

**Town of Duluth
Planning Commission
Meeting Minutes
June 27, 2019**

The meeting was called to order at 6:30 pm by Chair, Liz Strohmayr.

Present: Liz Strohmayr, Wayne Dahlberg, Jerry Hauge, Larry Zanko, Pam West and Angela Wilson.

Absent: Dave Edblom.

Also present: Sue Lawson, Planning Director and Mike Kahl, Town Board liaison to the Planning Commission.

The agenda was approved as presented.

The May minutes were approved as presented.

Colling Variance Hearing

Sue introduced the variance request. Paul and Kris Colling were present and their architect Carly Coulson was present via Skype. The Collings are applying for the following variances: A variance from the setback from Lake Superior from 125 ft to 80 ft and a variance from the side yard setback from 35 ft to 20 ft to construct a house; and a variance from the setback from the road centerline to the front of the building from 110 ft to 84 ft and a variance from the side yard setback from 25 ft to 20 ft to construct a garage.

The property is adjacent to Lake County and the driveway is shared with the adjacent property. There is an existing house on the site that the Collings currently live in. Sue showed a map showing the buildable envelope on the lot according to existing setbacks. The buildable area would not quite fit a 26 ft by 26 ft house and the house would be in the powerline easement. She showed a map of the planned layout of the buildings at the proposed setbacks. There will be a walkway from the garage to the house that will be wide enough to convey building materials down to the new home site. A topo map with 1 ft contour intervals showed that the house would be placed on the flattest area of the lot. There is approximately 18 to 20 ft in elevation change between the lakeshore and the proposed house. There will be a slight retaining wall on the lower side of the garage. Carly said that the Lake Superior waterline is at 600 ft and the house would be at 619 ft and the garage would be at 629 ft.

The site is in an erosion hazard area and one of the requirements for this area is that the site development plan must be approved by the Town's Planning Director. Buildings must be set back 125 ft from the top edge of the eroding bluff and where slumping is evident, the setback shall be measured from the uppermost shear zone.

Carly spoke via Skype. She said her work focuses on sustainable design. Her approach is to do something "quiet" that "disappears into the landscape." She had prepared a presentation for the hearing. The first slide was a map showing the existing conditions and practical difficulties. The ordinary high water level, as established by the surveyor, and the 80 ft setback line are shown. Carly said that a unique thing about the shoreline here is that it is solid bedrock going into the water, even though it is in the shoreland erosion area. The next slide showed the creek that divides the property in half. The next showed the 110 ft setback line from road. The existing house

and neighboring houses do not meet either the road setback or the lake setback. There is also an easement for an overhead powerline that divides the property. The existing home was built in 1920 and has a small footprint. It was not necessarily designed to be a long-term residence. It is being renovated for a guest cottage. The west side of the property has a dense grove of conifers with two clearings that would allow for passive solar access. These clearings are where they propose to put the new garage and home. Slide 16 showed the buildable area if all setbacks are met. The existing house doesn't fall into that area. The next slide showed a home placement similar to one that had been requested in the past, with an attached garage, a larger footprint, and a driveway all the way to the home. It meets the side yard setback of 35 ft, but is set even closer to the lake than 80 ft. The impervious surface area for the site would be 12%. Carly said that even though the Town's Ordinance allows 25% impervious area, the Comprehensive Land Use Plan highlights a study that shows that 10% or less impervious surface does not affect the watershed, and over 10% does. Their goal is to keep impervious surface as low as possible, not get too close to the creek, and preserve as many of the trees on the site as possible. The next slide showed a site plan with the garage detached and closer to the road. The house and garage meet the 35 ft side yard setback and the house is set back 80 ft from the OHWL. In this scenario, the buildings shift into the woodlands and they would need to remove the trees between the powerline and the 80 ft setback line. The house site is not flat and it is closer to the creek. The next slide showed their proposed plan. It has the best balance for preserving the site and following the intent of the Ordinance and the CLUP. The 20 ft side yard setback allows them to situate the buildings in existing clearings with the removal of only a few trees. It maximizes visual screening from the road and the lake. The footprints of the buildings are very small. The impervious surface area would be only 6% including all of the buildings, the walkway and the driveway. The buildings will be on flatter areas, minimizing grading disruption. The building sites would have optimal passive solar access. In the area to the east of the creek, where the existing house is, they plan on rerouting their portion of the shared driveway to the front of the existing house and revegetating the old driveway and parking area with trees and native grasses.

Paul spoke. He said that they lived previously in Minneapolis and moved here last summer. They have vacationed in the BWCA for the last 15 years and have wanted to live here for a long time. He has a degree in architecture has been working on a house design for years. They appreciate the neighborhood and region. Kris said that she just finished a fellowship in trauma surgery and is now at Essentia. They want their home to blend into nature. They want a sense of serenity.

Wayne said that the required side yard setback for the garage is 25 ft. Is there a good reason that they are asking for a 5 ft variance for that building? It seemed to him as though it would be easy to comply with the required setback. Larry said that it would allow more room for maneuvering into the garage. Carly said that the grade drops sharply to the east and moving it east would require a taller retaining wall and thicker build. Wayne said that there is no grade change walking east to west. Carly said that because of exposed bedrock, they have to build up the site for the garage, creating a grade from east to west.

Liz noted that they had clearly done a lot of work to minimize impact to the site and to try to blend in. There are a lot of things in play on the site. She wondered why they didn't place the house further from the shoreline when there is space to bring it closer to the garage. They may lose a lot of trees from spruce budworm, anyway. She said that they could cut some of the affected trees and manage the remaining trees and revegetate with trees that are not susceptible to spruce budworm. Carly said that it would take a lifetime for newly planted trees to equal what is on the site now. All of the trees between the powerline and the house would need to be removed. The Collings want to preserve the feeling of the forest and minimize the grading which would be more dramatic if the house were moved east and north. Liz said that as much as she appreciates the design, if there are a lot of down

trees in an area, there is a heightened risk of forest fire. In addition, if there were a fire or medical emergency, it would be difficult to access the house. If they are planning on aging in place, it is something to consider.

Angela said they mentioned that they plan to abate erosion on the side of property where the existing house is. What kind of erosion have they seen there? Carly said that there has been no actual significant sign of erosion, but the shore type changes on that side of the property to more of a gravel beach. There have not been erosion issues, but with the existing steep driveway and large parking area, it is not the best for stormwater management. As it is there is also a drainage problem in the current parking area. They are interested in best management practices.

Sue noted that the hearing is for the variances for the house and garage. Some of the information they are providing is extra to the variance, but is good information and provides insight into how they see their land.

Sue then read the criteria for deciding a variance and the Collings' responses to those criteria from the application.

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.

Applicant states: The plan is sensitive to the important issues of stormwater management, erosion control, visual screening, and preserving and respecting the natural beauty and context.

"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; and b. The plight of the property owner is due to circumstances unique to the property not created by the property owner. c. The variance, if granted, will not alter the essential character of the locality.

Applicant states: We propose the following plan that is sensitive to the important issues of stormwater management, erosion control, visual screening, and preserving and respecting the natural beauty and context. See Detailed Sketch D Proposed Site Plan.

We propose the existing dwelling on the east side of the creek will remain as is for use as a "Guest Cottage." The existing shared drive access will remain, however the drive will be realigned to move the parking and driveway closer to the road which improves the slope/access, reduces impervious area near the shoreline, and allows the old parking and driveway to be filled in with native vegetation and trees to improve stormwater management, erosion control, wildlife habitat, and visual screening of structures.

A new detached single-family principal dwelling and detached accessory structure garage are proposed to be located within the existing forest clearings. This allows us to preserve the pristine wooded area without disruption to trees, topography, and ground cover, maximize stormwater and erosion management, maximize visual screening of the structures with mature existing trees, and preserve wildlife habitat and the essential character of the property. Using the existing clearings also allows us to maximize access to winter passive solar which is essential for this planned near-zero energy passive house building and is otherwise challenging in such a dense conifer forest.

The proposed dwelling location has a naturally flat grade which allows for a simple slab-on-grade foundation with minimal disruption to existing drainage patterns while building up approximately two

feet to eliminate the risk of bedrock blasting with super-insulated piping being planned underground. See Detailed Sketch E Proposed Contour Plan and Sketch F Exterior Elevations.

House: The property is divided by a small creek running north-south that flows from a culvert under Congdon Blvd to the Lake Superior shore. It is located in a Shoreland Erosion Hazard Area. This particular property has a unique shoreline that is stable with exposed solid rock shield underlay running into the lake and dense mature vegetation abutting it with minimal signs of erosion. It is unlike the adjacent and nearby shore areas with large areas of unstable gravel beach and disturbed vegetation which are indeed sensitive to erosion.

The bedrock shore meets a dense existing grove of mostly mature spruce and pine with some birch trees. This wooded area has bedrock at or near the surface with limited soil cover. The forest is punctured by two existing large clearings. The property is also divided by an overhead powerline and utility easement running east-west. See the attached Detailed Sketch A Property Survey.

Given these existing constraints of the creek and overhead powerline, and the dimensions of the parcel relative to the road and shoreline, it is not possible to locate a new dwelling within the Buildable Area based on the setback requirements of the Ordinance. One can see in the attached Detailed Sketch B Existing Conditions Site Plan this tiny buildable area zone is in the overhead powerline easement area.

Since it is not practical or possible to construct a home in this area we kindly request a variance for a new dwelling building that is in harmony with the purposes and intent of the Ordinance, is consistent with the Comprehensive Plan, does not alter the essential character of the locality, nor cause harm to adjacent properties.

Garage: It is not feasible to locate an attached garage within this small buildable area to the south of the powerline, nor is it desired to increase impervious area, or alter the character of the forest by extending a driveway and parking to the new dwelling. Since the existing dwelling does not have a garage, we propose a new detached accessory garage structure 24 foot x 22 foot 1 story that occupies the existing clearing in the forest area to the north of the powerline.

This zone offers the most gentle drive grade possible on the property to access Congdon Blvd. The proposed size and orientation tucks the building behind existing trees for visual screening from the roadway and hides the overhead door from the roadway view to allow a more architecturally pleasing and quiet building form.

The existing grade would be raised up about 2 feet in the drive area to cover existing exposed bedrock and a minimal retaining wall would transition the grade to the existing conditions on the adjacent property without removing trees or altering the drainage patterns.

This proposed location requires the same 20 foot side yard setback variance and a variance for the roadway setback of 84 feet from the centerline of Congdon Blvd to the garage structure. This proposed roadway setback is more than the existing dwelling which is 77 feet and the adjacent neighboring structures roadway setbacks to the east.

A new detached single-family principal dwelling and detached accessory structure garage are proposed to be located within the existing forest clearings.

Using the existing clearings also allows us to maximize access to winter passive solar which is essential for this planned near-zero energy passive house building and is otherwise challenging in such a dense conifer forest.

Extensive new trees and native vegetation are planned: planting between the garage and overhead powerline, along the west property line and the proposed dwelling, and in the existing open lawn areas around the existing dwelling to provide the best visual screening and stormwater management, and blend the open landscape to the east of the creek with the forest landscape to the west.

The creek is protected with all proposed building far from this important wetland area.

Is the proposed variance a use that is allowed under the Zoning Ordinance?

Applicant states: Yes

Paul said that someone mentioned there they could cut down more trees and replant. They don't view it as a net outcome – take down a tree here and plant a tree there. Their goal is to disturb the site as little as possible.

Public Testimony

Beth read the emails and letters that had been received. There was no additional testimony.

From Joan and Robert Murray by mail: We support the variance application by our neighbors, Paul and Kristin Collings, and their request for a 20 ft side yard setback along their west property line and an 80 ft shoreline setback for their new detached garage and new single family home.

From Lee Cohen by email: Thank you for sending the variance application for Paul and Kristen Colling. I have reviewed it and the site in detail and would like to offer my support to their well thought out plan. The idea of a small house in the existing clearing with preservation of the maximum of forest, both between the house and the lake, and between the garage and the road will minimize run off and visual impact. I am the neighbor two houses toward Knife River and have a similar type of bedrock shoreline. My house was built in 1982 with a 75 ft. setback, as was the rule in Lake County at the time. With the house being small and the shoreline trees and vegetation left intact, there has been no significant erosion problem at the bank, even with these higher water levels. I, also, was granted a variance from Lake County to have the garage closer to the road centerline, but with a buffer of trees it is hardly visible from the road.

Thank you for considering my comments.

From K. Olson by email: They said that they would like their comments from the previous variance hearing for the property to be considered: In regard to variances in general, the ordinances are set and published when a property is purchased. One should be expected to plan according to the regulations. It is disappointing when owners are allowed to disregard these guidelines for their personal wishes.

In regard to 5956 North Shore Drive, I feel it is most important to retain the established setbacks from the shores of Lake Superior. In addition to pollution and erosion issues, we should maintain the scenic beauty of the

lakeshore. In the past, properties have been allowed to be built near the water but we can progress from these ideas and stop further encroachment. In reviewing the proposed plans, it seems there is ample property to build these structures within the legal setbacks and if not, the plans could be altered to adhere to the current regulations.

A second email received today from K. Olson: I still do not approve of any infringement on the lake setback. I question why the existing footprint could not be used for a new residence. If the existing dwelling requires extensive repair and renovation and it is allowed to stand, will it be repaired and maintained or left as is. The existing comment stands that rules are in place when land is purchased and should be expected to be followed.

End of public testimony.

Kris said that the existing house is 100 years old and they want to be able to use it for guest accommodations without having to have increase the size of their planned home for numerous bedrooms. They also value the history of the house and wish to maintain that.

Carly said that when the Collings looked at the property, a recent variance hearing for the property had indicated in the deliberations that the 55 ft shoreline setback that had been requested was not ok, but that an 80 to 85 ft setback might be feasible.

Liz made a motion that the variances be heard separately by structure. Wayne seconded. The motion passed unanimously.

Liz made a motion to approve the side yard setback and the road setback variances for the garage. Jerry seconded.

Liz moved to split the question to listen to each of the criteria for a variance. Larry seconded. The motion passed unanimously.

Liz made a motion that the proposal is in harmony with the general purposes and intent of the Ordinance because the design encourages preservation and protection of an area that is largely unsuited for development and the applicants have found a way to design it such that it is in harmony with what is spelled out in the Ordinance. Wayne seconded. The motion passed unanimously.

Larry made a motion that the proposal is consistent with the Comprehensive Plan because the plan for the garage is in the spirit of responsible design as outlined in the CLUP. Liz seconded. Wayne said that he felt that the variances were generally consistent with the CLUP, but he did not think they needed a variance to be consistent with the plan for the side yard setback. The motion passed unanimously.

Angela made a motion that the proposal uses the property in a reasonable manner not permitted by the zoning ordinance because it is a reasonable use that is not permitted. Jerry seconded.

Wayne said that to him, the garage is a reasonable use, but there is no reason it cannot be in compliance with the side yard setback. He would like to consider the two variances separately.

Carly said that looking at the topo lines, moving the garage directly east would change the grade by about 2.5 ft and cause the loss of at least 4 trees.

Larry asked what would happen if they pivoted the garage to be about 25 ft from side yard.

Carly said that they wanted to hide the garage doors from the road.

Angela moved to hear the two variance requests for the garage separately. Liz seconded. The motion passed unanimously.

Angela made a motion that the variance for the road setback for the garage be approved at 84 ft. Jerry seconded. The motion passed unanimously.

Angela made a motion that the side yard setback is not a reasonable use and be denied. Wayne seconded. Wayne said that he did not think a variance was necessary to situate the garage in that approximate location. Having 25 ft would also allow for more maneuvering. He said that he walked the property earlier in the afternoon and did not see a grade change that would prevent moving the garage 5 ft in from the property line. The motion passed unanimously. The variance for the side yard setback for the garage was denied.

Jerry made a motion that the circumstances are unique to the property and are not created by the property owner because if the shoreland setback and the road setback were met, and with the powerline running through the middle of the property, the area they can actually build on is limited. Liz seconded. The motion passed unanimously.

Liz made a motion that the variance for the road setback for the garage will not alter the essential character of the locality but will enhance it as the applicants have taken great consideration of the essential character of the locality and natural environment with their design. Larry seconded. The motion passed unanimously.

The main motion to approve the variance for the road setback for the garage was approved unanimously.

Jerry made a motion to approve the side yard setback and shoreline setback variances for the house. Liz seconded.

Angela moved to split the question to consider each of the criteria for a variance. Pam seconded. The motion passed unanimously.

Wayne made a motion to hear the two variance requests separately. Pam seconded. The motion passed unanimously.

Wayne moved that the variance for an 80 ft setback from the vegetation line / bluff is in harmony with the general purposes and intent of the Ordinance because, as discussed in the presentation, it is a ledge rock shore, with a gradual slope up to the proposed building site with virtually no signs of erosion. Liz seconded. The motion passed unanimously.

Liz made a motion that the variance for the shoreline setback for the house is consistent with the Comprehensive Plan because their proposed development respects the physical and natural limitations of the property. Larry seconded.

Discussion: Angela said that she was concerned with the Lake Superior setback – she is concerned about rising water levels. The properties just in Lake County show what encroachment on the Lake does to the shoreline. She would like to see the land owners sign something to hold harmless the Town and Commission in the event of flooding, erosion, etc. Liz agreed, saying that this could be a concern with climate change occurring. Wayne said that they could take out a few trees and move it north to be better situated to the water level of the lake, but in general, he thought the 80 ft setback from the lake was acceptable. Angela said that she did not think allowing the variance to build closer to the lake was consistent with the CLUP. She cited the CLUP, Chapter 4, Section B.3.G: “Sustain local control of land use policy and administration and build trust in the actions of local government through conscientious adherence to public comment processes, policy goals, and administrative procedures including uniform enforcement.” Also, Chapter 4, Section B.4: “Develop land with respect for the physical limitation of natural resources so that a quality environment can be enhanced and preserved.” Larry said he has been to the site and feels that 80 ft is adequate for this particular location. Jerry agreed. Liz said that because the shoreline is bedrock there, she supports the 80 ft setback. In addition, other issues could arise if the house was moved further from the lake, like being too close to the powerline. She thought they had picked a good location for the home and that it was consistent with the CLUP. Pam said that she agreed that the bedrock made it acceptable. She was worried about precedence, but Sue clarified that all variance requests are different, so precedence is not a concern.

The motion passed with Liz, Wayne, Jerry, Larry, and Pam in favor and Angela against.

Larry made a motion that the variance from the shoreline setback uses the property in a reasonable manner not permitted by the zoning ordinance because, given the site conditions and limited area where the building can be located, it should have minimal impact on the environment at that location. Jerry seconded.

The motion passed unanimously.

Angela made a motion that the circumstances are unique to the property and are not created by the property owner. Larry seconded.

The motion passed unanimously.

Larry made a motion that the variance for the lake shore setback for the house will not alter the essential character of the locality because, based on the design considerations presented, the house will enhance the area relative to the neighborhood and the site will provide access to passive solar. Liz seconded.

The motion passed unanimously.

Liz made a motion that the side yard setback for the house is in harmony with the general purposes and intent of the Ordinance because the chosen site will help eliminate the need for bedrock blasting and will preserve the natural beauty of the site. Pam seconded.

The motion passed unanimously.

Angela made a motion that the applicants have met their burden, showing that the side yard setback is consistent with the CLUP because they are doing everything possible to preserve the site and privacy. Larry seconded.

The motion passed unanimously.

Liz made a motion that the side yard setback for the house variance proposal uses the property in a reasonable manner not permitted by the Zoning Ordinance because they are going to great extents to preserve as much screening as possible between them and the neighboring property and it is a very reasonable site for that building. Angela seconded.

Wayne said that he was not convinced they needed the side yard variance, but they are making an effort to do some good things, so he will support it. Liz said that if they were to significantly change where the structure would be located to meet the side yard setback, they would have bedrock issue and would also encroach on the shoreline setback.

The motion passed unanimously.

Angela made a motion that the circumstances are unique to the property and are not created by the property owner. Larry seconded. He said that it would also require the least amount of fill to place the house there. The motion passed unanimously.

Angela made a motion that the applicants have shown that the variance for the lake shore setback for the house will not alter the essential character of the locality because solar access will be best there, they will not remove more trees than necessary and they will not encroach on the nature of the wooded parcel of land. Liz seconded. The motion passed unanimously.

Angela moved to have a condition that the property owners sign a hold harmless release in favor of the Township and members of the Commission. Liz seconded.

Jerry asked what the purpose would be for a hold harmless release. Angela said if someone is granted a variance and then has issues with the lake encroaching, it would prevent them from filing a lawsuit against the Town. It is in the best interest of the Town and the Commission. Jerry said that if the lake rises five feet, lots of people will have issues. Wayne said that he thought it would be short-sighted not to do it. Liz agreed. Angela said that if someone wants to do something different from what the Ordinance allows, it is not unreasonable.

The motion passed unanimously.

The main motion to approve the variance for the lake shore setback and side yard setback for the house, with the above condition, was approved with Liz, Wayne, Jerry, Larry and Pam in favor and Angela against.

Beth took a break to draft the findings and decision while Sue made a brief presentation to the Commission on the report that was prepared for the CLUP update process, Looking Back, Looking Forward: A Review of the 2002 Comprehensive Land Use Plan 2002-2018.

Director's Report

Sue said that she submitted the report for the current STAR grant. She has also submitted a STAR grant application to the Coastal Program for the last part of the CLUP update.

Concerns from the Audience

None.

The findings of fact and decision document for the Colling hearing was reviewed by the Commission and approved unanimously.

The meeting adjourned at 10:20.