

**Town of Duluth
Planning Commission
Meeting Minutes
March 23, 2017**

The meeting was called to order at 7:00 pm by Chair Paul Voge.

Present: Paul Voge, Jo Thompson, John Schifsky, Wayne Dahlberg, Larry Zanko, and Liz Strohmayer.

Absent: Jerry Hauge.

Also present: Sue Lawson, Planning Director.

The agenda was approved as presented.

Public Hearing: Bergstedt/Nakamura Short-Term Rental Conditional/Interim Use

Sue began by reading the Town's Communication Agreement.

She then introduced the hearing and the process for the hearing.

The request is for a short-term rental at 5918 River Road. The applicants are Rita Bergstedt and Amy Nakamura.

Sue read the description of the project from the application: The proposed conditional use is a small 2-3 bedroom, 2-bath home newly built for the purpose of running a short term rental business, with a minimum 2 night stay. Renters must be at least 25 years old. Because Duluth and the North Shore are major tourist destinations and because we wish to create a home based business we made a decision to subdivide our property and place the rental unit on its own dedicated 10 acre parcel, leaving 9.8 Acres surrounding our primary home. The guest house will be located approximately 200 feet south of River Road and will be completely hidden by woods. Our residence will be approximately 1,000 feet from the rental home. We will always be on premises (our home) while guests are staying at the guest house. Families will be our targeted guests.

She showed a vicinity map and a site map and then summarized the answers from the application regarding use and operation of the short-term rental. The hours of operation would be 7 days per week, 24 hours per day. The number of visitors to the site per day would be from two to seven. There would be no employees. There would be an average of one to two vehicles coming to the site per day. Any more would be extremely rare. There will be a gravel parking area for three cars. There will be a very small sign at the entry to the driveway. Proposed activities include hiking in the woods and along the Sucker River and campfires. Noise would not be heard by adjacent property owners. The proposed rental structure is 960 sq ft. There would be no additional outside work areas except for the addition of a propane tank. No wetlands would be affected. Wastewater would be handled by a septic system. Water would be supplied by a well. Waste disposal would be handled by North Shore Sanitary.

Sue reviewed the Community Participation Report. Of the 13 neighboring property owners in the notification area, 7 responded. Six responses were positive and one was not. Sue read the letter from Robert Collison opposing the short-term rental. (See attached.)

John asked about the legal document regarding the lawsuit.

Paul said that the suit was dismissed with prejudice which means that the plaintiff cannot come back and sue on the same matter again.

Wayne asked what the agreement was.

Rita said that it was the terms of the original easement agreement.

Paul asked if the parcel has been subdivided yet.

Rita said that after she subdivided the property and sold the parcel with the house on it to Seerings, she was left with 19.8 acres. She and Amy built their home on the west side of that division. When they decided to build a cottage for short-term rental, they subdivided the 19.8 acres. The cottage property is 10 acres and their home is 9.8 acres. She filed it about a month ago and it will be a separate tax parcel.

Paul asked the Collisons if their concerns were that there would be too much traffic on the road and people accessing their property.

Robert Collison said that he would like for the decision on the conditional use to be postponed until the original easement agreements have been met. Those agreements included a gate across the easement and planting of trees. He said that he has friends and relatives hunting on his property during deer season and prefers no rentals during that time because it could be dangerous. The Seerings agreed to not rent their property during deer season.

Rita said that there is a chain gate across the driveway and said she has pictures of it if the Commission would like to see them.

Paul said that the matter of the easement is between the Collisons and Rita and will not have a bearing on the approval or disapproval of the conditional use.

Jo asked how many days per year they anticipated renting.

Rita said that she would prefer not to have a set limit.

Paul said that the allowable rental days could be put on as a condition if the use were approved. He said that the Seerings are limited to renting no more than 140 days and the Town has not received any complaints about their rental.

Rita asked if it would be realistic to not have limits set for rental days.

Amy said that the nearest neighbors are Kathy McTavish and Sheila Packa and the Seerings. If either neighbor were to have a complaint, they would change. They have only come across a renter from the Seering property once or twice and they live right next door.

Wayne asked about the easement. The easement was granted to Parcel B. Was that the entire property at the time?

Rita said that the easement was granted for the whole 40 acres.

Liz said that the property has since been subdivided into two parcels, one is the Seering property and one is the Bergstedt property. Since then Rita has subdivided again for the purpose of the short-term rental.

Sue said that for the purpose of the hearing, there is legal access for the property.

Rita said that they want to create a small home-based business. They have the land and are able to do it legally. She feels that the traffic increase on either River Road or Wildwood Road would be minimal. They rarely meet others when traveling on the road, even with the Seerings short-term rental. Compared to families with multiple cars and multiple drivers, it would not be much of an increase.

Amy said that regarding being able to rent 365 days per year, it wouldn't actually end up being that much. Both she and Rita spend some time away in the winter. There are also times when other things are going on so that they would not be renting. Leaving it open would allow them the most flexibility.

Public testimony.

Keith Darsow said that they live just down the road on Wildwood, and have not noticed excess traffic from the Seerings' short-term rental. They have seen no negative impact from traffic or people wandering around the property. He would not want it to be advertised as having access to the property around it, but the river is public property. Rita and Amy said they will always be present on the property, like the Seerings, to manage the rental. Based on what he has seen with Seerings' rental, and knowing Rita and Amy, he has no issues with allowing the short-term rental.

Beth read previously submitted comments from Don and Janet McTavish; Sheila Packa and Kathy McTavish; and Stacey and Shellie Seering. The comments submitted by Robert Collison had been read earlier in the hearing. (All written comments are attached.)

Public testimony was closed.

The Commission's first decision was whether to consider the proposed short-term rental as an interim or conditional use. Sue read the criteria from the Ordinance for deciding between interim and conditional uses.

The Planning Commission may designate the conditional use as an interim use if the proposed use meets any of the following criteria:

- a. There is a time certain (for example, a date or particular event) when the use will terminate or the type of use is one that is inherently temporary.
- b. The type of use creates a heightened concern for public health and safety, requiring a closer monitoring of the use after the permit is issued.
- c. There will be a known change in zoning in the near future or there is a belief that future development patterns in the area will conflict with the conditional use being requested.

Jo made a motion that the request be considered as an interim use because the Town is still working its way around the issue of short-term rentals and because short-term rentals bring strangers into the neighborhood and there is a potential danger there.

John seconded.

The motion passed unanimously

Sue read the special requirements for short-term rentals from the Ordinance:

1. All short-term rentals require a minimum lot size of two (2) acres.
2. The side and rear setbacks shall be fifty (50) feet unless the adjacent property is zoned commercial, FAM or LIU, then the setbacks shall be as required for the applicant's land use district. All SENSO and SLO setbacks apply regardless of adjacent property zoning.

3. Licensing and permits. The owners shall obtain any and all licenses, permits, or other governmental approvals required by any governmental agency, board, department, or other governmental entity with jurisdiction.
4. Property oversight and complaint response. Thirty (30) days prior to rental of the property in any calendar year and anytime the contact information changes, the property owner shall provide to the Township Planning Director the name and phone number of a contact person. This phone number shall also be provided to all other property owners within five hundred (500) feet of the lot boundary. The contact person must be available at all times during rental periods, and able to be at the property within thirty (30) minutes.
5. Rental Frequency. Low-frequency short-term rental frequency is limited to once during any thirty (30) day period. Once during any thirty (30) day period means that a subsequent rental cannot begin less than thirty (30) days from the initiation of the prior rental. The allowable rental frequency for high-frequency short-term rentals will be established as part of the conditional use permit.
6. Rental Records. A log shall be kept of the renter, date of arrival, date of departure, and number of guests for all rentals. A copy of the log shall be provided to Planning Director upon request.
7. Parking. Off street parking shall be provided.
8. Temporary Sleeping Facilities. No temporary sleeping facilities may be used on the property during rentals (i.e. recreational camping vehicles, tents, etc.).
9. High-frequency short-term rentals require a conditional use permit.

In addition, there are 12 criteria that must be met to grant a conditional or interim use permit. See read each of the criteria and the applicants' response to each.

Necessary Findings. A conditional/interim use permit may be granted only upon finding all of the following:

1. The proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance.
Applicant states: In the 2002 CLUP, the 2021 Community Visions a goal of several hundred home based occupations/businesses... with a balance of commercial and low impact tourism activities.
2. The use is compatible with the existing neighborhood.
Applicant states: Yes. The house will be tucked into the wooded lot, it will be a modest size cottage, which fits nicely into our neighborhood. When not being used for rental it will be used as a guest cottage for our family, many who live across the country.
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.
Applicant states: Not at all. It will be a home in the woods.
4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.
Applicant states: Yes. Our next door neighbor, Stacey and Shellie Seering , operate a short term rental guest house on their property. This has created no issues for us. Actually, our guest house will be more private.
5. The proposed use will comply with the wetlands requirements in **Article III, Section 6** of this Ordinance.
Applicant states: Yes. There are no wetlands on this 10 acres. The building site is high and on a gentle slope to the southeast.
6. The total amount of impervious surfaces will not exceed that allowed in the zoning district where the conditional/interim use would occur.
Applicant states: No.
7. The topography, vegetation and soil conditions are adequate to accommodate the proposed use.
Applicant states: Yes. The slight slope to the southeast, alongside a variety of vegetation and trees more than adequately accommodates a house.

8. The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures.

Applicant states: No public waters from this house site would be impacted.

9. Adequate utilities (water supply, wastewater treatment), access, drainage, stormwater retention, and supporting facilities have been provided or are being provided backed by appropriate financial assurance.

Applicant states: We will be having a well drilled Rasmussons, Warren Peterson has looked at the site for a septic mound or holding tank viability, Coop Light and Power will bring in power. Money to cover is 100% available.

10. The proposed use will not create potential health and safety, environmental, lighting, noise, signing, or visual problems.

Applicant states: No. With the light use of a home, this rental shouldn't have any impact (negative) on any neighbor.

11. The location of the site is appropriate with respect to existing or future access roads.

Applicant states: The location has legal access with an easement off of Wildwood Rd. The guest house will be located approximately 380 ft from River Rd. easement/private driveway.

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.

Applicant states: Police and fire protection are provided through Duluth Township and paid for via our property taxes. There would be no more burden than any small single family house would.

Larry asked how soon they would start construction if the interim use were approved.

Rita said that they would start as soon as possible in the spring once the road bans are off and electricity can be brought in. They hope to be building in the spring and summer and start renting in the fall.

Jo asked what the process had been for the Seerings' two year interim use.

Sue said that the interim use for two years was granted in February of 2014. At the end of those two years, the Seerings came to the Commission for a conditional use to make it permanent. The Commission decided that it should continue as an interim use because short-term rentals are compatible with their neighborhoods only as long as the people who run them are diligent and considerate of their neighbors.

Liz thought three years would be more reasonable because they still have to build the structure for the rental.

Jo asked if the Town can revoke the interim use permit if there are problems with it.

Sue said that if the conditions are violated, the Town can pursue revocation.

Paul said the permit will automatically terminate at the end of the time period unless it is extended.

John asked if, with an interim use, the property is sold, does the interim use go away?

Paul said that it would be a part of the conditions.

Wayne said that he had concerns about allowing 365 days per year rental.

Jo made a motion to approve the interim use for a high frequency short-term rental in that the proposal meets the twelve criteria set forth in Article IX Section 7 of the Ordinance and will be subject to the special requirements in Article VIII Section 15 of the Ordinance as well as additional conditions as determined by the Commission.

Liz seconded.

Wayne suggested 250 rental days per year. They would have the choice of how to use the 250 days. He said he was not comfortable with year around. An interim use like this can be a trial run to prove that the use is a good fit with the neighborhood and that the owners are responsible and responsive to neighbor concerns.

Paul said that if, after the initial period, they wanted to increase the allowable rental days, they would have to go through the conditional use process again.

Wayne made an amendment to the motion that the number of rental days be limited to 250 days.

Jo seconded.

The amendment to the motion passed unanimously.

Liz made an amendment to the motion for the interim use to be for 3 years starting from April 1, 2017, or until the rental property is sold, which ever comes first. Wayne Dahlberg seconded.

The amendment to the motion passed unanimously.

Liz made an amendment to the motion that there be no more than 7 persons in the rental party; that at least one renter in the party has to be 25 years or older; and that a rental stay must be a minimum of two nights. Wayne Dahlberg seconded.

The amendment to the motion passed unanimously.

Larry asked if the applicants will have rules posted for expected behavior for guests. Rita said that they would.

Liz suggested that they also share the regulations regarding fishing and hiking on the Sucker River.

Rita said they would do that.

The motion as amended passed unanimously.

Rita asked what the process would be at the end of the three years. Would they have to go through this entire process again?

Sue said that it depended on whether they were requesting substantial changes at the time. If the request is the same or minor changes are requested, the whole process is not necessary. Because the Seerings wanted to make their short-term rental a conditional use instead of an interim use, it was necessary to have a public hearing.

Close of public hearing

New business

Sue asked what projects, besides continuing to work on the analysis for a possible rezone of SMU-8, the Commission might be interested in pursuing in the coming year.

John said that he would like to revisit the Congdon trust land.

Wayne said that because Ryan and Bergquist Roads are in such poor shape he anticipates that the County will be repaving them. He would like to work more on trails and making sure the County is aware of the Town's Trail Plan for when they do redo those roads.

Sue said that at least one open house would be needed for the SMU-8 rezoning.

Sue said that there might be a variance in April for a property on the shore a little east of Homestead Road. It is in the Greenwood Cliffs subdivision next to Dodges Log Lodges. But they still need to get a survey of the property.

With input from Jo, the Town Board passed a resolution at their last meeting to send the Town's representatives, Al Franken, Amy Klobuchar and Rick Nolan, a resolution opposing cuts to three federal programs, Sea Grant, the Coastal Program and Americorp.

Sue thanked Paul for his service to the Town and presented him with the gift of a bowl.

The February 23rd minutes were approved with one grammar change from John.

Concerns from the audience.

None.

The findings and decision document for the Bergstedt/Nakamura short-term rental interim use were approved.

The meeting adjourned at 9:30.