

**Town of Duluth
Planning Commission
Meeting Minutes
November 16, 2017**

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

Present: Jo Thompson, Wayne Dahlberg, Jerry Hauge, Larry Zanko, Dave Edblom, and Liz Strohmayer.

Absent: John Schifsky.

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

The agenda was approved as presented.

Public Hearing: Ehrenwald/Carberry Variance

Sue introduced Cheryl Fosdick, the designer and architect for the proposed project who is representing Ed Ehrenwald and Pam Carberry for the hearing.

She read the Town's Communication Agreement and then introduced the hearing and the process. The hearing is for a variance from the required 125 ft from the top edge of the eroding bluff in an erosion hazard area to 55 ft for construction of a home and a studio.

She showed a vicinity map. The property is right on the Lake County line at the northern end of the Township. The site photo shows the property with the existing house which will be torn down. The site map shows the building envelope for the home with the 55 ft setback and the location of the second building to be built, which will be a studio, also at the 55 ft setback.

Sue read from Article VI Section 3 of the Ordinance regarding Erosion Hazard Area Requirements:

3. Site development plans shall be required and approved by the Planning Director for all new construction in the Erosion Hazard Area. The site plans shall include a description of the following: surface runoff including roof drains, subsurface runoff, vegetation removal including proposed landscaping, proposed sewage treatment systems, topography of site, structure and driveway location, potential bluff toe protection, slope alteration, and other pertinent information as requested.
4. The site development plan shall include setback and shoreline erosion control recommendations, and shall comply with the shoreland alteration provisions of this Ordinance.
5. Structures and soil absorption areas shall be set back one-hundred-twentyfive (125) feet from the top edge of the eroding bluff, and where slumping is evident, the setback shall be measured from the uppermost shear zone (point at which the soil separates and slumping begins). Sewage treatment systems shall not be located within the structure setback area. The above standard may be modified by variance if the landowner provides technical data proving a different recession rate or that the erosion hazard area, although correctly estimated, can be mitigated by structural protection.

Sue looked at the setback requirements from Lake Superior for Lake County. Their requirement is 75 ft from the OHWL, which is 601.5 ft, or 40 ft from the vegetation line, whichever is greater.

Jo said that the Ordinance states that if the landowner can provide technical data showing that the erosion rate is different, it can be taken into consideration in establishing setbacks from the lake. Carol Johnston, with NRRI, published a bulletin looking at different geologic features and, coordinating with North Shore Management Board, calculated erosion risk for all of the North Shore. ("Erosion Hazard of Minnesota's Lake Superior Shoreline" Carol A. Johnston. Minnesota Sea Grant Research Bulletin 44.) A map was generated that is identical to the Town's zoning map for high and low erosion zones. Bedrock was a major factor and they calculated an erosion rate of 0.168 ft per year for these areas of low erosion. The highest rate was 0.648 ft per year. The NSMB recommends the following formula: the erosion rate x 50 plus 25 ft. They based this formula on data collected from old aerial photos. At this point, the lake is changing and there are more storms that are more severe, so Jo thought it would be prudent to use the highest erosion rate.

Sue said that using that formula, the setback would be about 57 ft from the vegetation line. She said that the erosion hazard area delineation is broad and it may not apply to every parcel in the area. The NSMB is continuing to work on erosion rates. Setbacks from Lake Superior have been considered in many ways over the years with varying conclusions.

Wayne said that he walked the shore and it went from rock to a wooded area without a bank. He did not think it was a low erosion area.

Sue said that the proposal shows two entries onto the site, one to the house and one to the shop. One is a common entry (partly in Lake County) that is shared with the neighboring cabin and is currently used to get to the existing house. The Ordinance says in Article III Section 8.G that "for each parcel served by a public road, there will be only one twenty to thirty-two foot wide driveway entrance unless permission is given by the appropriate authority. Additional driveways require a variance." It is not clear how to interpret this. Does it mean that if you were to have a 16 ft wide access you could have more than one? It may require an additional variance. She would like for the Commission to determine tonight if a variance would be required for the second driveway. Sue said that she looked at the site and at LIDAR topos and the drop for the driveway would probably be about 16 ft in 100 ft, which is quite steep. One concern is whether it would be adequate for emergency vehicles.

Cheryl said that they applied to St Louis County for two driveways. St Louis County said they didn't see that it would be an issue. The property is being subdivided and the legal description has not yet been settled. The owners want two accesses because there is a large culvert in the middle of the property that carries highway runoff and they do not want to have to negotiate that within the site. She said that her client is still determining whether or not he will purchase the property. These are all considerations.

Sue read the criteria that must be met to allow a variance and the responses to those criteria from the application.

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

Applicant response: The intent of the Ordinance is to protect the Lake Superior shoreline from further/increased shoreline erosion and to allow for adequate ground and surface water infiltration to be absorbed by the forest floor without undue erosion. Building at the required 125 ft setback will place the house structure closer to delicate exposed rock/boulder field and mossy surface

drainage area with very shallow soils and behind higher, drier spruce “upland” areas better suited for soils stability and avoiding surface drainage. The ideal setback within which to build and to best accommodate a “no build” strategy where forest floors are shallow soils, mosses and large cobbles is a 50 to 60 ft zone of setback on the SW 1/3 of the property. Building at greater than 210 ft 0 in setback conflicts with the power easement.

The Duluth Township Comprehensive Plan points:

Effects of a proposed 55 ft setback variance for a secondary (studio) building.

Currently the existing home is built within a cultivated lawn area, with increasing slope behind the existing house, up to the North Shore Road. The existing home is set back 88 ft from the vegetation line and only 28 ft from the 50 mph roadway corridor. The demolition of the home and the proposed construction of a furniture and printmaking studio at a 55 ft setback from vegetation line will allow for a proposed reduction in land slope off the roadway and proposed abundant planting corridor between the roadway and the new studio structure, increasing soils absorption of roadway runoff and better protecting the shoreline by increasing the quality of the pervious surface. A proposed studio structure located at a 55 ft setback would also be at a 4 – 5 in lower elevation than the current 88 ft setback, requiring a lower overall building height relative to the roadway above, preserving views to the lake. The creation of a crucial low height sound barrier, via plantings between roadway and studio, which also preserves views to the lake at this location on the property is also a result.

The current gravel driveway and parking surface between the existing house and the lakeshore, will be removed within the property lines. In its place along the Ne property line, a planting berm is proposed to slow water runoff down the neighboring driveway and increase soils absorption, better protecting the shoreline from future erosion and “fines” runoff from the neighboring property.

The character of the shoreline at this location is pebbles overlying a rock shelf. The vegetation line is well established and shows no sign of erosion. The neighboring house shown below is approximately 26 ft set back from the vegetation line.

Effects of a proposed 55' setback variance for a primary house structure, with attached garage.

The depth of the property between roadway and vegetation line at existing house on the NE side of the property, is 197 ft. The proposed site for the primary residence is located on a part of the property with an average depth of roadway right of way to lake vegetation of 312 ft. At approximately 85 ft from the roadway right of way (220 ft from vegetation line MAX), there is a 20 ft wide "no-build" power easement. The property at the roadway right of way is a mixed of poplar, fir, and spruce. Soils are loose, dry and organic. Undergrowth is moderate to minimal and fallen trees exist along the power corridor. We propose to add med. height pine and spruce below the road right of way, limb existing spruces to increase evaporative loss and cut up fallen trees for forest floor habitat. Driveway will serpentine through forest to minimize tree removal. There is no surface water coursing in the driveway area.

Lakeside of the power corridor, at an approximately 200 ft setback from vegetation line, to about a 125 ft setback, the soils, while shallow and soft, contain grasses, mosses and shrubs (NE side). This almost flat to very low slope area of the property seems to the best aerated and nutrient-rich

soils as a wide variety of leafy plants and ferns exist (SW side). The required 125 ft setback would place a primary residence within this vegetation zone.

Due to its high capacity to absorb runoff, this 80-90 ft wide section of well aerated land, left alone to flourish, is providing for daylighting into the middle area of the site, as well as processing, via evaporative loss, the runoff from the roadway and steeper area of the site above. We propose to avoid disturbing the soils in this zone by requesting our 55 ft setback variance and creating a "buildable area "from 55 ft to 110 ft setback from the vegetation line. The proposed 55 ft setback and "Buildable Area" of the site has the following characteristics:

- From approximately 110-120 ft from the vegetation line, to approximately 35 ft from the vegetation line, (where there is a definitive low grasses and small shrub growth up to the vegetation line), the tree cover is primarily (approx. 75%) black spruce, with exposed large cobbles and little undergrowth.
- Somewhat uniquely, in some areas, there is positive slope from this area to BOTH lakeside and roadside directions, making it a rather ideal location for healthy control of water runoff that is inevitable in any building project. This band of spruces is effectively growing on a very small "upland mound".

By permitting a proposed 55 ft setback (and a consequential 55 ft to 110 ft buildable zone), the lakeside tree line can be selectively preserved and the primary residence can be built "in a leggy woods", without significant added fill for positive slope generation, on soils that are not deep or highly organic and very close to fractured and solid rock surface. This seems the most ecologically sound approach to preserving the self-sustaining condition of the site drainage and soils absorption. Such a building location will have the least impact on the existing ecology of the site. And would allow us to sit lightly on the existing contours and limit clearing of spruce trees to just larger than the footprint, since these spruces are very tolerant of root cut and soils compaction and will seed and regenerate easily. There will be no lawn in this project. The nature of the shoreline below this proposed Buildable area, including the proposed 55 ft setback, shows little to no sign of erosion. Much of the shoreline is solid rock "shield", with large fractured rock components atop. The shoreline is very unlike the clay bank shores that dominate southwest of Stoney Point and indeed, aerial views of our site shoreline show a solidly structured rocky shoulder.

"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 response: Property is about 320 ft deep at proposed home site. Proposed use of the property is permitted in this zone. The shoreline is underlain with exposed solid rock ledge within soils. Vegetated bluff edge 1-3 ft in height. Land between the highway and lake is of 4 types:

Land between the power easement (at 210-230 ft setback) and highway (310 ft) is steeper with mix of deciduous and conifer trees. Leafy undergrowth with some areas of shallow overburdened rock ledges, stumps.

From 110 ft to 200 ft setback, the soils are mossy, with ferns, some birch, aspen, red pine and a few spruce. The soils are shallow, soft, absorptive with ferns interspersed with cobbles and small boulders, grasses and low, leafy plants.

From 35 ft to 110 ft setback, the land is largely spruce forest, variable density, with areas of native grasses and low plants. Floor is needled and smooth and dry. This is preferred for building sustainable. We request 65 ft setback. Shoreline plants are well established, incl birch, young pine, and spruce.

The discussion in Section VIII, #1 results in the following conclusion:

The "natural" circumstances of the site that affect the location of the "best" buildable zones involve the nature of specific vegetation and soils moisture, as described above. The requested 55 ft setback allows for a new home with attached garage, of up to 65-70 ft deep total, to be placed within the driest, most drainable portion of the property lakeside of the power corridor. This proposed 55 ft setback will allow for the least disruption of existing vegetative growth and diversity when constructing and locating the new home.

The proposed 55ft setback will not adversely affect the existing vegetated shoreline. Erosion is minimal or non-existent due to underlying bedrock close to the surface of the soils and a stable rocky cobble and bedrock shoreline.

There is an existing highway drainage ditch approximately mid-property, that will not be affected by the proposed locations of house or studios. No changes to the water course are anticipated. The 55 ft setback will allow for the placement of a studio structure such that grade between the studio structure and the highway can be both reduced from existing conditions and plantings can be added for increased soils absorption below and acoustic separation from the highway.

The Variance, if granted, will not alter the essential character of the locality. The requested 55 ft setback is not unusual for this portion of the shore, with most properties to the NE on this bay at less setback depths than 55 ft. The immediate neighbor is at 28 ft on the NE and the immediate neighbor on a large property to the SW is setback approximately 74 ft.

Variations shall be granted for earth sheltered construction as defined in Minnesota statutes when in harmony with the Ordinance.

Applicant response: Instead, we plan to install wooden walkways and paths above grade and propose a shallow, frost protected foundation in order to preserve existing subsoil hydrology. Project is intended to sit lightly on the land.

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

Applicant response: Yes. Proposed use is residential with 1 accessory structure containing 2 studios: printmaking and furniture building. A small greenhouse associated with studios and studio garden, is anticipated.

Jo asked for a clarification. In the application, they said that there will be no lawn in the project. There has traditionally been a lawn that has been mowed down to the vegetation line. Lawns provide very little protection because they have a very shallow root system. That is the area that has eroded. The DNR recommends a 25 to 50 ft buffer zone with deeper rooted, natural vegetation. She would like to see that reestablished.

Cheryl said that having no lawn is the plan. It is about a 3.5 yr process. The owners want a more natural landscape and want to slow water coming off the highway. They will plant trees between the highway and the studio and grasses and vegetation with deeper root systems below the studio. They also plan on a boardwalk.

Cheryl said that there are some legal issues on the north side that they are still resolving. There is a dedicated permanent setback for the driveway. The neighbor's cabin to the east towards Lake County is in that setback. The cabin is a grandfathered building. They would like to shift that driveway over. They need to find a compromise. They don't intend to use that land as a driveway as it directs runoff towards the lake. They would like to put in a berm to bring water away from the lake.

Wayne asked about the power line easement,

Cheryl said that the easement is very restrictive. It comes from the south and continues across the County line. They would like to bury it at some point in the future.

Dave said that it appeared that it would be more practical to have two driveways than it would be to cross the culvert.

Cheryl said that it would be possible to cross the culvert, but it would be much easier not to.

Wayne noted that the drawing showed only 70 ft between the two driveways on the highway.

Public comments

Michael Pliml spoke. He lives at 106 Scenic Drive, two houses down. He read from a prepared statement. He said that the larger the setback, the less chance of erosion or overland pollution impacting the lake. In the variance application it states that there is no erosion occurring, but there is definitely erosion occurring at the edge of the lawn. He sent photos prior to the meeting to be distributed to Commission members. For the studio they have two key justifications, one to improve the view from the road which would occur anyway when the existing two story is taken down and replaced with a one story structure. And you're also putting the one story structure 4 to 5 ft lower. The second justification was to allow space for plantings to improve absorption of road pollutants and to create a sound buffer. This is a good thing and he believes both could be accomplished with the setback that exists for the current home. For the requested home setback, the only justification that he could find in the application was that the soils are not conducive to building. But with today's construction practices, it should not prevent the building of a home between that 100 and 200 ft setback from the vegetation line. If the concern is disturbing the ecology behind the buildable area of the lot, please note that the driveway passes right through it anyhow. The proposed home layout is 80 ft from front to back. That could be modified to increase the setback and still be within the buildable area. He thinks the 55 ft setback is being requested to provide a great view of the lake. In his opinion, the variance request searches for justifications to support the view. Zoning Ordinance 5 was created to protect the lake from erosion and overland pollutants. He believes that rules and ordinances should be adhered to and variances should only be allowed when significant conditions exist that prevent the lot from being buildable and when we can be very confident that neither erosion or pollution will occur. In this case neither can be fully satisfied with

erosion already occurring and the buildable question behind the Ordinance's acceptable setback distance still under debate. Therefore this request should be denied in its present form. In summary, he does not believe the board should pass this variance in its present state. The justifications aren't adequate. The board could consider a setback of less than 125 ft but significantly more than 55 ft for both buildings due to the locations of the road and the powerline. 55 ft is too little and 125 ft is too much. There needs to be compromise.

Cheryl clarified that the studio will be 2 stories, with a print shop upstairs and a wood shop downstairs.

Beth read two comments submitted by email, one from Michel Pliml and one from K. Olson. (See attached.)

Close of public comments.

Wayne said that there are so many differences between the two sites, the studio and the house, that they should be addressed separately. The Commission agreed.

Jo made a motion that the variance be allowed at 55 ft for the proposed house. Jerry seconded. Liz made a motion to split the question. Jo seconded. The motion to split the question passed.

Jo made a motion that the proposed variance is in harmony with the intent of the Ordinance because per Article VI Section 3.B.5, there is technical data for the erosion area and based on the formula from the NSMB, the technical data allows for reducing the setback. Dave seconded.

Dave asked if Jo felt that the change from lawn to deeper rooted vegetation reduces runoff impact enough to be that close to the lake. He thinks they could push the house back.

Jo said that there is an issue with the powerline easement and with soils.

Cheryl said that they were negotiable on all points. She said that the property goes into a wet area before coming back up to the building area. They hope to direct runoff into this wet area and really slow its progress into lake. Their intent is to roll everything back to slow the water. That is the reason they identified this zone for layout of the building.

Wayne said that he walked through the area from the shore back up to the road. He believes that there must be a way to get back a little and still have a good home location. He can't see pushing the envelope that much from the required 125 ft setback. He drew a line at 100 ft relative to powerline. That creates a triangle running from 0 to 60 ft deep that would be buildable at a 100 ft setback. There is room to move forward to get a little relief from the powerline. He is not prepared to support a 55 ft setback. He does not believe it would be in harmony with the Ordinance or meet stormwater management goals.

Liz said that it is a big area on the map designated for the proposed building area and agrees with Wayne that it needs to be narrowed down. The proposed house is not a very modest size, in her opinion.

Jerry asked how much it could be moved back with the powerline easement.

Cheryl said they could possibly work to get it to 80 ft.

Larry suggested building on a different part of the property.

The motion failed 5 to 1 with Jo voting in favor.

Jerry made a motion to approve a variance of 80 ft for the home, based on the information Jo provided earlier on erosion. It seemed more reasonable to him and stays away from the powerline. Larry seconded.

Cheryl said that it is her business to have empathy between the building and the site. The building location is very specific to the site. If the setback is approved at 80 ft, she would have to have a conversation with the client. The goal would be to develop a plan for a house that is less than 2400 sq ft that fits in the building area.

Liz asked about approving the proposal without having the actual plans. She would like to see where exactly the structure would be located on the site.

Jo said that if an 80 ft setback was granted it would result in a building envelope that the structure would have to be built within.

Wayne said that he would rather have them come back with a new plan. He didn't think the requested 55 ft setback was acceptable but nor was he prepared to have the Commission make an off-the-cuff setback decision. He would like to see the owner present for the hearing. The powerline is a hardship. He suggested that the action be delayed. Go back to the owner and think about it conceptually to see what would be acceptable. It has to work for both the owner and the site.

Cheryl said that it is a lengthy process. She would like to know where to start.

Sue said the Commission could deny the variance and Cheryl and her clients could come back with a new request.

Jerry said that he made the motion because if they respect the powerline, they can still build at 80 ft.

Wayne said he would rather have them come back with something that they know would work for them. The Commission doesn't know enough to set an arbitrary setback.

Sue said that setting an 80 ft setback would provide a building envelope between that line at 80 ft from the vegetation line, the 30 ft side yard setbacks and the powerline easement. So the building would have to be in that area. Only the footprint and the height of the building are concerns of the Commission.

Cheryl said the home would be one story. She said that they had talked about different layouts and she said that she was confident that they could somehow make it work at 80 ft.

Dave said that he agreed with Jerry. 80 ft leaves a reasonable amount of area to work with. Would it be a problem with the soil conditions there?

Cheryl said that it put the building site into a wetter soil area, but she said she could work with it.

Wayne said that 80 ft is much more respectful of the 125 ft required setback than 55 ft and he would support it.

Liz moved to split the question and Jo seconded. The motion passed unanimously.

Wayne made a motion that the proposed project would be in harmony with the Ordinance with an 80 ft setback. Jo seconded.

Jo said that she agreed. It is more protective than the calculated amount she discussed earlier.

The motion passed unanimously.

Wayne made a motion that the setback is consistent with the Comprehensive Plan in that the CLUP speaks to respecting Lake Superior and the quality of the water and respecting buffer zones between the highway and the building site. Larry seconded and the motion passed unanimously.

Larry made a motion that the property owner proposes to use the property in a reasonable manner given the care and thought that has been put into the design and the discussions this evening that support it. Liz seconded and the motion passed unanimously.

Dave made a motion that the circumstances are unique to the property and not created by the property owner in that the encumbrances were there already. Jerry seconded and the motion passed unanimously.

Wayne made a motion that the project will not alter the essential character of the locality. It is very much in keeping with the shore as it has been developed to date. It is less intense development because of the acreage they have. It is in a wooded area that will make it less noticeable from the highway and from the lake. Liz seconded and the motion passed unanimously.

Jo asked about conditions. She recognized the effort throughout the project that Cheryl and the applicants made to protect the natural landscape, but should it be in the Commission's decision that the 25 to 50 ft buffer of natural vegetation between the project and the lake be maintained?

Wayne said that there are guidelines in place in the shoreland overlay regarding what can be done with regard to vegetation. It allows some alteration but does not allow removal of vegetation over a certain size.

Sue read from Article VI Section 2A: Activities within Building Setbacks from Lakeshore, Filter strips.

2. The setbacks listed in Table 5.2 function as filter strips. These strips provide a zone of infiltration that protects surface water by allowing remaining vegetation to remain essentially undisturbed, allowing the forest floor to trap sediment from adjacent land areas. Filter strips will be maintained as follows:

- a. They will border and parallel the edge of the lakeshore.
- b. Existing vegetation must be maintained, subject to the exceptions listed in 3 below.
- c. Soil exposure is limited to less than five percent (5%) of surface area well distributed throughout the filter strip.
- d. Cultivated lawns and lawn fertilizer are not permitted in the filter strip area.
- e. Erosion control measures such as straw bales, mulch and silt fences will be used when an area of soil is exposed within the filter strip and sedimentation is likely to result. (see the Town Erosion and Sediment Control Ordinance)
- f. There shall be no commercial harvesting of trees within these filter strips.

3. Removal of vegetation in the SLO area. The removal of natural vegetation is not allowed without first obtaining a permit from the Planning Commission. Exceptions to this requirement are:

- a. The removal of dead, diseased, dangerous, and storm or fire damaged trees, shrubs, and plants.
- b. The trimming and pruning of trees, shrubs and plants.

Jo said that all of that would then be spelled out in a site plan which would be submitted to the Planning Director.

Cheryl said that the area of disturbance would exceed 5000 sq ft with the berm and the driveways. She said the planned foundation was a shallow, frost-protected foundation.

The motion establishing the setback for the house at a minimum of 80 ft because it meets the criteria as stated above, passed unanimously.

Jo said that for the planned studio, the existing house will be removed.

Cheryl said that the size of the studio will be less than 2000 sq ft including both first and second floors. They want to move it towards the lake so that they can repair the drainage behind the site.

Liz asked why they didn't consider placing the studio where the slope is gentler. If the studio were pushed back, they would not have to drive a fire truck, for instance, down that steep slope. A fire seems like an increased possibility with a wood shop.

Cheryl said that there is a well there and part of the neighbor's driveway comes in there, as well. The location as proposed seemed most practical.

Wayne asked where the sewer comes in.

Cheryl said it came in perpendicular to the highway and is in line with the "35" dimension on the drawing and angles a little to the southwest.

Wayne noted that if the powerline was underground, there would not be these problems with the site.

Cheryl said that they were looking into that possibility.

Liz asked how far back the current structure was set back from the lake.

Cheryl said it was 88 ft.

Jerry said that the studio still had to meet the 110 ft setback from the road, so there is not that much room to move it back.

Wayne said that it was an existing nonconforming structure, and there are allowances in the Ordinance for those and alterations to them.

Cheryl said that the existing structure was not in good enough shape or suitable for conversion.

Wayne asked if the State allows taking down a nonconforming structure and rebuilding it in the same footprint.

Sue said that the Ordinance states that you can replace a nonconforming structure but that it must be the same footprint and the same height. It can be increased up to 25% without a variance.

Wayne said that that might not be as significant as the setback they are asking for now.

Sue read from Article IV of the Ordinance on Nonconforming Structures, Effect of Destruction:

Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of this Ordinance, may be continued, including repair, replacement, restoration, maintenance, and improvement that does not include expansion, unless:

1. The nonconformity or occupancy is discontinued for a period of more than (1) one year, or
2. The nonconforming use is destroyed by fire or other peril to the extent of greater than fifty percent (50%) of its market value, and no land use permit has been applied for within one hundred-eighty (180) days of when the property is damaged.

Cheryl said the existing structure is 28 ft by 28 ft not including the porch.

Wayne said that they could tear the existing structure down and rebuild, increasing the footprint up to 25%. They cannot increase the nonconformity, but they could make it wider. They would not need a variance. It would be a little bit smaller than the studio they have proposed.

Dave said that the enclosed porch on the front can be included for determining size and footprint.

Sue said that according to the Ordinance, a nonconforming structure can be replaced unless it has been unoccupied for 1 year. She believes it has been vacant for more than a year.

Wayne said if the requested 55 ft variance is not approved, the Commission could consider looking at the same location with a different configuration, not to exceed the current footprint size.

Jo said that she did not think that the home could be considered unoccupied for a year. The owner passed away and the kids are heating it and using it.

Wayne made a motion to deny the 55 ft setback for the studio because it doesn't comply with the Ordinance.

Dave seconded.

Jo made motion to split the question. Liz seconded and the motion passed unanimously.

Jo pointed out that the technical information regarding the erosion rate that she talked about earlier would allow the 55 ft setback.

Wayne made a motion that the requested 55 ft setback is not in harmony with the Ordinance because it does not comply with the setback requirements from the shore in a reasonable manner. Larry seconded. The motion passed 5 to 1 with Jo opposed.

The main motion to deny the 55 ft setback passed 5 to 1 with Jo opposed.

Sue said that a variance can only be issued to the owner of the property. So it should be a condition that the variance is contingent on the transfer of ownership to the applicant.

Cheryl asked if the Commission would consider a variance to allow construction of a studio with a square footage not greater than or equal to the existing building and that does not increase the lake setback or the highway setback.

Jo felt that it would be a different variance request and would need to be posted.

Wayne said that they changed the setback for the home to 80 ft and did not post it. It was his understanding that the Commission had the latitude to make adjustments during the hearing.

Sue said that her understanding on this was that the case law was not clear. The Commission has done it with the 80 ft setback. Judges have asked why alternatives were not considered.

Jo said that the 80 ft setback was less than the requested setback.

Liz said that there are rules regarding how many overnights constitutes occupancy under rental laws.

Chuck Mindestrom, brother of the owner, said that that was not reasonable. They mow the lawn, they heat it, they spend time there. If you go overseas for a year and leave your home vacant, you lose the right to do what you want with your home?

Liz said that her interpretation would be that the land itself would be considered to be occupied. She did not think that a variance was needed as long as you adhered to the requirements set out for nonconforming structures.

Liz made a motion that the applicant can build a structure, maintaining the setbacks of the existing structure from the road and the lake and not to exceed the ground floor area plus 25% expansion. Jerry seconded. The motion passed unanimously.

Jo made a motion that both of the passing motions are contingent on the transfer of the property to the applicants. Liz seconded. The motion passed unanimously.

Sue brought up driveways again.

Jo said that the Ordinance says that additional driveways require a variance.

Sue said that in that case another variance is needed for the second driveway.

Cheryl said that it was possible that a single driveway might work higher up on the property.

Dave said that it would result in less impervious surface.

Sue asked Cheryl to let her know what the County says regarding their driveway applications and what the applicants decide to do regarding a second driveway.

New Business

Sue introduced Les Grumdahl. He owns property in the Mcquade/Highway 61 area in SMU-6 and would like to relocate his siding and window business to that location.

Referring to the Ordinance, Sue said that SMU-6 is considered mixed use. Could Neighborhood Commercial be considered an element of mixed use? The definition of Neighborhood Commercial is: "Those uses that provide neighborhood level convenience services to communities such as small grocery stores, small sundry and convenience item stores, and small professional office buildings, such as doctor and dental clinics, which uses are of such size and nature as to blend well with the existing and intended development pattern of the neighborhood." Sue said that she didn't necessarily think that the business fit under Neighborhood Commercial. A home-based business wouldn't apply because he has more than 5 employees. Looking in Table 5.2, there is not anything else that is permitted that would be applicable.

Liz asked if they were selling or manufacturing.

Les said that there would be no manufacturing.

Sue said that Commercial, Neighborhood, Accessory Structure might fit for the proposal, requiring a conditional use in SMU-6.

Jo asked if the business was installation, requiring warehousing of materials. Do clients come there, too?

Les said that it would be offices and a warehouse. Clients would be coming to the location so it would be a showroom, too.

Jo thought the use would fit the LIU zone district better.

Sue said that rural industry such as would be permitted in LIU, is not permitted in SMU-6. So the options would be to allow it as Neighborhood Commercial or to rezone it to LIU.

Wayne said that rezoning was pretty broad in scope whereas a conditional use could be limited.

Sue asked how big the site was.

Les said that it was 12 acres.

Wayne said that the area is currently zoned residential but it is very close to the highway. The Town considered rezoning it at one time in the past but the proposal was not well received. It could be time to revisit the question.

Sue said that the Ordinance allows for Shoreland Commercial and regular commercial. Shoreland Commercial applies to anything in the Shoreland Overlay. The definition of Shoreland Commercial is “This district is intended for concentrated, locally based, commercial development along the shores of Lake Superior, for uses consistent with providing goods and services for the local community, and incidentally for the locally based tourism industry. This district supports a moderate level of development intensity.” So it might fit under that definition as goods and services.

In general, though, Sue said that she does not see a conditional use that fits. Wayne agreed.

Sue read from the Ordinance regarding changes to the zoning map: “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.” The LIUs that were grandfathered in are very small areas. It is not necessarily desirable to rezone small areas. SCO could potentially be an option, also.

Liz asked if it could be put on the agenda for the next meeting.

Jo agreed. There’s not an easy answer. A zoning map amendment is a long process.

It was agreed to put the matter on the agenda for the December 28 meeting.

Director’s Report

The annual holiday party is on Thursday Dec 14 after the Board meeting.

Old Business

Short-term rentals and SMU-8 continue to be put on the back burner. The hope is that there will be time for the Commission to continue their work on these issues early in the coming year.

The minutes were approved as presented.

Concerns from the audience. None.

The meeting adjourned at 10:56.

Attachments:
K. Olson Comments
Pliml Photos



Planning Department

Duluth Township

13 November, 2017

Following are comments on the variance request for 5956 North Shore Drive for the upcoming hearing on 16 November, 2017 .

Thank you for your attention

K. Olson

106 Scenic Drive

In regard to variances in general :

The ordinances are set and published when a property is purchased. One should be expected to plan according to the regulations. It is disappointing when owners are allowed to disregard these guidelines for their personal wishes.

In regard to 5956 North Shore Drive :

I feel it is most important to retain the established setbacks from the shores of Lake Superior. In addition to pollution and erosion issues, we should maintain the scenic beauty of the lakeshore. In the past, properties have been allowed to be built near the water but we can progress from these ideas and stop further encroachment.

If it is determined that this property is not subject to erosion, the authorized setback from the shoreline is still 100 feet . To allow reduction of the setback by nearly half the distance is excessive.

In reviewing the proposed plans, it seems there is ample property to build these structures within the legal setbacks and if not, the plans could be altered to adhere to the current regulations.