordinance, and
 - b. when the variances are consistent with the comprehensive plan.
2. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance.
3. "Practical difficulties," as used in connection with the granting of a variance, means that
 - a. the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
 - b. the plight of the property owner is due to circumstances unique to the property not created by the property owner; 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.
7. The Planning Commission may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance

The site is in zone district SMU-8 and is a non-conforming lot of record. The side yard setback for this zone is 10 ft and the requested variance is for 6 ft. The existing garage does not meet the road setback, but will if they move the location back with this variance. Sue showed a map of the site. The distance to the nearest neighbor's house from the new garage would be about 65 ft. The existing garage is a little further than that now.

Sue talked about the general purposes and intent of the Ordinance regarding setbacks. Setbacks 1) provide privacy from adjacent homes, helping to protect the rights of neighbors; 2) provide access within the lot for general circulation and for maintenance of structures; 3) provide access in case of fire and deter the spread of fires; and 4) provide space for utilities.

The decision criteria for granting the variance are: 1) the variance is in harmony with the general purposes and intent of the zoning ordinance, 2) the variance is consistent with the comprehensive plan, 3) the applicant's proposed use of the property is reasonable, 4) the plight of the landowner is due to circumstances unique to the property and not created by the landowner, and 5) granting the variance will not alter the essential character of the locality.

Sandy said that lot sizes are small on Greenwood Rd. They have spoken to many of their neighbors and their neighbors have had no objections. The existing garage is currently unusable. A neighbor said that the driveway was originally level with road.

Chuck said that there are safety concerns also. The current garage is hard to get in to and out of.

Jo asked what the size of the current garage is.

Chuck said that it is 23 ft by 14 ft.

Wayne asked what the relative height of the proposed slab is to the adjacent property.

Sandy said that in front they would not have to add fill but towards the back they would. The contractor would put in 12 inches of sand and the garage would be on top of that. Rocks or a retaining wall would have to be added. There is already a swale between the two properties. They also plan on putting gutters on the garage. She estimated that it would be about a three foot drop towards the neighbors.

Wayne asked if the contractor planned to physically restrain that three foot drop.

Sandy said that yes, they are working with the contractor with that.

Jo said that the calculated impervious surface seemed low.

Sue said that she corrected the calculation and the current impervious surface is 23.1% and the projected impervious surface would be 31.3%, which would require a stormwater plan.

Jo said that the Ordinance says the stormwater plan would have to be done by a licensed professional.

Sue said it would be up to the Commission.

Wayne said that the lot coverage could be reduced because brick pavers are technically not impervious.

Jo said that brick pavers reduce the total impervious surface because of the joints, and that amount is subtracted from the total. She roughly calculated 400 gallons of water coming off of the garage. She said that all it would take to manage that is a rain barrel and a small rain garden. She asked them about putting in the pervious pavers all the way back to the new garage.

Sandy said that they are considering that.

Wayne said that contractors typically do not do stormwater plans and they could spend more for the engineer than for the rain garden itself. He said that the Commission could waive the stormwater plan requirement, given the minimal amount that would have to be mitigated.

John asked if they had considered raising the floor of the current garage.

Chuck said that they would have to bring it up about 6 feet. They also don't want to endanger the adjacent trees that their neighbor planted when he was a boy. Raising the garage would disturb those trees and possibly kill them.

Wayne made a motion to approve the variance request, and, because of the minimal lot coverage impact above the maximum 25%, impose the condition to develop common-sense stormwater mitigation by using gutters and a rain barrel and creating a small rain garden to slow runoff in order to compensate for the amount of impervious surface over the maximum and not require a stormwater management plan.

Larry seconded.

Jo said that moving the location of the garage back would not create any additional setback and would not impose on the adjacent neighbor.

John said that he felt the proposal was consistent with the CLUP. He also felt it was a reasonable request because the garage cannot be used because of the steep slope and moving it would allow safer access to Greenwood Rd.

The Commission agreed that the need to move the garage further back on the property was not due to the property owner but to circumstances unique to the property, which were created by maintenance of Greenwood Rd. They also agreed that there are other structures along Greenwood Rd that have setbacks similar to that being requested in this variance. The property owner is moving the location of the garage back from the road and will thereby meet the road setback, which is not met in the current location.

The motion passed by unanimous vote.

Director's Report

Sue said that she and Jo and Val Brady have been working on the Town's SWPPP. She also met with James Gittemeier from the Duluth-Superior Metropolitan Interstate Council regarding trails. It was a positive meeting and he suggested that the Town get in the queue for funding. A letter from the Town Board is needed to get started on that.

Sue said that the Town Board has formed a committee to look at the Town Hall and facilities development. Wayne is the design consultant. The Board has approved a cap of \$675,000 for the improvements. Wayne is working on concept plans to present to the Board in July.

Wayne said that it would be useful to think about what kind of facilities Planning & Zoning need. He will be talking to all the departments. The next committee meeting is on July 7 and the next Board meeting is July 10. He asked what kind of space people envision for Planning & Zoning. They are trying to plan for the next 25 to 30 years. How does everyone see the department functioning as the Township grows and Planning & Zoning takes on more responsibilities? Things to think about are what kind of storage the office will need for files, maps, etc.; what implementing the new MS4 requirements will require; what space would be needed if the Town got GIS. He said that we don't have anyone who works out of the office now. The space is so cramped that it is uncomfortable. When John Kessler was the Planning Assistant, he had office hours with mixed success. Most people seem to expect planning officials to go out in the field and don't come in during office hours.

He said that some townships have adopted the Uniform Building Code which requires inspections during the building process. Is this something that may happen in our Township down the road? Where do we expect to be in 25 years?

Sue said that the plan is that the Town Hall will always be where it is now and in the building it is in now. Same for Planning & Zoning. On the other hand, the building is also a good place to hold other meetings. Other agencies, such as the SWCD have met here. If the offices were moved away from the meeting space and we got a projector and a drop down screen, it would facilitate using the space for other meetings.

Wayne said that the building is about 2400 to 2600 sq ft. The plan is to double the space. The Clerk's office can become a second meeting place for smaller meetings.

John said that he would like to see as much electronic support built into the facilities as possible. He would like to see built in projection, screens, plug-ins for devices at the desks, and a way to darken the meeting rooms for projection.

Don suggested having microphones on the desk and the capability to record meetings. He said that when the Board had the desks built, they wanted to have electronics built in, but because the desks are used for other things, it was not easy to do that and still be able to move them around. Wireless products are available, but they still require electricity.

Wayne said that he sometimes has a difficult time hearing some people. There may come a time when we want decent audio support that is not cumbersome.

Jerry said that there is wall paint that acts as a screen. He said that this is a better option and that mechanical screens break down all the time.

Brigid asked what material the ceiling was originally constructed of.

Wayne said that it was plaster and that it is now about six inches lower than it was originally.

Don asked about additional security such as motion detectors. For the Planning office, he said that there should be room for a plotter, a map case and cabinets. He said that there will also be a central records storage spot. A tipping point would be if we ever started doing building inspections. Then we would need a lot more space, both for storage and for personnel.

Sue said that most of the routine documents that we get now are pdfs. If we were to start building inspections, then we would require plans. Since about 2008, most everything in Planning has been electronic so long term electronic records storage is something we need to think about.

Jerry said that a cd is considered good for about five years. There are services that back up electronic records and guarantee that they can be recovered.

Sue asked about cloud services and Brigid asked about portable hard drives.

Jerry said that for cloud services you pay for the number of gigabytes you need. Portable hard drives are only designed to last about three years. Then they have to be backed up as well.

Sue said the Board is hoping to start the addition late this fall or early next spring.

Jerry asked if accessing the Town Hall from Shilhon Rd would be better than the current driveway off of Homestead Rd.

Sue said that Shilhon is not a good place to pull onto Homestead either. There is a hollow on Homestead and you cannot see oncoming cars. The better option is the lower entrance to the parking lot. They have talked about reducing the speed limit in front of the Hall.

Brigid asked about making the kitchen meet commercial requirements.

Don said that the Board was not interested in that.

Wayne said that it is not a food prep kitchen, only a serving kitchen.

New Business

Sue said that she had a question about whether a deck is considered an accessory structure or a part of the house. She looked at what a number of other cities and towns do and they count decks as accessory structures. Where it makes a difference is on setbacks. So she is asking the Commission to clarify this. There are separate definitions in the Ordinance for accessory structures and for decks.

Wayne said that an attached garage is considered a part of the principal structure.

Sue said that if someone does not want an attached garage, they have to pay an extra fee for the detached garage. So there is one fee for a garage and house together, but there is an additional fee for a garage that is separate from the house.

Wayne said that he thought that if you have a deck that is detached -- a stand-alone deck -- it would be an accessory structure. If the deck is a part of a structure, then it would follow the setback requirements for that structure.

Jerry said that is that way it is in Duluth. If the deck is attached to the house, it is one set of rules and if it is detached, it is a whole different set of rules.

Sue asked, what if the applicant detaches it from the principal structure by 6 inches? She said that if you look at setback requirements, one of the primary purposes is privacy. A deck is only useable for few months a year. How much will that infringe on neighbors' privacy?

Jo asked whether it would be at ground level or higher. If it is higher, then there could be an issue of looking down into someone else's yard.

Sue said that the one in question was a second story deck.

Don said that a deck is part of the impervious surface calculations either way.

Wayne said that there is a gap between every board so it doesn't make sense that it would be considered an impervious surface.

Sue said that she was inclined towards counting it as an accessory structure. She said that working on a motorcycle in a garage would be way noisier than people on a deck.

John said that the issues of visual aesthetics and country values come into play. What kind of visual effect would it have on neighbors?

Sue said that the location is Greenwood Rd which is not rural. The setback for accessory structures is 10 ft and for the principal structure is 20 ft. It is comparable to living in a city down there and expectations are different. There is not the emphasis on maintaining rural character there that there is in other areas of the Township. Would a 10 ft setback for accessory structures be unreasonable there?

Wayne said that the average lot size in that area is well under an acre, maybe .5 or .6 of an acre.

Don asked if it were decided that a deck is an accessory structure and the setback is 10 ft, if the owner later wanted to screen it in and roof it, could they do that?

Sue said that at that point it would no longer be a deck, it would be an addition and they would need a variance.

Jerry made a motion that a deck, whether it is attached or unattached, is an accessory structure. John seconded. The motion passed unanimously.

Old Business

Structure Size vs. Lot Size

Jo said that the last time the Commission met, there was a question about contiguous parcels. Sue was going to ask Tim Strom if we could require people to combine their lots to use the combined area to meet dimensional requirements.

Sue said that Tim said that it could be a requirement for conditional uses. He was going to research whether it could be an option for routine permitting.

Jo said that she was continuing to work on a formula that might work for lot size vs building size.

Wayne said that larger outlots in an area that is zoned for smaller 2 or 3 acre lots should not necessarily have the same dimensional limits as the smaller lots.

Jo asked how the impervious surface limits had been decided for the different zone districts.

Sue said that much of MUNS-4 is on the ridgeline, close to the lake and is in the Sensitive Overlay area. The discussion at the time was over what could reasonably be built on a 5 acre lot in this area and what people felt the community should look like. They looked at what different impervious surface numbers would look like on five acre lots. At 5 % you could build a reasonable house and a garage. At 7%, you could add a pole building. They decided on 7%. It was not an easy process.

Wayne thought that the shore area numbers came from the North Shore Management Plan. If the maximum allowable impervious surface wasn't at 25%, many of the existing small lots in areas along the shore like Greenwood Rd would not be useable.

Jo said that if we were to restrict larger lots from developing to 25% impervious surface, the Ordinance would have to be changed.

Sue said that we should figure out a useable formula. NEMO (Nonpoint Education for Municipal Officials) is not a good model for this area. The maximum impervious surface numbers they use are too high. Since 1976, when the Ordinance was enacted, our zoning has been more restrictive regarding impervious surface and setback from streams than most other areas -- and our rivers and streams are still becoming impaired.

Jo asked if a reasonable maximum size for an accessory structure should be set, and if so, how to determine what it should be.

Sue said that it could be looked at by use – what do people use big structures for? Horses are not allowed in this area, so usually the structures are for storage of boats, RVs, etc. We don't have a maximum size set for the principal structure. It again goes back to community rights vs. individual rights.

John said that he felt that limiting a structure size through impervious surface made more sense and would be easier to defend.

Concerns from the Audience

Don said that the Commission was discussing mitigating water coming off a roof earlier in the meeting, but rain barrels are not necessarily effective at mitigating runoff, especially if the collected rainwater is not used between rainfall events. He said that rain gardens are much more effective for mitigation.

The meeting adjourned at 9:35.