

**Town of Duluth
Planning Commission
Meeting Minutes
February 26, 2015**

The meeting was called to order at 7:05 by Chair Paul Voge.

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

Absent: No one

Also present: Sue Lawson, Planning Director; Don Sitter, Town Board liaison to the Commission

The agenda was approved as presented.

Design Review for Sundberg Permit

Sue started by explaining that the Ordinance requires that proposed structures in commercial districts require a commercial design review by the Planning Commission before a land use permit can be issued. The Commission can provide input and comments, but this input is only advisory. She introduced Ray Sundberg and showed the site plan for the property. It is on the corner of McQuade and Lismore Roads. Ray has applied for an addition to an existing building that will be cold storage. The building is a modified Quonset with a rounded roof. The addition will be a lean-to commencing from under the eave of the existing structure.

Ray said that the addition will be on existing piers that are about 6 ft below grade. The piers were put in at a different time for awnings. They are on 8 ft centers except for a 16 ft wide garage door. The beams will be green treated laminated beams. There will be a gravel base. The access doors will be on the sides. He plans to cover it in steel to match the existing building. It will be used for cold storage and as a staging area for construction equipment. With this addition, the equipment will be out of sight and secure.

Jo asked if, when they purchased the property from the Madisons, they had to get a conditional use permit.

Ray said that they inquired, but didn't need a CUP because the use remained the same and is zoned commercial. In the meantime, they have made improvements, mostly cosmetic and for energy efficiency.

Sue went through the objectives from the Ordinance, Article VIII, Section 10.

- Loading – there is plenty of room.
- Parking – there is adequate parking.
- Maintain and strengthen the character of the neighborhood – they are upgrading the building.
- Emphasize compact and connected structures that maximize green space while maximizing commercial opportunities – the proposal meets this objective.
- The proposal is in scale with the neighborhood and neighboring uses.
- The proposal is environmentally efficient and steel is a building material that has a good life span.
- The proposal is a small addition, so will have minimal impact on adjacent neighborhoods.

- The proposal is a small addition, so will have minimal impact on vegetation and drainage.
- The proposal fits with local development patterns.
- Landscaping and screening – this doesn't apply.
- Building design should fit with site and neighborhood – there is commercial on all four corners of the intersection, so it fits well.
- The proposal is not a franchise so fits the area.
- Parking areas should fit into the context of the site – nothing is changing regarding parking.
- New development should respect the predominant scale of the surrounding area -- the proposal is similar to the other businesses there.
- The building should respect the massing of the adjacent community – again, the proposal is similar to the other businesses there.
- The colors and materials of the proposed addition fit with the context of the neighborhood.
- The proposal is appropriate for climatic elements.

Paul asked if the items intended to be stored in the addition are currently stored in the yard.

Ray said that they are. Sometimes things disappear, so they need secure storage.

John asked if there was any possibility that waste, such as oil, was left behind by the previous owners.

Ray said that there was none in the disclosure when they bought the property.

Wayne asked what the amount of impervious surface was on the property.

Ray said that it is about 13%.

Wayne said that he thought the site has only improved since the current owners have had it and it has been a plus in the neighborhood. He suggested that they put in a few trees to help with scale.

Sue reiterated that there is no actual approval of the project, only input and comments. Everyone agreed that the project met the objectives for commercial districts and there was no further comment.

DeLeo Conditional Use Public Hearing

Sue introduced Sharon DeLeo. The hearing is for a conditional use for a high-frequency short-term rental and for a setback variance for that use. The conditional use is not possible without the variance, so the Commission will hear the variance first. Sue outlined the process and presented the proposed use.

A high-frequency short-term rental is defined in the Ordinance as a rental of a single family dwelling for less than or equal to 30 days at a frequency greater than 4 times per calendar year. There has been an antique business on the property for many years. In 2010 Sharon converted a 3 car garage into an assisted living facility to allow Sharon to take care of her husband and other patients. She did not end up taking in patients and her husband has since died, so she would now like to put the facility to use as a handicapped accessible guest house with 4 bedrooms.

The property is in zone district SMU-8 and meets all the dimensional requirements except for the lot width. The lot is 100 ft wide and the required width is 200 ft. The guest house is behind the main house. There is a fence and vegetation that screens it from the nearest neighbor.

The requirements for short-term rentals are listed in Article VIII Section 15A of the Ordinance.

1. All short-term rentals require a minimum lot size of two (2) acres.
2. The side and rear setbacks shall be fifty (50) feet unless the adjacent property is zoned commercial, FAM or LIU, then the setbacks shall be as required for the applicant's land use district. All SENSO and SLO setbacks apply regardless of adjacent property zoning.
3. Licensing and permits. The owners shall obtain any and all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction.
4. Property oversight and complaint response. Thirty (30) days prior to rental of the property in any calendar year and anytime the contact information changes, the property owner shall provide to the Township Planning Director the name and phone number of a contact person with the capability and authority to address complaints or concerns regarding the property. This phone number shall also be provided to all other property owners within five hundred (500) feet of the lot boundary. The contact person must be available at all times during rental periods, and able to be at the property within thirty (30) minutes.
5. Rental Frequency. Low-frequency short-term rental frequency is limited to once during any thirty (30) day period. Once during any thirty (30) day period means that a subsequent rental cannot begin less than thirty (30) days from the initiation of the prior rental. The allowable rental frequency for high-frequency short-term rentals will be established as part of the conditional use permit.
6. Rental Records. A log shall be kept of the renter, date of arrival, date of departure, and number of guests for all rentals. A copy of the log shall be provided to Planning Director upon request.
7. Parking. Off street parking shall be provided.
8. Temporary Sleeping Facilities. No temporary sleeping facilities may be used on the property during rentals (i.e. recreational camping vehicles, tents, etc.).
9. Low-frequency short-term rentals require a land use permit. High-frequency short-term rentals require a conditional use permit.

All of these requirements are met except for 2, which requires a side yard setback of 50 ft. Sharon is asking for a variance from this. The guest house is 10 ft from the side yard. The setback meets the zoning dimensional requirement, but not the requirement for a short-term rental.

Sue went through the application Sharon submitted. The hours of operation will be from 10 to 10 every day of the week. She will have one person helping out with cleaning. There are 4 bedrooms, so there could be from 1 to 8 renters. There could be a slight increase in traffic, depending on the number of renters and the number of cars. The effect on North Shore Drive would be negligible. There is adequate space for parking – approximately 6000 sq ft. There will be a small sign at the bottom of the driveway. There has been a sign for the antique business, so that will not be a change.

Regarding environmental factors, Sue said there could be some noise from guests going to and from their cars. Sharon has no plan for an outdoor fire ring so there will be no smoke, smell, dust, etc. There will be no effects on any of the other environmental factors.

For a conditional use permit, one of the questions is, How compatible is the use with the existing neighborhood? Sue read from the summary:

There has been a home-based business at the property, selling antiques. A garage was remodeled in 2010 to accommodate assisted living. All of the structures have existed and no new structures are proposed. The structures have and do fit in with the neighborhood. As for the change in use, there was probably more traffic associated with the antique business than will probably occur with a guest house. The house is on North Shore Drive, which is a heavily traveled scenic highway. Having a guest house will not increase traffic in the neighborhood noticeably. The traffic coming to the guest house will come up the driveway which is on the west side of the property directly adjacent to the MNDNR Fish Hatchery and will have no effect on the work of the Hatchery. There is vegetation and a fence separating the guest house from the property on the east. The property is very close to the SMU 6-A zone which was part of the original North Shore Management zone which allowed for the intermingling of commercial and residential uses – similar to what occurred in the earlier days of tourism on the North Shore.

For the Community Participation Report, Sharon was provided with a list of neighbors to contact within the area the Commission defined as the notification area. She contacted these neighbors by mail and received 3 responses. Sharon's closest neighbor is supportive of the variance and the short-term rental conditional use. A neighbor new to the area also supports the proposed use. A third neighbor said that he supported the proposed use and was pleased to see it would be handicapped accessible. No issues or concerns were elicited.

Sue read the requirements for variances from the Ordinance, Article X Section 3E and Sharon's response from her application to each.

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.

Sharon's response: This will be a locally based business for tourists and is not over-commercialized, fitting with the comprehensive plan vision. Services exist that serve the basic needs of residents...along Scenic Highway 61 in a strategic neighborhood location. The proposed business fits into the vision of the Town as part of the home business sector.

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.

Sharon's response: The proposed use is a reasonable use because it is self-contained with privacy fencing and natural vegetation. Her only neighbor cannot see through the fencing to the parking lot. Circumstances are unique for this property as it had belonged to one family and after his death the property was subdivided. The original stone house was a bed and breakfast, "The Chalet." The essential character of the locality will not be altered as the traffic on Scenic Highway 61 is essentially the same, busy in the summer and quiet in the winter.

Paul asked about the permit from 2010 to convert the garage into an assisted living facility.

Sharon said that she talked to John Kessler at the time and read from a letter she had received from him. Because the footprint of the structure did not change, there was not a land use permit required. John wrote that the use would fall under the heading of Dwelling – Social Services in the Ordinance, and was a permitted use.

Sue said that State Statutes say that social service residences are treated the same as single family residences.

Jo asked where the antique business was located on the property.

Sharon said that it was in the garage. They built it in 1998 and opened it in 1999. She closed it for a year after her husband died in 2012. She said that the former owners of the adjacent property to the east sold just a couple of acres and that is why her neighbor's home is so close to hers. That happened in the 1940s.

John said that he never noticed an increase of traffic or activity associated with the antique business, so he would not anticipate a problem with traffic with this use. He asked if parking would block access to the road behind her home that the power company uses to maintain lines.

Sharon said that the power company would have to ask for cars to be moved if they needed access. She said that she didn't know if they even have an easement, but they have told her that they can't get to the power lines from the hatchery side.

Jerry said they would have an easement for the line, but would have to ask permission for access to the line.

Public Testimony

John Bowen spoke. He said that he lives at the intersection of Greenwood and Ryan Roads and is in the notification area. He said that he supports the project 100%.

Don Sitter asked if each bedroom has a dedicated bathroom.

Sharon said that there is just one bathroom. It is her hope to rent to families.

Don asked about the hours of operation.

Sharon said that the use could be considered 24 hours a day, but she would not want guests checking in after 10 pm.

John made a motion to approve the variance because it would be in harmony with the purposes and intent of the Ordinance, because the request is consistent with the Comprehensive Plan, because the property owner proposes to use the property in a reasonable manner, because there are unique circumstances to the property not created by the landowner, and because the essential character of the locality will be maintained. Larry seconded.

It was agreed that the variance met the requirements for a variance for the following reasons:

The variance would be consistent with the Ordinance and Comprehensive Plan because the rental would be a locally based business for tourists and would not be over-commercialized; because it would provide a service that serves the basic needs of residents along Scenic Highway 61 in a strategic neighborhood location and because it would fit into the vision of the Town as part of the home business sector.

The owner proposes to use the property in a reasonable manner because it is self contained and screened by privacy fencing and natural vegetation and because the only neighbor cannot see through the screening to the parking area.

The circumstances unique to the property are that the property belonged to one family and after a death in the family, the property was subdivided. The original stone house was a bed & breakfast, "The Chalet."

The essential character of the locality will not be altered because traffic on Scenic Highway 61 will be essentially the same, busy in the summer and quiet in the winter.

Jerry suggested adding a condition to the variance that screening be maintained between Sharon's property and the property to the east. Sue suggested considering it as a condition to the conditional use instead, if approved.

Jo asked what the intent of the Ordinance was in making the setback for short-term rental 50 ft when the building side yard setback is only 10 ft. Sue said that the Board set that in the last Ordinance revision to protect the privacy of the neighbors.

Paul said because there is screening between the properties and because the neighbor is in agreement with the proposed use, the intent of the Ordinance is met.

The motion to approve the variance passed unanimously.

For the conditional use, Sue reviewed Sharon's application and Community Participation Report again.

Paul asked Sharon if it was her intention to rent the unit to single parties, or to rent it to individual parties who would then share the bathroom.

Sharon said that it was her plan to rent it to just one party at a time.

John asked if she would need permits from the State and if the State would allow one bathroom for four bedrooms.

She said that the State approved it with one bathroom when she was going to use it as an assisted living facility.

Sue said that the Ordinance requires that a short-term rental obtain any licensing required by the State.

Wayne said that in B&Bs in someone's home there is often a shared bathroom. He asked if she might rent the bedrooms individually.

Sharon said that she was going to try to mostly get families, but wouldn't rule out renting to individuals.

There was no additional public testimony.

John moved that the Commission hear the proposal as an interim use limited to 3 years. Larry seconded.

Jo said that it would be good to review the permit, if granted, periodically. Someone new could move in next door and have complaints about the nearness of the rental.

Wayne said that there can be reviews stipulated under a conditional use permit. He said that given the location and the long-standing history of the property, he would advocate for a conditional use permit with a review process after 3 or 5 years. He didn't see why she should have to come back in 3 years and go through the same process.

Sue said that the conditional use would stay with the property. She said that the experience the Town had with one conditional use was that even though there was a review process, it cost the Town a lot of money and time. It can be very difficult to revoke a CUP.

Don said that it could be revoked if the conditions are not met.

John said that even though the two neighbors know each other very well and are in agreement, they are very close in proximity and anything can happen.

Jo was also concerned that if the use were granted as a conditional use, it would go with the property if it were to be sold and the next owners might not be as conscientious as Sharon.

Paul said that an interim use could be set for 3 years or until the property is sold, whichever occurs first.

Wayne called the question.

The motion to hear the use as an interim use, limited to 3 years, due to the proximity of the nearest neighbor and the potential for adverse impact to that neighbor, passed 6 to 1.

Paul reviewed the necessary findings for a conditional or interim use from the Ordinance Article IX Section 7B:

- B. Necessary Findings. A conditional/interim use permit may be granted only upon finding all of the following:
1. The proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance.
 2. The use is compatible with the existing neighborhood.
 3. The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district.
 4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.
 5. The proposed use will comply with the wetlands requirements in **Article III, Section 6** of this Ordinance.
 6. The total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional/interim use would occur.
 7. The topography, vegetation and soil conditions are adequate to accommodate the proposed use.
 8. The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures.
 9. Adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance.
 10. The proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems.
 11. The location of the site is appropriate with respect to existing or future access roads.

12. The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met.

Jo made a motion to approve the interim use because it meets all of the requirements of Article IX Section 7.B of the Ordinance. Jerry seconded.

It was agreed that the use met the following necessary findings from the Ordinance Article IX Section 7B.

1. The proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance
2. The use is compatible with the existing neighborhood
3. The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district
4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area
5. The proposed use will comply with the wetlands requirements in Article III, Section 6 of this Ordinance
6. The total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional/interim use would occur
7. The topography, vegetation and soil conditions are adequate to accommodate the proposed use
8. The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures
9. Adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance
10. The proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems
11. The location of the site is appropriate with respect to existing or future access roads
12. The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met

Sue listed the conditions that are in the Ordinance that would need to be a part of a permit for a short-term rental: The owners shall obtain any required licenses and permits; the property owner shall provide the name and phone number of a contact person; the Commission shall set the allowable rental frequency; a log shall be kept of the rental; off street parking shall be provided; and no temporary sleeping facilities may be used on the property during rentals. These are 3, 4, 6, 7, and 8 from Article VIII Section 15A

Jerry made a motion for an amendment to the motion that the conditions listed in the Ordinance, Article VIII Section 15A numbers 3, 4, 6, 7, and 8 be included as conditions on the permit; that the rental frequency will be a minimum of one night; that there will be no more than one party per rental period; and that adequate visual screening must be maintained between the rental property and the adjoining property to the east.

Jo seconded.

The amendment passed unanimously.

Jo made a motion for an amendment to the motion that quiet time be from 10 PM to 8 AM. John seconded.

Brigid thought that since Sharon lives on the property, such a stipulation would not be necessary.

Paul said he thought quiet time is important for the neighbors. It is not in a commercial district -- it is a residential area that would have a commercial-type enterprise.

The amendment to the motion passed 6 to 1.

Don suggested considering an amendment of no guest-initiated fires.

Sharon said she would include it in a list of rules for renters. The way the property is fenced, it creates a kind of courtyard that isn't an area you would have a fire pit.

The motion to approve the use as an interim use, with amendments was approved unanimously.

Paul made a motion that the interim use would be for 3 years beginning on May 1, 2015. John seconded. The motion passed unanimously.

A recess was taken to put together and approve the decision document.

Approve Minutes

Sue said she would provide the table for the budget. With that the minutes were approved.

Director's Report

Sue said that there would be a variance request in March from the Town for the Town Hall addition. A variance will be needed for impervious surface and, because it is a nonconforming structure, for the addition exceeding 75% of the size of the original structure.

Sue said that she, Jo, Val and Don have the stormwater language for the Ordinance completed and the Commission will review that in March. The Commission should also look at what else may need to be changed in the Ordinance for the March meeting. Because the stormwater rules will likely increase administration costs for land use permits, some increases in permit fees may be necessary. The fees were last changed in 2009, so the Commission might consider recommending raising them to reflect inflation. We will then have the public hearing on the Ordinance changes in April if there are no other public hearings.

The Annual Meeting is on March 10 at 8:15. Two Town Supervisor positions are open and the voting is from 7 AM to 8 PM. For her presentation on Planning at the meeting, Sue would like each Commission member to give her an estimate of time spent outside of meeting time doing P&Z work.

Old Business

Budget

Sue said that the Board accepted the Commission's budget recommendations.

St Louis County Proposed Zoning Changes

Wayne said that Section 4.2, a, b, c, and d of the proposed document is a general statement about how St Louis County looks at nonconforming structures and we should look at this language.

Sue said because we have no inland lakes we don't need to look at anything related to Shoreland, so b and c don't apply. And because we need to get the stormwater language approved and in the Ordinance, we may not have time to consider much else for inclusion in the next Ordinance update. The County has some changes regarding dump sites and the Town could use that language and create an overlay for the Zoning Map. Regarding any changes on nonconformities, it is necessary to be very careful because one change could affect many parts of the Ordinance.

Paul said that the Commission should look at the nonconformities in the Greenwood Road area and consider rezoning that area. Greenwood Beach was platted in 1922.

Sue said that she talked to the Town's attorney and in the Greenwood Cliffs area virtually everyone needs a variance. It is hard to say that they have a difficulty unique to their property when everyone in their neighborhood has the same difficulty. So it would be good to look at that.

Sue said there was also quite a bit on solar energy standards in the proposed changes.

Paul noted that there are compliance orders in the proposed changes. If the County discovers a nonconformity or finds someone is not obeying the rules of their permit, they send a letter and have provisions for fines and getting the sheriff out.

Sue said the County is also looking at recording the infraction on the property deed so it would be like a lien on the property.

Sue said the County needs any comments on the proposed changes by some time in March. Her conclusion is that the Town doesn't have any concerns, so she will write a letter saying so and thanking them for their hard work.

Brochure

John and Brigid and Sue met and finalized the brochure.

Everyone was very pleased with how it turned out. Sue thanked Brigid and Don McTavish and John. She said it will go to the Town Board for approval at their next meeting.

Accessory Structure Size

Sue said that the conclusion from the last discussion is that accessory structures larger than 2000 sq ft in SMU-6 will be treated as a conditional use. She and Jo will work on the wording for the Ordinance. The formula for size and setbacks could be included as a performance standard.

Stormwater

Sue said that the language is completed for the Ordinance.

Paul asked who wrote it and if the language came from a model ordinance.

Jo said that she and Sue and Val wrote it and it was developed from the requirements of the permit.

Trails

There was nothing new to report on trails.

The meeting adjourned at 10:30.