

**Town of Duluth
Planning Commission
Meeting Minutes
July 27, 2017**

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

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

Absent: Wayne Dahlberg and Dave Edblom.

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

The agenda was approved with the following changes from Sue: Under New Business, add Updating the Ordinance, Greenhouse Language and under Director’s Report, Additional Meetings and Questions.

Variance Hearing: Derek Raisanen

Commission members introduced themselves. Derek Raisanen was present for the hearing.

Sue started by reading the Town’s Communication Agreement.

She then introduced the hearing process and the request.

The request is for a variance of 25' from the required 75' for the west side yard setback for construction of a home. Sue showed the vicinity map. The property is in FAM-3. The dimensional requirements are as follows.

FAM-3 Dimensional Requirements	Lot Area	Lot Width	Lot Coverage	Road Setback	Side Yard Setback		Rear Yard Setback	
					Principal	Accessory	Principal	Accessory
	9 Acres	300'	5%	100'	75'	75'	100'	100'

The proposed siting of the home meets all of these requirements except for the side yard setback. The requirement is for 75 ft and the request is for 50 ft, a variance of 25 ft.

She showed the site map. The driveway is straighter than it is shown on the site map.

Jo said that there is kind of a plateau where the building site is. Otherwise there are a lot of wet areas on the site.

Sue then read each of the criteria for granting a variance and the response to each of 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 states: The variance if granted will not alter the essential character of the location, but will encourage the most appropriate use of the land. By placing the proposed structure 50' from the side lot, the structure would be kept off of lowland that would adversely affect the property. The proposed variance would eliminate chances of erosion and structure failure. Less filling of site would maintain more natural vegetation. By protecting the lowlands natural resources I'll be making less of a footprint on the land, as a result of reducing foreign material needed to fill in lowlands.

The variance is consistent with the Comp Plan. The variance would encourage the preservation or protection of areas unsuitable for development due to environmental, economic constraints. The lowland on the rest of property is not ideal or suitable to build on environmentally as it would put at risk the carrying capacity of land or watersheds as stated in point E. Also in point 4. To develop land with respect for the physical limitation of natural resources so that a quality environment can be enhanced or preserved. I am physically limited to the natural high ground which places me within the 50 ft side yard range.

Variances 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: 2a. Due to the unusual circumstances unique to the property, the most reasonable location of the structure is approximately 50' from the side lot line. The rest of the property is low elevation unsuitable or unreasonable to build on. I do believe I would be using the property in a reasonable manner. I believe the variance requested doesn't go against the vision or policies of the township, or impact the surrounding neighborhood in a negative manner. According to soils scientist the most appropriate placement of home puts the home within 50' of property line.

2b. I didn't create or divide property.

2c. By using the topography of the land to keep the house lower to the ground, better privacy would be maintained. With the vegetation aged forest a privacy "wall" would still be maintained.

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

Applicant states: Yes.

Derek said that Sue covered everything he was going to say in her presentation of his request.

John asked if Derek had talked to either one of his immediate neighbors

Derek said that he talked to Warren to the west, and to Chad on the other side. They both agreed that it was the best place to put the house.

Jo said that she looked at the property and did not see any give. She thought Derek had done a good job of taking advantage of the knoll. But, she said, if Wayne were present, he would ask if they had considered any other siting that would not require a variance.

Derek said that he and the builder looked at turning the house. One of the corners would still have been at 50 ft. At 75 ft, no matter how you turn the house, it encroached on the wet areas.

Jo said that she was concerned that the culvert under the driveway might end up creating a trenching effect. She understands that they may also trench the artesian well over to the culvert. Right now everything spreads out into the wetland. It would be nice to have the water spread out again after going through the culvert.

Derek said that there is a natural drainage area there already. He thought it would make sense to drain it there for now. The well is a trickle, but eventually he would like to not have the water constantly running. He said that he could put some pea rock in there to create a more level area. He said he avoided ditching it.

John said that if you look at the topographic map, there is a naturally occurring bench along there where the house is placed. When he visited the site, he could not see where else the home could be placed.

Derek said that he understands the need for setbacks and wants to do what he can to maintain his and his neighbors' privacy. He doesn't want to build right on the property line. It helps that it is very wooded.

Larry Zanko moved to approve the variance as requested. John Schifsky seconded.

Jo Thompson moved to split the motion. Liz Strohmayer seconded. The motion to split the motion was approved unanimously.

Liz Strohmayer made a motion that the proposal is in harmony with the general purposes and intent of the Ordinance because the proposed project reduces the amount of environmental impact to the extent possible in that area. Larry Zanko seconded.

Jo agreed. She said that he is working with the natural environmental circumstances of the site.

Larry said that the placement of the home also minimized fill, which is good.

The motion was approved unanimously.

Jo Thompson made a motion that it is consistent with the Comprehensive Land Use Plan because the proposal works to preserve open spaces and natural resources as encouraged by the CLUP. Liz Strohmayer seconded.

The motion passed unanimously.

John Schifsky moved that the property owner proposes to use the property in a reasonable manner given the limitations inherent to the property. Jerry Hauge seconded.

The motion passed unanimously.

John Schifsky moved that the circumstances are unique to the property and not created by the property owner, as evidenced by the topographic map. The only place you can place a house is where the applicant proposes to place it. Larry Zanko seconded.

The motion passed unanimously.

Jo Thompson made a motion that the variance will not alter the essential character of the locality because it is a rural neighborhood and is heavily wooded. The property line is so buffered with greenspace that the 25 ft variance will not affect the character of the neighborhood and the house will not be set right next to the wetlands. John Schifsky seconded.

The motion passed unanimously.

Jo Thompson moved that a condition to the variance be that the applicant maintain the flow from the culvert such that it does not create a new channel, but spreads the flow of water into the adjoining wetland. Jerry seconded.

Jo said that he could put some large rocks and vegetation in the way of the water flow so that the flow is slowed and the water will spread out.

The motion passed unanimously.

The main motion to approve the variance, including all of the split motions and the motion for the condition, was approved unanimously.

A break was taken to prepare the decision and findings of fact document. The document was read and approved.

The June 22nd minutes were approved as presented.

Old Business

Sue said that she has gotten a few calls regarding the Commission's review of SMU-8. She hopes to get back to it when there are not as many hearings.

New Business

The Town Board requested that the Commission look at short-term rental requirements in the Ordinance.

Sue had a draft of what the language and placement should be. The purpose is to move pertinent language from Article VIII Performance Standards to Article XI, Conditional Uses. With the provisions for short-term rentals

under Performance Standards, as they currently are, a variance can be requested if the requirements cannot be met. Under Article IX, Conditional Uses, Special Requirements, the requirements must be met and a variance from them would not be allowed.

Larry suggested adding “interim” to Article IX Section 22.3: “The allowable rental frequency for high-frequency short-term rentals will be established as part of the conditional/*interim* use permit.”

The Commission agreed that Article IX was where the requirements for short-term rentals should be placed.

Sue said that the change will become effective after a public hearing, approval from the Board and after the appeal period.

John made a motion recommending that the Board accept the changes to the short-term rental language in the Ordinance, as Sue presented it and with the changes noted in the minutes. Larry seconded and the motion passed unanimously.

Next on the agenda was the Stoney Point variance. Sue said that Stoney Point is a platted subdivision on Stoney Point. The process started in 2005 or 2006. The developer (Odyssey) originally wanted a planned unit development, but then decided on a platted subdivision. It is in an erosion hazard area. They wanted to have the houses as close as possible to the lake shore with an unobstructed view of the lake. The setback requirement is 125 ft from the top edge of the eroding bluff. Their first proposal for a revetment was not granted as it involved an extensive area. A facilitated discussion was held with Odyssey to help understand the Town’s concerns and Odyssey’s concerns. The Commission eventually approved the variances, with the requirements for each LUP as it was built out.

Sue said they have revetted two of the lots and, as far as she knew, one had been sold. Odyssey called and they want to sell lots without doing the revetment. In doing that, any structure would have to meet the slump line setback. Is there anything in the Ordinance that says if you have a variance you have to use it? If they don’t want to do the revetment and just have the homes meet the standard setbacks, can they do that? There are wetlands that have to be considered in building placement. In addition, money has to be set aside to maintain any revetment work they do. Generally speaking, is it agreeable to the Commission that they don’t have to complete the revetment if they can meet the setbacks?

The Commission agreed it would be permissible to not revet the remaining lots. To build on those lots all the requirements in the Ordinance, including those for the Erosion Hazard area, would have to be met.

Sue showed the Google Earth aerial photos of the area. It is variable where the slump line is.

Jo noted that there is a driveway on lot number 3.

Larry noted that the revetments they have already done do not look that aesthetically pleasing in the aerial photos.

Sue said that there was also the question of whether a lot owner could apply for a variance from the regular setbacks if they wanted to.

It was agreed that they could.

Next up was the greenhouse language for the Ordinance. Sue said that it had been over a year since the Commission had designated three types of greenhouses and determined where they would and would not be allowed and with what performance standards. The Commission originally decided that commercial greenhouses would only be allowed in LIU-3A, SCO-8A and COM-3. There are three LIU-3s in the Township now that the Clover Valley School site has been rezoned. One of them is Bomark, another is on Mace Road.

Jo said the Mace Road site was 11 acres.

Larry said that the Bomark site seemed like the only one that would be large enough to accommodate this use.

Jo asked about the old tank farm. Even though there is a business there already, if someone wanted to have a commercial greenhouse there, could you have two businesses on one piece of property? It is entirely residential there except for the LIU parcel.

John said that the use could be made a conditional use so a public hearing would be necessary.

Jo said that as it is currently written someone could apply for a permit to have a greenhouse in LIU-3 or COM-3 and would not have to come before the Commission. That makes her uncomfortable.

Sue said that it could be made a conditional use, but one of the goals that emerged in the original discussion was to make things clearer. People reading the Ordinance wouldn't know if it was something they would be likely to be able to do.

Jo said that she didn't think the use was compatible with any of the commercial areas in the Township. The Township is still primarily residential and these greenhouses are sources of significant light pollution.

Liz said that she thought light pollution was a big issue. She can even see the hockey rink lights from her house when it's overcast. A greenhouse, which would be brighter than that, would be a significant intrusion.

Jo made a motion that commercial greenhouses not be allowed in LIU-3. Liz seconded.

Sue asked about SCO-8a and COM-3.

John said that the discussion indicated to him that the Commission does not want industrial/commercial greenhouses in the Township at all. The Township is mostly low-density rural residential with a little bit of commercial activity along Hwy 61. He said that he is comfortable saying no to industrial/commercial greenhouses across the board. Farmstead greenhouses would still be allowed.

Jo made a motion to amend the original motion to include COM-3 and SCO-8, so industrial/commercial greenhouses would not be allowed anywhere in the Township.

Larry seconded the amendment.

Larry asked if the definition for industrial/commercial greenhouses should be left in the Ordinance..

Sue said yes.

Liz said that light pollution was the primary concern. She was trying to think of other situations where it could be done without the light pollution. What about a mushroom farm?

Sue said that you wouldn't need a greenhouse structure to have mushrooms.

Liz asked if there were there other situations the Commission might be overlooking that might be excluded but would be okay.

Jo mentioned Maly's at the bottom of McQuade Road.

Sue said Maly's has been there forever, so wouldn't be subject to the new regulations.

John said that industrial/commercial greenhouses are a pretty limited use. Glass, translucent materials, lights and ventilation. He cannot think of any other purpose for something built from those materials at that scale.

Jerry agreed that the use should either not be allowed at all or made a conditional use.

The motion, as amended, passed unanimously.

Jerry made a motion to recommend that the Board incorporate the greenhouse language into the Ordinance as presented by Sue but with the deletion of industrial/commercial greenhouses as a use in the Township as discussed. Jo seconded. The motion passed unanimously.

Directors Report

Sue said that the Town's Stormwater Pollution Prevention Plan is being audited.

There is a conditional use hearing coming up on August 24th. Sue asked if an extra meeting should be scheduled for the end of August in case there are additional variances or cups. There are 2 or 3 that are in the wings, but she doesn't know when or if the applications will come in. Everyone agreed that August 31 would work. Sue said that we could schedule it and cancel it if it isn't needed.

Jo asked what the objective was for the Commission's study of the SMU-8 zone district.

Sue said it was to see how many lots are in compliance with the existing requirements in the Ordinance and see if it might be appropriate to reduce the lot size and lot width requirements. Setbacks would need to be considered, too, if lot size and width requirements were reduced.

Jo said that those properties were platted in 30s. There are parcels where people own the original lot but didn't buy adjacent lots. It concerns her to reduce the lot width requirement because it would encourage putting big houses on small lots. As for reducing the required lot size, she noted that a lot of people have been conscientious of that acre requirement and bought numerous contiguous lots to protect their space and privacy. She felt it might be better to hear those on a case-by-case basis.

John said that the challenge is to find the common ground of respecting neighbors and space without so many owners having to apply for variances.

Sue said that another aspect is that as nonconforming lots become conforming lots, they may be worth more.

Concerns from the audience.

None.

The meeting adjourned at 9:12.