

**Town of Duluth  
Planning Commission  
Meeting Minutes  
10/27/11**

The meeting was called to order by Chair Dave Chura at 7:05.

Roll call:

**Present:** Dave Chura, Jan Green, Jo Thompson, Paul Voge and John Schifsky, Brigid Pajunen

**Absent:** No one

Also present: Sue Lawson, Planning Director, and Barb Crow, Town Board Representative to the Commission

The agenda was approved as written.

The minutes from the September 29 meeting were approved with two changes:

- 1) On page 7 change “is in not harmony” to “is not in harmony” and
- 2) On page 11, delete the sentence starting with “Is the County saying....”

Concerns from the audience -- none

First up on the agenda was a review of Bill Lannon’s proposal for a duplex and four-plex in zone district SCO-8A. Bill, the owner of the property and Gary Peterson, the architect, were present to introduce the project.

Sue started by presenting the background for the proposal. The property is in zone district SCO-8A, by McQuade Safe Harbor and just east of the Cape Superior Inn, which Bill also owns. There are two older buildings on the property that have been used as rental properties for many years. Bill proposes to replace the existing structures with a four-plex in front and a duplex in back. It is a non-conforming lot of record – 169 ft wide -- but all other setbacks can be met. This use does not fit any specific use identified in the Ordinance. In Article 5, Table 5.3 of the Ordinance, a duplex is permitted with performance standards. However, a multi-family dwelling in SCO-8A would require a conditional use. The performance standards, in Article 8, Section 2, Residential Uses in Commercial Districts, are that 1) all standards in the Ordinance must be met and 2) “an affidavit shall be signed by the homeowner acknowledging the existence of the commercial or borrow pit area and that he/she understands the potential impact such uses may have on the home.” They are not proposing to build a home, per se, but are building a rental structure that replaces an existing rental structure. Sue thought that according to Table 5.3, the duplex would be allowable. For the four-plex, the Commission needs to decide if they need to go through the conditional use process.

Dave asked why it would not be a multifamily dwelling. He read the definition of a Dwelling, Multifamily from the Ordinance: “A residence designed for or occupied by three or more families with separate housekeeping and cooking facilities for each with an approved sewage disposal system.”

Sue said that it comes somewhere between a commercial enterprise and a residence for a family.

Jan said that it is only commercial in that they don't own the unit, but that is not unusual for a four-plex or a duplex.

Dave said that there is a definition in the Ordinance for "Dwelling, Duplex, Triplex or Quad" and he is not sure what the difference is between this definition and the definition for the multifamily dwelling. He said it seemed like a multiple family dwelling could be something like a basement apartment for parents, for instance, with separate housekeeping and cooking facilities, while a duplex would share common walls but be more separate with separate entrances. It was agreed that this project fit more with the definition of Dwelling, Duplex, Triplex or Quad.

Sue said that under that definition both structures would be allowed with performance standards, but no CUP. They are replacing dwellings that are already there.

Bill said that when they bought this property, they wanted to put in build senior housing for the community, but they were not able to do that. Having some of the units ADA compliant meets some of that goal.

Gary showed a map with the proposed building footprint superimposed over the existing footprint. The duplex is stacked and is over as far as they can get it to take advantage of views to the lake. The duplex will be phase one of the project and they hope to start on it as soon as they can. Then they will look at the four-plex, hopefully next year or the year after. There is not room to build the four-plex units side-by side. He said that they met with Heidi Bringman about wetland delineation and, in her opinion, they did not need to go through the delineation process. She thought they could establish a determination line and that would be simpler and less expensive. They will move the building sites if need be for wetlands.

Gary said that they are doing their best to minimize any additional impact to the site. The buildings are on the original building sites and they are retaining the existing road, only adding driveways. Their impervious surface total is about 12% not including the driveway. He guessed that it would be about 20% with the driveway.

Paul asked if they would need another well if there were going to be a total of 6 dwelling units.

Gary said maybe – they would have to look at the capacity.

Jan noted that they should also test for mineral concentrations in the water – some well water along the shore does not taste good.

Bill said their water at the motel is fine now. They have had trouble with the well in the past.

Gary presented the floor plan for the duplex. There will be an attached single garage on both sides of unit. The lower unit is single level and will be ADA compliant, but the upper unit will not be. There will only be one bathroom in the lower unit, but the upper unit will have both a master bath and a guest bath. The four-plex will be similar. There will also be two sets of stairs to the upper units which meets code for a second egress. The upper unit will also have an 18 ft by 8 ft deck.

Jan asked what the insulation would be.

Gary said the walls will be R60 and they will use Marvin windows.

Gary showed the elevation for the duplex. There will be dormers for light and space. It will be finished with field stone on the lower part and cedar on the upper. They will use transom windows. The ceilings will be 9 ft high and they will use scissor trusses.

Jo asked what the total height of the building will be.

Gary said it will be 34 ft 5 in, 7 in less than the maximum height allowed by the Ordinance.

John asked what the height of Cape Superior Inn is.

Sue thought it was maybe 20 to 25 ft.

Gary showed the elevation for the four-plex. It is very similar to the duplex. They wanted as steep a roof as possible. The façade will be all natural materials and will be relatively dark, with fieldstone from around the lake and medium brown cedar siding and dark shingles. They want it to absorb heat from the sun. The fascias will be cedar.

Jan asked what trees are still alive in the front yard. A mountain ash? She said that the weather coming in off the lake can be severe.

Bill said there are some apple and willow trees.

Gary said that the planned buildings could easily take 80 to 90 mph straight winds. The Marvin windows will stand up to severe weather, also.

Sue showed the site on Google Earth.

Gary said that they will keep as much vegetation as possible. They will improve the drainage by replacing the existing culvert which is obstructed. The wetlands are at the upper eastern corner coming down along the eastern property line before going underground. They will stay well away from the wetlands.

There was a discussion of what the procedure should be for moving forward with the proposal. Sue said that there are two issues before the Commission. The first is the design review which deals with visuals and with fitting in with the environment. The other is what, according to the Ordinance, is needed to issue a permit for the buildings. One of the issues is that there are two structures on one parcel and the Ordinance says that there can only be one dwelling per parcel. If there are two buildings, each building would have to meet the lot standards for the zone district, which would not be the case here. However, they are replacing structures that are already there and are maximizing density and use in a commercial district, which is desirable. It is next to a motel.

The Commission decided that the definition for Dwelling, Duplex, Triplex or Quad would apply. Duplexes are included in Table 5.3 as permissible with performance standards, so that could be extended to include the four-plex. There is also the performance standard that requires that the

owners of the property sign an affidavit acknowledging that it is in a commercial zone. It was decided that a variance for lot size would not be needed since the new construction would be replacing existing buildings in the same location with a similar footprint and would not be increasing the nonconformity. Duplex dwellings have to have a minimum of 1.5 of the minimum allowed lot area and if the easement is included, that requirement is met.

Sue said that Article VIII Section 2.B says that there can be two residential structures on one parcel if they can meet the minimum lot area. This is a lot of record with two structures historically on it. In our Ordinance you do not have to keep any wall or any part of a structure that you want to enlarge or replace as long as you can meet the requirements. She read

**Effect of Destruction.** Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of this Ordinance, may be continued, including through repair, replacement, restoration, maintenance, but for improvement that does not include expansion...

Dave Chura made a motion that

- 1) Based on the Commission's review of the proposal, the project would be defined as a "Dwelling, Duplex, Triplex, or Quad" in Article II of the Ordinance: "A dwelling structure on a single lot having two (2) , three (3), or four (4) units, that share common walls. Each unit is equipped with separate sleeping, cooking, eating, living, and sanitation facilities."
- 2) The Commission determined that the project is subject to performance standards in Article 8 Sections 2.A and 2.B and Article 8 Section 15. The Commission determined that it is a lot of record that had two structures on it and the proposed project will not increase any nonconformity.
- 3) The standards for a duplex from the Article V, Table 5.3 will apply.

The motion passed unanimously.

Jan made a motion that for the design review, the Commission looked at Article 8 Section 10, particularly Section 10.E and determined that the proposal meets the design review objectives in that section.

The motion passed unanimously.

### **Planning Director's Report**

Russ Krook came to the Town Board meeting and is appealing the Commission's decision on his variance. It looks like the appeal will likely be heard on November 21. Russ also asked the Board to consider a text amendment to the Ordinance. Only the Commission or the Board can initiate a text change to the Ordinance. The Board instructed the Commission to evaluate options regarding the potential inequities associated with the allowable maximum size structure in relation to lot size. The maximum structure size is based on the zoning district's minimum lot size as opposed to the actual parcel size. Russ also submitted his manure removal report to Sue at the Board meeting.

The Commission decided to look at the zoning text, as instructed by the Board, at the November meeting.

Sue said that we need much more information before we can look at it. She will talk to Clint Little.

Jan said that the problem with SMU-6 is that it is a mixture of plats – many small plats that are old and non-conforming mixed with larger plats.

Sue said that the Town will be advertising for all three positions on the Commission – Bill’s vacancy and the vacancies that will occur in March when Dave and Jan step down.

Sue announced a training opportunity: Watershed Zoning 202. This will held be on November 3<sup>rd</sup> at the EPA lab and will cover stormwater regulations, zoning, and code, and practices to develop and support green infrastructure.

Jo reported that she attended the Knife River Watershed meeting on the previous night. The meeting was open to citizens and it was a good turnout. Some agency people were there – they wanted input to the implementation plan. The next step is for the Soil and Water District to finish edits and then submit it to the MPCA for approval. Once it is approved it provides a plan for the different groups that are working on it.

Paul asked if it was something that we should incorporate into our Ordinance.

Jo said the biggest problem for the Township is the Township roads. The County does not have to meet the same standards on their roads in the Township.

Dave suggested that the Commission work on the Ordinance in both November and December and try to curtail discussion on things that are not germane to making the decision at hand.

Jan said that she didn’t think we should throw the discussion on maximum accessory structure size that has arisen from the Krook variance request into the current Ordinance change mix. She said that we need a lot more information before we can consider it. We really need to look at a map and a good delineation of the plats and the lot sizes in the area. It is a big issue. You need to define what you want the shore to look like.

Paul agreed, saying that the issue is at the CLUP level and is related to updating the CLUP.

Dave said that we can see if we have time to look at it in December.

Jo said that she put together a draft resolution and a rationale pertaining to the issue of accessory structure size vs. lot size.

Sue suggested that everyone look at Jo’s resolution before the next meeting.

Next the Commission looked at interim use for the Ordinance.

Paul said that there are not clear criteria for interim use that are spelled out in the law anywhere. We have the interim use permit statute language in our proposed Ordinance language. The courts have recognized that Planning Commissions have a broad discretion to determine what is going to be interim use as long as there is a rational basis. There are three main times when interim use is applicable: 1) When there is a certain time limit for the use, 2) When there is a heightened concern for public health or safety or the use is a potential nuisance, and 3) when there is a foreseen zone change or development pattern change. There is some case law on the subject.

Jan said the Commission should set fairly tight criteria and not try to determine whether each use in Table 5.3 is a conditional use or an interim use. It makes more sense to decide when we have an actual proposal to consider.

Dave thought all of the uses should be C/I. Then, when a proposal comes in the Commission would apply the three criteria Paul prepared and decide at that point.

Paul felt that subordinate dwellings need to be interim use to keep them from becoming rentals.

John said that he would rather write it such that people would know whether they are applying for a conditional use or an interim use when they come before the Commission.

Paul said that the potential for the Commission to put a time limit on the use could be a part of the application. The permit is still for a conditional use, but with time limits. So when the applicant completes the application, they would understand that a possibility exists that it could be permitted as an interim use.

Sue thought that procedurally, it might work best to not put interim use in the matrix, and instead add a sentence that the Commission will decide if the use is conditional or conditional with time limits, i.e. interim. This fits with the current wording that if the use is not listed in the matrix, the Commission will define the use and decide if it is a conditional use, a permitted use or a permitted use with performance standards. The 60 day clock does not start until the required Community Participation Plan is complete and submitted, so it fits in the overall framework of the process.

Dave said that he thought the Commission should be able to determine whether the use would be CU or IU when the Planning Director initially brings the application to the Commission to set the hearing date and the notification area. Then the applicant can decide whether to move forward with it or not. They would not have to pay the fee until the type use was determined.

Sue agreed, saying the process takes two meetings anyway. She said that as a part of the new process, the applicant could come talk to the Commission at the initial meeting instead of just having Sue present their application as she has in the past. She suggested making some uses CU/IU on the matrix and then continuing to include the phrasing that if a use is not listed, the Commission will decide what category it falls into.

Sue thought that in Article 5, Section 4, Use Classifications, we should, under “conditional use” add that conditional uses may be interim uses, and identify the criteria for interim uses, saying that the Commission will decide which use is applicable at the time of the application.

Paul asked if it would be appropriate to define time limits in the Ordinance. It seemed like something that should be decided on a case by case basis.

Jan asked about home-based businesses. She brought up a CUP the Commission granted for a home business on the south end of Greenwood Rd. She is not sure they ever actually had a sales event and now the property is for sale, but the CUP, which is for a very specific type of sales, continues and goes with the property.

Paul pointed out that if the CUP is not used for three years it is rescinded under the existing Ordinance. But it is hard to enforce, trying to figure out when someone last used a CUP. Permit holders are not required to report activities to the Township.

Sue said that a period of time could be also defined as when the business no longer runs, such as when the owners move.

It was decided that time limits should be set on a case by case basis.

Paul said he would write up the criteria for interim use and Sue said she would incorporate them into the text of Article 9 for discussion at the November 17 meeting.

Paul said that we would also need to rewrite the variance application – there is a question on the current application asking “What practical difficulties would be created if you were not granted the variance?” He said the question should be more about what practical difficulty currently exists on the property that prevents it from being used as a permitted use.

Sue said that regarding impervious surfaces away from the shore, the original calculations were based on mound systems being impervious. The County has since decided that mound systems are pervious. She said that she redid the calculations, but it was not linear. It might be simpler to leave the impervious surface requirements as they are. The percent would remain the same and the intent of the Ordinance would remain the same.

It was agreed that the remaining changes would be drafted into the Ordinance and it would be distributed electronically to the Commission towards the end of the week of November 7<sup>th</sup>. Then hopefully it can be approved and it can be given to the Board.

Paul asked if we are setting aside the CLUP update for this year.

Sue said that the first step was to decide if there have been enough changes in the Township to warrant updating the CLUP.

Dave suggested that we look at it at the January meeting.

The meeting adjourned at 9:40.