

**Town of Duluth
Planning Commission
Meeting Minutes
June 22, 2017**

The meeting was called to order at 7:00 pm by Chair Jo Thompson.

Present: Jo Thompson, John Schifsky, Jerry Hauge, Larry Zanko, Liz Strohmayer and Dave Edblom.

Absent: Wayne Dahlberg

Also present: Sue Lawson, Planning Director and Rolf Carlson, Town Board liaison to the Commission.

The agenda was approved with the insertion by Sue of a discussion about the decision making process before the public hearing.

Sue talked about approving or denying a variance or conditional use. If one of the criteria is not met for a variance or conditional use, it cannot be approved. Even if it is determined that a proposal does not meet one of the criteria, it is still necessary to go through all of the criteria. It is difficult to formulate and capture a motion that encompasses all of the criteria. She suggested that the Commission consider splitting the motion and addressing each criteria in an individual motion under the main motion. At the end, the entire motion with the individual split motions is voted on as a whole.

Sue said that the hearing on the agenda is for both a variance and a conditional use. Some of the variance criteria are similar to the conditional use criteria. As the Commission discusses each of the criteria, it is appropriate to discuss uncertainties or to add conditions. Conditions can be added to variances and to conditional uses. There are conditions in the performance standards that will also need to be incorporated.

Public Hearing: Abbot Apter Conditional Use/Variance for a Short-Term Rental

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 conditional use for a short-term rental at 5527 North Shore Drive and variances from the 2 acre lot size and 50 ft side yard setback required for short-term rentals. The owner and applicant is Abbot Apter, represented by Mike Larson at the hearing.

The request for a conditional use can be heard as a conditional use or as an interim use. A conditional use goes with the property. An interim use can be set with a time limit or with an endpoint such as when the property is sold. The variances are needed because when the Town Board reviewed short-term rentals, they set a 2 acre minimum lot size and 50 ft setbacks for short-term rentals. These requirements were put into the Ordinance under Performance Standards instead of Conditional Uses. Performance Standards can be appealed through the variance process.

Variance

Sue reviewed the process for the variance hearing.

Sue read the definition of zone district SMU-6 from the Ordinance: “This district is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior, on a suburban-scale lot size.” The minimum lot size for a short-term rental is 2 acres and the Apter lot is 1.85 acres. The minimum side yard setback for a short-term rental is 50 ft and the existing west side yard setback is 40 ft. Sue showed the vicinity map and the site map.

She read each of the criteria for a variance and the response to each from the application.

Is the proposal in harmony with the general purposes and intent of the Ordinance and consistent with the Comprehensive Plan?

Applicant states: a) The variance appears consistent with the 2002 comprehensive land use plan because the use of the property is not materially changing or any such building structures modified, land forms changed or vegetation altered. b) The property is located in zone district SMU-6 – Shore Land Mixed Use. This district is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior, on a suburban scale lot size. Having the property operate as a high-frequency, short term rental is in harmony with the general purposes and intent of the ordinance and this zone district when considering the very definition of the district – “residential and mixed use consistent with the recreational and natural attributes of Lake Superior.”

Variations may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that

- a. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;**
- b. The plight of the property owner is due to circumstances unique to the property not created by the property owner;**
- c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.**

Applicant states: a) The proposed use of the property is reasonable and not [out] of the ordinary character of the zone district. For example, a property within the SMU-6 zone district that has 2 acres and a 50’ side yard set-back would have the opportunity for high frequency short term rental. The applicant in this request shows 1.85 acres and 40’. In other words, the example shown above demonstrates the use of the property is a reasonable request and consistent with the character of the neighborhood. b) The request/plight was not created by that of the owner. This 1.85 acre property and the home it sits on was built in 1962. Zoning Ordinance Number 5 was adopted on December 31, 2015. c) The variance request will not alter the essential character of the locality. Matter-of-fact, the request is relatively consistent with the zone district as there are other high frequency short term rentals operating with the same zone.

Is the proposed variance a use that is allowed under the Zoning Ordinance?

Applicant states: High frequency short term rental is an allowable use under the zoning ordinance.

Sue said that there is a short-term rental right by Dodges Log Lodges and the 2 unit motel at the old Lighthouse Restaurant.

Jo asked why 2 acres was selected as the minimum lot size.

Sue said that the Board had a long discussion on the requirements. They concluded that the 50 ft setbacks would mean at least 100 feet between residences and the 2 acre lot size would preclude short-term rentals in really dense areas. A larger lot would also provide more privacy.

John said that Dodges is probably 3 miles from this property. It is in an entirely different neighborhood in terms of density, although both properties are in SMU-6.

Mike Larson spoke. He said that he lives in Lutsen Township. He is a co-owner of Cascade Vacation Rentals and has been in business 30 years starting with the motel he built. Mr Apter contacted him regarding a short-term rental at the North Shore Drive property. The property has been for sale and Mr Apter wanted an alternative use for the property. He completed the CUP application for Mr Apter. Mike said that he read the Ordinance. He is not an expert, but it is not uncommon ground for him. Good questions were raised in the Community Participation Report. He believes in full transparency.

Public Comment

Beth read the written comments that had been previously submitted. These are attached.

- 1) Kerrie Burns
- 2) David and Jeanie Estrada
- 3) Michael Sunnafrank
- 4) Michael Sunnafrank
- 5) John Fischer
- 6) Steve and Patty Sigford
- 7) Kevin White

Kay Westergren spoke. She said that she lives next door to the Apter property. She said the patio is only 25 to 30 ft from her property line and she is afraid that the patio would be a frequent congregation area and is close enough to her home to be disruptive. The neighborhood is very close-knit. Disrupting this with a short-term rental would be very difficult. It would take away part of the community feel and the freedom of being in the community. She said it is a sad situation.

Todd White spoke next. He said that he used to live in the Hunter Park neighborhood of Duluth. He loved that house and neighborhood, but over approximately 10 years the neighborhood slowly changed to a rental property neighborhood. So he has had experience with short-term rentals and never knowing who your neighbors are. He does not want to live next to a house with different people moving in every weekend. He has been a neighborhood monitor and hated it. He asked that the Commission not grant the short-term rental.

End of Public Comment

Jo pointed out that most of public comments were applicable to the conditional use request. Only some comments were applicable to the variance request.

Mike said that all of the questions are good questions. He said that his life would be miserable if his last 30 years had been dictated by conflict, whether from renters or neighbors or sexual predators, etc. He too lives in a destination area on a small road. He has vacation rentals near him that he doesn't manage, so he understands. He said he was not sure he could convince anyone differently. There is a rental agreement. He said that Kevin White is correct. When you go online you don't see the agreement. When the rental is confirmed, it is sent out.

Through a programming algorithm, potential renters are forced to go through the process with various check boxes. He said that there is no way to know if the document is actually read in its entirety.

Regarding occupancy, Mike said that the house is 4 bedrooms. They have been working with the MN Department of Health. If there are too many people it creates a problem and he doesn't want that either. His experience is that lower occupancy creates fewer problems. Regarding the comments that rentals are not well cared for, he said that when you rent a property, you want the same thing as anyone else. You want the property to be well cared for. They take care of their rental properties because renters want nice properties.

Mike said they manage 160 properties and he believes they do a good job. He has never had to do a Community Participation Report. It is not something required by other townships or by Lake County. He found it to be an opportunity to tell people a little bit about himself and his rental company. There are problems sometimes, but not to the extent brought up in some of the emails. What they do is transparent. They require that the Department of Health approve the rentals to be in their program. He feels that their rentals are often safer than long term rentals. They do the best they can and are as transparent as they can be. He said he visited John Fischer, but did not go around the neighborhood as John suggested he had. He knows he will not be able to convince everyone. But as he said, his life would be miserable if these kinds of things happened on a regular basis. But they don't.

Dave asked what the mechanism would be to deal with problems through the caretaker in Two Harbors.

Mike said that it won't be an immediate response. They do have 24 hour, 7 days a week phone contact. They nearly always answer that phone. They respond to the best of their ability.

Larry asked if they screen prospective renters other than through their applications.

Mike said that there are fair housing rules. He is also a licensed broker in Minnesota. Renters can make a reservation online through the portal, so they don't always have a lot of information about them.

Jo said that she would like to see a diagram of the actual lot.

Sue showed Google Earth images of the property and the neighboring properties.

Larry asked how they determined the 40 ft setback from the property line.

Mike said that the 1.86 acre figure was taken from the St Louis County website. The 40 ft was measured on the map, not by survey.

Jo asked where the main activity would take place at the rental.

Mike said that there was an entry on the east side. On the west side of the building there is a patio and that will probably be a gathering area.

Liz asked if there was a fire ring on the property.

Mike didn't know.

Kay said that she didn't think there was a fire ring. But the patio extends quite a ways from the house. It is right off the kitchen. She asked if the 40 ft was measured from the corner of the structure or the patio. You cannot see all of patio on the map because of trees. There is also a creek there that runs all the time.

Jo said that creeks can muffle sounds.

Kay said that it is just a trickle in the summer.

Mike said that there are 2 bedrooms upstairs and 2 on the main level. The capacity will be determined by room size and egress. He said that he does not yet have the MN Department of Health figure on that.

Liz asked if there was direct access down to Lake Superior.

Mike said that there is a small staircase down to the lake. It is not on their property.

John said that that would be an illegal access. He said the City of Duluth owns that land and they would be the ones to ask for removal. There are others along there.

Liz had a picture of the patio. She also had one of a deck upstairs off one of the bedrooms. Kay said that there is also a deck off the front upstairs bedroom.

Liz made a motion to approve the variances. Dave seconded.

Jo made a motion to split the motion. John seconded.
The motion to split the motion was approved unanimously.

John made a motion that the variance is in harmony with the general purposes and intent of the Ordinance. Larry seconded.

John said that he had some concern regarding the side yard setback because the applicant seems to be unsure about the actual distance. Would it be reasonable to ask for a survey to determine the actual setback on the west side? Especially given that the patio is on that side.

Liz asked if the patio counts as a structure.

Sue said that the Commission determined that decks are accessory structures. On one hand, setbacks are typically measured from the house. On the other, if the setback is considered for a use, then it would be measured from the patio.

John said that there is some screening between the properties, but he thought that it was important to determine the actual setback.

Jerry said that the question is whether a 10 ft variance in this case was reasonable. He said it doesn't matter from which structure it's measured, is the variance for 10 ft reasonable? He said he assumed someone would need to measure it. The Commission just needs to determine if it is reasonable or not.

John said that given the use, the 50 ft setback is really important in his mind.

Dave asked if there were stakes or markers showing the property line.

Mike said that there was on road. He did step it off, but cannot say precisely what that distance is.

Jo said that one of the purposes and intents of setback is for privacy and to provide a buffer. Will 10 ft make a difference?

Dave said that he thought it was consistent. Recreation is one of the things the Comprehensive Plan encourages.

Jo said that given the general size of the lot and the activity, she believes it meets the purpose and intent of the Ordinance.

The motion was approved unanimously.

Dave made a motion that the variances are consistent with the Comprehensive Land Use Plan. Larry seconded.

Dave said that he felt that 10 ft is not significant and is consistent with the Comprehensive Plan. He reread the definition for SMU-6. He thought it fit.

Jo read from page 17 of the Comprehensive Land Use Plan: “Encourage tourism activities that complement and do not detract from the community’s historic and rural character... Ensure that tourism, recreational development, and events occurring in the North Shore corridor support the North Shore’s unique natural environment and reflect its character. Maintain and promote the North Shore’s current character, image, landscape, and economic base to serve residents and visitors. Limit and restrict nuisance behavior to promote civil sharing of the North Shore corridor.”

Sue asked if a 10 ft variance would be likely to affect the intent of that part of the Comprehensive Plan. It is similar to meeting the intent of the Ordinance. Is the distance adequate in terms of buffering?

Liz said that she thinks in some ways that the request is consistent with the Comprehensive Plan, but she wants to seriously consider neighbors’ comments. She said that she is impressed by how concerned people are for their community. She is concerned about noise. She doesn’t think it is consistent with the Comprehensive Plan given the community’s input and concerns. She is also concerned about bonfires. The property across the street on Lake Superior is public property and people will want to have fires. One or two bonfires a weekend all summer long would increase pollution to the lake. Liz said that she interprets the intent of setbacks as limiting the effect of nuisance behavior on the neighbors. It would be good to have the actual measurement from the house and from the patio. Because the patio is where it is, she believes that renters’ behavior would impact the neighbors. She would be more comfortable with the reduced setback if it were from a quieter part of the rental.

Jo said that conditions regarding quiet hours could be set that might alleviate some of Liz’s concerns.

Dave said that in his experience, the setback is measured to the foundation of the house. The patio is not living space. And 10 ft is not a significant variance.

The motion passed unanimously.

Jo made a motion that the property owners propose to use the property in a reasonable manner because it is in zone district SMU-6 and is consistent with the definition of SMU-6. Liz seconded.

Dave noted that short-term rentals have been allowed elsewhere in the zone district.

Sue said that unless a variance request has identical circumstances, past variances are irrelevant.

The motion passed unanimously.

Jo made a motion that the variance requests do meet the criteria in that the owner's request is a reasonable one because a 10 ft variance from the 50 ft setback and .15 acre variance from the 2 acre requirement do meet the intent of the Ordinance and Comprehensive Land Use Plan and are not substantial differences from the size requirements as stated in the Ordinance. Jerry seconded.

The motion passed unanimously.

Jo Thompson made a motion that the circumstances are not created by the property owner. The lot size and setbacks were already established by the previous use and so circumstances were not created by the property owner. Larry seconded.

The motion passed unanimously.

Larry moved that the variances will not alter the essential character of the locality. All other dimensional requirements are met. Dave seconded.

Liz reiterated her apprehension given the neighbors' concerns.

John noted that it was hard to differentiate between the variance and the conditional use. Much of the public testimony was related to how the short-term rental would change the essential character of the neighborhood.

Jo said that the potential nuisance factor is such an uncertainty. The structure meets the setbacks in every other respect. If the potential for nuisance could be controlled for, would it necessarily present anything out of character for the locality?

Larry said he didn't think the variances would alter the essential character of the neighborhood.

The motion passed unanimously.

The main motion, encompassing the split motions passed unanimously.

Conditional Use

Sue reviewed the conditional use hearing process and introduced the request. The application stated "The property shall be used for short term rentals less than 30 days. In addition, property shall be licensed by Minnesota Department of Health and professionally managed by a firm licensed by the Minnesota Department of Commerce. The managing firm is Cascade Vacation Rentals, LLC." The proposed short-term rental will use the existing home on the site.

Sue reviewed the operational questions from the application. Many had not been answered on the application. She asked Mike what the hours of operation would be.

Mike said that the hours would be 24 hours a day. Check in would be after 4 pm with no restriction on how late. Typically, people want to arrive in time to enjoy their evening. Check out is 10 am. The days of operation would be 365 days per year.

Jo said that families coming in late with kids would potentially cause a lot of commotion and noise. She would like to have a condition limiting the hours for check in to limit noise.

Larry said that based on his experience, it is not reasonable to do that. If a renter's flight is delayed for instance, they have to be able to check in.

Jo said they would need to establish quiet hours then.

Dave said that those should be part of the rental agreement.

Mike said that they post the quiet hours.

Sue asked about the visitors to the site per day.

Mike said that it would be like any other property they listed. There is a lot of up and down on the North Shore according to the season. The home will be available for rent 365 days per year.

Sue asked how many renters would be allowed per rental time.

Mike said that number has not yet been set. Most of their occupancy rates are based on 2 people with additional charges for additional occupants, usually up to 6 or 8 total.

Sue continued with the questions from the CUP application. If the home is rented 365 days per year, with an average of 6 renters, plus employees for maintenance, yardwork and cleaning, the number of visitors to the site per day could be 1 or as many as 6.

Mike said that the minimum stay would be 2 nights. The average length of stay for their rentals during the period from May to October is 3.57 days.

Sue asked if there was enough parking area for up to 6 cars. There was.

There will be no signs for the rental.

Sue asked what kind of activities would likely be associated with the rental.

Mike said he wasn't sure about this. Campfires would be allowed. There would be grilling, but he did not know whether it would be charcoal or propane. That is usually up to the owner.

Dave asked if there was a designated area for campfires.

Mike said that there would be. He said that they do not supply firewood.

Dave suggested that there be hours that bonfires be limited to.

Liz said that with recent blowdowns and other fire dangers, she thought it was important to be able to notify renters of fire bans or restrictions.

Mike said that they do that for other rentals. They follow the DNR's restrictions when they are in place. All fires are required to be in a contained area. If there are restrictions, they are in touch with guests on a very regular basis.

Dave said that there is usually food and drink when people are sitting around a fire. There should not be anything except wood in the fire, no garbage.

John asked about restricting moving large speakers outdoor. He said that it's been done on that property in the past.

Mike said that they don't have any specific wording regarding speakers being moved outdoors in their rental handbook. They do have restrictions on noise and on loud music. People travel with smart phones now and plug them into whatever device they have. It could happen, but he didn't think it was likely.

Mike said that there will be some noise. You are going to hear your neighbor no matter whether your neighbor is the owner of the property, a long-term renter, or a short-term renter. There will be activity. There will be some noise.

Sue continued. There are no proposed structures, no outdoor work areas.

Mike said there will be small propane cylinders.

Sue read from the application. Waste will be picked up.

Jo asked how waste would be handled.

Mike said that he was not sure yet. Typically, the housekeepers pick it up. There won't be garbage cans sitting out.

Sue said that there were no wetlands on the site, the home is connected to the DNSSD and has a well for water supply.

Sue summarized some of the issues that were brought out by the Community Participation Report: adequate maintenance of the property, types of potential activities, protection of Lake Superior, rental turnover and not knowing neighbors, enforcement issues, fires and campfires, sexual predators, fireworks, smoking, occupancy, sound systems, noise levels, and rental agreement.

Public Comment

Jo noted that the written comments that were read for the variance also applied to the conditional use.

Kevin White spoke. He said that he was not sure if understood what happened with the variance from the side yard setback. Is that distance going to be checked?

Jo said that the variance was granted for 10 ft. If it is more than that, the owner will need to answer to that.

Kevin asked if the Town will verify the setback distance.

Jo said that it would not be verified.

Mike said that he has measured it.

Sue asked if Kay and Kevin's lot has been surveyed.

Kay said that she thought it had been.

Sue said there should be survey markers on the ground. It can be checked by tape, but the bottom line is that the variance was granted for 10 ft.

Kay Westergren spoke. She said that there is a creek going right into Lake Superior on the property and that creek could be sullied. She said firearms should not be allowed on the property. She was concerned with possible late night arrivals. Late arrivals had a potential to occur every time the rental turned over. She said that she is very protective of the lake and the trees. She would like to see conditions to protect the environment and, if approved, would like for it to be allowed for only one year at first for a trial period. The prospect of a short-term rental next door to her is very disturbing.

End of Public Comment

Sue said that one reason to make a use an interim use is heightened public concern for safety. She read from page 63 of the Ordinance. An interim use is to "allow for a use that creates a heightened concern for public health and safety, requiring closer monitoring of the use after the permit is issued" or "to allow for a use for which there is a time certain when the use will terminate." She read the performance standards from Article VIII Section 15 that must be met:

Article VIII Sect 15: Performance Standards: Dwellings, High-Frequency and Low-Frequency Short-Term Rental:

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 with the capability and authority to address complaints or concerns regarding the property. 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. Low-frequency short-term rentals require a land use permit. High-frequency short-term rentals require a conditional use permit.

John said that it is required by the Ordinance that a contact person be available at all times and be able to be at the property within 30 minutes. He said that Mike said that there is a 24 hr phone number that goes to him or to staff. In this case, if they needed to dispatch someone, whether for lockout or for commotion, it would be from Two Harbors. Mike has not said that the response will be within 30 minutes.

Mike said that if it's a condition, they will find a way to make it work.

Sue went through the necessary findings for granting a conditional use and the responses from the application:

1. The proposed use is consistent with the Comprehensive Plan and within the spirit and intent of this Ordinance.
Applicant states: Yes. Use of home is intended for rentals of 30 days or less
2. The use is compatible with the existing neighborhood.
Applicant states: Yes. This type of activity is not uncommon on consistent with other like-kind uses.
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: No.
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. The property shall be used for short term rentals less than 30 days. In addition, property shall be licensed by Minnesota Department of Health and professionally managed by a firm licensed by the Minnesota Department of Commerce. The managing firm is Cascade Vacation Rentals, LLC.
5. The proposed use will comply with the wetlands requirements in Article III, Section 6 of this Ordinance.
Applicant states: N/A
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: N/A
7. The topography, vegetation and soil conditions are adequate to accommodate the proposed use.
Applicant states: N/A
8. The proposed use will not impact public waters during or after construction or impact wetlands without appropriate mitigation measures.
Applicant states: N/A
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: N/A

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

Applicant states: No. Such activity will be consistent with normal residential use.

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

Applicant states: Yes. No change in existing driveway.

Jo said that for the first one, the application doesn't really answer the question.

For the second one, Dave said that people living in a house is a common use for house. The number of people and frequency could be an issue, but could be addressed by conditions.

Liz asked when they would start renting.

Mike said that it depended on the MN Department of Health approval. The home still needs to be furnished, also, so maybe in about a month.

Larry said that based on comments from neighbors and the discussion that has already taken place, he thinks it should be heard as an interim use. Also, the fact that the property is for sale indicates for an interim use, to avoid having a conditional use that goes to the next property owner.

Larry made a motion to hear the application as an interim use. Dave seconded.

Liz suggested one year.

Dave said that they have lost half the season already. He suggested two years.

Jo said that she was not comfortable; there are too many uncertainties. She said that the Ordinance allows short-term rentals as a use, but she is also considering the neighbors' concerns. She agreed that if the Commission grants the use, that an interim use is the best way to assess how it has worked.

Dave said that it is necessary to balance residents' concerns and needs vs others who want to enjoy the area. He talked to the director of Wolf Ridge recently who talked about how important it was for everyone to feel like they own Lake Superior. Dave said that he understands how the neighbors feel, but he also sees it as an opportunity to give more individuals the chance to experience and "own" the lake.

The motion passed unanimously.

Larry Zanko made a motion that the proposed interim use be approved. Dave Edblom seconded.

Jo made a motion to split the motion. Liz seconded.

The motion was approved unanimously.

Larry made a motion that the proposed use is consistent with the Comprehensive Land Use Plan and within the spirit and intent of the Ordinance because short-term rentals are allowed under the Ordinance, the CLUP and within this zone district. The CLUP encourages tourism activities and a broad range of recreational activities.

Jerry seconded.

The motion passed unanimously.

Jo made a motion that the use is compatible with the existing neighborhood so long as all the special requirements are met, the Ordinance is followed regarding noise, and other conditions as established are followed. Larry seconded.

Liz made a motion that occupancy cannot exceed 6 people. Larry seconded
The motion passed unanimously.

Liz made a motion that it be posted in the guestbook that it is illegal to have a fire on Lake Superior and that fire bans be obeyed and an appropriate size fire ring with a cover be provided, consistent with any existing regulations. Jerry seconded.

Jo said that the fire ring must be provided. The Commission could also require a screen.

Liz said that the law states that a fire must be less than 3 ft in diameter and less than 3 ft tall or a burning permit is required.

Liz said that the hours for a fire would be covered under noise.

Dave was concerned about smoke in people's houses. Just because one group wants to enjoy a fire does not mean everyone wants one.

Dave asked Mike what they will do if a renter does not adhere to a condition.

Mike said that he has no problem removing someone for an egregious violation. He doesn't need to do that very often. They can block people from renting, as well. They don't have that kind of problem very often. But for instance, if someone isn't using the screen over the fire, they won't know.

Liz asked if the neighbors were to notice and call, what would happen?

Mike said they would call the renter and say put the screen on. He said that all the questions are good. They are in the business and they feel like they are good at it. Most of their guests are good people who spend a lot of money to come to the area to vacation and will spend money in the area. They are respectful and like to have a nice place. A few fall thru the cracks, but not many.

Dave said that there should be quiet hours.

Sue said that the Commission has required some short-term rentals to have a handbook available to renters. The Commission establishes the policies regardless of who manages the property.

The motion passed unanimously.

Liz made a motion requiring that it be specified in the handbook that fires not be left unattended, that guests are respectful of neighbors and that there be quiet hours from 10 pm to 7 am (meaning quieter voices, no loud music), and no beach fires. Larry seconded.

Liz said that quiet hours would apply to people arriving late at night. She has been to places requiring that the manager be notified regarding late arrivals, but she was not sure how useful that would be in this situation.

Mike said that they have very specific rules on noise in their handbook. They have rules on everything the Commission has talked about in the handbook.

The motion passed unanimously.

Larry made a motion that the handbook include a statement to the effect that all guests respect the neighbors as they would like to be respected themselves. Dave seconded.

The motion passed unanimously.

Larry made a motion that there be a condition that grilling be limited to a propane grill on a grill that is provided on the property. Liz seconded.

The motion passed unanimously.

Jo made a motion that the handbook include a link to the MN DNR fire website. Liz seconded. The motion passed unanimously.

Jo made a motion that all pets be kept on a leash and be attended at all times. Liz seconded.

The motion passed unanimously.

Liz made a motion that it be specified in the handbook that littering is not allowed and to be conscientious of the natural environment on and around the property. Larry seconded.

The motion passed unanimously.

Larry made a motion that no firearms can be discharged on the property. Liz seconded. The motion passed unanimously.

Dave made a motion that the use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone. Larry seconded.

The motion passed unanimously.

Jo made a motion that the use is consistent with the desirable pattern of development for the area because it's an existing structure and will not change the neighborhood. Dave seconded.

John said that there are no other short-term rentals in SMU-6 except Dodges Log Lodges. Looking at the development in the area, the properties are pretty well built up. The prospect of permitting a short-term rental in that area is clearly not acceptable to the neighbors. Is it desirable for the rest of the Township? He cannot say. His biggest concern is the fact that it would be a short-term rental in a more populated area. The other short-term rentals are closely monitored with on-site caretakers. He thought that this is a movement in the wrong direction for this area. The contact person may or may not be able to get to the rental within one half hour if there is a problem. It isn't on-site supervision. This is what caused trouble with the Greenwood Road short-term rental. He doesn't support it.

Jo said that she agreed with those concerns.

Liz said that she thought the on-site monitoring was important. There were letters of support for those short-term rentals with on-site oversight. She would hope her voice would matter if she were one of the neighbors commenting on this proposal.

John said that he was concerned about enforcing the conditions. Who will do the enforcing? It is not reasonable to expect the Town or neighbors to enforce. At the same time, he does not assume that all people behave badly. The solution may be to establish a time limit for the use and invite public input at the end. Clearly people are going to keep an eye on it. It is a very different situation from the short-term rentals on Wildwood Road. Not many people are affected by the rentals there. In this case there is a potential for many people to be affected.

The motion passed 4 to 2, Liz and John opposing.

John moved that CUP criteria 5, 6, 7, and 8 are not applicable. Jo seconded. The motion passed unanimously.

John asked if it was a part of the MN Department of Health inspection to make sure that water supply is adequate.

Mike said that the Department tests for safety, not volume. He said less water would be required for the rental than for a year-around home owner.

Jo said that MN Department of Health determines occupancy based on utilities, too.

Mike said that that was true in new developments, but not for individual rentals.

Dave made a motion that utilities are adequate for the proposed use. Larry seconded. The motion passed unanimously.

John made a motion that the proposed use will not increase the potential for health, safety, environmental, lighting, noise, signing or visual problems. Jerry seconded.

Jo said that she did not agree. She said that there could be potential health and safety hazards.

Liz said that there was an increased risk for fire at a rental. Especially with campfires.

The motion passed 4 to 2, Liz and Jo opposed.

Jo made a motion that CUP criterion 11 is not applicable. Larry seconded. The motion passed unanimously.

John moved that the petitioner has demonstrated that the demand for public services will not be increased by the use. Dave seconded. The motion passed unanimously.

John moved that the interim use run from July 6, 2017 through January 2019, or until the property is sold, whichever comes first. Liz seconded. The motion passed unanimously.

John moved to include Performance Standard 3 from the Ordinance (Article VIII Section 15.A.3): "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." Liz seconded.

The motion passed unanimously.

Jo moved to include Performance Standard 4 from the Ordinance (Article VIII Section 15.A.4): “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 with the capability and authority to address complaints or concerns regarding the property. 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.” Larry seconded.

The motion passed unanimously.

Jo moved to include Performance Standard 6 from the Ordinance (Article VIII Section 15.A.6), “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.” Jerry seconded. The motion passed unanimously.

John moved that the property be rented to a maximum of two groups per week.

Jo said that would limit some of the traffic.

Liz asked if it would be easier to limit the number of rental days.

Jerry said that they currently have a 2 night minimum stay. That would be a maximum of 3.5 groups per week. He thought it seemed unnecessary to limit the number of groups per week.

Mike said that it was in everyone’s best interest to have longer stays.

The motion died.

Liz made a motion that off street parking be provided. Jerry seconded. The motion passed unanimously.

Liz made a motion that Performance Standard 8 (Article VIII Section 15.A.8), “No temporary sleeping facilities may be used on the property during rentals (i.e. recreational camping vehicles, tents, etc.)” be included. Larry Zanko seconded.

The motion passed unanimously.

The main motion to approve the request as an interim use, encompassing the split motions and conditions above, passed 4 to 2, John and Liz opposed.

A break was taken while the findings and decision document was written. The findings and decision document was approved and the meeting adjourned at 12:40.

Comments for June 22, 2017 Abbott Apter CUP/Variance

- 1) Kerrie Burns
- 2) David & Jeanie Estrada
- 3) Michael Sunnafrank
- 4) Michael Sunnafrank
- 5) John Fischer
- 6) Steve & Patty Sigford
- 7) Kevin White

Beth Mullan <bmullan.duluth@gmail.com>

Conditional Use Permit 5527 North Shore Drive

Kerrie Burns <webburns@lakeconnections.net>

Sat, Jun 3, 2017 at 12:57 PM

To: PlanningZoning@duluthtownship.org

We received notice that this land/property owner is requesting a special conditional use permit for the property at 5527 North Shore Drive, Duluth, MN 55804. Our interpretation is that they are seeking a permit to use this essentially as a vacation rental (rentals less than 30 days). This may work out fine for all parties involved, although due to the nature of rental properties in general we have some concerns about how well the property will be cared for and maintained. We also have concerns about what types of activities might occur by the renters. The home is located along Lake Superior - a resource that needs to be protected. As a general rule we have seen that rental properties are less cared for than properties that people have an invested interest in. We would like to see some type of a trial period, where the situation can be re-evaluated in the future and the permit revoked if appropriate. It would seem that a trial period of 1-2 years would be acceptable.

If you have any further questions for us please contact us at this email address.

Thank you in advance for sharing this with the Planning Department.

Kerrie Burns
Pamela Weber
1804 Pine Park Road
Duluth, MN 55804

Beth Mullan <bmullan.duluth@gmail.com>

Conditional Use Permit of 5527 North Shore Dr

Dave Estrada <estradametalart@comcast.net>

Wed, Jun 14, 2017 at 6:17 AM

To: planningZoning@duluthtownship.org

Good morning

My property is 5531 North Shore Dr . Next door to Mr Apter . I do not want the property to become a conditional use .
No 40' yard set back . I'm sorry they purchased the property at a bad time , when prices were high . I like it the the
way it is . No short term renters . Please just sell or move back . My property has been in my family since 1949.

Respectfully , neighbors

David & Jeanie Estrada

5531 North Shore Dr.

Duluth Mn

No short-term renters !

No set back of 40' !

Sent from my iPhone



Beth Mullan <bmullan.duluth@gmail.com>

Planning and Zoning Issues 5527 North Shore Drive

Michael Sunnafrank <msunnafr@d.umn.edu>

Mon, Jun 19, 2017 at 1:16 PM

To: planningzoning@duluthtownship.org, Michael Sunnafrank <msunnafr@d.umn.edu>

Cc: mike@staycvr.com

I am writing this letter in response to the Duluth Township's announcement of a Conditional Use Permit application and property variance for 5527 North Shore Drive. I am also sharing this letter with Mike Larson for his community participation report.

My wife and I live at 5519 North Shore Drive and are the nearest full-time residents to the subject property. We are therefore most likely to experience the negative influences that granting this variance could produce. Given this, we trust that our concerns will be carefully weighed.

Unfortunately and despite my very strong feelings about this matter, we will not be able to attend the June 24 meeting on the proposal. We have a long-planned family vacation that conflicts with the meeting and cannot reschedule.

I am strongly against this conditional use permit being issued for all the reasons addressed below. As you will see, some of my concerns pertain to issues we have already experienced with long-term renters at 5527, issues which could be greatly exaggerated when letting the home out for short-term usage to many sets of renters.

But before addressing those concerns, I would like to express my disappointment with the process used for the Community Participation Report. It doesn't make sense to me that such a report would be put in the hands of the management company that is involved with marketing the property and therefore has an obvious self-interest in its outcome--especially when they will be 'summarizing' feedback they get from surveyed residents.

I am, however, very grateful for this opportunity to address my concerns directly to Planning and Zoning on this matter.

Questionable Claims made by Cascade Vacation Rentals

At the outset, I want to address three questionable claims made by Cascade Vacation Rentals, LLC in their application.

(1) Cascade claims no negative effects will be forthcoming. It appears they are basing this largely on their six-page boilerplate contract (problem with that addressed in (3) below) and unverified claims they make about other rental properties they manage. Since Cascade is seeking this money-making opportunity we must consider these claims with due skepticism.

(2) Cascade claims this short-term use fits our community well. It does not--we are all long-term residents, almost all owner-residents--our community is filled with long-time residents who have a considerable stake in maintaining our we-have-each-others back kind of place. When we first moved here five years ago, it was largely due to that community feel. And when we arrived our neighbors kindly took the time and patience to mentor us into being full community members. That cannot happen with short-term renters. Given this, we are definitely not a vacation rental community nor would a vacation rental fit in.

The fact that Cascade would make a claim to the contrary speaks to either their unfamiliarity with our neighborhood, their willingness to say whatever it takes to get the permit issued, or both.

(3) Cascade's claims their six-page rental contract will cover issues of community concern. But those contracts will not be closely enforced and it is likely that problematic renters will have acted out long before anything can be done to address the problems they create---soon to be replaced by another set of potentially problematic renters. This is particularly likely in this case since there is no manager on site. The owner lives elsewhere, Cascade is located in

Lutsen, and their 'independent contractor' in Two Harbors is in place to take care of the residence for the renters and owner--not a Cascade employee with primary community-outreach responsibilities.

Concerns

I have several concerns about the use of 5527 as a vacation rental. Having stayed at vacation rentals myself, I realize many people who use them are well-intentioned and conscientious individuals. However, and despite the best of intentions, some individual vacationers and some vacationing groups--particularly in larger homes such as 5527 can ruin the lives of neighbors. I have witnessed that myself and do not want to live in a neighborhood or next to a property where that happens even on an occasional basis.

(1) Reliance on already-burdened police/sheriffs/fire resources to manage concerns stemming from abuses at the property. Levels of reliance that would not be as likely to occur with permanent residents in place or with onsite management. This concern will be clarified for you as I address other issues below.

I am not saying problematic behaviors will be anything close to rampant, only that they are more likely to occur with individuals using the property for short term stays than with long-term residents--a situation I do not wish occurring next door and in our community.

(2) Unsafe use of fire, either at the residence or on the lakeshore. Many people come to the North Shore thinking it would be fun to have a bonfire next to the lake. Despite it being against the law, people do that. You can walk up and down the shore and see the remnants for yourself. In the past, long-term residents of 5527 have done that and we (and others) have taken the time to help them see the problem with doing so and the issue was resolved. That is easy enough to do with cooperative long-term renters. Not so when new renters arrive every 3-5 days.

Moreover, vacationers may either be unaware or unwilling to follow fire bans and unsafe practices during high fire-risk episodes and season. Certainly this would be more likely with short-term visitors who have been looking forward to their chance to experience a bonfire than with long-term residents who have a greater stake in the fire safety of the neighborhood. This is particularly problematic with visitors from urban and suburban communities who may not be as aware of what it is like to live in the Northwoods.

Even though Cascade could include statements against these uses of fire in their contract, visitors could easily ignore that and make matters much worse and less fire-safe.

(3) Child safety. In fact, safety in general. While I realize this is unlikely, an incident at 5527 last summer spurs my concern here. The sister-in-law of another neighbor was visiting and took her children down to the lakeshore. There they saw a resident of 5527 taking photos of himself in 'provocative' poses. I suppose having the opportunity to take such photos to post to social media or share with like-minded friends was just too tempting. It does seem that when community membership and shared values are not in place--as would be more likely with short-term vacationers--such unacceptable behaviors could take place.

This also calls to mind a more extreme possibility. There are good laws in place specifying that a neighborhood is to be given due warning when a sexual predator moves in. I do not believe such laws could be enforced in the case of vacation rentals unless detailed criminal background checks (not simply credit checks) were run on all vacationers staying at the residence and warnings were issued in sufficient time.

I doubt Cascade is planning to do that. This also begs the question of who would be liable if something tragic were to happen.

(4) High levels of noise disturbing neighbors. We actually experienced this with one set of long-term renters at 5527 years ago, renters who played loud music late into the night and shot off fireworks (not just on the 4th). The residence is close enough to us that we had difficulty sleeping through the noise. We did speak with them and managed to reduce the noise--but that would not be possible with 3-5 days stays where each new group could recreate the problem.

Cascade could certainly articulate noise policies in their contract with renters but that does not mean each set would follow the contract. We would end up paying the penalty for that, not Cascade or the owner.

(5) Unsafe driving practices. Particularly problematic when drinking gets involved as is more often the case with vacationers than with permanent residents. Our grandchildren visit occasionally so this is of great concern for us.

(6) I am sure Cascade will have smoking policies in place for 5527. What that will tend to do is drive smokers outside, creating a fire danger. Additionally, this will often involve smoking on the street away from the property (where the housekeeper will not be cleaning up after them). Both my wife and I have had to pick up butts left by people who have decided to pull over to get a view of the lake, take a stroll along the shore. I would not relish having to do that for the neighboring visitors. And I am not at all thrilled with the idea of alcohol-consuming smokers tossing lit butts around.

(7) I am also very concerned about the total number of visitors at any one time. The size of this house and the fact that it can be broken up into a large home and an attached apartment increases the number of short-term visitors that may occupy the home, with each additional visitor multiplying the risks articulated above--whether that number is 8, 10, 12 or more.

There are more concerns I could list (e.g., increased littering along the road and shoreline by a few careless visitors--which my wife and I would be picking up.)

Again, I am not saying that all of these concerns would be realized with most visitors, only occasionally and with greater frequency than with long-term residents. But that is more than too much to be acceptable.

Thank you again for contacting us.

Michael Sunnafrank
5519 North Shore Drive

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Mike Sunnafrank



Beth Mullan <bmullan.duluth@gmail.com>

Addendum to Issues with 5527 North Shore Drive Conditional Use Permit Application

Michael Sunnafrank <msunnafr@d.umn.edu>

Mon, Jun 19, 2017 at 1:16 PM

To: planningzoning@duluthtownship.org, Michael Sunnafrank <msunnafr@d.umn.edu>

In my prior e-mail, I sent you my thoughts about the Conditional Use Permit being sought for 5527 North Shore Drive. I there noted my strong desire that the permit be denied. However, on the off-chance that you may see fit to grant the permit and variance I urge that any such permit do three things to lessen the potential long-term negative impact on the community.

First, make the permit probationary for one year and provide a way for neighbors to register complaints during the first year in order to better determine actual impact and then revisit the decision toward the end of that probationary period, seeking community input.

Second, and importantly, limit the total number of short-term residents occupying the whole property. As noted in my former letter, the main house and the included mother-in-law quarters could be advertised as a separate units so I urge a whole-house limit should be put in place. Each of the concerns I have expressed are magnified by every additional resident so the number allowed is crucial to keeping potential problems at a minimum.

Currently Cascade management lists 4 bedroom homes with maximums of 8 total renters. If the permit is issued, I request that the township specify that amount (8) as the maximum allowed for the total property in the permit. Please do not leave that in the hands of the owner. I recently contacted Cascade to ask about those maximums and was told some owners might be willing to lift their limits--that they are not set by the state except as applies to load on utilities (water, sewer, etc.). Given this, I think it best to formally include the number in the issued permit. I have seen homes this size occupied by as many as 12-15 people, even more, seriously compounding the potential for the concerns listed.

Third, please specify that only a limited sound systems be allowed in the property. Nothing more than a typical room sound system. As you may have experienced, hotels frequently put governors even on their television sound volume so as not to disturb neighbors. I am asking the Township to specify a similar cap on sound.

But my hope is that the permit will be denied and these requests will be unnecessary.

Thank you again,

Michael Sunnafrank
5519 North Shore Drive

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Mike Sunnafrank



Beth Mullan <bmullan.duluth@gmail.com>

Conditional use permit

john929t <john929t@peoplepc.com>
Reply-To: john929t <john929t@peoplepc.com>
To: planningzoning@duluthtownship.org

Mon, Jun 19, 2017 at 2:53 PM

Planning and Zoning: Re: Short Term Rental

My comments for the next meeting are as follows: I applaud the two year trial period. Also, I would like to be sure that loud noise will not be a problem such as from screaming children, barking dogs, and motorcycle clubs that might rent the home.

Mr. Larson came around and personally talked to people in the area, and if things go as he outlined, I would not expect any significant problems.

John Fischer
1821 Pine Park Rd.
Duluth, MN 55804



Beth Mullan <bmullan.duluth@gmail.com>

comments in opposition to variance request 5527 North Shore Drive

Steve and Patty Sigford <nshore@lakeconnections.net>

Mon, Jun 19, 2017 at 4:33 PM

To: PlanningZoning@duluthtownship.org

We are Duluth Township residents within the "area of impact." We are in opposition to the Conditional Use Permit-5527 North Shore Drive-requested by Mr. Apter. Additionally, we are in opposition to the variance request(s) related to the conditional use request.

We request that Duluth Township Planning and Zoning/Duluth Township deny the variance and CUP.

Thank you for your work on behalf of Duluth Township.

Steve and Patty Sigford

5485 North Shore Drive

Dear Planning and Zoning Commission,

Please accept my thoughts on the proposed rental of 5527 North Shore Drive.

I received a letter from Cascade Vacation Rentals outlining the proposal. It indicated to alert them to any concerns and they would convey these to you.

Cascade of course wishes to have the variance granted. So to have them provide a written report to the Planning Commission of property owner concerns makes no sense. They can interpret concerns how they want and present these concerns as less severe than they may be.

Because of this conflict of interest, I encourage you to thoroughly read any and all letters you may have received from concerned property owners, and not to rely on Cascade's interpretation and presentation of said concerns.

A note on Cascade Rentals:

Cascade indicates they have a 6 page rental agreement. I could not find this. It appeared all I needed to enter was my name, address, and billing information. Yes, there was a section of rights and responsibilities, but I was able to just scroll past it, and click on "I accept" without reading it. So does Cascade go through this list with renters in case they did not read it? How does Cascade assure all renters are truly aware of their rights and responsibilities?

I would be more receptive to this rental application if there was an on-site caretaker. But there is not. So the guests are on the honor system to adhere to the rules set forth on Cascade's website, if they bothered to read them. So what happens when there is a problem? There is a property caretaker in Two Harbors, but is he/she going to come down and deal with unruly renters, or do the neighbors have to call the police? Are the neighbors now the "hall monitors" so to speak of this property?

I would like to speak briefly to 2 concerns brought up by others in letters you have received.

Noise levels:

It is very possible that many of the guests will be from urban areas, coming to the North Shore to get away from the hustle and bustle of the city. Having lived in larger urban areas, I can say that the general noise level is higher than rural areas, and renters may not realize the level of noise they are used to in the city will be excessive when out of the city. Noise carries quite far on calm nights and renters may not even be aware they are causing issues.

Fires.

People are drawn to fires and like to have them. But if your house happens to be downwind and you aren't home to close your windows, your house will be full of smoke. Having grown up on a lake with neighbors who liked to have big fires, I have experienced this first hand.

Yes, one could say these issues would be true for owners, not just renters, but with a high frequency rental these issues will most likely be more common with renters, as there will always be a new batch of renters, eager to have a fire. Also, there are many times the wind is too high, or it is too dry for a fire. Are renters going to be savvy enough to know this and not have a fire if these conditions exist? Additionally the shore line is not owned by the property owner, and fires may not even be legal on the shore.

This is a beautiful area with many old growth white pines, and it would be terrible to lose these (not to mention potential home losses as well) to a fire caused by someone who just had to have a fire while they were on the North Shore.

In the variance application, note is made that usage would be consistent with normal residential use, yet with up to 6 renters at a time, on a high frequency turnover, I do not see how there cannot be an increase in the traffic levels, noise levels, etc. I also believe there could easily be more than the 2 cars maximum they indicate in the application.

On the questions page, 2a, the applicant even states that the proposed use of the property is “not of the ordinary character of the zone district.”

Finally, I would like to address the aspect of community. The Township has been very welcoming to us. While working on our property, numerous residents have stopped by to introduce themselves and make us feel welcome. Our next door neighbor has graciously offered to let us use his water to water some of our plants. Others have opened their homes to us so we can see the level of craftsmanship the home builder achieved to help us with our decision making process on a builder.

But renters do not have that interest in community. They are basically strangers coming through with the desire to enjoy their time and then go home.

So when making your decision on how to vote, ask yourself if you would want to live next to a high frequency rental unit, where your neighbors would always be people you didn't know. And if you would not, please don't make the other residents along this stretch of road do it either.

I would therefore request you not grant the variance.

Thank you for your time. Kevin White, 5523 North Shore Drive.