

Article III: General Provisions

Section 1 Application and Interpretation

- A. Permit required.** No structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered including the addition of basements and no land shall change in use until the Planning Director has approved and issued a land use permit.
- B. Dimensional Standards Set.** All development shall meet minimum standards for the relevant zoning district.
- 1. Double counting prohibited.** In each zone district each structure or use hereafter erected, altered or established, shall be provided with the yards and setbacks specified, and shall not exceed the percent of maximum total lot coverage or impervious surface coverage as specified in this Ordinance. No open space, lot, off-street parking, or loading space required for a building or structure shall be included as part of the lot, open space, off-street parking, or loading space for another building structure.
 - 2. Minimums required.** The minimum lot width, lot area, and setback requirements established herein shall be maintained for the placement of all structures and additions unless otherwise provided as specifically set forth in this ordinance. Greater lot area per unit may be required if necessary to provide for proper sewage disposal.
 - 3. Side-yard encroachment exception.** Any structure in any zone district may have an extended roof line which encroaches upon the minimum side and rear yard (shoreline) setbacks, provided such extension does not encroach more than 3 feet into the required setback and does not interfere with the adjacent property's solar access or create a drainage problem.
- C. Sewage Disposal.** All development shall meet sewage and wastewater standards provided in this ordinance.
- 1. Public sewer hookup required.** Structures that require sewage disposal facilities and are located on a lot serviced by public sewage facilities shall be required to connect to such facilities subject to the approval of the local unit of government operating the sewage collection/disposal system. No Land Use Permit shall be issued prior to such permit or approval.
 - 2. Approved sewage disposal required.** Any premises intended for human occupancy must be provided with an approved method of sewage disposal designed in accord with all regulations of the Minnesota Department of Health or the St. Louis County Department of Health, or as otherwise specified in this ordinance. No Land Use Permit shall be issued prior to such permit or approval.
- D. Permit Exceptions.**
1. Land Use Permits are not required for:
 - a. Local public utility distribution lines
 - b. Farming excluding livestock (see **Article VIII, Section 6, page 66** for livestock exemptions and permits).
 - c. Private Recreational trails (except for the Conditional Use review in Residential or Commercial District).
 - d. Forest management activities (except as required in the Shoreland Overlay (SLO) (see Article VI), and in Bluffs and Steep Slopes (see Article III)).
 - e. Lawn ornamentation.
 - f. Remodeling of existing structures.
 - g. Accessory structures of 100 square feet or less that meet all setbacks.
 - h. Satellite receiving antennas and apparatus of a diameter of 10 feet or less that meet all setbacks

Duluth Zoning Ordinance - Article III: General Provisions

- 2. Privy.** A sanitary permit but no land use permit is required for privies. Privies shall not be used for storage purposes and the setback standards shall conform to County Sanitary Regulations.

- E. Time Limit for Start of Construction.** Construction must commence upon issuance of a Land Use Permit according to the following standards.
- 1. Within 12 months.** Construction of a building or commencement of a use shall be substantially begun within twelve (12) months of the date a permit is issued, or the permit shall become void.
 - 2. Extensions.** Permit extensions may be granted by the Planning Director, if the proposal meets Ordinance requirements.
- F. Roadway Classification System.** Structure road setbacks are affected by the road classification system.
- 1. Available at Town Hall.** The road classification system applicable to this Ordinance is available for inspection in the Town of Duluth, Town Hall.
 - 2. Classifications may change.** Classifications of roads or sections of roads are subject to change from time to time as the result of changes in traffic patterns.
 - 3. Public hearing required for change.** Public hearings by the Planning Commission are required for new road construction that changes existing setback requirements or creates a setback requirement. No public hearing is required when the road classification change is the result of St. Louis County conforming to Minnesota Department of Transportation classification criteria.
 - 4. Effect of change on existing structure setbacks.** No variance for meeting setback criteria will be required for additions to structures that become nonconforming because of the change in road classification provided the addition goes no closer to the road than permitted under the original road classification.
- G. Social Service Dwellings.** Residences for government authorized social service programs with a maximum occupancy of 6 persons shall be considered as a single-family dwelling.
- H. Subdivision Standards and Requirements.** Any subdividing of land or creation of lots must meet the standards and procedures of St. Louis County and the Town of Duluth.
- 1. Violation bars issuance of permit.** No Land Use Permit shall be issued to establish a use on any lot that has been divided or transferred in violation of the Subdivision Regulations of St. Louis County, or when the Planning Director determines such violation exists.
 - 2. When a subdivision plat is required.** A person shall apply for subdivision plat approval when:
 - a.** Whenever more than one (1) lot per year, less than five (5) acres in size, per forty (40) acres or government lot, is created along a public road.
 - b.** Whenever more than one (1) lot per year, less than five (5) acres in size, per forty (40) acres or government lot, is created in an area that is water access only. Water access only parcels are those parcels that have no provisions for road access through an easement or other similar agreement, and there is no road that could feasibly provide access to the parcel within two (2) miles of the parcel.
 - c.** Any land division requiring a new road. A road is defined as any way that serves more than two (2) parcels per forty acres or government lot. A road shall also be considered to exist if more than two (2) forty- acre (40ac) parcels or government lots are divided into two (2) parcels per forty (40) acres and served by the same road.
 - d.** Re-subdivision of a previously approved subdivision.
 - 3. Subdivision Plat Exceptions.** The following actions do not require applying for subdivision plat approval.
 - a.** Transfers of interest in land by will or pursuant to court order.
 - b.** The creation of one (1) lot per twelve (12) month period along a publicly maintained road, not to exceed three lots per forty acres or government lot from the original parcel, in a ten (10) year period. All lots created in this manner must either be two-and-one-half (2½) acres or larger or meet the requirements of the Zoning Ordinance, whichever is more restrictive.

Duluth Zoning Ordinance - Article III: General Provisions

- c.** The creation of two (2) lots along a private driveway per forty acres or government lot not to exceed four (4) lots created in this manner along a single driveway. All lots created in

this manner must be 2 1/2 acres in area or meet the requirements of the Zoning Ordinance, whichever standard is more restrictive.

- d. The creation of lots of five (5) acres or more with a minimum lot width of 300 feet provided all lots created conform to the Zoning and Sanitary Ordinances and all such lots are along an improved publicly maintained road or are a water access lot.
4. **Certificate of Survey completed.** A Certificate of Survey Subdivision is completed for the property.

I. Subdivision Approval Process. The following is the designated Subdivision Approval process.

1. **Planning Commission review.** The Planning Commission shall review any proposed subdivisions as directed in St. Louis County Ordinance Number 33, Article III, Section 5 or amendments made thereto, as follows:
 - a. Prior to submission of the Concept Plan the developer shall discuss with the Planning Commission the zoning requirements for the area contemplated for development. The developer shall identify the zoning requirements in the Concept Plan, at the time when application for Concept Plan approval is made.
 - b. After review of the Concept Plan by the County, the developer shall apply for approval from the Town Planning Commission. This approval shall be considered preliminary Town approval.
 - c. No application to the County for preliminary plat approval shall be accepted unless Town Planning Commission approval has been given. All applications to the County shall include a statement from the Town demonstrating Town Planning Commission approval. The application shall reflect any conditions of Town approval.
 - d. The County Planning Commission, in reviewing the preliminary plat, shall consider Town conditions of approval and the requirements stated in these resolutions. If County Planning Commission preliminary approval differs from Town Planning Commission approval, the Town Planning Commission may either accept the County recommendations or request a conference with the County Planning Commission to compromise the differing requirements.
 - e. Upon reaching an agreement on preliminary approval, the Town Planning Commission shall consider final plat approval.
 - f. The developer may submit application for final plat approval to the County in accordance with these regulations after Town Planning Commission final approval has been given.
 - g. The chairperson of the Town Planning Commission shall sign the plat for recording.
2. **Community participation and review required.** Review of the Concept Plan by the Town will be conducted as outlined in **Article IX, Section 2, page 75**, Community Participation Plan and Community Participation Review. The review will be conducted in a timely manner as specified in St. Louis County Subdivision Ordinance Number 33.

J. Alternative Subdivision Design Encouraged. The Town of Duluth encourages some alternative subdivision designs.

1. **Traditional process.** The traditional subdivision process outlined in St. Louis County Subdivision Ordinance Number 33 is an acceptable process for subdividing parcels.
2. **Alternative designs.** The Town of Duluth prefers that the process outlined in this ordinance, **Article XII, page 95**, "Planned Unit Developments", be followed, except for the open space requirement found in **Article XII Section 14, page 101**. The Town of Duluth, at its discretion, may offer incentives for pursuing conservation design principles. The Town encourages conservation subdivision consistent with the following principles:
 - a. Lot sizes may be reduced as long as density is not increased in the subdivision, the subdivision is designed in manner consistent with preserving privacy and rural character, and all required setbacks are met.
 - b. All impervious surface requirements must be met.

Duluth Zoning Ordinance - Article III: General Provisions

- c. Lot layout and arrangement will take into consideration the requirement that sewage treatment systems will be clustered whenever feasible and meet the requirements established by St. Louis County.

- d. Lot layout and arrangement is based on the ability of the natural resource systems to sustain the development.

K. Land Transfer Requirements. The Town of Duluth requires that land transfers meet the following standards.

1. **Conformity with ordinance required.** No lot shall be created that does not meet the requirements of this Ordinance; transfers to adjoining parcels of nonconforming parcels are allowed provided such a transfer does not adversely affect the conformity of the remaining lot as it relates to zoning and sanitary standards.
2. **Land-locked lots prohibited.** No lot shall be created or transferred that will then become land locked. Access must be provided for each lot transferred.

Section 2 Environmental Review

- A. Planning Commission Authority.** The Planning Commission shall act upon all environmental review petitions, worksheets and impact statements that involve conditional uses, subdivision plats, or other development proposals.
- B. Applicant Responsible.** It shall be the responsibility of the applicant to supply all required information and to pay all fees.
- C. Information Requirements.** The Planning Commission, on any development proposal, may require the applicant to provide information regarding the environmental effects of a proposal either through a discretionary EAW or as part of the permit review process.
- D. EAW and EIS Review.** The Planning Director shall review all *Environmental Assessment Worksheets (EAW)* and *Environmental Impact Statements (EIS)* for accuracy and completeness. Upon certification, the Planning Director may submit the report to the appropriate review agencies in accordance with State regulations.
- E. Public Comment.** The Planning Director may refer the issue of accuracy and completeness to the Planning Commission who shall hold a public hearing on the draft environmental review.
- F. Public Hearing.** It shall be the responsibility of the Planning Commission after holding a public hearing to make the final declaration regarding the environmental review.

Section 3 Steep Slopes

- A. Erosion Control Plan Requirement.** In bluff and steep slope areas the Planning Director may require that the applicant for any land use permit, submit information on how erosion will be prevented and existing vegetation preserved to screen the structure as well as prevent erosion.
- B. Accessory Structures.** Selective vegetation removal shall be allowed to accommodate the placement of accessory structures.
- C. Intensive Vegetative Clearing.**

In no case shall intensive vegetative clearing be allowed on bluffs and steep slopes.

 1. The removal of natural vegetation is limited to the removal of dead, diseased, dangerous, and storm or fire damaged trees, shrubs, and plants and the trimming and pruning of trees, shrubs and plants.

Duluth Zoning Ordinance - Article III: General Provisions

2. No more than twenty-five percent (25%) of trees greater than two (2) inches in diameter (measured at four and one-half (4.5) feet above ground) may be removed at one time.
3. Removal of trees, shrubs and plants shall not be done by heavy equipment.
4. Removal in excess of twenty-five percent (25%) of existing vegetation is allowed if:

- a. It is replaced with trees, shrubs and plants that have similar erosion preventive and screening value than previously existed, or
- b. It is for the purposes of forest management activities associated with timber management practices such as thinning.

- D. Site Suitability Requirements.** No building intended for human use or occupancy shall be erected, structurally altered, or relocated on land that is:
- 1. Not adequately drained at all times, which is due to adverse soil conditions, steep slopes, shallow impermeable bedrock, or periodic flooding, or
 - 2. Where the lowest floor level is less than three (3) feet above the highest water level or less than one (1) foot above the one hundred (100) year storm wave run-up elevation on Lake Superior as determined by a licensed engineer. Steep Slopes Defined. No land disturbing or development activities shall be permitted on slopes of eighteen percent (18%) or more.
- E. Soil Disturbing Thresholds.** A land use permit is not required for soil disturbing activities that are directly associated with structure placement, structure alterations, Individual Sewage Treatment System (ISTS) placement or minor road and driveway maintenance, if less than ten (10) cubic yards. Soil disturbance for other activities effecting ten (10) to fifty (50) cubic yards requires a Land Use Permit. Soil disturbance effecting greater than fifty (50) yards requires a Conditional Use Permit.
- F. Bluff and Steep Slope Alterations.** Stairways, lifts, and landings are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas.

Section 4 Soil Erosion Control and Storm Water Management

- A. Grading Limitations.** No slope may be graded greater than the angle of repose for saturated soil conditions, unless the soil material on such slope is retained by some adequate erosion controlling structure or other stabilizing measures including, but not limited to, drains, rip rap, sod, walls.
- B. Controlling Stormwater Runoff during Construction.** The following applies to construction activities that result in runoff leaving the site.
- 1. **NPDES Permit.** Phase II requirements of the National Pollution Discharge Elimination Standards (NPDES), administered by the Minnesota Pollution Control Agency (MPCA), must be met where applicable.
 - 2. **Minimize bare soil.** All activities on the site shall be conducted with diligent effort to minimize the area of bare soil exposed at any one time.
 - 3. **Runoff control measures.** Runoff from the entire disturbed area on the site shall be controlled by meeting either Subsections a. and b., or a. and c. below.
 - a. All disturbed ground left inactive for seven (7) or more days shall be stabilized by temporary seeding or mulching until permanent protection can be established. Seed mixtures and mulch should be free of invasive weeds.
 - b. Disturbed areas should be permanently vegetated within seven (7) days after completion of building or site preparation.
 - c. One or more temporary or permanent sedimentation basins shall be constructed for sites with more than two (2) acres disturbed at one time, or if a channel originates or exists in the disturbed area. Each sedimentation basin shall have a surface area of at least one (1) percent of the area draining to the basin and at least three (3) (3) feet of depth and be constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three (3) feet. The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or receiving water.

Duluth Zoning Ordinance - Article III: General Provisions

- d. For sites with less than two (2) acres disturbed at one time, silt fencing, mulching and rock check dams, or equivalent control measures shall be placed along all side slopes and down slopes of the site. When a channel or area of concentrated runoff passes through the site, silt fencing shall be placed along the channel edges to reduce sediment entering the channel. The use of silt fences, mulching and rock check dams, or equivalent control measures must include a maintenance and inspection schedule.

- e. Any soil or dirt storage piles containing more than ten (10) cubic yards of material should not be located with a down-slope drainage length of less than twenty-five (25) feet from the toe of the pile to a roadway or drainage channel having a defined bottom. If remaining for more than seven (7) days, storage piles shall be stabilized by placing silt fence barriers around the pile. In-street utility repair or construction soil or dirt storage piles located closer than twenty-five (25) feet of a roadway or drainage channel must be covered with tarps or other suitable controls when exposed for more than seven (7) days. Storm drain inlets shall also be protected with straw bales or other appropriate controls.

- C. Post-Construction Stormwater Management Plan.** The Town of Duluth has identified the following minimum standards for a Storm Water Management Plan when required for meeting the provisions of this ordinance or as requested by the Planning Director. The plan must identify how the development will accomplish all of the following:
1. Be able to attenuate/retain/detain runoff from a 1-year 24-hour storm event for 24 hours. For new construction, the plan should include design practices to retain soil particles greater than 5 microns on the site, assuming no sediment re-suspension.
 2. Be able to reduce peak runoff rate for storms up to and including a 10-year event to that of a 2-year event.
 3. Where frequent downstream flooding occurs, the plan should identify the means by which the development will reduce peak runoff rate of storms larger than a 10-year event up to and including a 100-year event, to 90% of the "pre-development" peak runoff rate.
 4. For commercial or industrial development, the plan should identify how the first half (0.5) inch of runoff will be treated to remove oil and grease. The plan should identify the best oil and grease removal technology available. The Planning Director may waive the requirement to control for oil and grease if the applicant demonstrates, in writing, that installation of such practices is not necessary.

Section 5 Screening – When Required as a Condition and Suggested as a Guideline

- A. Screening Defined.** Screening may consist of walls, fences, landforms or natural or planted landscape materials, and shall effectively screen the use or structure from roads or adjacent residential parcels.
- B. Requirements.** Screening must be on the same parcel as the structure or use being screened. It is the responsibility of the owner to maintain the screening. The order of preference for screening is as follows:
1. Maintaining existing vegetation and using natural topography
 2. Planting native vegetation that is a minimum of four (4) feet high at the time of planting, and is planted and maintained in accordance with accepted silvicultural practices.
 3. Construction of a berm, which must be seeded and cannot have side slopes exceeding a two-to-one (2:1) ratio. The planting of vegetation shall meet the technical standards of the Soil and Water Conservation District.
 4. Construction of a solid wood fence
 5. Construction of a chain link fence

Duluth Zoning Ordinance - Article III: General Provisions

Section 6 Wetlands

- A. Federal and State Requirements.** All development shall conform to Federal and State Wetland regulations and it shall be the responsibility of the applicant to demonstrate conformance with the appropriate regulations.

- B. Delineations.** The Planning Director will work with St. Louis County to determine if wetlands are involved.
- C. County Approvals.** Approval of Land Use Permits is contingent upon County approval of any required wetland permit.
- D. No Net Loss.** The goal for the Town of Duluth is to have no net loss of wetlands.
- E. Development Requirements.** Applicants proposing development shall demonstrate a sequencing process as follows in descending order of priority:
 1. Avoid direct or indirect activities that will increase stormwater runoff and erosion or the draining or filling of wetlands.
 2. Minimize those impacts by limiting the degree or magnitude of the activity.
 3. Reduce those impacts through sound erosion and stormwater control measures and by restoring or replacing wetland losses.

Section 7 Significant Historical Sites

- A. Cemeteries.** No structure or use may be established within 50 feet of a platted or unplatted cemetery unless approved by the State Archaeologist.
- B. Significant Historic Site.** No structure or use may be placed on a significant historic site (defined by the Minnesota State Historic Preservation Office) that affects the values of the site unless adequate information about the site has been removed and documented and the Planning Commission approves such removal. (Minnesota Statutes, Section 307.08)

Section 8 Placement and Design of Roads and Driveways

- A. Public Access Required.** Each lot where a structure is to be erected, altered in its exterior dimensions, or moved, shall have frontage on and access to an improved public road, except as follows:
 1. Lots to be used for a seasonal or recreational cabin may have alternate means of access, which shall be either by a private drive, easement of record, permission to cross, or public water. A variance is required.
- B. Public Access Variance Requirements.** Construction of year-round occupied homes without public access must meet the following criteria and obtain a variance:
 1. **Proof of permanent access required.** The lot owner shall present to the Planning Director proof of permanent access to the property from an improved public road, except for year round homes with water access only.
 2. **Requirements of lot owner.** The lot owner shall sign before a notary public and record with the Recorder, an affidavit, agreeing to the following:
 - a. The lot owner shall agree to maintain a private access to the lot, within the easement, at his or her own expense, that allows the reasonable access of emergency vehicles.
 - b. The lot owner will not demand public road maintenance.
 - c. School bus service shall be made solely at the discretion of the local school district.

Duluth Zoning Ordinance - Article III: General Provisions

- 3. **Must comply with all other provisions.** The lot owner will comply with all other County and Township official controls including subdivision, zoning, sanitary, and rural addressing ordinance.
- 4. **Division of more than two (2) parcels.** For division of property containing more than two (2) parcels per forty (40) acres not having frontage on and access to an improved public road, see Subdivision Regulations in **Article III, Section 1-H, page 38.**
- C. Screening Encouraged.** Visual screening is encouraged along public or private roads, driveways, and parking areas and screening should be designed to take advantage of natural vegetation to achieve maximum screening.

- D. Line of Sight Screening.** Visual screening is also encouraged by slight bending of roads and driveways
- E. Minimize Width.** Driveway and road widths shall be minimized, consistent with safety and engineering road design recommendations.
- F. Rural Driveways.** In land use districts **MUNS-4, FAM-1, FAM-2, and FAM-3**, new driveways off of public roads, when feasible, shall not be located closer than 300 feet to another driveway and, if possible, shared with existing or newly constructed driveways if necessary to meet this standard.
- G. Driveways per Parcel.** For each parcel served by a public road, there will be only one (1) twenty (20) to thirty-two (32) foot wide driveway entrance unless permission is given by the appropriate authority. Additional driveways require a variance. In no case shall a driveway entrance be permitted to be within one-hundred (100) feet of the right of way line of any intersecting road. All access points shall meet the site visibility requirements of the roadway authority. The road authority shall approve all entrances onto collector or arterial highways. The applicant shall, if possible, make use of common access points to any road.
- H. Minimize Stormwater Runoff.** Roads and driveways will be designed and constructed to minimize erosion and runoff and will meet the following guidelines whenever possible:
1. Roads and driveways will be located above the high water mark of streams, lakes, wetlands, and seasonal ponds.
 2. Roads and driveways will not be located on unstable slopes (slopes subject to creep or slumping).
 3. Roads and driveways will not be constructed on slopes greater than 10%. On highly erodible soils, maximum grades of 5% will not be exceeded.
 4. Down-road flow and ponding will be minimized by constructing roads with a slight grade of 1 to 2% and with ditches or swales where practical.
- I. Road and Driveway Construction Standards.** Construction of roads and driveways will meet the following standards:
1. Install drainage structures as construction proceeds.
 2. Provide adequate drainage for road grades during construction to minimize erosion of unconsolidated materials.
 3. Provide temporary cross-drainage structures (such as water bars) during construction.
 4. Install siltation barriers such as silt fences and straw bales during construction in sites where roads and water have close contact for long periods, consistent with **Section 4 in this Article, page 41**.
 5. Stabilize bare soil areas to reduce erosion, consistent with **Section 4 in this Article, page 41**.