

**Town of Duluth
Planning Commission
Meeting Minutes
April 23, 2015**

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

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

Absent: Brigid Pajunen

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

The agenda was approved with two changes, addition of election of officers following approval of minutes and addition of a discussion on setbacks to New Business.

Myers SDR Interim Use Public Hearing

Sue introduced Billy Myers, Suzanne Kiethley-Myers and Gerry Henkle. The proposed use is, by definition, an interim use, so it will be heard as an interim use. Sue read the definition for subordinate dwelling, residential (SDR) from the Ordinance:

A secondary residential structure to accommodate immediate family members in cases where the primary living structure can no longer house all family members, or where grandparents may be housed.

The proposal is to remodel an existing building on the property originally used as a garage into an SDR. The unit will have one bedroom, a cooking area, and a living area. The building is 432 sq ft. St. Louis County Environmental Services has granted a permit to construct a privy and greywater system without pressure to serve the structure. A 6 ft x8 ft portable sauna on wheels will be parked nearby for occasional use. The footprint of the building will remain the same and no structural components will change. The structure will be insulated, interior walls will be covered with drywall or paneling, doors and windows will be replaced, and the building will be re-roofed.

Sue said the site is in FAM-3 zone district and both the structure and the lot meet all of the dimensional requirements. She showed a vicinity map and a site map. Gerry currently lives on the narrow strip of property, which is a nonconforming lot, adjacent to the Myers property. She showed the building remodel plan. Included is a growing bed which Billy said was designed with Jeff Crosby of St Louis County to take care of greywater.

Sue read the requirements for a subordinate residential dwelling (SDR) from Article IX Section 17 of the Ordinance. She said that the proposal meets all of these requirements.

A. General. One separate subordinate residential dwelling may be allowed to serve only members of the immediate family, including grandparents, on the same parcel.

B. Setbacks. The separate structure must meet setback requirements, as well as other applicable Ordinance provisions for the zone in which it will be located. Non-conformity Ordinance provisions must be observed.

C. Wastewater. Written approval for additional wastewater disposal adequacy must be presented from either the St. Louis County Health Department or the Duluth North Shore Sanitary District, depending upon the zone and which agency has jurisdiction. If separate on-land disposal or separate grinder pump installation becomes necessary, proof of the completion of the implementation must be provided.

D. Facilities. A separate kitchen and bath is allowed as part of the subordinate residential dwelling, subject to 17.C above.

E. Discontinuance. An interim use granted for the purpose above will be specific to the applicant's family only; it is not transferable. When this permitted use is discontinued, any future use of the building, structure or property to which the permit pertained shall conform to Article IV, Nonconformities. Future use of the structure as a residence, including rental, is not permitted except as specifically allowed under other portions of this Ordinance.

Sue said that for the Community Participation Report they contacted 12 neighbors. There were concerns from Curtis LaBreche, but Billy and Suzanne addressed those concerns and he is now supportive of the proposed use. Six people responded and were supportive. The remaining neighbors did not respond.

Suzanne said that they just received another voice of support from one of the neighbors who had not responded in time to be included in the report.

Sue presented a summary of the Myers' application. She read a summary of the answers to items B through L from the application:

- B. They are replacing an existing use with a new use.
- C. The hours of operation are not applicable.
- D. Number of employees is not applicable.
- E & F. There will be no increase in traffic.
- G. There is parking available for the SDR unit.
- H. Signage is not applicable.
- I. There will be no generation of dust, smoke etc.
- J. There will be no increase in noise.
- K. There will be no additional structures; they are remodeling an existing structure.
- L. There will be no outdoor work areas.

For the environmental factors, Sue read a summary from the application:

The structure already exists, so no wetlands will be impacted. They have a wastewater permit from St Louis County, # 27090. The water will be hand-carried. There will be regular household garbage pickup.

She read the responses from the application to the criteria that have to be met in order to grant an Interim Use:

Is the proposed use consistent with the Comprehensive Plan and within the spirit and intent of the Zoning Ordinance? The proposed SDR is consistent with the Comprehensive Plan in that it is a low impact project in the FAM -3 district. The Plan allows for a secondary residential structure to accommodate immediate family members via a CUP. Subordinate housing is allowed in a FAM-3 district provided immediate neighbors and the Commission approve the project.

Is the use compatible with the existing neighborhood? Yes, the existing neighborhood is residential and the intended use of the unit by a current neighbor will not change the neighborhood in any way.

Will the proposed use impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district? The intended use of the unit would be granted under the CUP is of minimal impact. The permit being applied for is an interim use and is location specific and time specific. The proposed use will not hinder any other regular developments by neighbors in the district.

Is the location and character of the proposed use considered to be consistent with a desirable pattern of development for the area? The area is part of the FAM-3 district. The Township has recognized that an

interim unit such as being proposed here is consistent with the development in the area provided that the community agrees with the proposal.

Does the proposed use comply with the wetlands requirements in Article III, Section 6 of this Ordinance? There will be no wetlands lost due to the establishment of an SDR.

Does the total amount of impervious surfaces exceed that allowed in the zoning district where the interim use would occur? No

Are the topography, vegetation and soil conditions adequate to accommodate the proposed use? Yes. There will be minimal impact on the topography, vegetation, and soil conditions by creation of the SDR unit. The Saint Louis County Environmental Services office has determined that wastewater will not be a problem, and since there is only remodeling occurring and no new construction, only minimal impact will occur because of the project.

Will the proposed use not impact public waters during or after construction or impact wetlands without appropriate mitigation measures? There will be no impact on public waters from this project.

Are there adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities provided or are being provided backed by appropriate financial assurance? The nature of the proposed project will not require any additional utilities or supporting facilities.

Will the proposed use create potential health and safety, environmental, lighting, noise, signing, or visual problems? No. The nature of the proposed use will have negligible impact on the neighborhood.

Is the location of the site appropriate with respect to existing or future access roads? The location of the site is well within the boundaries of the lot and is not located on property lines that might provide an access road to other properties.

Would the demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities affected by the proposed use and the adequacy of existing services to meet the increased demand be met? There will be no increase in demand for public services. The intended occupant lives next door.

Suzanne spoke. She said that Sue covered everything well. None of the neighbors they spoke with for the community participation report was opposed to the proposal.

Wayne asked what the one concern was that they addressed.

Suzanne said that Curtis LaBreche had a number of questions that were answered when he looked at the application. Another concern he had was that Gerry was not a family member as stipulated for this situation in the Ordinance. Suzanne said that Gerry has known their children since they were born and attends school events as their grandparent. She said that Gerry is family by their definition.

Paul asked what the nonconformity was that was referred to in the email exchange.

Sue said that the property Gerry lives on is narrow and does not meet setbacks. Although remedying this is part of the purpose of the proposed SDR, it is not relevant to the request.

Wayne asked what stream it is that runs through the property.

Cindy Hale answered that it is an unnamed tributary of the Little Knife.

Sue said that the setback from the stream is met.

Public testimony:

Gene Zachow said that he moved to the neighborhood in 1991 and has known Gerry since then. Gerry has lived there since 1974. He believes Gerry has a lot to offer and is an asset to the neighborhood. He supports the proposed use.

Jeff Hall said that Gerry has lived there for over 40 years without any problems until this situation came about. This arrangement will make it legitimate and hopefully after this, Gerry will be able to live in peace without being harassed by anyone. Gerry's home is more than just the home and land – it is the area and the community. Gerry actually built the garage that will be converted for him.

Cindy Hale said that she is 100% in support of the proposed use. She said that the entire neighborhood sees it as a good solution.

Billy Myers spoke. He just wanted to say, as the landowner and applicant, how much he is looking forward to having Gerry there.

Paul asked if this would be a rental situation.

Suzanne said that it would not be.

Terry McCarthy spoke. He lives in Alden Township and has known Gerry for 35 years. He is a kind, peaceful, and loving man. The situation has been a huge hardship and this seems like a great solution to keep him on the land and in the community where he has lived all this time.

Questions from the Commission

Don asked if the Myers' septic will serve the SDR.

Suzanne said the unit would have a composting toilet.

Paul said that the greywater permit from the County says that it expires in 2 years.

Gerry said that means the system has to be built within 2 years.

Jo moved to approve the request for an interim use for a subordinate residential dwelling because the proposal meets all of the applicable criteria of the Ordinance, Article IX Section 7 and Article IX Section 17.

Jerry seconded.

There was a discussion about the time of discontinuation.

Sue said that she has seen two SDRs in the Township approved as conditional uses. In both cases the time certain was the demise of the person living in the subordinate dwelling.

Suzanne asked if that meant they would have to go through this same process if at some time in the future they, for instance, wanted to let one of their children use it as an SDR.

Jerry said that Article IX Section 17.E says that “An interim use granted for the purpose above will be specific to the applicant's family only; it is not transferable.” It says that when the permitted use is discontinued, it is done. So it didn’t seem to him that there needed to be a time limit on it. The time limit is when you stop using it. And the Myers would not need to go through the process again to use it for another family member.

Paul asked what would happen if they sold the property while Gerry was still alive. The interim use is recorded with the County on the land.

Sue said that an interim use in this case would be for the family for family members and will apply as long as it is used for a family member.

The motion to approve the request was approved unanimously.

Paul said that the reasoning as outlined on the application and presented by Sue would be adopted.

A short recess was taken while the decision document was written. It was then approved and signed.

Minutes Approval

The minutes from March were approved with grammatical changes as suggested by John.

Election of Officers

There was a discussion of terms and everyone whose initial term was up agreed to a second term.

John made a motion to nominate Paul to continue as Chair. Wayne seconded. The motion passed unanimously.

Jerry moved to nominate Jo to continue as Vice Chair. Larry seconded. The motion passed unanimously.

Director’s Report

Sue said that she would be meeting with James Gittemeier from the Duluth-Superior Metropolitan Interstate Council (MIC) next week regarding bike trails in the Township. The MIC approved funding for planning.

The Board’s program for work was decided at the last Board meeting and Don agreed to continue as liaison to the Commission.

On June 25 there will be a hearing on the changes to the Zoning Ordinance and the new Stormwater Ordinance. Sue said that she will have the text for the new ordinance and the Ordinance amendments ready before the May meeting for Commission members to review. The Planning Commission will hold the hearing and Town Board supervisors will attend. The Commission then recommends the amendments to the Ordinance to the Board and the Board makes the decision to adopt and enact the amendments. The Commission does not make a recommendation to the Board for the Stormwater Ordinance; only the Board decides on ordinances that are not the Zoning Ordinance.

Paul asked how it was decided to make the Stormwater Ordinance a separate ordinance.

Don said that part of the reason is that the MS4 is likely to change and evolve and having it as a separate ordinance it will make it easier to change it as needed.

Sue said that regarding the status of the Nokomis site, the owners are working on feasibility and design. The cabins on the site are currently for sale.

Paul asked what was going on at Stony Point – it looks like some revetment work is going on. And who is responsible to keep an eye on that?

Sue said that it is the Town's responsibility to make sure that they are doing what is required by their variance. She said that she went down last year and talked with them.

New Business

Sue reviewed the current plan of work and possibilities for new work. The work on trails is continuing and the Town will be working with MIC on that project. John continues to get little response from the City of Duluth regarding the Congdon trust lands. The new Township brochure is done. Once the Ordinance work is completed, the Commission will need to work on getting the new stormwater control information out so residents will be familiar with it. Variances in SMU-8 are something the Commission could look at. Variances are not really a good solution because everybody in SMU-8 is hampered by lot size. Reducing the minimum lot size might be a better answer.

John asked if there is any way to know how many people read the Township newsletter. He said that it is our principal mode of communication with the residents. He has talked to some people who have not seen articles he has written.

Sue said that it is one of the best options for getting information out to the residents. There's also the website.

Don said that the newsletter circulates to somewhere between 700 and 800 households.

It was agreed that what Sue outlined would be a good plan of work for the coming year.

Sue suggested that subcommittees for each project, with no more than three Commission members per subcommittee, would be good. She said that she would know more about trails once she meets with James Gittemeir.

Jo and John volunteered to work on stormwater education.

Wayne, Jerry and Larry volunteered to work on the SMU-8 issue.

Setbacks

Sue said that in the Ordinance there are setbacks for side yards, rear yards, roads and streams. There are many instances where a lot is reached by an access road, which can create some confusion. She would like to clarify this in the Ordinance. Would the setback from an access road be the same as the setback from a public road? And if you have a house that is not on a public road, how do you determine the front, side and rear yards? If an access road, an easement or a cartway were considered a minimum road, the setback would be 68 ft.

Wayne said that in the City of Duluth, the narrow dimension of a lot is considered the front yard whether the approach to the house is from there or not. He thought it would be a good idea to be more specific. It is also common to say that whichever side you approach from is the front yard. Irregular lot shapes can make it hard to define width.

Paul said that all cartways are considered public right-of-way. They are usually privately maintained. The only way to get rid a cartway is through a public process to vacate. A cartway has to be a minimum of 2 rods wide.

Sue said the setback from Greenwood Rd is 68 ft from the centerline of the road. But accessways are usually much narrower. The County's setback for accessways is 15 ft from the right-of-way. 30 ft from the centerline would be about 15 ft from the right-of-way of a narrow access road.

Wayne thought that 15 ft is too close. He would consider 25 ft from the right-of-way line. If someone were to need a variance, they could apply for one.

Sue said that 25 ft from the right-of-way means that if you have a 100 ft wide lot it would leave you 50 ft to build in.

Jo suggested making the accessway setback the same as the front yard setback or the side yard setback, whichever is smaller.

It was decided that the front yard would be the general way you approach the lot from the public road (not the literal way the driveway comes up to the house). The setback from the accessway would be the same as the side yard setback.

Old Business

Don asked if the wording that Jo came up with regarding lot size and building size will be included in the upcoming Ordinance amendments. Sue said that it was.

Jo suggested that the Commission consider removing the word "immediate" from "immediate family" in the definition for, and discussions pertaining to, subordinate residential dwellings. She also suggested cleaning up the wording for nonconforming structures.

Sue said to let her know if anyone else is aware of wording in the Ordinance that is not clear.

Sue suggested deleting the section that deals with design review for commercial properties.

Don agreed. He said the problem with the design review is that there are no teeth to it. There is no approval or denial.

Wayne said that the design review originally had to do with getting a developer, for instance, thinking about the North Shore mentality. To say, at an early stage of the design process, please consider these North Shore aesthetic factors in your design.

Sue said that the emphasis then for the design review process was on the shore. She did not think it is relevant for inland areas. Given that, the design review process could be applied to just shore commercial areas and be made an approval process. Timing could be an issue. Currently, only a land use permit is required. The Town has 60 days to issue the permit. The time can be extended. But it could be tricky if a design review process were included as a part of these permits. We would have to be expedient about it.

It is nice to make people more sensitive to what is appropriate on the shore, but is it really useful? Commercial areas on the shore are the Tom's Logging Camp area, the Homestead Road area, and the McQuade Road area.

Wayne said that design standards were purposefully not included in the Ordinance. He said that his inclination was to leave it the way it is, but redefine where it pertains.

Sue said that the design objectives used in the review of commercial proposals could work as design standards.

Paul asked if performance standards could be applied in the same way. Sue felt that put too much onus of responsibility on one individual in deciding what is appropriate.

Wayne said that wanting to preserve the character of the North Shore doesn't mean that you are stuck in the 1950s. Time goes on and you design with the current flow.

It was agreed that the Commission would consider it for the next meeting.

The meeting adjourned at 9:55.