

Mid Month Community Center Properties Meeting
July 15, 2013

Present: Mary Ann Sironen (Skipper), Don Sitter, Mary Anne Daniel

Also present: Phil Strom, George Sundstrom, Clerk Ann K. Cox, Don McTavish, Attorney Tim Strom, Planning Director Sue Lawson, and School Board Chair Mark Helmer

Pledge of Allegiance

Tim Strom: This is an official meeting we are taking minutes.

Skipper what we are here to do tonight is to check on status.

To Date:

- Phil Strom has submitted a variance application to Sue Lawson.
- Tim Strom submitted a document to the Town Board for changing the closing date
- Sue Lawson has called a special meeting August 6th for the planning commission to meet and discuss the variance request.

Tim Strom: gave a status update on where things stand so far

- We have to wait 15 days for appeal if the 15 days pass with no appeal request the documents stand as signed.
- July 29th closing date, we need to select another date for closing.
- An e-mail went out regarding a tabled motion.

Don Sitter: We have a town board meeting on the 8th two days following the planning meeting. If the planning commission denies the variance can we hear it on the 8th? The 23rd would be the appeal date.

Sue Lawson: if the planning commission denies the variance ultimately the Town will be talking to itself.

Don Sitter: we have a board meeting scheduled for the 29th.

Skipper: is there any intent of the board members to go to the August 6th Variance hearing? If not there is no need to post that meeting for the Town Board.

- Only Don Sitter will attend the Variance hearing, no need to post.

Phil Strom: the need of this variance application might help any anxiety or concerns you might have to be at the meeting. In the interest of transparency I could read the variance request to the Town Board.

Sue Lawson: The Town owns the property at the moment

Tim Strom: the actual owner of the title remains the Town of Duluth. ABC has a legal interest in it because they have signed a purchase agreement. It is my sense that the board wishes to see that variance signed. I don't see any problem if the board authorizes to have the chair sign on the variance as the owner of the property. I would not want to see the planning commission say that the Town of Duluth has not signed onto this permit.

Don Sitter: the way Phil has written it is indeed the way the board has talked about.

Sue Lawson: Phil those are really good things you've written down but it is important that criteria be addressed. The "Seeds of Hope Ranch" was an absolutely great program but we have to look at things from the lands perspective. Sue would like to add to Phil's document.

Phil Strom: there is a little bit of a problem in understanding because of the way the blank document is written.

Sue Lawson: we cannot grant a variance to anyone who does not own the property.

Phil Strom: then why am I filling this out?

Tim Strom: The reality of it is, this is a situation seen frequently in front of planning commissions I am buying the property if I don't get the variance I am not going to buy the property.

Sue Lawson: we have had this happen multiple times in the township.

Tim Strom: I assume this is appropriate and it shouldn't cause an issue before the planning commission.

Phil Strom: there are a number of things you cannot change on the document.

Don Sitter: can we list the Town and the ABC as owners?

Sue Lawson: Sure.

Dave Miller: I would like to deal with the tabled motion. It sets up a consequence that is important for the ABC Corporation and the Town so we don't have to go through this again.

- I move that ABC pursue a variance to resolve the lot coverage issue and if a variance cannot be obtained to the satisfaction of ABC and/or the Banks for obtaining a mortgage, then title will be transferred to ABC without restrictions.

Phil Strom: you can take the banks out of it.

Skipper: it is fine to have the motion but it would be nice to tweak it a little bit before we accept and have it entered into the official records.

Sue Lawson: Forms can be changed to fit the situation you have the property information down there.

Phil Strom: read his variance dialogue under the heading "Describe the use"

Don Sitter: one word "reversionary". We do not want reversionary we want to have the first right of refusal.

Tim Strom: I had also had that underlined.

Sue Lawson: I would amend the variance request to:

- Change Section 1 to reflect the Town as owner and School as purchaser.
- Correct legal description to one parcel.
- Correct percentage from approximate to exact "The current impervious surface of the 40 acre subject property is understood to be approximately 8.3%"
- Add the following under V: "Summary of Variance Request" The purpose of lot coverage restrictions is that (1) there are some constraints placed on the intensity of development on properties reflecting a desired condition for zoning districts and (2) to help manage the amount of impervious surfaces which, in turn, helps manage storm water runoff.

Although the general lot coverage limitation for MUNS-4 is 7% - 14%, there are many other zoning districts in the township which allow 25 – 50 lot coverage. The requested variance to allow for 30% impervious surfaces would still be less than the 25% - 505 lot coverage allowed in a number of other zoning districts. Additionally, the east 20 acres will remain in public hands and is to remain natural and undeveloped as long as the school is operating. This addresses and should lessen concerns about excessive lot coverage on the west 20 acres.

Finally, a school and community center by their very nature typically must have large buildings, structures, facilities, and parking spaces, which is not always well-suited with the "typical" lot coverage restrictions that apply to other kinds of uses. These factors considered together indicate that a lot coverage variance would be in harmony with the general purposes and intent of the zoning ordinance.

- Under "Criteria for a Variance" **(1.)** add the following:
Using the property as a school and community center is a **reasonable use and has been since the 1960's**. School and community centers need larger and more extensive facilities than most other types of uses.

The property is unique because it is the only school and community center in the township. As a school and community center, it needs large centralized buildings, large parking areas near those buildings, larger than normal access drives, outdoor recreational facilities, and other structures and facilities which are more extensive than what is necessary for other properties within the township. The property owner did not “create” that “plight” – instead, the need for larger facilities and structures (including parking areas) is inherent to the use.

Using the property as a school and community center is a reasonable use. Not only is it a reasonable use, the school and community center are an integral part of the Township providing opportunities for residents and students. Schools and community centers need larger and more extensive facilities than most other types of uses.

The property has been used as a school since 1961 and as a school/community center since 2002. Allowing some reasonable additional amount of lot coverage would not change the neighborhood’s character, and the ordinance recognizes lot coverage of 25% - 50% as being appropriate in other zoning districts.

(2) Add: The Comprehensive Plan (CLUP) states: “Duluth Township is very proud of its North Shore Community School which has been designated as a school of excellence” (p.7).

The CLUP, in its vision states “There is a strong level of participation in community activities and in the Township government”. And, it also states: “The Duluth Township Community Center is a vital community gathering place that includes the North Shore Elementary School, a small business incubation center, a day care center, recreational opportunities and community education classes.” (p.13) Further, the policies state: “The Township, will, with full community input, undertake the development of a community center”. (p 14)

The Town’s commitment to the CLUP’s vision continues to remain true and is demonstrated by the negotiations regarding the transfer of the Community Center to the Affiliated Building Corporation (ABC), concurrent with a “Joint Use Agreement”. The Town Board, citizens of the community, members of the school Board and the ABC Board have and continue to be involved in working toward a mutually beneficial transfer. Many parts of the vision have come to fruition: the School, recreational opportunities and community education.

Yes, it will continue to flourish as a community elementary school, providing recreational and education ancillary use to the citizens of the community.

(3). Add: The property has been used as a school since 196 and as a school/community center since 2002. Allowing some reasonable additional amount of lot coverage would not change the neighborhood’s character, and the ordinance recognizes lot coverage of 25-50 as being appropriate in other zoning districts.

- Section VIII. Proposed Structure of Modification to Existing Structure. Impervious Surface Lot Coverage % was corrected to read: Required by Zone District 14%. Actual: 16.65%.

You are requesting a variance of up to 36% and will need to add a stormwater study every time you increase your impervious surface.

Skipper: so does that language go into Phil’s document?

Don Sitter: what Sue is doing is anticipating the Commissions questions and answering them before they are asked.

Phil Strom: the problem is a lending problem.

Sue Lawson: no it is not.

Tim Strom: let me clarify, in zoning terminology your request needs to meet 5 requirements.

Phil Strom: agreed with Sue's amendments to his variance dialogue and requested an electronic version.

Sue Lawson: In section 8 please give us the calculations of what is already there, the existing calculations.

Don Sitter: the more specific numbers we can get will prove the homework has been done.

Phil Strom: discussion on the required sketch. With the corrections and additions both Sue and Don Sitter have made I will get this in order.

Sue Lawson: one of the concerns people will have is increasing of impervious surface. Our stormwater management plan is adequate to manage the runoff on that property. I would be thinking about the runoff that will increase and how it can be held on the site.

Don Sitter: I thought our plan required an engineered stormwater management plan?

Tim Strom: it would seem to me that a very persuasive argument is; what is allowed in other districts in the township. Most of the districts are other commercial areas (Clearwater Grill, Shorecrest etc.) which allow larger lot coverage. It is a commercial type of use in a residential zone. If we don't require stormwater management plans in the other zones why are we doing it here?

Phil Strom: we are not applying for a permit. We have no option but to deal with the stormwater issue when the time is right.

Sue Lawson: what happens with plans and what happens with stormwater is cumulative. You have to argue that you are going to increase it that much and that you will address the issue.

George Sundstrom: you are the chair of the planning commission, are you saying you will not issue a variance without a stormwater plan?

Sue Lawson: I am not on the planning commission, I do not have a vote, and I will not make a recommendation to the planning commission.

George Sundstrom: You would not argue against the variance?

Phil Strom: what Sue is saying is we need to be on record that we will do what we need to do and get a stormwater management plan.

Don Sitter: in the first paragraph you added that.

Sue Lawson: I am simply trying to give you something to think about in case the question comes up.

Phil Strom: if we were simply transferring to a 40 acre title the future of a stormwater management plan will be required. It is a little bit moot but I will put whatever I need to in to the variance request.

George Sundstrom: in the future will it be possible for the land owner to have it removed from the property?

Sue Lawson: we do not have the administrative process.

George Sundstrom: if someone wanted to clear the title without a variance could you take out the variance.

Tim Strom: The statute does not say anything about the right to undo something but it is an interesting question. It seems to me the courts would recognize the right to say I want to remove the variance from this property.

Skipper: Calling for a closing date 23rd of August?

Sue Lawson: if the board stays after the meeting on August 6th we could write it up.

Tim Strom: some time after September 1st.

Skipper: could we say our Board meeting September 12th?

Tim Strom: there are other documents such as the Johnson control contract which will need to be taken care of.

Mary Anne Daniel what about September 5th?

Skipper: The 12th if it can be done early so we can be out of here. Skipper read Tim's addendum in its entirety.

Mark Helmer: I'm not sure that this won't complicate our lease aid. We have requested our first payment in September I wonder if this won't complicate things.

Don Sitter I make a motion to authorize the town chair to sign the addendum and revision to the purchase agreement with the date of on or before September 12th, Mary Anne Daniel seconded. Motion passed.

Dave Miller I want to go through the rational why I am so insistent on this. If ABC couldn't get the mortgage the property would revert, the rest of the board didn't see it that way but it was ambiguous so we didn't do that. In previous discussions the property would revert back without a variance. I want the board on record either for or against if the property goes bust, I would like it absolutely clear that if this whole thing goes bust the entire property transfers. If the variance fails whatever happens after that it would be entire clear that we would give the whole thing to ABC. If we exhausted all of the what if's, at the last meeting Mary Anne and Don didn't want to deal with that. I want to be on record so we know who wants it to happen and who doesn't want it to happen. My motion indicates that yes we want a variance, we have not made a motion to that affect, so the first part of my motion is to pursue the variance the second part is if the whole thing goes bust it automatically turns over all the property to ABC. I want to know who of the Supervisors agree to this and who does not.

Dave Miller I move that ABC pursue a variance to resolve the lot coverage issue and if a variance cannot be obtained to the satisfaction of ABC for obtaining a mortgage then ABC would secure the whole 40 acres without the restrictions of a variance.

Skipper it makes me feel as if everything we have done so far is useless.

George Sundstrom: is there a second?

Skipper: no not so far.

George Sundstrom: if there is no second then it is done

Don Sitter: you said we have never stated on record that we want them to have a variance, we have done that by authorizing Skipper to sign the documents.

Dave Miller: we have had these misunderstandings in the past I want to see it clear as to what happens if everything goes bust, the consequence of all the variance process.

Mary Anne Daniel: we have also made it very clear that everyone on the board wants the school to succeed and to have that property I think that is a very important part.

Skipper there is always something that comes up and we address things as they come up.

Don Sitter: by not seconding your motion I do not want it viewed that we are not committing to something, we are transferring the property.

Skipper: we are all on the same page. I think we are going to get it done by the end of August.

Tim Strom: what is the final thing? Planning Commission on the 6th of August, Town Board meeting on the 8th of August, this is a great point in time to see what our calendars are saying.

Skipper: is this our final document.

Tim Strom: no a deed.

Skipper: the last piece of paper is the deed.

Tim Strom: I have to create a check list of what needs to be done to close. Assuming there are no hitches it seems the closing would be fairly simple. The school is satisfied they can get their lending.

George Sundstrom: is it proper or improper for two members of the town board to be present at the planning commission meeting?

Skipper: as the owner of the property do I have to go to the Planning commission meeting?

Tim Strom: Skipper has to have a motion to sign the variance application as the owner of the property. It is possible the commission might think of the one thing that the town board has not thought of which then gives the town board something new to think about.

Skipper: we have given our planning commission and our representative the authority to deal with this issue.

Don Sitter: can I advocate passing this variance request as a representative of the Town.

Tim Strom: you can advocate but be advised it might disqualify you. If you can sit there and say I am willing to listen to other ideas.

Sue Lawson: you are just signing the variance when it is done.

Tim Strom: what you are authorizing her to do is to authorize the concept we are not necessarily agreeing her to agree with every word on the variance.

Dave Miller made a motion to authorize the town board chair to sign off on the ABC variance on behalf of the Town, Don Sitter seconded. Motion passed.

Don Sitter I move to adjourn the meeting. Skipper seconded. Motion passed.