

**Town of Duluth
Planning Commission
Meeting Minutes
11/17/11**

The meeting was called to order by Chair Dave Chura at 7:00.

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 October 27 were approved with one change: On page 7 in the paragraph about rewriting the variance application, the sentence "He said the question should be more about what about the property results in practical difficulty." was not clear. Paul said it should be "What practical difficulty currently exists on the property that prevents it from being used as a permitted use."

Barb announced that there will be a holiday potluck on December 8th following the Town Board meeting. The Board meeting will begin early at 5 and will hopefully be over around 7. The fire department, police department, all Town employees and volunteers are invited.

Dave called everyone's attention to the budget and asked that everyone take a look at it in preparation for January when the Commission submits a budget to the Board. The only place we are in the red so far is office supplies.

Planning Director Report

Sue said that Jo reported that the planning training seminar at the EPA was cancelled due to lack of interest. It is possible they will do a webinar.

Sue said that she, Beth and John met and went through the entire Ordinance. John had some changes, some grammatical and some substantive that needed to be looked at tonight. Paul sent interim use language. She said that she told the Board to anticipate a January or February hearing depending on how it all goes.

Sue said that she would be meeting with Clint Little for help with visuals for evaluating zoning.

Jan asked if Sue wanted to be alerted to new driveways that were noticed. Sue said yes, especially for Township roads. There is a new driveway on the Bergquist Road between Highway 61 and Old North Shore Road on the west side of the road below Sundstrom's property.

Dave started the discussion of the Ordinance by determining which Articles had no new changes beyond those had been discussed and agreed on in previous meetings. He made a motion to approve any changes made in Articles 1, 3, 4, 6, 7, 14, 15, 16, and 17. Some had no changes. He pointed out that we are only making a recommendation to the Town Board and a public hearing will also be held on it. Following the public hearing the Board will make a final decision. Sue said that she can bring any additional issues or

concerns from the Commission to the Board. Beth said that she was still working on formatting. The motion was approved unanimously.

Dave said that the Articles remaining that we need to work on are 2, 5, 8, 9, 10, 11, 12, and 13.

For Article 2, Definitions, John said that he noted that EAW and EIS were not defined. Sue said that they were common terms and we had decided not to include definitions for them. Paul asked if we should have a definition for performance standards. Dave said we have a whole article on performance standards, Article 8. Sue said that it has never been an issue. Jan said that the Ordinance is complicated and definitions help make it clearer. Paul said that the County uses a definition for a performance standard permit: "authorization given for a use that must meet a minimum set of predefined standards or criteria." It was agreed to leave it as it is.

The next issue John had was with the definition for remodel. Should it be external walls in the second line? Dave said that the framed walls all related to the exterior dimensions. John said that interior walls could be moved without affecting the exterior dimensions. Sue said that the way it has been interpreted in the past is that if the structural frame changes, or if the footprint changes, then it becomes a permit situation. It was decided to leave that as it is.

Jan moved to approve Article II and forward it to the Town Board. The motion was approved unanimously.

In Article V Dave wanted to make sure that everyone was still in agreement with the language that had been decided on in past meetings. Barb said that following the discussion from last month's design review, we need to change "Dwellings, duplex" to "Dwellings duplex, triplex, quad" in Table 5.3. The change was agreed on and Jo made a motion to approve Article V. It was approved unanimously.

In Article 8, Performance Standards, Dave asked about Section 11.G: Commission Review of Commercial Proposals. Sue said that it was a cut and paste from SCO-8A. The Commission must do reviews of commercial developments in SCO-8A, which is on McQuade Road. The same language applies to 8B so it was copied from 8A to 8B. 8B is Tom's Logging Camp. Barb said in Section 14, "Dwellings, duplex" needed to be changed to "Dwellings duplex, triplex, quad." Brigid asked about the lot size requirements for duplexes versus triplexes or quads. One and one-half (1 ½) times the minimum lot size is required for a duplex; should the requirement be larger for triplexes and quads? Traffic and parking are affected even if the buildings go up instead of out. Sue said that if the math went linearly, you would need 8 acres to construct a quad on the shore. Is that reasonable? Three times the minimum lot size would be 4 ½ acres. There are homes down there that are bigger than what would be an average quad-plex. Are we going to define it for any potential number of apartment units? It was decided not to add "triplex, quad" to "duplex" in Section 14 so that the Commission would deal with them as they came up. Jan said that adding the multiple dwellings without any further definition is confusing. Setbacks might be different, too. Dave asked about the difference between these dwellings and Multiple family dwellings. Sue said that "Dwelling, Multiple family" was included to allow for social service kinds of buildings. It was meant at the time to ensure that social service homes, such as group homes, were not discriminated against. But it was not clear from the definitions. Jan suggested going back to Table 5.3 and changing the use from permitted with performance standards to a CUP. Sue said that that would allow people in the neighborhood to weigh in on it. Dave asked if we should consider then what zone districts the use should be allowed in -- maybe only in the same districts that multi-family dwellings are allowed in, Zones 6A, 8A and 8B? Paul agreed saying that duplexes, triplexes and quads are more like commercial uses. Sue said that we could delete "Dwelling, multi-family" from the table and from Article 2, and leave social service Cs where they are, leave "Dwelling duplex" as it is, permitted with performance standards, and add another category, "Dwelling, triplex, quad" and make it conditional use.

Dwellings with more than four units would implicitly come before the Commission to be decided on. Dwelling, triplex, quads would be allowed as a conditional use in FAM-3, MUNS-4, SMU-6, SMU-6a, SCO-8a and SCO-8b. Dave made a motion that in Article 5 we would change Table 5.3 as described above. The motion passed unanimously.

On Page 50, Section 14, Dave said that we would leave “Dwelling, duplex” as is and since triplexes and quads are now CU, they don’t need to be addressed here. Jan moved that Article 8 be approved. The motion passed unanimously.

In Article 9, Conditional Uses, Paul said that in Section 4.F the Commission had changed the 10 days of notification for insufficient application to 15 days and he thought that that should be 15 business days. It should also be changed in the variance section. John said in Section 10.E it is not clear what “they” refers to – the airstrip or the utility structure. It was decided that it was not the airstrip or the utility structure that caused the problem, it was the proximity of the two. The sentence was changed to “...if *the proximity* constitutes a danger to the community.”

Paul said that the interim use criteria – 10.F, 11.I, 13.J and 15.L – that were added during an earlier edit are no longer needed now that the interim use criteria has been rewritten. It was agreed to remove all of them. 17.E, which contains similar interim use language, will remain as is because that use is only allowed as an interim use.

John said that in Section 11.H, the word “must” needed to be inserted into the sentence to read “A majority of the property owners within... *must* sign a petition...” And he said that for both Section 11.C and 15.C the sentence beginning “It must be determined by the Planning Commission...” would be clearer if it were changed to “The Planning Commission must determine...”

Jan moved to accept the above changes to Article 9 and approve it for forwarding the Town Board.

Barb asked if in Section 8.F there should be a time frame during which an extension could be requested. There was a discussion of what would be required for an extension. Jo suggested changing the sentence “The permit holder may apply to the Planning Commission for an extension.” could be changed by adding “no later than 60 days prior to the expiration of the permit.” to the end of the sentence. This would just be the deadline for the application for the extension and would not imply that it would be approved or denied within the 60 days.

The motion to accept the changes in Article 9 and move it on to the Board was approved unanimously.

In Article X Section 3.B.4, Paul suggested changing the language to the same language used for the Conditional Uses Article IX Section 4.F :

The Planning Director shall reject any application not accompanied by the required fee or by other material and information as required by this Ordinance. Notification of rejection, along with the reason for such action, shall be given the applicant within fifteen (15) business days of receipt of the application. The applicant shall have the opportunity to resubmit a substantially complete application after being notified of the rejection. For purposes of Minnesota Statutes section 15.99, the 60-day review period does not start until the Planning Director has received a substantially complete application.

Under Section 3.E, Criteria for Decisions, there is a note after item 7 to add an additional item from the Town’s attorney. Paul said that he included that language in the non-conforming lots of record section,

Section IV, it and should not be included as criteria for a variance. So the Criteria for Decisions will remain as is and there will be nothing further added.

Article X was approved unanimously for forwarding to the Town Board with the agreed on changes.

Article XI. John had a question about the term “from time to time” in Section 3.A. Sue said that it should stay in. It means that the public hearings may go on or may not go on.

Paul said that in 2.C it says that “Ordinance text and Ordinance map amendments, when initiated by a property owner...” but text changes cannot be initiated by a property owner, so it should be taken out. It may have just not been written clearly enough. It was decided to delete C and add “and will require a community participation report” at the end of Section 2.B to read “Amendments may be initiated by the Town Board, the Planning Commission, or by the property owner of record or authorized representative and will require a community participation report.” This means that anyone initiating a map amendment, including the Town Board or the Planning Commission, will have to complete a CPR.

Paul said that in Section 3.D.2.b and c, the language in b has been changed to from 20 to 30 days to report to the Town Board, so the length of time in c needs to be changed from 20 to 30 days to correspond to b.

Paul moved that Article XI be approved and forwarded to the Town Board. The motion was approved unanimously.

In Article XII John suggested adding the acronym PUD after the first instance of the phrase “planned unit development” in the first sentence of Section 1.

Article XII was unanimously approved with changes for forwarding to the Board.

In Article XIII Section 4.A Paul said that it was not clear at which meeting officers are to be elected. It seems that with the phrase “calendar year,” it would be expected to be at the beginning of the year, in January. It was decided to take out the word “calendar.”

Barb suggested that it in Section 3.B, it read that a Commission term is 3 years and that all appointments begin in April and end in March.

Paul suggested that we include the same phrase in 4.A so that it reads that officers will be elected at the beginning of the year and that “each year shall be presumed to run from April to March.”

John moved to approve Article 14 and it was moved forward unanimously.

Sue said that she would submit the draft changes to the Town Board. Indexing will happen at the end of the process. Because Don McTavish did such a thorough job with the original indexing, it should not be difficult to update it.

Sue put together an outline of issues regarding maximum accessory structure size. The primary questions that need to be addressed are the extent to which an option best meets the goals of the CLUP and the extent to which community goals for neighborhoods are balanced with individuals’ use of their property. Jo outlined a process for dealing with maximum size of accessory structures through CUPs. If the Commission did this, the Commission would need to decide what zone districts to apply it to. Applicable conditions and criteria could be added to Article IX. If it is dealt with through the CUP it gets into the realm of the community with a hearing. Sue said that the Commission needs to consider the implications of having a maximum size for an auxiliary structure and not having a maximum size for the main

structure, or home. She thought that people would, in general, not want to be told what size home they could build.

Jan said that the reason there is a maximum size limit for accessory structures is that houses have windows and other features that break up the mass and most accessory structures do not.

Sue said that it is the Zone districts along the shore are the areas of concern for this; inland it is assumed that there is lot sizes are adequate to accommodate larger structures. She said that one way of dealing with the issue would be through a zoning map change – in SMU-6 there are some very large tracts at the north end that could be zoned differently from the smaller tract areas. The issue could also be addressed with performance standards. If a person with 20 acres in the shore area wanted a large building, for instance, the Commission could require deed restrictions.

Jan said that she would need to see the GIS information for that area before considering anything. East of the Alseth Road is another area where there is a mixture of very large and very small parcels.

Sue said that the Commission might want to consider changing zoning requirements for areas with small lots such as the Greenwood Road area, so that people do not have to get variances for conditions that already exist throughout the area. But, if we were to look at a zoning map change like that, it could elicit a lot of contention.

Sue said that we need to consider the NSSD's comprehensive plan as well. They did not intend for the sewer to be used for development, but on the other hand, they need people to hook up to it to pay for it. They had the Town Board sign a letter embracing NSSD's comprehensive plan. The purpose of planning is that if you want to keep the North Shore looking like it is, you plan for it now. It will continually be revisited by upcoming generations. While the minimum allowable size for lots can easily be decreased, it is next to impossible to increase minimum lot sizes.

Dave thought it might make more sense to use the conditional use process with deed restriction for accessory structures over the maximum size and a zoning map change for the Greenwood Road area.

John was concerned that using conditional use permits could end up being more patchwork and not driven by a vision for the area.

Dave said that one of the criteria for approving a CUP is that it is consistent with the CLUP.

Paul said that it was really only a few isolated parcels where it might be an issue.

Jan said that if you approve a CUP for structure size, from the applicant's point of view it is for a specific use, but the CU is only for the size. The use may change and that may not be good.

Sue said that we could put the allowable structure size in the dimensions table and require a variance from the maximum size stated in the table. Require a variance from a number, not from a use.

Jan said that anyone applying for a variance for a larger structure has a use in mind. You cannot separate the use from the variance.

Sue said that the variance is for the size of the building. So a person could need a variance for the building and a conditional use permit for the use. But she has seen statute language that talks about use in variances, which is confusing.

Jo pointed out that you cannot get a variance for a use that is not allowed by the Ordinance.

John also noted that a conditional use goes with the property and that we do not police for disuse.

Dave asked if someone would have to tear down a building built under a conditional use if the conditional use terminated.

Paul asked what remedy we have for a building if conditions, such as screening and storm water control, are not met? Other CUs are uses which can be terminated more clearly. What about security bonds? Have they been effective?

Sue said that the Town required one for the cell phone tower. Once it was no longer in use, the bond was to take it down. She doesn't know if the bond is still in effect.

Dave suggested that Sue and Jan work on a map addressing the small, nonconforming lots in the Greenwood Road area, SMU-6.

The meeting adjourned at 9:30.