

**Town of Duluth
Planning Commission
Meeting Minutes
April 28, 2016**

The meeting was called to order at 7:00 pm by Chair Paul Voge.

Present: Paul Voge, Jo Thompson, John Schifsky and Wayne Dahlberg.

Absent: Jerry Hauge and Larry Zanko.

Also present: Sue Lawson, Planning Director, Don McTavish.

Election of Officers:

John nominated Paul for Chair; Jo seconded. Paul was unanimously approved as Chair.

Paul nominated Jo for Vice Chair; Wayne seconded. Jo was unanimously approved as Vice Chair.

The agenda was approved as presented.

Dolence Variance Hearing

Introductions were made. Present in the audience were Ann Dolence, Laura Radosevich, Bruce Duncan, and Don McTavish.

Sue began by reviewing the hearing process.

She then introduced the variance request. She showed a vicinity map of the Dolence property and a map of the proposed layout. The house is a nonconforming structure on a nonconforming lot.

The proposed addition is 33.1 ft by 12 ft. The requested variances for the addition are for 8.9 ft from the east side yard setback, 0.6 ft from the road setback, and to be allowed to expand the existing structure by more than 25%. The proposed addition is 49.5% larger than the existing structure. The proposed deck is 10 ft by 22 ft. The requested variance for the deck is for 10.6 ft from the road set back. In addition, an 8 ft by 12 ft rear entry is proposed and would require a variance of 1.3 ft from the rear yard setback. These variances are being requested all at once because, per the Town's Ordinance, a non-conforming structure can only be enlarged once.

The criteria for approval of a variance are:

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.

Ms Dolence's response from the application for the first criteria is: I am applying for this variance to follow the procedure of the Ordinance of building a nonconforming structure on a nonconforming lot.

In assessing whether the first criteria is met by the proposal, the Commission could consider:

- The vision for this area from the Comprehensive Land Use Plan (CLUP): "...there has been some development along the Shore. This development is characterized by...appropriate scale of development..."
- The purpose and intent of road setbacks, including to assure that there is room for future infrastructure requirements, to keep dwellings safe from dust, noise, and fumes from the road, to maintain a safe distance from traffic, and to add to the general attractiveness of the property.
- The purpose and intent of side yard setbacks which include to allow for fire safety and to maintain privacy.

In response to the practical difficulties criteria, the responses from the application were:

- a. I plan to use the property as a home residence;
- b. I am requesting the variance because the lot is a nonconforming lot which I purchased this way; and
- c. I have no intention of altering the essential character of the locality. I want the addition to improve the property.

The proposed variance is for a use that is allowed under the Zoning Ordinance.

Ann spoke regarding the variance request. She said that the rooms in the existing house are very small. The addition to the front will be a living room and will allow for a larger bedroom. The addition is the same width as the existing house. The back entry is to allow for a mudroom and to connect to the garage.

Paul asked if there is an existing deck on the front of the house that will be replaced. Ann said there is. He asked if there is a deck at the back of the existing house. Ann said that there is a deck that will be reduced in size. It allows access to the door to the basement.

John asked what the impervious surface would be with the proposed additions.

Ann said that it is 38.3% and, because it is over 25%, she will need to have a stormwater management plan. When she calculated the impervious surface she did not include Hazel Lane easement in the calculations.

Jo asked how wide the easement was.

Sue said that it was originally 20 ft. The easement is a traveled easement. It was platted further to the southeast but is further in on the property as traveled. When she calculated impervious surface area, she included the part of Hazel Lane on the property, so her results differ from Ann's.

Ann said that two homes behind her use the lane for access to their properties. The neighbor behind her voiced concerns that the new roofline of the addition be the same height as the existing roofline and not interfere with his view. The roofline will be the same height.

Jo said that the Ordinance says the addition height "cannot exceed the height of the existing structure."

Wayne noted that the current roofline ridge is parallel to the shore. How will the new roof come off the existing roof?

Ann said that it will be a gable roof with concrete block foundation.

Wayne asked about the proposed 8 ft by 12 ft back entry.

Ann said that the back entry with the enclosed walkway would provide for enclosed access to the garage.

Wayne said that that would result in one connected structure, which could be problematic.

John asked what the impervious surface would be with the addition of the walkway.

Sue said that it would increase impervious surface area somewhat but that it would still be less than 50%.

Wayne asked about the garage and driveway being partially on the neighbor's property.

Sue said that it was apparently due to a surveying error.

Laura Radosevich said that she is the neighboring property owner and the easement for the garage, driveway and well that are on their property was established before they purchased the property. The previous owner of the Dolence property had been a lifelong resident there and his parents had homesteaded the property. Since then, the property was foreclosed on.

Wayne said that the proposed additions will not increase the nonconformity of the house or garage. But if the house and garage are connected, it will be one structure and will not come close to meeting setbacks. The garage is 20 ft or less from the rear lot line, which is not nearly adequate for the principal structure setback.

Paul suggested that the walkway just have an awning over it. It would not be a living space.

Sue said that an argument could be made that the purpose of setbacks is, in part, for privacy. An enclosed space is more private.

Public Comment

Laura said that she and her husband were concerned when they got the letter from the Township notifying them of the variance hearing. They bought the property about three years ago. When the home was foreclosed on they called the realtor to make sure any potential owners were aware of garage and well situation. She read aloud a letter from an appraiser that she and her husband engaged to look at the situation. See attached.

Laura said that the minimum lot size is 1 acre. The setbacks assume a 1 acre lot. The Dolence lot is closer to one quarter acre. There are two houses on what should be a normal lot size. Both homes have problems with water runoff. A ditch has been dug on her property for runoff and there is plastic tubing that diverts water from those properties onto hers. She said that she does not have a problem with allowing variances, but this is an existing house that was purchased as is. The Commission should not consider allowing the variances. In addition, the house is closer to the road than most other houses in

area. The addition would make it closer. She believes it would affect their property value and privacy if it were allowed.

Paul asked how large the Radosevich lot is and when the Dolence lot was created.

The Radosevich lot is 300 ft by 83 ft.

Wayne said the lots were created before the Town had zoning.

Laura said that originally one family owned the whole lot.

Wayne said that although the Ordinance prohibits splitting of lots that would result in nonconformities, this situation predates the Ordinance.

Laura said that there is a functional house on the property. If there was not a functional house, or if it were falling down, it would be different. Why would the Commission allow more nonconformity on an existing nonconforming structure?

Jo asked if the house was one story or two.

Ann said it was one story.

Beth read aloud the email from Neil and Julie Igos. See attached.

Public comment closed.

Paul asked Ann to describe the floor plan of the existing house.

Ann said that it is a rambler. The kitchen is at the back of the house along with the bath and a small bedroom. There is another small bedroom in front of the back bedroom. The living room is at the front of the house towards the street.

Sue said that the floor plan is not specifically pertinent to the variance criteria.

Paul felt that it was pertinent as to whether or not the variance was reasonable and if the plight of the property owner were due to circumstances unique to the property.

Wayne asked if putting the addition on the front of the existing house was the only solution. Are there other solutions that would not require a variance?

Sue said that the average size of houses currently being built is larger than this proposal. According to U.S. Census data, the average size of a home built in 2014 was 2600 sq ft. The median size in 2010 was 2392 sq ft.

Paul said that the addition would not increase the east side setback so would not increase the non-conformity and is only 6 inches over the allowed setback for the road, which is minimal.

Wayne said that a 25 % increase of the existing house would be about 200 sq ft. But this request is for 396 sq ft plus an addition to the back of the house linking it to the garage. He asked if a motion could be made on just a portion of the request, or does the request have to be considered as a whole.

Jo suggested that the Commission consider each variance request separately.

John suggested breaking the request into the three structures with their respective variances. Would it be possible to approve a lesser variance, if the Commission thought that would be more appropriate? It was generally agreed to follow John's suggestion.

John moved that the Commission approve the addition with the associated variances because it is in harmony with the general purposes and intent of the Ordinance, the property owner proposes to use the property in a reasonable manner, the plight of the property owner is due to circumstances unique to the property not created by the property owner; and the variance will not alter the essential character of the locality.

Jo seconded.

John said that the side yard setback for the addition matches the existing structure and does not increase the non-conformity. The requested variance for the road setback exceeds the minimum setback by only about a half foot.

Sue said that the two additions together exceed the 25% allowable expansion. Should they be considered together? 49.5% includes the front and back additions. The front addition alone is 46%.

Jo said that she struggles with the confines of the criteria. Regarding the criteria about not altering the essential character of the locality, if you look at other houses along there, they are set back further from the highway with trees. This proposal would be closer to the highway. When someone buys a house knowing that it does not meet their needs, it is a big assumption to then plan on obtaining a variance. It seems as though the plight is caused by the owner. Is it reasonable to ask for a variance that is 100% more than what the Ordinance allows?

Sue thought that in a case such as this, the common interpretation is that the house wasn't built by the landowner, she bought what existed and is working with that. She is asking for a variance because of the existing non-conformity on that lot.

Wayne asked how big the proposed addition on the back of the house is.

Ann said it would be approximately 8 x 12 ft plus a breezeway to the garage. But she said that part of the variance request is not as important to her. She said that she did not mean for her request to be flagrant, it is just that the Ordinance allows for only one expansion of a non-conforming structure. She did not mean to offend the Commission or Township.

Jo said that the requested setback variances are very small. But the existing side yard setback is about half of what is allowed. If the survey had been correct to begin with, would there have been an issue?

John said that one of the concerns voiced was that the addition would make the house closer to the road. He used Google Earth to point out other homes nearby that are as close to the road. When he looked at the house as it sits now, it seemed like it comes right up to the road, but it meets the 110 ft road setback. The difference is that most of the other homes that are close to the road have trees between the home and the road.

Wayne asked how far above grade the existing floor is on the front of the house. He said that when he was Zoning Administrator, a patio at grade did not have setback requirements.

Ann said it was about 5 steps down from the house.

Sue said that that would be about 2 ½ to 3 ft. She said that any structure or platform above grade has to meet setbacks.

Wayne said that if the owner were to terrace down to a patio, she may not need a variance for setback. He said that he would like to find a solution that worked for everyone – neighbors, owner, and neighborhood.

Ann said that she would be willing to compromise.

Wayne suggested approving the variances for the addition, possibly reducing the size of the addition, and denying the deck, because there are acceptable alternatives.

Sue said that the deck is an accessory structure and as such does not count towards the percent increase of structure size. The question is, is it a reasonable use.

Laura asked about Article IV Section 2.A that no increase is allowed for a non-conforming use. It was pointed out that Section 2 references non-conforming uses and the request at hand concerns a non-conforming structure, not use.

John said that for him, the issue is that of almost doubling the size of what is allowed by the Ordinance.

Paul said that if you look at it in context, it is not a big addition.

Jo agreed. The house is tiny; it does not take much to exceed the allowed expansion size.

Wayne noted that the Ordinance allows an enlargement of 75% of the size of the existing structure if it is within the setbacks.

The motion passed, 3 to 1. Voting in favor: Paul Voge, John Schifsky, Jo Thompson. Voting against: Wayne Dahlberg.

Wayne made a motion that the variance for the deck as requested be denied. The request is not reasonable because there are other solutions that would be of lower profile. Regarding the plight of the property owner, there are no undue circumstances that would call for a need to elevate the deck.

John seconded.

Jo said that the criteria require that the owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance. A deck is normally permitted. Would it not be considered reasonable to build a deck?

Paul said that he does not think it is unreasonable. The requested variance to the setback is not that significant.

Jo suggested the Commission impose conditions.

Wayne withdrew the motion.

Wayne moved to accept the deck at a level that is at least halfway down from the floor level to the grade at the front of the deck. It is a transitional living space that is more acceptable in terms of sightline and to passers by on the highway. He said that the proposal is in harmony with the general purposes and intent of the Ordinance and is consistent with the comprehensive plan. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance and the plight of the property owner is due to circumstances unique to the property. The variance will not alter the essential character of the locality.

John seconded.

The Commission voted unanimously to approve the motion.

Regarding the back addition, Sue said that from the drawings, she assumed it was an 8 ft by 12 ft structure and a walkway to the garage.

Ann said that she meant for the walkway to be enclosed but must not have communicated that clearly.

John said that he would consider the rear addition, not the walkway connection.

Ann withdrew the variance request for the rear entry.

A brief recess was taken while the Findings of Fact was drafted.

The Findings of Fact and Decision document (see attached) was presented and John moved to approve it. Jo seconded and the motion was approved unanimously.

Close of Dolence Public Hearing

The March 24 minutes were approved as presented.

Sue presented the Restlawn greenhouse Findings of Fact and Decision document (see attached).

John moved to approve the document with the addition of “Chair” to Paul Voge’s signature line. Jo seconded and the motion was approved unanimously.

ATV Ordinance

St Louis County is considering a new ATV ordinance. Sue went through a presentation that St Louis County gave to townships. St Louis County says that it “has received a number of recent requests to operate ATVs on county roads from Embarrass, Crane Lake, Camp 5, Portage and Leiding Townships.” Sue pointed this is a very small subset of townships in St Louis County requesting this change. The County says that “a significant driver in these requests is trail connectivity.” The County wants to make the area more attractive to ATV tourists. Some of the reasons given for opening roads to ATV use are:

- ATV trails are more difficult and expensive to construct;
- Riders don’t want to trailer between trails and roads open to ATV use;
- Maps and signing in the field are incomplete and confusing...people want to ride legally; and
- Most county roads do not have a “rideable” ditch bottom or backslope.

Currently ATVs are permitted in the road right-of-way of County roads but not along the road or on the shoulder. St Louis County outlined what other counties in the area are doing regarding ATVs on the

road. Koochiching allows ATVs on all county roads, Lake allows on all except two, Cook: all roads except some of the Gunflint Trail, Pine and Itasca: only on permitted roads. One positive thing is that some of these counties, at the same time, prohibit ATV use in inslope, ditch or backslope areas of the roads.

The proposed ordinance

- Provides for ATV operation on all county roads outside of city limits
- Provides for a permit process for county roads within city limits. In these instances, the county will confer with the city.
- Provides for a permit process for any county roads on an as-needed basis. This will be issue driven and will be a collaborative process with the ATV clubs.
- Does not include conditions for speed, headlights, helmets required under the age of 18 and unsafe operation, because they are already covered by state statute and rules.
- Provides a mechanism for the County Board to close or restrict roads if needed.
- Provides a mechanism for the St Louis County Public Works Director to close roads quickly in the event of damage or safety issues. These actions are subsequently reviewable by the County Board.
- Provides for an official All-Terrain Vehicle Map that will be posted on the county website.
- This will be the document that road users and enforcement refer to. It will be updated as needed through action of the Executive ATV Permit Committee or as a result of County Board action.

Some of the concerns with the proposed ordinance are that it encompasses the whole County when only a handful of townships expressed the need for ATV use on County roads; ATVs can essentially go anywhere under this proposed ordinance, including the ditch banks, which damages the ditches and causes erosion; the permitting process for allowing ATVs on County roads within city limits will be permitted with the County through an ATV club. There is also a public safety issue. Under the ordinance, a 12 year old could be going fast on a County road and on a road like Homestead, with limited sightlines, it could be very dangerous.

John said that he has been keeping up with the issue and it doesn't seem like a good plan to him. The primary rationale is to make trail connections. One of the possibilities proposed early in the process was to allow ATVs to operate on County roads by permit only for trail connections and the permit would have to be applied for by an official ATV club. This makes more sense to him. In addition, keeping ATVs out of the ditches is important. The proposed ordinance says only that a youth needs to be accompanied by a licensed adult, not riding with the adult. It will not be a safe situation.

Wayne was concerned that ATV use continues to be allowed for farm use.

Sue summarized concerns the Commission has that she will submit as comments. ATVs should be kept out of the ditches. ATVs should not be allowed on any County roads except by permit to create connections to established trails. The executive ATV Committee needs to include the City of Duluth and other local government units. ATVs on County roads should be limited to a reasonable speed limit of from 10 to 30 mph.

Director's Report

Sue said that the North Shore Management Board is on May 12 which is the same night the Board meets, so they are looking for a volunteer to go to the meeting at Tettagouche. Wayne volunteered.

Brigid's position on the Commission is still open. There will be another advertisement in the newsletter.

Regarding the Town's stormwater plan for the addition, some more work needs to be done. Jo, Val and Sue have been working on it. Some rock still needs to go in and a pipe taking water away from the building. The previous weekend, Dave Edblom, Sue and Peggy Dahlberg, who was head of landscaping for UMD and has experience with rain gardens, looked at the situation. They decided that if the swales were sodded and some rain garden type plantings were added, there wouldn't be the need for as much rock.

Wayne said he would look into getting some crushed rock and Sue said that she would look into seeing if volunteers could be used for the project.

The meeting adjourned at 10:45.