

**Town of Duluth
Planning Commission
Approved Meeting Minutes
2/25/10**

The meeting was called to order at 7 p.m.

Roll call: **Present:** Seth Levanen, Barb Crow, Michael Kahl, Jan Green, Yvonne Rutford and Bill Lannon; **Absent:** Dave Chura

Also present: Sue Lawson, Planning Director; John Kessler, Assistant Planning Director; and Dave Mount, Town Board representative

The Agenda for the evening was approved with no changes.

The minutes for the January 28th meeting were reviewed and approved with no changes.

Public Hearing

Jason Zimmerman and Amie DeHarpporte are applying for a Conditional Use Permit (CUP) to build a subordinate residence above their garage. They were unable to attend the hearing because of an illness in the family. (See attached CUP application and Community Participation Report.)

Sue Lawson explained the process for conducting the hearing. She will explain the criteria and zoning requirements, present the request and the Community Participation Report. The Commission can then ask questions, and then public testimony. The Commission then deliberates and makes a decision, or postpones the decision if necessary.

Subordinate Residential Dwellings are addressed in the August 10, 2007 amendment to the Zoning Ordinance. They are defined as a secondary residential structure to accommodate immediate family members in cases where the primary living structure can no longer house all family members, or where grandparents may be housed.

In the Zoning District Land Use Matrix, Subordinate Residential Dwellings are designated as a conditional use in all zoning districts except LIU-3A where the use is not permitted.

The requirements and conditions for Subordinate Residential Dwellings (also from the August 10, 2007 Amendment to the Ordinance) are:

- A. One separate subordinate residential dwelling may be allowed to serve only members of the immediate family, including grandparents, on the same parcel.
- B. The separate structure must meet setback requirements, as well as other applicable ordinance provisions for the zone in which it will be located. Non-conformity ordinance provisions must be observed.
- C. Written approval for additional wastewater disposal adequacy must be presented from either the St. Louis County Health Department or the Duluth North Shore Sanitary District (D/NSSD), depending upon the zone and which agency has jurisdiction. If separate on-land disposal or separate grinder pump installation becomes necessary, proof of the completion of the implementation must be provided.
- D. A separate kitchen and bath is allowed as part of the subordinate residential dwelling, subject to item C above.
- E. A conditional use granted for the purpose above will be specific to the applicant's family only; it is not transferable. When this permitted use is discontinued, any future use of the building, structure or property to which the permit pertained shall conform to Article IV, Nonconformities. Future use of the structure as a residence, including rental, is not permitted except as specifically allowed under other portions of this Ordinance.

When making its decision, the Commission must follow the criteria set in the Ordinance in Article IX, Section 7:

- A. Approval standards.** At a minimum, a conditional use permit may be approved only upon a showing by the applicant that the standards and criteria stated in this section will be satisfied. Since by definition a conditional use is a special use not generally appropriate within the zone district, the applicant bears the burden of demonstrating a right to the permit. Absent such showing, the Planning Commission shall deny any application.
- B. Necessary findings.** A conditional use permit may be granted only upon finding all of the following:
1. That the proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance.
 2. The use is compatible with the existing neighborhood.
 3. The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district.
 4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.
 5. The proposed use will comply with the Wetlands requirements in **Article III, Section 6, page 43**, of this ordinance.
 6. The total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional use would occur.
 7. The topography, vegetation and soil conditions are adequate to accommodate the proposed use.
 8. The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures.
 9. Adequate utilities (water supply, wastewater treatment), access, drainage, storm water retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance.
 10. The proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems.
 11. The location of the site is appropriate with respect to existing or future access roads.
 12. The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, which would be affected by the proposed use, and the adequacy of existing services to meet the increased demand can be met.

The zone district encompassing the Zimmerman/DeHarpporte property is MUNS-4. For this zone district, the requirements are as follow: minimum lot area: 4.5 acres, minimum lot width: 300 ft, maximum lot coverage: 7%, minimum road setback: 100 ft, minimum side yard setback: 50 ft, minimum rear yard setback: 50 ft, and maximum structure height: 35 ft.

Sue then displayed a map of the overall area and of the site map.

Jan Green read the Community Participation Report to the Commission. There were three neighbors within the ¼ mile area of impact that was previously set by the Commission. The applicant contacted all three, but only one responded. The responding neighbor supported their proposed project.

The Commission reviewed the CUP application and had no comments or questions. They noted that it was very complete.

Public Testimony

Gary Berggren lives adjacent to the property. He and his wife have talked with the applicants and are impressed with all they have done. Gary said that they are concerned about their footprint on the

property and have put in a geothermal heating system. He also noted that the subordinate dwelling they have proposed conforms to the requirements as set in the Ordinance.

He and his wife sold the property to Mr. Zimmerman and Ms. DeHarpporte. It is 10 acres and cannot be subdivided. They used Scenic Title for the closing, but since then, Scenic Title has closed, so the title has not transferred yet. They have talked to the State and the County and everyone assures them that the title will be transferred, it is just a slower process. He said that not knowing what Scenic Title had done, he paid the taxes on the property and subsequently got a letter from St Louis County that the taxes had been paid twice, so he knows they at least received that payment from Scenic Title. He believes that the State of MN Department of Commerce has taken over from the title company.

Public testimony closed.

Discussion

Jan made a motion to approve the Conditional Use Permit based on the following:

It meets all of the dimensional requirements as set out in the Ordinance and it meets all the necessary findings in Article IX, Section 7 of the Ordinance.

Barb Crow seconded the motion. The motion was unanimously approved and the Public Hearing was closed.

The letter approving the Conditional Use Permit with the Findings of Fact (see attached) was written, read to the Commission and then approved by the Commission.

Next on the agenda was the approval of the **Stoney Point Final Plat**.

Sue provided some background on the project. The Town approved the preliminary plat for the development in April 2008. It then went to the St. Louis County Planning Commission and they approved it on December 10, 2009. Sue read this letter from the County (see attached). In addition, the Commission has a letter from Odyssey responding to the conditions put on the preliminary plat approval by the County. Sue read from that letter (see attached). At this point any additional conditions the Township would like to add would be attached before the Commission gave its final approval. A motion was made to approve the final Plat and it passed unanimously.

Senior Housing in Duluth Township

Odyssey Development has become aware that the Township has been exploring options for providing senior housing within the Township. Odyssey is potentially interested in this kind of development and was interested in discussing options with the Commission and Township residents. Greg Schendel from Odyssey was present, as were community members from the Rural North Shore Senior Housing Initiative Steering Committee.

Greg Schendel started by saying that he had gotten together with Don and Janet McTavish to review what the Senior Housing group had found. The group studied the question for at least five years and provided Greg with their May 2007 report as well as minutes from their June 2, 2008 meeting (see attached).

Don McTavish said that most of the members of the Senior Housing group were present. Since giving the Board their report, they have been in a holding pattern, waiting for a developer to show interest or for a change in economy.

Janet McTavish said that they were able to identify every senior who had lived in the Township in the last 10 years and had left because they needed more support. They tracked where these individuals had gone and most of them went to assisted living apartments. They also identified people who in the following two years might need additional support services. She said that residents from our Township alone could easily support 12 to 16 senior housing units. They also got an inquiry from Lakewood Township wanting to be included as well. They looked for land but didn't find anything. She said that the Township can get tax forfeited land for free, but the county can supersede state law and not give it to the Township. Janet said that they got that far, but had no money and the market was bad, so they were unable to pursue it further. They were delighted when Odyssey approached them. There is a great need for this in the Township if we can find a way to do it.

Greg said that when he looked at the Township Zoning Ordinance he could not really identify a zoning district in the Township that would support this type of housing. If Odyssey were to do a senior housing project, they would partner with a company called Golden Oaks. Golden Oaks has one senior housing facility in Hermantown and one in Proctor. The model they are considering is a single story building that houses approximately 20 to 30 residents. Independent living and assisted living would be in the same building, but in separate areas of the building. Complete services would be provided -- 24 hour staff, meals, medications, assistance with clothing, bathing, etc.

Sue asked how many units they would need to make a project like this viable. Greg said that they thought they would need 10 independent living units and 20 assisted living units. The assisted living units would probably be single rooms and the independent living units would be one or two bedroom units.

There was a discussion about how much land would be necessary under the current Ordinance for a residence like this. Greg said that the two areas recommended in the Senior Housing Report were near the shore at the end of Homestead Road, and near the North Shore Community School. If they were to locate it near the school, 4.5 acres would be required per living unit. 4.5 acres times 30 units would be 120 plus acres and would not be feasible. He noted that it was hard to find an appropriate property that was not too expensive. 15 to 20 acre parcels are typically the size parcel that is available and reasonable. Also, depending on where they located, the facility would either have to build a septic system or be serviced by the DNSSD sewer line below Highway 61. Tying into the sewer line would not necessarily be cheaper than septic. A residential connection costs \$40,000 to \$45,000 per unit. There are also yearly and monthly fees.

A discussion of zoning options followed. Most of the zone districts do not allow multi-family residences. If it were considered a planned unit development (PUD), the base residential density is based on the density allowed in the zoning district in which the proposed PUD lies. There is no density increase bonus for a PUD in SMU-6, the zone along the shore. If a density increase bonus is an option for a zone district, the extent of the increase is at the discretion of the Commission, but cannot exceed 50% of the base residential density.

If a location was identified, rezoning might be an option. A request for rezoning can be made by the Town Board, the Planning Commission, or by a landowner. At least 50% of the landowners have to be in favor of rezoning an area for the request to be heard. The Planning Commission conducts the hearing before the Town Board. It could be a relatively quick process. Jan Green asked if an appropriate zone district for this kind of use even exists in the Township. Sue said that currently there is not a use in the Ordinance that would cover this kind of development. If a use is not covered, the Commission can define the use and decide where it should be allowed. A "Senior Housing" use could be defined.

Janet McTavish pointed out that the Township's Land Use Plan directs the Township to increase variety in housing to serve the various housing needs of the community.

At one time there was a preliminary proposal for an independent senior living development in the works, but there was concern at the time regarding the affordability of the proposed units. Janet McTavish said that Phil Strom was the one who was hoping to build that. It was more of a townhouse approach, not necessarily what the Senior Housing group was looking at. He gave up the project because the DNR would not approve a pond that he felt was important to the project.

She said that the project Greg outlined is much more in line with what they had in mind. People could stay here for the rest of their lives. She said that seniors don't want to leave and often try to stay in their homes way beyond what they can manage.

Greg said that the model of mixing independent living units with assisted living units helps with the overall financials. A 1,000 sq ft apartment, built at a cost of \$100 to \$150 per sq ft, can quickly become unaffordable. The assisted living side can help carry the independent living side. They want the location to make sense and they, too, thought the areas by the shore and by the school made the most sense for the community.

Sue suggested the possibility of TDRs – transfer of development rights – to increase a parcel's density allowance.

John Kessler said that he thought that there was a contract with WLSSD that only allows so much growth on the sewer line per year. Greg said that there is a contract and it allows for a maximum 2% growth rate per year. Any unused portion of that 2% cannot be banked and is lost if it is not used. However, he said that DNSSD has less than one third of the connections that they planned for so they could be amenable to more growth.

Greg said that data from the MN Department of Health and Human Services show that there are 97 assisted living facilities in St Louis County, 8 in Lake County and 1 in Cook. 50% of the facilities in St Louis County are in the Duluth vicinity. 90% of assisted living is paid for by the government and the government does not pay for private rooms.

Janet McTavish said that there were several parcels around the school that people might be willing to sell. She said that the combination of the school and senior living could result in a lot of positive interaction.

There was a discussion about situating senior housing on the same piece of property that the NSCS sits on. Sue said that in about two years the Township will have clear title to that land. However, about 50% of the land is already committed and there are extensive nature trails on the property that support the school's curriculum. Land adjacent to the school could be purchased. Sue said that the rights of development for the school property could possibly be transferred to adjacent property, decreasing the acreage needed. Dave Mount said that although the Town owns the property, the ability to own it depends on the client, which is NSCS. The Township has to have a tenant for the facility or they cannot afford it. Off the top of his head, he agrees with Sue and would envision some use of the green space at the school as a way to deal with the density problem. There would be a great deal of resistance to building on the forested portion of the property. Sue said that because the school is an environmental school, they need the additional property.

Being on a paved road would be a plus. Traffic and access are a big concern, especially regarding emergency response time.

Gary Berggren said the State encourages about 20 acres for an elementary school. When he was a principal, he would have relished the opportunity to have a facility like this near the school. Helen Hendrickson said that in the past, when there was a program bringing senior citizens together with the students at the school it was a very happy, thriving situation.

Barb Crow pointed out that the school operates only certain hours while a home would operate 24 hours a day. She thinks the increased operating hours would increase the amount of space needed as a buffer from adjacent properties. She asked Greg if Odyssey would you look at expanding a facility on the same parcel of land if the need were to increase.

Greg said that Golden Oaks has determined that 30 units is a size that works economically and for staffing. Given the area, he thinks that size would be about right. But the need for independent living units could increase and they could consider future expansion for that in the plan. The building, as envisioned now, would be a large building already -- 15 to 20,000 sq ft.

An audience member commented that if the project were done the way Odyssey and Golden Oaks envision, with smaller units and a limited population, it would be easy to duplicate in different places in the Township if the need arose. It is a style that would fit in well.

Janet McTavish said that there is a model cooperative housing uses where the land is owned in trust, and individuals buy into the units. The land remains owned by other entity.

It was asked if the Township owned the land, would Odyssey need to buy it or could it be leased in perpetuity?

Greg suggested that the Township consider the worst case questions –if it were not an assisted living facility in 5 years, what would you do then?

Dave Mount suggested that people consider the kind of project Greg described, decide how well it aligns with the community's desires and then figure out the mechanics to make it work. Much would be up to the Planning Commission. They would have to determine that the use is consistent with a zone, and then grapple with density issues. They may want to adopt a different philosophy regarding density equivalents for this type of a facility. In order to preserve the vision of the CLUP and the zoning district, conditions and performance standards such as architecture, placement, etc. could be placed on the project. Lots of tools are available if there is a core compatibility.

Janet McTavish said that when they were rewriting the Ordinance, they tried to look at land use in terms of runoff and limiting impervious surfaces as key to controlling runoff. Applying the impervious surface percent limitations to the model might provide a better idea of how much land it would take.

Sue read from the Comprehensive Land Use Plan's 2021 community vision: "There are a few new, clustered housing developments that provide single family and mixed (senior and other) town home opportunities. They are well designed and conserve open spaces, natural amenities and farm vistas. A few, well designed, and affordable multi-unit housing developments (one is an assisted living complex) have also been developed."

Greg said that the question is where do we go from here – how doable is it? Does the community want it? The answer appears to be yes. The next question is can we meet the rules of the Ordinance? Density and rezoning are just two of the issues that could present a problem. He feels optimistic that the Township would help make it work. So the next step is to run some numbers to look at overall feasibility. They need to come up with a couple of options near the school and put a value/cost on

those options. Then do the same thing for an option near the shore. If and when they find a location, can they make it work? How much will the land cost and how much would a septic or sewer connection cost? He asked who the contact should be as they move through the process. Because of the logistics and mechanics, it made sense that the Planning Commission handle it. Mary Ann Sironen is one of the Township Board representatives to the school for questions relating to NSCS.

Proposed budget for 2011

Dave Mount reported that the Town Board decided on no increases in compensation for anyone for 2011. Planning and Zoning's levy stayed the same. The budget also stayed the same except the Board applied \$800 towards the Commission's anticipated permitting income, so as not to have to overly rely on permit income that cannot be planned on.

Sue announced upcoming meetings and hearings. At the March meeting, the Commission will be reviewing the Krook's CUP and hearing a request to increase the number of horses allowed on the property from 10 to 20. In April, there is a rezoning request for an area on Alseth Road where the Expressway and Alseth come together. John Abrams owns the parcel and wants to rezone it as commercial. It is 15 acres and is adjacent to and west of Tom's Logging Camp. Tom's Logging Camp is zoned SCO-8B. John Abrams would like to rezone his parcel to the same. He would like to rent surfboards, kayaks, and canoes and have a mixed retail store.

There was a discussion about whether the use could be allowed with a CUP under the property's current zone district, SMU-6. Jan said that SCO-8B is Shore Land Commercial and is intended for businesses that serve the local community and *incidentally* local tourism. This particular use would not serve the local community.

Sue said that it would be desirable to concentrate commercial enterprises and better than having scattered CUPs to accommodate businesses. It is desirable for zoning districts to be contiguous and this would be contiguous with Tom's Logging Camp. In addition, she said that rezoning makes sense over a CUP, because every time he would want to change something regarding the business, he would need to come back to the Commission for a new CUP.

Seth said that if the business fails, the CU is discontinued, but if the zoning is changed, the change remains even after the business is gone. Also, the Commission would have more control with a CUP.

Sue said that the CUP stays with the property but Dave Mount said that if the CU is discontinued because of disuse, that would no longer apply.

Barb asked if the applicant talked about his vision and if he could apply for one encompassing CUP.

Sue said that he didn't know yet what collaborations he is going to have with other people. Other quiet sports might want retail space at his small store. It may become an opportunity to serve the community by having bread and milk available. He has also talked about having retail space on the first floor and possibly renting the upper floor.

Jan made a motion that the Commission hold a hearing for an explicit CUP that he can describe in multiple ways so that there's an ability to keep the waterfront commercial/mixed use within certain parameters.

Dave Mount said that waterfront commercial is not allowed in SMU-6. So if the Commission thinks that the proposal is waterfront commercial, it cannot be a Conditional Use. They have to either change the Ordinance or change the zoning.

Jan read the definitions of the two zone districts. SMU-6 is “intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior on a suburban scale lot size.” SCO-8B is “intended for concentrated, locally based, commercial development along the shores of Lake Superior for uses consistent with providing goods and services for the local community and incidentally for the locally based tourism industry. This district supports a light level of development intensity.”

Sue pointed out again that waterfront commercial use is not permitted in SMU-6 according to the Land Use Matrix. Waterfront Commercial Uses are defined in the Ordinance as: “Those uses that by their nature customarily relate to or service recreational water activities, such as marinas, fishing and boating resorts, canoe outfitters, campgrounds, boat sales if part of a permitted marina, restaurants and supper clubs if part of a permitted resort, which uses do not include operational activities or development characteristics that are or may be a nuisance to or otherwise incompatible with the existing or intended development pattern of the area.”

Jan retracted her motion.

An audience member said that renters will use Alseth Road to carry their kayaks and surfboards to the lake. She asked, how do you manage and preserve the lakeshore? The management of land like this that is owned by the City of Duluth needs to be addressed.

Jan Green said that the City is not necessarily interested in managing that land. It is Congdon Trust land. She also pointed out that Alseth is a Township road and she feels that it is not necessarily a road where you would want to allow undefined business development.

The process for amending the zoning map is covered in Article XI of the Ordinance on pages 93 and 94. Sue read the section on public hearings:

XI.C. Notice For Zoning Ordinance Map. The Planning Commission will conduct at least one public hearing on all proposed zoning map amendments and report to the Town Board in writing within twenty (20) days of the close of the hearing(s).

1. For map amendments initiated by the petition of the property owner, notice of the time, place, and purpose of the Public Hearing will be published at least ten (10) days prior to the hearing, in the official newspaper of the Town of Duluth. Written notice providing the same information will be sent to property owners of record within three-hundred-fifty (350) feet of the affected property in all waterfront or residential zones, and within one half mile of the affected property in all other zones, and to the applicant.

and

XI.D.2. Zoning Map Amendment:

- a.** The Planning Commission’s report to the Town Board will contain a statement of evidence relied upon, the factual determinations made from the evidence, and the criteria used in reaching its recommendation.
- b.** Failure of the Planning Commission to report to the Town Board within twenty (20) days will be deemed to be recommendation for approval by the Planning Commission of the proposed amendment.
- c.** Upon the filing of the report by the Planning Commission or upon expiration of the 20 day period, the Town Board may by resolution adopt the amendment or any portion thereof as it deems advisable.
- d.** Once an amendment has been acted upon by the Town Board, the matter will not be reconsidered, nor will any additional amendments involving the same parcel of property be heard or considered by the Planning Commission or the Town for at least twelve (12) months.

A neighbor of the property in question was concerned that the Planning Commission was making decisions without really knowing how it affects the neighborhood. She said that she was very uncomfortable with the possibility of this business coming into the neighborhood.

Jan said that the Commission has to address his request. He has requested that his property be rezoned. The Commission now needs to determine the area of impact for neighborhood notification.

Sue read the letter from John Abrams to the Board (see attached).

Jan noted that he doesn't address the required conditions on page 94 of the Ordinance, Section 4B. Sue said that as she reads it, he has to meet the conditions at the hearing. They are the criteria by which his request will be judged.

Jan made a motion that the area of notification for the hearing will be a one-half mile radius from the property and all of Stony Point from the east to the west end of Stony Point Drive. The motion passed unanimously.

On the Bieraugel case, Dave Mount reported that the Board met and has three options 1) appeal the judge's ruling, 2) continue negotiations, or 3) follow judge's finding. The Board asked the Bieraugels if the settlement that had previously been offered was of interest to them, or if they wanted to rehear the original proposal, or if they wanted to rehear with a new proposal. They said that they might pursue new ideas with the same plan. He expected to hear in a day or two if they will do this. Their attorney wants to have the new hearing in April. The Commission could hear the evidence in April, close the hearing to consider it, and then make the decision in May. It is not clear if we are expected to adhere to the 60 day rule, but we are assuming that we are. Dave said he will inform their attorney that the 60 day clock will start when we receive their alternate plan or when they indicate that they want to rehear the original plan.

Jan said that the basis of the Commission's decision was that their variance request was too great for the shore. She said she thought they would be more amenable to a variance that brought it closer to the highway.

Dave said that there are three issues – the shoreline disruption, the position of the building and its absolute size. If they want to address some of those in a new proposal we would hear that proposal.

Jan noted that our Township is the hot spot for gypsy moths according to an article in the Duluth News Tribune. Dave said that they will be spraying with pheromones which are not pesticides.

The meeting adjourned at 10:00 p.m.

Attachments:

- Zimmerman DeHarpporte CUP application and CPR
- Approval of the Zimmerman/DeHarpporte CUP and Findings of Fact
- Stoney Point Cottages Final Plat approval application
- 12.10.09 letter from St Louis County to Odyssey approving preliminary plat
- 02.16.10 letter from Odyssey responding to conditions placed on preliminary plat approval by St Louis County
- Rural North Shore Senior Housing Initiative Steering Committee Report
- 06.02.08 minutes of the Rural North Shore Senior Housing Initiative Steering Committee
- Letter from John Abrams to the Town Board